



TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appellant: This Land Development Limited

Site Address: Land east of Rayleigh Road, Thundersley, SS7 3NL

Development Description: "Outline planning application for the development of up to 455 new homes, a new multi-use community hall, land for the provision of a healthcare facility, land for a stand-alone early years and childcare nursery, new vehicular/pedestrian access points from Stadium Way in the north and Daws Heath Road in the south, new greenways and green links, multi-functional open space, green infrastructure, surface water attenuation, landscaping and associated infrastructure. All matters reserved except access."

Planning Inspectorate Reference:

APP/M1520/W/24/3338797

Local Authority Reference:

23/0085/OUT

PROOF OF EVIDENCE OF PHILLIP E HUGHES MRTPI

On behalf of CASTLE POINT BOROUGH COUNCIL

May 2024

Contents

1	Introduction	2
2	Site and Surroundings	4
3	The Application and Planning History	14
4	Planning Policy	20
5	The Council's Case	25
	Green Belt Harm - Inappropriateness	25
	Green Belt Harm - Openness	27
	Green Belt Harm - Purposes	41
	Other Harm – Character and Visual Impact	49
	Other Harm – Best and Most Versatile Land	67
	Other Issues	68
6	The Appellant's "Other Considerations"	69
7	The Planning Balance and Summary	76

Appendices

1	Aerial Image of the Appeal Site
2	The Appeal Site "Current Land Uses"
3	Public Rights of Way and Permissive Routes and Tracks
4	Proposed Development Blocks
5	Proposed Development Blocks Numbered
6	Little Haven and West Wood Information Boards

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Phillip Eric Hughes will say:

I am a director of PHD Chartered Town Planners Limited, a town planning consultancy that I established in 1995. I had also worked at a senior level in local government for 10 years in both Planning Policy and Development Control.

I have a Bachelor of Arts Honours Degree (BA [Hons]) in Town and Country Planning and have been a corporate member of the Royal Town Planning Institute (MRTPI) since 1990 and I am a Fellow of the Royal Geographical Society (FRGS). I also have a Diploma in Management Science (Dip Man) and I am a Member of the Institute of Management (MCMI). I am also a member of the Town and Country Planning Association (TCPA) and an affiliate member of the Royal Institute of British Architects (RIBA).

I have represented a wide variety of clients at appeals ranging from Local Planning Authorities (including LB Camden, RB Kingston, LB Barnet, Spelthorne, Hertsmere, Watford, Welwyn Hatfield and Walsall Boroughs and Central Bedfordshire, Uttlesford, Epping Forest, St Albans and Bassetlaw Districts), Parish Councils including Bovingdon, Hartlip, Loddington and Tetsworth to housebuilders (New Homes Estates Limited, MASMA Limited, Whittleworth Homes, Fusion Residential, Henry Homes plc. etc.), developers (MS Oaklands Ltd, Acre London Holdings Limited, Lanz Group, Mitre Property Management Limited, Mark Stephen Limited etc.), property companies (Acre LLP, Orb Estates, Property Matters LLP, Property Matters LLC, Albermarle Property Investments plc.), businesses (Super Toughened Glass Limited, Williams Tenders Limited, JIRWL, Hollywell Spring Limited), amenity groups (Anglefield Residents Association, Stopit Action Group, Paynes Lane Association, Hemley Hill Action Group, Birch Green Residents Group, Bury Gate Residents Association) and individual householders.

I have visited the appeal site and general locality on a number of occasions; indeed I visited the appeal site and area before satisfying myself that I could support the Council's reason for refusal and accepting instructions in this matter. I am familiar with the policies applicable to the site. I am also familiar with the local, national and regional planning policies relevant to this appeal.

The evidence that I have prepared and provide for this appeal has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

1 Introduction

- 1.1 The proposal is for residential development of up to 455 dwellings and community facilities on a site in the Green Belt ('the appeal site'). This appeal relates to an outline planning application with all matters, excluding access, reserved for future consideration ('the application'). The application (Ref. 23/0085/OUT) proposed:

"Outline planning application for the development of up to 455 new homes, a new multi-use community hall, land for the provision of a healthcare facility, land for a stand-alone early years and childcare nursery, new vehicular/pedestrian access points from Stadium Way in the north and Daws Heath Road in the south, new greenways and green links, multi-functional open space, green infrastructure, surface water attenuation, landscaping and associated infrastructure. All matters reserved except access."

- 1.2 The Council resolved, consistent with the recommendation of their Officers, to refuse planning permission. A public inquiry into the appeal is scheduled to open on 4 June 2024.
- 1.3 Planning permission was refused by decision notice dated 14 December 2023 ([CD5.1](#)). The reason for refusal is outlined in the Officer Report ([CD5.2](#)) and decision notice as set out below:

"The proposal represents inappropriate development in the Green Belt as defined in the National Planning Policy Framework. Such development will only be permitted if very special circumstances exist to justify its inappropriateness. No other considerations have been found, either in isolation or in combination, to outweigh the harm to the Green Belt so very special circumstances do not exist and the proposed development is contrary to Government advice as contained in the National Planning Policy Framework."

- 1.4 The National Planning Policy Framework (NPPF) was updated in December 2023 but its approach to Green Belt harm and decision making, countryside character and beauty, and decision making remains materially unchanged from the previous version.
- 1.5 This is an outline application with only access not reserved at this stage. The application plans include a number of parameter plans but none of these can fix details required pursuant to the reserved matters submissions such as pertaining to the layout, scale or appearance of the proposed development or the landscaping of the site, and these matters remain reserved.
- 1.6 It is common ground¹ that the Council cannot demonstrate a five year supply of deliverable housing land and their Housing Delivery Test Score is below 75%. As such the so-called tilted balance pursuant to paragraph 11(d) of the NPPF is engaged in the first instance.

¹ See Statement of Common Ground (SoCG) paragraphs 3.12 and 3.3.16

- 1.7 However, as I demonstrate in this proof, the site is in the Green Belt, the proposal leads to Green Belt harm, and the application of policies in the Framework provide a clear reason for refusal. Therefore, the presumption/ tilted balance in paragraph 11(d) of the NPPF is disengaged (paragraph 11(d)(i)).



Fig 1.1: The Appeal Site - Base © Google

- 1.8 The Statement of Common Ground provides a brief description of the site, identifies the relevant planning policies and sets out the relevant background history of the appeal site. It also set out matters of agreement as well as matters of disagreement. As well as agreeing Heads of Terms it also considers that a Section 106 Agreement to mitigate the impacts of the development is necessary.
- 1.9 A failure to provide a suitable section 106 undertaking to address the infrastructure requirements of the appeal site as well as the impacts of the proposed development on European sites and RAMSAR sites will lead to additional objections to the scheme the subject of this appeal.
- 1.10 Where I refer to weight to harm or benefits in the planning balance I do so in accordance the following scale:
- Substantial
 - Significant
 - Moderate
 - Limited
 - None

2 Site and Surroundings

- 2.1 The appeal site comprises land extending to a total of 27.9 hectares. Whilst having four irregular boundaries, it is broadly square shaped with the boundaries broadly facing north, south, east and west.
- 2.2 The appeal site is located to the east of the Rayleigh Road (A129), south of Stadium Way and the Rayleigh Weir Retail Park and north of Daws Heath Road. Development along Daws Heath Road in the area of the appeal site is largely ribbon in character set within a wider area of open countryside.
- 2.3 To the east of the appeal site lies open countryside including Little Haven Nature Reserve, a hospice, Wyburns Wood, Tile Wood and Pound Wood Nature Reserve.
- 2.4 The appeal site lies within an area of countryside that runs north south separating Daws Heath and Thundersley as well as Leigh on Sea and east to west separating Thundersley and Daws Heath from Rayleigh.
- 2.5 The appeal site lies outside any settlement, within and forming part of a wider area of countryside that separates Thundersley/ Rayleigh/ Daws Heath. The appeal site lies within the Green Belt in the administrative area of Castle Point Borough Council.

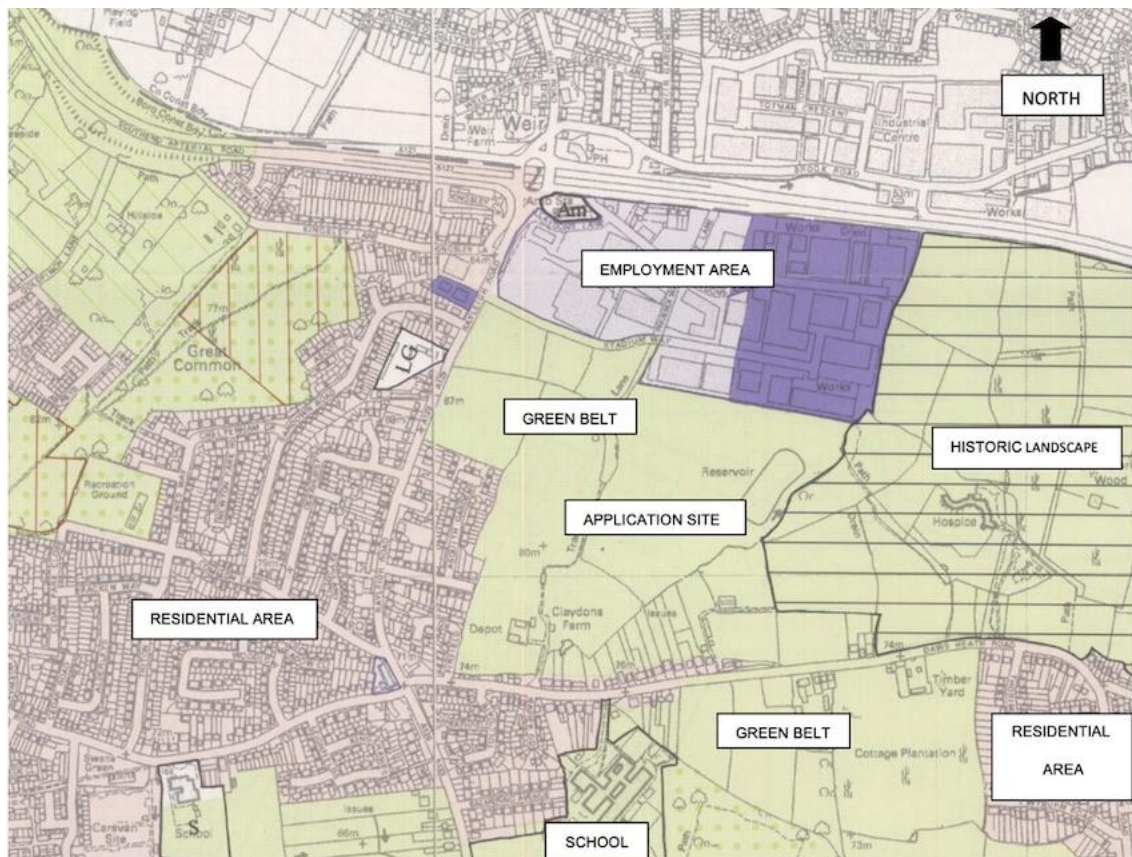


Fig 2.1: Green Belt Boundary Around Daws Heath Road and Rayleigh Road

2.6 The appeal site has open frontages to both Daws Heath Road and Rayleigh Road.



Fig 2.2: View of the Appeal Site from Rayleigh Road (viewed across part of the Fire Station Site)



Fig 2.3: View of the Appeal Site along Daws Heath Road

- 2.7 The site comprises an area of open undeveloped land, with a pond used by an angling club located close to the eastern site boundary. The fields on the eastern part of the site are broadly in agricultural use for arable crops. The eastern most field within the appeal site to the south of the pond comprises part of an historic landscape as identified on the Proposals Map.



Fig 2.4: The Arable Fields viewed from the access to the lake looking north west

- 2.8 The western part of the appeal site is separated from the arable fields by a tree belt which I understand delineates the route of an historic lane known as Claydons Lane. Those western fields comprise open grassland that contains a number of tracks around its periphery which I have observed being used by walkers, joggers and dog walkers.
- 2.9 To the south of the western part of the appeal site is a pocket of development excluded from the appeal site comprising Claydon farmstead also annotated on the Ordnance Survey Plan as a depot. To the south of Claydon Farm is a ribbon of houses that front onto Daws Heath Road and are outside the appeal site.
- 2.10 Extensive areas of woodland are located to the east of the appeal site and a number of small areas of woodland are situated around the site.



Fig 2.5: The Appeal Site (also at Appendix 2)

- 2.11 The development site comprises a number of small historic fields, with dense natural hedgerows with trees, bushes, and (where not farmed) flower rich acid grassland. The site forms part of an important wildlife corridor which runs into the urban area and is part of the historical Daws Heath Woodlands, which span from Hadleigh Great Wood in the east.
- 2.12 A stream runs through the site to the south-east of the large pond which is located to the northeast of the site. There is a small car park south of the pond including a small single storey club house used by anglers.
- 2.13 The topography of the site is gently rolling with a plateau of land located in the west/south west with falls to the north / north west to Stadium Way, south west and west. The western field fronting Rayleigh Road is flat and separated from the main western part of the site by a tree belt which is in turn divided from the arable field to the east by a tree belt that encases the route of Claydons Lane.
- 2.14 The northern boundary to the fire station and the rear of commercial units that front Stadium Way is defined by a strong tree belt that provides a well-defined and easily understood and legible boundary between the settlement edge and countryside/Green Belt.

- 2.15 The individual field boundaries within and around the appeal site are marked by hedgerow and tree planting. The southern appeal site boundary is to the ribbon of dwellings fronting Daws Heath Road and to the south-west includes modest bungalows as well as two storey dwellings. Views from Daws Heath Road are available between these properties of the open fields comprising the appeal site such as that between 27 and 31 Daws Heath Road below. Further views will be experienced as part of the site visit and I include further photographs in the area throughout my proof.



Fig 2.6: View from the Junction of Tollgate and Daws Heath Road looking north

- 2.16 In addition, Firfield Road is located close to the junction of Daws Heath Road and Rayleigh Road. It is a cul-de-sac that aligns with the southern part of the western boundary and provides some open views of the appeal site around the first bend in the road. The open fields can be appreciated together with the barn buildings at Claydons Farm.
- 2.17 As one moves eastwards the gaps between properties remain available where the openness of the appeal site remains evident and can be appreciated. In the 180 metre wide gap between 137 and 179 Daws Heath Road the appeal site either comes to the road frontage or is open to views from the road frontage across the narrow tapered land to the east of no. 137. The openness and intrinsic character and beauty of the countryside can be experienced from Daws Heath Road especially at the eastern end of the appeal site.

- 2.18 Firfield Road is part of a larger area of post war estate housing. I have already described views available from Firfield Road into the site and I also note that views of the appeal site are available from and along the full length of Asquith Avenue to the end of the road as it borders the appeal site and between properties on Asquith Gardens.



Fig 2.7: View from junction of Asquith Avenue with Asquith Gardens of the appeal site

- 2.19 North of Asquith Gardens the appeal site fronts onto Rayleigh Road where the full verdant and open character of the land is clearly appreciated as one approaches the eastern end of the road.
- 2.20 The northern boundary of the appeal site is to the Fire Station and commercial development that fronts onto Stadium Way. Some glimpses into the appeal site are available in the spaces between buildings and the proposed access corridor contains numerous existing trees that provide a sylvan character that contains a skate park and the start of an old country lane (Claydons Lane). Whilst the beginning of the route of Claydons Lane can be navigated and appreciated from the public footpath beyond the rear of the buildings it incrementally becomes more difficult to navigate and becomes more and more assimilated by vegetation.
- 2.21 Immediately alongside the northern part of the appeal site is a public footpath (BEN7) that runs to the rear of commercial units, at the eastern end of the units it turns south and runs outside the appeal site between its eastern boundary and the Hospice grounds until it connects with Daws Heath Road.

- 2.22 Views of the appeal site are available along the full length of the footpath as it runs both east to west (behind Stadium Way and alongside the northern appeal site boundary) and north to south (in part alongside the eastern site boundary). To the east of footpath BEN 7 running north south between Southend Arterial Road and Daws Heath Road is public footpath BEN8. Footpath BEN8 is connected to BEN7 by a series of links within and around the neighbouring woodland.



Fig 2.8: View from the north east part of Footpath BEN7 looking south west

- 2.23 Footpath 7 is supplemented by permissive routes through Little Haven Nature Reserve which include a route alongside 185 Daws Heath Lane and then running alongside the easternmost boundary of the appeal site (which also forms part of the historic landscape).
- 2.24 The site and area lie within Landscape Character Area ('LCA') 4²: an attractive area of rolling small valleys featuring well maintained pasture, woodland and hedgerows with field boundary trees. The appeal site is characteristic of the landscape area and features undulating land with small valleys and a ridge. The land form rolls north south and east west across the site.



Fig 2.9: View from mid-section of Footpath BEN7 below Finger Meadow looking west

2.25 The opportunities and constraints for the area identified in the LCA are:

- *“Opportunities to enhance existing landscape character through management and additional planting to the north of the site to more clearly define the green belt boundary with the trading estate*
- *Constraints to development are primarily the designation of ancient woodland and rolling topography to the north”*

2.26 The appeal site has an attractive open character which is redolent of the wider countryside within which it is set.

2.27 The LCA describes the landscape sensitivity as high as is the visual sensitivity of the area.

2.28 The LVIA that accompanied the application the subject of this appeal identified a number of viewpoints which will be addressed in detail later in this evidence.

2.29 The historic landscape area to the east of the appeal site comprises areas of Ancient Woodland and includes the eastern field within the appeal site as illustrated on Fig 2.5 above.

- 2.30 The local highway network includes the A129 Rayleigh Road which runs alongside and parallel to the appeal site's western boundary, Daws Heath Road which runs alongside the site's southern boundary and Stadium Way which runs parallel with the north site boundary. Rayleigh Road has pavements aligning both sides of the road and views are available into the site in the gap between 462 Rayleigh Road and the Fire Station building (including over land outside the appeal site (e.g. Fig 2.2)). Access is available from Rayleigh Road onto tracks that exist around the western part of the appeal site.
- 2.31 No clear views are available from Stadium Way into the appeal site, however, glimpsed and partial views are available at the site of the access where the sylvan nature of this part of the site can be appreciated, between the Fire Station and Ford dealership buildings at the western end of Stadium Way and between 52 and 56 Stadium Way. Likewise in the gap between 52 and 56 Stadium Way it is evident that the land to the rear of the buildings is open. Stadium Way provides formal access between 8 and 38 Stadium way via Claydons Lane to the public footpath network comprising FP BEN7, informal access to FP BEN7 is also available between 52 and 56 Stadium Way.
- 2.32 Daws Heath Road has pavements on both sides of the road save on a short stretch between 185 Daws Heath Road (on the northern side of the road) and 286 Daws Heath Road (on the southern side of the road) where pavement only exists alongside the southern part of the road. Access to Footpath BEN7 is provided from Daws Heath Road to the east of 185 Daws Heath Road on the northern side of the road and west of the access to Little Haven Hospice. Access to Footpath BEN8 is situated off Daws Heath Road to the east of the access to Little Haven.
- 2.33 As referred to in paragraph 2.21 Footpath BEN 7 links Stadium Way and Daws Heath Road running immediately alongside the northern site boundary and then alongside the eastern site boundary. It provides clear views and appreciation of the open nature of the appeal site and links into a wide network of footpaths to the east and south of the area.
- 2.34 Footpath BEN 8 runs north south to the east of the appeal site linking Southend Arterial Road and Daws Heath Road. Footpaths 7 and 8 are linked to the east of the trading estate by a footpath that runs along the northern side of Starvelarks Wood. Numerous permissive footpaths and tracks are available to the east of the appeal site including those around, within and through Little Haven Nature Reserve, Starvelarks Wood, Tile Wood and Pound Wood
- 2.35 Bridleway 85 BENF comprises a circular route located to the south of the appeal site and Daws Heath Road and accessed from Daws Heath Road, The Dell and Daws heath village, it circulates around the edge of West Wood and, it provides views north across paddocks to the south of Daws Heath Road of the appeal site.
- 2.36 Photographs of the site boards for West Wood and Little Haven Nature Reserve are at Appendix 6. Below is an extract map showing in yellow the public footpaths BEN7 and BEN85 as well as in blue the permissive routes and tracks referred to above.



Fig 2.10: Footpaths, Tracks and Permissive Routes (Base © Google) – Appendix 3

- 2.37 The appeal falls in the open green space between Thundersley and Rayleigh as well as the green space between Thundersley, Daws Heath and Leigh on Sea.
- 2.38 The appeal site is within the zone of influence of the eleven statutory designated sites and nineteen non-statutory designated sites of local importance where identified habitats are the subject of recreational pressure from new housing development.
- 2.39 The site is located within 300 metres of Thundersley Great Common SSSI, which is to the northwest, 1500 metres of Great Wood and Dodds Grove SSSI to the southeast; and 1800 metres of Garrold's Meadow SSSI to the east.
- 2.40 The site is located within the zone of influence of the Benfleet and Southend Marshes SPA and Ramsar sites, the Blackwater Estuary SPA and Ramsar site and the Foulness SPA and Ramsar site.

3 The Application the Subject of this Appeal and Planning History

- 3.1 The application is set out in the Introduction above.
- 3.2 The application plans show two accesses to the site one from Stadium Way close to the route of Claydons Lane and the other to the south from Daws Heath Road opposite nos. 154 and 156.
- 3.3 A number of illustrative masterplans have been provided with the application the subject of this appeal including:
- Indicative Road layout
 - Pedestrian and Non- Vehicular Access Parameter Plan
 - Building Scale Parameter Plan
 - Open Space Parameter Plan
 - Phasing Parameter Plan



Fig 3.1 Open Space Parameters Plan Extract (Development areas shaded yellow)

- 3.4 The building scale parameters plans show the indicative location of various elements of residential development including buildings of up to 13 metres/ three storey in height³ (albeit scale is not fixed at the stage). The remaining buildings are defined as two storeys with a height up to 11 metres⁴.

³ Assuming average floor to ceiling heights of 2.7 metres, then a building of 13 metres height is capable of accommodating more than 3 storeys.

⁴ Given a 5.0 – 5.5 metre tall eaves and a 3 metre roof height, an 11 metre tall building is extremely tall for development described as two storeys.

- 3.5 The indicative phasing plan shows the open land fronting Rayleigh Road to the south of the Fire Station grounds and car dealership the first to be developed followed by the open land fronting Daws Heath Road. The third phase comprises the land rear of properties fronting Daws Heath Road and east of Asquith Avenue and Firfield Road. The final phase of development comprises the northern parcel of land at the rear of the large box retail units that front onto Stadium Way. The phasing plan seems to indicate that Phase 1 will comprise c160 dwellings and will comprise the most densely developed part of the appeal site. Phase 2 is shown to accommodate 125 dwellings with phase 3 showing 60 dwellings and the final phase proposing 115 dwellings.
- 3.6 Access is a detailed matter to be determined at this stage and the proposals show two vehicular accesses to the site. From the north access is proposed from Stadium Way via a priority junction. The proposed carriageway is 6.75 metres wide and is flanked by a 3.5 metre wide shared cycleway/ footpath to the west and a 2 metre wide footpath to the east. Visibility splays of 2.4 x 43 metres are provided in both directions and the junction has 10 metre radii. Approximately 40 metres of the site frontage to Stadium Way will be the subject of development comprising the road, pavement, cycleway into the site, radii and widened footpath/ cycleway to the west of the access point. The access corridor that runs into the site is 12.25 metres wide.
- 3.7 The priority junction access from Daws Heath Road is opposite existing bungalows that front the southern side of the road and are located adjacent to open field and woodland that also fronts Daws Heath Road. The proposed carriageway is 6.75 metres wide and is flanked by a 3.5 metre wide shared cycleway/ footpath to the west and a 2 metre wide footpath to the east. Visibility splays of 2.4 x 54 metres are provided in both directions and the junction has 10 metre radii. Approximately 29 metres of the site frontage to Daws Heath Road will be the subject of development comprising the road, pavement, cycleway into the site and radii. The access corridor that runs into the site is 12.25 metres wide.
- 3.8 The responses of consultees are summarised in the committee report at CD5.2. Copies of the 945 public responses from third parties have been provided with the Council's questionnaire and a summary of their objections are included at pages 60 – 61 of the committee report.
- 3.9 A draft s106 undertaking was submitted with the application the subject of this appeal and, subject to agreement on Heads of Terms and successful execution this avoids the need for a reason for refusal relating to infrastructure and impact on European sites etc..
- 3.10 The mix and property sizes would be determined at reserved matters stage.
- 3.11 The provision of custom self-build houses or plots (CSB) can be secured in the section 106 undertaking and thus has been included in my overall weighting of the benefit of providing housing.

Planning History

- 3.12 The committee report at CD5.2 lists the limited relevant planning history.
- 3.13 A previous application on the eastern part of the appeal site was submitted in 2010 proposing 237 dwellings and I note that it was the subject of an appeal against non-determination that was withdrawn by the Appellant ahead of any decision. No reason was given for the withdrawal of the appeal.



Fig 3.2: 2010 Planning Scheme

- 3.14 The scheme proposed retaining the open land fronting Rayleigh Road and did not extend east onto the arable land and thus beyond 95 Daws Heath Road and thus also retained the open land fronting Daws Heath Road.

3.15 A copy of that scheme is included at CD13.2.

3.16 I also note an application for residential development south of Daws Heath Road which was the subject of an appeal for non-determination that was heard on 30 April and 1 May 2024 (APP/M1520/W/23/3329585). At the time of finalising this proof that appeal remained undetermined. The extent of the appeal site and the neighbouring appeal site are shown on the aerial image at Fig 3.3 below:



Fig 3.3: Appeal Sites North and South of Daws Heath Road

3.17 The proposed scheme at south of Daws Heath Lane included parameters plan and an illustrative layout plan which are at CD13.3, below is an extract of the illustrative Masterplan.



Fig 3.4: Illustrative Masterplan Land South of Daws Heath Road

- 3.18 That Appellant had appealed against non-determination. The Council subsequently determined that had they been in a position to do so they would have refused planning permission. The putative reasons for refusal were:

The proposal represents inappropriate development in the Green Belt as defined by the National Planning Policy Framework. Such development will only be permitted if very special circumstances exist to justify its inappropriateness. It is not considered that very special circumstances have been demonstrated in this case which either in isolation or combination carry sufficient weight to outweigh the harm to this part of the Green Belt. The proposed development is therefore contrary to Government advice as contained in the National Planning Policy Framework.

Under the Conservation of Habitats and Species Regulations 2017 (commonly referred to as the Habitat Regulations) a Habitat Regulations Assessment (HRA) is required for development that is likely to have significant effects on a Habitat Site. Habitat Sites are protected for their international importance. They are designated through the EU Birds Directive and EU Habitats Directive, and these Directives have been transposed into UK law. The proposal lies within the zones of influence of the Benfleet and Southend Marshes, Foulness and the Blackwater and as such would result in increased recreational pressure on wildlife habitat sites on the Essex coast.

The applicant has not offered any mitigation in accordance with the council's adopted Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or commissioned their own Appropriate Assessment to demonstrate that there would be no significant likely effect and in the absence of either of these the proposal would be contrary to guidance set out in the National Planning Policy Framework.

- 3.19 In addition to these appeals at CD13.1 is a plan showing the location of the most recent Green Belt housing applications and appeals in Castle Point. I refer to these for completeness sake rather than suggesting that any clear theme can be divined from the decisions that would assist the Inspector in assessing the merits of this particular appeal. It is trite but necessary to repeat that each and every appeal should be determined on its own merits and it is extremely difficult to translate the circumstances of one particular appeal to any other.
- 3.20 The Jotmans Lane appeal decision (CD8.12) is a decision of the Secretary of State wherein the lack of Local plan green belt policies were considered however the thrust of national policy in terms of Green Belt inappropriateness, openness and purposes resulted in the Secretary of State concluding that the other considerations did not clearly outweigh the harm to the Green Belt and any other harm (in that case moderate weight to character and appearance).
- 3.21 The most recent appeals are the Hart Road appeal (CD8.1), the Manor Road Industrial Estate appeal (CD8.2) and the rear of 301 Rayleigh Road Thundersley appeal (CD8.13) each was determined in the context of the Council being unable to demonstrate a five year housing land supply but each turned on their own facts and two were dismissed and the other allowed. The allowed appeal at Hart Road was for a scheme that was 100% affordable housing.

4 Planning Policy

- 4.1 The development plan comprises the Castle Point Local Plan 1998 (CPLP) together with the Essex and Southend on Sea Waste Local Plan (2017).
- 4.2 The adopted Local Plan Proposals Map identifies the appeal site as Green Belt land.
- 4.3 The Secretary of State's saving direction of September 2007 saved the majority of policies but did not save Policy GB1 which related to control of development in the Green Belt and replicated national policy. As a consequence, in accordance with the approach at the time of the direction the Council has since applied Government policy when considering development in the Green Belt as currently set out in Chapter 13 of the December 2023 National Planning Policy Framework (the NPPF).
- 4.4 It is agreed that the development plan does not make provision for meeting housing needs beyond 2001 (Policy H1). Furthermore, the Council is unable to demonstrate a five year supply of housing land and for that reason the Local Plan can be regarded as being out of date when assessed against Paragraph 11 of the NPPF.
- 4.5 The following saved policies of the CPLP are relevant to consideration of the application the subject of this appeal.

- EC2 Design
- EC3 Residential Amenity
- EC4 Pollution
- EC13 Protection of Wildlife and their Habitats
- EC14 Creation of new Wildlife Habitats
- EC16 Protection of Landscape
- EC19 Ancient Landscapes
- EC22 Retention of Trees Woodlands and Hedgerows
- H9 New Housing Densities
- H10 Mix of Development
- T2 Intensification of Access Use
- T8 Car Parking Standards
- RE4 Provision of Children's Playspace and Parks
- CF1 Social and Physical Infrastructure and New Developments
- H13 Location of development
- CF14 Surface Water Disposal

- 4.6 CPBC has adopted relevant supplementary planning documents including:

- Developer Contributions Guidance SPD
 - Affordable Housing March 2023
 - Healthcare Facilities March 2023
 - Highways, Travel, Education, Libraries, Flooding and Drainage Infrastructure March 2023
 - Playing Pitches and Indoor Built Facilities March 2023

- Residential Design Guidance SPD 2012
- Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS Strategy July 2019 and SPF May 2020)

4.7 Other guidance adopted by the Council includes:

- Essex Vehicle Parking Standards 2010
- Guidance for Assessing Planning Applications in the Green Belt in Castle Point (November 2023)

4.8 The appeal site is located within a Community Infrastructure Levy (CIL) charging zone, as set out in the Council's adopted. CIL is non-negotiable and is calculated at the time planning permission is granted. The charge is based on the net increase of gross internal floor area of the proposed development, and payment of CIL is due upon commencement of the development,

4.9 The Council has previously embarked on a replacement plan process, that draft Local Plan had undergone examination and was subject to the Examining Inspector's Report that had found it sound subject to Main Modifications. The Council withdrew that Local Plan on 15 June 2022.

4.10 The policies of the withdrawn Local Plan are no longer relevant. However, it is accepted that some of the evidence base documents may remain relevant alongside the Examining Inspector's Report dated 3 March 2022.

4.11 Work is underway on the Castle Point Plan. The Castle Point Plan is intended to guide development in Castle Point to 2050.

Castle Point Plan Timetable		
Stage	Time Period	Engagement Activity
Issues Identification	January 2023 - August 2023	4 - 6 months engagement on issues with partners, the community, local businesses and other stakeholders. The Initial Engagement Outcomes Report 2023 [pdf] 4MB has the key outcomes from this engagement.
Options Development	September 2023 - June 2024	Feedback on how the Council is addressing the issues raised. Some informal engagement may occur.
Developing the Plan	June 2024 – December 2024	2- 3 months Options Engagement with partners, the community, local businesses and other stakeholders. (Formal regulation 18)
Publication	January 2025 – March 2025	Formal consultation with partners, the community, local businesses and other stakeholders (Formal regulation 19)
Submission	April 2025	
Examination	June 2025 – December 2025 (Estimated, dependent on Examiner)	
Adoption	March 2026 (Estimated, dependent on Examiner)	

4.12 The agreed timetable for the preparation of the Castle Point Plan is set out above extracted from the approved Local Development Scheme January 2024 (LDS).

- 4.13 The plan has yet to reach Regulation 18 stage and therefore is at an early stage of preparation. Therefore, the emerging Local Plan can only carry very limited weight. I understand that to be common ground between the main parties.

National Planning Policy Framework (NPPF)

- 4.14 The Framework was revised in December 2023 and sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. In terms of the most relevant sections for this appeal Section 13 relates to Protection of the Green Belt. Section 2 includes the presumption in favour of Sustainable Development. Section 5 relates to the delivery of a sufficient supply of homes. Section 12 relates to achieving well-designed places and Section 15 relates to conserving and enhancing the Natural Environment.
- 4.15 Paragraph 11 sets out the approach to the presumption in favour of sustainable development. Paragraph 11(d) advises that the presumption means, for decision-making:

"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

- 4.16 The NPPF has been revised and in the circumstances of CPBC where a plan has yet to reach Regulation 18 stage with a policy map accompanying it, the Council is tasked with demonstrating a five year supply of deliverable land. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land.
- 4.17 Footnote 8 states that in the situation where a Local Planning Authority is unable to demonstrate a five-year supply of deliverable housing land and/ or the Housing Delivery Test (HDT) results are below 75% then the policies which are most important for determining the application are deemed to be out of date.
- 4.18 Therefore, the so called *tilted balance* or presumption in favour of sustainable development is engaged.
- 4.19 Paragraph 11(d)(i) and Footnote 7 provides (so far as relevant) that the so called *tilted balance* is disengaged in circumstances where the application of policies of the Framework which protect assets of particular importance provide a clear reason for refusing permission. Footnote 7 clarifies that:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: [...] land designated as Green Belt); [...]”

- 4.20 As such, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether the application of the Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the presumption/ tilted balance is disengaged.
- 4.21 Paragraph 154 of the Framework provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. It is common ground that the proposal for up to 455 dwellings and access roads and other development to facilitate the proposed housing comprises inappropriate development.
- 4.22 Given it is common ground that the development proposed comprises inappropriate development, the only route to permission is if very special circumstances can be demonstrated and the planning balance has to be undertaken absent any tilt in favour of the development to determine whether very special circumstances exist.
- 4.23 The Framework advises that inappropriate development is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 152). Paragraph 153 states:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

- 4.24 The appeal site comprises land outside any designated settlement and thus comprises part of the countryside. Although not a “footnote 7 policy”, paragraph 180(b) of the Framework directs that decisions on planning applications should contribute to and enhance the natural and local environment by:

“recognising the intrinsic character and beauty of the countryside ...”

- 4.25 The *Cawrey*⁵ judgment establishes that the recognition of the intrinsic character and beauty and character of the countryside necessarily imparts a degree of protection to those matters.
- 4.26 The NPPF at 180(b) also seeks recognition of the economic and other benefits of the best and most versatile agricultural land.

⁵ i.e. para 49 of **Cawrey Ltd and SoSCLG and Hinkley and Bosworth BC** [2016] EWHC 1198 (Admin) at [CD12.11](#)

- 4.27 The Framework seeks to achieve well designed places and as set out at paragraph 135(f) seeks to provide high standards of amenity for existing and future users and being sympathetic to context including landscape setting (135(c)).
- 4.28 Section 15 requires the protection and enhancement of biodiversity (185 - 186).

National Design Guide (NDG)

- 4.29 The National Design Guide notes:

“The National Planning Policy Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. [...]”

- 4.30 The NDG as referenced in the PPG sets out 10 characteristics and states that good design considers how a development can make a positive contribution to all 10 characteristics. The NDG notes the importance of context in achieving well-designed places.
- 4.31 The first of the ten characteristics is context within which the role of good design is to enhance the surroundings. The NDG advises that well designed new development responds positively to the surrounding context and details a number of physical features including existing built development including layout form, scale etc.

5 The Council's Case

5.1 I present my evidence under the following broad topic headings:

- a. Green Belt, openness and purposes;
- b. Countryside, landscape character and visual impact;
- c. Other harm
- d. Infrastructure and mitigating ecological impacts;

5.2 I then go on to consider whether any *other considerations* raised by the Appellant clearly outweigh the harm by way of inappropriateness and any other harm such that very special circumstances exist.

5.3 The Green Belt balance has to be undertaken in the context of the orthodox planning balance and not in the context of paragraph 11(d) of the Framework. It is the Green Belt balance that has to be satisfied, i.e. the decision maker needs to conclude whether the harm by way of inappropriateness and any other harm (including other Green Belt and non-Green Belt harms) are clearly outweighed such that very special circumstances exist. Should very special circumstances exist then planning permission should be granted there is no need to undertake another layer of decision taking.

Green Belt Harm – Inappropriate Development

5.4 The NPPF confirms that the essential characteristics of the Green Belt include its openness and permanence.

5.5 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Maps of the adopted Local Plan. The Framework (paragraph 154) does not define development of up to 455 residential dwellings, community buildings, access roads etc. as an exception from the definition of inappropriate development.

5.6 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception⁶.

5.7 It is common ground that the proposal comprises inappropriate development. Paragraph 153 of the NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight in the planning balance.

5.8 Paragraph 152 NPPF states that inappropriate development should not be approved except in very special circumstances.

⁶ See **Timmins and Anr and Gedling Borough Council** [2014] EWHC 654 (Admin) at **CD12.1**

- 5.9 Then paragraph 153 confirms that “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The test is to be “clearly outweighed” and not merely “outweighed”.
- 5.10 The application of NPPF paragraph 152 provides a clear reason to refuse permission under NPPF 11(d)(i), and it would only be through the exercise of the Green Belt planning balance in NPPF paragraph 153 (wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness and any other harm thus amounting to very special circumstances) that permission could be granted.
- 5.11 Therefore the decision will have to be taken with all the harm first identified and weighed and then the other considerations relied on by the Appellant considered and weighed and only if those other considerations “clearly outweigh” the harm by way of inappropriateness and all other harm do very special circumstances exist. That exercise is undertaken without any tilt in favour of the development and in line with the Green Belt planning balance set out in the NPPF.

Other Green Belt Harm - Openness

- 5.12 The Framework (para. 142) identifies openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl.
- 5.13 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact⁷. However, the word “openness” is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs, and factors relevant to the visual impact on the aspect of openness which the Green Belt presents⁸.
- 5.14 In **Turner**, Sales, LJ stated as follows (so far as relevant):

"14. [...] The word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents

15. The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]

16. The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.

25 The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."

⁷ **R (Lee Valley RPA) v Epping Forest DC** [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJ, para. 7 at [CD12.2](#)

⁸ **Turner v SSCLG** [2016] EWCA Civ 466, Arden, Floyd and Sales LJ [CD12.3](#)

5.15 In response to various judgements and case law including Turner the Government updated the PPG in July 2019 (Para 001; ID 64-001-20190722) in respect of openness and it now states:

“Assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:

- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- the degree of activity likely to be generated, such as traffic generation.”*

5.16 In **Samuel Smith**,⁹ a judgment of the Supreme Court (Lord Carnwath) issued the lead judgment (with which Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt, disagreeing with the judgment of Lindblom LJ in the Court of Appeal. The Supreme Court judgment was handed down on 3 December 2019. Therein Lord Carnwath said:

“22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.”

“39. [...] As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.”

“40 Lindblom LJ criticised the officer’s comment that openness is “commonly” equated with “absence of built development”. I find that a little surprising, since it was very similar to Lindblom LJ’s own observation in the Lee Valley case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and “urban sprawl”, and with the distinction between buildings, on the one hand, which are “inappropriate” subject only to certain closely defined exceptions, and other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.”

⁹

R (**Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC** [2020] UKSC 3 at **CD12.4**

- 5.17 In effect the Supreme Court found that the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case. The spatial component of openness is always a consideration in assessing openness.
- 5.18 There is a difference between impacts on visual amenity, which are normally considered within the process of LVIA and the visual aspects of openness which are considered as part of Green Belt Assessment. In a LVIA an assessment is made on the effects of development on views available to people and their visual amenity. In consideration of Green Belt, an assessment is made on the effects of development on the visual openness of the Green Belt including impacts on views, links to the wider Green Belt, inter-visibility between settlements and whether measures could be proposed that would restore the baseline aspects of openness.
- 5.19 In a Secretary of State decision of November 2021¹⁰ in dealing with visual openness on a site that has urban influences, paragraph 8.9 of the Inspector's conclusions, which were adopted by the Secretary of State, state:
- “In visual terms, external views of the site are relatively local and the M6 and A580, the Holiday Inn and the grandstands and other buildings of Haydock Park Racecourse lie close to its eastern, southern and northern boundaries respectively. Almost immediately west of the M6 is the extensive Haydock Industrial Estate (HIE). However, the proximity of these urban influences and features would do nothing to offset but, on the contrary, would serve to emphasise the permanent loss of openness, notwithstanding the relative containment of external views. **Moreover, the proposed landscape bunding and tree screening round the site, intended to soften the appearance of the buildings in the landscape, would aggravate the obvious loss of the essential and fundamental openness of the Green Belt. That loss carries substantial planning weight against the appeal.**” [4.17-22, 5.6] (emphasis added)*
- 5.20 With this in mind it is pertinent to look at the lawful baseline for the site. The appeal site comprises an area of open land with no material level of permanent development present. It is used for arable crop growing, open grassland, paddocks and a fishing lake. It is open both spatially and visually.

¹⁰ Haydock Point - Land at A580 / A49 - Ref: APP/H4315/W/20/3256871 at [CD8.9](#)



Fig 5.1 Aerial View of the Appeal Site from 2023 © Google

- 5.21 The pocket of two buildings in the south east of the appeal site are excluded from the appeal site, I understand these building formerly comprised part of the Claydons Farm farmstead.
- 5.22 At the southern part of the site are three single storey agricultural style buildings arranged to the east of the existing access road to the Cook Farm Fishery fishing lake (the bungalow and three outbuildings - two to the west of the access and one brick walled timber fronted building - are outside the appeal site). The buildings within Cooks Farm included in the appeal site comprise an open fronted concrete framed hay barn located between the access road and ménage as well as two sets of stables sited parallel to one another to the north east of the hay store. All three buildings are single storey.
- 5.23 In addition, there is a modest club house located to the south of the fishing lake and used in conjunction with leisure fishing at the lake.
- 5.24 To the south east of the appeal site is the former Claydons farmhouse which lies within the appeal site demise (as opposed to the two buildings excluded from the site and described above in 5.20). In addition to the farmhouse are two or three single storey buildings that comprised part of the farmstead.

- 5.25 It is common ground¹¹ that there are eight buildings across the appeal site and I estimate that they have an approximate footprint of 425m² and a floorarea of approximately 500m² on a site of over 278,900m². Other development comprises the access drive to Cooks Farm and fishing lake and the access drive to Claydon Farm (which is retained in the scheme). Finally a small area of (what now appears to be unused) hardstanding is located in the centre of the site adjacent to Claydon's Lane and on the western part of the arable field.
- 5.26 The existing development on the appeal site is extremely limited, predominately of agricultural origins and concentrated in two small clusters. The appeal site is open and predominantly undeveloped as shown on the aerial images such as at Fig 5.1 and **Appendix 2**.
- 5.27 The north of the site is open with views from Footpath BEN7, Stadium Way and Rayleigh Road clearly available and allowing an appreciation of the open nature and countryside character of the appeal site.
- 5.28 From the south the open rolling countryside and the openness of the appeal site and its character as countryside is readily appreciated from Daws Heath Road and Footpath BEN7 as well as the permissive routes in Little Haven nature Reserve as shown on Fig. 2.10 and on the site boards (see **Appendix 6**), an example of which is included below:



Fig 5.2: Little Haven Nature Reserve Information Boards

11 SoCG para. 2.7

- 5.29 The open nature of the appeal site is evident along the footpath route from north to south as well as in closer proximity on the permissive routes alongside the appeal site boundary.
- 5.30 These routes (footpath BEN7 and the permissive routes are extremely well used by walkers en-route to work, leisure walkers, dog walkers and cyclists. On my visits on weekdays and weekends I have witnessed numerous people traversing these routes.



Fig 5.3: Cyclist on Footpath BEN7 travelling north by Finger Meadow

- 5.31 The openness of the appeal site is also perceived from the rear of houses in Daws Heath Road that back onto the appeal site including but not limited to the modest bungalows at nos. 27 – 33 Daws Heath Road (see Fig 2.6); the dwellinghouses and users of Firfield Road; the dwellinghouses and users of Asquith Avenue (see Fig 2.7) and the occupants of the properties in Asquith Gardens that back onto the appeal site.
- 5.32 It is also evident that the open grassland comprising the western part of the appeal site beyond Claydon's Lane and Claydon's Farm farmstead is used as a leisure route by walkers and dog walkers. I note there are links to this circular route around the fields from Stadium Way via BEN7 and Claydon's Lane, Rayleigh Road via a formal footpath link, Firfield Road via an informal link and Asquith Avenue at the end of the road via an informal link.
- 5.33 The approximate route is shown on Fig 2.10 and allows a further appreciation of the open nature of the appeal site as part of a wider stretch of countryside.



Fig 5.4: View from the informal track at its northern point adjacent to Claydon's lane looking south

- 5.34 Levels on the west drop gently from its midpoint around the rear of 42 Asquith Gardens northwards toward Stadium Way, the field fronting Rayleigh Road is relatively flat with its own circular track as well as a direct link to Rayleigh Road.
- 5.35 Levels from the south of 42 Asquith Gardens to Claydon's farmstead plateau then fall gently toward the rear of properties fronting Daws Heath Road. In the southern area levels also fall to the east past Claydon's farmstead.
- 5.36 I therefore conclude that the openness of the appeal site can be appreciated from numerous vantage points on and around the appeal site. Many of the vantage points are public and others are private. In Green Belt terms, the visual component of openness the distinction between public and private appreciation is not the same as in carrying out an LVIA compliant landscape assessment.
- 5.37 In assessing the landscape and Green Belt qualities of the appeal site and Area 4 the 2010 Assessment¹² concludes in respect of views:

"There are attractive views within the area and looking into the area from surrounding roads and other viewpoints. The industrial estate on the northern edge is reasonably well screened and set below the high ground in views from the south. The area is very attractive in views from Daws Heath Road."

¹²

Page 30 of the Green Belt Landscape Assessment 2010 ([CD6.24](#)) see also paragraph 5.73

5.38 I consider the appeal site to exhibit a strong sense of openness.

5.39 The Part 1 Green Belt Assessment 2018 summarises Parcel 4¹³ as

"[...] devoid of development considered to be inappropriate for a Green Belt location."

and to form:

"the entirety of the relatively small strategic gaps between these three settlements (Hadleigh, Thundersley and Daws Heath) and displays strong agricultural / countryside characteristics."

5.40 The appeal site, which falls predominantly within Parcel 4, is open in both a spatial and visual sense and that the development existing on site is extremely limited in its scope and impact. The parcel provides a very positive contribution to the openness of the countryside and is perceived as such.

5.41 Into this local and wider open countryside context the appeal proposal is to introduce up to 455 new dwellinghouses, access roads and other community development. I acknowledge that it will only be possible to definitively measure the extent of proposed development at reserved matters stage, however, for the purposes of assessing the overall impact of such a quantum of development it is necessary to have some estimates of the scale and overall quantum of development proposed.

5.42 The parameter plans provide some context to enable consideration of the dispersal of development and its overall impact. For instance I note that the proposals include:

- The development of around 65% of the Rayleigh Road frontage with proposed residential development with over two thirds of that development area proposing development of up to 13 metres in height.
- The development of the entire Daws Heath Road frontage with residential development of up to 11 metres in height

5.43 These blocks of development will fundamentally alter the perception of openness from these two roads and will enclose views from these roads with dense estate style development at depth replacing the open fields that currently dominate the views in these areas.

5.44 There is very little existing development on the site comprising two groups of former farm buildings in the south east and south west of the appeal site. They have a modest footprint and a predominately single storey scale. Existing plans are not available and I estimate the volume of the existing buildings¹⁴ to be circa 1700m³.

¹³ which is consistent with Area 4 in the 2010 Green Belt Landscape Assessment

¹⁴ Assuming a single storey footprint of 400m² with an average height of 3.2 metres and a two storey footprint of 50m² with eaves at 5 metres and ridge at 8 metres



Fig 5.5: Proposed Development Blocks (Appendix 4)

- 5.45 I estimate that the 455 proposed dwellings¹⁵ would have an approximate footprint of 22,750m². Added to that I have allowed another 1800m² for garages¹⁶. Then allowing for a shed or other outbuilding in 300 gardens of 4m² would add a further 1200m². Therefore, I estimate the proposed residential building footprint is approximately 26,000m². This figure is to a degree speculative, but it is a reasonable and conservative, assumption given the scale of the proposed development that allows comparison between the existing and proposed contexts.
- 5.46 In addition to the residential component of the build are three community buildings comprising a medical centre, community/ sports hall and early years facility. I have estimated that a multi-purpose sports/ community hall that accommodates a multi-use area that can be used as five a side football/ netball/ badminton pitches/ courts could be circa 1500 m² in footprint. An early years facility for 60 children would require a net internal area of c180m² for the children and when other space (circulation, storage, services etc) is added in and a gross figure derived I think it would not be unreasonable to be looking at a footprint of c400m². In terms of a medical centre looking at recent applications nationwide, a modest centre would have a footprint of 600m². I recognise these are highly speculative figures and I am using them only to quantify generally the overall impact of the proposed development.
- 5.47 The combined footprint of residential and community buildings would be c28,700m².

¹⁵ For the purposes of this exercise I have assumed that the average dwelling is a three bedroom 5 person dwelling with a footprint of 50m².

¹⁶ I have assumed 100 single garage spaces. A garage space of 6 x 3 metres equals 18m².

- 5.48 To be added to this is the area of hardstanding which breaks down between access road, estate roads, car parking and other hardsurfacing (patios, footpaths etc..). The main access road is c800 metres long and has a total width of 12.25 metres and thus has an area of around 9800m². For the estate road I have conservatively allowed 5 metres width (a 5 metre carriageway / shared surface) over a length of 3000m giving an area of 15,000m². For car parking I have allowed an average of 1.5 car parking spaces per dwelling which equates to 683 spaces, I have then deducted the 100 garage spaces and that results in a total of 583 car parking spaces with an area of 15m² each¹⁷. That adds a further 8745m² of hardstanding. I have allowed a further 100 spaces for the community buildings which adds another 1500m². I have also added a modest patio of 3m x 4m for 300 of the proposed houses which equates to 3600m². Lastly I have allowed for 1500 metres of footpaths and cycleways per the non-vehicular access parameters plan¹⁸ at an average of 2.5 metres width which equates to 3750m² of hardstanding.
- 5.49 Again, I realise that these figures are to a degree speculative, but they are a reasonable and I believe conservative assumptions given the scale of the proposed development as well as the parameter plans and allows a comparison to be made between the existing and proposed contexts.
- 5.50 Therefore, the total area of hardstanding would be approximately 39,000m² of hardstanding.
- 5.51 The combined footprint of buildings and hardsurfacing would be c 67,500m².
- 5.52 In terms of volume the proposed scheme includes up to 455 dwellinghouses of two and three storey height. The parameters plan indicates the height of two storey dwellinghouses to be a maximum of 11 metres and the three storey houses to have a maximum height of 13 metres. I refer to my earlier comments on the realism of these parameters to reflect 2 and 3 storey scale but for the purpose of my exercise and again utilising restraint I have assumed an average height of 10 metres comprising 6 metres to eaves and a 4 metre roof. On the basis of a footprint of 22,750m² the volume of dwellings¹⁹ would be 182,000m³. Obviously should the Appellant's maximum figures be used the volume of building could increase significantly. I have also allowed for 100 single garages with a 3 metre height and therefore a volume of 5400m³ and 300 sheds with a height of 2.5 metres providing a volume of 3000m³.
- 5.53 The total volume of residential buildings would be c190,400m³.

¹⁷ I have allowed 2.5m x 6m per space.

¹⁸ 34580 304 Rev C

¹⁹ i.e. (22750 x 6) + ((22750 x 4) / 2)

- 5.54 For the purpose of this exercise I have assumed all the community buildings are single storey with the medical and early years facilities having a height of 4 metres which equates to 4000m³ and the community hall has a height of 6 metres which results in a volume of 9000m³. On that basis the healthcare, education and community buildings would have an indicative volume of 13,000m³.
- 5.55 In terms of three dimensional impact we do not have details of the house types, I have approximated the volume as over 203,000m³ of proposed buildings across the appeal site as an illustration of the overall volume of proposed above ground development.
- 5.56 As a result, the total volume of proposed buildings would be over 203,000m³ compared to an existing volume of c1700m³.
- 5.57 That equates, even on this conservative approach, to an increase of above ground three dimensional built development over the existing situation of 99.2%²⁰. I would emphasise that this is a best estimate and not intended to give a precise indication of volume rather a conservative estimate of the approximate scale of development proposed.
- 5.58 These figures are illustrative of a substantial loss of openness in spatial terms.
- 5.59 However, in terms of the visual component of openness this difference is marked given the existing baseline is open arable fields, open grassland and a large pond with a limited number of former agricultural buildings. The site is located beyond an existing ribbon of dwellings fronting Daws Heath Road, an estate of post war housing and to the rear of retail/ commercial sheds and comprises part of the open countryside.
- 5.60 The proposed buildings are up to 13 metres in height and infill the 400 – 480 metre open space between the rear of properties in Stadium Way and the rear of the ribbon of dwellings fronting the northern side of Daws Heath Road . Furthermore, the proposed development will extend development over 600 metres east of Asquith Avenue and Gardens.
- 5.61 This scale of development and the loss of openness will be perceived both spatially having regard to the openness of the existing appeal site and visually having regard to public and private views of the existing completely open appeal site. In addition to being experienced within the appeal site I consider the loss of openness proposed will be experienced from:²¹.

²⁰ i.e. existing volume (1,700)/ proposed volume (203,000) x 100

²¹ See Photographs at section 2 and on previous pages in section 5

The North

- public views from Footpath BEN7
- public views from tracks approaching Footpath BEN7 from the north east
- public views from Stadium Way along the proposed access corridor
- public views between 52 and 56 Stadium Way and along the track between the units
- public views from Stadium Way between the Fire Station and car dealership
- private and public views from the car dealership and Fire Station on Stadium Way and the decked car park to Sainsburys

The East

- public views from Footpath BEN7
- public views from permissive routes within Little Haven Nature Reserve
- “private” views from Little Haven Children’s Hospice
- private views from Finger Meadow

The South

- public views from Daws Heath Road between nos. 127 - 179
- public views east of 179 Daws Heath Road
- public views from Daws Heath Road in gaps between nos. 65 - 127
- public views from Daws Heath Road above and between nos. 27 – 47 and from Napier Gardens and Tollgate looking north
- public views exiting The Deanes Secondary School onto Daws Heath Road
- public views from Bridleway BEN85 looking north across paddock and its link to Daws Heath Road
- private views from 27 – 179 and 4 - 286 Daws Heath Road

The West

- public views from Rayleigh Road between the Fire Station building and 462 Rayleigh Road
- public views along Asquith Avenue
- public views between properties in Asquith Gardens
- public views along Firfield Road
- private views from 9 – 23 and 16 – 20 Asquith Avenue and their rear gardens
- private views from 4 - 46 and 3 - 47 Asquith Gardens and houses in Firfield Road
- private views from 458 – 462 Rayleigh Road and their rear gardens

- 5.62 Having regard to the baseline the proposal would lead to a substantial and permanent loss of openness in both a spatial and visual context. I consider the substantial adverse impact on openness in a spatial dimension to lie toward the very top end of the scale of such impact. Given the virtual absence of development on the appeal site and the scale of new development I also consider the loss of openness in a spatial sense to be at the top of the scale of substantial.
- 5.63 I consider that in addition to the substantial increase in permanent development as proposed the scheme will be visible from all four sides of the site in public and private views where the substantial loss of openness will be experienced. Moreover the significant increase the visual perception of enclosure and development will reduce the experience of the openness of the site and this part of the Green Belt.
- 5.64 As to duration, the development would be permanent, a further aggravating factor.
- 5.65 In addition, a high degree of activity would be introduced onto the site, which presently involves only the limited occasional activity associated with farming arable land to the east, a fishing lake on the eastern boundary and horse paddocks in the south east. I have visited the site and area on a number of occasions and on all of these occasions it was not possible to discern any activity on site (save a car arriving at the fishing lake). The proposals would introduce significant vehicle movements behind the ribbon of houses that front Daws Heath Road, the units fronting Stadium Way, the houses in Asquith Gardens and the hospice grounds, noise and activity from residential occupation of 455 dwellings, 3 community buildings, parking and manoeuvring of vehicles, buses and commercial vehicles passing through the site, light from houses, streetlights, security lighting and vehicle headlights. These would be further aggravating factors reducing openness through generated activity.
- 5.66 In coming to these views I am mindful that this is an outline application with all matters reserved except access but I am also aware that the Appellant has illustrative material designed to show how the proposed scale of development will impact on the appeal site. Whilst I have referred to the illustrative material (and I note that this is the Appellant's best effort to show how the site can accommodate the quantum of development proposed) my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum regardless of layout, design, landscaping, appearance etc.
- 5.67 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm at the top end of the range in that regard. I also consider it will have a substantial impact on the visual appreciation of openness and again such matters lead to substantial harm. In coming to this conclusion I rely on both my analysis above as well as the perception of the site from the areas I describe above.
- 5.68 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.

- 5.69 In assessing this matter I consider the impact of the development as a whole and do not seek to credit as open encapsulated space such as private gardens or verges noting the findings of Inspector McDonald in an appeal at Leverhulme²²:

“The appellant sought to suggest that elements of the schemes, such as the play areas, sports pitches and open spaces would not be inappropriate development, and this somehow reduced the effect of the proposals. Yet, whilst these elements would not be inappropriate development on their own, there would still be a requirement to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Furthermore, the open spaces, play areas and pitches would be clearly related to housing development.

Moreover, parallel with the above, arguments that significant amounts of land would remain undeveloped, and that would contribute to spatial openness are illogical. Private gardens, play areas and amenity spaces are included in the appellant’s calculations as ‘undeveloped’ land, but these areas would be contained or surrounded by housing.”

- 5.70 I conclude that the harm arising from the substantial loss of openness of the Green Belt is substantial at the top of the scale, given the existing open nature of the appeal site and the scale of development and degree of harm to openness that is proposed.

22

DL64 - 65 at CD8.10

Other Green Belt Harm - Purposes

5.71 The purposes of the Green Belt are set out in NPPF at paragraph 134:

- a) *“to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

5.72 It is common ground for this appeal that purposes (d) and (e) are not harmed²³.

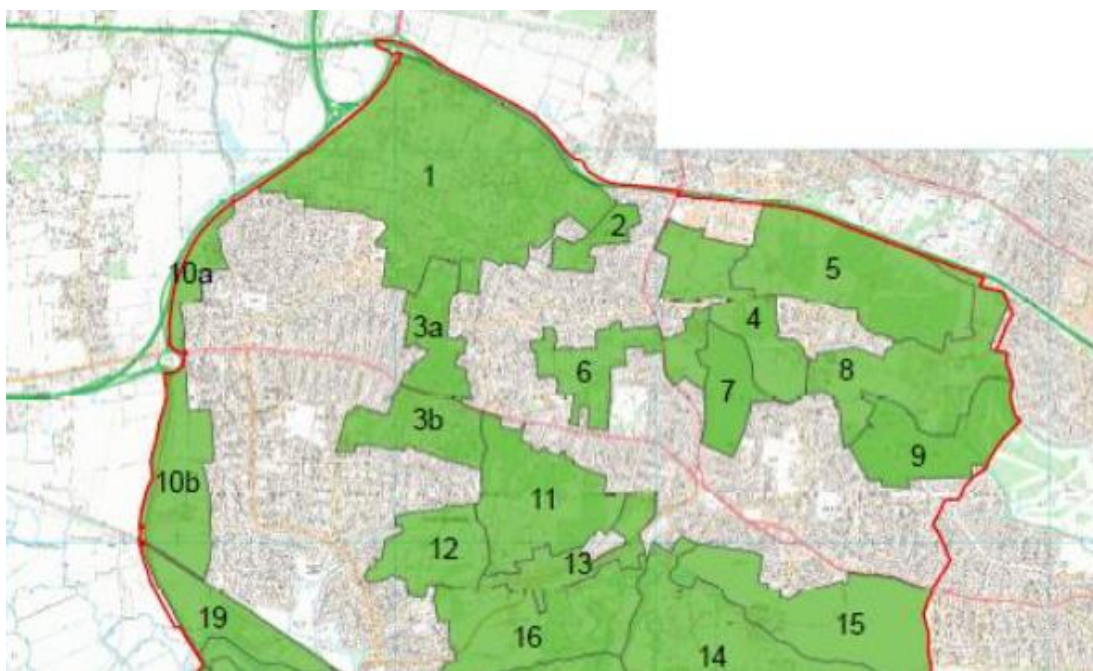


Fig 5.6: Green Belt Parcels in the North of Castle Point

5.73 The Council commissioned an independent Green Belt Review to inform future plan-making. The Green Belt Review 2018 – Part 1 sets out findings and identifies that a number of the areas reviewed were considered to contribute least toward the purposes of including land in the Green Belt. The contribution to the purposes was measured having regard to a scale ranging from none to minor to moderate to strong to very strong.

5.74 The appeal site falls predominately within Parcel 4²⁴ with a small part in Parcel 5, which both performed very strongly against each of the purposes (a) to (c). They are 2 of only 6 parcels (out of 30) that performed very strongly against all three purposes.

5.75 As such Parcels 4 and 5, of which the appeal site comprises part, are 2 of the 20% highest performing parcels of Green Belt in Castle Point.

²³ SoCG Paragraph 3.4

²⁴ Parcels 4 and 5 were first identified as a character areas in the 2010 Green Belt Landscape Assessment [CD6.24](#)

- 5.76 In addition to its strategic importance in the context of Castle Point and South Essex Parcel 4 is located to the east of Thundersley, south of Rayleigh and is identified as part of the Daws Heath Ring alongside parcels 5, 7, 8 and 9. These parcels collectively were found to make *a very strong contribution to the holistic purpose of the Green Belt*. The Review noted²⁵: the small but distinctive gap between Daws Heath and the larger urban settlements in proximity to it and then in the Part 1 report it notes²⁶:

“This Green Belt area encircles the settlement of Daws Heath and has been effective in preventing urban sprawl and therefore preventing the settlement from merging with the surrounding settlements of Hadleigh, Thundersley, Rayleigh and Eastwood. It also has an important function of preventing urban coalescence between these settlements more generally. As a result, Daws Heath has a more rural character compared to other settlements within Castle Point and neighbouring districts.”

- 5.77 Parcel 4 comprises one of four parcels (1, 2, 4 and 5) that collectively provide separation between Rayleigh in the north and Thundersley and Daws Heath to the south of the Southend Arterial Road. Parcels 4 and 5 both perform very strongly against all three purposes. It is fair to record that the gap between Rayleigh and Thundersley alongside the west side of Rayleigh Road has been eroded with Parcel 2 set 160 – 200 metres back from the road frontage which has been infilled with post war housing. Parcels 2 and 4 are therefore separated by up to 200 metres of existing housing. The proposal would further diminish the extent of Parcel 4 and widen the gap between Parcels 2 and 4 from up to 200 metres to c 800 metres.

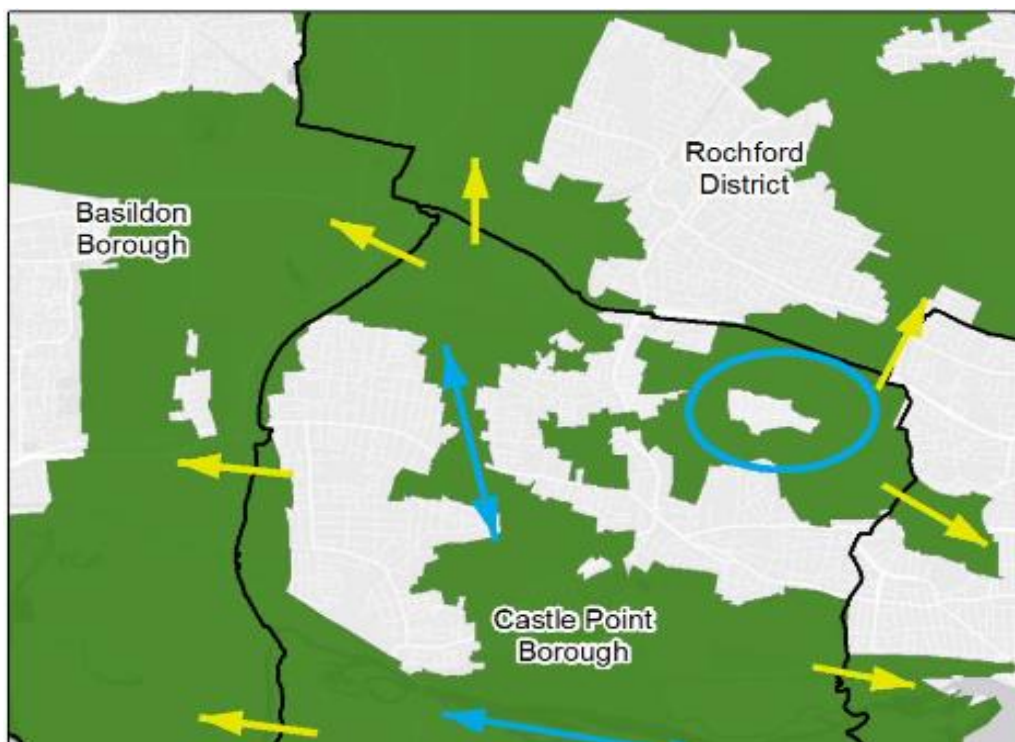


Fig 5.7: Castle Point Green Belt in the Strategic Context²⁷

²⁵ at paragraph 5.26

²⁶ Paragraph 7.7

²⁷ See Figure 8 in the Green Belt Review Part 1

- 5.78 The appeal site frontage to Rayleigh Road is the only green gap that provides any sense of separation along Rayleigh Road to delineate Rayleigh and Thundersley as separate settlements.
- 5.79 Both Parcels 4 and 5 perform very strongly (i.e. at the very top of the hierarchy) in terms of their contribution to purposes (a), (b) and (c).
- 5.80 In terms of conflict with purpose 1 ((a) in the NPPF) the review states that very strong conformity arises from indicative parcel characteristics for Parcel 4²⁸:
- *The parcel is adjacent to a built-up urban area, or sprawl from a built up urban area, and contains isolated or no development emanating from the adjacent area.*
 - *There are no alternative features that would provide a strong barrier to development.*
 - *Development would conflict with the purpose.*
- 5.81 With regard to Purpose 2 ((b) in the NPPF) for Parcel 4 the review states that very strong conformity arises from indicative parcel characteristics²⁹:
- *The parcel forms the entirety of the strategic gap between two neighbouring towns*
 - *Development would lead to urban coalescence or a very strong perception of merging.*
- 5.82 With regard to Purpose 3 (c) in the NPPF) the review states that very strong conformity arises from indicative parcel characteristics for Parcel 4³⁰:
- *The parcel represents open countryside and is almost entirely free of development considered inappropriate in a Green Belt location when considered as a whole.*
 - *Any periphery development influencing the parcel is characteristic of the countryside or not sufficient to outweigh the perception of countryside.*
- 5.83 The proposals will lead to the sprawl of large urban areas comprising Thundersley/ Rayleigh/ Hadleigh with a residential development of up to 455 dwellings and incidental development such as health, education and community buildings, car parks, access roads etc. The quantum of development is substantial in the context of this important gap and leads to substantial harm. The sprawl will infill an important gap that separates Rayleigh, Thundersley and Daws Heath and erode the sense of separate identity of these settlements. The continued sprawl of Rayleigh to the north and Thundersley to the west and south will not provide any more coherent, legible or defensible boundaries than already exist.

²⁸ See Table 3: Assessment Criteria under Purpose 1

²⁹ See Table 4: Assessment Criteria under Purpose 2

³⁰ See Table 5: Assessment Criteria under Purpose 3

- 5.84 In the context of Parcel 4 and its very strong performance I consider the harm that will arise from the appeal proposals to Purpose (a) would be very strong and merit substantial weight.
- 5.85 The proposal will lead to the merging of neighbouring settlements including Daws Heath/ Thundersley and Rayleigh with residential development of up to 455 dwellings and incidental development such as health, education and community buildings, car parks, access roads etc. The loss of open space between these settlements closes the gap between them and leads to continuous development alongside Rayleigh Road.
- 5.86 In particular as I have detailed above the proposal will close the only gap along Rayleigh Road that delineates the gap between Rayleigh in the north and Thundersley in the south. The infilling of this gap with up to 11 and 13 metre tall development will lead to the two settlement merging into one another and losing any sense of a gap or separate identity when travelling along Rayleigh Road.
- 5.87 In addition the proposal also proposes a substantial element of development alongside the existing open gap along Daws Heath Road filling the gap between the fishery access drive at no. 127 and the dwelling at 179 Daws Heath Road with in depth estate development that is wholly out of context with the existing sporadic ribbon development alongside the north side of Daws Heath Road. The development of the site will also fundamentally change the ribbon characteristics of the development alongside the northern side of Daws Heath Road reinforcing the urban characteristics with development climbing the hill behind the ribbon fronting the road. In addition the proposals will envelop and incorporate into the mass of development the existing sporadic clusters of houses including 133 and 137, 179 – 185 and 154 – 164 and 190 and 192 such that these also lead to the gap closing and the sense of merger occurring.
- 5.88 The loss of this existing gap will bring the sprawl of Thundersley/ Rayleigh closer to Daws Heath closing the gap between settlements to the degree that they are perceived as merging into one another.
- 5.89 The closing of this part of the gap by the substantial quantum of the development leads to substantial harm to Purpose (b).
- 5.90 The proposals include open grassland and arable fields as well as a small fishing lake and paddocks. All these are located within the countryside outside any settlement. The proposed development will urbanise this part of the countryside and thus will encroach into the countryside with residential development of up to 455 dwellings, health, education and community buildings, car parks, access roads etc. Therefore, the proposals will conflict with Purpose (c) which is to safeguard the countryside from encroachment. The degree of encroachment both in terms of the spread of development (see Fig 5.5) thus the loss of countryside and the quantum of development is substantial and leads to substantial harm.

- 5.91 Thus the appeal site as part of Parcel 4 (and 5) is identified as performing at the top of the scale for Purposes (a) – (c) as defined in the 2023 NPPF. Parcels 4 and 5 are 2 of only 6 parcels that perform at this level. There are 24 parcels that perform less well against these 3 purposes.
- 5.92 In terms of identifying sites for release from the Green Belt, if that was the growth strategy of the Local Plan I would expect the search for sites to begin with the parcels that performed less well against the three purposes.
- 5.93 I have been unable to identify any Green Belt Site Assessment between the Phase 1 Green Belt Assessment that identified Parcels 4 and 5 as two of the six best performing parcels (out of 30), and the Phase 2 report wherein it identifies development within Parcels 4 and 5 as sequentially preferable to less well performing parcels. Nor have I found any assessment that starts with a premise of locating growth in the less well performing parcels in preference to the very best performing ones.
- 5.94 I cannot understand the logic of undertaking a Part 1 Report that identifies the very strong contribution of Parcels 4 and 5 to the three purposes and then jumps to allocate land in Parcel 4 (and 5) instead of the other 24 less well performing parcels. In my view it would be an illogical approach which directs development to very strongly performing parcels of land over those that performed less well.
- 5.95 The Regulation 19 Local Plan SA Environmental Report (produced to support the now withdrawn Local Plan) included numerous factors used in the assessment of draft allocated and non-allocated sites. I was unable to find any criteria that recognised or weighted the performance of the land in respect of the purposes of the Green Belt (i.e. the identified performance in the Part 1 Green Belt Assessment).
- 5.96 The Part 2 Report starts with the premise that the identified sites are the only sites to be assessed (and there is no explanation why any other sites have been excluded or indeed the approach to selecting these sites). Given the conclusions of the Part 1 report I would have expected the search for sites to focus on the areas that did not perform as well as others or to clearly explain why sites in the best performing areas were being considered ahead of less well performing parcels. It notes³¹:

“The role of this part of the Review is to assess the degree of harm on the Green Belt, on a site-by-site basis, that would be realised if any of the individual Green Belt sites that are being considered by the Council for potential allocation for housing are allocated for that use.”

- 5.97 What it does not do is recommend allocating sites or removing land from the Green Belt. Nor does it compare the Green Belt impacts of a range of sites and then come to a recommendation of which should be released (and thus satisfying a comprehensive assessment of what parts of the Green Belt perform the least well and thus may be justified for release).

31

Paragraph 1.5

5.98 The Part 2 Report does not start by building on the Part 1 report and seeking to identify sites within the parcels and areas that performed less well against the three purposes.

5.99 Having noted the very strong contribution of Parcels 4 and 5 in the Part 1 report the Part 2 report then considers the release of part of that parcel in Draft Allocation (now withdrawn)³². It found this part of Parcel 4 to have a moderate contribution to purpose (a), a very strong contribution to purpose (b) and a strong contribution to purpose (c). These contributions equate to degrees of harm with moderate harm to purpose (a) very strong harm to purpose (b) and a strong harm to purpose (c).

5.100 The Part 2 Report notes:

There is however a significantly negative impact in relation to the merging of urban settlements as the strategic gap between Thundersley and Daws Heath will be significantly reduced in general, as well as narrow by approximately two thirds at the point where it is currently the narrowest. Development would act to exacerbate the perception of coalescence of the urban settlements in this area and reduce the contribution the Green Belt makes to the identified locally strategic priority of preventing the urban coalescence of Thundersley, Daws Heath and Hadleigh.

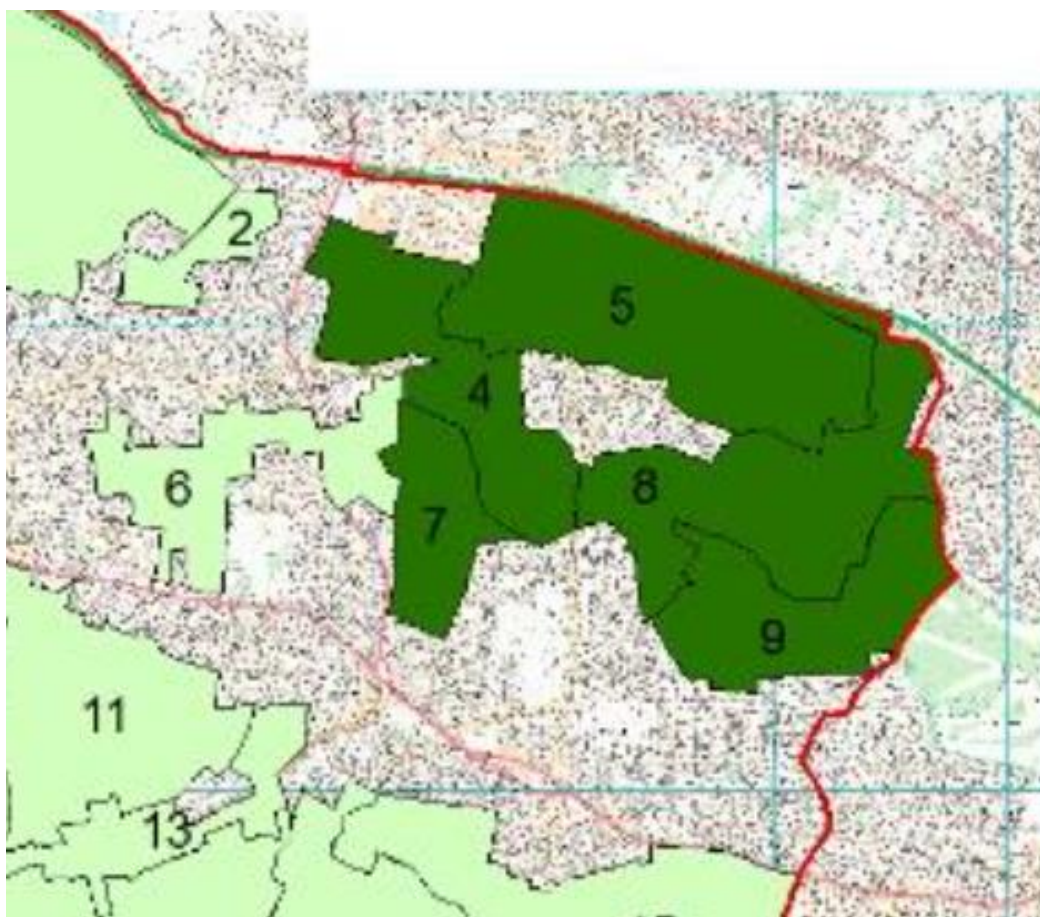


Fig 5.8: Daws Heath "Ring"³³

³² The site became Allocation Policy H07 in the withdrawn Draft Local Plan

³³ Figure 9 Part 1 Green Belt Report

- 5.101 The site is acknowledged to fall within the Daws Heath Ring identified in the Part 1 and Part 2 Reports. In the Part 1 report it noted at paragraph 7.7 the importance of the ring in preventing sprawl and coalescence.
- 5.102 I pause to note that 16 sites are assessed in the Phase 2 Report. These sites comprise part of the larger parcels and as I have already remarked no explanation is provided why sites in such well performing parcels such as Parcel 4 are selected for assessment. It is inevitable in my view that in subdividing the parcel areas you can reduce the performance of individual sub areas against the purposes.
- 5.103 Of the 16 sites chosen even with the approach of Part 2 used I note the appeal site is one of only 3 that performs the best of any of these subdivided sites against the three purposes³⁴.
- 5.104 What is missing from this analysis is any assessment of other sites in less well performing parcels and an explanation why they are not being brought forward ahead of sites in the very best performing parts of the Green Belt. Given the *essential characteristics of Green Belts are their openness and their permanence* I find the approach to assessing Green Belt sites for their suitability for development to be incoherent and to lack transparency in terms of being able to trace through from the Part 1 conclusions the decision to identify these sixteen sites. Moreover on the basis of the Part 2 report it is simply not possible to conclude that the weakest performing elements of the Green Belt have been identified.
- 5.105 The individual site assessment for the appeal site notes that the development of the site would not result in the realignment of Green Belt with existing boundary features.
- 5.106 I consider the northern boundary to the appeal site to be well defined and the existing landscaping at the rear of Stadium Way and alongside the Fire Station provide a clearly legible and easily understood Green Belt boundary. To the south again the boundary is clearly legible and understood insofar as it includes the ribbon of dwellinghouses but excludes the long rear gardens. To the west the Rayleigh Road provides a coherent and legible boundary as do the rear garden boundaries of properties in Asquith Gardens. All the existing boundaries around the site are legible and well understood.
- 5.107 I note that in assessing the contribution of the appeal site to Purpose (b) the Part 2 report concludes:

“The proposed site currently forms a significant part of the existing gap between Thundersley and Daws Heath. Development would act to reduce the gap between the two settlements, bringing a greater extent of Thundersley in closer proximity to Daws Heath whilst also narrowing the gap which exists between the two settlements along Daws Heath Road which is currently its narrowest point. In this area, the strategic gap would be reduced by approximately two thirds. The perception of merge would therefore be significantly increased.”

³⁴ For the purpose of this objective analysis I have allocated a score of 4 to any very strong performance, 3 for strong, 2 for moderate and 1 for minor. The appeal site is one of three that score 9 the maximum score of any site.

5.108 I concur with this assessment and also agree that the appeal site (in common with Parcel 4 as a whole) would experience a very strong degree of harm should the site be developed.

5.109 In the context of Purpose (c), I note the Part 2 report concludes:

“The proposed development site is currently free of built development considered inappropriate in the Green Belt. Although there is built development around much of the periphery of the site, this is not assessed as being sufficient to compromise the rural integrity of the site as a whole due to its size.”

5.110 I acknowledge that the northern boundary largely abuts development, that around 66% of the western boundary is developed and part of the southern boundary is open the remainder is backed onto by a ribbon of housing and the eastern boundary is completely open to the countryside. However I am unclear how that has justified reducing the level of harm from very strong to strong given those same characteristics existed when Parcel 4 was assessed in Part 1.

5.111 Whilst the report quite rightly then goes onto address the very strong harm that arises to purpose (b) it does not address the strong harm to purpose (c) and the moderate harm to purpose (a).

5.112 I have concluded that the appeal scheme will lead to substantial harm individually to purpose (a), purpose (b) and purpose (c). It is unusual in my experience that such a degree of harm arises to all three of the main purposes (a – c) and harm is not just focussed on one of the purposes. For that reason I consider the harm to be collectively substantial and to carry substantial weight at the very top of the scale.

Green Belt Conclusion

5.113 Therefore there would be substantial harm by reason of inappropriateness, substantial harm at the top of the scale through the loss of openness in both the spatial and visual context as well as substantial harm at the top of the scale to three of the purposes of the Green Belt.

Other Harm – Countryside, Landscape Character and Visual Impact

- 5.114 I am not a Landscape Architect and I do not purport to undertake an LVIA or a GLVIA compliant assessment. I am a chartered town planner with over 35 years' experience of assessing development in the countryside and Green Belt. I provide my own findings and observations as well as reviewing the documentation to enable me to come to a reasoned judgement in respect of my view that the proposals will adversely affect the character and appearance of the area and in particular to address the question whether the proposal will recognise the intrinsic character and beauty of the countryside pursuant to paragraph 180 of the NPPF.
- 5.115 I make no criticism of the methodology adopted in the Appellant's LVIA which accompanied the application the subject of this appeal.
- 5.116 As to the landscape character of the area, the Essex LCA³⁵ identifies the site within South Essex Coastal Towns (G3) landscape character area (LCA). The key characteristics relevant to the site are large areas of dense urban development, narrow bands and broader areas of gently undulating arable farmland, with a remnant hedgerow pattern, separating some of the towns. Coalescence is one of the key landscape sensitivities to change in an area that has been subject to massive expansion of urban areas in the 20th Century³⁶.
- 5.117 At a local scale, the site falls within Area 4 of the Green Belt Landscape Assessment (2010). The assessment refers to attractive views within the area. The rolling landform and well vegetated field boundaries are key elements of its landscape character. The landscape and visual sensitivity were identified as High which is defined as³⁷:
- "A landscape/townscape with limited ability to accommodate change because such change would lead to some loss of valuable features or elements, resulting in a significant loss of character and quality."*
- 5.118 The site has very strong landscape features, attractive landform and rural character despite its proximity to urban development. Existing vegetation plays an important role in protecting and enclosing parts of the site from views and provides some intimacy. Residential development aligns part of the west and south site boundaries. Development decreases towards the east part of the southern edge of the site by Daws Heath Road and comprises sporadic clusters of small scale dwellings.
- 5.119 The site and surroundings benefit from tranquillity and whilst a low level background hum from surrounding roads can sometimes be perceived the predominant aural experience I noted at my 4 site visits was birdsong.

³⁵ Essex Landscape Character Assessment Final Report 2003 Chris Blandford Associates

³⁶ See pages 218 - 222

³⁷ See Table A page 5 (Landscape) and Table B page 6 (Visual)

5.120 When moving east along Daws Heath Road from Thundersley, the topography and character of the surrounding landscape becomes very apparent with the ancient woodlands as the backdrop.

5.121 The LCA identifies an open character featuring small field patterns for Area 4 of the LCA which it also identifies as having good condition and thus its strategy and guideline for managing change is to:

"[...] enhance existing landscape character through management and additional planting to the north of the site to more clearly define the green belt boundary with the trading estate."³⁸

5.122 Since the LCA was prepared I understand the Poplar trees alongside the fire station and the tree belt along the rear of properties in Stadium Way have matured and provide a clearly defined Green Belt boundary.

5.123 The main constraint in Area 4 is identified as:

"[...] the designation of ancient woodland and rolling topography to the north"

5.124 With regard to Area 5 the visual sensitivity is High and no opportunities are identified and in respect of constraints it states:

"Constraints to development are due to the multiple landscape designations, the high landscape sensitivity and sensitivity of the historic landscape character."

5.125 The appeal site has an existing attractive open character comprising open grassland and arable fields. This is redolent of the landscape character area and the contribution the appeal site makes to the area.

5.126 The south east part of the site crosses over from Area 4 to Area 5 and comprises an area of historic landscape. The LCA notes that the area lies within the Daws Heath and Pound Wood Historic Character Area, which has the following historic landscape character:

'This zone represents a remarkable survival of a historic pattern of irregular small fields and ancient woodland, Pound Wood, Tile Wood and Starvelarks Wood. Significant elements of the woods are managed as nature reserves. The zone is bounded to the north by the Southend Arterial Road (A127). North of the road are a number of modern nurseries, which have imposed a new pattern of enclosures over the early field system. There are a range of earthwork woodland boundaries and other earthworks within the woods.' (Essex County Council, 2007)

5.127 The appeal site is set within areas of open countryside that provides physical separation between settlements and exhibits a countryside character.

³⁸

See page 32

- 5.128 The site is also located within views that include settlement edges. However the site is also part of an area of a wider area of open countryside including woodland and grassland that is clearly defined as separate from the sprawl of neighbouring settlements.
- 5.129 The landscape sensitivity of the site and area is high particularly in the south east of the appeal site where the historic landscape exists and the site is experienced from the public rights of way network, Daws Heath Road and has a rural context that is not immediately influenced by the edge of Thundersley.

Landscape character harm

- 5.130 The proposed illustrative layout parameter plans show the Appellant's best estimate at how 455 dwellings, community buildings, access roads and ancillary development can be accommodated on the appeal site. This substantial level of development (which I described earlier in the context of openness) contrasts with the prevailing open countryside character of the area. The parameter plans show parcels of dense 11 – 13 metre maximum high buildings.
- 5.131 The development will be noticeable and result in the introduction of an urban form of development on a currently open countryside site. The proposals will not recognise (i.e. protect) the intrinsic character and beauty of the countryside, rather they would urbanise and replace the countryside.
- 5.132 The proposals would not respond to the Landscape Opportunities and Constraints for the areas within which it is located as it would not provide a more legible or better understood Green Belt boundary (noting that the existing boundaries are legible). In this respect I note the Part 2 Green Belt Review acknowledges that the development of the site would not result in the realignment of the Green Belt boundary with an existing boundary feature and would merely realign a boundary that is formed of residential curtilages with a different set of residential curtilages.
- 5.133 The opening up of the site through the creation of the new vehicular accesses from Daws Heath Road to the south and Stadium Road to the north would have significant adverse impacts on the countryside character of Daws Heath Road and will open up the commercial development in the north as part of a continuous development area to spread south and include the appeal site. Such change, with associated activity, traffic and movement would be to the detriment of the tranquil rural character of the appeal site and area.
- 5.134 In addition, the significant areas of new estate development that would front Daws Heath Road around the new access corridor and also to the rear of properties fronting Daws Heath Road and climbing the site gradient will erode the rural character and the site and destroy the perception of countryside and the so called peri urban (or peri rural) character of the western part of Daws Heath Road

- 5.135 I acknowledge the proximity to existing settlement edges, but these do not detract from the current relative tranquillity that is felt within the site (notwithstanding its proximity of the road network). The landscape impacts that occur would be in the context of an existing site that is open with a strong countryside character albeit influenced to a degree by settlement edge.
- 5.136 The proposed development would harm and not safeguard or enhance the local landscape character in accordance with the identified opportunities in the Landscape Character Area.
- 5.137 Recognition of the intrinsic character and beauty of the countryside necessarily imparts a degree of protection (after *Cawrey*). The development of 455 dwellings, community buildings and roads etc. on an existing open site that currently comprises attractive countryside would fail to recognise the intrinsic character and beauty of the appeal site and wider countryside of which it forms part.
- 5.138 This failure to respect context, deliver high quality design and have proper regard to setting and the character of the area together with the loss of existing attractive landscape would comprise harm that weighs against the grant of planning permission.
- 5.139 The proposal would not make a positive contribution to local character and the identified harm would lead to conflict with 135 b), 135 c), 139 as well as 180(b) of the Framework. I consider that significant weight applies to such harm.

Visual harm

- 5.140 I acknowledge that the viewpoints in the LVIA are a useful aide and part of the toolbox for assessing the impact of the proposed development, however they are no substitute for the three-dimensional multi sense experience walking the area. In particular, slight deviations from the exact viewpoints can reveal different aspects, views or glimpses and the experience of most receptors will be kinetic as they walk, ride or drive through or around the area or enjoy their gardens or other spaces. I am surprised that the LVIA did not include any viewpoints east of the appeal site, however the kinetic experience of the area should include experiences from the east.
- 5.141 In terms of general principles relating to sensitivity to change I accept that motorists would have a low to medium sensitivity to change having regard to their focus on the road. Passengers (including those using public transport) would have a greater sensitivity to change, i.e. a medium sensitivity. Pedestrians and cyclists will have a focus on visual amenity and in my view would have a high sensitivity to change undertaking recreational or leisure pursuits, I also consider pedestrians and riders who are local residents would also have a high sensitivity to change.
- 5.142 Local residents with views from their residences and/ or gardens toward the site would in my view have a high sensitivity to change as would users of public rights of way such as BEN7 and BEN85 and the permissive routes and existing tracks in the area.

5.143 The eastern part of the site (see Fig 2.5) falls within an area of Ancient Landscapes under Policy EC19 of the current Local Plan. Policy EC19 - Ancient Landscapes says that:

“Development proposals which would adversely affect the nature and physical appearance of ancient landscapes will be refused.”

5.144 The appeal site is open and visible to a number of receptors including housing development to the west and ribbon and intermittent housing to the south, users of parts of Rayleigh Road, Asquith Gardens and Firfield Road to the west and Daws Heath Road to the south. In addition, users of the public rights of way network that run alongside the north and east boundaries of the site have clear views across the open appeal site.

5.145 In terms of visual sensitivity, the visual sensitivity of the area is high.

5.146 I briefly consider the viewpoints (VPs) identified in the LVIA below before making some wider observations. In reiterate at this point that the site is normally experienced kinetically and any photographs should not be relied on ahead of the site visit and observations in and around the site. the site extract below is intended to allow identification of parcels of land in my future text.

5.147 As a general observation I consider the commentary with the VPs to underplay the rural influences and overplay the urban influences.



Fig 5.9: Development Parcels (Appendix 5)

- 5.148 Viewpoint 1 (a and b); these are views taken at the open section of the appeal site as it fronts onto Daws Heath Road, predominately in this view the open pasture land dominates and an appreciation of the open countryside is achieved. Whilst tree and hedge cover delineates field boundaries in the view, the sense of openness is available with the absence of development beyond the tree and hedge screens evident. The VP includes the proposed 12.25 metre wide hardsurfaced access corridor.
- 5.149 The works to facilitate access from Daws Heath Road will include removal of existing trees and vegetation and cutting back other plants, trees and shrubs to accommodate these proposed changes. The proposals will introduce a 12.25 metre wide hardsurfaced access corridor with 10 metre radius resulting in a total opening to Daws Heath Lane of 24 metres.
- 5.150 Set around the proposed access are two parcels of up to 11 metres tall housing development that front onto Daws Heath Road (2A and 2B). The development continues to the rear with parcels 2C and 2D and these would envelop the small clusters of modest dwellings on the north side of Daws Heath Road such that they are incorporated into the sprawl of Thundersley/ Rayleigh eastwards and not read as now as a small cluster of rural dwellings.
- 5.151 The dwellings at the east end of Daws Heath Road have a modest scale (bungalows and 1.5 – 2 storeys) and are arranged in small clusters (i.e. 179 – 185 Daws Heath Road); the large scale development on Phase 2 that fronts onto this part of Daws Heath Road will be an incongruous addition to this area failing to reflect the distinctiveness of these dwellings and their arrangement in small clusters.



Fig 5.10: The cluster of 5 dwellings at 154 – 164 Daws Heath Road

- 5.152 The engineering around the access and the presence of housing alongside the road frontage will urbanise completely this frontage and these viewpoints with the proposed development on site featuring prominently in these experiences. The combination of the access corridor and proposed dwellings would fundamentally change the experience along Daws Heath Road.
- 5.153 The presence of dwellings beyond the tree screens will be appreciated from this viewpoint as a result of a combination of topography and the height of proposed buildings. There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to an urban one.
- 5.154 These will give rise to significant impacts on visual receptors around the appeal site.
- 5.155 Viewpoint 2 is the view to the east of the existing access to Cook Farm Fishery from Daws Heath Road looking west (as opposed to looking north as indicated on the VP plan at page 10). It clearly shows the rolling topography and the depth of the site looking west/ north west and the site hedgerow on the road frontage would not obscure appreciation of the proposed development with parcel 2B in the foreground and 2D and 4B .
- 5.156 The view will change markedly from one of a pleasant appreciation of the countryside and rolling landscape to the north/ north west of the viewpoint one of a mass of prominent housing in depth.
- 5.157 This is a VP where minor movement of the location of the receptor would reveal different aspects of the experience. These include views from the opposing pavement on the south side of Daws Heath Road. The kinetic experience that is currently enjoyed by pedestrians and riders alike travelling along Daws Heath Road will take in VPs 1 and 2 and the open sections of road frontage in-between.
- 5.158 The proposals will be visible and will affect the current baseline adversely as they would be visually intrusive. The change on the appeal site will be evident and impact significantly on passers-by (leisure users and residents) as well as neighbouring residents.
- 5.159 The presence of dwellings beyond the tree screens will be noticeable from this viewpoint as a result of a combination of topography and the height of proposed buildings. There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to an urban one.
- 5.160 Viewpoint 3 shows the existing access to Claydon's Farm; however a combination of topography and buildings heights will mean that, in my judgement the depth of housing proposed will be visible in this viewpoint. In particular parcel 3A will be viewed replacing the existing appreciation of the ribbon nature of development fronting Daws Heath Road with largely open land to the rear.



Fig 5.11: View between 27 and 31 Daws Heath Road Looking North

- 5.161 If this VP is experienced as part of a journey along Daws Heath Road (where I accept to the west it comprises part of an urban area but that the northern side of the road quickly changes to a ribbon of development with an appreciation of openness to the rear) I would maintain that those experiencing the journey will be aware of the proposed large housing development at the rear of houses fronting Daws Heath Lane. In particular in travelling east from the junction of Rayleigh Road one passes a number of modest bungalows (nos. 27 – 33). Over and through these plots those on Daws Heath Road and Tollgate will clearly experience the mass of housing climbing the site in parcels 3B, 3A and 1D. The change in this viewpoint whilst experienced in the context of a road fronted by housing, will be profound.
- 5.162 In some views the rising ground is evident and glimpses are possible of housing in the distance alongside the west boundary of the appeal site, however they are viewed in the context of intervening open land.
- 5.163 The presence of dwellings climbing the site will be a prominent addition to this viewpoint as a result of a combination of topography and the height of proposed buildings. There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.
- 5.164 Viewpoint 4 is from the end of Asquith Avenue and I agree that a full appreciation of the existing site and its rolling topography is possible, the existing backdrop of woodland will be replaced by housing in the foreground obscuring the woodland views.

- 5.165 A similar experience is achieved from alongside Firfield Road.
- 5.166 Both of these VPs allow access to a series of tracks that circumnavigate the western fields and are detailed in my section 2 and on Fig 2.10.
- 5.167 In these views the distinctly countryside experience on the appeal site beyond the neighbouring roads will be replaced by a distinctly urban experience with prominent housing foreshortening views across the site.
- 5.168 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.
- 5.169 Viewpoints 5 and 7 are taken from the south and north of the Rayleigh Road open frontage to the appeal site.
- 5.170 Existing passers-by along Rayleigh Road perceive the open gap on the east side of the road between the development to the north comprising the fire station and related development and the suburban housing to the south. That gap will be lost and that sense of countryside punctuating the built area of Thundersley and Rayleigh will be lost. The depth of residential development will increase and any sense of separate identities to Rayleigh and Thundersley will be lost as they completely merge into one another along Rayleigh Road.
- 5.171 Access is available to the existing series of tracks that circumnavigate the western fields via the formal footpath link to the south and informal links to the south
- 5.172 The presence of 11 – 13 metre maximum tall development will be prominent in this existing open gap where the existing open countryside character of the appeal site can be experienced will fundamentally change the experience of the area and how the settlements are perceived. The existing views of existing tree belts will be replaced in VP5 by prominent housing of up to 13 metres in height.
- 5.173 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban/ suburban one albeit with a narrow corridor comprising primarily a drainage basin dominated by the proposed development provided in the north.
- 5.174 Viewpoint 6 this is taken from the tracks referred to earlier and detailed in Fig 2.10. The image is one of openness on the site with fringes of development beyond tree screens. This experience will be fundamentally changed with maximum 13 metre tall development in Parcel 1C obscuring any views.
- 5.175 The proposed housing and development would be prominent in this experience.



Fig 5.12: View from track in the NW of the western field looking south to VP6

- 5.176 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.
- 5.177 Viewpoint 8 is an urban view of the woodland fronting the southern side of Stadium Way alongside Footpath BEN7 and the route of Claydon's Lane.
- 5.178 The proposed engineered priority junction involves the removal of existing trees and vegetation and cutting back other vegetation to accommodate these proposed changes. The proposals will introduce a 12.25 metre wide hardsurfaced access corridor with 10 metre radius resulting in a total opening to Stadium Way of 24 metres.
- 5.179 Whilst the loss of this area of woodland to facilitate the access corridor is regrettable, this VP is experienced in the context of a hard urban environment within the Weir Estate and the proposals would not comprise overall negative change experienced from outside the appeal site.
- 5.180 Viewpoints 9 and 10 are part of a kinetic experience travelling along the northern section of Footpath BEN7. The experience is distinctly countryside as one travels along the footpath wherein the rolling nature of the land is experienced. The footpath is separated from the rear of the commercial boxes that front Stadium Way by a wide area of grassland and trees.



Fig 5.13: View from BEN7 looking south from rear of Stadium Way

- 5.181 The views along this journey would be curtailed and dominated by housing development of up to 13 metres in height in Parcel 4A both as it encloses views south and provides a depth of development evident in views looking south west and west.
- 5.182 The experience will change fundamentally and what is currently a pleasant rural footpath with expansive open views south will be replaced by an enclosed corridor enclosed on both sides by urban development. The housing and development on the appeal site will be prominent in this experience.
- 5.183 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.
- 5.184 Viewpoint 11, I agree that the woodland and tree cover limits views of the site but I do consider that the presence of housing would be perceived on the site as part of the kinetic experience travelling south west from VP11 toward BEN7, overall the experience from VP11 will not perceptively change.
- 5.185 With regard to Viewpoints 12 and 13 I agree that it is difficult in these views to the south west of the VPs to discern the appeal site and that any view of the site is in the context of the full depth of the settlement of Rayleigh in the foreground and Thundersley in the background.

Other Viewpoints – Close Context

- 5.186 In addition to the VPs identified by the Appellant in the LVIA I consider a number of other viewpoints should be experienced by the Inspector as part of the kinetic experience of the appeal site. I am surprised that the Appellant's LVIA failed to identify any VPs to the east of the appeal site. I would invite the Inspector to walk the length of Footpath BEN7 from Stadium Way (via VPs 9 and 10) and then south to Daws Heath Road via Little Heath Nature Reserve.
- 5.187 Travelling along this route an immersive rural experience is evident. The footpath is used by a large number of leisure users including cyclists, ramblers and dog walkers as well as people using it for commuting to work.



Fig 5.14: Views looking west from FP7

- 5.188 The experience is a tranquil one with birdsong dominating the aural experience and tree and grassland dominating the visual experience. The rolling nature of the landscape is also evident as is the openness of the land beyond the boundary trees.
- 5.189 In my judgment having regard to the topography of the site and land the proposed housing on the appeal site will be noticeable along the full length of the north south leg of FP7 beyond VP10 but especially at its southern end where Parcel 2C will be located on historic landscape close to the eastern boundary. It will change the perception of this part of the area from one that is overtly rural and countryside to one that is impacted by prominent residential development, especially roofscapes.

- 5.190 This impact will also be experienced on the permissive routes around Little Haven Nature Reserve (see Fig 5.2) impacting particularly those routes that run alongside the eastern site boundary closer to parcel 2C.
- 5.191 In this experience my judgement is that housing on the appeal site will be prominent in the experience.
- 5.192 The degree of activity on the appeal site would also be in stark contrast to the current ambience of the site and its overall tranquillity and its influence on the experiences to the east.
- 5.193 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience from footpath BE7 and the permissive routes will change to one that is no longer completely rural but one heavily influenced by the urban development to the west.

Other Viewpoints – Wider Context

- 5.194 From outside the site I also consider the site to be evident from West Wood and in particular Bridleway BEN85 and its link to Daws Heath Road.
- 5.195 At its northern tip BEN85 runs alongside the external boundary of the woodland and to the rear of paddocks fronting Daws Heath Road. It is then linked by a footpath that runs between 112 Daws Heath Road and the open paddocks. The woodland is an ancient woodland and the routes through part of a well-used leisure route providing connectivity from Daws Heath Road in the north (onward to BEN7 and Little Haven) to The Gill and Hadleigh in the south.
- 5.196 Alongside the northern element of the PROW, clear views are available over the paddocks of the appeal site. I acknowledge that the cluster of dwellings fronting Daws Heath Road can also be experienced in these views. However, the proposed development will be experienced in these views looking north with parcels 2B, 2D and 2E experienced as you travel along the northern part of the woodland.
- 5.197 Views north east from the footpath linking Daws Heath Road with West Wood are also available over the paddock of the appeal site. In these views parcels 2A, 2B and to a lesser degree 2C and 2D are likely to form part of the experience.



Fig 5.15: Views looking north from BEN85



Fig 5.16: Views looking north east from the Footpath link to BEN85

- 5.198 I recognise that both these viewpoints are not immediately adjacent to the appeal site and views are across other land, however I do consider them to be relevant viewpoints from which development of the appeal site would be evident. The character of the area would change from a rural experience to one with greater urban influences.
- 5.199 The development would not recognise the intrinsic character and beauty of the countryside should it be permitted and the experience from the south on the footpath will be influenced by the quantum of urban development to the north.

Other Viewpoints – On - Site

- 5.200 Finally are the experiences from within the site itself including along the access to the fishing lake and on the tracks that circumnavigate the western field. Both should form part of a kinetic experience of the appeal site and any assessment of the impact of the proposed development.



Fig 5.17: Views from the track to the fishing lake

- 5.201 Along the driveway for the fishing lake the experience will change fundamentally. At present you enter via the yard of Cook Farm with an open hay store to one side and stables and a ménage beyond through a tree belt and adjacent to open arable fields. That will change to either entering via the existing access and then through prominent housing in parcel 2B or via the proposed access corridor and along a 12.25 metre access corridor and through housing parcels 2A and 2B and then through some landscaped grounds between housing parcels 2D and 2C or 2D and 4B. It would become a distinctly urban experience as opposed to the existing rural experience.

- 5.202 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.
- 5.203 Finally I turn to the network of tracks that circumnavigate and cross the western grassland fields. These provide connectivity to FP BEN7 to the north and east, Firfield Road in the south west, Asquith Avenue in the west, Rayleigh Road also in the west and Claydon's Lane in the north east all as shown on Fig 2.10.
- 5.204 The experience on these tracks is of open countryside with exposure to different elements of the site.
- 5.205 At the entry point to the field from Claydon's Lane/ BEN7 the land is at its lowest with levels rising to the south. Views are of a strong tree belt to the north and west and a cluster of trees on high ground and rising land.



Fig 5.18: Views from track at northern part of site looking south

- 5.206 As you travel south on this track to the east of the western field alongside Claydon's Lane the housing in Asquith Gardens to the west reveals itself with only limited intervening landscaping between the houses and field.
- 5.207 Views of the site become more expansive as you move onto higher ground (which plateaus alongside Asquith Gardens) including views to the east from the track north of Claydon's Farm.



Fig 5.19: Views from track looking south/ south east



Fig 5.20: Views from track looking east

- 5.208 As well as being immersed in parcel 3A at this point views over 2E and beyond would be available.
- 5.209 The track then skirts Claydon's Farm and then drops in level toward Daws Heath Road before it and returns west in or around development parcel 3B to an entrance point at Firfield Road. The track then continues north along the western boundary alongside/ within parcel 3B to an entrance in Asquith Avenue. It then continues north within development parcel 1D and providing access into the field fronting Rayleigh Road and development parcels 1C. It then continues north into development parcels 1B before travelling east into development parcel 1A before completing a circuit and joining at its northern end to the entrance point to Claydon's Lane.
- 5.210 The experience within these fields will change fundamentally from open grassland as part of the countryside to urban development as an extension of Rayleigh and Thundersley. The route of the track would pass through parcels 1A, 3A, 3B, 1D, 1C and 1B and in my view parcels 4A, 4B and 2E would be evident from the route of the track. Housing would be dominant in these experiences and it would change from a countryside experience to an urban one.
- 5.211 There would be no recognition of the intrinsic character and beauty of the countryside should the development be permitted and the experience will change to a wholly urban one.

Conclusion on landscape character and visual amenity impacts

- 5.212 Overall that the site is currently seen in the context of some existing development is only of limited relevance. The proposal will extend much denser and more prominent development to the south (of Stadium Way) and east (of Rayleigh Road) and infill presently open land to the north of Daws Heath Road and west of existing nature reserve and woodland.
- 5.213 It will fail to recognise the intrinsic character and beauty of the countryside and will lead to the loss of countryside and countryside character to be replaced by an extension to the urban areas of Thundersley and Rayleigh and the perception of them merging with Daws Heath.
- 5.214 In terms of visual impacts the existing open views across the site and the overtly rural countryside appearance of the land will be replaced by an extension to the neighbouring urban area, the loss of the open nature of the site, views of area of trees and pasture land and the sense of space provided to the existing edge of the settlement.
- 5.215 Overall, in terms of the harm to the character and appearance occasioned by the development of the site for 455 dwellings with associated development, activity, and traffic, the degree of harm would be permanent, substantial and irreversible and attracts significant weight in the planning balance.

Other Harm – Best and Most Versatile Agricultural Land

- 5.216 I do not suggest that the loss of nearly 18 hectares of BMV should of itself comprise a reason for refusing planning permission and I acknowledge that the reason for refusal does not refer to such loss. However the NPPF advises that planning decisions should contribute to and enhance the natural and local environment by inter alia:

*recognising the [...] wider benefits from natural capital and ecosystem services – including **the economic and other benefits of the best and most versatile agricultural land**, and of trees and woodland; (emphasis added)*

- 5.217 The proposal leads to the loss of almost 18 hectares of BMV and as such planning decisions need to recognise that loss. It is certainly not a benefit of the scheme that such land is lost and 18 hectares of BMV is a substantial parcel of such land. However, I acknowledge that it falls below the DEFRA threshold for notification.

- 5.218 I do not consider this to be a determinative factor but it is a harm that arises from the development and as such it has to weigh against the grant of planning permission. I agree with the Appellant that the economic benefits of such land of itself is relatively limited. However BMV is a finite resource and its loss is recognised in planning policy as a material planning consideration. Its loss is not only an economic consideration, it also assists in maintaining (i.e. conserving) the landscape quality of the area which includes arable land as a characteristic.

- 5.219 The impact of the loss of good quality agricultural land that has been farmed over generations and could continue to be farmed contributes across a number of planning considerations in addition to the economic dimension of sustainable development it also has relevance to the social and importantly environmental dimensions.

- 5.220 In that regard I consider it should, carry limited weight against the grant of planning permission but I agree with the Appellant³⁹ that:

“The loss of BMV land in this case does not therefore outweigh the substantial benefits associated with this scheme>”

- 5.221 In my terms I make it plain that should the Inspector decide that all other matters suggest that planning permission should be granted the loss of BMV does not of itself provide a reason to withhold planning permission.

39

SoC para. 5.2.11

Other issues

- 5.222 The failure to provide a satisfactory mechanism to deliver necessary infrastructure to service the proposed development, and also secure the proposed affordable housing, would add to the Council's reasons for refusal.
- 5.223 However, it is anticipated that a section 106 obligation can address the provision of necessary infrastructure, the securing of affordable housing, and the provision of biodiversity enhancements.
- 5.224 The Heads of Terms should include:
- Affordable Housing
 - Biodiversity Net Gain
 - Provision of Play Space and its management
 - Healthcare General Medical contributions
 - Education (Early years and Primary) contributions
 - Library Services Contribution
 - Youth Services contribution
 - Highway Improvement and Sustainable Transport measures
 - Monitoring fees
 - Travel Plan monitoring fee
 - Custom Self Build Housing Plots
- 5.225 The Council will provide a Community Infrastructure Levy Statement to demonstrate that the contributions sought meet the Regulation 122(2) tests as well as those set out in the NPPF.

6 The Appellant's "Other Considerations" under NPPF para. 153

- 6.1 The Appellant is required to demonstrate that the other considerations they rely upon are capable of clearly outweighing the harm identified so as to amount to very special circumstances.
- 6.2 In terms of "other considerations" or benefits of the scheme I note that the Appellant relies on a number of factors⁴⁰ which can be summarised as:
- The provision of housing in an area of housing need (including 40% affordable housing)
 - Delivering 10% BNG
 - The draft allocation of the site in the abandoned Local Plan
 - Economic benefits
 - Landscaping
 - Community Infrastructure
- 6.3 I do not set out the dispute between the parties on the impact of the proposal on the Green Belt in terms of openness and purposes. I do not consider such arguments comprise "other considerations" that weigh in favour of the grant of permission. Instead, if there was any substance to any such case should it be put, then such matters would go to the degree of weight attributed to harm.
- 6.4 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm⁴¹ is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.
- 6.5 In these circumstances, I have already established that the development is inappropriate, will lead to an erosion of openness, harm the purposes of the Green Belt as well as damaging the character, appearance and visual amenity of and encroaching into the Green Belt. Additional harm by way of harm to character and appearance of the countryside and loss of BMV land add to the weight of factors against the proposed development. Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.
- 6.6 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**⁴², which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

⁴⁰ See Statement of Case in particular at paragraph 5.2.2

⁴¹ **SoS CLG, Reigate and Banstead BC, Tandridge DC and Redhill Aerodrome Ltd** [2014] EWCA Civ 1386 at [CD12.6](#)

⁴² **R (Chelmsford) v First Secretary of State and Draper** [2003] EWHC 2978 at [CD12.7](#)

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

6.7 In **Temple**⁴³, Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.

6.8 Further guidance was provided by the Court of Appeal⁴⁴, in which Carnwath, LJ (as he then was) stated inter alia that:

"21. [...] The word "special" in PPG2 connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. [...]"

and

"26 [...] I see no reason, in terms of policy or common sense, why the factors which make a case "very special" should not be the same as, or at least overlap with, those which justify holding that Green Belt considerations are "clearly outweighed". To my mind, the wording of para 3.2 ("will not exist unless") reinforces that view. I prefer the formulation used by Sullivan J himself in a judgment the previous year on somewhat similar facts, Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions [2002] JPL 1509, para 70, where (also in the context of para 3.2 of PPG2) he said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy." (Original emphasis.)"

⁴³ **R (Basildon District Council) v First Secretary of State and Temple** [2004] EWHC 2759 (Admin) at **CD12.8**

⁴⁴ **Wychavon District Council v Secretary of State and Butler** [2008] EWCA Civ 692 at **CD12.9**

The provision of housing in an area of need

- 6.9 It is common ground that there is a substantial and serious housing land supply shortfall in Castle Point and the Council can only demonstrate a 1.86 year HLS utilising the standard method. The proposal would provide housing in an area of current need and thus is a benefit of the scheme. Having regard to the HLS position and the degree of shortfall on five-years, I consider that the provision of housing carries substantial weight which lies in the top bracket of my scale. I note the Appellant argues for very significant weight, however that would fall below substantial weight on my scale and thus I maintain for my planning balance substantial weight to such matters.
- 6.10 It is my view that the Appellant's reliance on housing need and supply are important considerations that weigh in favour. I consider that the provision of 455 market and affordable houses carry substantial weight in the planning balance. In coming to my view I am mindful of the judgement in *Hunston*⁴⁵ where it was stated:

"[...] the weight to be given to such a housing shortfall (and whether it constituted 'very special circumstances' for the purposes of the NPPF) is a matter of planning judgment. The weight to be attached to the shortfall may, as a matter of planning judgment, be reduced where a shortfall is inevitable due to a district being subject to policies which restrict development."

- 6.11 In assessing the weight to market housing I have had regard to the contribution the site would make toward the housing supply position of the Borough and I do not consider such matters to be separate considerations, indeed, to do so would in my view comprise double counting. I have also allowed in my assessment for a proportion of the market housing to be offered as custom self-build plots or units. I acknowledge the Council does not have a policy to secure provision, however, given the statutory duties in this regard I would expect a scheme of this scale to make provision and such matters can be secured via the section 106 agreement.

Affordable Housing

- 6.12 On the back of an under-delivery of housing generally, significant shortfalls in affordable housing provision have occurred. The appeal scheme proposes 40% of the proposed housing to be affordable. That equates to up to 182 affordable dwellings.
- 6.13 The Council currently seeks a minimum of 35% affordable housing from sites of 10 or more dwellings⁴⁶. The withdrawn Local Plan and its evidence base proposed an affordable housing requirement of 40% on qualifying sites.
- 6.14 Subject to the affordable provision being secured (which it is agreed between the parties is necessary⁴⁷) it is common ground that it is a benefit of the scheme and my position is that it should carry substantial weight (as opposed to very significant).

⁴⁵ **St Albans v Hunston Properties Ltd and Anor** EWCA Civ. 1610 at **CD12.10**

⁴⁶ Developers Contributions Guidance Supplementary Planning Document (SPD) Affordable Housing March 2023

⁴⁷ See SoCG 1

Inevitable Harm

- 6.15 Should it be suggested that the harm that arises is inevitable and as such the weight to such harm should be reduced or its inevitability comprise a benefit of the scheme I reject such an approach as I do not consider the harm I have identified as inevitable.
- 6.16 In any event, as the High Court noted in **Goodman Logistics**²¹, it would be illogical to suggest the "inevitable harm" caused by meeting the need for inappropriate development in the Green Belt

"somehow enhanced the weight to be given to the [applicant's] case on need and lack of any alternative site, or could otherwise affect the striking of the balance between benefit and disbenefit." (per Holgate, J at paragraph 37).

Biodiversity Net Gains

- 6.17 The application site comprises arable and grassland fields with a large pond and some hedgerow and tree belts. The appeal site comprises land for growing cereal crops, paddocks and open grassland.
- 6.18 The application is accompanied by an Ecological Impact Assessment which states that the development is not anticipated to result in any significant residual negative effects on important ecological features following the implementation of the recommended mitigation measures. Subject to the imposition of conditions and entering into a section 106 agreement Place Services - Ecology raises no objection to the proposals and are satisfied that BNG can be delivered from the site.
- 6.19 The application proposes the provision of 10% biodiversity net gain (BNG), which is welcomed.
- 6.20 The development plan does not currently require provision of BNG but the NPPF does require BNG from all development schemes. I acknowledge that the Environment Act 2021 mandates at least 10% BNG for sites. The only reason that does not statutorily apply to this scheme is that the application the subject of this appeal was submitted before February 2024. Had the application been submitted after February 2024 at least 10% BNG would be required to meet the requirements of the Act.
- 6.21 I consider 10% BNG, to be a benefit of the scheme. As such, it is a quirk of timing that the scheme delivers more than is required, however, I agree with the Appellant⁴⁸ and I attribute moderate positive weight to such matters which comply with the NPPF.

48 Paragraph 5.2.2 Statement of Case

Economic Benefits

- 6.22 The economic benefits of providing more housing at this Green Belt location are acknowledged as a benefit of this scheme.
- 6.23 However fundamentally household spend is not necessarily all new spend or even new spend in this area as those households already exist, some within Castle Point administrative area, and currently spend money in the local economy.
- 6.24 I acknowledge the benefits that arise during the build phase of the development, but these are generic benefits that would arise anywhere in Castle Point.
- 6.25 In assessing whether the proposals comprise sustainable development generic economic benefits of the proposed housing scheme are not unique to this scheme and the Council Tax spending and infrastructure spending are required to meet needs emanating from the development and are not a benefit of the scheme. The construction employment and spend associated with up to 455 houses is temporary. Overall my position on economic impact is positive and carries moderate positive weight.
- 6.26 For those reason I attribute moderate weight to the economic benefits of providing housing in this Green Belt location.

Enhanced Landscaping

- 6.27 I have assessed the impact of the site on the character and appearance of the area and concluded that harm arises to such matters in the context of the NPPF test of recognising the intrinsic character and beauty of the countryside.
- 6.28 It is common ground that the appeal site comprises countryside and thus intrinsically its countryside character and beauty should be recognised. Recognition necessarily imparts a degree of protection and thus the appeal scheme will lead to harm as opposed to recognition. The proposal therefore conflicts with the NPPF and such matters, I argue, carry significant weight against the proposal.
- 6.29 I acknowledge that the scheme allows for reinforced boundary landscaping and provides landscaping between the development parcels. However, I do not consider any landscape scheme could adequately mitigate the harmful impacts of the scheme and indeed I consider it unrealistic to suggest it would.
- 6.30 However these would be in the context of the proposed development and are provided in order to assist in assimilating the development onto the appeal site and in the context of the harm that arises from such a quantum of new development.

- 6.31 I acknowledge the landscape enhancement measures proposed in the scheme⁴⁹, however many overlap with other matters and some are required to make the development acceptable, serve future residents and prevent other objections (i.e. green infrastructure, community facilities etc..). It is relevant to note that the Appellant has chosen to reserve landscaping for consideration at another time and as such none of the details are to be determined as part of this application.
- 6.32 As such I do not consider the landscaping strategy to comprise a benefit of the scheme as it cannot be divorced from the overall harm that arises to the countryside as a result of building 455 dwellings etc. in the Green Belt.
- 6.33 Therefore, in my view this is a neutral matter. If the Inspector considered that discernible and tangible benefits arise from the proposed landscaping strategy that can be divorced from the overall harm that arises to the character and appearance of the area then I would consider such benefits to lie at the bottom of my scale and carry limited weight.

Community Facilities

- 6.34 In the first instance the proposed facilities are required to service the 455 households that are proposed on the appeal site.
- 6.35 With regard to the proposed medical facility the s106 seeks to secure a contribution of £225,500.00 to meet the needs of the additional population arising from the development, that is not a benefit of the scheme. However the provision of land to provide a new facility to service the new population and existing population where deficits arise is capable of comprising a benefit of the scheme if it is delivered.
- 6.36 The proposal safeguards (subject to the s106 agreement) the location identified on the appeal site for the construction of a new healthcare facility, albeit I understand that the CCA and ICS are considering alternative options for provision of a healthcare facility to meet the needs of the growing population and provision may not ultimately be made on site.
- 6.37 Within the ward area I understand that only 2 available early year (EY) spaces are available and that the proposed development will generate a need for 41 EY spaces.
- 6.38 The data shows that there is insufficient provision to meet the additional demand created by this development. I therefore understand that it is proposed that a new facility is required and a suitable piece of land (minimum 0.13 hectare) and a financial contribution to facilitate a new 30 place early years and childcare provision and additional contribution for remaining place is to be provided.

49

LVIA at 4.40

- 6.39 The EY facility is required to meet demand arising from the appeal scheme and not the wider community. Therefore, I accept it will increase choice (5 to 6 providers) but it is not a wider community benefit rather it is required to service the needs arising from the development itself.
- 6.40 I recognise that a community hall could have wider benefits for the wider community than just the occupants of the appeal site and as such could be viewed as a benefit of the scheme.
- 6.41 I acknowledge that the community facilities comprise a benefit of the scheme that carries positive weight in favour of the grant of planning permission. I attribute moderate positive weight to such matters in agreement with the weighting attributed by the Appellant⁵⁰.

7 Planning Balance and Summary

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The Framework is a material consideration in the determination of these appeals. Under paragraph 11(d), the policies most important for the determination of the appeals are deemed to be out of date by reason of the HDT results and housing land supply shortfall: see footnote 8. This requires the decision-maker to consider whether the application of policies in the Framework provide a clear reason for refusing the proposal. One of the key sets of policies in the Framework are the policies protecting Green Belt land.⁵¹
- 7.3 As I have already demonstrated the application of policies in the Framework relating to the Green Belt provide a clear reason for refusing the proposal. Thus the tilted balance, otherwise engaged by the HDT and 5YHLS position, is disengaged in this case.
- 7.4 The proposed development constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”. Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.5 As explained above in section 5, the other Green Belt harm by loss of spatial and visual openness and harm to three purposes leads to substantial harm at the upper end of such harm and must carry substantial weight. The appeal site and area contribute very strongly to safeguarding the countryside from encroachment and maintain settlement patterns. The proposals would lead to urban sprawl, settlements merging and encroachment into the countryside and would erode settlement patterns. Such harm to the purposes of Green Belt is multifaceted and wide ranging and carries substantial weight.
- 7.6 Added to this is “any other harm” arising from the character and appearance matters considered above. In that respect, the failure to recognise the intrinsic character and beauty of the countryside and adverse impact on the character of the area carries significant weight against the appeal scheme and the loss of best and most versatile agricultural land carries limited weight against the proposal and comprise additional harms that add to the harm to Green Belt matters.
- 7.7 I have carried out my Green Belt balancing exercise assuming that a satisfactory obligation is presented to address the provision of affordable housing, Custom Self Build Plots and other infrastructure associated with the application the subject of this appeal.

⁵¹ i.e. section 13 and footnote 7 of the National Planning Policy Framework 2023

- 7.8 The weight of factors against the grant of permission present a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations such that “very special circumstances” exist. This high bar is illustrated in an appeal decision in St Albans⁵² wherein the Inspector notes:

*“The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. However, very special circumstances cannot exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Consequently, for the appeal to succeed, the overall balance would have to favour the appellants case, not just marginally, but **decisively**.”* Emphasis added

- 7.9 The factors relied on by the Appellant comprise the contribution to housing (including affordable housing and custom build houses) which collectively carry substantial weight. I have also acknowledged the positive benefits of some of the other considerations including economic benefits, community facilities and biodiversity net gains which all carry moderate positive weight in favour of the scheme.
- 7.10 I consider that the proposal will lead to substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt countryside which adversely affect the character of the area including the setting of heritage assets. The impact on the environment is substantially negative and in my view means the proposed development cannot comprise sustainable development.
- 7.11 I am cognisant of the Written Ministerial Statement of July 2015, which sets out the Secretary of State’s own view that need is unlikely to clearly outweigh harm to the Green Belt to justify the loss of Green Belt land and the grant of planning permission. I recognise that the WMS was not incorporated into policy and carries only limited weight but the principle remains good. I consider part of the rationale behind such an approach must lie in one of the two essential characteristics of the Green Belt being their permanence.
- 7.12 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they “clearly outweigh” the Green Belt and other harms and demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 153 of the Framework.
- 7.13 As such, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i). Thus the presumption in favour (the so called “tilted balance”) is disengaged.
- 7.14 The policies of the Framework provide clear reasons to refuse permission, and material considerations would not justify the grant of permission.
- 7.15 Therefore, I invite the Inspector to dismiss the appeal.

⁵² APP/ B1930/W/19/3235642 at Burstons Garden Centre at [CD8.11](#)