



**CODE** Development  
Planners



---

## Statement of Case

**Land east of Rayleigh  
Road, Thundersley**

**This Land  
Development  
Limited**

---





## CONTENTS

1	<b>INTRODUCTION .....</b>	<b>1</b>
2	<b>SCOPE OF EVIDENCE .....</b>	<b>2</b>
3	<b>PLANNING POLICY CONTEXT.....</b>	<b>4</b>
4	<b>THE APPELLANT’S CASE.....</b>	<b>6</b>
5	<b>REASON FOR REFUSAL .....</b>	<b>7</b>
6	<b>PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS.....</b>	<b>10</b>
7	<b>OVERALL PLANNING BALANCE .....</b>	<b>10</b>

## APPENDICES

Appendix 1 – Justification for the inquiry procedure

Appendix 2 – Draft Statement of Common Ground

Appendix 3 – Pre-application advice received from Castle Point Borough Council (27 May 2022)



## 1 INTRODUCTION

- 1.1 This Statement of Case (SoC) has been prepared by CODE Development Planners (hereafter referred to as 'CODE') on behalf of This Land Development Limited (the appellant, hereafter referred to as 'TLDL'), and supports the appeal against the refusal of TLDL's outline planning application on land east of Rayleigh Road, Thundersley for:

*“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 relevant local planning authority in this case is Castle Point Borough Council (CPBC). Outline planning permission is sought for the proposals. The relevant CPBC planning application reference number is 23/0085/OUT.

- 1.3 The documentation submitted in support of the planning application, correspondence with CPBC and additional material to address issues raised by consultees are included in the suite of Core Documents submitted with this appeal. Where submitted documents provide more context and detail, to prevent against unnecessary repetition, CODE has made specific reference to these within this SoC.

### 1.4 The appeal proposals

- 1.4.1 A more detailed site description, overview of the proposed development and details of the site's planning history can be found within sections two, three and four of the submitted Planning Statement (please refer to CD 1.4). Importantly, details of pre-application engagement (including public consultation and pre-application discussions with officers of CPBC) are summarised within section five of the Planning Statement (and the formal written pre-application advice received from CPBC is enclosed at appendix 3 of this SoC).

### 1.5 The application process

- 1.5.1 The planning application for the proposed development was submitted on 3 February 2023, with the application being formally registered by CPBC on 24 February 2023. The planning application was supported by a comprehensive suite of technical reports, illustrative plans and drawings in accordance with CPBC's planning application validation requirements. The Submission Schedule (CD 1.33), submitted with the planning application, details the documents submitted for consideration to the Council and the plans and drawings for approval.



1.5.2 The original determination deadline for the planning application was 26 May 2023. An initial extension of time was agreed until 3 July 2023. Further subsequent extensions of time were subsequently agreed with CPBC, up until 31 October 2023.

1.5.3 The application was considered by CPBC's development management committee on 13 December 2023, where members resolved to refuse the application, citing one reason for refusal. These are outlined on the decision notice (CD 5.1). The officer's report to the development management committee is enclosed at CD 5.2.

## 1.6 EIA Screening Decision

1.6.1 A formal request for a Screening Opinion was submitted to CPBC on 16 April 2021. A formal Screening Opinion was received from CPBC on 6 May 2021. The Screening Opinion concluded, *"From an analysis of the information submitted by the applicant, the Local Planning Authority is of the formal opinion that the proposed development, either independently or cumulatively with the development of other sites, is **unlikely to have such significant effects** on the environment that an EIA should be carried out and an Environmental Statement submitted.*

***For the above reasons, it is determined that an Environmental Statement is not required for the above development."*** [our emphasis]

1.7 Relevant conclusions from the formal Screening Opinion issued by CPBC on 6 May 2021 are referred to within the Planning Statement (CD 1.4). It should also be noted that the Screening Opinion was previously issued prior to the withdrawal of the emerging local plan which would, had it been formally adopted, have allocated new residential development sites which were considered within the Screening Opinion and its assessment of whether the cumulative impacts could have had significant effects on the environment. Further to the formal withdrawal of the local plan, there is no 'planned' development in the borough. The conclusions of the Screening Opinion remain valid, but it should be noted that the potential cumulative effects on the environment have significantly lessened further to the local plan's withdrawal.

## 2 SCOPE OF EVIDENCE

### 2.1 The appeal procedure and submitted evidence

2.1.1 CODE considers that an inquiry is the most appropriate procedure for the determination of the appeal. Justification for the inquiry procedure is enclosed at appendix 1.

2.1.2 The submission of an appeal utilising the inquiry procedure reflects the substantial local interest generated by the proposals, and the need for evidence to be tested through formal questioning by an advocate (particularly in light of the pre-application advice issued by CPBC, the conclusions of CPBC's evidence base regarding the exceptional circumstances considered to exist for the appeal site, and



the positive conclusions of the inspector into the soundness of the now withdrawn Castle Point Local Plan 2018-2033).

2.1.3 The justification for the inquiry procedure, enclosed at appendix 1 outlines CODE's view as to why these matters require further testing by an advocate in an inquiry setting. It is anticipated that the parties can agree substantial common ground to minimise the issues in this appeal. The travelling draft of the statement of common ground (to be agreed with CPBC within the timescales set by PINS), is enclosed at appendix 2.

2.1.4 Where appropriate, and to avoid this statement becoming unnecessarily voluminous, reliance is placed upon the Planning Statement and Design and Access Statement submitted with the planning application (CDs 1.4 and 1.2).

## 2.2 **Relevant statutory test**

2.2.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that:

*"If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

2.2.2 Section 39 of the Act requires decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development.

2.2.3 The presumption in favour of the development plan is also confirmed in the National Planning Policy Framework (NPPF), which emphasises the importance of the plan-led approach. However, the NPPF is itself a significant material consideration in the determination of planning applications and appeals.

2.2.4 As such, CODE considers the following to be relevant considerations in the application of the statutory test:

- Whether the proposals accord with the most important (and other relevant policies) of the development plan;
- Whether the proposals are in accordance with the relevant provisions of the NPPF;
- Whether the proposed development constitutes "sustainable development"; and
- Whether there are very special circumstances which cumulatively outweigh the identified harm to the Green Belt.

## 2.3 **Costs**

2.3.1 TLDL is considering whether to submit a claim for costs as part of the determination of the appeal. If such an application is to be forthcoming, this shall be prepared and circulated to the inspector and CPBC in accordance with the timescales outlined in the procedural guidance for appeals.



### **3 PLANNING POLICY CONTEXT**

#### **3.1 The adopted development plan**

3.1.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

3.1.2 Paragraphs 7, 8, 10 and 11 of the NPPF emphasise the requirement for decision makers to contribute to the achievement of sustainable development.

3.1.3 At the time of writing, the adopted development plan in Castle Point consists of the following documents:

- Castle Point Local Plan (adopted November 1998, reviewed in September 2007)
- Essex Waste Local Plan (adopted July 2017)
- Essex Minerals Local Plan (adopted July 2014)

3.1.4 Further detail regarding CODE's consideration of the development plan is contained within section 6 of the submitted planning statement (CD 1.4). CODE will adduce evidence, on behalf of TLDL, regarding the status of CPBC's development plan, their housing land supply (and housing delivery test) position, the lack of development control policies for new schemes in the Green Belt, and the compliance of the proposals with the policies of the development plan.

3.2 Furthermore, CODE notes the focus and determination of the officers at Castle Point to prepare a new, national policy compliant and up-to-date local plan, which was found sound by the examining inspector. Whilst the emerging Castle Point Local Plan (2018-2033) was not adopted (and formally withdrawn on 15 June 2022), the supporting evidence base is important to the determination of this planning appeal.

3.3 CODE will adduce evidence regarding the evidence base which underpinned the withdrawn local plan, particularly with regard to the assessments undertaken by CPBC to determine how much of its local housing need could be accommodated within the urban area in Castle Point, and the requirement for Green Belt releases as part of the emerging local plan. The conclusions of the evidence base are relevant to the determination of this appeal.

#### **3.4 National Planning Policy Framework (NPPF, December 2023)**

3.5 The site is shown on the adopted policies map as being within the Green Belt. It is pertinent to note policy GB1 (Control of Development) was not included within the list of policies in the saving direction issued by the Secretary of State (September 2007). Policy GB1 previously outlined when planning permission might be granted for development within the Green Belt, including in very special



circumstances, and for purposes related to agriculture, mineral extraction, forestry and cemeteries (amongst other limited uses).

3.6 In the absence of an adopted policy providing guidance for the consideration of new development in the Green Belt, CODE refers to the guidance contained within the National Planning Policy Framework (NPPF, July 2021). Paragraphs 152 and 153 of the NPPF clarify that inappropriate development should not be approved except in ‘very special circumstances.’

3.7 **Levelling-Up and Regeneration Act (November 2023)**

3.7.1 The Levelling-Up and Regeneration Act received Royal Assent on 26 October 2023. Most of the sections directly related to development management and plan-making have not commenced and will require secondary legislation. Should this secondary legislation be made in advance of, during or after the public inquiry, CODE reserves the right to prepare additional written representations on the potential implications for TLDL’s appeal case.





## **4 THE APPELLANT'S CASE**

- 4.1 CODE contends that very special circumstances exist which clearly outweigh the identified harm to the Green Belt (as prescribed by the NPPF) and justify allowing the appeal for land east of Rayleigh Road, Thundersley. In demonstrating that sufficient very special circumstances exist in favour of allowing the appeal, CODE considers that the proposals are in accordance with the development plan as a whole.
- 4.2 Such very special circumstances include those listed at section 7 of the submitted Planning Statement (CD 1.4) and as outlined within subsequent letters to the planning officer at CPBC (CDs 2.2, 2.3 and 2.5). Further evidence in support of these particular material considerations in favour of the appeal proposals will be adduced by CODE.
- 4.3 CPBC's own monitoring data shows an abject failure to bring forward a sound local plan since November 1998 which can appropriately meet the identified market and affordable housing needs of the borough. There is an acute need for new affordable housing in the borough, reflecting a dire record of delivery since 2011 (just 169 affordable homes have been provided in the borough over this 12-year period). The planning policy position in CPBC at the current time cannot appropriately meet the government's aim to boost the supply of new housing (paragraph 60 of the NPPF) or to provide sufficient affordable homes to enable local residents to own their own homes.
- 4.4 CPBC's affordable housing register further demonstrates a significant existing need for the immediate delivery of new affordable homes. The Right to Buy continues to deplete the stock of existing affordable housing stock in the borough.
- 4.5 The consistent and sustained failure to adopt a sound local plan in the borough has also delayed the provision and delivery of much needed new community infrastructure to ensure sufficient capacity across education and health institutions exists for local residents.
- 4.6 Statutory consultation responses (and the officer's report to the development management committee, CD 5.2) confirm that all other technical matters, such as highways, ecology, surface water drainage, foul drainage, noise, air quality and landscape are all considered to be acceptable, or capable of being addressed by appropriately worded planning conditions and/or planning obligations.
- 4.7 CPBC's report to the development management committee is clear that the sole issue in this appeal is the principle of development on the site, given its location within the Green Belt.



## 5 REASON FOR REFUSAL

### 5.1 The decision notice

5.1.1 TLDL’s planning application (CPBC reference 23/0085/OUT) was refused by members at the development management committee meeting on 13 December 2023. The decision notice was formally issued on 14 December 2023. The decision notice included one reason for refusal, regarding the principle of development in the Green Belt. Please refer to CD 5.1). Planning Practice Guidance (PPG)<sup>1</sup>, with reference to article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that the decision notice should, where planning permission is refused, “state clearly and precisely the full reasons for refusal, specifying all policies and proposals in the development plan that are relevant to the decision.”

5.1.2 An officer’s report to the development management committee was published on 6 December 2023. This is included within the Core Documents (please see CD 5.2).

### 5.2 Reason for refusal one – inappropriate development in the Green Belt and very special circumstances

5.2.1 This section of the SoC outlines CODE’s position in relation to CPBC’s identified reason for refusal (as set out in CPBC’s decision notice, CD 5.1). The sole reason for refusal addresses several matters, which are addressed sequentially below:

5.2.2 CODE will adduce evidence to demonstrate to the inspector that sufficient material considerations arise from the appeal proposals which cumulatively amount to very special circumstances. Evidence will be submitted by CODE in support of the following particular material considerations in favour of the appeal scheme (and to evidence the weight afforded in CODE’s overall planning balance):

Benefits and Weighting	
Benefit	Weight
Provision of new market housing	Significant – very significant weight
Provision of affordable housing	Very significant weight
Contribution towards rectifying CPBC’s substantial housing land supply deficit	Significant weight
The conclusions of Castle Point’s evidence base, that exceptional circumstances exist, for the release of the site from the Green Belt	Moderate – Significant weight
Economic benefits	Significant weight
Biodiversity net gain	Moderate weight
Enhanced landscaping	Moderate weight
Provision of new community infrastructure	Moderate weight

<sup>1</sup> Paragraph 020, reference ID: 21b-020-20140306



- 5.2.3 In addition to the above, the officer's report to planning committee (CD 5.2) outlines CPBC's view that its local housing need figure should be calculated using an alternative method to the government's standard method. CODE intends to submit evidence to the inquiry to support the continued use of the government's standard method for calculating local housing need, with reference to the provisions of paragraph 77 of the NPPF (it is anticipated that this approach will be agreed in common ground with the Council), in addition to further evidence relating to the acute and sustained need for affordable housing in the borough. A section 78 appeal is not the venue for arguing for an alternative housing need figure for the purposes of calculating housing land supply. This is clear from the relevant paragraphs of the NPPF (and provisions of the Planning Practice Guidance).
- 5.2.4 With regards to the sustainability of the appeal site, The promotion of sustainable transport options has been key in the preparation of the parameter plans for the site to ensure all new residents will be within a 400m walking distance of existing or proposed bus stops. The site occupies a sustainable location in close proximity to existing services and facilities, increasing the opportunity for residents to explore alternative methods of travel to the private car. This is considered further within the submitted Transport Assessment (CD 1.12, and the submitted Travel Plan, CD 1.13).
- 5.2.5 CODE will also refer to CPBC's evidence base which supported the now withdrawn Castle Point Local Plan 2018-2033, which positively concluded that exceptional circumstances exist in favour of the release of the site from the Green Belt (as proposed allocation HO13). These conclusions were supported by the examining inspector's conclusions regarding the soundness of the plan, including the allocation of land east of Rayleigh Road, Thundersley for 'around 455 dwellings and associated community infrastructure. Whilst there is a difference between the exceptional circumstances and very special circumstances tests, the conclusions that exceptional circumstances existed for the release of the site from the Green Belt are pertinent to the determination of this appeal.
- 5.2.6 Indeed, important circumstances remain unchanged, and in some cases have worsened since the withdrawal of the local plan, including the Council's affordability ratio (currently at 12.2 times the average annual wage) and the continuing sustained shortfall in the provision of new market and, in particular, affordable homes in the borough. The continued under provision of affordable housing in the borough is considered in further detail at paragraphs 8.1.5 to 8.1.9 of the submitted planning statement (CD 1.4).
- 5.2.7 Furthermore, the housing land supply position in the borough is anticipated to worsen over the five-year period. The most recently published annual monitoring report for the borough shows that by 2027/28, the housing land supply position of the borough will have reduced to 1.64 years, demonstrating the inability of the saved policies in the Castle Point Local Plan (November 1998) to boost the supply of housing (and the insufficient capacity on brownfield sites to meet the identified housing needs of the borough).



- 5.2.8 CODE will also adduce evidence to demonstrate that the harms to the purposes of the Green Belt, as summarised within the officer's report to the development management committee (CD 5.2) are overstated (and contrary to the sound conclusions of the withdrawn local plan's evidence base).
- 5.2.9 Landscape and visual evidence will be limited to matters relevant to the consideration of the visual impact on openness and in response to the specific comments raised in CD 5.2 regarding the scheme's impact on purpose c) of the Green Belt as outlined at paragraph 143 of the NPPF.
- 5.2.10 With regard to other potential harms arising from the proposals, the submitted agricultural land classification (ALC) survey (CD 2.6) identified the total amount of best and most versatile (BMV) land on site is 17.9ha, which falls below 20ha. Natural England sets the threshold for consultation, regarding whether the loss of BMV land is significant, at 20ha or more. Due to the proportion of non-agricultural land, the quantum of BMV land within the site is under the 20ha threshold for consultation with Natural England and thereby does not meet the definition of 'significant development' for the purposes of footnote 62 of the NPPF. CPBC's officer's report to committee similarly does not consider the loss of BMV land in this case to be significant.
- 5.2.11 The ALC report itself concludes the economic value of the BMV land to be less than £6,000 per annum. These economic benefits of the agricultural land are 'limited' in nature. The loss of BMV land in this case does not therefore outweigh the substantial benefits associated with this scheme.
- 5.2.12 Finally, CODE will adduce evidence to demonstrate that the material considerations in favour of the proposals cumulatively amount to very special circumstances which justify allowing the appeal in the Green Belt. In passing the very special circumstances test, CODE's evidence will demonstrate the proposal accords with the development plan as a whole (in light of the lack of saved development control policies for Green Belt development in the Castle Point Local Plan (November 1998), and the appeal scheme's compliance with the remaining saved policies (please refer to appendices A and B in CODE's submitted Planning Statement (CD 1.4).
- 5.2.13 Subject to the inspector finding that very special circumstances do exist in support of the appeal proposals, CODE also considers that the tilted balance as contained in paragraph 11d) of the NPPF would be engaged (as a direct consequence of the Council's inability to demonstrate a housing land supply and the repeated failure to pass the Housing Delivery Test).



## **6 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS**

### **6.1 Planning conditions**

6.1.1 The parties will seek to reach agreement on planning conditions to be attached to any grant of outline planning permission for the appeal. These will be agreed through discussions on the SoCG. CODE submitted an initial list of planning conditions to CPBC in advance of the determination of the planning application, and these are enclosed at CD 3.41.

### **6.2 Section 106 obligations**

6.2.1 An appropriate planning obligation will be provided in accordance with the submitted draft Heads of Terms for a Section 106 (CD 2.11). CODE will consider the CIL compliance statement to be provided by CPBC to understand the relevant justification for each planning obligation and reserves the right to scrutinise such evidence in advance of the inquiry (and therefore evidence may be adduced to the inquiry should such justification not meet the relevant tests for planning obligations).

6.2.2 The draft S106 will be issued to the Council for comment in advance of the appeal in order to provide reasonable opportunity for agreement to be reached and in order for a draft UU to be provided to the Inspector 10 days in advance of the Inquiry.

## **7 OVERALL PLANNING BALANCE**

7.1.1 CODE will adduce evidence to demonstrate that the material considerations in favour of the proposals cumulatively amount to very special circumstances which justify allowing the appeal in the Green Belt. In passing the very special circumstances test, CODE's evidence will demonstrate the proposal accords with the development plan as a whole (in light of the lack of saved development control policies for Green Belt development in the Castle Point Local Plan (November 1998), and the appeal scheme's compliance with the remaining saved policies (please refer to appendices A and B in CODE's submitted Planning Statement (CD 1.4).

7.2 Subject to the inspector finding that very special circumstances do exist in support of the appeal proposals, CODE also considers that the tilted balance as contained in paragraph 11d) of the NPPF would be engaged (as a direct consequence of the Council's inability to demonstrate a housing land supply and the repeated failure to pass the Housing Delivery Test).

### **7.3 Conclusions**

7.3.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

7.3.2 In accordance with the requirements of the NPPF, CODE will demonstrate very special circumstances exist which justify allowing the appeal in the Green Belt. As outlined within this statement of case (and within the submitted planning statement, and subsequent detailed correspondence with officers at



CPBC), it is considered that the proposals are therefore in accordance with the remaining saved policies of the Castle Point Local Plan (November 1998).

- 7.3.3 As very special circumstances exist, CODE will also invite the inspector to apply the tilted balance (paragraph 11d of the NPPF) and it will be demonstrated that there are no material adverse impacts arising from the appeal proposals which would significantly and demonstrably outweigh the benefits the development will deliver. There are no specific policies of the Framework (as listed at footnote 7 of the NPPF, in light of very special circumstances existing) which would either preclude or restrict the development of the appeal site.
- 7.3.4 The delivery of up to 455 new homes (of which 40% - 182 homes – would be affordable), in addition to a new multi-use community building and the provision of land for a new healthcare facility, and a new early years childcare/nursery facility will lead to significant and tangible benefits for existing and future residents of Thundersley.





---

**CODE Development Planners Ltd**

17 Rosemary House  
Lanwades Business Park  
Kentford CB8 7PN

**T:** 01223 290138

**E:** [info@codedp.co.uk](mailto:info@codedp.co.uk)

**W:** [www.codedp.co.uk](http://www.codedp.co.uk)

---