

APP/M1520/W/24/3338797

APPEAL BY MR MARK SPERRIN

RE: 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 FROM STADIUM WAY IN THE NORTH AND DAW'S HEATH ROAD IN THE SOUTH, NEW GREENWAYS AND GREEN LINKS, MULTI FUNCTIONAL OPEN SPACE, GREEN INFRASTRUCTURE. ALL MATTERS RESERVED EXCEPT ACCESS.

LAND EAST OF RAYLEIGH ROAD, THUNDERSLEY, ESSEX

COUNCIL'S CLOSING SUBMISSIONS

[e.g. X of PH = Examination in Chief of Phillip Hughes; (XX of LR) = Cross examination of Liam Ryder; References are to document page numbers (not pdf pages) unless otherwise stated]

The effects of the proposal on the openness of the Green Belt

- 1 The core elements of national Green Belt policy have remained unchanged since before the Green Belt boundaries were included in the adopted Local Plan. The Government attaches great importance to the Green Belt, with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open (NPPF, 142). Neither objective is achieved here by developing this site for 455 homes, 3 community facilities, with associated infrastructure. It is plainly inappropriate development in the Green Belt.

- 2 As for the impact on openness, the starting point is that the Appellant accepts that their proposal will cause moderate harm to the openness of this part of the Green Belt (LR, 7.3.6). However, the analysis supporting that conclusion is flawed:
 - (1) It fails to undertake any volumetric assessment of the impact of the development, paying lip service to the spatial impact of openness;
 - (2) It underassesses the extent to which the appeal site is visually open as well as the appeal scheme's visual impact;

(3) It overplays the extent to which the proposal's design can mitigate the harm to openness.

A substantial loss of openness, spatially

3 At its root, the concept of Green Belt openness means the state of being free from built development, as distinct from the absence of visual impact¹. A key factor in assessing the spatial aspect of openness is to consider how built up this part of the Green Belt is now, and how built up it would be if the proposal occurs. Yet Mr. Smith's analysis of the spatial impact on openness focuses on the basic headline that approximately half of the appeal site will be given over to multi-functional open space (AS, 6.28). That glosses over the issue. He has not undertaken any comparison between the existing built development and what is proposed by the appeal scheme, nor is there any recognition in his evidence of the volume of development which will be introduced (XX of AS).

4 By contrast, Mr. Hughes' analysis was not disputed (XX of AS):

- The built development on the appeal site is extremely limited², predominantly of agricultural origins, and concentrated in two small clusters to the south east (former Claydons farmhouse and farmstead) and south west (3 agricultural style buildings to the east of the fishing lake access road) of the site. Even allowing for access drives and hardstanding, on any view, the site is open and predominantly undeveloped. The existing buildings have footprint of 425m² and a floor area of c.500m² on a site of over 270 900m² (PH, 5.25).
- Against that baseline, the appeal scheme will introduce 455 dwellings of 2 – 3 storeys with associated garages and residential sheds / outbuildings, a medical centre, a community / sports hall, an early years facility (60 children), hardstanding associated with the access road, the estate road, car parking, patios, and footpaths.
- On a rough - and conservative - estimate, the volume of built development will amount to c.203 000m³, over 100 times (actually x 119) the volume of what is on site now (c.1700m³) (PH, 5.56).
- The development will be permanent and irreversible (PH, 5.15, ref. PPG ID: 64-001).

¹ *R (Lee Valley RPA) v Epping Forest DC et al.* [2016] EWCA Civ 404 at para. 7 [CD12.2], as referenced in *R (Samuel Smith et al.) v North Yorkshire CC* [2020] UKSC 3 at para. 40 [CD 12.4] confirming the consistency of interpretation between these judgments [CD 12.4]. By focussing on the extent to which natural vegetation limits visual openness, the Appellant appears to have overlooked this definition.

² The modest clubhouse adjacent to, and used in conjunction with, the fishing pond, will remain.

5 On any view, there will be a substantial loss of openness in spatial terms.

The visual openness of the appeal site

6 It is well recognised that harm to openness does not require there to be visual impacts. Otherwise, open sites in the Green Belt could be developed in areas which cannot be seen, leading to the piecemeal erosion of the Green Belt. In this case, the visual openness of the appeal site as open countryside is something which can be perceived from the north, south, east, and west (XX of AS) in public and private views (PH, p.38). There will be a substantial and permanent loss of visual openness.

7 Far too much emphasis is placed in the LVIA and Mr. Smith's evidence on the presence of built form development around the appeal site. But the fact of built development to the north, west, and to some degree to the south of the site, does not prevent the visual openness of the appeal site from being appreciated from these locations. Public Right of Way BEN7 allows views across the northern part of the appeal site, there are views of the appeal site from the 180m gap along Daws Heath Road to the south, and from the track to the rear of Asquith Gardens to the east (both public and private).

8 A proper assessment of the visual impact on openness must also take account of the high degree of activity which would be introduced to the site (PH, 5.15, ref. PPG ID: 64-001). This too is absent from Mr. Smith's assessment. The occasional, limited activity associated with the arable farming, fishing lake etc. now, will be replaced by 100s of vehicle movements each day associated with 455 houses and 3 community facilities, noise and activity associated with those aspects of the development, parking and manoeuvring of private and commercial vehicles throughout the site (including buses), residential lighting and night-time street lights, all of which would be an aggravating factor in further reducing the openness of the appeal site.

'Mitigation' of harm to openness

9 The simple fact that approximately half of the appeal site will be given over to multi-functional open space will in no real sense mean that the appeal site remains open (AS, 6.28)³. That is

³ See also the Leverhulme appeal decision at [CD 8.10, para. 65], referred to by Mr. Hughes (PH, 5.69). It is illogical to think that spaces left "undeveloped" will be open. They will be contained or surrounded by housing.

an oversimplification of the impact on openness, which pays no regard to the 3-dimensional reality. The Parameter Plans show how 2-storey housing and a 12.25m width access road will be introduced into the area fronting Daws Heath Road [CD 1.6, CD 1.9], an area which currently allows the visual openness of the site to be appreciated (PH, p.5, Fig. 2.3). The openness of the Green Belt will not be maintained in any real sense by e.g. reducing densities and towards the east of the site and allowing a degree of permeability; the new housing (in depth) which will form the immediate context for any open space on the site. The alignment of the access road, and softening brought about by landscaping cannot sensibly be said to offset the clear and substantial harm to openness.

- 10 The Appellant has finally acknowledged that there would be harm to openness in spatial terms during this inquiry, an aspect of openness which they have failed to assess and failed to own up to in their evidence. On proper analysis, the appeal scheme will cause a substantial and permanent loss of openness in both a spatial and visual context. The spatial impact would cause harm at the very top end of the scale, whilst the visual impact on openness would be within the same bracket (PH, 5.62). As a component of Green Belt harm, the harm to openness must carry substantial weight in the planning balance (NPPF, 153).

Conflict with Green Belt purposes

- 11 Proper consideration of the extent to which the appeal site serves the Green Belt purposes is a distinct and separate element of the assessment of Green Belt harm. This is not an ordinary piece of land which is designated Green Belt in name only. It serves 3 of the 5 purposes very strongly. The harm caused by its loss and the resulting conflict with these purposes must be weighed in the planning balance.
- 12 The Green Belt Review Part 1 (2018) is the most comprehensive and detailed assessment of the Green Belt of the Council's area to date. It enables the Council to understand how each parcel contributes to the fundamental aim, characteristics and purposes of the Green Belt, without addressing individual sites. It was commissioned by the Council, formed part of the evidence base for the withdrawn Local Plan, and remains part of the evidence base for the emerging plan (X of PH).

- 13 Its conclusions are set out against transparent assessment criteria⁴ and are fully reasoned to support the judgments made.
- 14 Parcel 4, of which the appeal site forms a significant part⁵, is parcelled because its character differs from those areas around it [CD 6.1, p.75]. The parcel is noted to be almost devoid of development considered to be inappropriate for a Green Belt location, and to form the entirety of the relatively small strategic gap between the settlements of Thundersley, Daws Heath, and Hadleigh, displaying strong agricultural / countryside characteristics (pp. 76-77). Together with the surrounding Green Belt parcels, it collectively encircles Daws Heath, acting as a ring of Green Belt around the settlement, preventing encroachment into the surrounding countryside, which helps to maintain the character and integrity of the area (p.77).
- 15 Mr. Smith's attempts to cast doubt on the conclusions of the Part 1 review do not stand up to scrutiny.
- 16 As to the contribution which Parcel 4 makes to checking the unrestricted sprawl of large built-up areas, it is largely free of built-up development, adjacent to the built up area of Thundersley, and there is limited sprawl from the urban areas into it. Openness is the counterpart to urban sprawl⁶, and the Parcel's spatial and visual openness underlines its very strong contribution to this purpose.
- 17 As to preventing neighbouring towns merging into one another, the policy objective is to recognise the Green Belt's function in ensuring that urban areas retain separation and are distinctive. It is too narrow an approach to argue that it only applies to "towns". As explained in the Part 1 review, Castle Point does not have an adopted settlement hierarchy, as its urban areas are primarily comprised of the 4 large towns of Thundersley, South Benfleet, Hadleigh, and Canvey Island. Daws Heath is the only distinctly urban settled area outside of the 4 towns, with a clear albeit relatively small gap between it and the larger urban settlements in proximity to it, with the gaps entirely comprised of Green Belt land (pp. 24-25). The identity of a settlement is not determined solely by distance to another settlement, but the extent of that gap and effect of development remains a valid part of the assessment. Parcel 4 forms the entirety of the strategic gap between these distinct urban areas and it very strongly serves this purpose.

⁴ [CD 6.1, pp. 26-27, 29-30, 31-32]

⁵ Together with a small part of Parcel 5.

⁶ *R (Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC* [2020] UKSC 3 at para. 22 [CD12.4]

- 18 As to safeguarding the countryside from encroachment, the Part 1 review rightly highlights the great extent to which Parcel 4 represents countryside, with areas of pasture, woodland, and hedgerows with field boundary trees, together with its agricultural uses. It fairly notes that the parcel is large enough not to be specifically influenced by these boundary features and that the retail park to the north is reasonably well screened and set below the high grounds in views from the south [CD 6.1, p.76]. The small amount of ribbon development along Daws Heath Road is characteristic of a countryside location. Parcel 4 very strongly meets this purpose.
- 19 Importantly, the Part 1 review also provides clarity on how the parcels perform relative to each other in serving the purposes of the Green Belt, with Parcels 4 and 5 being two of only 6 parcels, out of a total of 30, which very strongly perform against all 3 purposes assessed [CD 6.1, pp. 36-37].
- 20 Given that the appeal site forms a significant part of Parcel 4, it is hardly surprising that the appeal site should be considered to serve the same purposes to the same extent, with the result that the appeal scheme would lead to substantial harm to the purposes (PH, paras. 5.83-5.90). Key parts of the Part 1 assessment remain relevant for the appeal site as a matter of judgment.
- 21 Against that background, Mr. Hughes has rightly commented on the lack of rationale in Green Belt terms for the allocation of the appeal site through the withdrawn Local Plan process (X of PH), a matter which is taken up below (para. 59).
- 22 Whilst the Part 2 review formed part of the evidence base for the withdrawn Local Plan, it forms no part of the emerging Local Plan (X of PH).
- 23 The appeal site very strongly serves the purposes of the Green Belt, particularly in preventing urban coalescence. The appeal scheme will close the only remaining gap between Thundersley and Rayleigh. It will significantly narrow the clear albeit small gap between Thundersley and Daws Heath, leading to a very strong perception of merging between these settlements. The countryside and rural integrity of the appeal site will not be safeguarded, and the built up area of Thundersley will sprawl eastwards infilling the appeal site. The appeal scheme will lead to

substantial harm to those Green Belt purposes. This too carries substantial weight in the planning balance.

The effect of the proposed development on the character and appearance of the area

24 Anyone who visits the appeal site cannot help but appreciate its qualities as an area of unspoilt local arable farmland and pasture, with all the hallmarks of attractive open countryside. The views across and through this area provide a degree of respite between the urban area of Thundersley to the west, and the settlement of Daws Heath to the east. It is this perception of open countryside which is enjoyed by the many residents who live around it, the workers who commute through it, and the recreational users of the footpaths, tracks, and permissive routes both on and around the appeal site. The high level of objection to the application⁷ is entirely unsurprising in that context. A landscape does not have to be a valued landscape in national policy terms, to be highly valued at a local level.

Landscape harm

25 There is a clear resonance to these aspects of the appeal site in the cascade of landscape character publications which apply to it.

26 At a regional level, the Essex Landscape Assessment (Chris Blandford Associates) places the appeal site in a landscape character area known as the South Essex Coastal Towns. One of the key characteristics of that landscape character area is '*Narrow bands .. of gently undulating arable farmland, with a remnant hedgerow pattern, separating some of the towns*' [CD 6.32, p.218]. That is apt to describe the appeal site and its surroundings here. Against that background, a key landscape sensitivity and accommodation of change issue for developments of a scale of more than 5ha (as here) is '*coalescence*'.

27 At a borough level, the Green Belt Landscape Assessment was produced by Essex Landscape Design for the Council to provide a layer of information to inform Green Belt policy from an objective standpoint [CD 6.24, p.4]. Area 4 – the northern half of which broadly represents the appeal site – is noted to border residential areas around Rayleigh Road and Daws Heath. The description given mirrors and supports that in Mr. Hughes' assessment (p.30, as relevant):

⁷ 945 objections (OR, p.60 [CD 5.2])

- The landscape is very attractive due to the individual elements and the contrasts, with the rolling landform being a key element of its landscape character.
 - There are attractive views within and looking into the area from surrounding roads and other viewpoints, with very attractive views from Daws Heath Road. The industrial estate on the northern edge is reasonably well screened and set below the high ground in views from the south.
- 28 The assessment of landscape sensitivity is rightly high, taking account of aesthetic factors as well as its well managed condition. Visually, it is also assessed to have a high sensitivity (p.32).
- 29 Through the LVIA and Mr. Smith's assessment, these pertinent landscape and visual aspects are either missed or downplayed, with the consequence that their baseline assessment is flawed. Mr. Smith does not pick up on these aspects in his proof (AS, 4.10-4.12). Remarkably, he had not read the regional level assessment before being taken to it during oral evidence (XX of AS). As for the LVIA, it refers obliquely to the relevant part of the LCA and downplays the borough scale assessment by overemphasising urban influences and referring to the allocation in the withdrawn Local Plan [CD 1.20, paras. 2.14, 2.21, 2.24].
- 30 The consequence is that the Appellant's assessment mischaracterises and underappreciates the sensitivity of the appeal site [CD 1.20, 2.39]. Urban influences do not pervade the area, and there is a clear degree of tranquillity experienced from within and around the appeal site, from footpath BEN7 looking into it, and when walking footpath BEN7 and the permissive routes of the nature reserve. There is nothing disruptive to tranquillity in the presence of the retail units along the northern boundary.
- 31 The scale of the housing scheme - together with the community buildings, access road capable of taking buses, estate road, and associated residential paraphernalia – will be fundamentally at odds with its strong open countryside character. It cannot be designed or landscaped in such a way as to mitigate the landscape harm to any meaningful extent. The traffic and movement associated with the appeal scheme will be disruptive and harmful to its existing tranquil rural character.
- 32 Mr. Smith has to accept that the landscape character effects upon completion will remain adverse, albeit not significant in his view (AS, 4.53). Mr. Ryder attributes moderate weight to the landscape harm here (LR, 7.7.5). But given the flaws in the Appellant's assessment, Mr.

Hughes' assessment is to be preferred. The appeal scheme will introduce an urban form of development on an area with a prevailing open countryside character.

- 33 The Appellant is quick to focus on the fact that this is not an NPPF valued landscape - an agreed matter - without acknowledging and grappling with the Council's case⁸, that the appeal scheme would fail to recognise⁹ the intrinsic character and beauty of the countryside and conflict with para. 180(b) of the NPPF. Mr. Smith fails to deal with para. 180(b) in his evidence, relying instead on an oblique reference in the LVIA to TIN 05/2017 (which itself is directed to the intrinsic character and qualities of a place in the context of townscape character assessments) [CD 1.20, para. 2.4]. Para. 180(b) has a different focus in seeking that decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside; it is particularly apt to apply to the appeal site, with its open countryside character and rural qualities. Significant weight applies to that harm (PH, 5.139).

Visual harm

- 34 The current views of the open countryside enjoyed from around and within the appeal site will best be experienced on site. Viewpoints in an LVIA are a useful aide for assessing the impact of a proposed development, but they are no substitute for the 3-dimensional multi sense experience of walking the area.
- 35 Mr. Hughes provides a detailed assessment of the visual harm which will not be repeated here (PH, 5.140-5.211). However, some key points can be highlighted.
- 36 First, there are a variety of receptors here, from residents in houses, to leisure and commuter walkers, dog-walkers, cyclists. The permissive routes around the appeal site and those well-worn within it are extremely well used during the week and at weekends. A significant proportion of those experiencing the open countryside character of the appeal site do so for recreational or part recreational reasons, increasing their sensitivity. The sensitivity attributed to particular types of receptor should be construed with a dose of reality here. A commuter walking to work at the retail park might well make use of footpath BEN7 in order to enjoy the

⁸ Nothing of substance turns on the fact that the OR did not raise L&V harm. There was no landscape officer consultation response (as distinct from a response on historic landscape matters). Following Mr. Hughes' appointment, the harm was properly raised in the Council's Statement of Case [CD 11.2, paras. 5.28-5.41].

⁹ Imparting a degree of protection (*Cawrey Ltd. v SSCLG, et al.* [2016] EWHC 1197 (Admin) at para. 49)

open countryside views across the appeal site, as much as to use a more direct commuter route.

37 Secondly, as with the landscape character assessment in the LVIA, the visual assessment in the LVIA underplays the rural influences and overplays the urban influences. However, using the Appellant's own viewpoints, it will be noted that:

- From (or around) Daws Heath Road (Vwpt 1a/b), Asquith Avenue (Vwpt 4), Asquith Gardens (Vwpt 6), and from footpath BEN 7 (Vwpts 9 and 11), open and generally uninterrupted views of the appeal site can be appreciated.
- Surrounding housing development is not prominent and does not intrude into any of the above views of the appeal site.
- The retail park is not noticeable above the skyline in any of the viewpoints in the LVIA.
- The views from Daws Heath Road looking north are particularly attractive and unaffected by urban influences. They help to provide a sense of separation between the settlements.

38 Thirdly, the visual sensitivity of the appeal site is well supported in the Green Belt Landscape Assessment (see above).

39 Fourthly, the viewpoints cannot capture the degree of tranquillity actually experienced from and around these locations when viewing the appeal site, both through the auditory experience of e.g. hearing birdsong, and also the lack of disruptive movement in the field of view.

40 Fifthly, these are views which will be transformed by the appeal scheme. Even a well-designed and landscaped housing and community facility scheme won't change the overall effect of urban development transforming what once was an open countryside view.

41 Mr. Smith acknowledges significant adverse visual effects which are limited and localised in his assessment (AS, 6.11). This is translated into harm by Mr. Ryder, carrying moderate weight in the planning balance (LR, 7.7.5). Again, Mr. Hughes' assessment is to be preferred. For the above reasons, the visual harm here will be significant, permanent and irreversible and carries significant weight in the planning balance.

Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal

42 Any harm to the Green Belt carries substantial weight (NPPF, para. 153). It is agreed that there are separate and distinct components to Green Belt harm which fall to be assessed: harm by reason of inappropriateness; openness in the spatial and visual context; and harm to the purposes of including land in the Green Belt. In a given case, the levels of harm to openness and to the purposes (or any one of them) might vary considerably, though each would carry substantial weight. A logical approach would seek to reflect that variance in the planning balance.

43 Happily, Mr. Ryder accepts that (although he does not advocate it as an approach in his assessment) (XX of LR):

- para. 153 of the NPPF does not preclude an approach which disaggregates the weight to be applied to each of the component parts of Green Belt harm;
- there is nothing in the PPG which requires them to be weighed holistically in the planning balance as giving rise to substantial weight; and
- none of the appeal decisions which he cites in support of his approach give a reasoned view as to why aggregation or disaggregation should be followed¹⁰.

44 The risk with aggregating the Green Belt harm components, giving them a single substantial weighting, is that it has the effect of glossing over and conflating them. That is in fact what Mr. Ryder has done in presenting his Table 1 (LR, pp.53-54), where the Green Belt harm is lumped into one box and given a holistic substantial weighting. The level of harm he ascribes to each Green Belt component is also not recorded in the Table.

45 There are a number of other issues with Mr. Ryder's assessment which serve to undermine it:

¹⁰ For that reason, it would be wrong to conclude that all of the appeal decisions demonstrate a particular approach. The quotation given from the Manor Trading Estate appeal, for example, is taken from the conclusion, reflecting a shorthand summary, in an appeal which was in any event dismissed [CD 8.2, para. 86].

- (1) There is no parity of approach to each side of the balance, with Mr. Ryder disaggregating the benefits of market and affordable housing, but aggregating the weight to be given to the Green Belt harm. That presents a skewed picture.
- (2) He provides no scale, which would transparently set out the levels of harm / weight which he applies¹¹. He agreed that 'substantial' is the highest category of weight afforded to any harm in the NPPF as set out in his Table 1 (XX of Ryder). What remains unclear is how his 'very significant' category of weight, which he gives to market and affordable housing as a benefit, compares with that substantial weighting.
- (3) The basis for his assessment that there would be moderate harm to the purposes of the Green Belt remains unclear. He states that he agrees with Mr. Smith's 'conclusions' as to the purposes of the Green Belt and that the site's contribution to the purposes is overstated (LR, 7.5.3). But those conclusions state: that his scoring for purpose (a) would be a closer fit with 'strong', in fact greater than the 'moderate' finding in the Green Belt Review Part 2 document [CD 6.2, p.47]; that his scoring for purpose (b) would be 'lower than very strong' and 'lesser' for purposes (b) and (c), without any indication as to how much lower (AS, 5.57, 5.60¹²). Mr. Ryder could not point to any clear conclusion as to the harm to the purposes, from which to base his assessment (XX of Ryder).
- (4) Having concluded that there would be moderate weight to the moderate landscape & visual harm here, Mr. Ryder fails to grapple with the policy conflict which must follow. He has taken account of the extent to which the harm can be mitigated or designed out, in arriving at his conclusion that moderate harm would remain. That must mean that the appeal scheme fails to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, such that there is a conflict with para. 180(b) of the NPPF. Yet that is nowhere reflected in his written evidence, and was only reluctantly agreed to in oral evidence (XX of Ryder).

46 Properly considered, there are a number of Green Belt and other harms which weigh very heavily against the appeal scheme in the planning balance:

¹¹ Cf. Mr. Hughes' scale (PH, 1.10)

¹² Mr. Smith's proof at paras. 6.33 – 6.47 regrettably provides no further clarity.

- The proposal represents inappropriate development in the Green Belt, which must carry **substantial weight**.
- The proposal will give rise to substantial harm to the openness of this part of the Green Belt, spatially in the top end of the substantial bracket, and visually within the same substantial bracket. This too carries **substantial weight**.
- The proposal will give rise to substantial harm to 3 of the 5 purposes which it serves, carrying **substantial weight**.
- There will be significant landscape and visual harm caused by the proposal, attracting **significant weight**.
- The loss of almost 18ha of Best and Most Versatile agricultural land will be harmful, which is agreed to attract **limited weight**.

47 Very Special Circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations (NPPF, 153). This is not a mathematical exercise but a single exercise of judgment.

Housing Need

48 The Council has openly agreed that the proposed development will contribute to the Council's housing land supply, that for the purposes of this appeal that should be calculated in accordance with the standard method, and that this gives a 1.86yr housing land supply [CD 9.2].

49 Mr. Hughes acknowledges that there is a serious and substantial housing land supply shortfall. That is why the provision of housing carries substantial weight in his planning balance (his top bracket) (PH, 6.9).

Affordable Housing Need

50 It is also agreed that significant shortfalls in affordable housing provision have occurred in the Borough. Very little affordable housing has been delivered and the Council is not achieving the delivery that is required. Against that background, the 40% affordable housing (182 dwellings) also carries substantial weight in the planning balance undertaken by Mr. Hughes (PH, 6.9).

- 51 As a result, the Council accepts that there is a pressing need to deliver both market and affordable housing in the Borough. The Council has rightly not taken up inquiry time scrutinising these matters, since they are properly the subject of a Statement of Common Ground which has been given the highest category of weighting in the planning balance.
- 52 The Council's new Local Plan is estimated to be adopted in March 2026. Whilst it has not yet reached formal Regulation 18 stage:
- (1) The plan remains on schedule according to the published Local Development Scheme (PH, 4.11), with the formal Regulation 18 plan to be published by the end of this year.
 - (2) There has been communication and input from DHLUC on its progress (XX of PH).
 - (3) There is a very clear political will for the Council to progress the plan according to that timetable, as expressed by Cllor Lillis [ID-5]; there is no evidence of the Council delaying the process (Re-ex of PH).
 - (4) Whilst the emerging Local Plan will of course have to be examined for soundness through the examination process, that will be a matter for the Council, and it would be wrong to speculate as to what that plan will be following the withdrawal of the last plan in June 2022, and how it will progress.
- 53 Importantly, the housing land supply position does not mean that planning permission should be granted here. As Mr. Ryder accepted in XX, the lack of a 5yr HLS does not "trump" Green Belt policy when considering the way national policy on decision taking is framed under para. 11(d) of the NPPF (XX of Ryder). Specifically, the tilted balance is disengaged where policies of the NPPF that protect areas of particular importance provide a clear reason for refusing development. National Green Belt policy is one such protected area of particular importance to the Government (NPPF, para. 11, Footnote 7). Applied here, where the VSCS are not demonstrated to clearly outweigh the considerable harm caused by this development, permission should be refused; the effect of which is that the development of this site is not justified.

Evidence base to the withdrawn Local Plan

- 54 It is agreed that the withdrawn Local Plan cannot be afforded any weight in the decision-making process. The parties also agree that weight may be afforded to relevant parts of the evidence base which informed the withdrawn plan [CD 9.1, para. 5.7].

- 55 Very little weight should be attached to the Local Plan Inspector's Report allocating the appeal site as a Green Belt release. As accepted by Mr. Ryder in XX, the examining Inspector was considering whether there were 'exceptional circumstances' for altering the Green Belt boundaries, which the Courts have interpreted to be a less stringent test than the VSCS test which applies in the development control context¹³. The application of that less stringent test would have informed the whole of the examination process.
- 56 As to the evidence base generally, the local plan process is directed at assessing a strategic plan, put forward by a local authority as the means by which to achieve its development needs at that time. It is ultimately assessed against an overarching test of soundness. The examination process by which individual sites are considered for Green Belt release, and assessed against reasonable alternatives, is a strategic one. It is nowhere near as fine grained or in depth as an assessment of a specific development proposal, taking place through a planning application or an adversarial inquiry appeal process.
- 57 The simple fact is that the Council's democratically elected new administration did not agree with that previous Local Plan strategy, at least in part because they did not consider that Green Belt sites such as this should be released from the Green Belt. Scrutiny of the Green Belt evidence base justifies that concern.
- 58 As set out above (paras. 12-13), the Green Belt Part 1 Review objectively and comprehensively assessed the Green Belt parcels throughout the Borough. It carries significant weight as a material consideration.
- 59 However, thereafter, the Green Belt evidence base did not logically follow through on the Part 1 assessment (X of PH). The Part 2 review focussed solely on those sites which were to be considered for allocation. The Green Belt evidence base did not address the obvious question as to why less well performing parcels were being discounted in favour of better performing Green Belt sites. There is no logical progression from the findings of the Part 1 assessment, starting with the premise of locating growth in less well performing parcels in preference to the best performing ones.

¹³ R (Luton BC) Central Bedfordshire Council [2015] 2 P&CR 19 at paras. 54-56.

60 The appeal site provides a good example of this. It forms a significant part of Parcel 4 (and a small part of Parcel 5) which were assessed as very strongly performing against all 3 Green Belt purposes assessed. Relative to the rest of the Green Belt in the Borough, only 6 out of the 30 parcels performed at that level [CD 6.1, pp. 36-37]. Even when assessed against the 15 other sites coming forward for allocation in the Green Belt Review Part 2, the degree of harm to the 3 purposes here was assessed as higher in only one other case, and development of the site was considered to give rise to a very strong degree of harm to the purpose of preventing urban coalescence in particular [CD 6.2, pp.36-37]. In those circumstances, Mr. Hughes has rightly questioned the rationale for releasing this site in Green Belt terms, and the lack of explanation in the Green Belt evidence base. Very little weight should attach to the rest of the Green Belt evidence base after the Green Belt Review Part 1.

Biodiversity Net Gain

61 The 10% Biodiversity Net Gain is agreed to attract moderate positive weight in the planning balance. A 10% biodiversity net gain is the minimum which would now be required under the Environment Act 2024. This would by no means represent a significant gain for the area, given its already rich biodiversity and wildlife-rich habitats.

Economic Benefits

62 Moderate positive weight should attach to the economic benefits here. The estimated benefits are not suggested to support the threatened viability of local high streets or shops, which would support greater positive weight. There is no evidence that the shops around Rayleigh, Thundersley etc. are anything other than thriving. Given Mr. Donagh's evidence of low household formation rates due to e.g. overcrowding, it cannot be assumed that all of the households moving onto the site will be new to the area, or leave their present homes empty for others to fill.

Enhanced landscaping

63 The appeal scheme will lead to a loss of countryside and countryside character, in circumstances where the Appellant accepts there will be moderate landscape and visual harm which carries moderate weight in the planning balance. That conclusion is arrived at having already factored in any mitigation brought about by a landscaping scheme. No landscape scheme could adequately mitigate the harmful impacts of the scheme, as Mr. Ryder himself appears to recognise (LR, 7.6.2). This is a neutral matter or else carries limited positive weight.

Provision of new community infrastructure

64 The new community hall, land for provision of a healthcare facility, and land for an early years / childcare nursery are agreed to attract moderate positive weight in the planning balance. They would in significant part be required to service the needs of the new housing's occupants.

Sustainability

65 Mr. Ryder does not advance the sustainability of the site as a benefit of the scheme (LR, 9.11). It does not feature as a separate benefit in his Table 1 (LR, p.54). All new development under the NPPF would be required to be sustainable and the site's sustainability at most only supports the housing need argument and the weight attributed to housing in the planning balance.

66 Overall, the harm to the Green Belt by reason of inappropriateness, the harm to openness, the harm caused to the purposes of the Green Belt, the landscape and visual harm, and the loss of BMV agricultural land is a price too high to pay for the development of this site for housing. The harm here is not clearly outweighed by benefits which amount to VSCS. There is a clear reason for refusal on Green Belt grounds disengaging the tilted balance applying para. 11(d)(i) of the NPPF.

67 Indeed, properly considered, the planning balance points decisively to refusal in this case, given the clear and considerable harms which will arise. The proposal is contrary to NPPF paras. 142, 143, 152, 153, on the Green Belt, and para. 180(b) in its failure to recognise the intrinsic character and beauty of the countryside. Applying s.38(6) of the PCPA 2004, although the proposal would be consistent with the Development Plan, the proposal is contrary to the NPPF, and other considerations indicate that permission should be refused.

68 For the above reasons, the Inspector is invited to dismiss the appeal.

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7 June 2024

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