



Castle Point Borough Council

Local Plan

Inspectors Matters Issues and Questions (MIQs)

MATTER 3: THE GREEN BELT

(8th April 2021)

Matter 3: The Green Belt

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Please note. Where the Council is proposing modifications to policies or reasoned justifications in the submitted plan these are detailed in the responses as follows:

Additional or new text in Red

Deleted text is shown by strike though

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Strategic Policy GB1 Green Belt Strategy

Question 24

Does the Policy serve a clear purpose, avoiding unnecessary duplication of national policy for Green Belts as expressed in the Framework?

Question 25

Is the Policy clearly written and unambiguous, so that it is evident how a decision maker should react to a development proposal?

Question 26

Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

1. The purpose of the policy is to establish the existence, extent and boundaries of the Green Belt within Castle Point and the Planning Authority's commitment to its protection, in accordance with national policy.
2. The necessity for such a policy is derived from the judgement in *Fox Land and Property Limited and the Secretary of State for Communities and Local Government and Castle Point Borough Council (Case No: CO/10476/2013 High Court QBD - 17/01/2014)* made by the honourable Mr Justice Blake.
3. The case concerned an application for planning permission received in 2012, for the development of land allocated for Green Belt purposes within the Borough, with 165 houses. The application was refused on Green Belt grounds by the Planning Authority and the subsequent appeal was recovered by the Secretary of State who disagreed with the Inspector's findings and dismissed the appeal, also on Green Belt grounds, in 2014.
4. Fox then brought a challenge under S288 of the 1990 Town and Country Planning Act against the Secretary of State's decision.
5. In 2004 the Planning and Compulsory Purchase Act was enacted. Schedule 8 of this Act provided for a transitional period of 3 years for preserving a Local Plan that was a Development Plan.
6. Local Authorities were strongly encouraged not to save policies which duplicated the provisions of other legislation and guidance and accordingly the Authority made no application to save the adopted Plan Policy GB1 which largely duplicated the provisions of then extant planning guidance. Policy GB1 of the 1998 Plan, which identified the Council's attitude towards development in the Green Belt and established a link between the control

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of development in the Green Belt and the extent of the Green Belt as identified on the Proposals Map, therefore lapsed in 2007.

7. At the Court Hearing Fox claimed that as a consequence of the failure of the Planning Authority to save GB1, there was no Green Belt within Castle Point and that logically therefore, there was no impediment to the proposed development and that the Secretary of State had erred in his determination of the matter.
8. In determining the matter of the existence of the Green Belt in the Borough, the Honourable Mr Justice Blake concluded that the existence of other policies which were saved and which concerned the control of development in the Green Belt, and the identification of the Green Belt on the Proposals Map, clearly indicated that the Green Belt existed but that *'it would have been neater and simpler for a modified GB1 to remain in existence and bring the Proposals Map directly into play as an element of the Policy'*.
9. Fox subsequently sought to appeal this determination, but that appeal was dismissed.
10. It is within the context of this background that it is considered essential that a policy establishing the presence of the Green Belt in the Borough be retained within the Local Plan. It is the view of the Planning Authority that Policy GB1 clearly sets out the Council's strategic position in respect of the Green Belt and therefore serves a clear purpose.
11. It is noted that a representation was received in respect of this Policy (Representation 610, submitted on behalf of the House Builders Federation) which states that the Policy does not serve a clear purpose. In light of the foregoing statement this representation is rejected.
12. In terms of unnecessary duplication, it is acknowledged that the second sentence of the first paragraph paraphrases the advice of the NPPF and that this level of duplication could be removed from the Policy, whilst retaining clear links within the Policy to the provisions of the NPPF.
13. It is also acknowledged that paragraph 3 shares strong links with paragraphs 143 and 141 of the NPPF respectively and that this paragraph could also be modified to avoid repeating the provisions of the NPPF.
14. It is also considered that the positive attitude expressed towards the beneficial use of the Green Belt is more fully expressed in Policy GB7. Reference to such matters in this Policy is therefore superfluous and may reasonably be removed.
15. It is further considered, as suggested by Mr Justice Blake, that reference to the [Proposals] Policies Map should be included within the Policy, to provide geographical scope to the application of the Policy and thus a proper understanding of the Policy.
16. With regard to consistency between the proposed policy and national policy, as submitted it is considered that paragraphs 1 and 2 are consistent with the provisions of the NPPF, identifying the importance of the permanence and openness of the Green Belt and identifying that development will only be permitted where identified as appropriate development or justified by the existence of very special circumstances and compliant with all other relevant policies within the Local Plan.

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17. Paragraph 3, however, fails to caveat proposals for the beneficial use of the Green Belt in similar terms and a simple reading of this element of the policy would suggest that all proposals for appropriate development which enhanced the environmental quality and beneficial use of the Green Belt would be supported. This is clearly inconsistent with national policy, wherein it is clearly stated, at paragraph 144, that in considering any application for development Local Planning Authorities should give substantial weight to any harm to the Green Belt. No criteria for the consideration of harm are provided within the Policy.
18. Consecutively it is considered that paragraph 3 is inconsistent with national policy.
19. Furthermore, given that Policy GB7 seeks to deal with the matter of positive uses within the Green Belt, reference within this policy appears superfluous.
20. It is therefore considered that paragraph 3 may be deleted and Policy GB1 amended to read as follows:

The Council will determine proposals for development ~~continue to protect the permanence and openness of land designated as Green Belt. Development within the Green Belt~~ in accordance with the ~~will only be permitted in very special circumstances or if it is not inappropriate development. 2. Development that is not inappropriate in the Green Belt, as defined in the~~ provisions of the National Planning Policy Framework and ~~will be subject to consideration against relevant policies within this plan. 3. Opportunities that enhance the environmental quality and beneficial use of the Green Belt will be supported by the Council, in particular the provision of formal and informal green infrastructure to support the quality of life of the urban population (provided that it is appropriate development as defined in the National Planning Policy Framework).~~

The Green Belt Boundary is defined on the Policies Map.

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Strategic Policy GB2 – New Development in the Green Belt

Question 27

Does the Policy serve a clear purpose, avoiding unnecessary duplication of national policy for Green Belts as expressed in the Framework?

Question 28

Is the Policy clearly written and unambiguous, so that it is evident how a decision maker should react to a development proposal? Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

21. Paragraph 1 of Policy GB2 largely duplicates para 143 of the NPPF but is considered necessary as it seeks to provide the context for the remainder of the Policy which seeks to provide guidance on the 'other considerations' referenced in paragraph 144 of the NPPF which may constitute very special circumstances.
22. To this extent it is considered that the Policy does not unnecessarily duplicate the provisions of the NPPF and serves a clear purpose.
23. The Policy in its current form, however, fails to reference the need to demonstrate very special circumstances and therefore lacks clarity. It should be modified to incorporate this requirement.
24. In terms of consistency with national policy, on first reading, the opening paragraph makes the clear statement that inappropriate development will be refused by reason of its harm to the Green Belt. However, no reference is made to appropriate development and the implication may be drawn that appropriate development in the Green Belt would be acceptable, regardless of harm.
25. This is clearly inconsistent with national policy which states that in considering any application for development substantial weight should be given to any harm to the Green Belt.
26. In its submitted form the policy could be further improved to include the consideration of proposals which are not deemed inappropriate development. In addition, part (e) should be modified to take make reference to the consideration of the potential harm to protected areas, as proposed in proposed modification M17.1 (See response to Question 30).
27. It is proposed to amend policy GB2 as follows:

Proposals for ~~where~~ new buildings or structures ~~are proposed~~ within the Green Belt, will be determined in accordance with the provisions of the National Planning Policy framework.

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In determining the weight to be given to harm to the Green Belt arising from proposed development, the planning authority will give consideration to: ~~inappropriate development will be refused by reason of its harm to the Green Belt, very special circumstances.~~

~~Where very special circumstances are demonstrated Consideration will be given to:~~

- a. The **ability of the** Green Belt of, and in the vicinity of, the proposal ~~will~~**to** continue to fulfil its purpose/s;*
- b. The **ability of the** proposal ~~is designed~~ to integrate well into the landscape in which it is set and to maintain the openness of the Green Belt.*
- c. The **design of the** proposed development **which will be expected to be** an exemplar of high-quality;*
- d. Whether the land is previously developed, providing that the new building is within the envelope of the land previously developed and not the whole curtilage of the site; and*
- e. **Whether** the proposal is compliant with all other relevant policies in the plan **and it can be demonstrated that there would be no adverse effect on the integrity of the Benfleet and Southend Marshes SPA and Ramsar site and the Thames Estuary and Marshes SPA and Ramsar site, either alone or in combination with other plans or projects. In order to achieve this, a project level HRA should be provided for any development within the Green Belt on Canvey Island, in South Benfleet or near Hadleigh Marshes.***

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Strategic Policy GB2 – New Development in the Green Belt

Question 29

What is the clear justification for restricting national permitted development rights as is intended by part 3 of the Policy?

28. It should be noted that there is no Part 3 to this Policy and no restriction on permitted development rights.

Question 30

Is the Policy consistent with the findings of the HRA?

29. Policy GB2 is screened in by the Habitats Regulations Assessment 2020 [EQ-010] because there is the potential for the policy to cause likely significant adverse effects because of:
- Impacts on Features (species outside Habitats Sites)
 - Disturbance
 - Water Quality and Quantity
 - Air and Noise Pollution
 - In-combination Effects
30. This is summarised in Table 7 at page 39 of the Appropriate Assessment and detailed in Appendix 2 at page 146.
31. The Appropriate Assessment identifies the need for mitigation in respect of policy GB2 to prevent adverse effects on the integrity of Habitats Sites arising from:
- Increases in recreational use (see paragraph 5.2.31 of the HRA 2020) and
 - Damage to or the destruction of functionally linked land (see paragraph 5.2.31 of the HRA 2020)
32. The mitigation recommended is the inclusion of additional text in policy GB2 to ensure that project level Habitats Regulations Assessments are carried out where there is the potential for effects on the integrity of the Benfleet and Southend Marshes SPA and Ramsar Site or Thames Estuary and Marshes SPA and Ramsar site, either alone or in-combination with other plans or projects to arise.
33. The Local Plan, as submitted does not include this modification, and consequently there is a risk that policy GB2 could give rise to adverse effects on the integrity of Habitats Sites. This would be contrary to the Conservation of Habitats and Species Regulations 2017, and to the requirements of section 15 of the NPPF.

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34. Modification M17.1 proposes the insertion of the following text into policy GB2 to overcome this issue as set out above.
35. Appendix 3 of the HRA 2020 sets out the impacts of embedding the recommended mitigation. This shows at page 171 that there will be '*No adverse effects on site integrity with mitigation embedded*'. Modification M17.1 therefore makes policy GB2 effective in protecting and enhancing biodiversity, having regard to the evidence set out in the HRA 2020, and should be incorporated as a Main Modification for that reason.

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Strategic Policy GB3 Extensions and alterations to, and Replacement of, Buildings in the Green Belt

Question 31

Does the Policy serve a clear purpose, avoiding unnecessary duplication of national policy for Green Belts as expressed in the Framework and other policies of the proposed Plan, such as the design policies?

36. It is acknowledged that the first parts of both Paragraph 1 and 2 of Policy GB3 largely duplicate para 145(c) and (d) of the NPPF. This is considered necessary to provide the context for the remainder of the Policy which seeks to provide clear guidance on the matters that will be taken into consideration by this Planning Authority in the determination of any planning application for the enlargement, alteration or replacement of an existing building in the Green Belt.
37. Whilst it is acknowledged that the NPPF seeks to control development which would have an adverse impact on the openness of the Green Belt and that reference to openness in paragraph 1(a) and proportionality in paragraph 1(b) represents duplication of the national policy, the appearance and character of the Green Belt and development within it do not feature as matters to be considered within the NPPF.
38. The openness, character and appearance of parts of the Green Belt within the Borough has historically been adversely impacted by poor control over these forms of development. By clearly identifying those considerations to be taken into account in the determination of applications it is hoped that improvements in the character and appearance of development in the Green Belt can be achieved.
39. The purpose of the Policy is to provide clear guidance on the matters which will inform the decision-making process. It is, therefore, considered to have a clear purpose.
40. Planning policies and supplementary documents provide a framework for creating distinctive places with a consistent and high-quality standard of design. However, the level of detail and degree of prescription should be tailored to the circumstances of each place and allow a suitable degree of variety.
41. By clearly identifying the specific design requirements to be considered in a Green Belt context, the framework for the creation of a distinctive place, reflecting national Government guidance is provided.

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42. It is not considered that the provisions of GB3 duplicate the provisions of design policies contained elsewhere in the Local Plan.
43. Within Policy DS1 (General Design Principles) paragraphs 1, 2 and 3 are clearly focused on development within the urban area and seek to improve the quality and attractiveness of the urban environment. Application of the identified policy requirements would be inappropriate in a Green Belt context.
44. Furthermore paragraph 4 of DS1 is clearly focused on achieving development which is appropriate to the site and its surroundings.
45. The application of this paragraph to development within the Green Belt would be inconsistent with the provisions of the NPPF which requires development in the Green Belt to be consistent with the scale and massing of the original dwelling. Application of DS1 could result in the diminution of the openness of the Green Belt with consequences for its character and appearance. A more refined approach is considered necessary in respect of development in the Green Belt, as expressed in GB3.
46. It is considered however that part 5 of DS1 is equally applicable to development in the Green Belt.

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Sub-Heading Strategic Policy GB3 Extensions and alterations to, and Replacement of Buildings in the Green Belt

Question 32

Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

47. The policy identifies a positive stance in respect of proposals of the extension, alteration and emplacement of buildings in the Green Belt, which is identified as appropriate development in the NPPF. However, the policy does not identify that in the consideration of any planning application substantial weight must be given to any harm to the Green Belt (harm is dealt with in Policy GB2). This consideration applies to development which is identified as inappropriate as well as that which can be identified as being not inappropriate.

48. To address this and ensure that the policy is more consistent with the Framework, it is suggested that the Policy should be modified as follows with other modifications to improve soundness:

1. Proposals for extensions or alterations to existing buildings in the Green Belt will be determined in accordance with the provisions of the NPPF.

In determining the weight to be attributed to the harm to the Green Belt arising from the proposed development, the planning authority will give consideration to:

~~a. There is no material~~ **The** impact on the character, appearance or openness of the Green Belt;

b. The individual and cumulative size, scale, form, massing and height **of the proposal which shall be** is proportionate to that of the original building and its plot;

~~c. The design and siting~~ Siting to ensure sufficient space around the building, between neighbouring buildings and between boundaries; **and**

~~d. The design, Design and siting and materials~~ **which shall be of high quality** and is sympathetic to the existing building and its surroundings.

~~e. The design and materials are of high quality.~~

2. Proposals for replacement buildings in the Green Belt, will be determined in accordance with the provisions of the NPPF.

In determining the weight to be attributed to the harm to the Green Belt arising from the proposed development, the planning authority will give consideration to:

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a. ~~The size and use of the new building will be permitted, provided that the new building is in the same use and not materially larger than the one it replaces, and subject to fulfilling the following criteria:~~

a. **whether** the building to be replaced has ~~not~~ been abandoned for such a period that the site has developed greenfield characteristics;

b. **whether** there is ~~no~~ a material impact on the character, appearance or openness of the Green Belt

c. **whether** the individual and cumulative size, scale, form, massing and height reflects the original building and its plot;

d. **whether** the design and siting ensure sufficient space around the building, between neighbouring buildings and between boundaries; and

e. **whether** the design, siting and materials ~~is~~ **are** sympathetic to the existing building and its surroundings, unless its re-siting and design would be less obtrusive in the Green Belt and would improve the appearance of the Green Belt.

3. Where the replacement building is approved, a condition may be applied to any permission granted removing permitted development rights which might allow for further enlargements to the building, and/or the provision of ancillary buildings within the curtilage of the building, compromising the criteria set out above.

Question 33

What is the clear justification for restricting national permitted development rights as is intended by part 3 of the Policy?

49. Part 3 of GB3 identifies that in some cases it may be necessary to remove permitted development rights where a replacement building is approved.

50. This would appear to be inconsistent with paragraph 53 of the NPPF which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

51. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides extensive rights to extend and alter buildings.

52. In some cases, the enlargement of a replacement building or the provision of ancillary buildings within the curtilage of the building could, if uncontrolled, prejudice the openness of the Green Belt. Where it is considered that the openness of the Green Belt could be prejudiced by further development, it is considered appropriate to secure the submission of an application for planning permission in order that the impact may be appropriately controlled if required.

53. The protection of the openness of the Green Belt is considered adequate justification for the restriction of permitted development rights.

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Local Policy GB4 limited Infill – Special Policy Areas

Question 34

What is the justification for the definition of the Special Policy Areas, is this consistent with national policy for Green Belts and would the Policy be effective?

Question 35

Is it intended that the Policy would render the erection of buildings in these areas as not being inappropriate development in the Green Belt? If so, upon what basis?

54. It is proposed to retain the land within the identified Special Policy Areas within the Green Belt allocation, but to allow limited infill development within the frontages.
55. Paragraph 145(g) states that limited infill would not be inappropriate where it would not have a greater impact on the openness of the Green Belt than the existing development.
56. The areas identified as the Benfleet Road/Vicarage Hill Special Policy Area, the Bramble Road Special Policy Area and the Burches Road Special Policy Area are characterised by frontage development only with extensive areas of open Green Belt land behind. Whilst all of these areas provide clear evidence of undesirable urban sprawl, because of the embedded nature of these frontages within the Green Belt, they maintain a character which is completely different to that found within the urban area and which, because of the open grain of the development, maintain a recognisable spatial and visual link with the wider strategic Green Belt.
57. Release of these areas from the Green Belt and the likely subsequent intensification of development within these areas is considered likely to harm the character and appearance of these areas and sever the links currently maintained with the wider Green Belt through the frontages, to the detriment of the character, appearance and strategic function of the Green Belt in these areas.
58. It must be recognised however, that these frontages can offer opportunities for limited infilling, which if appropriately controlled, would not adversely impact on the openness of the Green Belt.
59. Policy GB4 seeks to establish the criteria by which proposal for such infill developments would be considered. Application of these criteria would, by controlling the form and layout of proposed development, maintain the openness of the Green Belt whilst providing the opportunity for the provision of high-quality bespoke dwellings.

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60. Such frontages may also offer the opportunity for the satisfaction of demands for 'self-build' dwellings, it being identified in the 2020 Addendum of the South Essex Strategic Housing Market Assessment, that approximately 40% of those seeking plots for self-build within the Borough require dwellings with 4+bedrooms, plots for which are unlikely to be readily available within the urban areas.
61. Given that paragraph 145(g) of the NPPF identifies that limited infilling which would not have a greater impact on the openness of the Green Belt than the existing development would not constitute inappropriate development and given that the proposed criteria seek to clearly establish the parameters for development which will ensure that development has no greater impact on the openness of the Green Belt, it is considered that the Policy is consistent with national policy.
62. In terms of the effectiveness of the policy, there is a clear demand for self-build plots for larger dwellings within the Borough. This need cannot be easily met within the urban area due to the limited availability of suitable sites. This policy identifies opportunities for the satisfaction of that demand is considered likely to deliver new dwellings within the plan period.
63. The policy is therefore considered justified and effective.
64. It is noted that the preamble to Policy GB4 is entitled 'Limited infill and Self-Build – Special Policy Areas' whereas the Policy refers only to 'limited infill'. This omission is an error. It is intended that Policy GB4 also be applied to proposals of self-builds within these areas and as such reference to self-builds should be included within the Policy title.

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Local Policy GB4 limited Infill – Special Policy Areas

Question 36

Given the boundaries of the Special Policy Areas defined on the Policies Map and the nature of the land so defined, what is envisaged in respect of 'limited infill'

65. Paragraph 145(g) refers to the appropriateness of 'limited infilling; within the Green Belt but does not specifically define the meaning of the term.
66. Similarly there would appear to be no clear definition provided by caselaw.
67. Whether a proposal represents infilling must therefore rely on the facts of the case and professional judgement.
68. Generally however 'Infill' is widely described for countryside locations as "the infilling of a small gap within an otherwise built-up frontage or group of houses".
69. It is considered that a 'small gap' would usually be big enough for only one, or at most two, houses set in plots of a broadly similar width to those in the area.
70. It is considered that a development proposal which conformed with the requirements of part 1 of Policy GB4 would constitute acceptable limited infill.

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Local Policy GB4 limited Infill – Special Policy Areas

Question 37

What is the clear justification for restricting national permitted development rights as is intended by part 3 of the Policy?

71. Part 3 of GB4 seeks to identify that in some cases it may be necessary to remove permitted development.
72. This would appear to be inconsistent with paragraph 53 of the NPPF which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
73. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides extensive rights to extend and alter buildings.
74. In some cases, the enlargement of a new or previously enlarged or altered dwelling, or the provision of ancillary buildings within the curtilage of such a building could, if uncontrolled, prejudice the openness of the Green Belt.
75. Where it is considered that the openness of the Green Belt could be prejudiced by further development it is considered appropriate to secure the submission of an application for planning permission in order that the impact may be appropriately controlled if required.
76. The protection of the openness of the Green Belt is considered adequate justification for the restriction of permitted development rights.
77. It is noted however that the provision refers to the replacement of buildings rather than the provision of infill development or extensions and alterations to existing dwellings within the Policy Areas. This is clearly an error and it is considered that this element of the Policy should be modified in order to clarify its applicability to parts 1 and 2 of GB4 as follows:
 3. Where the ~~replacement building~~ *infill development or extension and alteration to an existing dwelling* is approved, a condition may be applied to any permission granted removing permitted development rights which might allow for further enlargements to the building, and or the provision of ancillary buildings within the curtilage of the building, compromising the criteria set out above.

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Local Policy GB5 Change of Use of Buildings and Land in the Green Belt

Question 38

Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

Question 39

What is meant by criterion 1.d of the Policy?

78. Paragraph 146(e) of the NPPF identifies that a material change in the use of land does not constitute inappropriate development in the Green Belt, provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
79. Paragraph 146(d) makes the same statement in respect of the re use of buildings within the Green Belt – provided such buildings are of permanent and substantial construction.
80. Policy GB5 seeks to achieve the same objectives but on reflection fails to promote the underlying protection of the openness of the Green Belt prominently enough. It is considered that the requirement to protect the openness of the Green Belt should be moved to sub paragraph (a) of the Policy.
81. Paragraph (b) as originally submitted identifies that any building the subject of a proposed change of use should be suitable for the proposed purpose with limited need for extensions or alterations.
82. On reflection it is considered that reference to ‘limited need’ for extensions and alterations’ is inconsistent with national policy and introduces a level of ambiguity which is unhelpful in a development management context. It is considered that any proposal for the enlargement or alteration of a building may reasonably be considered within the context of the impact of the proposed structures on the openness of the Green Belt as established within paragraphs 143 – 145 of the NPPF and proposed Policies GB2 and GB3. Such consideration would be more consistent with national policy. It is therefore proposed to delete reference to ‘limited need for extensions and alterations’
83. Paragraph (e) also implies a restriction on the provision of plant, or temporary, ancillary outbuildings and structures. No such stipulations are made within the NPPF and again it is considered that any proposal for such use of land may reasonably be considered within the context of the impact of such structures on the openness of the Green Belt as established within paragraphs 143 – 145 of the NPPF and other policies in the Plan. It is therefore proposed to delete this sub paragraph.

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84. Further the Policy introduces in sub-paragraph (f) considerations, such as the identification of a need for the proposed use, which are not identified as relevant within the NPPF.
85. To that extent therefore Policy GB5 as submitted is not considered to be consistent with national policy for Green Belts as expressed in the Framework.
86. In addition, in response to question 46, paragraph 1(d) is considered poorly worded and would benefit from clarification.
87. As currently written paragraph 1(d) only refers to intensification of an existing use of the site, which is of limited relevance in the context of a policy concerned with changes of use and is considered unduly restrictive in that it seeks to prevent any form of intensification of activity associated with the use of the site, regardless of the harm of such intensification.
88. The intent of this paragraph is to ensure that any proposed change of use of buildings or land within the Green Belt should not give rise to unacceptable increases in traffic movements, noise or other forms of disturbance which might result on harm to the wider environment.
89. In order to clearly express this within the Policy it is considered that paragraph 1(d) should be modified.
90. The proposed modified Policy is therefore as follows:
1. *Proposals for the change of use of buildings or land in the Green Belt will be permitted, subject to fulfilling the following criteria:*
 - a. *There is no material impact on the character, appearance or openness of the Green Belt;*
 - b. *The existing building is of permanent and substantial construction;*
 - c. *The building or land is suitable for the proposed use, ~~with limited need for extensions or alterations;~~*
 - d. *It will not result in an unacceptable intensification of the existing use of the site, by means of the generation of traffic movements, noise or other forms of disturbance;*
 - e. *It will not result in a massing of open storage, parked cars, plant or temporary, ancillary or out buildings/structures greater than existing; and*
 - f. *The need for the proposed use has been identified.*
 2. *Permitted development rights relating to outbuildings will be removed if a garden has been extended into the Green Belt. (See response to Question 40 below).*

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Local Policy GB5 Change of Use of Buildings and Land in the Green Belt

Question 40

What is the clear justification for restricting national permitted development rights as is intended by part 2 of the Policy?

91. The Green Belt boundary within the Borough is tightly drawn and a considerable length of the boundary is defined by residential curtilages.
92. Gardens within the Borough can be small and pressure to extend gardens into the Green Belt, where proximity allows, can be significant.
93. Whilst the Planning Authority has historically resisted proposals for the extension of gardens into the Green Belt, in an attempt to limit the visual fragmentation and diminution of the visual extent of the Green Belt associated with the erection of fences and thus maintain its openness, it must be recognised that the erection of fences, up to 2m in height, will not, in many instances, require the formal consent of the planning authority. The ability of the Planning Authority to protect the openness of the Green Belt under the scenario of garden extensions is therefore limited.
94. The extension of gardens is however rarely confined to simply the enlargement of the curtilage. Larger gardens almost inevitably create a demand for new buildings or structures, either to house equipment necessary to maintain the enlarged areas or from which to enjoy the extended space.
95. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) provides extensive rights to provide buildings etc incidental to the enjoyment of a dwelling house within the curtilage of dwellings, which could include the extension to the original garden.
96. The proliferation of such buildings and structures within extended garden areas, could have a further adverse impact on the openness of the Green Belt.
97. Where it is considered that the openness of the Green Belt could be prejudiced by such development it is considered appropriate to remove the permitted development rights available and seek the submission of applications for planning permission for such development, in order that the impact may be appropriately controlled if required.

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98. The protection of the openness of the Green Belt is considered adequate justification for the restriction of permitted development rights.

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Local Policy GB6 Ancillary Buildings and Structures in the Green Belt

Question 41

Is the Policy consistent with national policy for Green Belts as expressed in the Framework, particularly in regard to inappropriate development?

Question 42

What is the justification for part 2 of the Policy and is this clearly written and unambiguous, so that it is evident how a decision maker should react to a development proposal?

99. The Policy implies that buildings which are demonstrated to be necessary and ancillary to a permitted building or use are acceptable within the Green Belt provided they satisfy the criteria within the policy. National policy clearly identifies that the construction of any new building in the Green Belt is inappropriate unless it falls within one of the exceptions identified in paragraph 145 of the NPPF.
100. Where a proposal for an ancillary building or structure does not benefit for one of the stated exceptions, very special circumstances will need to be demonstrated to secure a permission. This is not referenced in the Policy.
101. As a consequence, it is considered that in its current form the Policy fails to properly establish the context for the consideration of such applications.
102. This should be addressed in a modification to the Policy.
103. As a consequence of making such a modification the current wording the Policy is less clear and needs improving to assist the developer and the decision maker.
104. Question 42 seeks justification for Part 2 of the Policy.
105. Caravans, mobile homes and metal storage containers tend to be of limited design quality and life span and the character, appearance and openness of parts of the Green Belt within the Borough have been marred by the stationing of such structures. As a consequence, a need to control such development has been identified.
106. Part 2 of Policy GB6 was intended to secure this control, however, on reflection the policy provision appears overly restrictive and fails to provide an appropriate framework for consideration of such proposals.
107. Whilst Part 2 notes that proposals for the use of caravans, mobile homes and storage containers as ancillary buildings in the Green Belt will normally be refused, the implication of

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this statement is that under some circumstances such development may be considered acceptable, however no guidance is provided in respect of the circumstances where such development might be considered acceptable.

108. Thus this element of the Policy is considered ambiguous and unhelpful in the determination of planning applications.

109. Consideration of Part 1 of GB6 suggests in any case that Part 2 is surplus to requirements.

110. Part 1 refers to the 'provision of ancillary buildings and structures'. This description may reasonably be considered to include structures such as caravans, mobile homes and storage containers, and may be expanded remove any doubt as to their inclusion.

111. To improve the focus and usefulness of Policy GB6 it is considered that it should be modified as follows:

1. Where ancillary buildings and structures, including caravans, mobile homes or metal storage containers are proposed in the Green Belt, inappropriate development will be refused by reason of its harm to the Green Belt, except where very special circumstances can be demonstrated. ~~will not be permitted, unless it is proven to be necessary subject to fulfilling the following criteria:~~

In determining the level of harm to the Green Belt consideration will be given to:

- a. ~~There is no material~~ The impact of the proposed development on the character, appearance ~~or~~ and openness of the Green Belt;*
- b. The individual and cumulative size, scale, form, massing and height of the proposed development which shall be proportionate to that of the ~~original~~ main building and its plot;*
- c. ~~It can be clearly demonstrated~~ The demonstration by the applicant that ~~they~~ the proposed development is incidental and ancillary to the main building or use of the site;*
- d. The use of the main building or use of the site which shall not have ~~has not~~ been left dormant;*
- e. The ~~design and siting~~ of the proposed development, to ensure ~~high quality~~ the provision of sufficient space around the ~~development building~~, between neighbouring buildings and between boundaries.*
- f. The ~~design, siting and materials~~ which should be of high quality and ~~are~~ sympathetic to the existing building or use and its surroundings. ~~However, it must not repeat poor forms of development;~~ Poor forms of development should not be repeated.*
- g. The design and materials are of high quality; and*
- h. It is restricted to use as ancillary accommodation to the main building or use.*

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1. ~~The use of caravans, mobile homes or metal storage containers as ancillary buildings in the Green Belt will normally be refused.~~

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Strategic Policy GB7 Positive Uses in the Green Belt

Question 43

Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

112. Paragraph 141 of the NPPF states that once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.
113. Policy GB7 seeks to respond positively to the proposals of others, stating that the Authority will give favourable consideration to proposals which will positively enhance the beneficial use of the Green Belt.
114. In its opening sentence the Policy, as currently written, may be read as a positive endorsement of any development within the Green Belt which purported to enhance the beneficial use of the Green Belt. It does not set the context or intent of the Council to positively plan for the beneficial use of the Green Belt as required in paragraph 141 of the NPPF.
115. To remedy this the first sentence of the Policy should be modified.
116. The second sentence of the Policy clearly identifies that it is concerned with development beyond, but adjacent to, the Green Belt boundary and seeks to explore the potential within such proposals for the beneficial enhancement of the use of the Green Belt. This element of the Policy is considered to be consistent with the NPPF, although minor adjustments to improve readability and encompass development proposals within the Green Belt, are considered necessary.
117. Part 2 of the Policy is concerned with the achievement of the enhancements and seeks to ensure that any development proposal arising from such enhancement does not compromise the purpose or openness of the Green Belt and is considered within the same policy framework, as set out in the NPPF and the submitted Local plan, as any other proposal for development in the Green Belt. It is however considered that the clarity of this element of the Policy could be improved with a minor adjustment to the wording to identify that these criteria are applicable to proposals for the enhancement of the beneficial use of the Green Belt.
118. Part 2 of the Policy is considered to be consistent with the national policy.

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119. Part 3 of the Policy is concerned with the consideration of other appropriate forms of development in the Green Belt. As policy provision for the consideration of other forms of development within the Green Belt is made elsewhere within the Local Plan, this element of the Policy appears superfluous and should be deleted.

120. In addition, part (g). should be modified to take make reference to the consideration of the potential harm to protected areas, as proposed in proposed modification M17.2 (See response to Question 44).

121. Proposed Modified Policy:

*1. The Council ~~will consider proposals favourably which seek to positively enhance the beneficial use of the Green Belt, by providing opportunities for positive use of the Green Belt~~ will seek opportunities to positively enhance the Green Belt for beneficial use. Where development is proposed **within or** adjacent to the Green Belt, opportunities will be sought to:*

a. improve access;

*b. **improve** outdoor sport and recreation **provision**;*

*c. **enhance the** landscape;*

d. ~~improvements to~~ visual amenity;

e. ~~improvements to~~ biodiversity;

*f. **facilitate** sustainable flood risk management; or*

g. ~~improvements to~~ damaged and derelict land.

*2. **Proposals for the enhancement of the beneficial use of the Green Belt** ~~Such proposals~~ must clearly demonstrate that the following criteria have been fulfilled:*

a. The Green Belt will continue to fulfil its purposes;

b. There will be no material impact on the character, appearance or openness of the Green Belt;

c. The design, siting and materials of any buildings are sympathetic to the surrounding built form and landscape;

d. The proposal is an exemplar of high-quality design and materials;

e. The design and siting of any buildings ensures sufficient space around the building, between neighbouring buildings and between boundaries;

f. It will not result in an unacceptable generation of traffic, noise, or other forms of disturbance; and

*g. The proposal is compliant with all other relevant policies in the plan **and will have no adverse effect on the integrity of the Benfleet and Southend Marshes SPA and Ramsar site and the Thames Estuary and Marshes SPA and Ramsar site, either alone or in combination with other plans or projects. In order to demonstrate this, a project level HRA is required for any***

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development within or adjacent to the Green Belt on Canvey Island, in South Benfleet or near to Hadleigh Marshes.

~~3. The Council will consider favourably the provision of other appropriate forms of development in the Green Belt, subject to the fulfilment of the criteria set out above.~~

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Strategic Policy GB7 Positive Uses in the Green Belt

Question 44

Is the Policy consistent with the findings of the HRA?

122. Policy GB7 is screened in by the Habitats Regulations Assessment 2020 [EQ-010] because there is the potential for the policy to cause likely significant adverse effects because of:
- Impacts on Features (species outside Habitats Sites)
 - Disturbance
 - Water Quality and Quantity
 - Air and Noise Pollution
 - In-combination Effects
123. This is summarised in Table 7 at page 40 and detailed in Appendix 2 at page 147.
124. The Appropriate Assessment identifies the need for mitigation in respect of policy GB7 in order to prevent adverse effects on the integrity of Habitats Sites arising from:
- Increases in recreational use (see paragraph 5.2.31 of the HRA 2020) and
 - Damage to or the destruction of functionally linked land (see paragraph 5.2.31 of the HRA 2020)
125. The mitigation recommended is the inclusion of additional text in policy GB7 to ensure that project level Habitats Regulations Assessments are carried out where there is the potential for effects on the integrity of the Benfleet and Southend Marshes SPA and Ramsar Site or Thames Estuary and Marshes SPA and Ramsar site, either alone or in-combination with other plans or projects to arise.
126. The Local Plan, as submitted does not include this modification, and consequently there is a risk that policy GB7 could give rise to adverse effects on the integrity of Habitats Sites. This would be contrary to the Conservation of Habitats and Species Regulations 2017, and to the requirements of section 15 of the NPPF.
127. Modification M17.2 proposes the insertion of the following text into policy GB7 to overcome this issue:

The proposal is compliant with all other relevant policies in the plan and will have no adverse effect on the integrity of the Benfleet and Southend Marshes SPA and Ramsar site and the Thames Estuary and Marshes SPA and Ramsar site, either alone or in combination with other plans or projects. In order to demonstrate this, a project level HRA is required for any development within or adjacent to the Green Belt on Canvey Island, in South Benfleet or near to Hadleigh Marshes.

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128. Appendix 3 of the HRA 2020 sets out the impacts of embedding the recommended mitigation. This shows at page 170 that there will be '*No adverse effects on site integrity with mitigation embedded*'. Modification M17.2 therefore makes policy GB7 effective in protecting and enhancing biodiversity, having regard to the evidence set out in the HRA 2020, and should be incorporated as a Main Modification for that reason.

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Issue: Is the Green Belt Assessment consistent with national planning policy for Green Belts, is it based upon appropriate criteria and is it adequate and robust? Are the Green Belt policies clear, justified and consistent with national policy and will they be effective?

Strategic Policy GB8 Enclosure and Boundary Treatment in the Green Belt

Question 45

Is the Policy consistent with national policy for Green Belts as expressed in the Framework?

Question 46

What is meant by 'semi-openness' in part 3 of the Policy and is this consistent with national policy?

129. It is a matter of fact that as a consequence of the provisions of the Town and Country (General Permitted Development) (England) Order 2015, as amended, in many cases, proposals for enclosure and boundary treatments will not require the formal consent of the Planning Authority. The applicability of the policy is therefore limited to those proposals which exceed permitted development parameters and are therefore more likely to have the most significant impact on the character, appearance and openness of the Green Belt.
130. S336 of the Town and Country Planning Act 1990 defines 'building' to include '*any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*'.
131. Within this broad definition a means of enclosure or boundary treatment could constitute a building and as such it would need to be considered within the context of paragraphs 143 – 145 of the NPPF.
132. GB8 makes no reference to such consideration.
133. Furthermore, the Policy makes no reference to the fact that the erection of an enclosure or boundary treatment could constitute inappropriate development in the Green Belt in respect of which exceptions may not apply and that any such proposal would therefore need to be justified by the demonstration of very special circumstances.
134. As such GB8 fails to provide an appropriate framework for the consideration of proposals for enclosure and boundary treatments and in its current form is inconsistent with the NPPF. This would suggest that the Policy should be deleted. However, inappropriate forms of enclosure can have a significant adverse impact on the character, appearance and openness of the Green Belt and it is considered appropriate that guidance is provided to inform proposals for such development and assist decision makers in the determination of applications for such proposals.

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135. It is therefore proposed that GB8 should be modified to provide this guidance under those circumstances where planning permission for this type of development is required.
136. Whilst modifying the Policy, it is considered appropriate to consider Question 46 and the use of the term 'semi-openness'.
137. This term is inconsistent with national policy and should not be included within a policy for the control of development in the Green Belt, where the objective, as stated in National Policy is to maintain openness.
138. Further consideration of this element of the Policy suggests Part 3 to be unnecessary. Any form of enclosure will inevitably enclose land and in visual terms is considered likely to reduce the openness of the Green Belt. The objective of the Planning Authority in seeking to control such development, where possible and necessary, is to ensure that any form of enclosure provided is of high quality and appropriate in terms of appearance so as not to harm the visual quality and openness of the Green Belt. This objective can be met by modified parts 2 and 4 of the Policy. It is therefore considered that part 3 of the Policy should be deleted.
139. The following modified policy is suggested:

~~1. For land in~~ *Within the Green Belt, the provision of any means of enclosure or boundary treatment should be informed by the prevailing character of the land use, surrounding area, in terms of which exceeds the provisions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) represents inappropriate development.*

Inappropriate development will be refused by reason of its harm to the Green Belt, except in very special circumstances.

Where very special circumstances can be demonstrated, consideration will be given to :

- 1. The impact of the proposal on the openness of the Green Belt*
- 2. the materials, design, height and positioning of the proposal which shall be informed by the prevailing character of the land use and surrounding area. Any means of enclosure or boundary treatment should not dominate the public realm.*
- ~~3. Enclosure and boundaries within rural areas should maintain a semi-openness of the Green Belt.~~
- 4. The quality of materials used. In all cases the means of enclosure or boundary treatment must be of high-quality materials, appropriate in terms of appearance and ongoing maintenance to the location, full details of which must form part of any application.*
- ~~5. Where more robust means of enclosure or boundary treatment is required in exceptional circumstances, its~~ *visual impact which should be minimised by the provision of appropriate landscaping. For landscaping associated with residential development, reference should be made to the Residential Design Guidance Supplementary Planning Document (SPD).*

140. Modifications to the supporting text are also suggested as follows:

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17.55 It is a matter of fact that as a consequence of the provisions of the Town and Country (General Permitted Development) (England) Order 2015, as amended, in many cases, proposals for enclosure and boundary treatments will not require the formal consent of the Planning Authority. The applicability of Policy is therefore limited to those proposals which exceed permitted development parameters and are therefore more likely to have the most significant impact on the character, appearance and openness of the Green Belt. The fundamental aim of Green Belt Policy is to maintain the openness of the Green Belt. This extends to proposals for the formation of enclosures and boundary treatments which must be considered in the context of paragraphs 143 – 145 of the NPPF.

17.56 The NPPF states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development and creates better places in which to live and work.

17.57 The NPPF makes clear that planning policies and decisions should aim to ensure that developments:

- Add to the overall quality of the area, are visually attractive as a result of good architecture;*
- Establish a strong sense of place, using the arrangements of streets, spaces, and building types;*
- Respond to local character and history, and reflect the identity of local surroundings, and building types*
- ~~*• Respond to local character and history, and reflect the identity of local surroundings and materials; and*~~
- Create places that are safe, inclusive and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

~~*17.57 The NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence.*~~

Reasoned Justification

17.58 Clearly identifying the extent of ownership of space around a building defines the boundary between public, semi-private and private spaces. This is frequently through the construction of means of enclosure, which are readily visible in the public realm. Unless appropriately controlled however, such development can have a significant adverse impact on the openness, character and appearance of the Green Belt.

~~*17.59 Within the Green Belt of Castle Point the various land uses, such as residential, small holdings, and commercial businesses, have a mix of forms of enclosures, with the properties often set back considerable distances from the highway.*~~

~~*17.60 The Urban Design Characterisation Study 2013 identified that many of the commercial/industrial uses, as well as the small holdings are strongly enclosed by high fencing and palisade fencing, with electronic gates, frequently of stark materials. This creates a poor public realm and has resulted in a sense of isolation and remoteness, which can lead to the perception of not being safe.¹*~~

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~~17.61 The residential properties in the Green Belt are also heavily enclosed, often by similar forms as discussed above, particularly in the case of older properties. There is also high and dense hedging provided in many areas.~~

~~17.62 There are also successful means of enclosure in some parts of the Green Belt, which whilst providing the necessary demarcation and security measures, are of attractive construction, appropriate to the land use they are associated with. Examples include the provision of ranch style fencing used to enclose land containing livestock, including horses. Such methods provide the necessary enclosure of the animals, but at the same time are of an appearance commonly associated with agriculture and maintain a degree of openness. Furthermore, the provision of decorative railings can provide the necessary security for businesses or residential properties, at the same time as creating an attractive public realm, allowing for natural surveillance to take place, and a degree of openness to be maintained~~