Brook Farm, Daws Heath

Appellant's Closing Submissions

The appeal site to the south-east of the village of Daws Heath.

The appeal scheme.

1. For all the many documents before you, Sir, the decisive question in this appeal is simple. The question is:

> *Are this scheme's harms so great that they would significantly and demonstrably outweigh its benefits?*

2. Unless the harms reach that high bar, the parties agree that the appeal should be allowed, and permission **granted**.

3. That is the decisive question if you accept the analysis of the site set out in the 6.9.21 report of Inspector Philip Lewis BA(Hons) MA MRTPI,[1] on the basis of the which Mr Gittens agreed for the Council that the site would meet the definition of "grey belt". But even if you ultimately disagree with Inspector Lewis, and decide that the site falls outside of that definition, the determinative test is different, but the answer is the same. The key question then becomes:

> *Do this scheme's benefits clearly outweigh its harms?*

4. Again, if they do, the parties agree that the appeal should be allowed applying §153 NPPF.

5. In answering either question, most of the important points are **agreed**. In particular, the Council agrees with the Appellant that:

   (i) The site can accommodate the 173 homes proposed at an appropriate density with a significant area of green open space.[2]

[1] CD6.1, §94.

[2] SOCG (CD10.1), §16.4, §16.5, §16.17.

(ii) The proposal is acceptable in terms of ecology, air quality, drainage, archaeology, access, living conditions, noise and flood risk.[3]

(iii) There are no highways, transport, parking or location accessibility objections from the Council or the Highway Authority.[4] The site is well located to access a range of local services and facilities, and we have agreed a substantial contribution to upgrade the local bus service.

(iv) The Council also accepts that critical Government objectives are not being met in this area.[5] In particular, as we explain below, the "plan-led" system in Castle Point is broken. The delivery of market and affordable housing has collapsed.

(v) The Council agrees that housing needs are spiralling. The shortfalls in housing delivery and unmet need for affordable housing in this part of Essex are *"significant"*,[6] and the position is only going to get worse over time. Mr Gittens for the Council accepted that the housing land supply position in Castle Point is one of the very worst of any local authority in the country. He also told us he had <u>never</u> in his 40 years as a professional planner seen a housing land supply position as bad as this. We agree that a step-change in delivery is **urgently** required.[7]

[3] SOCG (CD10.1), §16.7, §16.10, §16.11, §16.11, §16.3, §17.1.

[4] SOCG (CD10.1), §16.8, §16.20, §17.1.

[5] Mr Gittens XX.

[6] Mr Gittens XX.

[7] Mr Gittens XX

(vi) Further, we agree that there has been no substantive strategic review of the green belt boundaries in this part of Essex for over 25 years.[8] We agree that those boundaries are not only *deemed* out-of-date but are *substantively* out-of-date too.[9]

(vii) And we agree that the only way out of this crisis is through the adoption of a new local plan. And that regardless of when that new local plan may come about, we agree that if the Council is going to come anywhere close to meeting its needs for housing, the use of green belt land is **inevitable**.[10] That is obviously right: around 56% of Castle Point is washed over by the Metropolitan green belt. That covers all land outside settlement boundaries.

6. Of course, in a properly functioning local planning authority area, national policy would expect those releases of green belt land to be managed at least every 5 years through a local plan process. But the last plan in Castle Point was adopted over 26 years ago. And, as we close this Inquiry, we still have no idea *if* and *when* Castle Point will adopt an up-to-date local plan that accords with the December 2024 NPPF, or *what* that new plan might actually include. Despite repeated invitations, not a *single* person from the Council's team or its elected members were able to provide those answers to the Inquiry. The belated production of a draft local development scheme – which we return to below – raises more questions than it answers.

7. Here lies the catch-22. Housing needs are rocketing. It is inevitable that green belt land will be required to meet them. The Council tells us that this can only be achieved through the

[8] SOCG 9CD10.10, §4.3.

[9] Mr Gittens XX.

[10] Mr Gittens XX.

"plan-led" system. But there is no "plan-led" system in Castle Point to manage those releases, and there has not been for decades.

8. We heard from local residents who despair at the prospect that they and their children will never be able to afford their own homes in the area in which the grew up in. That is why, if we are actually to begin to meet those needs in Castle Point **now**, we cannot – at least in the short to medium term – rely on the "plan-led" system to solve this problem. If urgent and critical needs are to be met not in 5 years, not in 10 years, but **now**, a solution must lie in the development management process. Through planning applications (and appeals) just like this one. Which will inevitably involve the use of land that is currently washed over by the Metropolitan green belt. That means permissions must be granted positively applying the planning balances at §11(d)(ii) or §153 NPPF.

9. Again, there is really no other option. That is a statement of the **inevitable**.

10. In the end, the appeal site is in a sustainable location with good access to a number of local services and facilities which meet day to day needs. The site makes (at most) a limited contribution to any of the green belt purposes. It is well enclosed and there will be no appreciable effects on the wider landscape as a consequence of the scheme. It has no statutory, national, regional or local landscape designations. It isn't a *"valued"* landscape under the NPPF.

11. If Castle Point ever wants to start meeting its shortfall – not of tens, or hundreds, but **thousands** of homes – then this is exactly the sort of scheme it must start approving. Its benefits clearly outweigh its harms, and for those reasons, both the balances at §11(d)(ii) and §153 NPPF support allowing the appeal and granting planning permission.

The plan-led system has failed Castle Point

12. As we explained in opening, this part of Essex has been let down by the planning system.

13. Years go by – decades pass – national policies come and go. But through it all, this Council has managed to keep its head buried firmly in the sand. The general scope of the green belt in this part of Essex was fixed in 1964 – over 60 years ago. There's been no strategic review of green belt boundaries here since the 1990s. New plan-making exercised have been tried. They have failed. For too long, Castle Point has been frozen in aspic. The statutory development plan for the district relates to a completely different era.

14. The Council's Core Strategy was adopted in 1998 – some 14 years before the *"radical"* shift brought about by the first iteration of the NPPF in 2012 which made meeting objectively assessed housing needs *"not just a material consideration, but a consideration of* ***particular standing****"*. Its spatial strategy was predicated on a housing requirement derived from the long-abolished Essex Structure Plan of 153 homes a year: a fraction of the true needs in this area which stand at 701 dpa.

15. In those circumstances, Mr Gittens was clearly right to accept that the most important policies for determining this appeal – including those which prescribe the green belt boundaries – are not only *deemed* out of date under national policy. They are *substantively* out of date too. The green belt boundaries were drawn to accommodate the needs of a different generation, in an entirely different local, regional and national policy context to that which applies today.[11]

[11] Mr Gittens XX.

16. And there is no prospect of things changing any time soon. The Council has tried, and *failed*, several times to adopt a new local plan. Its 2016 draft plan, which itself revised an earlier attempt at a draft plan in 2014, was withdrawn in 2017. Then its 2019 draft plan was withdrawn in 2022 even though Inspector Lewis had signed the plan off as sound. Crucially, and uncomfortably for the Council's case, this site was promoted by the Council and supported for allocation and release from the green belt in 2014,[12] *again* in 2016,[13] and *again* in its 2019[14] draft plan. Inspector Lewis supported its release from the green belt and its allocation for housing in 2022[15] on the basis that the site is supported by it exceptional circumstances.

17. It is right, as the Council says at §39 of its closings, that the new NPPF has changed the approach Councils must take when considering redrawing their green belt boundaries to accommodate new homes. But the **way in which** the NPPF has changed has the effect of making the (re-)allocation of this site not just likely, but almost inevitable. That is because the new NPPF requires the Council to plan to redraw its green belt boundaries to meet its housing needs **in full** – which has doubled from the 349dpa that formed the basis of its 2019 draft plan to 701dpa now. That means that it must find land for well over 10,500 homes (assuming a 15 year plan period). Remember, it was still proposing to allocate this site when it considered the number of green belt homes to be released over the plan period was under 300. Now it's in the thousands. In any event, the Council has not even *begun* to engage in that process, exemplified in its September 2024 confirmation that its early-plan making

[12] CD7.24, Policy H11.

[13] CD7.26, Policy H9.

[14] CD6.6, Policy HO14.

[15] CD6.1, §94.

stages are predicated on a now totally superseded 255dpa requirement.[16] It is already many months behind its now defunct January 2024 local development scheme (LDS).

18. On Day 4 of this Inquiry the Council provided a revised LDS timetable which it proposes to put to Council members.[17] We know from its September 2024 confirmation that the Council's Regulation 18 draft was prepared on the basis of meeting 255dpa.[18] On the basis of the revised timetable and updated LDS, officers at least appear to accept (we will see what members make of it) that it will need to plan to meet 700+ dpa to comply with the new NPPF.[19] Which is a position that is completely at odds with anything this Council has done before and how it has been steadfastly proceeding over the past 3 years.

19. The revised LDS confirms that officers accepts it will have to undertake a fresh green belt review,[20] i.e. to identify the Borough's "grey belt" land. But there is no evidence before you, Sir, of how long it will take for that Borough-wide "grey belt" review to actually happen. Plus, to meet the new NPPF requirements, the Council will need a Regulation 19 draft allocation of sites that adds up to 14,000 homes (over 20 years). None of that has been consulted on at Regulation 18 stage.

20. To be clear, the basis of the Regulation 18 plan – officers now appear to accept – has been **entirely superseded**. The Council's closing talk about the "thoroughness" of the process – well, people were consulted on a false premise. The new plan will have to plan for almost 3 times as many houses. And yet the revised LDS suggests this can all be done (i) without

[16] CD7.27.

[17] CD12.14.

[18] CD7.27, pp.2-3.

[19] CD12.14, §5.9-§5.17.

[20] CD12.14, §5.15.

taking a further Reg 18 back to the people of Castle Point for their views, and also (ii) with almost no delay to the plan programme.

21. Which is why the new timetable set out in the revised LDS is, with respect to officers, ridiculously optimistic. It suggests that the Council needs only 1 additional month to complete all of that extra work (a green belt review, and identifying sites to accommodate many thousands more homes than the Council has ever planned for before) to prepare a Regulation 19 – which it will be doing from a standing start. It also envisages that the process of submission and examination will only require 6 months, with a further 6 months until adoption. Despite the last local plan examination by Inspector Lewis taking 18 months for the examination stage alone. The deliverability of those timings is fanciful.

22. In any event, the revised LDS is not yet formally adopted. At this stage, it is only a proposal. We will have to see what members make of this proposed drastic change of course. Even though I asked the members and the local MP along with Mr Gittens, we all remain totally in the dark as to whether the decision taken in September 2024 to bury the Council's head in the sand in relation to the new NPPF and its higher local housing need requirements has now been re-taken.

23. In the end, the reality is that producing an NPPF-compliant plan in these circumstances is going to take the Council much, much longer. The only alternative it has is to submit a plan for examination on the basis of the requirement it's been using so far of 255 dpa, which would inevitably (as Mr Gittens agreed) be kicked out as unsound. For those reasons, contrary to what the local MP and Council members may be telling their constituents, a new local plan in Castle Point not "weeks" but **years** away. And the delivery of homes pursuant to such a plan is even further off.

The consequences of these failures to plan

24. The resulting position is a regrettable one:

(i) The scale of housing shortages in this part of Essex is staggering. Mr Gittens agreed that the shortfalls are *"significant"*. That is, with respect, an understatement. We return to them below.

(ii) We have no idea if and when this Council will adopt another local plan. What we do know is that it's not months but **years** away.

(iii) Which means that there is no plan-led answer to this crisis in the short or medium term. Without a plan, unmet housing in Castle Point will continue to spiral. The Council's own evidence is that there is no short-term solution in place.[21]

(iv) We know, and again Mr Gittens agreed repeatedly, that the use of land currently washed over by the metropolitan green belt to meet those shortfalls is **inevitable**. That's not a choice, but a certainty. We also know, as Mr Gittens agreed in cross-examination, that other options – such as making use of brownfield land or increasing the density of development within the settlement boundaries – will not be enough. Not nearly enough.

(v) Which is why, if the Council's needs are to be addressed in the short to medium term, then (a) that must be done through the development management process on green belt land (and ideally, of course, on land which meets the definition of "grey belt"), and (b) it is inevitable that the tests at §11(d)(ii) and §153NPPF will be engaged. Not just

[21] As even on the Council's own ambitious timetable, a new local plan will not be adopted before April 2026 (CD12.14).

engaged. For needs to be met, those balances will actually have to be *passed*. We return to how the balance should be struck in this case below.

The scheme's public benefits will be profound

(i) Affordable housing

25. The scale of the shortfall in affordable housing delivery in this part of Essex could not be much worse. It is catastrophic.

26. Ms Gingell's unchallenged evidence shows that:

(i) 97% of the district's needs over the last 10 years remain unmet.[22]

(ii) The net shortfall in only the last 3 years has been 991 homes, with further projected shortfalls over the next 5 years of many hundreds of homes per year.[23]

(iii) Measured against its 2020 housing needs assessment, the Council's delivery of affordable homes has been **-1%**. That is to say – a negative figure.

(iv) Those languishing on the housing register in Castle Point are waiting on average not weeks or months but *years* to find an appropriate home. As of 31 March 2024, the number of households on the housing register was 648 homes and rising every year.[24] Demand for homes in this part of the Borough is enormous. In Thundersley North

[22] CD12.4, §5.11, also Tables 5-7 p.64.

[23] CD12.4, §5.15-16.

[24] CD12.4, §4.23.

Ward, there were an average of 162 bids per 1-bed affordable dwelling in 2023-2024 (CD12.4, Table 4.2).

(v) In the meantime, *hundreds* of households are housed in temporary accommodation, including 169 children,[25] most of which is out of the Borough, on which the Council spends what is likely millions of taxpayer money every year.

(vi) Housing affordability across this part of Essex as a whole is substantially above national and regional averages, particularly for those on lower incomes. House prices Castle Point have increased dramatically and at a much higher rate than the rest of the East of England.[26]

(vii) That position is staggering. Mr Gittens agreed that the position was likely to get much, much worse.

27. The position is simple and stark: supply of affordable housing in this district has collapsed. Totally collapsed. And it is, even on the Council's own figures, only getting worse.

28. In all the numbers, one could be forgiven for losing sight of what really matters. We are talking about housing some of the most vulnerable in our society. These are, as the Secretary of State has repeatedly put in other appeals, <u>real</u> people in <u>real</u> need <u>now</u>. Their voices have not been heard at this Inquiry. But these are people in real and urgent needs. People of all backgrounds: key workers, parents and children. All united by one thing: the need for a safe, warm and dry place to call home. They would wish to make that home here in Castle Point

[25] CD12.4, §5.12.

[26] CD12.4, §6.10, §6.13-§6.14, and Figure 6.5.

if only there was somewhere affordable for them to go. And they are relying on the floundering planning system in Castle Point to provide a home for them.

29. The most invidious consequence of this Council's failure to plan is that the needs of this segment of the community have gone unheeded and unmet for so many generations. The socio-economic costs of failing properly to house this segment of the population for so long can never be tallied. But what we can say is that this failure represents a fundamental conflict with national policy:

(i) The purpose of the planning system is to contribute to the achievement of sustainable development: §7 NPPF.

(ii) That means ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations: §8(b) NPPF.

(iii) And to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, so that the needs of groups with specific housing requirements are addressed: §61 NPPF.

30. Given the "*persistent*", *"critical"* and *"extremely acute"* position of the undersupply of housing in St Albans and Welwyn Hatfield, Inspector Masters in the Colney Heath decision in June 2021 afforded the delivery of affordable housing within the green belt "very substantial" weight.[27] The position is considerably worse here than it was there.

[27] CD8.4,§54.

31. That the shortfalls are so large and growing doesn't make the contribution from this scheme's 87 units any less important. On the contrary, in the context of net annual delivery figures of 7 affordable homes per year over the past 10 years, projected delivery of 10 affordable homes a year over the next 5 years, and worsening affordability across all of Castle Point, an offer of 87 affordable homes represents a very substantial contribution to local supply.

32. In fact, as Mr Gittens agreed, given net affordable housing delivery of only 66 homes since 2014, this single scheme will deliver almost **a third** more affordable housing than the Council has provided cumulatively in a decade. This is also more affordable homes than the Council is projected to provide over the next 5 years.

33. Given these numbers, Mr Gittens refusal to award this scheme's provision of affordable homes anything other than top drawer weighting is, with respect, baffling. Despite accepting that the demand for affordable housing in this part of Castle Point is *"enormous"*. That the needs of some of the most vulnerable in society are being unmet. And that a *"step-change"* is required ***"urgently"*** in affordable housing in Castle Point. Despite providing nothing – literally nothing whatsoever – in his written proof to substantiate his position. Instead, his only response is to suggest that the Council's already staggering affordable housing figures would have to get even worse to push it into the very significant category – albeit he accepted that *"it looks like they are heading in that direction"*. Frankly, that is an astonishing, and wholly unsatisfactory, position to take given this Council's persistent failure to deliver the affordable homes that it desperately needs, and against a backdrop of many hundreds of households languishing on the housing register and housed in temporary accommodation.

34. The position is clear. The shortfalls in the delivery of affordable housing are very substantial. The needs are very substantial. The scale of the crisis in affordable housing and affordability is very substantial. The delivery of homes to meet these needs is a benefit which should attract **very substantial weight**.

(ii) Market housing

35. It is common ground that the Council does not have a 5yhls: its supply is agreed to stand somewhere in the range of just 0.55 to 0.69 years.[28] On the Council's best case, its shortfall in housing delivery over the next 5 years will be 3,623 homes. On the Appellant's case, the position is even starker: a shortfall of 3,743 homes. Those number are, of course, measures against minimum 5 year targets: §78 NPPF. This should be a floor and not a ceiling.

36. Mr Gittens agreed that this means some of the most important central government objectives are not being met in Castle Point: the imperative at §8 NPPF of *"ensuring that a sufficient number and range of homes [are] provided to meet the needs of present and future generations"*; the objective at §60 NPPF of *"significantly boosting the supply of homes"*; and the requirement at §77 for local planning authorities to demonstrate a 5YHLS. The planning system is failing in its most basic task here.

37. And those failures are having dire social, economic and environmental consequences: families unable to afford somewhere to live, unsustainable solutions with people being forced to find a home further away from where they work, shop and socialise. Economic growth which simply is not and cannot happen without sensible population growth. When it comes to this scale of failure to deliver housing, justice delayed is justice denied.

[28] CD10.3, Table 3.

38. Despite this, Mr Gittens invites you, Sir, to reduce the weight afforded to the provision of market housing to "significant". That is, with respect to him, a drastic understatement. Mr Gittens' written proof contains no analysis at all – literally not a word – justifying this type of reduction.

39. Instead, in cross-examination he told us again that although this Council's HLS was the worst he had seen in over 40 years as a professional, that position would have to deteriorate even further before he would contemplate giving it top drawer weighting. With respect, there is nowhere else for it to go. This is already one of the very worst performing authorities in the country.

40. In contrast, Mr Wood highlighted how other Inspectors have found that the benefits of market housing in context such as this should be awarded weight of the highest order.[29] Inspector Masters in the Colney Heath decision concluded that:[30]

> *"There is therefore no dispute that given the existing position in both local authority areas, the delivery of housing represents a benefit. Even if the site is not developed within the timeframe envisaged by the appellant, and I can see no compelling reason this would not be achieved, it would nevertheless, when delivered, positively boost the supply within both local authority areas. From the evidence presented in relation to the emerging planning policy position for both authorities, this is not a position on which I would envisage there would be any marked improvement on in the short to medium term. I afford very substantial weight to the provision of market housing which would make a positive contribution to the supply of market housing in both local authority areas."*

[29] CD12.6, §7.83.

[30] CD8.4, §49.

41. The scheme being considered in Colney Heath was for 100 homes, vs 173 on offer here. It was in the context of a HLS shortfall of 2.4 to 2.58 year HLS (compared to 0.55 to 0.69 years in Castle Point). Inspector Masters only considered a proposal for *outline*, rather than *full*, planning permission, which means this appeal scheme's homes would be delivered far quicker (as you know, sir, this appellant is a major housebuilder and the delivery programme, without the need to finalise reserved matters, will be fast which will mean this scheme plays an immediate role in bolstering housing land supply – something neither of the dismissed appeals in 2024 were able to claim). Further still, Colney Heath concerned a site which had never been included in a draft allocation, whereas this appeal site has been proposed for housing consistently over the past 10 years. Every material circumstance supports giving more weight here than in the decision in Colney Heath. Mr Gittens could not point to a single circumstance that suggested giving less weight here to market housing than was given in the Colney Heath case. In any event, he refused to change his view.

42. Which is why, as Mr Wood explains, this appeal scheme, at up to 87 market dwellings, could be delivered over the next five years, and this would make a material contribution towards supply to which **very substantial** weight should be given.

43. Note that, although the Council continues to rely on dismissed appeals from last year, note that:

    (i) They do **not** refer to the many green belt appeals locally – in neighbouring Boroughs and Castle Point itself – which have **succeeded**;

    (ii) In any event, and more importantly, those sites were assessed on their own merits – those merits must be considered in light of the fact that this site, and not those, has

been consistently supported for over a decade for allocation in every version of the Council's emerging plan;

(iii) Plus, most important, everything has changed since last summer. The Council's housing land supply has, on its own account, fallen off a cliff. Its housing needs have more than doubled. National policy has transformed. None of those appeals were even considering, of course, the implications of grey belt policy – which we turn to below.

(iii) Other benefits

44. The parties agree that the appeal scheme will result in a number of economic benefits. These include a total construction value of £39m, as well as £40.4m in economic output and £2.7m in resident expenditure. On top of this, the scheme would deliver 182 construction jobs, 224 supply chain jobs, and 28 supported jobs from increased expenditure in the local area. It would also generate an additional £279,000 in council tax revenues. The Appellant's Planning Statement quantifies these direct and indirect benefits, and their effect on the local economy.[31] Mr Gittens offered no evidence to dispute the Appellant's analysis.

45. The Appellant considers that these economic benefits should be given **significant** weight, particularly given the current situation in Castle Point which has endured for so many years as a consequence of the Council's failure to plan.[32]

46. Further, the parties agree that the appeal scheme will lead to environmental benefits. These include areas of public open space and biodiversity enhancements. It is also agreed that these

[31] CD1.55, §9.8.

[32] CD1.55, §9.9.

can be controlled and delivered by condition and a section 106 obligation. The dispute again is in respect of weight:

(i) On biodiversity net gain, Mr Gittens in oral evidence affords the provision of BNG of *at least* 10% only limited weight.[33] The Environment Act 2021 mandates at least 10% BNG for applications submitted after February 2024 (which this application was not). The High Court has made clear that those legislative requirements do not apply retrospectively, and irrespective of whether a benefit is/is not required by policy or legislation, it should be afforded due weight accordingly. As Mr Wood explained, this is a situation where the biodiversity enhancements exceed both local and national policy requirements, in a context where there is a severely limited housing supply to make further contributions in the short to medium term. In those circumstances, the biodiversity enhancements should be given **substantial** weight.

(ii) Fur public open space provision, Mr Gittens does not appear to provide any weighting at all. But as we know, the Council has a well-established deficit of provision in respect of parks, gardens and provision for children and young people.[34] Mr Wood explained that the appeal scheme far exceeds policy requirements in respect of open space provision (offering 10ha above the 2.83ha), and given the express importance national policy places on the need for open space to support communities' health, social and cultural well-being (§8 and §103 NPPF), should be afforded **substantial** weight.

[33] It will be noted that Mr Gittens did not provide any weighting in his proof.

[34] CD3.20, CD7.20

The scheme's impact on the wider green belt will be negligible

47. In the end, if this site were not washed over by the Metropolitan green belt, then we would not be here. Because as Mr Gittens confirmed, the ***only*** harm set against permission by the Council relates to the green belt.

48. Of course, the green belt designation has nothing to do with landscape quality. It is not about protecting landscapes or townscapes. Still less individual views around settlements. Nor does it have anything to do with protecting species – flora or fauna. We have a wide range of other policies for those things.

49. The metropolitan green belt is for something much more specific. It is a strategic spatial policy designation which is fundamentally concerned with curtailing the post-war "sprawl" of Greater London.

50. As Mr Gittens agreed, the Council requires land which is currently in the green belt in order to meet the enormous and urgent needs we describe above. The Council does not have a plan-led solution to manage releases of the green belt. Which means that impact on the green belt, one way or the other, through development management decisions like this one isn't a choice. It's a necessity. It's *inevitable*.

51. The *real* issue is whether schemes can come forward which do not unacceptably impact on the green belt's wider integrity – i.e. its ability to perform its strategic spatial purposes. Those things for which the green belt was designated in the first place.

52. Which is precisely what the NPPF's new definition of "grey belt" seeks to achieve, as we will see below.

Grey belt

53. Annex 2 of the NPPF defines the "grey belt" as:

> *"For the purposes of plan-making and decision-making, 'grey belt' is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development."*

54. The parties agree that the application of the policies relating to FN7 (other than Green Belt) would not provide a strong reason for refusing or restricting the development.[35] Further, the Council, and Mr Gittens, have not argued that the appeal scheme would cause *any* harm to purpose (d).

55. Which means that for the purposes of determining whether this appeal site meets the definition of "grey belt", the question for you, Sir, is whether this site makes a strong contribution to purpose (a) and (b). Taking those in turn:

56. The objective of purpose (a) is *"to check the unrestricted sprawl of* ***large built-up areas****"*. The meaning of that policy is clear: if Daws Heath is anything less than a large built-up area, this policy is simply not relevant. And, as Mr Gibbs explained, by the Council's own definition Daws Heath is a **village** and not a large built-up area:

[35] SOCG, §14.1 (CD10.1).

(i) The Council's own GB Study tells us that Castle Point's *"urban area is primarily comprised of the four large towns of Thundersley, South Benfleet, Hadleigh and Canvey Island".*[36] Daws Heath is not included in that group of towns, instead the GB Study describes it explicitly as a *"**small** settlement".*[37]

(ii) Daws Heath is referred to as a *"village"* consistently throughout the Council's Issues and Options paper (prepared as recently as September 2024).[38] That document makes a clear distinction between the 4 main towns and *"the village of Daws Heath"*. It does not identify Daws Heath as possessing a town centre, and it tells us *"Daws Heath doesn't have a parade, and there is no cluster suitable for designation within the village, with only a local shop present".*[39] It even records that the residents consider Daws Heath to be a *"semi-rural village".*[40]

57. Which is why Mr Gibbs concludes that Daws Heath is a village and not a large built-up area, and on that basis purpose (a) is not engaged.[41]

58. In cross-examination, Mr Gittens tried, with respect, to dance on the head of a pin in arguing – for the first time, as it was nowhere in his proof – that although Daws Heath was a *"village"* and was *"**not** in itself a large built-up area"*, it could nonetheless be considered a large-built up area in its "local context". This suggestion does not appear anywhere in Mr Gittens' proof, nor was it offered in his evidence in chief. Instead, Mr Gittens relies on a single paragraph

[36] CD7.1, §6.23.

[37] CD7.1, §8.11.

[38] CD 7.21, pp.10, 50, 66.

[39] CD7.21, p.66-67.

[40] CD7.21, p.37. In fact, we heard on Day 4 from Ms Deverrick, a local resident, who emphasised that Daws Heath was a *"village"*, *"semi-rural"* and *"not a large built-up area"*.

[41] CD12.5, §7.19, §7.21, §8.6.

in the Council's GB Study which considered that as Daws Heath was the *"only distinctly urban settled area"* outside of the 4 main towns in the borough, it was therefore *"appropriate"* to include it alongside those towns. The problem with this is that, as Mr Gittens freely accepted in XX, this GB Study tells us nothing about whether Daws Heath is actually a large built-up area within the language of the NPPF, nor why it would be "*appropriate*" to consider it as such. When this was put to Mr Gittens repeatedly, he refused to provide an answer.

59. Even if you, Sir, were to accept Mr Gittens' suggestion that a small semi-rural village could be considered a large built-up area for the purposes of the NPPF, the appeal site is not making a strong contribution to this green belt purpose. As Mr Gibbs' evidence demonstrates, the appeal site forms a logical, well-defined expansion to the village.[42] The appeal scheme would not contribute to sprawl is it is a natural fit in the landscape and forms a logical pattern of development, increasing permeability between the village and the countryside.[43] This was also the conclusion of Inspector Lewis in March 2022, who found that even if this site were removed from the green belt for development, *"a new Green Belt boundary would be formed to the east and south of the allocation, partly following existing boundaries"* which *"would be readily recognisable and likely to be permanent, preventing further encroachment into the countryside"*.[44]

[42] CD12.5, §7.17.

[43] CD12.5, §7.16-§7.18, §7.22.

[44] CD6.1, §94.

60. Which means that, as Mr Gibbs concludes, the appeal site makes (at most) a **limited** contribution the green belt with respect to purpose (a).[45] Any harm to this purpose from the appeal scheme would be (at most) **limited**.[46]

61. Purpose (b) seeks *"to prevent neighbouring **towns** merging into one another"*. Again, the Council's case boils down to a disagreement about language. Mr Gibbs's position is simple. Where the NPPF refers to "towns", it means a "town". If it had intended this purpose to refer to "settlements" or "villages" then it would have done so expressly. That was also the specific conclusion of Inspector Owen in the Leighton Road decision only one month ago[47] - which confirmed that this is a policy about towns, not villages, or settlements more generally. Mr Gittens' evidence is directly contrary to this approach recently endorsed by another inspector.

62. Indeed, in its closings, the Councils rightly accept at §8 that "*the NPPF knows the difference between a town and a village*". Those terms are used quite deliberately in the green belt chapter. So the answer here is simple: the parties in this case agree that Daws Heath is a **village**. It is not a town. To conclude that it is a "town" for the assessment of purpose (b) is, with respect, a nonsense.[48] The green belt review that decided to *treat* it is a town gave – Mr Gittens agreed – no relevant reasons for doing so. A village is still a village – nothing in the so-called "context" of Daws Heath has the effect of turning a village into a town. The Council's

[45] CD12.5, §8.6.

[46] CD12.5, §7.23.

[47] CD8.20, §8.

[48] CD12.5, §7.27.

evidence is quite clear that it isn't one. Again, just like the Stanbridge appeal, this is a case where both parties agree that the relevant settlement is a **village**.

63. That said, as Mr Gibbs explains, even *if* Daws Heath were somehow considered to be a town (which it is clearly not) the areas beyond the developed parts of the appeal site will be retained and will continue to form the function of preventing the merging of the two settlements.[49] Mr Gibbs is not alone in this analysis, because as Inspector Lewis found in March 2022 when assessing this site release from the green belt as part of the examination of the now withdrawn local plan:

> *"… a reasonable gap of open Green Belt land would be retained between the two settlements which would maintain a clear physical separation between them and ensure development of the proposed allocation would not lead to their coalescence."*

64. Which is why Mr Gibbs concludes that the role of the developed part of the appeal site in preventing the merging of neighbouring towns is **limited**. And why (at most) there would only be **limited** harm to this purpose with the appeal scheme in place.[50]

Overall conclusion on "grey belt"

65. If you agree with Mr Gibbs and the conclusions of Inspector Lewis, then the appeal site meets the NPPF definition of "grey belt". On that we agree with Mr Gittens.[51] Which means that there is no longer any green belt policy objection under §11(d)(i) or FN7 NPPF to permission being granted. This is because the parties also agree that the appeal scheme

[49] CD12.5, §7.39-§7.42, §8.7.

[50] CD12.5, §8.7.

[51] Mr Gittens XX.

would comply with all of the criteria set out in §155 and meets the 'Golden Rules' in §156-§157 NPPF.[52]

66. In consequence, the appeal should be determined under the balance at §11(d)(ii) NPPF. i.e. permission should be **granted** unless any harms both significantly and demonstrably outweigh its benefits.

67. The Council, however, invites you, Sir, to disagree with the conclusions reached by Inspector Lewis in order to decide that the site falls outside the definition of "grey belt". In their closing, the Council suggests that Inspector did not make any findings in respect of green belt purposes (a) and (b). There are several problems with that argument:

    (i) It is abundantly clear in the language Inspector Lewis uses that he is making findings on green belt purposes. His Report at §94 refers expressly to the concepts of *"sprawl"*, *"encroachment"* and *"coalescence"*. Those are findings about green belt purposes. That is what he's considering in that part of the report. If that is not the language of green belt purposes, then the Council has failed to offer any alternative for what that could realistically be. Because there isn't any.

    (ii) In any event, the Council's argument in closings is antithetical to **what its own witness**, Mr Gittens, confirmed in cross-examination. Which is that, on the basis of Inspector Lewis' findings, this appeal site would meet the definition of grey belt and in that event the appeal should be allowed. Further, Mr Gittens confirmed that there had been no material changes since Inspector Lewis assessed this site. Mr Gittens' answer was to ask you, Sir, to **depart** from Inspector Lewis' conclusions. My learned friend's submissions

[52] SOCG, CD10.1, §14.2-§14.3.

in closing are a belated attempt to row back from Mr Gittens' evidence which do not suit her case.

(iii) To avoid any misunderstanding: Mr Gittens was **absolutely clear** in cross-examination that to accept his evidence on this topic you would have to reject the findings of Inspector Lewis. We agree with his characterisation of the situation. But it leaves the Council's position in tatters. Because there are no good reasons to reject the findings of Inspector Lewis, and the Council in their closings do not offer you any.

Overall impact on green belt

68. If you decide to disagree with Inspector Lewis (and neither party has identified any reason that you should), then the scheme would comprise inappropriate development in the green belt, and §153 NPPF requires you to apply the very special circumstances test and determine whether the scheme's benefits clearly outweigh its harms. And in this case, the only harms relied on by the Council relate to the green belt.

69. Of course, in the language of green belt policy, this site would be less *"open"* if new homes were built. And although the scheme involves the provision of substantial areas of open space (10ha), adding the appeal scheme would make this site less "open". That is inevitable, at least as far as the spatial component of openness goes.

70. The visual component of openness is more nuanced. We are concerned not only with the fact of buildings on a site. But how, from where and by whom those buildings can be perceived. This is where the site's existing enclosure by the urban areas of Daws Heath and Hadleigh, and by woodland to the south and west become important.[53] Those features have

[53] LVIA CD1.53, §8.6; CD12.5, §6.10.

a bearing on the extent of any harm associated with the visual component of openness. As Mr Gibbs explained, aside from a small number of viewpoints in close proximity to the site access, visibility of the proposed development will be contained by the existing vegetation and woodland around the site.[54] Additional tree planting will strengthen this screening effect.

71. On the basis of all of this, Mr Gibbs concluded that although there will be a loss of openness within the developed part of the appeal site itself, there would only be a **limited** degree of harm beyond this area and within the wider green belt.[55]

72. On harm to green belt purposes, as already explained, Mr Gibbs concludes that the harm to purposes (a) and (b) are **limited** (at best). The Council's officers concluded, as does Mr Gibbs, that the extent of any harm to purpose (c) is also **limited**.[56] We also agree that purposes (d) and (e) are not relevant for the purposes of determining this appeal.[57]

73. That is the extent of the harm we are dealing with. All of it. And that is the harm which you, Sir, will have to weigh when the final balance is struck.

[54] CD12.5, §6.11, §6.16.

[55] CD12.5, §10-4-§10.7.

[56] See the Council's closings at §28 NPPF.

[57] SOCG, §13.1.

Striking the balance

74. In the end, Sir, the position is straightforward.

75. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan taken as a whole unless material considerations indicate otherwise (including the NPPF).

76. The parties agree that there is no conflict with the adopted local development plan. They also agree that the key material consideration in determining this appeal is the application of the new NPPF.

77. The Appellant's case is that the appeal site meets the definition of "grey belt" and there is no green belt policy objection to permission being granted. In consequence, this appeal should be determined under the balance at §11(d)(ii) NPPF, i.e. permission should be **granted** unless any harms both significantly and demonstrably outweigh its benefits. As we know, if this site meets the "grey belt" definition, then the Council accepts that the appeal should be allowed.

78. That is the short answer to this appeal.

79. That said, if you ultimately decide to depart from the conclusions of Inspector Lewis, and you decide that the site falls outside of the definition of "grey belt", then the parties agree that the question for determining this scheme's acceptability is found in §153 NPPF, i.e. to ask whether its benefits clearly outweigh its harms.

80. If you find that they do, then you should allow the appeal and grant planning permission: §153 NPPF. In those circumstances, the test is passed and very special circumstances are

deemed to exist. There is no further test, e.g. the scheme's benefits do not need to be "remarkable" or "unusual" in of themselves.[58] That they clearly outweigh the scheme's harms is enough.

81. Further, in response to the commentary on the policy test at §36 of the Council's closings, it is common ground that national policy requires substantial weight to be given to harm to the Green Belt. There is nothing unusual about that. All kinds of things are given significant, great or substantial weight (e.g. heritage impacts, AONB, development on brownfield land). It also, of course, requires us to give "*significant*" weight in favour of granting applications, like this one, which accords with the new NPPF's "*golden rules*". The mere fact that §153 NPPF prescribes a weighting does not mean that any systemic priority is afforded to the protection of the Green Belt over e.g. the delivery of housing (NB the council's reference in closings to green belt protection being "top of the tree").

82. That's made absolutely clear by the raft of decisions, including within this part of Essex, where the Secretary of State and his Inspectors have found that the delivery of market and affordable housing in circumstances attracts very substantial weight, and clearly outweighs harm to the Green Belt – so carrying the balance at §153 NPPF (see e.g. the approach taken by the Secretary of State at Oxford Brookes, or by Inspector Masters at Colney Heath – there are many, many others not in the core documents.

83. In striking the balance, the one side of the scales, you have only one category of harm: the harm to the green belt – which is the only harm identified by the Council. Yes, the site comprises a field. With little built form on it. Which means, in the language of green belt policy, the site will be less *"open"* if new homes are built. And yes, because the site is next to

[58] *R. (Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin) at §29.

but outside the village of Daws Heath, it is deemed *"countryside"*. Even though that boundary is a relic of another plan-making era. Nonetheless, that means the appeal scheme would, in the language of the NPPF, *"encroach"* into that countryside, albeit in a very limited way. The Council's view is that the harms to openness and green belt purposes are substantial. The Appellant considers that the level of harm is much less – particularly as the openness and purposes of the wider green belt beyond the developed part of the appeal site itself would remain intact. Whatever degree is correct, we must, in the end, give those harms substantial weight – even though we *agree* that planning permissions in the green belt are inevitable in this area absent an effective plan-led approach to meeting needs.

84. On the other side of the scale:

(i) The break-down in the plan-led system in Castle Point has had real consequences for real people. The parties agree that for many years this Council has not come anywhere *remotely* close to meeting its needs – for market housing or for affordable housing.

(ii) As we have shown you, these shortfalls aren't marginal. They're staggering. We aren't talking about missing the mark by tens or even hundreds of homes. We're talking about thousands.

(iii) In Castle Point, the plan-led system has broken. And our case is simple: there is no short or medium term prospect of it being fixed. The real issue before this Inquiry is whether the many people in need now should have to wait another 3 years, 5 years, 10 years, or however long it takes Castle Point to actually *adop*t a plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.

(iv) The Council accepts that substantial weight should be given to the scheme's market and affordable housing offers. However, given the scale of the crisis in Castle Point, and the meaningful contribution this scheme would make to meeting the Council's shortfall across both market and affordable housing, the Appellant invites you to – consistently with other appeal decisions – give each of these benefits **very substantial weight**.

(v) On top of that, we have other substantial benefits – namely economic benefits for the local and wider economy. The Appellant considers that these benefits should be given **significant weight**. The scheme's open space provision and biodiversity enhancements should also be afforded **substantial weight**.

85. When striking either the §11(d)(ii) or §153 NPPF balances, we must remember that §158 NPPF requires that *"a development which complies with the Golden Rules should be given* ***significant weight in favour of the grant of permission****"*. On that:

(i) Albeit the Council's closings suggest that "*significant*" weight here is somehow a lesser standard of weight than "*substantial*" weight to green belt harm at §153 NPPF, that is (yet again) **not** what Mr Gittens actually said, and inconsistent with his own analysis (under which significant / very significant weightings are the "top drawer" weighting categories); and in any event

(ii) The meeting of the golden rules is a free-standing benefit identified by the new NPPF – it does no obviate the requirement to and the importance of disaggregating those benefits and giving individual weightings to e.g. the delivery of affordable homes. That is not double-counting. §158 NPPF adds an additional policy boost toward granting permission – a boost which **it is agreed** applies here – over and above the standard approach to weighing benefits.

86. Ultimately, whether you apply the §11(d)(ii) or §153 test, the answer is the same. Those benefits carry the planning balance.

87. Given the disastrous scale of shortfalls in delivery of housing of all kinds in Castle Point, and the failures to plan to address them, this scheme's benefits are **profound**. Far more profound than this Council wishes to accept publicly. The imperative to bring them forward on a sustainable site, and one which has continuously been proposed for release from the green belt for over a decade, is compelling; and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.

88. For those reasons, the balance weighs decisively in favour of granting permission. We ask you to allow the appeal.

ZACK SIMONS

EDWARD ARASH ABEDIAN

Landmark Chambers

180 Fleet Street

London EC4A 2HG

23rd JANUARY 2025