



TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

Appellant: Countryside Partnerships (Eastern Home Counties)

Site Address: Land at Brook Farm adjoining 451-469 Daws Heath Road, Hadleigh, Essex

Development Description:

Construct 173 No. dwellings including public open space, landscaping, access, drainage, parking, servicing, utilities and all associated infrastructure and ancillary buildings

Planning Inspectorate Reference: APP/M1520/W/24/3351658

Local Authority Reference: 22/0484/FUL

PROOF OF EVIDENCE OF DAVID GITTENS BA(HONS)MRTPI

On behalf of CASTLE POINT BOROUGH COUNCIL

JANUARY 2025

Contents

1	Introduction	2
2	Site and Surroundings	4
3	The Application the Subject of this Appeal and Planning History	10
4	Planning Policy	14
5	The Council's Case	21
6	The Appellant's "Other Considerations"	35
7	The Planning Balance and Summary	38

All Mapping is courtesy of Ordnance Survey and His Majesty's Stationary Office and © Crown Copyright and is reproduced under licence (AC0000855692)

All photographic images are my own work unless otherwise acknowledged. All photographic imagery is used for illustrative purposes and not to any professional standards or conventions.

This Proof of Evidence has been prepared by David Gittens.

I have been employed by Castle Point Borough Council as a Principal Planning Officer since July 2024.

I hold a Bachelor's degree with Honours in Town Planning from London South Bank University. I am a Chartered Town Planner, having been elected to Membership of the Royal Town Planning Institute in 1998.

I have more than 40 years of professional experience in Town Planning of which 37 have been in Development Management having worked across 10 different local planning authorities, initially at officer level, but at management levels for nearly 20 years.

In this time, I have dealt with a wide range of planning matters, including providing evidence and appearing as an expert witness in respect of planning appeals conducted by written representation, informal hearing and public inquiry.

I have inspected the appeal site and surroundings area and am familiar with the appeal proposal.

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

1 Introduction

- 1.1 The proposal is for the construction of 173 No. dwellings on a site in the Green Belt ('the appeal site'). This appeal relates to a full planning application (ref: 22/0484) that proposed:
- "Construct 173 No. dwellings including public open space, landscaping, access, drainage, parking, servicing, utilities and all associated infrastructure and ancillary buildings"
- 1.2 By Decision Notice dated 20 March 2024, the Council's Development Management Committee, consistent with the recommendation of their Officers, resolved to refuse planning permission. A public inquiry into the appeal is scheduled to open on 15 January 2025.
- 1.3 The reason for refusal is outlined in the Officer Report and decision notice as set out below:
- "The proposal represents inappropriate development in the Green Belt as defined in the National Planning Policy Framework 2023. Such development will only be permitted if very special circumstances exist to justify its inappropriateness. It is not considered that any very special circumstances have been demonstrated which either in isolation or in combination carry sufficient weight to outweigh the harm to this part of the Green Belt. The proposed development is therefore contrary to Government advice as contained in the National Planning Policy Framework."*
- 1.4 The National Planning Policy Framework (NPPF) was updated in December 2024 but its approach to Green Belt harm and decision making has been significantly changed and has seen the introduction of a new "Grey Belt" designation that refers to refers to Green Belt land that is previously developed or does not strongly support some of the key purposes of Green Belt designation. It is the Council's position, however, that despite these policy changes, the appeal site still strongly contributes to the Green Belt purposes of checking the unrestricted sprawl of large built-up areas and preventing neighbouring towns merging into one another. We therefore consider the site is not "grey belt".
- 1.5 It is common ground¹ that the Council cannot demonstrate a five-year supply of deliverable housing land and their Housing Delivery Test Score is below 50%. As such the tilted balance pursuant to paragraph 11(d) of the NPPF is engaged.
- 1.6 However, as shall be demonstrated in this proof, the site is in the Green Belt, the proposal leads to Green Belt harm, and the application of the NPPF as existed at the time of the Council's decision, as well as the December 2024 version, both provide a clear reason for refusal. Therefore, the presumption/tilted balance in paragraph 11(d) of the NPPF is disengaged (paragraph 11(d)(i)).

1. As per paragraph 11.1 in Statement of Common Ground (CD 10.1)

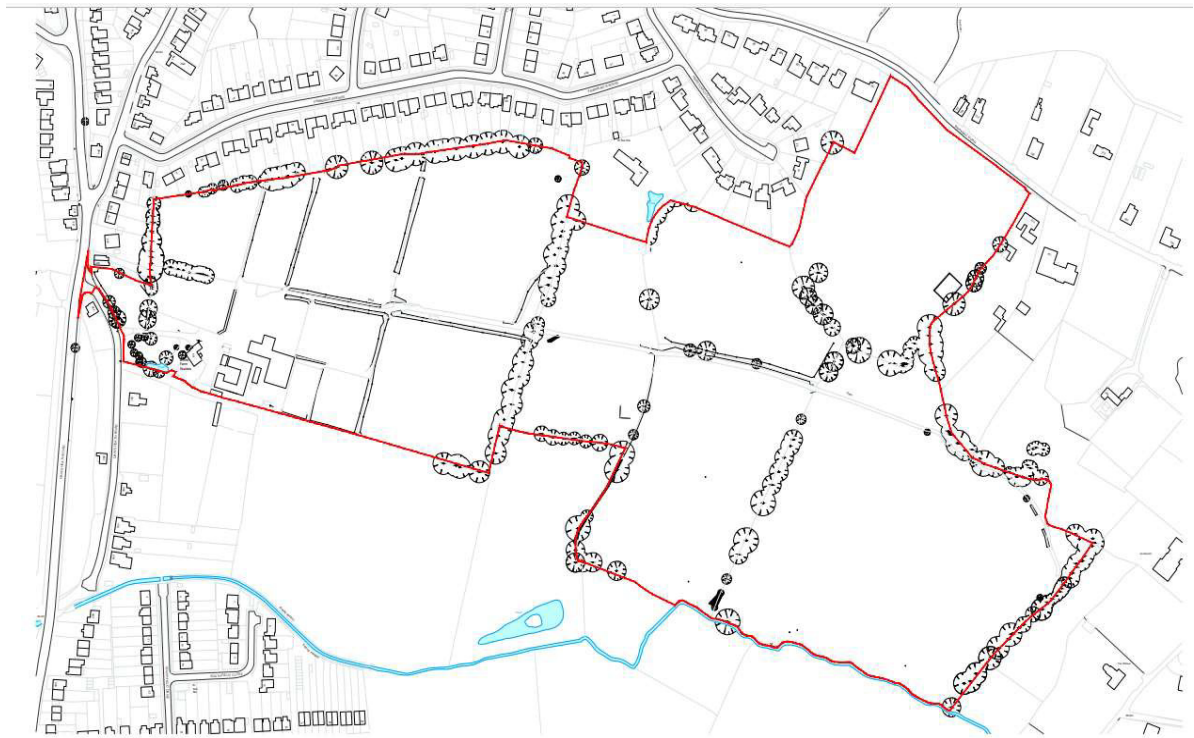


Fig 1.1: The Appeal Site

- 1.7 The Statement of Case, together with the Statement of Common Ground and summary of this Proof provide a brief description of the site, identify the relevant planning policies, and set out the relevant background history of the appeal site. The Statement of Common Ground also sets out matters of agreement as well as matters of disagreement.
- 1.8 During the appeal, the Council and the appellant have negotiated a s106 undertaking to address the affordable housing and infrastructure requirements of the appeal proposal as well as the impacts of the proposal on European and RAMSAR sites. Final agreement of the s106 is currently being worked upon by both parties, however the main requirements are not in dispute.

2 Site and Surroundings

- 2.1 The appeal site is located to the south-east of the settlement of Daws Heath and comprises the complete curtilage of Brook Farm, extending to some 18.9ha located within the southern extent of Daws Heath and north of the northern extent of Hadleigh.
- 2.2 The farm comprises several fields defined by trees and tall hedges that extends from Daws Heath Road eastwards. The site is not located within a conservation area and there are no listed buildings or locally listed buildings on the site. None of the trees on the site are currently preserved.
- 2.3 The site includes the four existing buildings associated with Brook Farm, all located to the west of the site near its Daws Heath Road entrance. These are a two-storey residential building with a pitched roof, and single storey stables and other agricultural buildings.
- 2.4 Also located on the site at the time of my visit were many caravans being stored on the western part of the site. I am of the view that the open storage of these caravans is unauthorised and after consulting the Council's records, I can find no record of permission having been granted for this use.
- 2.5 The remainder of the farm to the east comprises a series of fields that at the time of my visit all appeared to be laid to grass.



Fig 2.1: appeal site showing proposed site layout and relationship with adjacent Daws Heath residential settlement to the north

- 2.6 Presently, residential development, in the form of mostly semi detached, and some detached, bungalows is located immediately to the north, on Fairmead Avenue and Haresland Close, and on Bramble Road to the north east; all located within Daws Heath.
- 2.7 Residential development is also located beyond the southern boundary of the site, in a ribbon of houses on the eastern side of an older, setback section of Daws Heath Road, and beyond an area of green space outside of the application site on Southfield Close and Southfield Drive, of which both roads are located in Hadleigh.
- 2.8 Topographically, the site generally slopes from some 68m AOD in the north to 50m AOD on the southern boundary, with the central element of the site sloping from west to east.
- 2.9 There are no existing ponds or rivers within the site although a small stream runs west to east along the southern boundary.
- 2.10 A Badger sett is located on the northern boundary.

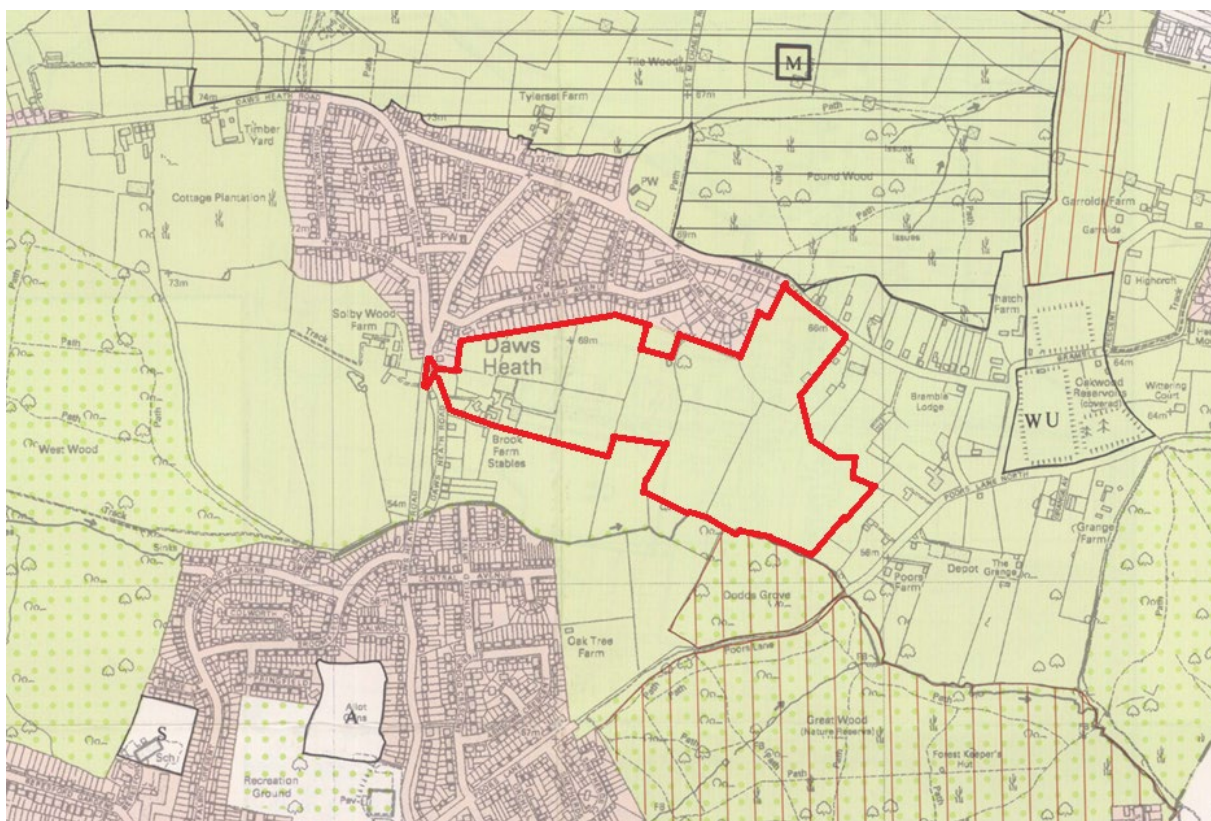


Fig 2.2: Application site outlined with map showing the settlements of Daws Heath (north) and Hadleigh (south) all set within the surrounding Green Belt

- 2.11 The site is presently bounded by a fence and hedgerow to Daws Heath Road and is

accessed via a spur off the older set back section of Daws Heath Road. Apart from the Daws Heath Road frontage to the site, the site is largely land locked, bounded by other adjacent parcels of land except in the northeastern extent of the site that has a frontage to Bramble Lane.



Fig 2.3: View of the Appeal Site facing east with entrance from Daws Heath Road arrowed

- 2.12 The appeal site is contiguous with the surrounding Green Belt sites; aside from the rear garden fences to the houses backing onto the site in Fairmead Avenue and Haresland Close, there is no well-defined and easily understood, legible boundary between the appeal site and the rest of the Green Belt. The large expanses of Green Belt designated land that abut the site to the immediate north and south of its eastern extent comprises of dense woodland.
- 2.13 Whilst the appeal site can be experienced in discreet views from around the site entrance in Daws Heath Road, the Green Belt openness and intrinsic character and beauty of the countryside can be more fully experienced from the northeastern boundary of the site where it abuts Bramble Road between nos 122 and 170 where there are open views available across the northeastern field facing west and south.
- 2.14 However, there are extensive private views of the site from the rear of residential properties in Fairfield Road and Haresland Close, and on Bramble Road further east.

- 2.15 The site lies within Landscape Character Area ('LCA') 8 of the Essex Landscape Design Green Belt Landscape Assessment 2010². This described the land as an attractive mixture of woodland and pasture with old hedgerows with a long established and compartmentalized landscape pattern. It was stated to be in good condition with high visual quality and a cared for appearance.



Fig 2.4: aerial view of the site facing west showing connection to densely forested Green Belt sites to both the north and south

- 2.16 Its visual sensitivity was described as Medium to High. Although its general visibility was enclosed by woodland, hedges, and other vegetation it confirmed that there are views into the area from properties in Daws Heath and turnings off Daws Heath Road.
- 2.17 It was considered that mitigation should concentrate on protection of woodland and retention of rural character of the area.
- 2.18 The opportunities and constraints identified for this Green Belt parcel were:
- Opportunities to reinforce and strengthen existing landscape character.
 - Constraints to development are substantial due to the designated landscape and high landscape sensitivity and integrity of the historic landscape. Development is

- 2.23 Leigh-on-Sea Station provides access to Shoeburyness in the eastbound direction and London Fenchurch Street in the westbound direction (6 to 9 trains per hour Mondays to Friday) and serves a number of East London and local Essex Stations.
- 2.24 Once passengers arrive in London an extensive range of rail and bus connections are available.
- 2.25 There are no public rights of way through the site and no formal cycle routes within the Daws Heath area although there are several footpaths and bridleways that pass nearby the site.

3 The Application the Subject of this Appeal and Planning History

- 3.1 The appeal proposal seeks to provide a mix of single storey, two storey and two and a half storey dwellings in a variety of detached and semi-detached forms. It is also proposed to provide two x three storey apartment blocks.
- 3.2 The surrounding area is generally characterised by detached and semi-detached houses, ranging from single to two and a half storey in form. Within the context of the surrounding development the proposed houses are consistent with the general scale and form of development in the area.
- 3.3 The proposed apartment blocks are not a style of development that is a common feature of the area and may be considered inconsistent with the existing general form of development. However, the setting of the proposed apartment blocks will ensure that they have a minimal impact on the character and appearance of the area and will provide an opportunity for the provision of smaller housing units which are generally absent from the area, but for which a demand is known to exist.
- 3.4 The Addendum to the South Essex Strategic Housing Market Assessment (SHMA) for Castle Point (2020)⁴ reviews the need for different house sizes and types to meet the changing needs of the borough's population. Table 4.1 of the Assessment provides the anticipated need, by household size, which is compared to the mix of housing within the appeal scheme in the table below:

Size of unit	Amount of units within appeal scheme	Percentage of units within appeal scheme	Percentages within Addendum to South Essex SHMA 2020
1 Bedroom	13	7.5%	6%
2 Bedroom	31	18%	22%
3 Bedroom	74	43%	43%
4 Bedroom	41	23.5%	29%
5 Bedroom	14	8%	

- 3.5 The proposed mix of dwellings closely reflects the housing need suggested by the Addendum. There will be demand from a range of different household types, although this will be particularly strong from families with children and people of retirement age resulting in a strong demand, for 3 or 4-bedroom properties.
- 3.6 The appeal proposal sought to provide parking on the basis of one space for each 1-bedroomed property and at least two spaces for dwellings having more than one bedroom, with many of the larger dwellings being provided with three spaces. Parking spaces were the requisite size, as are single garages. Where provided, double garages are slightly shorter than the minimum of 7m, but these dwellings have utility rooms which compensate for the lack of storage space provided within the garages and no objection is raised to the proposal on this basis. Parking spaces are each 2.9m wide and 5.5m deep.

4 Table 4.1 of the Addendum to the South Essex Strategic Housing Market Assessment for Castle Point 2020

- 3.7 Based on the provision of one space for each 1-bedroomed property and two spaces for each property having two or more bedrooms and given the requirement for visitor parking to be provided on the basis of 1 space for every four dwellings, a total of 378 parking spaces are required. The scheme achieved some 400 car parking spaces which exceeded the minimum parking standards, and no objection was raised to the proposal on this basis.
- 3.8 Several plans have been provided with the application the subject of this appeal including the following which will be reproduced in this document:
- Proposed Site Layout Plan (CD 1.4)
 - Proposed Building Height Plan (CD 1.5)
 - Landscape Plan (CD 1.61)
- 3.9 A draft s106 undertaking was submitted with the application the subject of this appeal and, subject to agreement on Heads of Terms and successful execution this avoids the need for a reason for refusal relating to infrastructure and impact on European sites etc.

Planning History

- 3.10 Section 6 of the Officer's Committee Report lists the limited relevant planning history which includes three preapplication queries for residential redevelopment of the site since 2016 and a planning application for a new bungalow in 1983.
- 3.11 All previous history relates to the use of the site as a farm and is not relevant to this appeal.

Relevant Local Appeal Decisions

- 3.12 A relevant application for residential development on Land south of Daws Heath Road, Thundersley which was the subject of an appeal for non-determination was heard by public inquiry held on 30 April and 1 May 2024 (APP/M1520/W/23/3329585)⁵. In coming to his decision the Inspector concluded:

- "81. The proposal would be inappropriate development in the Green Belt which the Framework sets out is, by definition, harmful to the Green Belt and which should not be approved except in very special circumstances. The Framework further outlines that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
82. In addition to the harm arising from the inappropriate nature of the development, I have found that the proposal would harm the openness of the Green Belt. The effects on openness would be localised, but I have also identified significant harm to three of the purposes of the Green Belt. In accordance with the Framework, the harm that would be caused to the Green Belt attracts substantial weight.
83. I have also found that there would be harm to landscape character and

5 APP/M1520/W/23/3329585 - Land south of Daws Heath Road, Thundersley (CD8.1)

appearance. This harm would be limited and localised and the Council has not identified conflict with the development plan or Framework in this respect. I give limited weight to this harm.

84. *There would be harm to the significance of the locally listed building 137 Daws Heath Road. However, the harm would be limited. In isolation and taking a balanced judgement, I consider that the range of benefits of the proposal noted above would vastly outweigh the limited harm that would be caused to the significance of No 137 as a NDHA. Nevertheless, this is a harm to be weighed in the overall green belt balance.*
85. *There is little firm detail to substantiate that the proposal would force the closure of Ragwood Riding Centre, but even if I were to take a worst-case view, any consequent loss of employment and leisure opportunities would be of modest scale and I find that harm would be limited.*
86. *Against these harms, I give very substantial weight to the benefits of the provision of housing and affordable housing on the site noting longstanding failure to meet requirements and that a plan-led solution to address existing pressing needs is unlikely in the short to medium term. However, while not taking away from their importance, I consider the contributions that the proposal would make to housing and affordable housing supply to be modest relative to the overall degree of harm that would be caused to the Green Belt here. Even taken together with the significant weight that I give to the provision for BNG and enhancement of ancient woodland, the moderate weight to economic and social benefits and limited weight to the site sustainability, and setting aside unsubstantiated potential effects on Ragwood Riding Centre, I find that the collective other considerations would not clearly outweigh the harm that the proposal would cause to Green Belt by reason of inappropriateness and other harm resulting from the proposal. Consequently, very special circumstances do not exist and the Framework indicates that the inappropriate development in the Green Belt should not be approved.*
87. *Having found that very special circumstances do not exist, policies within the Framework relating to land designated as Green Belt provide a clear reason for refusing the development and paragraph 11 d) of the Framework does not therefore indicate that permission should be granted in this case.*
88. *Although I identify no conflict with the development plan, the Framework is a compelling material consideration which I find indicates that permission should be refused."*

3.13 Another relevant application for residential development on Land East of Rayleigh Road was the subject of an appeal by public inquiry that was held between 4-7 June 2024 (APP/M1520/W/24/3338797)⁶. In his concluding comments the Inspector stated:

- “59. *Having regard to the Framework, the proposed development would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, I have found that substantial and significant levels of harm would be caused by the proposal to the openness of the Green Belt in spatial and visual terms respectively. Additionally, I have found there would be varying levels of harm caused by the proposal in terms*

6. APP/M1520/W/24/3338797 - Land East of Rayleigh Road(CD 8.2)

of its conflict with the relevant three Green Belt purposes. This is all set in the context of the great importance attached to Green Belts by the Government and that it should be ensured that substantial weight is given to any harm to the Green Belt.

60. *In respect of the now withdrawn Local Plan, I have previously highlighted the Examining Inspector's conclusions in respect of harm to the Green Belt as a result of releasing the site from the Green Belt for housing. My colleague went on to find that whilst there would be harm to the Green Belt, the policy requirements would serve to reduce that harm; and that overall, given the need for housing which could not be accommodated within the existing urban area, and subject to recommendations, there were exceptional circumstances for releasing the site from the Green Belt. This body of evidence is a material consideration to which I have afforded significant weight. However, my colleague's conclusions were in the context of that exceptional circumstances test as opposed to the agreed more stringent consideration of whether very special circumstances exist in respect of this appeal.*
61. *In taking all factors into consideration relating to this appeal, the potential harm that would be caused by the proposal to the Green Belt by reason of inappropriateness, together with the varying levels of harm that I have found would be caused in respect of openness, the purposes of the Green Belt and to the character and appearance of the area, along with the albeit limited harm caused by loss of BMVAL, is not clearly outweighed by other considerations. This is despite the extent of, and in some cases high degree of weight afforded to, the benefits. As such, the very special circumstances referred to in the Framework do not exist.*
62. *Having regard to paragraph 11d of the Framework, the application of policies in the Framework that protect land designated as Green Belt therefore provides a clear reason for refusing the development proposed."*

- 3.14 The outcome of these cases confirm that in the context of developing in the Green Belt, "very special circumstances" is a very high bar to achieve.

4 Planning Policy

National Planning Policy Framework (NPPF) 2023⁷

- 4.1 At the time that the appeal proposal was refused planning permission by the Council, the NPPF 2023 was the current version of The Framework.
- 4.2 Paragraph 152 of NPPF 2023 provided that inappropriate development is ‘by definition’ harmful to the Green Belt and should not be approved except in very special circumstances.
- 4.3 This version of the NPPF provided that except in the circumstances identified in paragraph 154, the construction of new buildings should be regarded as inappropriate in the Green Belt.

National Planning Policy Framework (NPPF) 2024⁸

- 4.4 The NPPF was updated in December 2024 and like its predecessor continues to set out the Government’s economic, environmental, and social planning policies for England. These policies articulate the Government’s vision of sustainable development, which are intended to be interpreted and applied locally to meet local aspirations.
- 4.5 The most relevant sections for this appeal are Section 13 which relates to the Protecting Green Belt land. Section 2 includes the presumption in favour of Sustainable Development. Section 5 relates to Delivering a sufficient supply of homes. Section 12 relates to achieving well- designed places and Section 15 relates to Conserving and enhancing the natural environment.
- 4.6 Paragraph 11 of the NPPF sets out the approach to the presumption in favour of sustainable development. Paragraph 11(d) advises that for taking decisions the presumption means:
- “...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”*
- 4.7 In the circumstances of CPBC where a plan has yet to reach Regulation 18 stage with a policy map accompanying it, the Council is tasked with demonstrating a five-year supply of deliverable housing land. It is common ground that the Council cannot

7 National Planning Policy Framework December 2023(CD 7.32)

8 National Planning Policy Framework December 2024(CD 7.33)

demonstrate a five-year supply of deliverable housing land. Prior to the publication of the NPPF 2024, the Council was able to demonstrate 2.34 years of deliverable housing land, whilst the appellants suggested that the Council could only demonstrate 1.86 years. Whilst it will be for the Inspector to determine the materiality of this differential, the under provision should be afforded significant weight.

- 4.8 Footnote 8 of the Framework confirms that the policies that are most important for determining the application are deemed to be out of date where a Local Planning Authority is unable to demonstrate a five-year supply of deliverable housing land and/or the Housing Delivery Test (HDT) results are substantially below 75%.
- 4.9 In such circumstances, the *tilted balance* or presumption in favour of sustainable development is engaged.
- 4.10 However, paragraph 11(d)(i) and Footnote 7 to the Framework provide for the tilted balance to be disengaged in circumstances where the application of policies of the Framework which protect assets of particular importance provide a clear reason for refusing permission. Footnote 7 clarifies that the policies in the Framework that relate to land designated as Green Belt constitute such policies.
- 4.11 Therefore, when considering planning decisions relating to land in the Green Belt it is necessary to determine whether the application of the Green Belt policies in the Framework provide a clear reason for refusal under paragraph 11(d)(i). If they do, the presumption/ *tilted balance* is disengaged.
- 4.12 Paragraph 154 of the 2024 Framework provides that “the construction of new buildings” is “inappropriate development” in the Green Belt, unless one of the stated exceptions applies. It has previously been common ground in the preparation for this appeal that the Appeal Proposal for the construction of **173 No. dwellings including public open space, landscaping, access, drainage, parking, servicing, utilities and all associated infrastructure and ancillary buildings** comprises inappropriate development.
- 4.13 In the circumstances that the development proposed comprises inappropriate development, the only route to permission is if very special circumstances can be demonstrated and the planning balance must be undertaken in the absence of any tilt in favour of the development to determine whether very special circumstances exist.
- 4.14 The Framework advises that inappropriate development that is, by definition, harmful to the Green Belt should not be approved except in very special circumstances (paragraph 152). Paragraph 153 states:
“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly

outweighed by other considerations.”

Significant changes brought by NPPF 2024

- 4.15 On 12 December 2024 the government published an update to the NPPF (“NPPF 2024”). It contained several changes which have great significance to the Appeal. At paragraph 155 it now contains the following:

“155. The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where:
a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
b. There is a demonstrable unmet need for the type of development proposed [Footnote 56];
c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework..; and
d. Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below.

- 4.16 Footnote 56 provides:

“Which, in the case of applications involving the provision of housing, means the lack of a five year supply of deliverable housing sites, including the relevant buffer where applicable, or where the Housing Delivery Tests was below 75% of the housing requirement over the previous three years; and in the case of traveller sites means the lack of a five year supply of deliverable traveller sites assessed in line with Planning Policy for Traveller sites.

- 4.17 The golden rules are set out at paragraphs 156 to 160 as follows:

“156. Where major development involving the provision of housing is proposed on land released from the Green Belt through plan preparation or review, or on sites in the Green Belt subject to a planning application, the following contributions (‘Golden Rules’) should be made:
a. affordable housing which reflects either: (i) development plan policies produced in accordance with paragraphs 67-68 of this Framework; or (ii) until such policies are in place, the policy set out in paragraph 157 below;
b. necessary improvements to local or national infrastructure; and
c. the provision of new, or improvements to existing, green spaces that are accessible to the public. New residents should be able to access good quality green spaces within a short walk of their home, whether through onsite provision or through access to offsite spaces.

157 . Before development plan policies for affordable housing are updated in line with paragraphs 67-68 of this Framework, the affordable housing contribution required to satisfy the Golden Rules is 15 percentage points above the highest existing affordable housing requirement which would otherwise apply to the development, subject to a cap of 50%. In the absence of a pre-existing requirement for affordable housing, a 50% affordable housing contribution should apply by default. The use of site-specific viability assessment for land within or released from the Green Belt should be subject to the approach set out in national planning practice guidance on viability.

158 . A development which complies with the Golden Rules should be given significant weight in favour of the grant of permission.

159 . The improvements to green spaces required as part of the Golden Rules should contribute positively to the landscape setting of the development, support nature recovery and meet local standards for green space provision where these exist in the development plan. Where no locally specific standards exist, development proposals should meet national standards relevant to the development (these include Natural England standards on accessible green space and urban greening factor and Green Flag criteria). Where land has been identified as having particular potential for habitat creation or nature recovery within Local Nature Recovery Strategies, proposals should contribute towards these outcomes.”

4.18 The NPPF 2024 defines ‘grey belt’ as follows:

Grey belt: *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.*

4.19 The NPPF 2024 makes it clear therefore, that where land is categorized as “grey belt” **and** would not fundamentally undermine the purposes of the remaining Green Belt, there is a demonstrable unmet need for the development type proposed, the development would be in a sustainable location and the proposed development meets the “Golden Rules” that development in the Green Belt should not be regarded as inappropriate.

4.20 It is the Council’s case that, despite the changes to the NPPF in 2024, and the creation of the “grey belt” category of land designation, the appeal site remains Green Belt (and, mostly, does not form “grey belt”) and the appeal proposal is inappropriate

development.

- 4.21 The site strongly contributes to the Green Belt purposes at P143 of the NPPF 2024 in that it a) *check(s) the unrestricted sprawl of large built-up areas* and b) prevents neighbouring towns merging into one another. Further commentary on these specific matters can be found both in the DMC report, the Green Belt Review of 2018 and in part 5 of this statement. The appeal proposal remains inappropriate development and the Council's decision to refuse planning permission was sound and justified.
- 4.22 It was consequently considered that very special circumstances did not exist that would outweigh the harm that would be caused by this inappropriate development.

The Castle Point Local Plan

- 4.23 The Framework requires that applications for planning permission be determined in accordance with the Development Plan currently in force unless material considerations indicate otherwise. The development plan comprises the Castle Point Local Plan 1998⁹ (CPLP) together with the Essex and Southend on Sea Waste Local Plan (2017)¹⁰.
- 4.24 As indicated earlier in this document, the adopted Local Plan Proposals Map identifies the appeal site as Green Belt land.
- 4.25 The Secretary of State's saving direction of September 2007¹¹ saved the majority of Local Plan policies but did not save Policy GB1 which replicated national policy and sought to control development in the Green Belt which means that the adopted Local Plan contains no policies that establish the general principles for the control of development within the Green Belt. Therefore, the Council has since applied Government policy when considering development in the Green Belt as currently set out in Chapter 13 of the NPPF.
- 4.26 It is acknowledged that the development plan does not make provision for meeting housing needs beyond 2001 (Policy H1). Furthermore, the Council is unable to demonstrate a five-year supply of housing land and for that reason the Local Plan can be regarded as being out of date when assessed against Paragraph 11 of the NPPF.
- 4.27 The following saved policies of the CPLP are relevant to the consideration of the application the subject of this appeal:

- EC2 Design
- EC3 Residential Amenity
- EC4 Pollution
- EC13 Protection of Wildlife and their Habitats
- EC14 Creation of new Wildlife Habitats
- EC16 Protection of Landscape

9 Castle Point Local Plan 1998 (CD 4.1 & 4.2)

10 Essex and Southend on Sea Waste Local Plan 2017

11 Direction -Paragraph 1(3) of Schedule 8 to the P&CP Act 2004 Policies Contained in the CPBC Local Plan (CD 4.3)

EC19	Ancient Landscapes
EC22	Retention of Trees Woodlands and Hedgerows
H9	New Housing Densities
H10	Mix of Development
T2	Intensification of Access Use
T8	Car Parking Standards
RE4	Provision of Children's Playspace and Parks
CF1	Social and Physical Infrastructure and New Developments
H13	Location of development
CF14	Surface Water Disposal

4.28 CPBC has adopted relevant supplementary planning documents including:

- Developer Contributions Guidance SPD
- Affordable Housing March 2023
- Healthcare Facilities March 2023
- Highways, Travel, Education, Libraries, Flooding and Drainage Infrastructure March 2023
- Playing Pitches and Indoor Built Facilities March 2023
- Residential Design Guidance SPD 2012
- Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS Strategy July 2019 and SPF May 2020)

4.29 Other guidance adopted by the Council includes:

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

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

Withdrawn Local Plan

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

4.32 It is identified that the appeal site was allocated for residential development within the withdrawn Local Plan however, the Council withdrew that Local Plan in June 2022. The policies of the withdrawn Local Plan are no longer relevant and have no weight in the consideration of this appeal.

- 4.33 Work is currently underway on the Castle Point Plan which is intended to guide development in Castle Point to 2050.
- 4.34 The plan has reached Regulation 18 stage and is planned to reach regulation 19 in early 2025. It is common ground that the emerging Local Plan can only carry limited weight.

5 The Council's Case

5.1 The Council's case is presented under the following broad topic headings:

- a. Green Belt or "grey belt" in relation to Green Belt purposes;
- b. Green Belt Harm: Inappropriate Development;
- c. Green Belt Harm: Openness

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

Green Belt or Grey Belt

5.3 As stated earlier in this document, in Annex 2 to the NPPF 2024 "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."

5.4 Paragraph 143 of the 2024 Framework tells us the five purposes that the Green Belt serves:

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

5.5 The appeal site was assessed for its contribution to the various Green Belt purposes as part of a larger parcel of land (parcel 8) within the Green Belt Review 2018. The Officer's Committee Report on the appeal proposal also assessed the extent to which the proposal would impact on the purposes of the Green Belt.

5.6 Green Belt purpose (d) is to preserve the setting and special character of historic towns. The 2018 Green Belt Review confirms that the Green Belt in the Borough has no function of preserving and protecting the setting and character of historic towns (para 5.46-5.47). The Officer's Report confirmed that appeal proposal would have no impact on purpose (d) of the Green Belt (para 15.24).

5.7 Accordingly, the Council does not argue that the appeal site strongly contributes to purpose (d).

5.8 It is also Common Ground that there is a small area of previously developed land

towards the western end of the site which comprises the two-storey dwelling and the three single storey farm buildings. These parts of the site would clearly fall into the “grey belt” designation. Therefore, the remainder of the site needs to be assessed against the strength of its contribution to Green Belt purpose (a) or (b). I also consider whether the Site contributes to Green Belt purpose (c) although I recognize that strong contribution to this purpose would not prevent the Site from being considered Grey Belt.

Green Belt Purpose (a)

- 5.9 Green Belt purpose (a) is to check the unrestricted sprawl of large built-up areas. The 2018 Green Belt Review assessed that parcel 8 (of which the appeal site forms a part) made a **strong contribution** to this purpose (table page 86). The assessment states that this is because:

“The parcel is adjacent to Daws Heath at the northern boundary, Eastwood, Leigh-on-Sea to the east and Hadleigh to the southwest. Other than for a small proportion of the western boundary, these boundaries take the form of the curtilages of residential properties and are therefore not considered to be strongly robust.

However, along the extent of most of these boundaries there has not been sprawl meaning that these boundaries are well defined. Nonetheless, there is evidence of sprawl into the parcel taking the form of ribbon development originating from Daws Heath and following the route of Bramble Road in the eastern portion of the parcel. Daws Heath Road, located in close proximity to the western boundary and which runs between Hadleigh and Daws Heath also contains a small amount of ribbon development. There are further, localised examples of sprawl in the northeast whilst in general, the western portion is open field. Although sprawl has therefore occurred within the parcel, the degree of sprawl compared to the size of the parcel, and its proximity to three separate urban settlements means that it is assessed as strongly contributing to this purpose.”

- 5.10 The Officer’s Committee Report¹² stated:

“15.22 Whilst the application site includes an area of previously developed, or brownfield land, the proposal would result in the intensive development of a currently primarily vacant site. Such development represents a physical and visual encroachment into the Green Belt which will contribute to the enlargement of the settlement of Daws Heath and urban sprawl, in conflict with the first purpose of the Green Belt. Development of the site will prejudice

12 Officer’s Report to Castle Point Council Development Management Committee: 20 March 2024(CD 3.2)

the ability of the developed area to contribute to the prevention of sprawl. This carries weight against the proposal.”

- 5.11 Accordingly in view of the above, in the light of the appeal site’s strong contribution to Green Belt purpose (a) alone, the parts of the site that are not previously developed cannot be considered to constitute “grey belt”.
- 5.12 With regard to the appeal site specifically, Part 2 of the 2018 Green Belt Review¹³ assessed a number of sites in the Green Belt to determine the degree of harm on the Green Belt were they to be released and allocated for housing use. The Brook Farm site was considered in this part of the Review, using a boundary that largely resembled the current appeal site, save for three fields in the south east of the site.



Fig 5.2 Brook Farm Site
Castle Point Green Belt Review 2018 Part 2

- 5.13 In considering the reallocation in respect of Green Belt purpose (a) the Review stated:

“The proposed site is free of development considered inappropriate in the Green Belt and would act as a southerly extension of Daws Heath. However, this extension as a whole would not be well related to the existing settlement pattern, with the land associated with Brook Farm jutting out from what otherwise would be a general rounding out of the south of Daws Heath, and forming a ribbon development along Daws Heath Road.”

Green Belt Purpose (b)

- 5.14 Green Belt purpose (b) is to prevent neighbouring towns merging into one another. The 2018 Green Belt Review¹⁴ assessed parcel 8 (which the appeal site forms part of) as performing very strongly against this aim. It states:

“The parcel is adjacent to Daws Heath, Eastwood, Leigh-on-Sea, which is primarily in Southend-on-Sea, and Hadleigh and as such its development would lead to the physical merging of these three settlements. Leigh-on-Sea is some distance from the other two settlements, being approximately 1.2km away, and is already merged with Hadleigh further south across Belfairs Park. However, the strategic gap between Daws Heath and Hadleigh is approximately 250m and comprised solely of this parcel, meaning that this parcel makes a very strong contribution to this purpose.”

- 5.15 The Officer’s Report at paragraph 15.23 said of the appeal proposal:

“In terms of the second purpose, whilst it is acknowledged that the area between Daws Heath and Hadleigh, of which the application site forms part, strongly performs the function of preventing the merging of those settlements, it is not considered that the release of the development site would unduly prejudice this objective. As with the development to the west at Solby Wood Farm, the development site is located immediately adjacent to the built up area and a substantial area of open land will be retained both within the site and beyond which will continue to perform the function of preventing the merging of the two settlements. Release of the land for development will significantly reduce the distance between the two settlements, whilst this will not result in the merging of those settlements. It is not therefore considered that the proposal is significantly harmful in this regard. The loss of the site in the context of the second purpose of the Green Belt is considered to carry moderate weight.....”.

- 5.16 In addition, the site has undergone Landscape Sensitivity Assessment by Essex Place Services on behalf of the Council in October 2024. The table at page 17 of the report indicates that in terms of visual sensitivity, the site has a high to medium sensitivity with regard to “Prevention of Merging/Coalescence” of Daws Heath and Hadleigh.

- 5.17 In respect of Green Belt purpose (b) the Castle Point Green Belt Review 2018 Part 2 stated:

“Given the existing development within the Green Belt along Daws Heath Road, development of the proposed site would likely constitute a loss of the current strategic gap between Hadleigh and Daws Heath along Daws Heath Road to the point where the general perception would be that these urban settlements had merged. In the wider context of the proposed development

14 Page 87 of the Castle Point Green Belt Review 2018 – Part 1 (CD7.1)

site, development would act to reduce the existing strategic gap between Hadleigh and Daws Heath, with boundaries or features which prevent inter-visibility between the two urban settlements being weak or nonexistent in the land which would form the remainder of the strategic gap.”

- 5.18 My own understanding of the strong contribution that this site makes was crystallised during my own visit to the site and increased the further eastwards and southwards that I ventured. This contribution will be evident during the appeal site visit. Whilst I can accept that the partial filling of the gap between the settlements could be accepted, and indeed occur on this site, in my opinion that would only be acceptable on previously developed land, and with a significant amount of restraint.

Green Belt Purpose (c)

- 5.19 With regard to green belt purpose (c), to assist in safeguarding the countryside from encroachment, the 2018 Green Belt Review¹⁵ found that the parcel 8 made a moderate contribution to safeguarding the countryside from encroachment and on page 87 describes it as:

“The landscape is compartmentalised with hedges and fences separating areas, and it is also well screened by trees and hedges. Roads are few and narrow. The parcel adjoins significant expanses of countryside to the north and south but there is however residential development located along much of the boundaries in the eastern and western portion of the site which influence the perception of the parcel being in open countryside at these locations, which is further compounded by the ribbon developments in the centre.”

- 5.20 From my own visit, on entering the main body of the appeal site, walking eastwards, and having left the farm buildings behind, one is immediately struck by its open and spacious character. The site is a mainly a series of fields and forms part of a wider attractive and undulating landscape with a gently rolling topography. That said, as mentioned, the site does benefit from some degree of enclosure and visual containment by virtue of the mature hedgerows and intermittent trees along its boundaries and the woodland to the southeast.
- 5.21 The appeal proposal plans show a mix of residential dwellings. New gardens would be created for the houses, with fencing and domestic paraphernalia. A significant amount of hardstanding, including parking and an internal road layout would be built. All this built form, on an open field which is currently undeveloped, would clearly have a harmful effect on the openness of this part of the Green Belt. Activity within the site would also increase greatly with the comings and goings of residents and visitors. Whilst landscaping would appreciably augment the existing field boundaries of hedgerows and trees and help screen the new development from the wider landscape, it would also have the effect of diminishing the openness of this part of the Green Belt

by divorcing the appeal site from the neighbouring agricultural land.

5.22 In terms of the wider impact on the Green Belt, I accept that the effects on openness would be somewhat localised and agree that the effects on wider Green Belt openness would be relatively limited. Notwithstanding, I consider that the introduction of a significant amount of built form on an undeveloped area would inevitably result in a significant loss of openness of the Green Belt causing material harm, as well as harm by inappropriateness. It would conflict with the Green Belt purpose of safeguarding the countryside from encroachment. The Framework directs that substantial weight should be given to any harm to the Green Belt in the planning balance.

5.23 Finally with regard to the wider context of Parcel 8, this parcel along with parcels 4, 5, 7 and 9 forms the Daws Heath Ring, a locally important strategic Green Belt area comprising of parcels all adjacent to Daws Heath that prevent the settlement from merging with surrounding settlements. Paragraph 8.11 of the 2018 Green Belt Review¹⁶ states:

“As a result, Daws Heath has a more rural character compared to other settlements with Castle Point and neighbouring districts.....these parcels are making a very strong contribution to the holistic purpose of the Green Belt”

5.24 Accordingly, in view of the above, it is considered that the appeal site lies principally within a parcel of land that makes a strong contribution to Green Belt purpose (a) and a very strong contribution to Green Belt purpose (b) and therefore cannot be considered to be “grey belt”.

5.25 In addition, the site and parcel of which it forms a part continues to make a moderate contribution to Green Belt purpose (c). When this contribution is considered together with the strong and very strong contributions that this parcel makes in respect of purpose (a) and (b) cumulatively, and its key local strategic role as part of the Daws Heath Ring¹⁷, the parcel makes a very strong and valuable contribution to this part of the Green Belt.

16 Paragraph 8.11 of the Castle Point Green Belt Review 2018 – Part 1 (CD 7.1)

17 Paragraph 7.6 of the Castle Point Green Belt Review 2018 – Part 1 (CD 7.1)

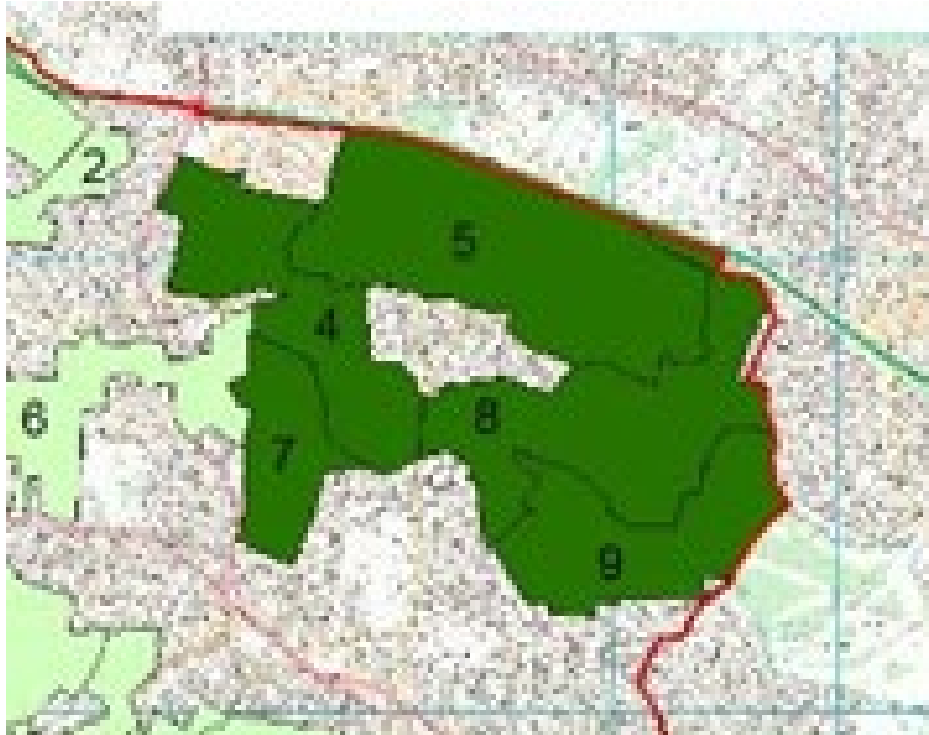


Fig 5.2 Daws Heath Ring
Castle Point Green Belt Review - Part 1

Green Belt Harm – Inappropriate Development

- 5.26 The NPPF confirms that the essential characteristics of the Green Belt include its openness and permanence.
- 5.27 The broad approach of policy in respect of the Green Belt is to designate areas of Green Belt land and then to consider development within the Green Belt to be inappropriate unless it is specifically identified as an exception.
- 5.28 The appeal site lies outside any existing settlement within the designated Green Belt as defined on the Proposals Maps of the adopted Local Plan. However, the effect of paragraph 155 of the 2024 NPPF is to increase the number of exceptions that allow development within the Green Belt to not be regarded as inappropriate.
- 5.29 Before the 2024 NPPF it was hitherto common ground between the parties that the appeal proposal constitutes inappropriate development. Paragraph 153 of both the 2023 and the 2024 NPPF confirms that harm by way of inappropriateness and any other Green Belt harm is harm that is attributed substantial weight in the planning balance.

- 5.30 Paragraph 152 (2023) NPPF and paragraph 153 (2024 NPPF) both state that inappropriate development should not be approved except in very special circumstances.
- 5.31 Paragraph 153 (2024 NPPF) confirms that “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. The test is to be “clearly outweighed” and not merely “outweighed”.
- 5.32 The application of 2024 NPPF paragraph 153 provides a clear reason to refuse permission under NPPF 11(d)(i), and it would only be through the exercise of the Green Belt planning balance in NPPF paragraph 153 (wherein other considerations are demonstrated to clearly outweigh the harm by way of inappropriateness thus amounting to very special circumstances) and now additionally, consideration of the exceptions detailed in paragraphs 155 to 159, that permission could be granted.
- 5.33 Therefore, the decision will have to be taken with all the harm first identified and weighed and then the other considerations relied on by the Appellant considered and weighed and only if those other considerations “clearly outweigh” the harm by way of inappropriateness do very special circumstances exist. That exercise is undertaken without any tilt in favour of the development and in line with the Green Belt planning balance set out in the NPPF.

Green Belt Harm – Openness

- 5.34 The 2024 Framework (para. 142) continues to identify openness and permanence as the essential characteristics of the Green Belt with the fundamental aim of Green Belt policy to keep land permanently open and thereby prevent urban sprawl. Paragraph 153 states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness.
- 5.35 The concept of openness means the state of being free from built development; the absence of built form as opposed to the absence of visual impact. However, the word “openness” is open-textured, and several factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if the proposed development occurs, and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.
- 5.36 In **Turner**¹⁸, Sales, L.J. stated as follows (so far as relevant):
"14. [...] The word “openness” is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built

18 Turner v SSCLG [2016] EWCA Civ 466, Arden, Floyd and Sales L.J. (CD 9.2)

up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents

15. *The question of visual impact is implicitly part of the concept of “openness of the Green Belt” as a matter of the natural meaning of the language used in para. 89 of the NPPF. I consider that this interpretation is also reinforced by the general guidance in paras. 79-81 of the NPPF, which introduce section 9 on the protection of Green Belt Land. There is an important visual dimension to checking “the unrestricted sprawl of large built-up areas” and the merging of neighbouring towns, as indeed the name “Green Belt” itself implies. [...]. Openness of aspect is a characteristic quality of the countryside, and “safeguarding the countryside from encroachment” includes preservation of that quality of openness. [...]*
- 16 *The visual dimension of the openness of the Green Belt does not exhaust all relevant planning factors relating to visual impact when a proposal for development in the Green Belt comes up for consideration. For example, there may be harm to visual amenity for neighbouring properties arising from the proposed development which needs to be taken into account as well. But it does not follow from the fact that there may be other harms with a visual dimension apart from harm to the openness of the Green Belt that the concept of openness of the Green Belt has no visual dimension itself.....*
- 25 *The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension."*

5.37 In response to various judgements and case law, including Turner, the Government updated the PPG in July 2019 (Para 001; ID 64-001-20190722)¹⁹ in respect of openness and it now states:

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

- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*

19 Planning Practice Guidance: Paragraph: 001 Reference ID: 64-001-20190722 - Revision date: 22 07 2019 (7.34)

- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation.”*

5.38 In **Samuel Smith**²⁰, a judgment of the Supreme Court (Lord Carnwath) issued the lead judgment (with which Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agreed) in respect of the interrelationship between visual impact and openness of the Green Belt, disagreeing with the judgment of Lindblom L.J. in the Court of Appeal. The Supreme Court judgment was handed down on 3 December 2019. Therein Lord Carnwath said:

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

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

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

20 R (Samuel Smith Old Brewery (Tadcaster) & Ors v N. Yorks CC [2020] UKSC 3 (CD 9.1)

- 5.39 In effect the Supreme Court found that the visual component of openness is capable of being a material consideration, but it is not necessarily a consideration in every case. The spatial component of openness is always a consideration in assessing openness.
- 5.40 In assessing the landscape and Green Belt qualities of the appeal site and Area 8 the 2010 Assessment concludes, in respect of views, that the site has medium to high visual sensitivity and is generally enclosed by woodland, hedges, and other vegetation. It was also stated that there are views into the area from properties in Daws Heath Road and turnings off Daws Heath Road.
- 5.41 I therefore conclude that the openness of the appeal site can be appreciated from numerous vantage points on and around the appeal site. However due to its largely “land locked” location the majority of views are private views from within the site or from neighbouring sites. Accordingly, from within, I consider the appeal site to exhibit a strong sense of openness.
- 5.42 The Part 1 Green Belt Assessment 2018 summarises Parcel 8 as:

“..... adjacent to the three settlements of Hadleigh, Eastwood, Leigh-on-Sea in Southend-on-Sea and Daws Heath meaning that it makes a very strong contribution to preventing neighbouring towns from merging into one another. Although the majority of the urban/rural boundaries between the settlements and the Green Belt parcel are not considered to be strongly robust or permanent, there has only been limited ribbon development in the parcel, with the greater proportion of dwellings being farmhouses or buildings ancillary to agricultural use. As such the parcel makes a strong contribution to Purpose 1.”

and also that:

“The parcel adjoins significant expanses of countryside to the north and south but there is however residential development located along much of the boundaries in the eastern and western portion of the site which influence the perception of the parcel being in open countryside.....”

Its strategic contribution was determined as serving:

“to prevent urban sprawl into nearby Eastwood, as it restricts the urban development of the settlement, thus maintaining a demarcation between Castle Point and Southend on Sea administrative boundaries in this area. This parcel is within a Green Belt system; all of the Green Belt parcels around Daws Heath act as a protective ring of Green Belt around the settlement”

- 5.43 The appeal site, which falls predominantly within Parcel 8, is open in both a spatial and visual sense and the development existing on site is extremely limited in its scope and impact. The parcel can reasonably be considered to make a positive contribution to the openness of the countryside.
- 5.44 Into this local and wider open countryside context the appeal proposal is to introduce up to 173 new dwellings, hard standing and access roads. For the purposes of assessing the overall impact of such a quantum of development it is useful to have some practical understanding of the scale and overall quantum of development proposed.
- 5.45 The drawings provide some context to enable consideration of the dispersal of development and its overall impact. For instance, I note that the proposals include:
1. Two apartment blocks of 11.5 metres in height;
 2. 400 car parking spaces
 3. In excess of 1025 metres of road that measures in most places up to 10.8 metres in width
 4. Assorted dwellings some of significant volume.
- 5.46 These elements of development will fundamentally alter the perception of openness when considered from within the site, from neighbouring properties, and from surrounding views.
- 5.47 There is very little existing development on the site comprising a small group of three farm buildings and one house near the western extent of the appeal site. They have a modest footprint and except for the two storey house are all single storey in scale. Existing plans and elevations were not provided with the application although I have estimated the volume of the existing buildings.
- 5.48 However, from conservative measurement of the proposed drawings I estimate that the 173 proposed dwellings alone would have an approximate footprint of 8,830 square metres. Added to that I have allowed another 6,380 square metres for vehicle hard standing for parking (2.9 metres x 5.5 metres) x 400 spaces. Therefore, I estimate the proposed residential building footprint is approximately 15,210 square metres over 1.5 hectares. Adding 1025 metres of residential access road at approximately 10 metres in width would add another hectare making the combined total of building footprint, hard standing and roads more than 2.5 hectares.
- 5.49 In terms of the volume of the appeal proposal, the existing 4 buildings on site comprise of 2 largely open-sided structures to a height of approximately 7 metres (3,402 cubic metres and 1,728 cubic metres), stables of a height of approximately 3 metres (1,560 cubic metres) and the existing 2 storey house with a “cat-slide” roof (900 cubic metres).

- 5.50 The proposed scheme includes up to 173 dwellings of between 1 and 2 and a half storeys, plus two apartment blocks of three storeys.
- 5.51 On the basis of a footprint of approximately 25,000 square metres, the cumulative volume of the individual dwelling types would be 57,771 cubic metres. This compares to an existing estimated volume of 7,614 cubic metres.
- 5.52 In terms of three dimensional impact that equates, even on this conservative approach, to a more than 7 fold increase in built volume concentrated into one part of the site when compared with agricultural buildings in excess of 7 metres in height.
- 5.53 Whilst this does not give an absolute precise indication of volume (and given more time, precise figures could be calculated) these figures are illustrative of a substantial loss of openness in spatial terms.
- 5.54 However, in terms of the visual component of openness this difference is marked given the existing baseline is open arable fields and open grassland with a limited number of agricultural buildings.
- 5.55 This scale of development and the loss of openness will be perceived both spatially having regard to the openness of the existing appeal site and visually having regard to public and private views of the existing completely open appeal site as perceived from adjacent residents in Daws Heath Road.
- 5.56 Having regard to the baseline conditions the proposal would lead to a substantial and permanent loss of openness in both a spatial and visual context. Given the virtual absence of development on the appeal site and the scale of new development I also consider the loss of openness in a spatial sense to be substantial.
- 5.57 I consider that in addition to the substantial increase in permanent development as proposed the scheme will be visible from all sides of the site in either public or private views and from within the site, where the substantial loss of openness will be experienced. Moreover, the significant increase the visual perception of enclosure and development will reduce the experience of the openness of the site and this part of the Green Belt.
- 5.58 In addition, a higher degree of activity would be permanently introduced onto the site, which presently involves only the limited occasional activity associated with farming arable land to the east. The proposals would introduce significant vehicle movements behind the ribbon of houses that front Daws Heath Road parking and manoeuvring of residential vehicles, at unrestricted hours, light from houses, streetlamps, security lighting and vehicle headlights. These would be further aggravating factors reducing openness through generated activity.

- 5.59 In accepting that the previously developed land on the site may now be “grey belt”, my conclusions on harm apply to the quantum of development as the harm is an inevitable consequence of such a quantum regardless of layout, design, landscaping, appearance etc.
- 5.60 In conclusion I consider that in spatial terms the proposal would substantially erode openness and lead to substantial harm. I also consider it will have a substantial impact on the visual appreciation of openness and again such matters lead to substantial harm.
- 5.61 In addition to the substantial increase in permanent development as proposed the scheme will lead to significant degrees of activity across the site and impacts from light and noise that further reduce openness.
- 5.62 The development will be noticeable and result in the introduction of an urban form of development on a currently open countryside site. The proposals will not respect or protect the intrinsic character and beauty of the countryside, rather they would urbanise and replace the countryside.
- 5.63 I acknowledge the proximity of the site to edges of the existing settlement, but this proximity does not detract from the current relative tranquillity that is felt within the site nor from the private spaces adjacent to the site.

Other issues

- 5.64 Should the Planning Inspector decide to uphold this appeal, it is anticipated that a section 106 obligation can address the provision of necessary infrastructure, the securing of affordable housing, and the provision of biodiversity enhancements.
- 5.65 The Heads of Terms as presently drafted, include:
- Affordable Housing
 - Biodiversity Net Gain
 - Provision of Play Space and its management
 - Healthcare General Medical contributions
 - Education (Early years and Primary) contributions
 - Library Services Contribution
 - Highway Improvement and Sustainable Transport measures
 - Monitoring fees
 - Travel Plan monitoring fee

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

6.1 The Appellant is required to demonstrate that the other considerations they rely upon are capable of clearly outweighing the harm identified so as to amount to very special circumstances.

6.2 In terms of "other considerations" or benefits of the scheme I note that the Appellant relied on a number of factors that were considered in detail in the Officer's Committee Report starting at paragraph 16.5. The Council's position on these considerations has not changed since the application was determined, save for its recognition of the changes to the level of affordable housing provision put forward by the appellant in response to the updated NPPF 2024. These considerations can be summarised as:

- The provision of housing in an area of housing need (including 50% affordable housing post NPPF 2024)
- The provision of 10Ha of public open space
- Ecological enhancements to achieve BNG
- Delivery of highly sustainable housing
- Site identified for release in previous iterations of the Castle Point Local Plan
- Construction and post construction economic benefits

6.3 It is well established that it is for the Appellant to demonstrate that very special circumstances exist to warrant overriding normal Green Belt presumptions. Such circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In addition, substantial weight must be given to Green Belt harm.

6.4 In these circumstances, I have already established that the development is inappropriate, will lead to an erosion of openness, encroaching into and harming the purposes of the Green Belt. Therefore, the circumstances relied on by the Appellant will need to be of sufficient calibre to **clearly** outweigh these components of harm that cumulatively amount to greater harm than just that of inappropriateness.

6.5 In this regard, I am mindful of the stringent test articulated by Sullivan, J (as he then was) in **Draper**²¹, which concerned national Green Belt policy in Planning Policy Guidance Note 2 ("PPG2"). Although PPG2 was replaced by the Framework, for present purposes, current national Green Belt planning policy has not changed. In paragraph 58 of his judgment, Sullivan, J states:

"The combined effect of paragraphs 3.1 and 3.2 [of PPG2] is that, in order to justify inappropriate development in the Green Belt, (a) there must be circumstances which can reasonably be described not merely as special but as very special, and (b) the harm to the Green Belt by reason of inappropriateness and any other harm must be clearly outweighed by other considerations. Those

21 R_(Chelmsford)_v_First_Secretary_of_State_and_DRAPER__2003__EWHC_2978 (CD 9.7)

other considerations must be capable of being reasonably described as very special circumstances. If they are capable of being so described, whether they are very special in the context of the particular case will be a matter for the decision maker's judgment."

6.6 In **Temple**²² Sullivan, J (as he then was) clarified the test for demonstrating very special circumstances by confirming that it was not necessary for each factor, of itself, to be 'very special' and that factors which individually were otherwise quite ordinary could cumulatively become very special circumstances. This supports my view that very special circumstances are the outcome of the balancing exercise (and not the inputs to such an exercise) and only exist at the point when the other considerations clearly outweigh the harm by reason of inappropriateness and any other harm.

6.7 Further guidance was provided by the Court of Appeal, in which Carnwath²³, LJ (as he then was) stated inter alia that:

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

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

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

22 R (Basildon District Council) v First Secretary of State and Temple [2004] EWHC 2759 (Admin)(CD 9.8)

23 Wychavon District Council v Secretary of State and Butler [2008] EWCA Civ 692 (CD 9.9)

7 Planning Balance and Summary

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The Framework is a material consideration in the determination of this appeal. Under paragraph 11(d), the policies most important for the determination of the appeal are deemed to be out of date by reason of the HDT results and housing land supply shortfall. This requires the decision-maker to consider whether the application of policies in the Framework provide a clear reason for refusing the proposal. One of the key sets of policies in the Framework are the policies protecting Green Belt land.⁵¹
- 7.3 In carrying out its role as the decision maker the local planning authority demonstrated the application of policies in the Framework relating to the Green Belt provided a clear reason for refusing the proposal. Thus, the tilted balance, otherwise engaged by the HDT and 5YHLS position, was appropriately disengaged in this case.
- 7.4 Despite the recent changes to the NPPF the appeal site largely remains Green Belt (and not grey belt) save for the small portion of it that constitutes previously developed land. The appeal proposal constitutes “inappropriate development” in the Green Belt. This is, by definition, harmful, and should not be approved except in “very special circumstances”.
- 7.5 Substantial weight must be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is “clearly outweighed” by other considerations.
- 7.6 As explained above in section 5, the other Green Belt harm by loss of spatial and visual openness and harm to three purposes leads to substantial harm at the upper end of such harm and must carry substantial weight. The appeal site and area contribute very strongly to safeguarding the countryside from encroachment and maintaining settlement patterns. The proposals would lead to urban sprawl, begin the merging of settlements and encroachment into the countryside, and would erode settlement patterns. Such harm to the purposes of Green Belt is multifaceted and wide ranging and carries substantial weight.
- 7.7 I have carried out my Green Belt balancing exercise based on a satisfactory obligation is presented to address the provision of affordable housing and other infrastructure associated with the appeal proposal.

- 7.8 The weight of factors against the grant of permission presents a high hurdle for the Appellant to demonstrate that these harms, taken together, are “clearly outweighed” by other considerations such that “very special circumstances” exist. This high bar is illustrated in an appeal decision in St Albans²⁴ wherein at paragraph 55 the Inspector notes:

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

- 7.9 As referred to in the decisions for APP/M1520/W/24/3338797 and APP/M1520/W/24/3329585, the factors relied on by the Appellant may collectively carry substantial weight. Although not discussed in detail in this proof, I have also relied on the analysis provided in the Officer’s Committee Report that reviewed the other considerations in detail. I appreciate the positive benefits of the other considerations, including the provision of affordable housing, and biodiversity net gains which all carry positive weight in favour of the scheme.
- 7.10 Overall, notwithstanding the benefits of the scheme taken together, I do not consider that they “clearly outweigh” the Green Belt, and do not demonstrate “very special circumstances” to justify inappropriate development in the Green Belt for the purposes of paragraph 153 of the Framework.
- 7.11 I consider that the proposal will lead to substantial environmental harm such as the loss of openness, encroachment into the countryside and significant permanent built development in the Green Belt countryside which would adversely affect the character of the area. This impact is substantially negative and, in my view, means the proposed development does not constitute sustainable development.
- 7.12 As such, the application of the Green Belt policy provides a “clear reason for refusing” the development proposal under NPPF paragraph 11(d)(i). Thus, the presumption in favour (the “tilted balance”) is disengaged.
- 7.13 The policies of the Framework provide clear reasons to refuse permission, and material considerations would not justify the grant of permission.
- 7.14 Therefore, the Inspector is respectfully invited to dismiss the appeal.

24 APP/C1950/W/22/3307844 Land to the North of Bradmore Way, Brookmans Park (CD 8.20)