

Brook Farm, Daws Heath

Appellant's Opening and List of Appearances

Appearances

Zack Simons & Edward Arash Abedian instructed by **Alex Harrison MRTPI** of Vistry Eastern Counties will call:

- (i) **Ben Pycroft** BA (Hons), Dip TP, MRTPI, Director of Emery Planning (housing land supply).
- (ii) **Paul Gibbs**, DipLA CMLI DipUD, Managing Director of David Jarvis Associates Limited, (green belt impacts).
- (iii) **Annie Gingell** BSc (Hons) MSc MRTPI, Associate Director at Turley (affordable housing).
- (iv) **Matthew Wood** BSc (Hons) MScTP MRTPI, Director of Phase 2 Planning and Development Ltd (planning policy and the balance).

Opening

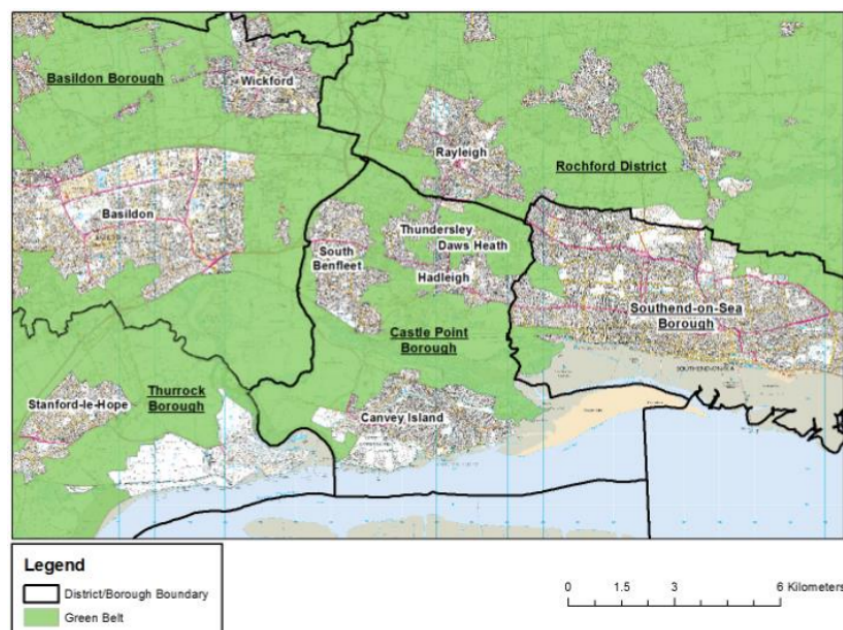


The appeal site to the south-east of the village of Daws Heath.



The appeal scheme.

1. The planning system in this part of Essex has collapsed. 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. For too long, this area has been frozen in aspic.
2. As we open this inquiry, the position is simple and stark:
 - (i) This Council has one of the very worst housing land supply positions in all of England – just over 0.5 years. With all of the disastrous consequences that brings.
 - (ii) There is no short-medium term plan-led solution to that crisis – indeed, even on the Council’s account, a local plan to start to address its spiralling needs is years away.
 - (iii) We do not know yet how many years because the Council has not even begun to plan to meet its up-to date housing needs. But what we do know is that whatever strategy it adopts, the release of green belt land to meet its needs is inevitable. There is literally no other option.
3. The starting point is to recognise the spatial realities that apply to this part of south Essex:



4. 56% of Castle Point is washed over by the Metropolitan green belt. That covers all land outside settlement boundaries.
5. Given that constrained geography, the position is clear: if this Council is to come anywhere *near* meeting its needs in this part of the county (and in particular its needs for housing), release of green belt land isn't a choice. It's a certainty.
6. The Council has recognised that fact for several years, noting e.g. in its withdrawn 2016 and 2019 plans¹ that significant green belt releases, **including the release of this site** for housing, will be necessary in order to meet its needs. And that was in circumstances where its needs were only a fraction then of what they are now.
7. Inspector Philip Lewis endorsed that approach when signing the plan off as sound after its examination, finding that there were exceptional circumstances that required the release of green belt land, and in particular that **exceptional circumstances exist to support this site's release** from the green belt and allocation for housing.² Those circumstances have only become more pressing and acute since his report.
8. Of course, national policy expects the review and amendment of green belt boundaries to happen through the local plan process, i.e. at least every 5 years, so that needs are properly accommodated. But the general scope of the green belt in this part of Essex was fixed in 1964 – over 60 years ago. And the inner boundaries have not been reviewed since the still-somehow-adopted 1998 local plan over 25 years ago, in a totally different local, regional and national policy context. And what truly is remarkable about this authority is that, so many

¹ Withdrawn Local Plan, CD6.2.

² CD6.1, §94.

years later, despite needs of all kinds (and in particular needs for housing) having ballooned, the green belt boundaries around Castle Point have not changed since then. Indeed, these green belt boundaries here have **never** been reviewed against the NPPF's requirement to address objectively assessed needs for housing.

9. All of that stasis in plan-making creates a Catch-22 which has stalled sensible development proposals in this area for many years. It is inevitable that land which is currently within the green belt will be required for new homes. National policy generally expects the release of that green belt land to be managed in a plan-led way. But there is no plan-led mechanism to release green belt land in Castle Point to meet housing needs, and there has not been for a long time.
10. The current development boundaries reflect the requirements of another generation, and we are still years away from a new plan to update them:
 - (i) The Council's Core Strategy was adopted in November 1998 – over 26 years ago, and 14 years before even the first iteration of the NPPF. 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).
 - (ii) This site was promoted **by the Council** and supported for allocation and release from the green belt in its 2014 draft plan, its 2016 draft plan that was withdrawn in 2017, and then again in its 2019 draft plan, which was withdrawn in 2022 even though Inspector Lewis had signed the plan off as sound.
 - (iii) 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 349 dpa that formed the basis

of the 2019 plan to 701 dpa now. That means it must find land for well over 10,500 homes. The Council has not even *begun* to engage in that process: see e.g. its September 2024 confirmation that its early plan-making stages are predicated on a now totally superseded 255 dpa requirement.³ It is already many months behind its now defunct January 2024 local development scheme.

- (iv) In reality, a new local plan is **many years** away.
 - (v) So if the Council's spiralling needs are to be addressed *at all* in the short-medium term, as this Government is intent that they should be, that must be through the development management process. Through planning applications just like this one – ideally on sustainable sites (like this one) which the Council has supported for over a decade through draft allocations.
11. This break-down in the plan-led system in this part of Essex has had real consequences for real people. Most of all, and for many years, this Council has not come anywhere *remotely* close to meeting its real needs – including needs for market or affordable housing.
12. The 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. Many thousands. With all the terrible social, economic and environmental consequences that failing to plan will bring: families unable to afford somewhere to live, more people languishing on the housing register, unsustainable solutions with people being forced to find a home further away from their family networks, and from where they work, shop and socialise.

³ CD7.27.

13. Of course, there is a wider regional and national housing crisis. But that does not dilute the severity of what is happening – or rather, what is *not* happening – in this part of Essex. Again, the Council’s housing land supply is one of the very worst, if not the worst, in the country. A deficit over the next 5 years alone of over 3,700 homes. These numbers evidence a dire dereliction of basic plan-making functions.
14. It gets worse. On affordable housing, measured against its 2017 SHMA, the Council has a backlog in delivery of almost 2,900 homes since 2014.⁴ Measured against its 2020 housing needs assessment, its delivery of affordable homes has been -1%. That is to say – a negative figure. Since 2020, net delivery of affordable homes in Castle Point has been -12 against a need of 1,304. This is, to state the obvious, disastrous.
15. The many hundreds of households languishing on the Council’s housing register are waiting on average on that register for not weeks or months but many years for a home (over 4 years for a 3-bed, almost 8 years for a 4-bed). On 31.3.24, 169 children in Castle Point were housed in temporary accommodation.
16. Even worse, these enormous shortfalls are not going to stabilise or improve in the next few years. They are, even on the Council’s account, going to get much worse, i.e. 54 affordable homes a year on the Council’s case (and 10 on our case) against a need of over 300 a year.
17. Whether looking backwards to the past, or to the future, supply has collapsed.
18. So the real issue before this inquiry is whether the many people in need now should have to wait another 5 years, 10 years, or however long it takes, for Castle Point to actually adopt a

⁴ Ms Gingell’s Appendix 6 tables.

plan, and then for sites to come forward in accordance with that plan. Or whether more urgent needs require more urgent solutions.

19. Of course, national policy requires that any harm to the green belt is given substantial weight in the balance. There is nothing unusual about that – all kinds of things are given significant, great or substantial weight. Indeed, since the first NPPF in 2012, national policy also prioritises achieving a significant boost of housing land supply in a step the Courts described as a “*radical*” shift in emphasis by making the meeting of housing needs not just a material consideration, but one of particular standing.⁵ And in recent years, the Secretary of State and a number of Inspectors – including at appeal decisions in South Essex – have found that the delivery of market and affordable housing in circumstances like this attracts very substantial weight, and that it clearly outweighs harm to the green belt, so carrying the planning balance at §153 NPPF.
20. So we know that there is no systemic priority in national policy for e.g. green belt protection at any cost. Far from it. That said, of course, (a) each of those green belt approvals turned on the particular facts of the sites and schemes before those Inspectors, and (b) it is not *always* the case, particularly for sensitive sites in landscape or green belt terms, that housing needs (even those in as broken an area as Castle Point) will be found clearly to outweigh harm to the green belt.
21. So, albeit this dire position on housing supply and plan-making sets the context for this appeal, what matters – as always – is to strike the correct balance for this scheme on this

⁵ Gallagher Homes Ltd v Solihull MBC [2014] EWCA Civ 1610 at §8 and §16.

site: on the one hand weighing the benefits which arise from meeting these desperate spiralling needs, on the other weighing impacts on the site and its surrounds.

22. Which takes us to the appeal site at Brook Farm.
23. There is a good reason the Council proposed this site for release from the Green Belt and allocation for housing in 2014,⁶ 2016,⁷ 2019,⁸ and 2022⁹. And there is a good reason Inspector Lewis found that its allocation was supported by exceptional circumstances.¹⁰ That is because:
 - (i) The Council agrees that this site is sustainable and will allow future residents good access to a number of local services and facilities to meet day to day needs.
 - (ii) The site is – we agree – not a valued landscape. Nor is it a designated landscape at any tier of policy or guidance – national, regional or local. It is well enclosed – there will be no appreciable effects on the wider landscape as a consequence of the scheme.
 - (iii) There are no technical constraints to delivery e.g. in relation to ecology, heritage, flood risk, drainage, air quality, highways, or anything else.
24. Further to all of that, the site makes no more than (at most) a limited contribution to any green belt purposes. In consequence, (a) it meets the new NPPF's definition of "grey belt" and (b) as all the other criteria at §155-§156 NPPF are agreed to be met, including the

⁶ CD7.24, Policy H11.

⁷ CD7.26, Policy H9.

⁸ CD6.6, Policy HO14.

⁹ CD6.2, Policy HO14.

¹⁰ CD6.1, §94.

provision of 50% affordable housing, this scheme is **not** inappropriate development in the green belt. Which means that there is no longer any green belt policy objection under §11(d)(i) or FN7 NPPF to permission being granted.

25. 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.

26. Which means, for all the many documents before you, Sir, the real question is simple:

Are the scheme's harms so great that they would not significantly and demonstrably outweigh its benefits?

Unless any harms reach that high bar, permission should be granted. In this case, the harms come nowhere close.

27. The only harms set against permission by the Council relate to the green belt. 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* but *outside* the village of Daws Heath, it's 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.

28. But, with respect, that's the kind of narrow approach to development management which has prevented this Council from getting out of the mess they're in. Again, if Castle Point is to come anywhere *close* to meeting its spiralling needs for housing, then schemes like this in sustainable locations supported by the Council's own evidence base will have to be approved.

29. Even if you ultimately decide the site falls outside the definition of “grey belt”, the test is different but the answer is the same. The key question would then become:

Do these schemes benefits clearly outweigh its harms?

If they do, permission should be granted: §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.¹¹ That they clearly outweigh the scheme’s harms is enough.

30. 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.***”
31. In the end, our case is straightforward: 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, the imperative to bring them forward on a sustainable site is compelling, and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.
32. For those reasons, which we will develop in our evidence and in closing, the balance weighs decisively in favour of granting planning permission, and we will ask you to allow the appeal.

¹¹ *R. (Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin) at §29.

ZACK SIMONS

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