

TOWN & COUNTRY PLANNING ACT 1990

**APPEAL BY MESSRS SMITH, G&K GROUNDWORKS LTD & ACT
ROADWAYS LTD**

LAND EAST OF MANOR TRADING ESTATE

PROOF OF EVIDENCE – RUSSELL FORDE

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Appendices (separately bound)

- RF1 Agendas for Appellant's Cooperative Meetings with LPA on 27 June 2018 (includes minutes), 13 August 2019, 19 December 2019, 4 December 2020.
- RF2 Email from RSL Chelmer Housing Partnership to Appellant, 1 November 2021 - expressing formal interest in the appeal site
- RF3 Letter from Smart Planning, 22 October 2019 to Ian Butt, Head of Place and Policy - unannounced alteration of the draft Local Plan
- RF4 Letter from Smart Planning, 10 February 2020 in response to Regulation 19 Consultation on Pre-submission Local Plan, 2019
- RF5 Email from Smart Planning, 19 June 2018 to LPA Enforcement Officer and EHO – various matters including Benfleet Scrap
- RF6 Email from Smart Planning, 4 May 2018 to Environment Agency – Benfleet Scrap
- RF7 Photographs of Benfleet Scrap, May 2018, related to RF5 & RF6, separated for clarity
- RF8 Letter from Smart Planning, 30 October 2018 objecting to 18/0834/FUL – 5m Wall
- RF9 Amended Development Masterplan (16.3839/P205/C) and Schedule of Commercial Building floor Area and Parking Provision (16. 3839.DP/M007/B)
- RF10 Personal Statement of Glenn Smith
- RF11 Realising Potential – The Manor Trading Estate (omitted from appeal bundle)
- RF12 Statement of Community Involvement (omitted from appeal bundle)

1.0 PERSONAL INTRODUCTION

- 1.1. Russell Forde will say
- 1.2. I hold the Batchelor of Engineering Honours Degree (enhanced) in Electrical & Electronic Engineering of the University of Bradford.
- 1.3. I hold the post-graduate Diploma with Distinction in Town Planning of the South Bank University. At graduation I was recipient of the RTPI prize for outstanding achievement. I am a Member of the Royal Town Planning Institute. In total I have some thirty-three years experience in town and country planning involving a wide variety of development projects, both in the public and private sectors.
- 1.4. My first ten years development control experience was based in Local Government. As a planning assistant at Castle Point Borough Council I obtained a thorough grounding in all aspects of the development process routinely handling a wide variety of matters under the planning acts from preliminary enquiry through to formal decision including advertisements, prior notifications, CLEUD's and enforcement proceedings. My experience ranges from bespoke domestic schemes to large scale housing proposals through industrial and commercial developments to shopping and leisure uses. The context of my experience has varied between urban and rural settings and has been subject to a number of different constraints including those related to green belt, listed buildings, conservation, wildlife, and landscape.
- 1.5. At Castle Point I was full time appeal officer and expert witness at all the Council's informal hearings and public inquiries, a role, which I undertook for three years.
- 1.6. Subsequently at Maldon District Council in a more senior capacity I became lead officer for a geographical area with additional supervisory responsibilities for further areas. Specific proposals remained extremely varied and, in addition to my earlier experience, included diversification of rural farm buildings, conversion/re-use of listed buildings, marina developments, telecommunications proposals, gypsy sites, windfarms and residential development in rural villages.
- 1.7. In view of continuing appeal work, I became increasingly involved in the interpretation and review of the effectiveness of development plan policies and liaising with the planning policy section in that regard. I have routinely coached and monitored the performance of other officers in their presentation of evidence to hearings and inquiries. During this period, I was appointed Development Control Manager and became responsible for the whole team.

- 1.8. I left Maldon District Council to join Andrew Martin Associates in April 2000. Here I coordinated evidence for a number of successful appeals. I was the lead consultant for a Master Plan for an urban extension at Maltings Lane Witham for which I coordinated seven landowners and subsequently four major housebuilders. This included the coordination of a Maltings Lane public interest liaison group consisting of local bodies, two local schools, the Parish Council and others by invitation.
- 1.9. Over a short time, I attracted and retained a broad client base for whom I secured a variety of development solutions through the normal process of negotiation and application under the planning acts. Within the practice I was also commonly involved advising on both routine and the more complex aspects of development control.
- 1.10. In March 2002 I formed an independent planning consultancy called Smart Planning Ltd of which I am the Principal Director. Over the last twenty years I have built a planning and development team, currently numbering fourteen staff, across two offices who are both proactive and reactive to all aspects of the development process. I have acted for scrap metal merchants and for waste operators on safeguarded sites in planning procedures, appeals and at judicial review.
- 1.11. My work has taken place in most parts of the UK but remains centred on London, East Anglia and the Home Counties. My client base retains public and private sector clients as well as third party interest groups. I have represented five Essex Authorities most commonly but not exclusively at public inquiry.
- 1.12. The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2.0 SUMMARY CONTEXT FOR THE INQUIRY

- 2.1. The context for this appeal is set out in the Appellant's Statement of Case Section 1.0.
- 2.2. There are five reason(s) for refusal relating to:
 - 1) Inappropriate development in the Green Belt.
 - 2) Impact upon safeguarded waste disposal site (scrap metal yard)
 - 3) Noise impact of the scrap yard upon future occupiers of the proposed commercial and residential development
 - 4) Noise impact of the scrap yard upon occupiers of existing premises to the west,
 - 5) Inadequate vehicle parking for the proposed commercial units
- 2.3. Since lodging the appeal, by email dated 4 January 2023, the LPA has said that they will no longer pursue Reason 4.
- 2.4. Upon submission of the appeal, I drafted an initial Statement of Common Ground which has been exchanged between the parties and close to resolution. The SOCG provides an agreed Description of the Site; Description of the Area; Relevant Planning History; Development Plan; List of Possible Conditions; Agreed Matters; Disagreed Matters.
- 2.5. I rely also on the original Planning Design and Access Statement, submitted as part of the subject planning application.
- 2.6. At the time of writing, a S106 Obligation is close to completion and has been widely scrutinised by the LPA and Essex County Council. It will be submitted to the Inquiry separately to the SOCG. It helps deliver the appellant's very special circumstances and infrastructure commitments which are integral to the appellant's case.
- 2.7. I have been intimately involved with this case from the outset, including the 2008 appeal relating to the triangle land. I draw on that experience to some extent and provide a commentary on the activities and efforts that have been made to engage with the LPA; that is on the one hand, in producing a deliverable Local Plan, and on the other, creating a Master Plan which works in the absence of an upto date plan.
- 2.8. I set out the extensive consultations my team has undertaken to consult with Local Businesses, Local Householders, the Robert Drake County Primary School and Hesten Lodge Day Care Centre.
- 2.9. With reference to the original planning permission and waste licensing I set out the extent to which Benfleet Scrap (BS) operates within statutory controls.

- 2.10. My evidence is predicated on the fact that the LPA does not have an up to date Local Plan; moreover, that it has not adopted a plan for 24 years, effectively skipping a whole generation of persons seeking homes and employment.
- 2.11. My evidence is that through cooperation with the LPA, coupled with the unique coup of securing control of the MTE estate roads, and as informed by detailed, expensive baseline studies; the draft Local Plan 2018 was produced.
- 2.12. This captured the zeitgeist of how to deliver the long desired qualitative improvements and regenerative circumstances necessary to fulfil the economic development and employment strategy
- 2.13. Inexplicably, against an imminent threat of direct Government intervention, the motion to proceed with the 2018 Plan was defeated by just one vote, out of more than thirty cast.
- 2.14. The politics of planning continue to dog the LPA's ability to produce and adopt a plan. The deliverable 2018 proposal for MTE was removed in the next draft considered to be 'politically sensitive'?
- 2.15. The Pre-publication draft Local Plan 2019 took away all the factors that would have provided the MTE with a deliverable regeneration opportunity. However, the LPA voted, almost unanimously to not adopt the plan and subsequently withdrew it.
- 2.16. It is within this development plan vacuum that the current appeal is to be determined.
- 2.17. Castle Point are not alone in their plan making impotence. Neighbouring Authority to the west, Basildon Borough Council, share a parallel plan making history. Their last adopted Local Plan was also in 1998. They withdrew their most recent draft Local Plans (one of many) as recently as 3 March 2022. Plan-led housing and employment opportunity in south Essex has never been so grim.
- 2.18. **Core Document H7** comprises a directly comparable appeal, for upto 200 homes allowed in the Basildon Borough Green Belt, 9 December 2022. The dearth of housing supply and absence of a plan-led solution were critical factors in the very special circumstances of the case.

3.0 HOUSING LAND SUPPLY

- 3.1. The LPA's housing land supply performance is a matter of fact and of public record. Hence, I set it out only briefly on the basis that there can be no dispute.
- 3.2. The LPA has produced annual monitoring reports (AMR) every year and they are available on the LPA's website back to period ending March 2005. The most recent is period ending March 2022 (**CD E1**).
- 3.3. The report states that:
- 3.4. "During the year 2020/21, 355 homes should have been delivered in accordance with the requirement for housing identified through the application of the standard methodology in Castle Point. This target was not achieved with 166 homes delivered representing around 47% of the required provision".
- 3.5. Indicator H3 monitors delivery to date against the established housing target and determines the extent to which the Housing Delivery Test set out in the NPPF has been achieved.
- 3.6. The report states that:
- 3.7. "During the period 2018 to 2021, 437 homes (net) have been delivered in Castle Point. This is just 48% of the total homes that should have been delivered in the Borough during that period. In accordance with the Housing Delivery Test set out in the NPPF, the Council should be taking measures to improve housing delivery against this outcome. A Housing Delivery Action Plan has been prepared to establish what these actions are."
- 3.8. It further states that states:
- 3.9. "For Castle Point, the progression of a Local Plan to adoption is a critical component of that action plan"
- 3.10. The earliest Local Plan Adoption date in the LPA's present Local Development Scheme is March 2026, some three years hence. This is far beyond the horizon in relation to the current appeal.
- 3.11. The undersupply of housing is not just a recent occurrence, but part of a long-term trend dating back to 2001 at least. In only one year since then, has the LPA exceeded the minimum target, and that by just 18 dwellings in 2004/05.

3.12. Figure 6 in the AMR to March 2018 provides the following summary of historic performance:

Figure 6: Additional dwellings in previous years (net)

Year	Source of Target	Net Additional Dwellings[1]	Annualised Target	Performance Against Target	Cumulative Performance
2001/02	RSS	68	200	-132	-132
2002/03	RSS	70	200	-130	-262
2003/04	RSS	54	200	-146	-408
2004/05	RSS	218	200	18	-390
2005/06	RSS	163	200	-37	-427
2006/07	RSS	80	200	-120	-547
2007/08	RSS	105	200	-95	-642
2008/09	RSS	91	200	-109	-751
2009/10	RSS	115	200	-85	-836
2010/11	RSS	100	200	-100	-936
2011/12	RSS	50	200	-150	-1,086
2012/13	CLG 2012	75	285	-210	-1,296
2013/14	CLG 2012	45	285	-240	-1,536
2014/15	CLG 2012	202	285	-83	-1,619
2015/16	CLG 2012	123	285	-162	-1781
2016/17	CLG 2012-based Household Projections & SHMA 2016	114	390	-276	-2057
2017/18	SHMA 2016	150	410	-260	-2317
Total		1,823	4,140	-2,317	

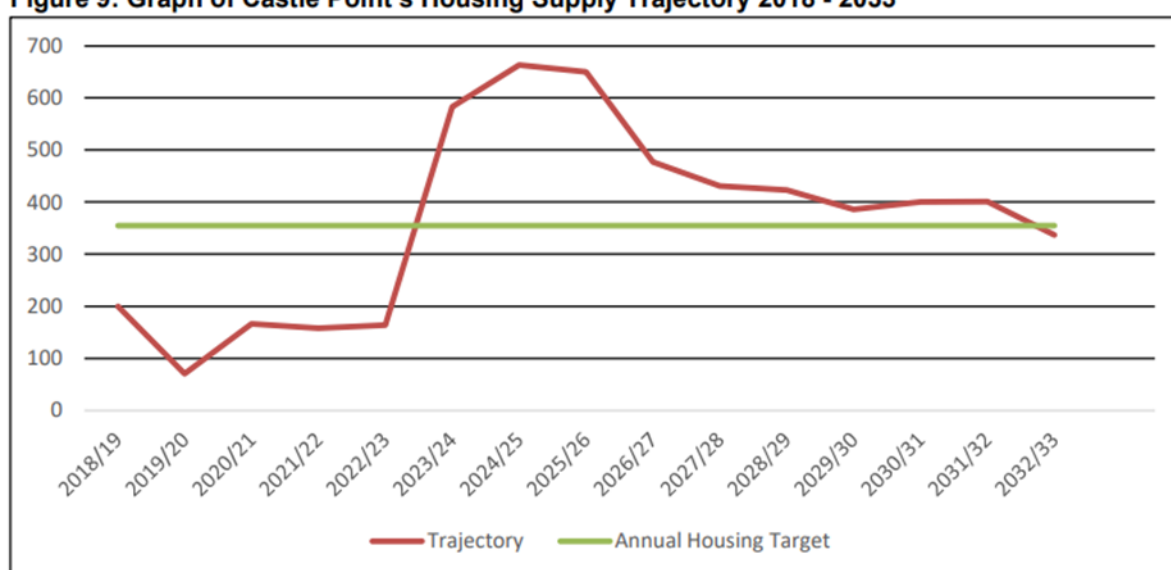
3.13. Overall, in the *seventeen years* to March 2018, the LPA delivered on average only 44% of the minimum target. In the last most recent reports, delivery has been 58% (to March 2022), 48% (COVID combined 2018 to March 2021) and 37% (to March 2018).

3.14. Compare this with paragraph 55 of the Kennel Lane Appeal Decision (**CD H7**). The Inspector noted that:

3.15. “...in terms of overall housing delivery, the Borough is the *7th poorest performing* out of the 328 local authorities nationally. In this regard the Council has failed to deliver its annual housing requirement since the 2016-2017 monitoring period. In the 3 years to January 2021 the Council has delivered only 44%, 45% and 41% of its requirement respectively”

- 3.16. Castle Point's housing delivery performance is almost equally poor. Castle Point is the 12th poorest performing out of 328. In this regard, Southend-on-Sea which adjoins Castle Point on its east side is the *worst performing of all local authorities* in the whole country. Persons stuck in sub-standard living conditions in Castle Point, cannot easily migrate either east or west to neighbouring authorities as these are even less capable of meeting housing need.
- 3.17. Figure 9 below from the AMR to March 2022 shows the housing delivery performance that would have been necessary to put housing delivery back on track over a twenty-five-year period.

Figure 9: Graph of Castle Point's Housing Supply Trajectory 2018 - 2033



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- 3.18. This future trajectory was predicated on the assumption of an adopted Local Plan. Following withdrawal, the Local Plan that this relies upon does not exist.

Affordable Housing

- 3.19. Generically it is the case that the provision of affordable housing piggy backs on the delivery of large market housing sites. In Castle Point, these are few and far between.
- 3.20. In the South Essex Strategic Housing Market Assessment, May 2016 (**CD F12**), there are many detailed expressions of affordable housing need. The following table describes net affordable housing need as a proportion of households:

Figure 6.14: Affordable Housing Need as Proportion of Households (2011)

	Total households 2011	Net annual affordable housing need	% of households in need
Basildon	72,746	254	0.3%
Castle Point	36,440	298	0.8%
Rochford	33,564	268	0.8%
Southend-on-Sea	74,678	650	0.9%
Thurrock	62,353	406	0.7%
TGSE	279,781	1,877	0.7%

- 3.21. Note that the annual Castle Point affordable housing need is greater than Basildon.
- 3.22. Note the Inspector's comment at paragraph 61 of the Kennel Lane appeal:
- 3.23. "This existing position is a clear symptom arising from the continuing overall housing land supply and delivery deficiencies of the Borough. There is a persistent trend of a significant number of people being unable to access their own affordable home in the Borough unless suitable, technically unconstrained, well located housing sites which are capable of meeting those needs, are brought forward now in advance of the new plan"
- 3.24. In the addendum to the SHMA, May 2017 (**CD F1**), it states that:
- 3.25. The SHMA identified a need for 1,877 affordable homes across South Essex over five years to clear the backlog while meeting the needs of newly forming and existing households falling into need. After the backlog is cleared, 1,767 affordable homes will be needed annually across the housing market area to meet newly arising needs.
- 3.26. The SHMA addendum recognises that meeting this need relies almost exclusively upon delivery through adopted Affordable Housing policies in an up to date Local Plan. The LPA has no ability to deliver Affordable Housing at any level, without any semblance of a Local Plan.
- 3.27. Table 4.1 below from the SHMA addendum provides the following requirements per District:

Table 4.1: Housing Provision Required to Meet Affordable Housing Need in Full

	Annual affordable housing need	Affordable housing requirement	Overall housing provision required
Basildon	288	25%	1,152
Castle Point	291	15 – 25%	1,164 – 1,940
Rochford	238	35%	680
Southend-on-Sea	649	20 – 30%	2,163 – 3,245
Thurrock	663	35%	1,894
South Essex	2,129		7,054 – 8,911

- 3.28. As evidenced in their AMR's (para.3.12 above), the LPA has not even achieved the delivery of 291 market dwellings in any one of the last twenty-one years let alone affordable housing. As such, it is essential that affordable housing is brought forward urgently in advance of any new Local Plan

4.0 THE GREEN BELT

- 4.1. Land East of the Manor Trading Estate has been within the purview of the LPA's planning policy department for many many years. Its potential as a strategic release of land to meet reasonable planned development needs first occurred in the early 1990's when it appeared in an early version of the draft Local Plan (subsequently adopted in 1998 without being included).
- 4.2. Hence, the Appeal Site has been repetitively assessed over many years for its contribution to the Green Belt and the five main purposes¹.
- 4.3. Each of the last four draft versions of the Local Plan have, in the supporting text to the draft allocation said:
- 4.4. "The Green Belt Review Paper (or successive versions) indicated that this site could be removed from the Green Belt without undermining the purpose of the Green Belt in this location." (parentheses added)
- 4.5. In Green Belt terms, the appeal site is a hidden space. The site is open, in terms of a commonly used definition, that being the absence of buildings. Any public perception of the openness of the appeal site is severely limited in that there is no visibility of it from public vantage points. It also has clear physical outer boundaries consistent with Government policy on Green Belt boundaries.
- 4.6. The concept of openness has both a spatial and a visual dimension. In this case, the perceived change to openness in both a spatial and visual sense will be largely restricted to the appeal site itself and the few neighbouring properties that back onto it. Outside the site, there are four obvious viewing locations:
- 4.7. Firstly, standing on Church Road, at the current entrance to Hesten Lodge looking northwards along the alignment of the curving ('swan-neck') proposed access road towards the area of development. Figure 1 shows the current view, and although some of the vegetation will be removed (as detailed in the submitted arboricultural report), a large proportion will be retained along with mature trees and supplementary planting; this coupled with an alignment that leads into the site without allowing direct views. Rather, the existence of the appeal site would be gradually revealed whilst travelling northward on the swan-neck.

¹ NPPF para.138

Figure 1: view of appeal site looking northwards from Hesten Lodge access point



- 4.8. Secondly, standing on Brunel Road, within the Manor Trading Estate (MTE) looking eastwards between the various industrial buildings, yards and industrial appurtenances towards the appeal site. There are no direct opportunities to see the appeal site.
- 4.9. Figure 2, below shows perhaps the best view, certainly a useful reference point i.e. eastwards from the entrance to Benfleet Scrap. Note above the scrap pile, the rising ground in the distance covered in trees, ascending to St Peters Church on the top of the hill. The rising ground is beyond the appeal site which nestles in-between.
- 4.10. Thirdly, standing in Keswick Road, looking westwards, and trying to obtain views through the private gardens/land which borders the east side of the appeal site. Figure 3 was taken almost on the same point of latitude as Figure 2, showing the reverse view. This view is representative across all the private land along the east side of Keswick Road.
- 4.11. At the north end of Keswick Road, is a junction with Windermere Road which branches east and northwest. The northwest branch of Windermere Road runs along the northeast side of land which is the subject of TPOs 10/2018, 12/2018 & 13/2018 (**CDs 17.1, 7.2 & 7.3**).
- 4.12. The TPO woodland is broadly rectangular in shape with external dimensions of about 260m x 60m. Even in winter the woodland is, to all intents and purposes, visually impenetrable. Figure 4 illustrates this.

Figure 2: view towards appeal site looking due east from Benfleet Scrap access point

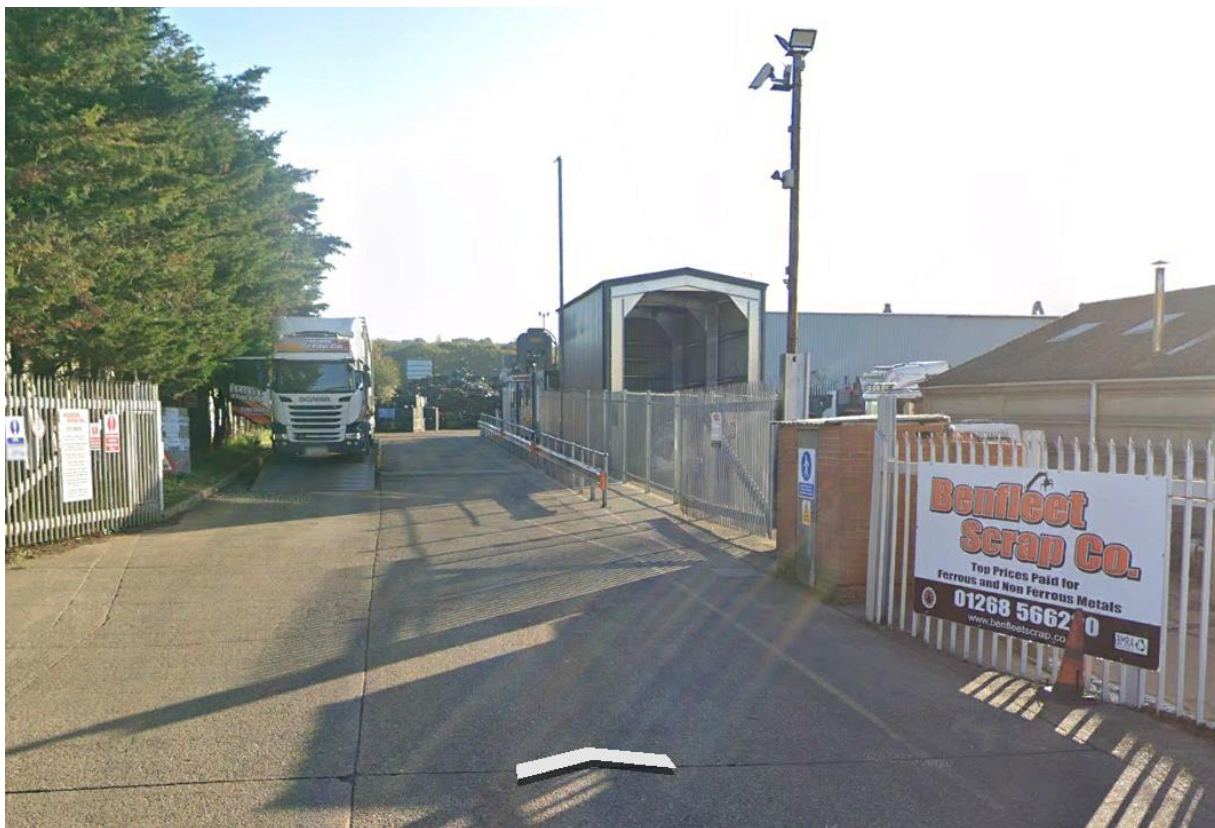


Figure 3: typical view towards appeal site looking due west from Keswick Road



4.13. There are no public footpaths from which the appeal site can be viewed.

- 4.14. There are limited private views of the site. These amount to being from:
- 1) the small number of residential properties on the west side of Keswick Road
 - 2) the grounds of Hesten Lodge – noting that this property has taken land from the appellants (see blue line on Location Plan)
 - 3) the grounds of Benfleet Scrap, albeit only by machine drivers in elevated positions
 - 4) the grounds of the appellants' property in Brunel Road on the northwest side of the appeal site.

- 4.15. Figure 4: view southwest from Windermere Road (alongside TPO) towards appeal site



- 4.16. The appeal site is in the Metropolitan Green Belt. In the present day, the larger part of the appeal site is as shown in Figure 5.
- 4.17. The alignment of the Green Belt boundary, at the eastern edge of the MTE is odd. For reasons lost in history, there is a triangle of land excluded from the MTE, or rather included in the Green Belt, such that the MTE outer boundary is angled northeast to southwest.
- 4.18. Satellite imagery shows that the triangle land has been used in part for ad hoc open storage for more than ten years although there is no formal recognition of this.

- 4.19. In the Castle Point Borough Green Belt Review 2018 – Part 1 (**CD F7**) the appeal site is included in 'Green Belt Parcel 1'². The 'Parcel Summary'³ makes no reference to the MTE. It states that, save for residential back gardens elsewhere on the parcel edge:

“There are no other strong permanent features through which to realign this boundary other than using local roads”

- 4.20. Figure 5: relationship of appeal site (main part) to Green Belt boundary



- 4.21. The National Planning Policy Framework 2021 (the 'Framework') states that

² Core Document F7, Appendix 1, page 63

³ Page 67

Development Plans, when defining boundaries should:

“f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.”

4.22. In the Green Belt Review, Parcel 1 was closely associated with Parcel 3A and in turn, Parcel 3B. Of Parcel 3A it states that:

“This parcel forms an important strategic gap between South Benfleet to the west and Thundersley to the east”

4.23. Moreover:

“At the strategic level, this serves to provide a link from the north west of the Borough to the Green Belt parcels within the central and southern areas of the Borough” (i.e. Parcel 3B)

4.24. This is shown in Figure 8 on page 54 of the Green Belt Review i.e.



4.25. Surprisingly absent from the Green Belt Review is any mention of the short steep wooded hill, that physically defines the north-south strategic gap, depicted by the blue arrow above between South Benfleet and Thundersley.

- 4.26. In the 2008 appeal decision the Inspector observed the land beyond Keswick Road to the east 'rises quite steeply' (paragraph 9). This is the only place that the significant hill is acknowledged in any background papers.
- 4.27. Towards the southern end of the strategic gap, the hill is popularly known as Bread and Cheese Hill (one of only a handful of hills so identified in the whole of Essex), where it ascends along the west-east line of the A13 (Kiln Road). But the hill extends northwards from the A13 (creating a long ridge in the alignment of the blue arrow)), sloping in the same fashion from the lowlands of South Benfleet to the west, upwards to the highlands of Thundersley in the east.
- 4.28. In Church Road, proximate to the appeal site, the hill is no less pronounced than at the A13. Like the A13, Church Road runs eastwards up into Thundersley, and drivers have to negotiate the fierce (in Essex terms) hill and two almost aggressive bends.
- 4.29. This cannot be easily captured in a photograph and I recommend that the Inspector is shown this in a driving or walking tour of the locality.
- 4.30. Why is this relevant? Because in Framework terms *reliable* Green Belt boundaries should be defined by strong *physical features that are readily recognisable and likely to be permanent*⁴
- 4.31. To the immediate northeast of the appeal site is a 1.5ha TPO Woodland, permanently preserved in the public interest. Moreover, the break of slope to the strategic hill/ridge commences just east of the appeal site, on the Church Road frontage, at its junction with Keswick Road. The strategic ridge is of geological provenance and will remain as an effective permanent physical feature.
- 4.32. Development of the appeal site in the manner proposed would be contained in the hidden space, but its outer boundaries, i.e. northeast and east, would be strategically preserved by permanent physical features that are visually prevailing in the local landscape.
- 4.33. None of the photographs of key public vantage points depicted in Figures 1-4 above would be materially altered by the development. Figure 2, in particular, depicts the rising hill, to the east and yet does not reveal the appeal site, which although presently an open space, remains hidden.

⁴ National Planning Policy Framework para.143, bullet (f)

- 4.34. It is notable that none of the draft proposed allocations in the withdrawn plan was able to demonstrate the same degree of visual containment as the appeal site. The appeal site is the best performing in that respect. This is part of why it has been included in every draft version of the Local Plan in the last 24 years.
- 4.35. Overall, only very localised spatial and visual effects would arise. Moreover, the long curving swan neck access road, leading initially to an area of public open space, would ensure that a degree of openness within the site and as perceived from Church Road would be retained.
- 4.36. Taking all these long-studied characteristics together, the appeal proposal would amount to a moderate level of harm to openness of this particular Green Belt.

5.0 ECONOMIC DEVELOPMENT AND EMPLOYMENT STRATEGY

- 5.1. There are two key evidence base documents which inform any employment strategy. These are both included as Core Documents i.e.

- 1) Employment & Retail Needs Assessment, August 2012 – Nathaniel Lichfield & Partners [**CD F11**] or ERNA 2012
- 2) South Essex Economic Development Needs Assessment, November 2017 – GVA [**CD F6**] or SEEDNA 2017

- 5.2. There is a third document set which acts as a prelude to the formal evidence base documents that followed. On 5 February 2008, Appeal APP/M1520/A/07/2034627 was dismissed (the ‘2008 appeal’). This appeal related to part of the current appeal site, namely the Green Belt triangle land and that part of the MTE immediately adjacent but within the existing industrial boundaries. It largely echoes the proposals on the same land within the current appeal site. The 2008 appeal and associated plans/documents comprise **Core Document H2**.

Matters Arising from the 2008 Appeal

- 5.3. Note that in the 2008 appeal, at that time the most recent Employment Study was dated November 2006 (**CD F13**). Even then, 16 years ago, the Study determined that MTE contained many low capital and low skilled uses but that occupancy levels were high.
- 5.4. The Study acknowledged that the building stock on MTE was in need of refurbishment, repair and regeneration. Draft Core Strategy policy DC12 required a demonstration of transition towards regeneration rather than a continuation of existing low-quality characteristics.
- 5.5. The study recognised that many of the manufacturing company owners will be local people who choose to remain where they are for personal reasons. Small businesses are recognised as a key part in the Castle Point economy and ‘without jobs growth in this sector, Castle Point will not meet its target’. Building the success of existing companies is seen as the way forward acknowledging that the main source of new investment comes from businesses that are already in a local economy.
- 5.6. The proposed strategy included investment in skills, enhancement and utilisation of the environment and needs to ensure ‘...a supply of sites and premises to meet the changing needs of businesses.’ In this the LPA continues to fail.

- 5.7. In the three months following dismissal of the 2008 Appeal, one of the key businesses occupying Unit 30, desperate for large, improved premises, occupying about one third of the dilapidated premises at Brunel Road, went into receivership and never recovered. The personal statement of Glenn Smith at Appendix **RF10** details this.
- 5.8. In Paragraph 25 of the 2008 Appeal Decision, the Inspector noted that:
- “...a Regeneration Officer has been in post for over a year. Despite that I was told that the Borough continues to be unresponsive to the business development needs of those contributing importantly to its economy. If well founded then *this is a serious matter* that goes beyond just the Council’s town planning function.”** (emphasis added)
- 5.9. In Section 6.0 I describe a series of cooperative meetings with the LPA, which were led by the ‘Local Plan and Regeneration Officer’ in the period 2018 to 2021. These were instrumental in the form and content of the current appeal proposal.
- 5.10. The study identifies protection of existing employment areas as a key mechanism by which existing businesses can continue to operate and, a programme of rationalisation, and improvement of industrial areas to deliver better job densities and improved working environments is a ‘preferred approach’ to these locations.
- 5.11. Key Issue 5 states that ‘...investment has notbeen forthcoming in resolving these issues. A programme of investment is needed to improve the quality of these areas before they can expect to achieve economic growth.’ The 2008 appeal proposal was not considered to contain sufficient in the way of Very Special Circumstances notwithstanding that there was a very obvious intended programme of investment. The absence of VSCs is remedied in the current appeal.
- 5.12. Between 1998 when the Local Plan was adopted, and the 2008 appeal, the LPA had delivered no new employment buildings or infrastructure of any significance based on the 1998 allocations made at that time.
- 5.13. In the meantime, existing businesses suffered for lack of adequate premises. Each of the subject companies involved in the 2008 appeal had grown up locally and employed labour that is based principally in the Benfleet area. The business proprietors all stated that the performance of their businesses and the ability to remain viable or achieve growth potential was adversely affected by the accommodation crisis. The conditions were appalling. That was 2008.

- 5.14. In the subject application to the 2008 appeal, the officer's report, gave short shrift to the plight of existing businesses where it was said land on Canvey Island would:

‘....be available for use in the near future’

This repeated what was said in 1998 ten years earlier. The Roscommon Way and Northwick Road sites on Canvey Island remain, some 24 years on, the LPA's only ingredient to the semblance of an employment strategy.

- 5.15. I have spent some time recapping historic matters relating to studies on economic development and the delivery of an employment strategy because, apart from the passing of time, not much has changed. It has been 24 years since the adoption of the Local Plan and a whole generation has almost passed.

Matters Arising from Local Plan Evidence Base Documents

- 5.16. The ERNA 2012 and SEENA 2017, both Core Documents, build on the Employment Study of November 2006. There are common themes which, 14 years on from the 2008 Appeal are even more pointed.
- 5.17. For brevity, I take only obvious quotes from the two documents, mostly from the Executive Summary or Conclusions, sufficient to make the point. The points are enlarged upon within the main body of the report which is a Core Document to the Public Inquiry. Any italics and/or underlining are added by me for emphasis.

Extracts from Employment Review and Needs Assessment, 2012 (ERNA, 2012)

- 5.18. For brevity I propose that the Executive Summary to the ERNA, 2012 is referred to in full. I comment under the headings as follows:

(Commercial Property Market, heading in Executive Summary)

- 5.19. However, even on Canvey Island, much of the stock is not seen as being of high quality and about 10% of businesses were unable to find suitable units and were considering locating outside the Borough."

(Development Trends, heading in Executive Summary)

- 5.20. "...Castle Point has *a fairly ageing stock of employment space* and a lack of modern business premises relative to other parts of the region. ..."

(Assessment of Existing Employment Sites, heading in Executive Summary)

- 5.21. There is a clear distinction in *all* historic employment related studies between quantitative analysis – the amount and type of employment premises, and qualitative analysis – the quality of the employment premises including its micro location. The ERNA 2012, makes the following statement:
- 5.22. “Despite this surplus, there may be a *qualitative need* for some more sites that are *readily available and better located to strategic roads and population centres in the north of the Borough. Such sites might also have better prospects of attracting developers. They could also enable the decanting of firms in established industrial areas and modernisation of the stock in the older areas. The amount of such land required would be modest but would need to be of sufficient scale to make development and infrastructure provision viable.* One or two sites of up to 5 ha in combined area may be adequate. *This may require some release of Green Belt land.*”
- 5.23. This statement post-dated the 2008 Appeal, but accurately describes part of what the appeal proposal is seeking to provide. The LPA who do not acknowledge it anywhere.
- 5.24. Similarly, it was theoretically within the purview of the recent Local Plan Inspector. At the Local Plan examination, the matters were focussed principally upon quantum and these qualitative issues were not aired.
- 5.25. Despite successive comprehensive employment reviews in 2006 and 2012 both finding that there was a vital need for qualitative improvements at Manor Trading Estate, which in turn would contribute to regeneration, as part of an overall strategy, the Local Plan Inspector said in his Post Hearing letter of 6 September 2021 [**Core Document G1**]:
- “46. Policy EC1 proposes that there should be an additional 24 hectares of employment land over the plan period. Three sites are proposed to be allocated, in Local Policy EC2. Of these, the proposed extension to Charfleets Industrial Estate is under construction and there has been a technical start to construction of the site south of Northwick Road. Numerically therefore, the employment land need as identified in the SEEDNA could be said to be met in full, and indeed exceeded, from these sites. These sites are situated at Canvey Island.

47. It is also proposed that 3.7 hectares of land are allocated to extend the Manor Trading Estate in Thundersley. This land would be removed from the Green Belt.

48. I have had regard to the proposed distribution of new employment land between Canvey Island and the 'Mainland' part of the Borough, and that *the Council considers that there is not a reasonable alternative to the extension of the Manor Trading Estate to provide additional employment land on the Mainland*. I have also taken into account that over 50% of the planned housing growth would take place in the 'Mainland' and that the Framework promotes sustainable travel.

49. Whilst I understand vacancy rates of existing employment sites to be low and that existing employment land provision is predominantly located at Canvey Island, due in part to the gas and oil receptor and storage facilities, *I am not convinced by the evidence that there is a need to seek greater balance in the provision of employment land within Castle Point*. There is however an issue with the quality of some of the existing industrial areas, a matter which would be addressed through Strategic Policy EC1."

5.26. Policy EC1 stated amongst other things that the economic strategy would be achieved by:

- 5.27. "a. Working with partners to deliver improvements to the quality of public space within employment areas in Castle Point, including the quality of open spaces, landscaping, roads, drains and communication infrastructure, and improvement of access for those travelling by active and sustainable modes;
- b. Encouraging the improvement and redevelopment of private land within existing employment areas in order to enable business growth and improve the attractiveness of these areas;"

5.28. At the examination, there was no significant evidence given on qualitative improvements or regeneration of the MTE. Neither did LPA officers present or say anything material in this regard. It was a matter on which the evidence base reports should have prevailed.

- 5.29. The regeneration aspects of draft policy EC1 had no delivery mechanism. At no time in the history of Castle Point has aspirational regeneration of industrial areas occurred without it being development led. Regeneration does not occur out of nowhere and this goes to the heart of deliverability.
- 5.30. In any case, the draft Local Plan was withdrawn, including Strategic Policy EC1. As such, there remains no mechanism to provide the desperately needed qualitative improvements to the Manor Trading Estate or to create the circumstances for regeneration of any kind to occur. The evidence of expert Justin Bass demonstrates the deepening deterioration of the MTE estate roads.
- 5.31. The ERNA, 2012 reinforces this theme in a number of places:

(Managing Economic Growth, heading in Executive Summary)

- 5.32. It advises that various approaches could help out-commuting from worsening leading to greater self-containment of jobs. These would include
- 5.33. “...providing some more immediately available industrial sites in the north of the borough, near strategic roads and adopting measures to encourage their development and occupation....”
- 5.34. In relation to offices, the ERNA observes that there are a very limited number of sites with potential for new office development within the Borough. It is suggested that a better approach to allocating office sites may be to seek elements of modern office space within mixed use developments. The appeal proposal is of this kind.

South Essex Economic Development Needs Assessment, 2017 (SEEDNA, 2017)

South Essex Area Overview

- 5.35. The SEEDNA endorses that, “For Castle Point Borough Council the existing Employment and Retail Needs Assessment 2012 provides the economic and employment evidence base for their new Local Plan (submitted for examination in August 2016). This EDNA *complements the existing assessment and provides the strategic level assessment within which its more detailed assessment of employment sites sits.*”

- 5.36. The level of strategic analysis data is therefore more distant from the specific issues in the appeal. It recognises that there is a particular challenge in evidencing the need for an appropriate range of employment land sites in *quantitative and qualitative terms*. Facilitating and supporting appropriate and *effective mixed-use development*, incorporating residential and employment uses is another challenge to address, in order to meet both housing and employment objectives in the face of significant population increase.
- 5.37. Six key threats to the South Essex economy are identified. The following two are most relevant to the current appeal (page 61):
- 1) *Underinvestment in local infrastructure that poorly accommodates investment in development locations* and on key/new routes.
 - 2) Limited affordability, range and quality of housing which acts to constrain investment and the attraction of a diverse labour pool
- 5.38. The SEEDNA explains that with high occupancy of low value poor quality units such as in the case of MTE, this strongly impedes the mobility of businesses and restricts their growth potential. A business might perhaps occupy three small old-fashioned units inefficiently whereas the optimum would be to occupy one larger modern unit much more effectively. These circumstances are commonly prevailing at MTE such as evidenced in the 2008 appeal.
- 5.39. A practical demonstration of how local businesses evolve, adjust, respond and survive within the business environment in Castle Point is contained in the personal statement of Glenn Smith at Appendix **RF10**. It is a vivid and compelling story exploring the real world facts about what is happening to business owners at the local level.
- 5.40. The SEEDNA concludes on many strategic matters including:
- 5.41. *“Consideration of the balance between quantitative capacity and qualitative choice is an important factor in adopting flexibility towards managing the potential employment land portfolio. This requires the acknowledgement that whilst there may be an adequate amount of identified potential employment land, the location, type and condition of this land will affect its suitability and attractiveness as a site for employment use development occupation, particularly in relation to different sector activities.”*

- 5.42. The appeal proposal, built on the foundation of the Economic Development evidence base, dovetails directly into the fundamental principles of the Framework.
- 5.43. “82. Planning policies should:
- a) set out a clear economic vision and strategy *which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;*
 - b) set criteria, *or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;*
 - c) seek to address *potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment*; and
 - d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.”
- 5.44. The LPA in the formative stages of the now withdrawn Local Plan, went some way to develop a positive and proactive strategy. The draft Local Plan 2018 (omitted from the Officer’s Report but now, in relation to MTE, recognised as **CD J5-J8** was the closest iteration of draft Local Plan to the appeal proposal. This is no coincidence, as the appellant had pursued a series of cooperative meetings with the Council, sharing information derived from the appellant’s own baseline studies.
- 5.45. The appellant had for the first time in the LPA’s administrative history created a set of circumstances that creatively and practically, produced a working master plan for the MTE that was supported by the Local Plan evidence baseline, supported by a whole suite of technical studies and which delivered public benefit on a number of recognised levels.
- 5.46. In this the appeal proposal created the circumstances for ‘local and inward investment to match the strategy and to meet the anticipated needs over the plan period’. And it directly addressed ‘*potential barriers to investment, such as inadequate infrastructure, services ...or (and) a poor environment*’

- 5.47. It remains an anathema to the process of positive, proactive plan making, that the LPA, overnight and without explanation dropped the housing aspect from draft Local Plan 2018, dropped the second site access from Church Road and reverted to an undeliverable employment only scheme.
- 5.48. The understanding of how to best create the circumstances for a vibrant local economy remains vested in the Local Plan evidence base. Key elements of this, as they relate to the MTE were developed and built into the appeal proposal and tempered by detailed technical studies and public consultation.
- 5.49. The appeal proposal remains, in the absence of a cogent Local Plan, the only vestige of an economic strategy that the LPA has.

6.0 LPA COOPERATION AND CONSULTATION ON MASTER PLAN/LOCAL PLAN

- 6.1. The 2008 appeal was largely aimed at rescuing local businesses, providing modern buildings and commencing a pump priming exercise to allow the decanting of local businesses into the new units, and the subsequent refurbishment/rebuild of the large unit in Brunel Road.
- 6.2. Businesses failed as a result of the dismissed appeal. The symptoms of and reasons for that failure have been recognised in the subsequent ERNA 2012 and SEEDNA 2017. The recommended remedies are in common with the spirit of the 2008 appeal. The current appeal proposal provides the missing links.
- 6.3. Two key processes have informed the journey of the appeal proposal.

1) Opportunity to Purchase the MTE Estate Roads

- 6.4. Investment in the MTE roads has been negligible in over thirty years. At best, ad hoc, localised patching has taken place.
- 6.5. The Road Improvement Scheme described in planning application 20/0159/FUL (**CD H4**) is comprehensive and is the only proposal in the last generation to propose anything to materially improve the MTE environment. It encompasses carriageway repairs, reinstatement of footways, kerbs, gullies, surface water and foul drainage (except where statutory responsibilities exist), lighting, routing of utility infrastructure, guarding of pedestrian footways, reinstatement of correct property boundaries, and parking management.
 - 6.5.1. When the Road Improvement Scheme is initiated, there will be a series of consequential actions including rearrangement of many presently opportunistic yards created in lieu of on-site parking; removal of storage containers and skips on the private roads; parking management on the roads.
- 6.6. The environment so created will be more attractive, more efficient in all aspects of the improved infrastructure, better lit, safer (for pedestrians and cyclists, including at night), less damaging for motor vehicles. Something that will instil pride in occupiers and cause them to take greater care. Something that will attract higher value users and promote an increased likelihood of inward investment.
- 6.7. The evidence of Justin Bass details the ongoing demise of the estate infrastructure in the absence of investment and improvement.

- 6.8. Over a number of years following the 2008 Appeal, the appellant negotiated a purchase of the MTE estate roads. This negotiation is not to be underestimated, it was by no means guaranteed, and took an exceeding amount of wisdom, patience and business acumen to achieve.
- 6.9. Note also, that in their current increasingly dilapidated state, the roads are potentially also a huge liability. Despite the lowest common denominator environmental quality of the estate, lorries, vans, cars, bikes and pedestrians use the road system on a daily basis and in doing so, the poor conditions promote circumstances where accidents could occur and associated claims could be made.
- 6.10. The appellant recognised that in order to improve the environment of the MTE, then control of the private road system was essential. The corollary to this is that, there is actually no prospect of the LPA achieving its well evidenced aspiration to improve and regenerate the MTE without having a stakeholder that owns or controls the private roads.
- 6.11. The appellant's aspiration to improve and regenerate connects with the ERNA, and the notion of enabling the decanting of firms in established industrial areas and modernisation of the stock in the older areas. This would require a modest amount of land required of '*sufficient scale to make development and infrastructure provision viable*'. It was suggested that one or two sites of up to 5 ha in combined area may be adequate which "*may require some release of Green Belt land.*"
- 6.12. This last point goes to deliverability. The present estimate of the cost of upgrading the MTE road infrastructure is over £2.8M. The ERNA recognises that those costs should be generated through associated development and the release of Green Belt land. Such is the nature of the appeal proposal.
- 6.13. The appellant took ownership of the MTE roads on 30 April 2019.

2) Interaction with the Emerging Local Plan

- 6.14. In anticipation of securing ownership of the MTE roads, the appellant team began a series of cooperative and information sharing meetings with the LPA. These ran in parallel with the drafting of the New Local Plan and to some extent informed it.

- 6.15. Appendix **RF1** to my proof contains two representative agendas (and in one case minutes) of meetings with the LPA relating to the appeal proposal and its relationship to the emerging Local Plan. Such meetings continued until 4 December 2020 and there was also a walking tour of the estate with the meeting members on 25 October 2019
- 6.16. **27 June 2018.** This meeting preceded ownership of the MTE estate roads, but we knew at this stage that a deal was possible, hence we went to the meeting specifically in that knowledge. This meeting also took place shortly after the LPA were threatened with being placed into Special Measures for underperformance.
- 6.17. This first meeting effectively set the rolling agenda for all that followed. I set out below the key detailed issues emerging from the meetings:
- 6.18. The appellant was in the ongoing process of obtaining detailed studies, all of which ultimately informed both the meetings with the LPA, and the subject planning application.
- 6.19. There were legitimate concerns about the operation of Benfleet Scrap (BS). The appellant had no issues in principle with the existence of this business, only that it should operate with integrity, having regard to its planning and licensing conditions, and with regard to the environment generally.
- 6.20. With regard to a Master Plan, it was agreed that, subject to BS operating with integrity, its site should be *visually and aurally contained*. The subsequent noise reports, modelling and assessments were all informed by this common aim.
- 6.21. The proposed noise barriers, in the form of physically continuous boundary buildings, by their very nature, had the effect of visually screening the site to the north and east. There are no public views of the appeal site from MTE in any case.
- 6.22. There was debate about the importance of the MTE road system and the standard that this should be regenerated to. These matters were reflected in the planning application for the Road Improvement Scheme, 20/0159/FUL, validated on 15 April 2020 and approved 24 July 2020 (**Core Document H4**).
- 6.23. There was associated debate about how the MTE estate road system might connect through the private land (Marden Signs and Designs Ltd) of 30 Brunel Road (Title EX755725). The appellant made provision for the Marden land to be incorporated into the Master Plan, whilst at the same time allowing for the decanting of the Marden business into a new unit to enable regeneration of the whole of Unit 30 Brunel Road.

- 6.24. This helps to illustrate the kind of creativity, forward planning, entrepreneurial skill and cooperation that is necessary to deliver Local Plan strategies.
- 6.25. The decision to provide two access points into the proposed development was informed primarily by the Transport Assessment. There were other factors, such as should the development be wholly employment. Rather should there be a housing element and if so, how much.
- 6.26. The key ingredient to this debate was that the MTE only has one access point via the junction of Armstrong Road and Church Road. Initial studies showed that a full utilisation of the appeal land for employment purposes, without a secondary access at Church Road, would lead to high levels of queuing in Armstrong Road at peak times.
- 6.27. There was a second consideration of quantum of development for employment as derived from the evidence base.
- 6.28. A third factor was that if a second access to the site was required to alleviate queuing at peak times, then was the access point adjacent to a primary school and a day care centre for adults with learning difficulties conducive to the setting and amenity of those institutions if used by industrial/heavy traffic.
- 6.29. Taking all this together, it was fairly and reasonably concluded that a second access was going to provide a necessary safety valve for road traffic to make sure that the development functioned satisfactorily in handling the quantum of traffic generated within the reasonable capacity of the road system.
- 6.30. The second associated conclusion was that the new Church Road junction should only be used for residential purposes and B1 offices, where visitors would be driving private cars in the main, in addition to other more sustainable transport modes such as buses, walking and cycling.
- 6.31. The principal appellant, Glenn Smith has undertaken many developments which have a social/demographic element to them. In this case, the housing element of the appeal proposal is provided higher than normal at 50% of the total number of units. This idea originated not as a means of increasing the weight to be attached for Very Special Circumstances, but because Mr Smith wished to give back to the people of Benfleet, deprived the ability to live locally through the historic inadequate provision of affordable housing.

- 6.32. Glenn Smith has deliberately focussed on developers who are Registered Social Landlords in their own right, with the intention of delivering on the affordable housing as effortlessly as possible.
- 6.33. Awaiting the outcome of the current appeal is Chelmer Housing Partnership (CHP), with an exemplary delivery and management record associated with an extensive affordable housing portfolio. Appendix **RF2** contains an email from CHP formally expressing their interest in the site. Note that CHP not only intend providing the 50% affordable housing through the S106, but also intend grant funding 'affordable rent or shared ownership' housing with the other 50%. Thereby providing a 100% affordable housing scheme.
- 6.34. Through these meetings, the LPA were aware that there was an affordable housing partner waiting in the wings and that remains true today.
- 6.35. It is no accident that, as a result of these meetings, the draft Local Plan evolved to the draft Local Plan 2018. This was the best-informed draft and timely for the LPA being under threat of special measures along with two other Essex Green Belt Authorities including Basildon.
- 6.36. On 28 November 2018, the LPA convened a Special Meeting of the Full Council to make a formal decision. Every elected member of the Council was invited. The officers report was written by Steve Rogers, the Appointed Local Plan and Regeneration Advisor. The same Steve Rogers who attended our cooperative meetings. His report to members is self-explanatory and quite damning in terms of reasonable options [**Core Document G9**]. The minutes [**Core Document G10**] record that:
- 6.37. "Debate took place during which Members acknowledged the difficult decision before the Council. A number of Members recognised that they would have to set aside their views concerning the use of Green Belt land for building in order that an effective Local Plan could be delivered to retain control of local plan making in the Borough and future planning decisions for the benefit of the community and avoid the serious consequences of intervention.
- At the conclusion of the debate a vote was taken on the recommendations by show of hands which was *lost narrowly by one vote*. The meeting concluded."

- 6.38. It is not clear what, if any special measures were put in place. It does seem that the LPA's prevarication in formulating a Local Plan to adoption appears to reward the elected officials who have openly pursued public office on a 'no development in the Green Belt' manifesto.
- 6.39. The appellant continued detailed work on the Master Plan. This included completing purchase of the MTE estate roads, and the conduct of subsequent extensive public consultation events. The public consultation activities are detailed in the Statement of Community Involvement (SCI – see Appendix **RF12**), which forms one of the subject application documents, accidentally omitted from the appeal bundle.
- 6.40. In summary, 200 invitations (addresses provided) were sent to the businesses on the MTE for the public meeting to discuss Regeneration of the MTE on 23 July 2019 in the context of a Master Plan. 50 businesses were represented at the meeting. 8 written responses were received.
- 6.41. 149 invitations (addresses provided) were sent to local residents for the public meeting to discuss the provision of new housing in the context of a Master Plan involving the MTE on 24 July 2019. 72 people attended the meeting. 26 written responses were received.
- 6.42. 14 Local Councillors were invited to both meetings; none attended.
- 6.43. Senior officers of the LPA and LHA were invited to both meetings, including those we had met with; none attended.
- 6.44. Separately to the above, on 3 October 2019 the appellant team met with the Head and Deputy Head Teachers along with six members of the Robert Drake County Primary School's Governing Body.
- 6.45. The appellant sought to engage Hesten Lodge in the same way, but the owners and tenants prevaricated and over time frustrated all such attempts to engage. We pointed out that Hesten Lodge is in some jeopardy with its unregistered Title on the access road, and its trespass on the appellant's land (see blue line). We offered to solve these matters unilaterally through the subject application, but the owners/tenants/agents thereof remained bullish and apparently unaware of their predicament.

- 6.46. The offer to solve the Hesten Lodge access and occupation rights through the donation of relevant parts of the blue land remains in the current appeal. It constitutes an element of public interest where a public service health provider, might otherwise be shut down if Title boundaries were to be properly observed.
- 6.47. The Master Plan was positively amended as a result of the public consultation as set out in the SCI.
- 6.48. At Appendix **RF3** is a letter dated 22 October 2019 I wrote to Ian Butt, Head of Place and Policy who had replaced Steve Rogers in our cooperative meetings. The letter concerns the unilateral and unannounced alteration of the draft Local Plan. This became the pre-submission Local Plan 2019.
- 6.49. The letter is self-explanatory and laments the abandoning of all the detailed work that had led to the 2018 draft Local Plan. This letter concisely explains everything that has been lost in the newly revised plan and, as a consequence, the undeliverability of the new scheme.
- 6.50. I concluded by reiterating that the previously agreed masterplan remains viable and deliverable in the short term. Furthermore, failing to adopt the previously detailed scheme would come at a great loss to the Borough, consigning Manor Trading Estate in particular to a future of increasing degradation and dereliction. This being a huge and yet eminently avoidable consequence. That remains the position in the present day.
- 6.51. On 25 October 2019 the appellant team met at short notice with Ian Butt and the planning policy officer, Maria Hennessy, which included a walking tour of the MTE. Ian Butt was a little embarrassed and seemed uncomfortable with the fact that he was unable to divulge how the MTE draft allocation had been changed and by whom. It remains a well-kept secret. The best we could adduce was that the MTE allocation was 'politically sensitive'.
- 6.52. Under a Regulation 19 Consultation I set out the appellant's objection to the pre-submission plan in a letter dated 10 February 2020. I append this at **RF4**. This letter also formed the basis of my submission to the public examination that subsequently took place in mid-2021.

- 6.53. The letter at RF4 is self-explanatory and explains afresh the frailty of the Pre-submission Local Plan against the evidence base ERNA and SEEDNA documents. The public examination topics did not dovetail directly with these matters.
- 6.54. The public examination coincided with the submission of the subject planning application, which was registered on 1 June 2021.
- 6.55. Following examination, the LPA did not adopt the draft Local Plan. But the evidence base documents remain as useful studies to inform the land use planning issues.

7.0 BENFLEET SCRAP

- 7.1. From the outset, the existence of Benfleet Scrap Ltd was a known constraint to the draft Local Plan and the appeal proposal. Understanding the regulatory history of BS, what the business was allowed to do and any limitations/conditions on their activity was a necessary first step.
- 7.2. The appellant has a healthy regard for local business operators and the basis for such research was not to create any hindrance to reasonable business activity. Rather to understand the typical ambient conditions and how this might interact with new business and residential occupiers.
- 7.3. The simple point is that if BS were to be operating outside its environmental parameters, then its external symptoms would be more aggressive than is reasonable. Whereas, if the operating conditions were to be adjusted by statutory control, to within normal environmental parameters, then the baseline assessments on impact, would have, as a starting point, a lower working ambience.
- 7.4. Planning permission for “use for waste recycling and recovery and as a waste transfer station, at 16 Brunel Road...” was granted on 8 March 2002, LPA reference CPT/16/02/FUL. The decision notice and ‘Site and Location Plans’ comprise **Core Documents H1.2 & H1.1**
- 7.5. There are five planning conditions:
 - 7.5.1. Condition 1 – five-year time limit
 - 7.5.2. Condition 2 – submit a scheme of car parking for LPA approval – never submitted
 - 7.5.3. Condition 3 – “The use shall not be carried out in a manner which causes nuisance to occupiers of nearby land from disturbances which causes nuisance to occupiers of nearby land by reason of *noise, dust or fumes* – in the interests of *amenity*”
 - 7.5.4. Condition 4 – limit on collection and delivery hours: 7am to 6pm Monday to Friday, 8am to 6pm Saturday; not Sundays or Bank Holidays – to protect occupiers of nearby land from disturbances by noise, fumes and dust
 - 7.5.5. Condition 5 – no incineration

- 7.6. The approved plan (**CD 1.1**) showed an isolation gap between the western extent of the 'existing concrete' and other surfaces (see top of plan). This gap scales at about 3m. No such buffer exists on site and the recycling operation is sited on the boundary with the appeal site.
- 7.7. The scrap metal recycling activity is licensed in the first instance by Castle Point Borough Council, Licence Number SMD0016. (**CD I8**). There are no publicly available documents which indicate any licensing conditions.
- 7.8. The site has a Waste Disposal Licence 398-98 (Licence 'A') for Metal Recycling, issued by the Environment Agency on 26 March 1998 (**CD I2**). This relates to the whole site, as shown on the plan attached to the Licence.
- 7.9. Schedule 3 to Licence A sets out conditions which includes:
- 7.10. "6.9 All controlled waste shall be stored in a safe manner in order to ensure public safety. No waste material shall be stored or stacked to a height greater than 5.0 metres" and
- 7.11. "8.1 No waste shall be received or handled at the site except between the following times: 0730 hours to 1830 hours Monday to Friday; 0730 hours to 1730 hours Saturday.
- No such operations shall be carried out on Sundays or Bank Holidays"
- 7.12. These hours differ slightly from those specified in the planning permission.
- 7.13. Part of the site has a Waste Management Licence EAWML/71298 (Licence 'B') as a Transfer Station issued by the Environment Agency on 21 May 2003 (**CD I3**). This relates only to a small part of the overall site, as shown on the plan attached to the Licence.
- 7.14. The Transfer Station area corresponds to that indicated in Appendix One of the application consultation response from the Mineral and Waste Planning Authority. It scales at about 22m x 22m and it is this area alone that constitutes a 'safeguarded waste site'.
- 7.15. There have been variations of the two principal licences, not material to the appeal.
- 7.16. Figure 6 below, shows my estimate of the extent of the safeguarded waste site (yellow line) and illustrates the activity in action in 2006.

Figure 6: Extent of Safeguarded Waste Site (yellow) in 2006



- 7.17. By 2017, the safeguarded waste site activity had ceased and has never returned. See Figure 7 below. In a letter dated 11 February 2010, the EA has since confirmed that they have been notified by the operators that the Waste Transfer permit is no longer actively used. There is no requirement to surrender the permit.

Figure 7: Absence of Safeguarded Waste activity (yellow) in 2017



- 7.18. Note the scrap piles to the north (right of picture) and east (bottom of picture) overspilling the boundary into the appeal site in breach of Condition 7.2 of Licence A.
- 7.19. Further to the cessation of the Waste Transfer activity, the safeguarded part of the site has been dedicated consistently and solely to the processing of scrap metal.

Activities in Breach of Planning and Licensing Controls

- 7.20. I cover this lightly, though the investigation and representations are extensive.
- 7.21. At Appendix **RF5** is my email to the LPA's enforcement officer Robert Davis, 19 June 2018 copied to the Environmental Health Officer (and others including Essex County Council) raising a number of significant issues relating to planning, licensing and environmental health matters generally associated with BS
- 7.22. In the same vein At Appendix **RF6** is my email to the Environment Agency, 4 May 2018 but focussing on EA responsibilities.
- 7.23. At Appendix **RF7** is a suite of contemporaneous photographs which were attached to the complaint emails. These are visually striking and quite damning of the quality of operations being undertaken and their statutory control.
- 7.24. In relation to BS, the key issues were suitability of boundary enclosure; visible pollution of bare earth on appeal site; height of stacking; overspilling boundary; noise.
- 7.25. On this matter, the LPA enforcement officer was set to attend the first cooperative meeting with the LPA on 27 June 2018. The enforcement officer pulled out of that meeting. No response was ever received from the LPA on any of the matters raised with them.
- 7.26. No response was received from the Environmental Health Officer.
- 7.27. A response was received from the EA, but which said that the operators had been encouraged to act within their licence. The EA would not involve themselves in the ground pollution of the appeal site by BS.
- 7.28. BS applied for a 'Proposed Boundary Wall to South and East Boundaries' LPA reference 18/0834/FUL (**CDs H2**). At Appendix **RF8** is a letter of objection from Smart Planning, 30 October 2018. It provides commentary on the operational issues still outside control limits, but is prefaced on the basis that there is 'no intention to prevent or frustrate the reasonable working of Benfleet Scrap'.

- 7.29. Planning permission was granted for the new wall, but without requiring contamination assessment, despite the appellant having demonstrated considerable contamination emanating from the site. A judicial review of the decision was unsuccessful. The new 5m wall has been built on the eastern boundary. The northern boundary remains unimproved at 2.75m
- 7.30. Since 2018 I have visited the appeal site in the region of 20 times for different reasons. The appellant records CCTV continuously. Almost every time I visit, the storage of scrap at BS exceeds the height of the 5m boundary wall in the range 6-8m. Overtopping of the walls occurs on the northern boundary on an almost continuous basis. Since the erection of the 5m wall on the east boundary, overtopping has rarely occurred.
- 7.31. Figure 8: Benfleet Scrap northern boundary, 6 January 2023, scrap pile 6.1m high



Unauthorised Building

- 7.32. In late 2019, BS constructed a new building. It is outside the site defined in Licence A for metal recycling, and outside the site defined in planning permission CPT/16/02/FUL. The subject building is shown in Figure 2 but extracted here for convenience in Figure 9 below.

7.33. Figure 9: Unauthorised Building at Benfleet Scrap



7.34. Smart Planning reported this to the LPA's Enforcement Department on 30 January 2020, identifying that the building does not have the benefit of planning permission, that it is sited outside the approved site plan for CPT/16/02/FUL, and that it is in breach of the site licence operating conditions.

7.35. The correspondence was acknowledged but no action was taken.

7.36. I conclude that BS is subject to reasonable environmental controls through its original planning permission and site licensing requirements. However, none of the statutory bodies responsible for monitoring and compliance, that is Castle Point Borough Council and the Environment Agency have demonstrated any will, or tenacity to perform their duties in that regard.

7.37. For this reason, BS continues to operate, relatively freely, and is in the habit of creating scrap metal piles that typically exceed 5m on any given day with regular overtopping on the northern boundary in particular.

7.38. This scenario creates a false base line for studying the reasonable activity of BS. Scrap metal piles created higher than the 5m boundary require material to be lifted higher than otherwise necessary and dropped from and to a more exposed position.

- 7.39. Similarly, the friction sound of metal on metal falling down the slope of the scrap pile from an elevated position greater than 5m and then over the north wall, would create an extreme noise impulse which by fact and degree would be over and above what the licensed scrap activities and planning permission (noise condition) would reasonably allow.
- 7.40. These factors are capable of statutory control and are not so tyrannical as to prevent the everyday working of BS in a practical business sense. It is just good management.
- 7.41. The historic absence of such controls has allowed BS to create ambient conditions that are to some extent unreasonable. The difference between well managed within statutory control and badly managed on a laissez-faire basis justifies an adjustment downwards in factoring in the impact the operation of BS has on the wider locality.
- 7.42. The Framework states that:
- 7.43. “The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions *Planning decisions should assume that these regimes will operate effectively.*” (para.188)
- 7.44. I have identified obvious weaknesses in those regimes simply to emphasise the importance of operational norms and how those fairly relate to the ambience of the proposed development.

8.0 IMPACT ON SAFEGUARDED WASTE SITE (RFR2)

- 8.1. Reason for refusal 2 (RFR2) is predicated on the alleged impact on the operation of a safeguarded waste site. It is assumed that this impact relates to noise and the threat of statutory nuisance arising from the amenity of both residential and commercial occupiers.
- 8.2. This is directly related to RFR3 which alleges adverse impact on future occupiers of both residential and commercial occupiers in the first instance.
- 8.3. The supporting text to Policy 2 (Safeguarding Waste Management Sites and Infrastructure) of the Waste Local Plan (WLP) states that:
- 8.4.

“Whilst Waste Consultation Zones apply to all permitted waste facilities in the Plan area, the WPAs are unlikely to object to development in close proximity to a *small scale, non-specialist facility*, defined in this Plan as those with *an annual capacity of 10,000tpa or less*” (para.6.11)
- 8.5. In this case, the safeguarded part of the site measures about 22m x 22m. Its use as a Waste Transfer facility ceased in 2017.
- 8.6. Attached to the relevant EA Licence B (**Core Document I4**) are a set of ‘General Considerations’ which includes at 1.2.2 ‘Permitted quantities of waste’. This states:
- 8.7.

“Whilst complying with the maximum quantities specified for each type of waste, the total quantity of waste accepted at the site per year *shall not exceed 4,999 tonnes*”
- 8.8. This limit is less than half of the 10,000 tpa which defines a ‘small scale facility’. Hence the 22m square is a small, small-scale facility. For completeness the act of raking out skips and sorting their contents on the ground whether manually or with some machine assistance, is categorically ‘non-specialist’.
- 8.9. In these terms, the WPA appears to have overstated its position in relation to their objection to the appeal proposal. Indeed, they have acted in a manner contrary to their own Waste Local Plan.
- 8.10. The safeguarded site is physically tiny. Its waste throughout per-annum, is less than half the threshold at which precautionary objections are typically likely. The waste-transfer activity was non-specialist and in any case ceased over five years ago.

- 8.11. Notwithstanding this, the supporting text describes circumstances where the 'loss of a site' may be acceptable. In the appeal case, there is no 'loss' of any facility, just alleged pressure arising from the potential objection of occupiers of the new development. It states:
- 8.12. "In some cases, the *loss* of a site or facility may be acceptable, for example where it would enable the implementation of a town centre improvement strategy and it can be demonstrated that the wider social and/ or economic benefits resulting from such a scheme outweigh the retention of the waste use."
- 8.13. The appeal proposal categorically provides considerable wider social and economic benefits through the provision of desperately needed housing, desperately needed improvements to the MTE, the creation of economic regeneration possibilities, enhancement of the local employment portfolio and stimulating inward investment.
- 8.14. In these terms, the conflict with Policy 2 is arguable. It states:
- 8.15. "Proposals which are considered to have the potential to adversely impact on the operation of a safeguarded waste site ...*are unlikely to be opposed* where:
- ...redevelopment of the waste site or loss of the waste infrastructure would form part of a strategy or scheme that has wider environmental, social and/or economic benefits that outweigh the retention of the site"
- 8.16. Without even having to consider impact, based on the above facts alone, the WPAs objection to the appeal proposal is contrary to their own modus operandi and appears hollow.

Impact

- 8.17. It is the evidence of expert Josie Nixon (JN) that:
- 8.18. "...the noise impact of the scrapyards upon the existing Noise Sensitive Receptors are predicted to have an improved noise climate once the proposed commercial premises are constructed.
- ...that with the provision of the proposed good acoustic design and building barrier the noise impact from Benfleet Scrap on the proposed receptors is predicted to be a "low impact"The predicted rating level on the proposed residential is lower than the existing impact on the existing residential premises

and the current scheme shows good acoustic mitigation.

...that the requirements for internal noise levels (commercial and residential) and external amenity levels are achievable.

....Considering the results of the noise survey, the illustrative layouts and the calculations, the predicted resultant noise levels are predicted to meet appropriate and reasonable guidance and the relevant noise criteria.”

- 8.19. This can be further tempered by the existing complaint record of Castle Point Borough Council which has recorded only fifteen spot complaints in a five-year period. That is about three per year or one every 122 days. None of these are continuous or ongoing.
- 8.20. The proposed mitigation is such that all surrounding properties will benefit from a materially improved noise environment. Whereas the new properties will be provided with an environment that has been assessed to be satisfactory in that respect.
- 8.21. On this basis, rather than experience adverse impact, the safeguarded site is likely to become acoustically less apparent, rather than more so as a result of the proposed development.
- 8.22. I conclude that based upon impact alone, the consequences of the proposed development would not create any pressure from future occupiers to restrict the activities of the safeguarded site, even if its use were to recommence.

9.0 NOISE GENERALLY (RFR3)

- 9.1. The considerations relating to this reason are in common with RFR2 but where the considered impacts are upon future occupiers of the proposed residential and commercial properties.
- 9.2. As with RFR2, the acoustic assessment is the same and as dealt with by expert Josie Nixon which I do not repeat. The conclusions on noise impact are in paragraph 8.18 above as extracted from the Conclusions of JN's Proof of Evidence.

10.0 PARKING (RFR5)

- 10.1. Transportation issues generally, and specifically in relation to parking are covered separately in the evidence of expert Justin Bass (JB).
- 10.2. There are some simple points.
- 10.3. Firstly, there is no displacement of parking from the informal yards at the rear of 30 Brunel Road. Unit 30 is self-sufficient in terms of vehicle parking for its individual units and will remain so. The informal yards will be replaced by the new development.
- 10.4. The application is made in outline, hence the parking layout is not to be determined. However, based on minimum bay sizes as currently shown, the proposal makes an overprovision of spaces. It is logical that there is scope to provide an alternative layout that has larger spaces, but fewer of them. There is enough slack in the available space to achieve this.
- 10.5. Although it is the evidence of JB, for convenience I attach at Appendix **RF9** an amended Development Masterplan (16.3839/P205/C) and Schedule of Commercial Building floor Area and Parking Provision (16.3839.DP/M007/B) to illustrate an alternate layout with the greater range of vehicle bays preferred by the LPA.
- 10.6. Contrary to RFR5, the proposal clearly demonstrates the provision of appropriate car⁵ parking, powered two wheeled vehicle parking and cycle parking facilities for the proposed commercial units. Provision for commercial vehicles is also provided.
- 10.7. In this regard, the proposal is fully compliant with the adopted Essex parking standards and the provisions of Local Plan policy T8.

⁵ Note that the RFR does not actually mention vans, lorries or commercial vehicles.

11.0 VERY SPECIAL CIRCUMSTANCES (RFR1)

- 11.1. These are spelt out in the Planning Design and Access Statement. The LPA refer to these each in turn in the officer's report.

68 Residential Units in the Context of Long-Term Undersupply

- 11.2. From the LPA's publicly recorded housing supply performance, it is a matter of fact that the situation is dire. It has been dire for twenty years, and will remain dire until 2026 at the earliest, if the only reliance is upon a future adopted Local Plan.
- 11.3. On past performance, history has demonstrated that the LPA's timetable to adopt a Local Plan is likely to slip further still and be frustrated by a failure of the democratic system of decision making.
- 11.4. In the present day, a new Local Plan is so far away, it can be discounted in the appeal decision-making process.
- 11.5. In the Kennel Lane appeal decision, the Inspector concluded:
- 11.6. "In short, the evidence before me conveys at this particular moment in time the continuation of what is already an acute deficiency and extremely bleak outlook for local housing provision for a further protracted period. The capability of the appeal proposal to contribute significantly to addressing the identified extremely serious housing land supply and delivery deficits *weighs considerably in favour of this appeal.*" (para.60)
- 11.7. In defence of this, the Officer's report to the current appeal proposal, relied totally on the New Local Plan. That defence is no longer available and the appeal proposal aligns almost identically to the Kennel Lane situation. In the context of south Essex, it is notable that Kennel is geographically situated only 10 miles away from the current appeal site.
- 11.8. The provision of 68 dwellings, in accordance with the demographic need in an efficient and amenable use of land emphatically weighs considerably in favour of this appeal.

Provision of 50% Onsite Affordable Housing

- 11.9. Where market housing is undersupplied, then affordable housing, or rather those in affordable housing need are the vulnerable unseen victims. Those in affordable housing need are the least capable of speaking out and influencing change.

- 11.10. Outside of schemes such as the appeal proposal, there is no hope for affordable housing provision in the Borough. If every house built in Castle Point in the last ten years had been affordable, there would still be an undersupply of affordable in the present day.
- 11.11. In the Kennel Lane appeal decision, the Inspector concluded:
- 11.12. “In summary, the evidence before me demonstrates an ongoing acute and continuing extremely bleak outlook for local affordable housing provision for a further protracted period. *The capability of the appeal proposal to contribute significantly to addressing the existing and predicted very serious affordable housing shortfall within the next 5 years attracts considerable weight in favour of this appeal.*” (para.64)
- 11.13. The officer’s report on the affordable housing matter is quite troubling as it is dismissive:
- 11.14. “This offer, whilst generous, is viewed with caution...
- ...excessive provision such as that proposed could be construed as an attempt to sway opinion in respect of the acceptability of the proposal and is therefore viewed with caution...
- ...Cumulatively these factors give cause for concern in respect of the deliverability of affordable housing at this level on the site and this limits the weight that may be attributed to this consideration.”
- 11.15. On the strength of the above, it is not surprising the LPA rarely secure affordable housing of any kind. This is a rare opportunity for the LPA, but it has only been viewed with undeserved cynicism.
- 11.16. The appellant’s offer was professionally formulated, backed by a S106 Agreement which the LPA knew was in its final stages of preparation at the point of decision, and had/has the backing of a Registered Social Landlord.
- 11.17. The other part of the LPA’s defence on this point is a reliance on the New Local Plan. That defence is no longer available.
- 11.18. The provision of 50% affordable housing that is over and above the LPA’s adopted policy requirement attracts considerable weight in favour of this appeal.

Provision of Employment Space, Environmental Improvements & Regeneration

- 11.19. The LPA take only a quantitative approach to this matter. In places the Officer's report displays huge scepticism. Yet, the evidence base explains a much more complex situation and seeks to provide the circumstance in which there can be qualitative improvements, a process of decanting, inward investment and the opportunity for home grown businesses to stay in the Borough. It is the art of the possible.
- 11.20. The appellant, a forward thinking and caring entrepreneur was ahead of the more recent evidence base when in the 2008 appeal, he put together a proposed process of development, decanting and business development for existing businesses crying out for better quality spaces, room to grow and a working environment that they could be proud of.
- 11.21. None of them wanted to move out of the Borough; none wanted to move to Canvey Island, and would as a last resort probably have moved out of the area to Basildon which is more accessible, and more reputable than Canvey Island.
- 11.22. The personal statement of Glenn Smith at RF10 brings to life the trials and tribulations of local business in Castle Point seeking to thrive amongst a cluster of other local businesses. It describes the regenerative circumstances of the 2008 appeal but puts this in the context of a lifelong career in business development, business mentoring and practical enabling/delivery of business legacy through himself and others. He is a rare man, and an asset to the Castle Point Borough business community.
- 11.23. What the 2008 proposal lacked was VSCs and significantly did not include the environmental improvements now possible through investment in the MTE estate roads. These circumstances, accompanied by a further 15 years of housing undersupply, are now present in the current appeal.
- 11.24. The regenerative model described in the 2008 appeal is a microcosm of how regeneration might occur through the appeal proposal on a larger scale. All of the MTE will now be improved rather than just the environs of 30 Brunel Road.

- 11.25. Submitted with the subject application was a regeneration document entitled 'Realising Potential – The Manor Trading Estate, Benfleet'. It was submitted to the LPA on 26 July 2021 along with some revisions arising from consultation responses. I regret that the regeneration document was inadvertently missed from the original bundle of appeal submissions. However, it is in the public domain and for convenience I attach it here as Appendix **RF11**.
- 11.26. Outside those parts of the appeal site within the appellant's control, the regeneration model is by necessity aspirational. Forget not that every road will be regenerated. This will affect the setting and function of every unit in a positive way. It will result in the reorganisation of the external spaces, and the manner in which these are used and enclosed. Parking opportunity will be improved and made more amenable. The roads will be safer to traverse by all modes including walking and cycling. They will be safer and more amenable to walk in the dark. Containers, skips and scrap cars will be removed. Pride of place will be instilled in some and inward investment will increase.
- 11.27. Weigh this against the expert observations of Justin Bass that deterioration of the roads is readily recognisable even in the last 3.5 years, never mind 30 years.
- 11.28. These are not just the ideas of the appellant, they are the formal observations and suggestions of the employment evidence base which recognises how regeneration is to be stimulated and encouraged.
- 11.29. The essence is to create the circumstances in which regeneration can be encouraged to take place. Invoke change to stimulate more change. There is never a situation of absolute control. The LPA has no tools of their own to deliver improved business environments or to create the circumstance to stimulate regeneration. Their track record, against publicly stated environmental aspirations has delivered nothing.
- 11.30. The recent Local Plan Inspector simply repeated the aspiration, without providing anything in the New Local Plan that would deliver the aspiration. Even that empty aspiration has been withdrawn.
- 11.31. The officer's report suggest that high levels of occupancy suggest that the MTE is in good shape. This is naïve. The evidence base recognises that high occupancy of low value units is rather representative of a lowest common denominator where predominantly local businesses have no options, comprising nowhere else to go and nowhere locally to grow.

- 11.32. The LPA ascribe 'no weight' to the regenerative possibilities of the appeal proposal. This conclusion is so far off the facts that it discredits the LPA
- 11.33. The provision of employment space, significant environmental improvements and significant stimuli towards effective regeneration, against a background of long term physical deterioration of infrastructure and lack of growth/quality opportunity for local businesses; and where there is no Local Plan and no other mechanism to effect change, attracts considerable weight in favour of this appeal.

Provision of Community Infrastructure including Public Open Space, New Pedestrian Crossing and School Parking.

- 11.34. The debate on school parking and the crossing of Church Road, occupied a disproportionately large part of the question and answer session at the public meeting for residents on 24 July 2019. It was also a key topic at the subsequent meeting with the school Head Teachers and Governors on 3 October 2019. The matter also features high on the concerns of local residents expressed in the consultation responses. It clearly matters to the local community.
- 11.35. The appeal proposal replaces a short stay layby, where drivers may have to exit cars on the unprotected roadside, with a dedicated car park nearby. There is a net increase in car parking provision from 7 (max depending on how users park) to 12. The dedicated car park is equally convenient, safer and more amenable to use.
- 11.36. Parking stress and excessive turning manoeuvres in the vicinity of the school are manifest at each end of the school day. The appeal proposal goes some way to alleviating that stress and providing material improvement to the parking/turning situation for the benefit of parents, and local road users generally.
- 11.37. In accordance with the expressed preference of the school, the proposal retains the wide highway verge in front of the school where parents are inclined to congregate.
- 11.38. Expert Justin Bass explains his tenacious efforts to discuss the relative merits of different crossing points. In this, the LHA were elusive and from the officer's report, the LPA seem to rely upon a back office chat/communication with the LHA for which there is no public record. There is an obvious cooperative question as to why the LPA did not seek to bottom this out with the appellant's expert.
- 11.39. Note that Robert Drake County Primary School is the only school in the Castle Point Borough that does not have a dedicated pedestrian crossing.

- 11.40. From first principles, and based on wide experience, JB maintains the technical ability to provide a safe and practical crossing in the vicinity of the school. The community want it and the appellant is willing to provide it. Such provision is in scale and kind with the proposed development and related to it through providing housing which will generate a need for school places.
- 11.41. The LPA gave the school parking and crossing improvements no weight in their judgement. In any judgement, this cannot be correct.
- 11.42. There is a net improvement in quantity and quality of school parking spaces.
- 11.43. The school crossing is technically feasible and represents significant community gain.
- 11.44. These facilities should be given moderate weight in consideration of this appeal.
- 11.45. The appellant agrees with the LPA that the provision of informal public open space should be afforded positive weight in consideration of this appeal. However, I would say that such provision, in Castle Point, which sees little strategic infrastructure provision, should be 'moderate' rather than 'minor' positive weight.

Biodiversity Net Gain (BNG)

- 11.46. The existing appeal site is presently of limited ecological value. There is no mandatory requirement to provide biodiversity net gain, but the Environment Act 2021 introduces that requirement from an as-yet unconfirmed date expected in 2023.
- 11.47. The appeal proposal embraces the importance of biodiversity net gain as an environmental principle. It therefore commits to a scheme of Biodiversity Mitigation and Enhancement in advance of any forthcoming mandatory provision. This is secured through the S106 Obligation.
- 11.48. The LPA misdirect themselves on this point in the officer's report. It wrongly suggests that biodiversity net gain is a necessary provision of the NPPF, and that the provision of biodiversity net gain merely satisfies a national policy requirement. This is the wrong approach.⁶ Planning permission should be refused if 'significant harm to biodiversity ...cannot be avoided'. That is not advice on or a positive requirement for biodiversity net gain. It is rather decision making based on the presence or absence of harm.

⁶ National Planning Policy Framework, paragraph 180 – habitats and biodiversity

11.49. The LPA give biodiversity net gain no weight in the appeal proposal, and to do so is an error.

11.50. Biodiversity net gain is not required by policy but is provided here as a scale and kind public benefit. It is secured through the S106 Obligation and should be given moderate weight in consideration of this appeal.

Hesten Lodge Boundaries

11.51. Despite a lack of cooperation from the owners/operators of Hesten Lodge, their site is in total jeopardy. It is a small problem which if not solved could have a big consequence.

11.52. Resolving the Title issues in the context of a Master Plan that seeks to be responsible and deliverable on all fronts is in the public interest.

11.53. The resolving of crippling property anomalies as part of an area wide Master Plan should be afforded moderate weight in the appeal proceedings.

12.0 PLANNING BALANCE AND CONCLUSIONS

- 12.1. There is a presumption in favour of sustainable development. For decision taking this 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 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.
- 12.2. The so-called tilted balance is strongly engaged in this appeal. The New Local Plan is in the future and beyond the horizon.
- 12.3. I do not dwell on the three overarching objectives, economic, social and environmental which have been pursued in the appeal proposal in mutually supportive ways, as these are set out extensively in the original Planning, Design and Access Statement and have been expounded upon at length in my evidence. In my experience, rarely are economic, social and environmental issues so closely interconnected and with such complexity as in this appeal proposal.
- 12.4. There is little to count against the proposal.
- 12.5. In order to provide much needed housing, Green Belt will have to be sacrificed.
- 12.6. In order to provide qualitative improvements to the MTE and to create the circumstances for regeneration and inward investment to occur, Green Belt will need to be sacrificed. One begets the other.
- 12.7. The appeal site displays the lowest level of harm to the visual and spatial aspects of openness of any other potential housing/employment site that the LPA has ever assessed throughout its proliferation of draft Local Plans
- 12.8. It makes no sense to seek regeneration in the north of the Borough, in any other place than at the greatest concentration of local businesses (circa.200) i.e. on or close to the MTE.
- 12.9. The LPA has no mechanism to deliver its specific employment objectives. The 1998 Local Plan failed and there is no successor to this. No Authority can continue behaving in the same way it always has done and expect different results.
- 12.10. The component parts of the appeal proposal are unique and exist only at this point in time as a result of the tenacious, cooperative, entrepreneurial activity of the appellant.

- 12.11. The appeal proposal builds on the experience of the 2008 appeal and the track record of the appellant. That microcosm echoes the advice of the ERNA 2012
- 12.12. The appeal proposal is honed and refined through a brief but productive period of cooperation with the LPA, based on detailed site- specific studies and the Local Plan evidence base.
- 12.13. The supply of housing is at an historic all-time low. The provision of 68 dwellings weighs heavily in favour of the appeal.
- 12.14. The supply of affordable housing is at an historic all-time low. The provision of 50% affordable housing weighs heavily in favour of the appeal.
- 12.15. The degraded and dilapidated condition of the MTE is worse than it has ever been and deteriorates daily. The regeneration of the roads, and the plethora of positive consequences that flow from that weighs heavily in favour of the appeal.
- 12.16. The provision of improved community infrastructure including school parking, a pedestrian crossing and public open space weighs moderately in favour of the appeal.
- 12.17. The provision of biodiversity net gain through the proposed development weighs moderately in favour of the appeal.

Other Harm

- 12.18. RFR5 related to parking is factually unsubstantiated. It has been demonstrated that the quantum, type, size and location of vehicle parking spaces can be easily accommodated in a suitable Development Masterplan, whether as presently submitted or a variation thereof at the reserved matters stage.
- 12.19. RFR2 appears to have no substance. The safeguarded site is small and non-specialist. It has not operated since 2017 and alternative (non-safeguarded) activity has replaced it. The appeal proposal does not involve the removal of the safeguarded site, but in any case, provides significant wider environmental, social and economic benefits that outweigh the 'retention of the site'.
- 12.20. Following fair assessment, the noise environment experienced by occupiers of the new commercial and residential properties would be reasonable (RFR3). I make this conclusion on the assumption that the statutory planning and licensing regimes operate effectively.

- 12.21. This would not lead to any untoward pressure upon the existence of the safeguarded site if it were to reopen.
- 12.22. Existing occupiers of all properties nearby, without exception, would enjoy an improved noise environment as a result of the proposed development. Given that this includes a primary school, a day care centre for adults with learning difficulties and a small number of residential properties, this weighs moderately in favour of the proposed development.
- 12.23. I conclude overall that very special circumstances exist which clearly outweighs the harm to Green belt, by reason of inappropriateness, and any other harm (though I have found none).
- 12.24. In this balance of judgement, I consider that the proposal constitutes sustainable development by definition and that planning permission should be granted without delay, in accordance with paragraph 11 of the Framework.