

HUTCHINSONS

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

PROOF OF EVIDENCE OF
ALISON HUTCHINSON
MRTPI

ON BEHALF OF
CASTLE POINT BOROUGH COUNCIL

LPA Ref: Ref: 21/0532/OUT
PINs Ref: APP/M1520/W/22/3310794

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HUTCHINSONS
15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

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1 STATEMENT OF EXPERIENCE

- 1.1 My name is Alison Hutchinson. I have a degree in Town and Country Planning and I am a Member of the Royal Town Planning Institute. I am a Partner in Hutchinsons, a planning practice that operates from Kimbolton in Cambridgeshire. I have over 35 years' experience of town and country planning.
- 1.2 Hutchinsons was set up in 1991 and advises clients in both private and public sectors on a wide variety of planning issues. I have acted, and continue to act, on behalf of a number of private clients, Local Planning Authorities and Parish Councils on planning matters including providing advice on planning applications and enforcement matters and acting as their expert witness at appeals.
- 1.3 Before joining Hutchinsons in 1996 I was Associate Partner in The Development Planning Partnership (DPP), acting on behalf of such clients as Tesco Stores Ltd and the former Commission for the New Towns as well as District Councils.
- 1.4 I have experience in dealing with a wide range of Development Management issues throughout the country. I started my career working in Local Government for eight years where I gained extensive experience in development control with responsibility for dealing with all types of planning applications including housing.
- 1.5 I have acted on behalf of District Councils for many years and have acted as their expert planning witness at a large number of their appeals. I have also been retained to help process major applications at Uttlesford, Braintree and Tendring District Councils.
- 1.6 I was approached by Castle Point Borough Council in November 2022 who provided details of the appeal proposal and asked if I would be able to act on the Council's behalf in respect of the forthcoming inquiry. I had had no prior involvement with the case and therefore needed to satisfy myself that I could defend the reasons for refusal professionally. Following my investigations, I confirmed that I could act on the Council's behalf and received a formal instruction from the Council on the 6 December 2022 to present the planning evidence in relation to this appeal. I have visited the site and surrounding area and am familiar with the issues involved.
- 1.7 The evidence which I have prepared and provide for this appeal reference APP/M1520/W/22/3310794 (in this proof of evidence) 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 INTRODUCTION AND BACKGROUND

- 2.1 The application the subject of this appeal was submitted in May 2021 and sought outline planning permission with all matters reserved except for access for 68 residential units, three Class E (Commercial, Business and Service) units, one Class B2 (General Industrial) unit and two Class B8 (Storage and Distribution) units with associated access, parking, amenity space, strategic landscaping and noise attenuation. The application also included the restoration and improvement of existing estate roads and infrastructure on land east of the Manor Trading Estate, Benfleet which was within the applicants' ownership but outside the application site boundary.
- 2.2 The application was accompanied by a site location plan and a Development Masterplan (Drwg No: NC18.442-P203) showing how it was envisaged the site would be developed. This showed that the proposed commercial units would be located within part of the existing boundary of the industrial estate known as the Manor Trading Estate (MTE) currently used primarily for car parking and storage and would extend the Estate eastwards into the Green Belt with the Class E units extending southwards along the eastern boundary of Benfleet Scrap, a large established open scrap yard operated by Benfleet Scrap Ltd that dismantles cars and recycles various metals. The proposed housing was shown to the east of the Class E units. Vehicular access serving both the housing and Class E units would be taken from Church Road to the south using a reconfigured access route currently used by the Hesten Lodge day care facility. No access was shown between the MTE and the new housing estate other than for cycles and pedestrians. Access to the new B2 and B8 units was shown to be from the existing industrial estate via Brunel Road.
- 2.3 The application was also supported by a number of documents which included amongst others, a Transport Assessment, Soil Contamination Assessment and a Noise Constraint Study. It also included a Preliminary Ecological Appraisal dated August 2018.
- 2.4 The application was subject to extensive consultations and a summary of the responses of the statutory consultees are set out in the officer's report (CDA3) and have been enclosed with the Council's questionnaire response for this appeal. The majority of the consultee responses confirmed that they had no objections to the

proposal subject to the imposition of conditions or requirements of a Section 106 Agreement.

2.5 The application was the subject of a holding objection from Essex County Council in its capacity as Lead Local Flood Authority and a further objection from the Minerals and Waste Planning Authority (MWPA). The MWPA letter of objection dated 29 June 2021 raised concerns regarding the lack of a Waste Infrastructure Impact Assessment and also in respect of the submitted Noise Constraint Study which the MWPA considered did not adequately demonstrate that the residential units could be established without being subject to noise levels capable of creating a 'nuisance' for any future occupiers.

2.6 The MWPA's letter was followed by a consultation response dated 14 July 2014 from Jacobs who act as the County Council's technical consultants on matters of highways and noise. That consultation response identified technical information that was lacking in the Noise Constraints Study and concluded that:

'Based on the information submitted to date in support of the application, Jacobs consider there to be the potential for new residents to be subject to adverse effects and for complaints regarding noise from scrap operations'

2.7 The Environmental Health Officer also endorsed the comments submitted by the MPWA in their response of the 19 July 2021.

2.8 In July 2021, the Council received an updated Preliminary Ecological Assessment and a plan (P204) showing Area Measurements which was immediately superseded by an amended version (Rev B) identifying the respective areas of the commercial, residential and open space areas of the site.

2.9 In August 2021, a revised Development Masterplan was submitted (Drwg No: NC18.442-P203 Rev B) which included a new school drop off parking area off the new access road and placed a new surface water drainage attenuation basin to the north of the Class E units and a new larger biodiversity pond to the east of Hesten Lodge and the new access road. The applicants also submitted a letter in response to the LLFA's objection.

2.10 In September 2021, the Applicants submitted a Waste and Infrastructure Assessment and in December they submitted a Noise Assessment Report (Façade

Noise Exposure Assessment for Outline Planning) dated 17 December 2021. The MWPA responded on the consultation to the noise report on the 23 December 2021 and maintained their objection for the reasons set out in that letter.

2.11 The LLFA confirmed their holding objection on the 9 February 2022 but subsequently withdrew it on the 23 March 2022 following receipt of a revised FRA in February 2022.

2.12 On 13 April 2022 a revised Development Masterplan was received (Drwg No: 16.3839/P205) showing a revised Conceptual Illustration of the Proposed Acoustic Barrier Solution which utilised the Class E units. It was accompanied also by a revised Façade Noise Exposure Assessment dated 6 April 2022 and a revised Location Plan (Drwg no: 16.3839DP/M005 Rev D) which showed the access roads within the Manor Trading Estate within the ownership of the Applicants.

2.13 The MWPA responded on the latest Noise Assessment Report on the 26 April 2022 and again maintained its objection on the basis that:

‘the application is not in conformity with the NPPF and Policy 2 of the Essex and Southend-on-Sea Waste Local Plan (WLP) 2017. This is because the proposal is currently ‘considered to have the potential to adversely impact on the operation of a safeguarded waste site or infrastructure’ (WLP Policy 2) and therefore may lead to ‘unreasonable restrictions’ (NPPF Para 187) on the operation of existing development.’

2.14 The rationale for this conclusion was explained in that letter.

2.15 The application was determined under delegated powers and refused for the reasons set out in the officer’s report which is contained at Appendix 1 of the Council’s Statement of Case. The Reasons for Refusal are set out below for convenience:

1. The proposal represents inappropriate development in the Green Belt as defined by the National Planning Policy Framework. Such development will only be permitted if very special circumstances exist to justify its inappropriateness. It is not considered that any very special circumstances have been demonstrated which either in isolation or combination carry sufficient weight to outweigh the harm to this part of the Green Belt. The proposed development is

therefore contrary to Government advice as contained in the National Planning Policy Framework.

- 2. The proposal fails to adequately identify and consider the impact of the proposed residential and commercial development on safeguarded waste disposal sites within the adjoining Manor Trading Estate, contrary to the provisions of Policy 2 of the Essex and Southend-on-Sea Waste Local Plan 2017 (WLP) and paragraph 187 of the National Planning Policy Framework.*
- 3. The submitted Noise Constraint Survey and Facade Noise Assessments fail to adequately demonstrate a lack of adverse impact arising from the operation of sites within the Manor Trading Estate on future occupiers of the proposed commercial and residential development, contrary to paragraph 187 of the National Planning Policy Framework and Policy 2 of the Essex and Southend on Sea Waste Local Plan 2017.*
- 4. The submitted Noise Constraint Survey and Facade Noise Assessments fail to adequately demonstrate a lack of adverse impact arising from the installation of the proposed acoustic barrier on the western boundary of the site on premises and operations within the Manor Trading Estate, contrary to paragraph 187 of the National Planning Policy Framework and Policy 2 of the Essex and Southend on Sea Waste Local Plan 2017.*
- 5. The proposal fails to demonstrate the provision of appropriate car parking, powered two wheeled vehicle parking and cycle parking facilities for the proposed commercial units, contrary to the provisions of the adopted Essex parking standards and the provisions of Policy T8 of the adopted Local Plan and TP8 of the New Local Plan. Further, it is not considered that the applicant has adequately demonstrated that the proposed development will adequately mitigate its impact on the existing parking provision within the adjoining Industrial estate in order to ensure that existing operations are not compromised by the proposal.*

2.16 The appeal was submitted on the 9 November 2022.

2.17 Following the refusal of planning permission, the Borough Council withdrew its New Castle Point Local Plan 2018-2033 (dated March 2022) on the 15 June 2022.

At that stage, the new Local Plan had been through examination and been found sound but was withdrawn prior to adoption. The single policy of that withdrawn Local Plan referred to in the decision notice (Policy TP8) is therefore no longer relevant and I do not propose to refer to it in my evidence. However, I accept that some of the evidence base documents remain relevant as does the Examining Inspector's post hearing letter of the 6 September 2021 (CDG1) and his later Report dated 3 March 2022 (CDG2), which I propose to refer to later in my evidence.

- 2.18 The appeal was accompanied by a document entitled Schedule of Commercial Building Floor Area and Parking Provision containing a short table summarising the respective floor areas and the parking provision based on the requirements of the Essex County Council's Parking Standards 2009.
- 2.19 On 2 December, the Council received a revised Development Masterplan (Drwg No: 16.3839/P205 Rev B) together with an updated Schedule of Commercial Building Floor Area and Parking Provision (Rev A), both documents dated 25 November 2022. I understand that the Appellants intended that these documents address the objections raised by Reason for Refusal No 5 and to demonstrate that sufficient parking can be provided at the site. As explained in the Council's Statement of Case, I am prepared to rely on the updated Development Masterplan and comment later in evidence why I do not consider that this addresses the Council's concerns as set out in Reason No 5.
- 2.20 Following notification of the appeal, the Council engaged Mr Davis of Showcase Acoustics, an independent acoustic consultant, to review and re-assess the acoustic evidence submitted by the Appellants. On the basis of his advice and the information contained in the Appellants' document HA/AD961/V2, the Council withdrew Reason for Refusal No 4 which related to the impact of the acoustic barrier on premises and operations within the Manor Trading Estate and I can confirm that it does not intend to pursue that reason for refusal at this appeal. The Appellants were informed of this by email on 4 January 2023.
- 2.21 A Planning Statement of Common Ground (SoCG) between the Appellants and the Local Planning Authority is currently under discussion (NB update to be provided). It provides a description of the appeal site and surrounding area together with a description of the development proposals, and identifies relevant

planning policies and planning history. The SoCG also sets out the areas where the parties agree and disagree.

2.22 The Appellant has submitted a draft S106 Agreement. The Council is currently reviewing its contents with a view to submitting comments to the Appellants and to this inquiry.

2.23 A CIL justification which justifies the need for the agreed requirements of the S106 will also be prepared for submission.

2.24 In my evidence I explain the Council's case in respect of the reasons for refusal and consider whether there are any material considerations to justify the grant of planning permission, contrary to the development plan. In doing so, I am mindful of the main issues identified by the Inspector in his Case Management Conference Summary note and have set out my evidence to reflect those issues, namely:

- i. The effects of the proposal on the openness of the Green Belt.
- ii. The effects of the proposal on safeguarded waste disposal sites within the adjoining Manor trading Estate
- iii. The effects on the proposal of noise from the Manor Trading Estate.
- iv. The effects of the proposal on the supply of and demand for parking
- v. Whether there is an adequate supply of housing and employment land in the area.
- vi. Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

2.25 In preparing my evidence in respect of issues ii) and iii), I draw upon that of Mr Davis who is giving evidence on Issues of Noise. I conclude my evidence with a consideration of the benefits of the proposal and the planning balance.

3 PLANNING HISTORY & BACKGROUND

- 3.1 The draft Statement of Common Ground and the Council's Statement of Case confirms that the land the subject of the residential proposal at this appeal has not been the subject of any relevant planning applications in the past.

Manor Trading Estate - Within Current Appeal Site

- 3.2 The appeal site contains a triangle of land where the B2 development is proposed and which forms part of the current Manor Trading Estate. That area of land was the subject of applications in 1994 and 1995 involving new security fencing, hard standing areas for car parking and servicing and also included the provision of the service road and rear access to the existing units on Brunel Road (Ref: CPT/368/94) as well as storage of goods and materials (Ref: CPT/61/95) (Photographs at Appendix 1 show the fencing and the rear access and storage areas (Photographs F, G, H, I, J,K))
- 3.3 The same area was the subject of a further application (Ref: **366/06/OUT**) in 2006 for the erection of 2 new industrial buildings and the refurbishment of the existing industrial building for continued B1/B2 use. The area of that site included the above triangle but also extended as far eastwards as the Benfleet Scrap yard boundary and the line of the current B2/B8 proposals. The application was refused planning permission and the subsequent appeal was dismissed in February 2008 on Green Belt grounds and the lack of any very special circumstances to warrant setting aside the Green Belt designation. A copy of that appeal decision is contained at CD.H2.
- 3.4 Outside the current appeal site, planning applications on the remaining area of the Manor Trading Estate have been in connection with the industrial/commercial activities carried out. I have commented below on the most relevant ones.

Manor Trading Estate – Outside Current Appeal Site

- 3.5 As indicated above, the MTE is the subject of numerous applications relating to the various industrial and commercial uses undertaken on the estate. Of relevance to the current appeal is an application for the improvement of the estate roads which was submitted in 2020. The application, Ref: **20/0159/FUL** sought full planning permission for the repair, renovation and improvement of private road

infrastructure including carriageway, footways, kerbs, gullies, surface water and foul drainage (except where statutory responsibilities exist), lighting, routing of utility infrastructure, guarding of pedestrian footways and reinstatement of correct property boundaries at the Manor Trading Estate. The proposal involved the repair and improvement of all the roadways within the Trading estate as shown on the submitted Estate Roads Improvement Plan (Ref:16.3839/P201 Rev A) which includes Armstrong Road and Brunel Road, the latter to be improved up to the junction with Parsons Road. The area of the MTE within the current appeal site was not included within the road improvement application site boundary.

- 3.6 The application was approved on 23 July 2020 subject to several conditions relating to the submission of details of road kerbs, lighting and footways as well as the submission and approval of a Construction Management Plan. To date none of these details have been submitted or the conditions discharged. The permission remains extant.

Benfleet Scrap Ltd Co – Unit 16, Brunel Road, Manor Trading Estate

- 3.7 Benfleet Scrap Ltd Co is a long-established scrap yard occupying Unit 16 and borders the western boundaries of the appeal site (Appendix 1 Photographs A & B). The existing operation was granted planning permission in 2002 to allow its use for waste recycling and recovery and as a waste transfer station (Ref: **CPT/16/02/FUL**). A copy of the planning permission is contained at CDH1(1.2).
- 3.8 The planning permission contains few conditions and none that limit hours of operation of the scrap yard although Condition 4 limits the times that vehicles can deliver and collect materials to the site.
- 3.9 The scrap yard is subject to a 1998 licence¹ (as varied in 2004 and 2017) from the Environment Agency (EA) that places operational restrictions on the business.
- 3.10 In 2018, Benfleet Scrap Ltd submitted a planning application for partially retrospective planning permission (Ref: **18/0834/FUL**) for the construction of a wall along the southern, and the majority of the eastern boundary of the site. The wall was constructed of concrete panels and was 5m in height, extending along the eastern boundary of the scrap yard and therefore adjacent to the current appeal

¹ Licence no 398/98 dated 26 March 1998

site. The application was approved under delegated powers on the 9 November 2018 but was the subject of a Judicial Review by one of the current Appellants in 2019. The challenge was brought on the basis that the planning officer had ignored the Claimant's objection that the scrap yard was contaminated. The arguments raised were also partly intertwined with the assertion that the application was implicitly intended to facilitate intensification of the site's use. The High Court judgement found no error of law in the Council's decision. The matter was taken to the Court of Appeal and again the Court found that there was no error in law by the Council in granting permission and the appeal was dismissed.

- 3.11 An application for a Certificate of Lawfulness was approved by Essex County Council on 5 August 2022 (**ESS/48/22/CPT**) for the Installation of replacement plant for aluminium recycling consisting of a super chopper, a multi-purpose rasper, an overband magnet to remove ferrous material from the aluminium, a tumble back feeder to ensure continuous flow into the multi purpose rasper, linking conveyors, and separators (eddy current and x-ray). The approved plan shows a large L shaped plan located on the south eastern corner of the scrap yard with the tallest parts being some 6m in height.

Local Plan

- 3.12 The draft Statement of Common Ground sets out the background of proposed allocations of the appeal site within the various draft Local Plans prepared by Castle Point Borough Council. None of those draft plans were continued to examination other than the most recent one, the New Castle Point Local Plan 2018-2033 dated March 2022. That local plan identified 3.7ha of the current appeal site for employment purposes on the pre-submission Proposals Map. The identified area comprised the area to the east of the MTE currently within the Green Belt and proposed for the commercial and housing development in the current appeal. It extended southwards to the northern boundary of the Hesten Day Centre. The land to the east of the Hesten Day Centre, currently identified for open space (on plan 16.3839/P205 Rev B) and the access onto Church Road, was excluded.
- 3.13 The proposed allocation was subject to an assessment for soundness by the Examining Inspector who recommended in his post Examination letter dated 6 September 2021 (CD.G1) that the proposed allocation should be deleted and the Plan amended on the basis of lack of need for the employment allocation.

- 3.14 The Main Modifications to the Plan deleted the allocation for Manor Trading Estate and showed the site to be retained in the Green Belt in the amended Proposals Map. The Inspector's Report dated 3 March 2022 (CD.G2) repeated his recommendation for the deletion of the allocation to extend the MTE into the Green Belt. However, the Local Plan was not adopted but instead was withdrawn by the Council on the 15 June 2022.

4 THE DEVELOPMENT PLAN

- 4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. It follows therefore that where proposals are contrary to policies of the Development Plan, then development should be refused unless there are material considerations that indicate otherwise.
- 4.2 I therefore assess the proposals against the relevant policies of the development plan.
- 4.3 The development plan for the site comprises the Castle Point Borough Local Plan 1998 (CD.D1), the Essex Minerals Local Plan 2014 and the Essex and Southend-on-Sea Waste Local Plan (July 2017) (CD.D2).

Castle Point Local Plan 1998

- 4.4 The current Local Plan was adopted in 1998 and intended to cover the period up to 2001.
- 4.5 The Secretary of State issued a saving direction on 20 September 2007 which saved the majority of policies in the Local Plan. However, Policy H1 (Residential Development) which made provision for additional housing in the Borough over the plan period was not saved. Similarly, Policy GB1 (Control of Development) which related to control of development in the Green Belt was also not saved. As a consequence, the Council relies on Government policy when assessing housing requirements and calculates the housing need based on the standard method as required by Paragraph 74 of the NPPF. Applications for development in the Green Belt are currently assessed against the policies set out in Chapter 13 of the 2021 National Planning Policy Framework.
- 4.6 The Proposals Map of the 1998 Local Plan identifies the majority of the appeal site as Green Belt. However, the north western corner of the site is excluded from the Green Belt. This area is demarcated by a diagonal line which extends through the proposed Unit D on the updated Development Masterplan (Drawing No 16.3839/P205 Rev B). The area within the existing Manor Trading Estate is identified as Employment Land on the Proposals Map and subject to saved Policy ED3 which confirms that proposals for B1, B2 and B8 uses would be permitted in

the three named industrial estates (which includes Manor Trading Estate), that sui generis uses would be considered on their own merits but that uses falling outside these uses would be refused. The policy continues that in the case of inappropriate uses, the Council would encourage measures to mitigate the effect of such uses and where necessary, encourage the relocation to more appropriate sites. Policy ED7 also confirms that the Council will seek to encourage environmental improvements within employment areas with the supporting text indicating that such improvements include hard and soft landscaping, tree planting, other appropriate screening measures and the re-siting of buildings where possible.

- 4.7 The Council accepts that the proposed development of industrial units within the designated employment land is consistent in principle with these policies.
- 4.8 The reasons for refusal refer to one Local Plan Policy – T8 Car Parking Standards (RfR No 5). The policy confirms that the Council will apply, with specified exceptions, the revised standards for car parking in Essex, published by Essex County Council (ECC). Although the supporting text at paragraph 7.18 mentions specified exceptions, the documents referred to and which set out the exceptions are no longer applicable and the Council relies upon ECC's Parking Standards as Supplementary Planning Guidance.
- 4.9 The Council commissioned a NPPF Conformity Check in April 2013 which compared each of the saved policies in the Castle Point Adopted Local Plan 1998 with the 2012 Framework and indicated the degree of consistency between the two documents. Policy T8 was considered to be consistent with the Framework which required local planning authorities to set such standards reflecting local circumstances.
- 4.10 The current Framework considers that parking (amongst other highway matters) is integral to the design of schemes and contributes to making high quality places (Paragraph 104 e)) and accepts that local parking standards can be set for residential and non-residential development, but the policies should take account of the criteria set out in Paragraph 107. These include the accessibility of the development (a); the type, mix and use of development (b); the availability of and opportunities for public transport (c); local car ownership levels (d) and the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles (e).

4.11 The Essex County Council Parking Standards are dated 2009 and apply parking standards for vehicles (cars), cycle, powered two wheelers (PTW) and disabled. Whilst they indicate that vehicle parking is a maximum figure, contrary to the advice in NPPF Paragraph 108, in reality this is not put into practice by the Council but instead is regarded as a **minimum** figure in line with the standards for the other forms of parking. I am of the view therefore that the current standards do comply with the current Framework and the requirement of Policy T8 to provide car parking in accordance with the published ECC standards, is in conformity with the NPPF and can be given weight in this appeal.

4.12 The Reasons for Refusal also cite concerns about potential noise pollution but they do not allege that the proposals are contrary to any specific Local Plan policy in respect of noise. The Local Plan contains a single policy that covers noise issues – Policy EC4. Policy EC4 relates to the wider issues of pollution and states that development which would have a significant adverse effect on health, the natural environment, or general amenity by reason of released of pollutants to water, land or air, or by reason of noise, dust, vibration, light or heat, will be refused. Whilst that policy was considered to be generally consistent with paras 120 to 125 of the 2012 NPPF, the Conformity Check advised that those paragraphs contained a number of qualifications that should be considered when determining an application. As a consequence, the Council has relied, as it has here, on the more detailed policy position in the NPPF in relation to pollution, including noise, when considering planning applications.

The Essex Minerals Local Plan 2014

4.13 The Minerals and Waste Planning Authority confirmed in its consultation response of the 29 June 2021 that no part of the application site is located within land which is designated as a Mineral Safeguarding Area (MSA) or Mineral Consultation Area (MCA) and therefore no safeguarding issues are identified with regards to mineral resources or associated infrastructure. The Minerals Local Plan is not therefore relevant to the current appeal.

The Essex and Southend on Sea Waste Local Plan 2017

4.14 However, the Essex and Southend on Sea Waste Local Plan 2017 is relevant. The Manor Trading Estate contains a number of safeguarded waste disposal sites and

Policy 2 of that Local Plan (Safeguarding Waste Management Sites and Infrastructure) requires the Waste Planning Authority to be consulted on non-waste development proposals on sites located within 250m of safeguarded sites. The policy indicates that proposals which are considered to have the potential to adversely impact on the operation of a safeguarded waste site or infrastructure are unlikely to be opposed if they meet the three conditions of the policy. The current proposal does not meet those conditions. That is because the waste management uses on the Manor Trading Estate are still operational (a), the potential loss of the waste infrastructure would not form part of a strategy or scheme that has wider environmental, social and/or economic benefits that outweigh the retention of the waste use and no alternative provision is made for the potentially displaced waste use (b) and no suitable replacement site or infrastructure is being proposed as part of this scheme (c). The appeal proposal is therefore in conflict with Policy 2 of the Local Plan.

- 4.15 Although there has been no assessment of compliance of the Waste Local Plan with the NPPF, I consider that the policy is entirely consistent with the NPPF. The NPPF places heavy reliance upon sustainability through minimising waste and pollution as part of its environmental objective (Paragraph 8c) and requires strategic policies to make sufficient provision for waste management (Paragraph 20b). Policy 2 allows the impact of non-waste development to be taken into account on safeguarded waste sites and for the potential loss of those sites to form a consideration in the decision process.

Supplementary Planning Guidance

- 4.16 Essex County Council published the document **Parking Standards Design and Good Practice** in 2009. The parking standards were adopted by the Castle Point Borough Council as Supplementary Planning Guidance in 2010.
- 4.17 The parking standards relate to car parking and set out maximum numbers for cars within each use class (as at 2009) and minimum numbers for cycle, PTWs and disabled parking. The document advises that the onus will fall to the developer to demonstrate that the level of parking provided is appropriate and will not lead to problems of on street parking on the adjacent highway network (Paragraph 2.1.1). Furthermore, if the application of the standards is insufficient for the development then provision over the maximum should be considered by the LPA (Paragraph

2.1.2).

- 4.18 The document does not set commercial parking standards but does require that developers should analyse their development's own requirements in terms of the numbers and types of commercial vehicles visiting their premises and should demonstrate to the LPA that any development proposal includes sufficient commercial vehicle provision to meet normal requirements such as provision for loading, unloading and turning. Such commercial provision should be clearly signed and marked to avoid being utilised as an overflow parking area for cars. (Paragraph 2.8.2)
- 4.19 Standard dimensions for all vehicles including commercial vehicle parking spaces are provided in the document.
- 4.20 The **Developers Contributions Guidance** SPD was adopted in 2008 and forms the basis for discussions on individual applications and the drafting of planning obligations to deliver improved infrastructure, environmental enhancements and community facilities, such as education, health care, leisure activities and open space. It provides guidance on the nature and levels of contributions likely to be required as part of development proposals.
- 4.21 The SPD also provides guidance on the level of affordable housing the Council will seek from developments. Paragraph 6.13 confirms that, based on a 2004 Housing Need Survey, 35% of all new housing should be affordable.

Emerging Local Plan

- 4.22 Following the withdrawal of the draft Local Plan in June 2022, the Council adopted a new Local Development Scheme in November 2022. This advises that the consultation on the Issues will take place between January to August 2023 with formal submission of the Local Plan being in June 2025, the Examination taking place later that year and Adoption anticipated in March 2026. At present, no document has been published for consultation.

5 GREEN BELT

- 5.1 There is agreement amongst the parties that the majority of the appeal site lies within the Green Belt. Furthermore, it is agreed that the current proposals represent inappropriate development in the Green Belt and therefore that very special circumstances must be demonstrated to justify the development of the site and the setting aside of the Green Belt designation.
- 5.2 The NPPF confirms that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It confirms that the essential characteristics of Green Belts are their openness and their permanence.
- 5.3 The appeal site forms part of the Green Belt which extends between the settlements of Thundersley and new Thundersley and has been found to serve some of the purposes of Green Belt as set out paragraph 138 of the NPPF.
- 5.4 The Council carried out a review of the Green Belt in 2018 as part of its evidence base for the new Local Plan. That review – Castle Point Borough Green Belt Review 2018 – Part 1 (CD.F7), divided up the areas of the Green Belt in the Borough (as defined by the 1998 Local Plan) into parcels which were then assessed against the individual purposes of the Green Belt to identify the contribution, if any, that each parcel made to those purposes. The appeal site formed part of Parcel 1 which extended to the north of South Benfleet and Thundersley and southwards to Church Road including the land proposed for the access to the development as well the Hesten Lodge Day Centre and the Primary School. Parcel 3a to the southeast of Parcel 1 contains the strip of largely wooded land which forms the narrowest area of separation between South Benfleet and Thundersley.
- 5.5 The description and assessment of Parcel 1 is contained at page 65 of the Review which found that the parcel contributed to purposes 1 (a), 2 (b) and 3 (c) to varying degrees from Very Strong to Moderate as set out below.

<u>Purpose</u>	<u>Assessed Contribution</u>
1 - To check unrestricted sprawl of large built up areas	Strong
2 – To prevent neighbouring towns from merging into one another	Very Strong
3 – To assist in safeguarding the countryside from encroachment	Moderate

5.6 The Review considered that the strong contribution of the parcel to Purpose no 1 related to the fact that whilst the eastern and western boundaries were considered to be strong permanent boundaries, the southern boundary was not considered to be robust as it takes the form of back gardens. However, the parcel lacked alternative features that could act as a strong, defensible boundary and as such this parcel was considered to strongly contribute to the purpose of restricting urban sprawl given the density of inappropriate development within it as a whole.

5.7 The Review considered the parcel made a very strongly contribution towards preventing neighbouring towns merging (purpose 2) although it recognised that the scale of development required to do so would be unlikely but *‘As such, a very strong contribution is assessed against this purpose.’*

5.8 In terms of the third purpose, the Review considered that Parcel 1 made a moderate contribution in safeguarding the countryside. The Parcel was seen as generally representing a semi-rural character with the plotland dwellings, stables and small holdings being largely hidden by vegetation.

5.9 The Review did not consider that the Parcel contributed towards the fourth or fifth purpose of the Green Belt.

5.10 The Review’s summary of Parcel 1 concluded that:

The southern boundary of the parcel takes the form of residential back gardens but has been largely successful in preventing urban sprawl. There are no other strong permanent features through which to realign this boundary other than using local roads.

As a whole the parcel is however semi-rural, with industrial / business uses

considered inappropriate in the Green Belt to the north, and some residential development, which in some locations constitutes urban sprawl. Large areas are nonetheless entirely rural in character, consisting of fields and development associated with agriculture. As such a strong contribution is assessed under Purpose 1 and a moderate contribution under Purpose 3.

- 5.11 Parcel 1 was also considered to have an important purpose at the strategic level in that the restriction of urban sprawl and large scale urban encroachment from settlements within the borough created a Green Belt area which was free from large scale urban development and which also acted as a link with the Green Belt outside of the borough within Basildon and Rochford.
- 5.12 The 2018 Review therefore assessed Parcel 1, contributed towards three of the purposes of the Green Belt and that, in the case of the preventing neighbouring towns merging, the parcel had a very strong contribution.
- 5.13 The appeal site forms a significant part of Parcel 1 being at the southern end of the parcel and at its narrowest point between South Benfleet and Thundersley. This is one of the narrowest parts of the Green Belt in the Borough.
- 5.14 Whilst the Review considered that the area containing the appeal site fulfilled three of the purposes of Green Belt, the Council nevertheless proposed initially to allocate the northern part of the appeal site for residential purposes. The Green Belt Review Part Two was undertaken in 2019 following an acceptance that the Borough's housing need would necessitate the development of housing on Green Belt land. The second Green Belt Review was therefore intended to assess the degree of harm on the Green Belt, on a site-by-site basis, of allocating Green Belt sites that have been put forward for housing. Those sites were suggested to the Council as part of the Call for Sites exercises or had been the subject of previous enquiries.
- 5.15 The second Green Belt Review included an assessment of the current appeal site for housing purposes and concluded that the site would have a moderate degree of harm in terms of purpose No 1 and minor degrees of harm in respect of Purpose Nos 2 and 3. Although the release of the land from the Green Belt was considered not to result in the formation of more defensible Green Belt boundaries, it was also considered that it would not weaken them relative to the boundaries that already

existed (Purpose No 1). In addition, the site was free from built development and was densely wooded (prior to the site being cleared). However, the immediate surroundings of the site were considered to be predominantly developed, in part by industrial uses, such that the rural integrity of the site was considered to be compromised (Purpose No 3).

- 5.16 As part of the Local Plan process, the decision was taken not to allocate the site for residential purposes due to local issues, and instead some 3.7ha of Parcel 1 land was identified for employment purposes in the new Local Plan. This was to be one of three employment sites within the Borough which together totalled some 24ha of land. The supporting text to the draft policy confirmed that land to the east of Manor Trading Estate had been promoted to the Council for employment purposes and appeared to be deliverable. It was expected that access to the site would be achieved through the existing estate or through the redevelopment of some land within the existing estate. Part of the policy requirement was that appropriate highway improvements were made to the estate roads and junction to accommodate the increased traffic.
- 5.17 As already mentioned, the proposed allocation was considered at the Examination into the new Local Plan and the Inspector recommended that the allocation be deleted and the site retained as Green Belt. Whilst the Council had originally sought to justify the allocation on the basis that the majority of the employment land was skewed towards Canvey Island, the Inspector did not consider that there was a need to seek greater balance in the provision of employment land in Castle Point. The Inspector found that there was no numerical need for additional employment provision at the strategic level for the plan period and considered that the proposals for the MTE were modest in scale and the associated benefits would be limited. The Inspector also had serious reservations as whether the proposed allocation would come forward during the plan period².
- 5.18 The Inspector did conclude however that for the strategic and site specific reasons set out in his report, that there were exceptional circumstances to justify removing the twelve housing sites listed at paragraph 138 of his March 2022 report (CD.G2) from the Green Belt. However, he was not convinced there were exceptional circumstances for releasing the 3.7ha of land at the Manor Trading Estate for

² Paras 144, 145 & 146 Report on the Examination of the New Castle Point Local Plan (CD.G2)

employment purposes from the Green Belt.

- 5.19 The Council accepted the Inspector's recommendation in respect of Manor Trading Estate and deleted the proposed allocation in the Main Modifications and the final version of the withdrawn new Local Plan showed the site continuing as Green Belt as per the 1998 Local Plan.
- 5.20 The current appeal proposal seeks to develop part of the site for employment uses. Approximately 2.48ha of the site is proposed for commercial development according to the Area Measurements Plan (NC18.442-P204). However as this also includes an area of some 1.2ha of the existing MTE which is not within the Green Belt, this results in approximately 1.28ha of Green Belt being proposed for commercial purposes. The Inspector in his deliberations made it clear that he found no numerical need for additional employment land and I consider that there remains no justification for the development of employment uses, even at a reduced scale as now being proposed in the Green Belt in this case.
- 5.21 The matter of whether land which was part of the proposed industrial allocation should be developed was also considered earlier in the Appeal decision of 2008³ which I have summarised in Section 4 of my evidence at paragraph 3.3 above. That decision considered a proposal for two new industrial buildings and the refurbishment of an existing one at the MTE. The proposals in that case sought to fill in a triangle of Green Belt land measuring 0.68ha which would extend the industrial estate eastwards up to a common line with Benfleet Scrap Ltd to the south. However, the Inspector considered that this area of land contributed to four of the Green Belt purposes and that its fundamental aim would be harmed by the proposal (paragraph 10).
- 5.22 She considered that the land helped contain the sprawl of the urban area and helped separate New Thundersley from Thundersley village and also that the proposal would visibly encroach on land that "reads" similarly to open countryside even though she considered it did not function as such. The Inspector also considered that extending into the Green Belt would weaken urban regeneration of the industrial estates by allowing development on easier development sites than

³ APP/M1520/A/07/2034627

others where site clearance costs need to be factored in. (Paragraph 10).

- 5.23 Whilst I accept that the appeal decision is some 15 years old, I nevertheless consider that it remains relevant as a material consideration. The Government policies relating to Green Belt have not changed in any significant way since 2008 and Green Belt is still required to meet the purposes for which it was designated and as set out in NPPF paragraph 138. It is clear that both in 2008 and 10 years later in the Green Belt Review, that this land fulfils those purposes in not just one, but in at least three ways.

Impact upon the openness of the Green Belt

- 5.24 The Framework makes it clear that the fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open (paragraph 137). The appeal proposal will not keep the appeal site open.
- 5.25 The Green Belt part of the appeal site is currently undeveloped land and therefore open as can be seen from the photographs and Google Earth Images enclosed at my Appendix 1 and 2 respectively. Whilst I note the Appellants' arguments that part of the site has been used for unauthorised uses, the land in question forms only a small part of the appeal site. Further, from what I have seen on site and from using Google Maps⁴ over time, that use has remained in a limited and low key form. I also note that the area of land is accessed only through locked gates (Appendix 1, photo E) and it appears that the Appellants are able to control the use or otherwise of this land as they unlocked and locked the gate for our site visit. Based on the level of use that has been apparent on site over time and observed at my site visit, I do not consider that it provides any justification for the siting of large commercial buildings on either the land in question or extending them further into the Green Belt.
- 5.26 On the contrary, the proposal would result in the loss of the openness of this part of the Green Belt. The residential development as shown in the updated Development Masterplan, extends across the width of the site and is reliant upon the strip of woodland along its northern boundary for screening from the north and northeast. To the east, the Development Masterplan shows the site backing onto

⁴ Appendix 2

the rear gardens of the properties on Keswick Road. The area to the east of the appeal site which includes Keswick Road, Bassenthwaite Road and Windermere Road is characterised by very low density, loose knit residential development, mostly of one or one and a half storey detached dwellings which are set in relatively large plots and separated from each other by small fields and woodlands. The area retains a largely open feel and whilst the 2018 Green Belt Review considered that the plotlands area was urban sprawl, it also confirmed that they were largely hidden by vegetation.

- 5.27 The current proposal is for a modern housing estate of 68 dwellings which are proposed at a density of some 35dph (Area Measurements Plan). This will be, and appear to be, totally out of character with the housing development to the east. Indeed, the proposed development will be similar to the housing estates in South Benfleet and Thundersley which define the edges of the Green Belt to the north. The northern part of the site proposed for the commercial development and the housing is completely open visually, having been cleared of any vegetation, and it can clearly be seen through the protected woodland from the bridleway Windermere Road to the north (bridleway 64 Benfleet), contributing to the perceived openness of this part of the Green Belt. The site provides an open rural area of land between the more intense development of the industrial estate and the low density and wooded 'plotlands' located to the east. The development would totally remove and harm the openness of this part of the Green Belt, contrary to the aims of Green Belt and government policy.

6 IMPACTS OF NOISE

6.1 The second and third reasons for refusal raise concerns regarding noise in respect of two matters which are set out as ii) and iii) in the Inspector's Main Issues. The first (Reason No 2) relates to the effect of the proposal on the safeguarded waste disposal sites situated on the Manor Trading Estate and is concerned primarily with the potential for noise complaints from the occupiers of the new residential properties (and possibly the commercial occupiers) due to the activities of those safeguarded sites. This raises concerns that those premises may have to curtail, or even cease, their activities to avoid being a nuisance for the new occupants which would impact the Council's waste strategy and reduce the ability of those businesses to contribute towards the processing of waste. The second issue (reason No 3) relates to the impact of the existing noisy activities at the Manor Trading Estate on the new residential and commercial premises and whether the proposed development can ensure that the future amenities of those occupants will be acceptable.

6.2 Mr Davis has considered the submitted noise assessments and concluded, as did the Essex County Council in its capacity as Minerals and Waste Authority, that the Appellants have not demonstrated a satisfactory noise climate for future occupants and that there is a real risk that increased numbers of complaints of noise against the current activities on the MTE would be forthcoming and be substantiated in the future. He considers that noise would be likely to be excessive at the proposed properties due to their proximity and that, were the scheme permitted, the risk of noise disturbance to future occupiers would be high. I rely on Mr Davis's evidence on these matters and expand upon that evidence below in explaining the concerns regarding the potential impact on the Safeguarded sites and upon the new residential and commercial properties.

- i. The effects of the proposal on safeguarded waste disposal sites within the adjoining Manor Trading Estate

6.3 The National Planning Policy for Waste (October 2014) (NPPW)(CD.C2) confirms that positive planning plays a pivotal role in delivering this country's waste ambitions through, amongst other matters, delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste

management up the waste hierarchy (set out in the Appendix to the NPPW). Paragraph 8 of the NPPW advises that when determining planning applications for non-waste development, local planning authorities should, to the extent appropriate to their responsibilities, ensure that:

- *the likely impact of proposed, non-waste related development on existing waste management facilities, and on sites and areas allocated for waste management, is acceptable and does not prejudice the implementation of the waste hierarchy and/or the efficient operation of such facilities*

6.4 Appendix B of the NPPW advises that when testing the suitability of sites and areas in the preparation of Local Plans and in determining planning applications, waste planning authorities should consider the factors set out in that appendix including:

j. noise, light and vibration

Considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise affecting both the inside and outside of buildings, including noise and vibration from goods vehicle traffic movements to and from a site. Intermittent and sustained operating noise may be a problem if not properly managed particularly if night-time working is involved. Potential light pollution aspects will also need to be considered.

6.5 The Essex and Southend-on-Sea Waste Local Plan 2017 was produced under the guidance of the NPPW and was aimed at helping to ensure that all types of waste arising in Essex and Southend, could be dealt with during the plan period up to 2032 in a way which is least damaging to the environment and which would help maintain the best possible quality of life for residents. The Plan is focused mainly on the identification and provision of new facilities and ensuring that they are locationally acceptable. The Plan's Vision includes that:

The Plan will provide sufficient waste management infrastructure in Essex and Southend-on-Sea to meet the existing and forecasted amount of waste expected to arise over the Plan period. The forecast includes a decreasing proportion of London's waste exports into the Plan Area, as informed by the adopted London Plan (2015).

Waste management facilities will be located, designed and operated without adverse impacts on the amenity of local communities, the natural and historic environment, the landscape and the townscape of Essex and Southend-on-Sea. Opportunities to enhance such features will be supported. (Page 34)

- 6.6 The vision is to be achieved through the Strategic objectives set out at Page 35 which include:

SO3. To safeguard and encourage opportunities to enhance existing waste infrastructure which provide an important contribution to waste management at sites that serve the Plan area.

SO4. To achieve net self-sufficiency in waste management by 2032, where practicable, with an associated reduction in the amount of waste from London that is disposed of in the Plan area, in line with the London Plan.

- 6.7 The need to safeguard existing sites is therefore fundamental to the success of the MWLP's strategy in ensuring that sufficient sites are provided to deal with waste in the plan area. As a consequence, Policy 2 of the Plan seeks to ensure that development proposed near to existing safeguarded waste sites does not have an adverse impact on the operation of those sites or infrastructure.
- 6.8 The Manor Trading Estate contains a number of businesses that operate waste processes and therefore come under the control of the Essex County Council Waste and Mineral Planning Authority. The WMPA's consultation letters include a plan identifying the seven safeguarded Waste sites on the industrial estate and the reason for their safeguarding. Most of the sites are effectively used for scrap/recycling of vehicles and parts and tyres or waste transfer and constitute sui generis uses that are not easily accommodated on many industrial estates.
- 6.9 The nearest of the Safeguarded sites to the appeal site are the Benfleet Scrap Co Ltd (Unit 16 Brunel Road) and GT Breakers (Unit 10 Brunel Road). Both operate as breakers and recovery of scrap and for recycling.
- 6.10 Benfleet Scrap is one of the largest Waste operators in the County with the site on the MTE having the fifth largest capacity of all the operational metal recycling

sites in Essex⁵ and whilst the safeguarding plan identifies a small area on its safeguarding plan, the scrap yard comprises all the land that borders the appeal site at the rear of the proposed Class E units (identified as units (A) on the Development Masterplan) and the Class B2 unit (B on the Masterplan). Benfleet Scrap Ltd operate several sites in Essex and specialise in scrap metal recycling, scrap vehicles and waste skip hire for the domestic, commercial and industrial sectors. The British Metals Recycling Association (BMRA) website states that the Manor Trading Estate site handles a significant number of metals, including car and lorry engines, zinc, copper, titanium and aluminium amongst others and it lists its specialist activities to include Waste Electrical and Electronic Equipment (WEEE) (General), cable processing and batteries and catalytic convertors (both classified as hazardous waste) as well as roll on roll off containers and the waste transfer station.

- 6.11 Much of the breaking and recovery takes place outside and the operation is, by its very nature, noisy involving the breaking and dismantling of cars and the external storage and recycling of metals with mounds of scrap metal and some of the machinery clearly visible from the appeal site (see photos A & B, Appendix 1). The activities that take place within this yard are extremely noisy, particularly on the adjacent appeal site where the noise dominates the experience of the site.
- 6.12 Benfleet Scrap has been established on the site for many years. Prior to 2002, it was still operating as a scrap yard but the 2002 planning permission allowed its use as a waste recycling and recovery operation as well as a waste transfer station. There were no planning conditions applying to the site prior to 2002 but the site was subject to the 1998 site licence⁶ issued by the EA. The 2002 planning permission placed limited restrictions on the operation of the business but included Condition 3 which requires that the use shall not be carried out in a manner which causes nuisance to occupiers of nearby land by reason of noise, dust or fumes. The operational restrictions of the site are therefore still tied to the EA licence which limits, amongst other things, the type of waste permitted at the site and limits the throughput to less than 75,000 tonnes per annum, the height of the scrap heaps to 5m and the working hours restricted to 0730 to 1830 Monday to Friday and 0730 to 1730 on Saturday. No operations are allowed on Sundays and Public Holidays.

⁵ Minerals & Waste Authority Monitoring Report 2017 - 2018

⁶ Licence no 398/98 dated 26 March 1998 Permit No 71088 26031998

According to their website, Benfleet scrap operate reduced hours to those allowed by the licence and is currently open for business between 07.30 and 17.00 Mondays to Fridays and 07.30 and 12.00 on Saturdays⁷. As far as I am aware, the scrap yard does not emit dust or fumes but it is very noisy as can clearly be experienced by visiting the appeal site and as explained by Mr Davis.

- 6.13 The operation at Benfleet Scrap appears to have expanded over time and is likely to do so in the future and has a permit that would allow it provided it is annually less than 75,000 tonnes. According to Essex County Council's 2017/18 Mineral and Waste Authority Monitoring Report, the site had a throughput that year of some 27,029 tonnes based on the Environment Agency's Waste Data interrogator (WDI). It appears therefore that the site has an authorised capacity significantly in excess of what it has been operating at.
- 6.14 Furthermore, the Certificate of Lawfulness issued by the MWPA in August 2022 (Ref: ESS/48/22/CPT) for the installation of replacement plant for aluminium recycling suggests that it will have greater capacity to process aluminium. The new plant is shown positioned to the south of the site adjacent to the southern boundary and replacing a significantly smaller processing plant. I am not aware that the new plant is yet on site but clearly, the ability to process more aluminium will contribute significantly to the County Council's waste strategy of increasing recycling and reuse.
- 6.15 The photographs of Benfleet Scrap Ltd on Google Earth at my Appendix 2 show that the scrap material is stored in bunkers around the periphery of the site. Furthermore, that over the years since 2002 (and prior to that – see Image 1), the heaps of scrap and work takes place yard with the crusher which is currently in the north eastern corner and closest to the appeal site, having stayed in the same location in each photograph.
- 6.16 GT Breakers at Unit 10 Brunel Road is located adjacent to Benfleet Scrap and therefore near to the appeal site. GT Breakers occupies a much smaller area of land than Benfleet Scrap but it also is involved in car breaking, specialising in breaking and providing spare parts for light commercial vehicles and 4x4s. It also relies on outside storage of vehicles etc. However, from my observation, the noise

⁷ Source: Benfleet Scrap Co website

made at this site is not discernible given the noise from the Benfleet Scrap activities which are so dominating.

- 6.17 The MWPA's consultation responses to the planning application considered the matters relating to the safeguarded sites and how the proposals would affect the existing uses. Their sustained objection related to matters of noise. Mr Davis has considered the submitted noise assessments and has concluded that there would be an adverse impact on the existing trading estate and particularly in relation to the noisy activity of the safeguarded Benfleet Scrap site.
- 6.18 Mr Davis considers Benfleet Scrap to be the dominant noise source and the level of noise it emits and its nature is likely to lead to noise complaints against the operator from occupiers of the residential units, particularly in warmer months when residents will want to have their windows open and be able to sit out in their gardens. He considers that there would be an unacceptable level of noise amenity for residents at those times due to the noise from Benfleet Scrap.
- 6.19 It is clear from Mr Davis's evidence that there is a real risk of justified complaints about noise from new occupiers of the residential and commercial properties. The location of some of the residential properties would be only some 60 to 70m from the crusher in the corner and 70 to 80m away from the new aluminium recycling plant mentioned above.
- 6.20 The impact of those complaints would be difficult to calculate but it is clear that if upheld which, in view of the likely noise levels and the location, Mr Davis considers is entirely possible, the workings of Benfleet Scrap could be severely curtailed if not stopped altogether. It is difficult to see how the yard could operate and carry out its current activities at reduced noise levels. Either it would need to operate at reduced hours to its current hours but those are currently set at fairly limited times and less than the licence permits, and there is no guarantee that reduced hours of operation would resolve the complaints, or the alternative would be to erect large structures on the site to bring all the noisy activities inside. Either way, there would need to be a very significant investment by the operators to resolve any potential problems that arise as a result of allowing housing to be built close to the existing operation.
- 6.21 We clearly cannot know what the impact of any complaints might be. We know

that there have been complaints over the years in respect of noisy activities in the area directed towards Benfleet Scrap. The officer's report for the wall application⁸ stated that there had been three complaints about Benfleet Scrap that year (2018), two of which were unsubstantiated.

6.22 In addition, we know that one of the current Appellants has sought to challenge the grant of planning permission for the wall through the courts⁹, partly on the grounds that Benfleet Scrap has not been operated correctly and cited instances of the scrap metal being stored at heights of 6 or 8m¹⁰ and alleging '*that the proposed wall is nothing more than a stalking horse to allow Benfleet scrap to store and process more metal than they do at the moment*'. Both the judicial review and the subsequent challenge in the Court of Appeal were dismissed but it is clear in those judgements that the Appellants in this appeal were keen to try to limit the operation of the scrap yard due to their intentions to develop the appeal site for housing. It seems to me from reading the Court judgments that the Appellants clearly recognised that an unfettered scrap yard would present difficulties in being able to develop housing nearby. They sought to argue that there should be conditions imposed on the permission for the wall to limit the wider operation of the scrap yard and to avoid intensification, but their argument failed and the case was dismissed.

6.23 I note however that the Appellants continue to allege unacceptable practices at the scrap yard and appear to have an ambition to fetter its operation. Paragraph 2.38 of their Statement of Case states;

It will be concluded that the safeguarded waste facility will not suffer impacts when operated reasonably within its planning, licensing and legal guidelines. The appeal proposal is a once in a lifetime opportunity to reasonably mitigate the safeguarded facility, retaining it in operation and yet encouraging its future good behaviour. Any inconsistencies in its administrative behaviour are capable of reasonable tempering without threatening its viability.

6.24 The Appellants do not explain what they mean by 'tempering' and the Council is not aware that the scrap yard is operating unlawfully or outside the terms of its

⁸ LPA Ref: 18/0834/FUL (CD.H3)

⁹ [2019] EWHC 2019 (Admin) (CD.H3) and [2020] EWCA Civ 1420

¹⁰ [2019] EWHC 2019 (Admin) (CD. H3) - Paragraph 28

planning permission and licence. The Environment Agency carries out site checks for permit compliance and the Council understands that it has found no breaches of the permit that warrant action being taken against the operator.

- 6.25 There is no suggestion of intensification at the scrap yard such that it represents a change of use, but I do consider that there could easily be a greater throughput of scrap metal in the future both in terms of quantity and type as pressure for reclaiming and recycling increases both by the Government and the County Council in seeking to minimise waste and pollution (NPPF paragraph 8c), in attempting to adapt to climate change, and as technologies change to allow greater levels of recycling. As Mr Davis's evidence on noise demonstrates, the location of housing so close to this noisy operation could easily prevent that taking place and could therefore reduce the capacity of the site to carry out those functions, or potentially close it down altogether if having to comply with any noise restrictions makes the operation unviable. Operations of this nature are extremely limited in where they can be located because of the noise they generate and because they are generally unsightly. Many industrial estates will not accommodate them as they are sui generis uses and I consider that the nature of the Manor Trading Estate is one where these type of operations can locate and operate with comparatively limited impact. Indeed, the fact that there are some seven safeguarded sites on the estate indicate that it is a site where such uses can reasonably locate.
- 6.26 The potential impact of complaints cannot therefore be ignored and there is a very real prospect that housing would effectively fetter the operation of Benfleet Scrap. The site is an important one in both the Borough and the County, contributing significantly to processing and recycling waste which is why it is safeguarded. The reduction in capacity or even the loss of the operation would have a serious impact on the County Council's ability to meet the capacity requirements set out in its Waste Local Plan 2017 and is contrary to Policy 2 of that plan. It is also contrary to the aims of the Government as set out in the NPPF and the National Planning Policy for Waste (CD.C2).
- 6.27 Paragraph 187 of the NPPF requires that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of

development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed. Mr Davis has shown that the appeal proposal cannot be integrated effectively with the industrial estate and there are clear and justifiable concerns that the operation of the existing businesses, primarily Benfleet Scrap, could be fettered by residential development so close by. I consider that the appeal proposal is therefore contrary to paragraph 187 of the NPPF.

ii Effects of the proposed noise from the Manor Trading Estate

- 6.28 The Manor Trading Estate has been an established industrial estate since before 1949. Many of the units have been on site since the 1950s and 60s and are not subject to any planning conditions that limit their hours of operation or exclude outside working and storage.
- 6.29 The Estate contains a large number of industrial units which are predominantly B2 uses but it also contains number of other uses, including some Class E, B8 and a number of sui generis uses such as the safeguarded waste sites. The industrial units appear to be tightly packed with limited external space and I note that, in many cases, their operations extend into what outside space they have, often at the expense of parking. Most of the safeguarded sites are also reliant upon external working and storage. As such, there is limited scope to prevent noise from the industrial estate.
- 6.30 At his Case Management Conference, the Inspector asked for information about any history of noise complaints in respect of the industrial estate. The Council has received 21 complaints about noise relating to Benfleet Scrap in the last 5 years. Mr Davis addresses this in his evidence and includes a plan identifying the location of those complaints at Appendix 1 of his evidence. The plans shows that complaints were received from both within the Manor Trading Estate and beyond with the majority being from residential properties. I understand that four of the complainants lodged two complaints each whilst a single property was the subject of 4 complaints. The rest complained only once. In terms of location, the nearest complainants were the Appellants on the MTE, approximately 150m from the machinery and crusher in the northeast corner which appears to be the main

source of noise at the scrapyard. The rest of the complainants lived in excess of 200m to the east with others in excess of 500m. A significant proportion of the complaints came from the housing to the south of Church Road.

6.31 The current appeal proposals would locate the new dwellings between 60m to 150m approximately from the same noise source at the scrapyard. The Appellants propose acoustic attenuation primarily in the form of a noise barrier created by the Class E units together with a robust glazing specification for the dwellings. Mitigation is therefore reliant upon the detailed layout and design of the housing and estate generally.

6.32 However, Mr Davis's has assessed the submitted noise assessment and concluded noise would be likely to be excessive at the proposed properties and that, were the scheme permitted, the risk of noise disturbance to future occupiers would be high. He is concerned that the noise levels within the site will not be fully attenuated by the proposed measures and that although an acceptable level of noise amenity could be achieved internally in the dwellings, this is reliant on the windows being kept closed at all times. Furthermore, the noise levels externally will still be unacceptable and will not provide an acceptable external level of amenity for residents (and potentially for occupiers of the Class E units). As a consequence, future occupants will experience considerable lack of residential amenity and would be constrained on how they can use their properties.

6.33 The NPPF places increasing importance on good design and requires that developments should function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development (paragraph 130 a)) and also that they should:

Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users;
(paragraph 130 f)

6.34 Furthermore in respect of noise it requires that planning policies and decisions should ensure that new development is appropriate for its location taking account of the likely effects of pollution on health, living conditions and the natural environment (paragraph 185) and, that they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development

and avoid noise giving rise to significant adverse impacts on health and quality of life (paragraph 185 a)

6.35 The need for extensive noise attenuation is evident when you visit the appeal site. The appeal site experiences considerable noise pollution because of its close proximity to Benfleet Scrap. I accept that noise attenuation can be put in place but Mr Davis does not consider that it will be capable of providing an acceptable level of amenity for future residents (and potentially occupiers) unless they remain indoors with their windows closed. I consider that would give rise to a poor and unacceptable level of amenity for future occupiers.

6.36 The matter of amenity in such cases was considered by the Inspector in the Bedwell Road, Elsenham appeal¹¹ (CD.H5). That appeal related to some 220 dwellings but the principle was similar. Those dwellings would experience considerable noise nuisance from the elevated M11 motorway on one side and the railway line on the other. The Inspector raised this issue early on in her decision letter when she said that:

On both visits, I experienced the noisy character of the site and this left me with concerns about the overall suitability of the site for residential use.
(paragraph 12)

6.37 As is the case here, in order to achieve satisfactory internal living conditions in relation to noise levels, every window of all the 220 dwellings in that appeal as shown on the indicative layout would have to remain closed at all times. In that case, the windows would not have been fixed shut for emergency escape purposes but the Inspector considered that if residents opened the windows, they would be exposed to unacceptably high noise levels at all times and that whilst, technically, internal noise conditions would be satisfactory with the windows closed, she advised at paragraph 15 that her assessment did not just dwell upon technicalities.

6.38 She commented at paragraphs 17 and 18 that:

'Being required to always keep windows closed in all 220 residential properties, is far from desirable and raises concerns over the suitability of the site for residential use. In my opinion, being able to open windows in a

¹¹ APP/C1570/W/21/3274573: Land north of Bedwell Road, Elsenham

family dwelling is an essential part of everyday life, and something which most people take for granted. For example, in summer months, patio doors or windows may be open all day round if the weather is warmer, children are playing outside, or families are enjoying barbecues. Equally, in winter months, windows are often opened to let in fresh air, even if for short periods. Windows are often left open overnight, even if only partially, to enable fresh air particularly in summer months.

Keeping all windows closed to produce a suitable noise environment internally would, to my mind, create an oppressive living environment, and I fail to see how keeping windows closed at all times could promote a high standard of amenity. This is particularly relevant given its rural edge of village location, where I consider it would be reasonable to expect a quieter noise environment than perhaps an urban area or city centre. Furthermore, there could be potential adverse impacts on health and quality of life because the scheme places an unreasonable burden upon all the future occupants.

Additionally, it is likely that ventilation of the properties would be necessary to avoid overheating in warmer months and ensure suitable air flow all year round. Whilst again, this could be technically achievable, I remain concerned how it could be conditioned to be investigated, designed, implemented and maintained, whilst remaining reasonable and enforceable. It would also place an additional unusual financial requirement upon the house owner to maintain the equipment. This particularly concerns me in relation to the occupants of the intermediate affordable homes.'

- 6.39 The Inspector also raised concerns about the external environment with a large proportion of the gardens likely to experience noise exceeding acceptable noise levels. She stated:

'Therefore, it would be reasonable to conclude that, based on the indicative plan, my experience of the site and evidence before me, that most, if not all properties would be exposed to noisy external conditions.' (paragraph 30)

- 6.40 And that

'To have most private garden spaces exposed to this amount of noise, or

even marginal exceedance at 58 dB, would be undesirable, particularly considering the value private garden spaces have played in many peoples' lives over the course of the COVID-19 pandemic. Furthermore, these dwellings are likely to provide a high amount of family housing, occupied by people with children who are likely to utilise gardens frequently. Being able to have the window open and passively observe children playing, 'keeping an ear out for them', could be difficult at times.

31. Likewise, talking to neighbours in the street would also be problematic as noise levels are likely to be higher in public spaces. The open spaces and play areas on the west and north would be in the noisiest parts of the site, where noise levels are indicated as 61 and 65 dB LAeq 16hr. This would not encourage community cohesion nor social wellbeing and the quality and value of the public space around the development would be diminished by the noise levels, such that I fail to see how they would be actively and continually used.'

6.41 The current appeal proposal is obviously smaller than the Bedwell Road proposal but I consider that it raises similar concerns to those raised by the Inspector for the above appeal. It is also a rural site where one could expect a quieter environment. However, based on the submitted noise assessment, Mr Davis has confirmed that the windows will need to be kept closed for all the properties, that residents will be reliant upon mechanical ventilation and that the gardens and public open space will also experience noise levels above acceptable limits. The Inspector for Bedwell Road considered the proposal against the guidance at paragraph 011 in the Planning Practice Guidance¹² to see if the noise impacts might be partially offset but concluded that it could not.

6.42 I have carried out a similar exercise and conclude that residents on the current appeal proposal would also not have access to those matters for the following reasons.

- The proximity of the scrapyards means that few dwellings if any would have a relatively quiet facade (containing windows to habitable rooms) as part of their dwelling;
- There would be no relatively quiet external amenity space for their sole use,

¹² NPPG: 011 Reference ID: 30-011-20190722

(e.g. a garden or balcony).

- The Development Masterplan shows no areas that might act as relatively quiet, protected, nearby external amenity space for sole use by a limited group of residents as part of the amenity of their dwellings;
- There is no relatively quiet, protected, external publicly accessible amenity space (e.g. a public park or a local green space designated because of its tranquillity) that is nearby (e.g. within a 5 minute walking distance). The nearest amenity space is Woodside Park to the northwest but this is not directly accessible from the appeal site and would involve residents walking down to Church Road and then along Manor Road, a distance of some 1.2km.

6.43 I conclude therefore that the current proposal will not provide future residents with an acceptable level of amenity. The Appellants at the Bedwell Road appeal argued that people buying the properties would be aware of the noise conditions of the site prior to purchase, and people's sensitivity to noise levels differs widely. I would imagine that a similar argument could be advanced in this case. However, I agree with the inspector that 50% of these properties would be affordable (40% in that case), and these future occupants would have less choice over their future housing than market dwelling purchasers – especially those who would be housed in the social rented dwellings. This matter rightly concerned the Inspector and it also concerns me when considering the implications of the current appeal. Noise perception and tolerance varies between people but I consider that the noise climate of the current appeal site is not one which will provide an acceptable level of amenity for the future residents and it is conflict with the Framework, which requires developments to provide high standards of amenity and promote health and well-being (paragraph 130).

6.44 Mr Davis has shown that the operation of the existing business of Benfleet Scrap will have a significant adverse effect on the new development and that suitable mitigation cannot be provided that would make the amenity of future residents acceptable. It is clear therefore, that the new development cannot be integrated effectively with existing businesses and community facilities on the Manor Trading Estate and that it is likely that those existing businesses and facilities could have unreasonable restrictions placed on them as a result of development, contrary to

Policy 2 of the 2017 Essex and Southend on Sea Waste Plan. The appeal proposal is contrary to paragraph 187 of the NPPF.

7 PARKING

- 7.1 The Manor Trading Estate experiences considerable problems of parking. Many of the industrial units use what would normally be regarded as parking spaces, for storage or outside working space with the result that throughout the estate, ad hoc parking of both cars and commercial vehicles takes place and often blocks the narrow footpaths. Unloading often takes place often in the road, thereby blocking the road. The photographs submitted with the 2020 application to improve the roads¹³ included photographs (CD.H4) that demonstrated and highlighted the continuing parking problems that are prevalent throughout the industrial estate. As a consequence, any new development is expected to provide adequate vehicle parking for its needs and not to exacerbate existing problems.
- 7.2 Reason for Refusal No 5 raises concerns regarding the ability of the appeal site to provide sufficient parking for the commercial element of the proposal. The officer's report (CD.A3) identified the reasons for these concerns which are based on the submitted details and that the commercial element of the scheme would not be able to provide sufficient parking to meet either the standards or the need for parking on the MTE and would not address the displaced parking that arises. Whilst it is accepted that the appeal proposal is in outline and therefore the final details of the layout of the commercial units and the residential development, including their associated parking, will be determined at a later stage, it is considered that the appeal proposal must be capable of providing sufficient parking at that stage. The parking capability of the commercial units is in doubt for the reasons I explain below.
- 7.3 Since the refusal of planning permission and the submission of the appeal, the Appellants have submitted additional information on parking and have updated their Schedule of Commercial Building Floor Area and Parking Provision in their Note of the 25 November 2022 (Drwg No. 16.3839.DP/M007 Rev A) and have provided the updated Development Masterplan (Drwg No. 16.3839/P205 Rev B). These effectively revise the information contained in the application forms and the previous plans and I have therefore based my assessment and evidence on those documents.

¹³ LPA Ref: 20/0159/FUL

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- 7.4 The NPPF promotes good design and at paragraph 110 (c) states that in assessing planning applications it should be ensured that the design of streets, parking areas, other transport elements and the content of associated standards reflects the current national guidance, including the National Design Guide and the National Model Design Code (and not reflect the withdrawn Design Bulletin 32). The National Design Guide also promotes well-designed spaces which includes the promotion of walking and cycling and well-considered parking and servicing. (Paragraph 50)
- 7.5 Policy T8 of the adopted Local Plan confirms that the parking standards of Essex County Council will be applied. As explained in my Section 3, the most up to date parking standards are set out in the County's document Parking Standards; Design and Good Practice (September 2009). These parking standards (which were not based on the withdrawn Design Bulletin 32) reflect the previous Use Class classification of B1, B2 and B8 and require maximum provision for car parking spaces based on proposed floor areas. However, they apply a minimum standard for cycle parking for both staff and visitors, powered two wheel vehicles (PTWs) and disabled space for each former use class. Although B1 is now Class E, it is considered that the previous standard still applies as the standards have not been updated and there is no equivalent E class requirement. The ratio of parking space to floorspace is different between the B classes but each category requires the four forms of parking space to be provided. There are no standards for the numbers of commercial vehicles that should be provided.
- 7.6 Paragraph 3.2 of the Standards sets out the required sizes of the respective parking bay spaces. These state that the preferred size for car parking bays should be 5.5m x 2.9m with a minimum size of 5.0m x 2.5m to be used in exceptional circumstances. Paragraph 3.2.2 advises that the minimum bay size may only be used in exceptional circumstances as determined by the Local Planning Authority. Castle Point Borough Council does not consider that exceptional circumstances exist in this case and I agree that there is no reason to adopt the minimum standards in a location where there is already pressure for parking. Disabled parking bays should be 6.5m x 3.9m (paragraph 3.3.5).
- 7.7 Paragraph 3.2 also sets out the minimum bay size for vans of 7.5m and the smallest bay size for HGV's is 12m x 3.5m for rigid HGV's (17.0m x 3.5m for

articulated HGV's).

7.8 The Appellants' November 2022 Schedule of Commercial Building Floor Area and Parking Provision calculates the numbers of parking spaces required by the parking standards in respect of car parking, powered two wheelers and cycle spaces and then provides figures for the proposed provision of those spaces. I have no disagreement with the calculations and I agree that the numbers of car parking spaces correlate to those shown on the updated Development Masterplan. However, no disabled spaces are calculated (or shown) nor are the areas proposed for cycle and PTW parking shown. I accept that those areas may be accommodated generally but consider that they should be shown indicatively on the masterplan if only to demonstrate that they can be accommodated in suitable locations. Setting that issue aside, I have two main concerns regarding the parking provision shown on the masterplan.

7.9 Firstly, although the parking standards indicated that vehicle parking spaces should be considered to be maximum numbers, the most recent advice contained at NPPF Paragraph 108 is that;

Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework).

7.10 As a consequence, the figures are not applied as maximum requirements by the Council but are instead regarded as a guide and in this case, may be regarded as minimum figures in line with the standards for the other forms of parking due to the clear problems of existing parking at the Manor Trading Estate (see my paragraph 7.1). Therefore, the requirement for the Class E spaces is, to my mind, a minimum requirement especially when you take account of the fact that Class E may include retail, indoor sport, nursery and medical facilities, some of which would have required higher provision of parking spaces than the previous B1 category. For instance, old Class A1 would have required 1 space per 20sqm compared with 1 space per 30sqm for old Class B1 applied here.

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- 7.11 My second concern is the size of the spaces and the implications this will have on the overall layout and appearance of the site. The Development Masterplan (Drawing No 16.3839/P205 Rev B), submitted after the appeal was lodged, shows the parking provision intended for the appeal proposal. However, I do not consider that this reflects the necessary provision required by the parking standards if properly applied and that the proposals do not demonstrate that adequate parking provision can be provided. The spaces shown on the Masterplan are of the minimum size of 5.5m x 2.5m and, as I have commented above, fail to provide any spaces for disabled, cycle parking or for PTWs.
- 7.12 The required parking sizes for cars is 5.5m x 2.9m and I see no reason to accept a smaller space than the standards in this location. The standards were prepared and adopted in 2009 and many car makes have increased in size since then. Furthermore, we are dealing here with commercial premises and no provision has been made for commercial vehicles in the layout. If they are to be accommodated in the car parking areas, then they will displace the space available for a significant number of cars, especially if the narrow spaces are to be adopted.
- 7.13 On the basis of the standards alone, the B2 and B8 units would require some 41 spaces and as confirmed by the Appellants' Schedule, some 69 are provided. However, if the correctly sized spaces are applied, this reduces the number to some 59 achievable spaces. Whilst this represents a possible over provision in respect of these commercial units, the same calculations reduce the 87 parking spaces for the Class E units down to approximately 61 spaces, significantly short of the standards for those units.
- 7.14 The total provision for the appeal site would therefore be some 120 spaces against a requirement of 128. I accept that this is not a significant shortfall but it has to be considered in the light of several factors.
- 7.15 Firstly, the parking provision only relates to car parking. No disabled, PTW or cycle parking is shown and those also need to be taken account of and are in addition to the 120 spaces that can currently be achieved or in the case of disabled, require large spaces.
- 7.16 Secondly, no commercial vehicle parking is shown or accounted for either on the masterplan or the Schedule. Although the standards do not stipulate what

provision should be provided, as it is largely reliant upon the type and nature of the uses they will serve, it is common sense that the proposed commercial uses will require to use or/and be serviced by commercial vehicles, in addition to cars. One only has to visit the MTE to see the reliance upon commercial vehicles and therefore the need for both car and commercial vehicle parking spaces.

- 7.17 Thirdly, the division of the commercial uses in terms of access means that the Class E uses are to be served by the new residential access road from Church Road and not the existing access to the industrial estate via Armstrong Road (and Brunel Road). Although a pedestrian connection is shown on the masterplan between the two areas, in reality, drivers visiting the Class E units will expect to park near to those premises and will normally drive there first. If there are insufficient parking spaces then they are far more likely to park nearby on the residential roads than to drive back to Church Road and then drive into the MTE to find another parking space, even assuming that any are available there. The lack of sufficient parking spaces for the Class E units therefore will impact on the residential occupiers of the dwellings, meaning that residential roads would be used for commercial vehicles, contributing to a lack of amenity and to additional noise and disturbance for residents.
- 7.18 Fourthly, the proposed B8 unit occupies a site within the existing MTE on an area which is currently used for various activities including storage and parking. The photograph at my Appendix 1 show this area and the usage (photos I, J & K). Some 50 spaces are actually marked out (counted using Google Earth) and these together with the storage and other uses would be lost as a result of the proposed development and there are no proposals to replace them or to indicate what measures are to be put in place for the existing units. The existing industrial units contained in the large existing building within the north western corner of the appeal site has very limited associated parking. Parking is shown along the frontage of the building along Brunel Road and outside storage and commercial vehicles occupy the areas to the rear (Appendix 1, Photos G & H). There is no spare capacity within the area left to this industrial building to provide the replacement parking and I consider that any proposals must also address and make provision for the displaced parking at the very least. The retained building has a total floor area of some 3640 sqm and assuming that the occupants are B2 uses, the building would require a total of 73 car parking spaces, 15 staff cycle spaces, 8 visitor cycle

spaces, 5 PTW spaces and 4 disabled bays, not to mention any commercial vehicle parking that might be required. (If this building is B1 (Class E) then it would require some 122 car parking spaces alone). I cannot see how this can be achieved based on the current proposals.

- 7.19 The Appellants have advanced a case that the proposals represent an opportunity to bring about environmental improvements on the Manor Trading Estate. Those improvements relate primarily to the roads within the estate and I am unaware of any proposals to improve the parking situation which is chronic with vehicles parking wherever they can. The Appellants' 2020 planning application for the Repair, Renovation and Improvement of Private Road Infrastructure does not include parking provision. Indeed, the photographs submitted with that application (CD.H4) highlight the issues of insufficient parking and storage space within the MTE. In my opinion, these would be compounded by the appeal proposal through the displacement of existing parking and the lack of adequate new and replacement parking provision for all types of vehicles.
- 7.20 I therefore consider that the appeal proposal fails to demonstrate that the necessary commercial parking provision for both the existing and extended industrial estate can be provided on the site and is therefore contrary to the provisions of the adopted Essex parking standards and Policy T8 of the adopted Local Plan.

8 HOUSING AND EMPLOYMENT LAND SUPPLY

Housing Land

- 8.1 The Council published its most up to date housing supply figures in January 2022 in its Annual Monitoring Report (CD.E1) and confirmed that the Council could not demonstrate a 5 year supply of housing land. The latest supply figure is 1.86 years.
- 8.2 I accept that the Borough Council has a long-standing under-delivery of housing as confirmed by the AMR. The current required housing provision is 355 dwellings per year and according to the Housing Delivery Test, the Council only achieved delivery of 442 or 48.3% of the required dwellings over the last three years (2019 to 2022) against a covid adjusted target of 916. The majority of the provision has been on brownfield sites.
- 8.3 In terms of affordable housing, the delivery is worse with no affordable housing being delivered in 2021/22¹⁴, 13 being delivered in the previous year and none in the year before that. Even in the 10 years prior to those years, delivery was limited and varied between 0 and 55. The SHMA Addendum 2017 (CD.F1) indicated that there was a need for up to 288 homes per annum to be affordable. This represents 81% of the current annual housing requirement and it is clear that this is unfeasible. However, it is also clear that the Council is not achieving anywhere near the figures that are required to address affordable housing need and is unlikely to do so until it has an up to date Local Plan in place.
- 8.4 It is evident from the above that the Council is not able to provide sufficient homes, either market or affordable to meet its requirements and there is a pressing need to deliver more housing both market and affordable in the Borough.
- 8.5 It is accepted that the tilted balance in favour of sustainable development would normally be engaged as a result. However, in this case, Footnote 7 to paragraph 11(d) is applicable and the appeal site is within the Green Belt where the NPPF policies provide a clear reason for refusing inappropriate development. As a consequence, the tilted balance is disengaged.

¹⁴ AMR 2021 – 2022 Figure 15.

Employment Land

- 8.6 The proposal includes the provision of some 6,359 sqm of commercial floorspace, a relatively small proportion of which is contained within the existing industrial estate.
- 8.7 The Appellants argued that there is a need for this employment floorspace in the borough in their original planning application and I note that whilst they do not argue the need for additional floorspace in their Statement of Case, they maintain at paragraph 2.13 that the Manor Trading Estate is the only industrial facility on the mainland, with no opportunity for growth or inward investment.
- 8.8 The need for additional employment floorspace both in the borough and at Manor Trading Estate was considered in some detail at the new Local Plan examination and by the Examining Inspector in his letter and report to which I refer in my Section 3. The arguments advanced by the Appellants in terms of the need for additional floorspace on the mainland as opposed to Canvey Island were considered in the Inspector's letter of the 6 September 2021 at paragraphs 45 and 46. He commented that;

The SEEDNA¹⁵ considers future employment growth in South Essex for the period 2016 – 2036. The total employment land requirement for Castle Point for the period, with a supply side adjustment taking into account historic development rates and offsetting losses of employment land to other uses, is 9 hectares.

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.

- 8.9 With regard to the third allocation of 3.7ha proposed employment land on the

¹⁵ South Essex Economic Needs Assessment 2017

Manor Trading Estate, the Inspector considered at paragraphs 48 and 49 that:

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.

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.

In terms of the exceptional circumstances for the alteration of the Green Belt boundary to accommodate the extension to the Manor Trading Estate, there is no numerical need for additional employment provision at a strategic level for the plan period. Furthermore, whilst the planning system should actively manage patterns of growth in support of the transport objectives of the Framework, the proposal at the Manor Trading Estate is modest in scale, and any such benefits would be limited.

- 8.10 The Inspector did not therefore support the allocation for 3.7ha at Manor Trading Estate and it was subsequently deleted on his recommendation.
- 8.11 The Inspector clearly did not consider that there was a demonstrated need for further employment land beyond that already committed with current development and, whilst he accepted that this was all taking place on Canvey Island, he was not convinced that locationally, there was a pressing need for a greater balance in the provision of employment land within the Borough.
- 8.12 I am not aware of any updated evidence beyond the SEEDNA that supports the need for additional employment floorspace in Castle Point Borough beyond the

areas already developed and/or committed. The Appellants have not advanced any additional information to support a need argument or updated the information contained in the evidence base and I also question the contribution of the MTE to any potential need bearing in mind the Inspector's comments. The Inspector considered that the proposal for the MTE of 3.7ha was modest and provided limited benefits and therefore, a significantly smaller additional employment area of 1.26ha (Commercial development area minus the existing industrial site) must have further reduced benefits in terms of any strategic benefits and contribution.

- 8.13 I consider that any benefit of additional employment development at the MTE must therefore be considered at the local level and in respect of its impact on the Trading Estate itself and consideration of any very significant circumstances. I turn to those matters in my next section.

9 VERY SPECIAL CIRCUMSTANCES

9.1 Paragraph 148 of the NPPF requires that when considering planning applications for inappropriate development, very special circumstances need to be demonstrated and that they will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. I therefore turn to consider what very special circumstances may exist in this case.

9.2 The Appellants have stated that the very special circumstances for this proposal are set out in their submitted Planning, Design and Access Statement (PDAS) and the Statement of Common Ground. There is currently no agreed list of potential very special circumstances in the SoCG and I therefore propose to consider the Appellants' very special circumstances as set out at paragraph 6.53 (page 22) of their PDAS. I propose to consider each one in turn.

Tangible contribution of 68 residential units in the context of long-term five-year housing supply deficit of a mix in accordance with identified housing need.

9.3 Section 8 of my proof explains the current 1.86 years¹⁶ supply of housing land and I agree with the Appellants that the Borough Council has long standing issues with under-delivery of housing as confirmed by the AMR. Furthermore, with the withdrawal of the new Local Plan, the Council is currently in a position whereby it cannot identify appropriate sites for development and the position is unlikely to improve in the short term.

9.4 The withdrawn Local Plan identified sites for housing to be removed from the Green Belt and those sites were considered acceptable by the examining Inspector and their removal from the Green Belt justified. The current appeal site was not one of those nor was it considered by the Inspector for housing purposes.

9.5 However, the site had been considered for housing by the Council as part of the Local Plan process. The site had been put forward under call for sites for previous draft Local Plans (site Reference 2014/2) but was considered again in the 2018 assessment of sites. The SHLAA Review 2018 identifies the current appeal site as site SO145 – Land East of Manor Trading Estate (CD.F3 &4). The Insert Map

¹⁶ Annual Monitoring Report 1 April 2021 to 31st March 2022

3¹⁷ shows the same boundaries for that subject site as the current appeal site, including the separate access from Church Road. (The SHLAA also considered some eight sites being advanced for residential development within the Manor Trading Estate but discounted them primarily because they were not available or considered not achievable).

9.6 The SHLAA site SO145 (the appeal site) had an area of 4.17 ha and was assessed to be of Medium Overall Suitability (in a range of High, Medium and Low)¹⁸, that development was achievable and that it was available in 5 to 10 years. That assessment was based on a capacity of 100 dwellings rather than the 68 now being proposed. The SHLAA raised no issues of suitability in the fourteen categories considered but, in this case, it is relevant that issues of residential amenity/noise did not form one of the categories although the SHLAA did identify noise buffering as well as ecological mitigation, tree preservation and/or replacement as exceptional costs in achievability considerations. Also that the development would be for houses only (not flats).

9.7 The Council also commissioned development viability appraisals¹⁹ for the sites identified as being potentially suitable and available and not already committed. The appeal site formed one of the 73 sites considered. The viability assessment considered that a net area of 3.08ha would yield 100 dwellings and be viable on that basis.

9.8 The Council refined the consideration of sites in the Strategic Housing and Economic Land Availability Assessment Update dated November 2018 (CD.F5) and concluded that the need for housing could not be met without the need to release sites from the Green Belt. The report made specific mention of the sites within the Manor Trading Estate and commented that:

A small number of sites were put forward by landowners whose land was located within existing well-established employment areas. These eight sites were located within the Manor Trading Estate, Thundersley. In total they equate to approximately 5.8ha of economic land (See Figure 16 below). These sites were not considered for residential development based on their

¹⁷ SHLAA 2018 Update – Volume 4 Mapping Report

¹⁸ SHLAA Review 2018 – Volume 2 Site Schedules

¹⁹ Castle Point SHELAA Sites – Development Viability Appraisals Report September 2018

location.

- 9.9 The Council's Local Plan Hearing submission to the Inspector's Matters, Issues and Questions on Green Belts²⁰ (CD.G3) explained the process of refining sites and confirmed that the SHLAA did not apply Green Belt Policy and provided the starting point for identifying sites. There followed various assessments eg. the Sustainability Appraisal, Strategic Flood Risk Assessment and the information from those separate assessments were brought together into a Housing Options Topic Paper 2018 (CD.F2) to provide an understanding of the relative merits of each site, and a summary of any mitigation measures likely to be required. This summarised information provided the basis for the political decision-making process. The Topic paper recommended that the 29 potential sites allocations (which included the current appeal site) be taken forward in the draft Local Plan by the Council to meet the sustainable development needs of the Borough. The appeal site was recommended as an allocation for 95 dwellings and in terms of mitigation stated:

Any development within this parcel should be well screened from the proximal road network to preserve the rural feel of what largely functions as a small rural break in between the industrial estate and surrounding residential dwellings.

The Interim Sustainability Appraisal has identified that the allocation policy must mitigate impacts on the adjacent Bridleway.

- 9.10 No mention was made of any noise issues or requirement for noise mitigation.

- 9.11 However, as the Hearing paper⁸ continues at paragraph 41:

It should be noted that the capacity of the sites available for consideration at this stage in the plan-making process did not leave a lot of scope for choices to be made between one site or another. However, Land north of Scrub Lane, Land east of Downer Road North, and East of Manor Trading Estate and rear of Robert Drake School were all removed from consideration at this stage due to consideration of local impacts.

- 9.12 I understand that the local impacts of the Manor Trading Estate site related to concerns about noise from the adjacent industrial estate. Further, no information

²⁰ Inspectors Matters Issues & Options (MIQs) Matter 3: The Green Belt (8 April 2021)

had been submitted to demonstrate that a development of 95 dwellings could be adequately protected from noise and that the local impacts of this site could be properly mitigated. As a consequence, the appeal site was not put forward as a housing site in the draft Local Plan by the Borough Council.

- 9.13 The suitability of the site for housing has therefore been tested and whilst the site had some potential for residential development, the Council did not advance it in its emerging Local Plan due to noise concerns, preferring instead that part of the site be advanced for employment purposes in the draft Local Plan. Furthermore, although the Inspector commented on the housing requirement and some of the housing allocations contained in the submitted Local Plan, he did not consider that more sites, such as the current appeal site, needed to be brought forward to meet that requirement. The Inspector instead assessed the appeal site for employment purposes (my paragraphs 8.9 to 8.11).
- 9.14 I accept that the identified housing allocations will not come forward so quickly now that the Local Plan is withdrawn and agree that there is a need for sites to come forward and that these will need to be located in the Green Belt. However, I do not consider that there is sufficient justification for this site to be developed for housing such that the need would amount to very special circumstances. The site considered as part of the Local Plan process was assessed for 100 dwellings and found to be viable at that level. There was no policy context or confirmation linking it to the infrastructure improvements on the Manor Trading Estate, nor was there any indication that housing developments would provide anything other than a policy compliant affordable housing provision (40%) and a notional S106 contribution of £1500per dwelling
- 9.15 The current proposal will now provide 68 dwellings, in an area where there is, and has been, a long standing under supply of housing. The 68 dwellings will therefore make a significant contribution towards the Council's housing land supply and I consider that this represents a substantial benefit of these proposals. However, I do not consider that circumstances have changed so significantly that, based on the previous assessments of the suitability of the site for housing, the Inspector's findings and Mr Davis's findings, that the site represents a suitable housing site which will provide an acceptable level of amenity for future residents. I therefore do not consider that proposal to now bring this site forward for 68 dwellings

amounts to the very special circumstances needed to release this site from the Green Belt.

'Provision of 50 percent onsite affordable housing of a mix in accordance with identified housing need, this exceeding the current LPA policy requirement of 20 percent.'

- 9.16 The Appellants' proposal of 50% affordable housing (34 dwellings) as part of this development is welcomed, particularly in a situation where no, or very few, affordable homes have come forward in recent years.
- 9.17 The Appellants' Planning Statement refers to a current policy requirement of 20% but I am not aware of any such requirement. The 1998 Local Plan Policy H7 (Affordable Housing) contained no required number or proportion of development to be affordable although the supporting text at Paragraph 4.28 does indicate that the Council would negotiate with developers to provide up to 20% of all buildings built on large sites as affordable housing.
- 9.18 However, as I have explained at paragraph 4.19 and 4.20 above, the Council adopted its Developers Contributions SPD in 2008 and that contains a requirement for the provision of 35% affordable housing on sites of 15 units or more. The Council has applied that figure to development since 2008 and compliance with this requirement would require provision of 23.8 affordable units on the site.
- 9.19 It is also noted that the withdrawn new Local Plan proposed to apply a 40% requirement for affordable housing based on viability testing.
- 9.20 The South Essex Strategic Housing Market Assessment Addendum 2017 calculated a need for affordable housing calculated at 353 affordable homes per annum which included 62 homes per annum to meet the backlog of need on the Council's housing register. Whilst there was an accepted and strong justification for seeking affordable housing in Castle Point, and for the proportion of affordable homes being sought to be maximised, the 2017 figure of 353 affordable homes per annum represented 100% of the planned housing supply. The new Local Plan therefore sought 40% provision on applicable sites having taken development viability into account.
- 9.21 The proposal for 50% of the housing coming forward as affordable housing is

therefore limited in its benefit. That is not to take away the importance of the provision of any affordable housing but that the site is proposing only 15% more (10 dwellings) than a policy compliant scheme based on the requirements of the SPD.

9.22 The officer's report raised concerns about viability with 50% affordable housing provision. I consider that those concerns are justified bearing in mind that viability testing for the new Local Plan concluded that 40% was generally achievable. The Council's Whole Plan Viability Assessment calculated viability on a range of house typologies including developments of 50 and 100 dwellings on greenfield sites (which the appeal site was classed as). That assessment was based on a policy compliant affordable housing of 40% and, as also used for the site specific viability testing (my paragraph 9.14), an assumed S106 contribution requirement of £1500 per dwelling.

9.23 Bearing in mind therefore that the Local Plan viability testing for affordable housing considered that 40% was achievable and that the site specific general viability testing for the SHLAA site SO145 was based on similar premises, but calculated on 100 dwellings rather than 68, I consider that the Planning Authority's concern that 50% affordable housing may not be capable of being achieved on the site, particularly in the light of the applicant's stated intention to use at least part of the receipts from the site on the upgrading of the Manor Trading Estate and the substantial costs likely to be attributable to the provision of appropriate acoustic screening and decontamination of land on the western boundary of the site, appears justified.

9.24 The Appellants do not address this concern in their original planning submissions and do not refer to it in their Statement of Case and have not submitted any viability assessment to demonstrate that what they are proposing as part of the appeal application is achievable and deliverable. I appreciate that they are prepared to enter into a S106 agreement to offer the 'benefit' of increased affordable housing provision and the other matters, but consider that in the light of the known constraints on this site and the extent of what is being offered by the Appellants, I do have some concerns as to whether this development can bring forward all the elements being proposed.

9.25 However, setting those concerns aside, I consider that the provision of 50%

affordable housing on the appeal site would be a considerable benefit and is welcomed in a situation where the Council has a poor track record of delivery in recent years with none delivered last year. However, I consider that benefit has to be tempered by the consideration of the amenity of those dwellings so close to a noisy scrap yard and whilst the provision of any affordable housing represents a benefit and will provide some 15% more than a policy compliant scheme, thereby assisting the Council's aims in securing additional affordable housing, I am concerned that the living conditions of those occupants will not be acceptable. Putting that concern to one side, I accept however, that the provision of affordable housing per se is a substantial benefit to which I attach substantial weight but I do not consider the provision in this case, including a 15% uplift represents the very special circumstances required by the NPPF.

Significant new employment space creating jobs for the Borough, partially in accordance with the emerging Local Plan site allocation;

- 9.26 Again, I appreciate that the Appellants prepared their Planning, Design and Access Statement (PDAS) prior to the new Local Plan being withdrawn and therefore the reference to that document is no longer relevant.
- 9.27 The proposal involves the creation of some 5874 sqm of additional employment floorspace which the Appellants have indicated would equate to 50 full time jobs although it is not yet known what activities would take place in the buildings. I have addressed the need for significant new employment floorspace in Section 8 of my proof and demonstrated that there is no evidence to support the need for extra floorspace in the borough. Although there is some acceptance that most of the employment development is taking place in Canvey Island and not on the mainland, that issue did not bear weight with the Examining Inspector when he concluded that the proposed allocation at Manor Trading Estate should be deleted.
- 9.28 Whilst I consider there is no demonstrable need for the floorspace, I nevertheless consider that any additional jobs are a benefit and will provide greater employment opportunities for local people. Similarly, I accept that the building of new homes and commercial floorspace generates economic benefits both through the construction process and also from the spending power of the residents and employees who occupy them. I also accept that the proposals have the potential to provide some temporary employment opportunities during construction.

- 9.29 I afford these benefits moderate weight but consider that the fact that no evidence has been presented to demonstrate that there is an employment need in the borough that justifies additional land being taken out of the green belt, I do not consider that such an argument represents very special circumstances.

Significant environmental improvements to the adjoining Manor Trading Estate in conjunction with approved application 20/0159/FUL as a 'pump primer' for further future investment;

- 9.30 The Appellants have stated that the proposal will allow the start of improvements to the roads within the Manor Trading Estate and they propose to tie these improvements into a Section 106 Agreement, the wording of which is still under discussion. It seems that the estate roads which are private and owned by the Appellants have been allowed to fall into disrepair over the years and I saw no signs of any real efforts to carry out any emergency repairs or even much in the way of patching in the worst areas.

- 9.31 The Appellants' Planning, Design and Access Statement does not identify what improvements are being proposed on the Manor Trading Estate other than referring to those proposed in planning application ref 20/0159/FUL. Those relate to the improvements to the roads and footpaths and not to any other environmental improvements or rationalisation of the industrial estate. The most detail is contained at paragraph 6.95 of the PDAS:

As previously explained within the Objection Letter to the LPA dated 22 October 2019, at PDAS1, significant investment has already been made by the applicant in baseline studies alone. The applicant is well-positioned to deliver the regeneration of the Manor Trading Estate roads in addition to the necessary drainage infrastructure, but only where an economy of scale exists in the associated development. The present employment allocation does not achieve this, this outline application does.

- 9.32 The appeal site does not include the remainder of the MTE and there are no proposals being advanced at this inquiry for any specific improvements to the industrial estate. The 2020 planning permission for the improvements of the roads was granted on the 23 July 2020 and is subject to a number of conditions that require the submission of details in order to be discharged. That planning

permission is due to expire on the 23 July 2023 but as yet, no details have been submitted to discharge the conditions.

9.33 Furthermore, there has been no submission of viability assessments with the current appeal proposal, nor any substantive arguments and evidence that the current proposals represent enabling development and the suggestions to carry out improvements have been somewhat vague and imprecise as to exactly what will be carried out as a result of the appeal proposals.

9.34 While I accept that improvement of the roads will be of benefit to the businesses within the industrial estate, I fail to understand how that can be regarded as a requirement of a benefit of the current proposal. Clearly the access to the appeal site will require improvement but I consider that is a direct requirement of the appeal proposals although it will benefit other businesses. However, the extent of the improvements that can be secured by the appeal proposal are limited in my view. They do not appear to address some of the main problems of the industrial estate which is overcrowding, lack of parking and servicing. Instead, the development is likely to lead to problems for existing operators such as the safeguarded waste sites through potential complaints. I consider that those operators, including Benfleet Scrap Ltd would experience difficulties finding alternative sites to relocate to due to their sui generis use and noisy nature.

9.35 I consider that the possible improvements to the MTE should attract limited weight and that they are not of such a nature as to represent very special circumstances.

Increased ecological value of the site which is currently of low ecological value.

9.36 The submitted 2022 Preliminary Ecological Appraisal updated the August 2018 Appraisal and concluded, as did the earlier one, that the site was of low ecology value. Whereas the site had been listed as a potential Local Wildlife Site in the Local Plan Appraisal of the site in the SHLAA Review with a good diversity of species²¹ containing areas of semi-natural scrub and woodland habitats, those habitats were cleared from the site at around the same time as can be seen on the Google Earth images contained at My Appendix 2. Image no 4 shows the land being cleared in June 2018 shortly before the first Preliminary Ecological

²¹ CD.F4 SHLAA Review 2018 Volume 2, Schedule D - Suitability

Assessment was issued on 10 August 2018. Both the earlier and recent PEA therefore recommended that compensatory habitat provision is recommended together with appropriate mitigation and enhancement for protected species based on the cleared site rather than the previous woodland and shrub habitats.

- 9.37 The NPPF paragraph 174 requires that decisions on planning applications should contribute to and enhance the natural and local environment through amongst other things, minimising the impacts on and providing net gains for biodiversity as part of the application process (174(d)). As a consequence, planning applications generally are expected as a matter of course, to improve biodiversity and to provide net gains. The current proposals provide no indication or measurement of net gain and the layout as proposed provides limited opportunities to restore the extensive semi-natural scrub and woodland habitats that previously existed before clearance. The appeal site will largely be covered by development and I consider therefore it has limited ability to either restore any of the previous habitats. Whilst I accept that there may well be net gain in biodiversity to what is there at present, I do not consider that any improvements that can be offered on this site represent very special circumstances.

Provision of community infrastructure including public open space, new pedestrian crossing and school parking.

- 9.38 Similarly, I consider that the proposals for the provision of community infrastructure including public open space, new pedestrian crossing and school parking is required to mitigate the impact of this development and cannot be considered to be very special circumstances.
- 9.39 The development will provide open space but in this case the area of open space is fairly limited and is partly required to provide the SUDs for the development. I consider that its provision is therefore more to make the development acceptable and is aimed at providing an acceptable level of amenity for residents. However, because of the issues of noise, I consider that it is unlikely to provide an attractive amenity for future occupiers.
- 9.40 The Appellants also suggest that the provision of the school drop off parking area is a benefit of the proposals. However, this appears to be in response to the fact that the proposed access cuts into the footway and layby in front of the Primary

school and therefore I regard this as a replacement for the lost drop off area in front of the school rather than a benefit of the proposals.

9.41 I do not find that these amount to very special circumstances.

Conclusions on Very Special Circumstances

9.42 Whilst I accept that there are matters being advanced that are planning benefits to this scheme, I do not agree with the Appellant at paragraph 6.54 of their PDAS that: *An aggregation of VSCs has been demonstrated to overcome the formulaic harm to the Green Belt and any other harm.*

9.43 The very special circumstances being advanced by the Appellants are not of sufficient weight in this instance to be considered as the very special circumstances required by the NPPF to set aside Green Belt policy.

10 OTHER MATTERS

Hesten Lodge

- 10.1 The Appellants have stated that they own some of the land that the day care centre Hesten Lodge is located on. They claim that their land runs through the small extension at the rear of the centre and includes the northern hedgerow and some of the centre's access along the eastern boundary. They claim that as part of the appeal proposal they result in the '*Resolution of potentially crippling access and ownership issues for Hesten Lodge*'. (P, D&A paragraph 7.19) and in their Statement of Case at 2.19 and 2.20 that:

The appellant will further demonstrate the attempts made to reconcile this trespass, and its consequences for Hesten Lodge if not formally resolved.

It will be concluded that Hesten Lodge cannot operate whatsoever, without cooperation with the appellant who controls the access and significant areas of the trespass land.

- 10.2 Hesten Lodge is a day care centre for vulnerable adults with Profound and Multiple Learning Disabilities. The building and the same boundary has been in place for many years as can be seen on the aerial photographs in my Appendix 2. Hesten Lodge is excluded from the appeal site and there is no proposal to block off access to the day centre as part of these proposals. Indeed, the Council has suggested a condition to ensure that the access to be kept open at all times both during and after construction. The Appellants have not indicated what the 'consequences' are for these vulnerable adults but I consider that the matter appears to be a land ownership dispute between the Appellants and the owners of Hesten Lodge and is outside this appeal.

11 THE PLANNING BALANCE

11.1 As I have set out above, the appeal scheme represents inappropriate development in the Green Belt and I attach substantial weight to this in principle harm. However, in addition to that harm, I also add harm to the openness of the Green Belt, the harm arising because of the noise impacts both for existing industrial operators and future occupants of the new housing and commercial premises, and the harm resulting in the provision of inadequate parking. All these harms weigh against the development.

11.2 The Council accepts that it is not able to demonstrate a 5 year supply of housing and the policies which are most important for determining the appeal are also out of date (paragraph 11d). In those cases, the tilted balance would normally apply. However, we are in a Footnote 7 case here whereby there are clear reasons for refusing (what is agreed to be) inappropriate development in the Green Belt unless very special circumstances apply. I have considered the Appellants' suggested very special circumstances in Section 9 of my proof and concluded that whilst they may be considered to be benefits of the scheme and I have given them the following weights summarised below, they do not amount to very special circumstances.

- Housing: the provision of 68 new homes - substantial weight.
- Affordable Housing: The provision of 50% (34) affordable housing, some 15% more than a policy compliant scheme - substantial weight.
- Employment Floorspace: the creation of some 5874 sqm of additional employment with the potential to create 50 full time jobs - moderate weight.
- Economic Benefits - moderate weight.
- Environmental Improvements: improvement of roads on the Manor Trading Estate - limited weight.
- Ecological Improvements: - limited weight
- Provision of Community Infrastructure: limited weight

The Planning Balance

11.3 The NPPF requires that substantial weight is given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the

proposal, is clearly outweighed by other considerations

- 11.4 The proposed development represents inappropriate development within the Green Belt and is therefore harmful and in accordance with the NPPF, I attach substantial weight to that harm. Furthermore, as I have demonstrated above, the appeal proposals harm the openness of the Green Belt and again, in line with the NPPF, I attach substantial weight to that harm.
- 11.5 Mr Davis has also assessed the submitted evidence on noise and concluded that the development will experience significant problems of noise pollution from the adjoining industrial estate, and particularly from Benfleet Scrap, which cannot be adequately mitigated and will lead to unacceptable living conditions for future residents and complaints against the noisy scrapyards. In my view that could have serious consequences for that operation and its ability to process waste, an increasingly important activity both locally and nationally in trying to adapt to climate change. He considers that there is good reason for refusal on noise grounds and I attach substantial weight to that harm.
- 11.6 However, the proposals also result in further harm through the lack of adequate vehicle parking for the commercial units, including provision of the displaced, existing parking. Bearing in mind the parking problems already experienced on the Manor Trading Estate which are not proposed to be addressed either by the appeal scheme or the proposed road improvement works, I consider that the proposal will also add to those existing parking problems. The proposal has failed to demonstrate that sufficient parking can be made available and that the proposal will not compromise existing operations on the industrial estate. I attach significant weight to this harm.
- 11.7 Balanced against that harm are the substantial benefits of providing 68 market and affordable dwellings to help meet the Borough's housing need. However, I consider that these and the more limited benefits offered by the other considerations above do not clearly outweigh the substantial harm to the Green Belt, the unacceptable living conditions of future occupants and the potential adverse effect on an established scrap yard, nor the lack of adequate parking for the proposal. Consequently, I do not consider that very special circumstances exist which justify the inappropriate nature of the development and the harm that would arise.

- 11.8 As I have concluded that the development is inappropriate within the Green Belt and that there are no very special circumstances to justify making an exception in this case, Green Belt policy as set out in paragraphs 133-147 of the Framework provides a clear reason for refusing the development. It follows therefore that the 'tilted balance' in paragraph 11 of the Framework does not apply in this case.
- 11.9 I therefore consider the appeal should fail and request the Inspector to dismiss this appeal.

12 CONCLUSIONS AND SUMMARY

- 12.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Borough Council accepts that there are only two Development Plan policies that are relevant to the proposal but both Local Plan Policy T8 and Essex and Southend-on-Sea Waste Local Plan Policy 2 are consistent with the National Planning Policy Framework and can be given weight at this appeal. For considerations in relation to the Green Belt and noise, the Council relies on the policies of the NPPF.
- 12.2 The principle of developing the part of the appeal site within the Green Belt has been examined in the past both on appeal in 2008 and as part of the now withdrawn Local Plan process. Both the 2008 appeal decision and the 2018 Review of the Green Belt in 2018 found that the land contributed towards at least first three of the purposes of the Green Belt in that it helped to (1) check unrestricted sprawl, (2) prevented neighbouring towns merging and (3) safeguarded the countryside.
- 12.3 The northern area of the appeal site (3.7ha) was put forward as an employment allocation in the withdrawn Local Plan but was deleted as part of the main modifications in accordance with the examining Inspector's recommendation²² as he considered the need for the allocation had not been demonstrated and there was no justification for removing the site from the Green Belt. The final plan was found sound but was withdrawn by the Council in June 2022.
- 12.4 The current proposals will provide only 1.28ha of additional employment land within the Green Belt. Based on the Inspector's conclusions on lack of need for 3.7ha, I can see no justification for this smaller area of employment land to be removed from the Green Belt.
- 12.5 I also find that the appeal proposal will result in harm to the openness of the Green Belt. Residential development would extend across the width of the site removing the openness of this part of the Green Belt resulting in further harm and contrary to the aims of Green Belt and government policy.
- 12.6 The reasons for refusal raise two issues in relation to noise - the effect of the

²² Letter dated 6 September 2021 and Report on the Examination of the new Castle Point Local Plan
Castle Point Borough Council
1284.01/Proofs

proposal on the safeguarded waste disposal sites situated on the Manor Trading Estate arising from likely complaints from new residents (RfR 2) and the impact of the existing noisy activities at the Manor Trading Estate on the new residential and commercial premises and whether the proposed development can ensure that the future amenities of those occupants will be acceptable (RfR 3).

- 12.7 Mr Davis's evidence concludes on the first that the proximity and nature of the industrial estate and particularly those of the noisy Benfleet Scrap Ltd adjacent to the site, will mean that noise levels cannot be adequately mitigated and there are likely to be complaints about the noise generated by the scrap yard, particularly in the warmer months.
- 12.8 The scrapyards are one of the largest in Essex and are safeguarded due to their function and importance. If complaints do arise and are upheld then it is difficult to see how the yard could operate and carry out its current activities at reduced noise levels. Furthermore, I anticipate that there may be a greater throughput of scrap metal in the future both in terms of quantity and type as pressure for reclaiming and recycling increases both by the Government and the County Council in seeking to minimise waste and pollution (NPPF paragraph 8c), in attempting to adapt to climate change, and as technologies change to allow greater levels of recycling. As Mr Davis's evidence demonstrates, the location of housing so close to this noisy operation could easily prevent that taking place and could therefore reduce the capacity of the site to carry out those functions, or potentially close it down altogether if having to comply with any noise restrictions makes the operation unviable.
- 12.9 In terms of reason for refusal No 3, Mr Davis has concluded that noise would be likely to be excessive at the proposed properties and the risk of noise disturbance to future occupiers would be high. Further, that noise levels within the site will not be fully attenuated by the proposed measures and that acceptable internal noise levels could only be achieved by keeping windows closed at all times. Noise levels externally however, will still be unacceptable. I conclude that the proposals will not provide an acceptable level of amenity for residents (and potentially for occupiers of the Class E units) and is in conflict with the Framework, which requires developments to provide high standards of amenity.

- 12.10 It is clear that the new development cannot be integrated effectively with existing

businesses and community facilities on the Manor Trading Estate and that it is likely that those existing businesses and facilities could have unreasonable restrictions placed on them as a result of development. There would also be unacceptable impacts on the residential development and possibly on the commercial units (Class E) such that the appeal proposal is contrary to paragraph 187 of the NPPF and places at risk the safeguarded waste sites on the Manor Trading Estate, contrary to Policy 2 of the Essex and Southend on Sea Waste Plan 2017.

- 12.11 Reason no 4 relates to parking and I have demonstrated that the proposal fails to provide sufficient parking for the commercial element of the proposal and would not comply with the parking standards nor replace the displaced existing spaces. The appeal site is located within and adjacent to the MTE which already experiences severe problems of parking for cars and commercial vehicles and there is no justification in this case to accept a minimum parking bay size and reduced numbers. I consider that the proposal is therefore contrary to the provisions of the adopted Essex parking standards and Policy T8 of the adopted Local Plan.
- 12.12 In Section 8 of my evidence I confirm that the Council's most recent figure for housing land supply is 1.89years and that it has a longstanding issue with under delivery. The situation for delivery of affordable housing is in some respects worse with none being delivered last year and limited numbers in previous years.
- 12.13 I examine if there are very special circumstances to set aside Green Belt policy in Section 9. There is no agreed list of potential very special circumstances in the draft Statement of Common Ground and I have therefore considered those advanced by the Appellants in their submitted PDAS.
- 12.14 Housing: I accept that the appeal site was originally considered as a possible housing allocation in the withdrawn Local Plan but it was included it as an employment and not a housing allocation in the submitted Plan. I understand that the Council resolved not to allocate the land for housing because of concerns about noise. The proposal will provide 68 dwellings where I recognise there has been long standing issues of under supply of housing. Those dwellings will make a significant contribution towards the Council's housing land supply and I consider that this represents a substantial benefit of these proposals but have concern about

the amenity of any future occupants of those dwellings.

- 12.15 Affordable Housing: The provision of 50% affordable housing on the appeal site is a considerable benefit and is welcomed particularly in a situation where the Council has a very poor track record of delivery. However, I consider that benefit has to be tempered by the consideration of the amenity of those dwellings so close to a noisy scrap yard and whilst the provision of any affordable housing represents a benefit and will provide some 15% more than a policy compliant scheme, assisting the Council's in securing additional affordable housing, I am concerned that the living conditions of those occupants will not be acceptable. Putting that concern to one side, I accept however, that the provision of affordable housing per se is a substantial benefit to which I attach substantial weight.
- 12.16 Employment Need: I consider that no evidence has been presented to demonstrate that there is an employment need in the borough that justifies additional land being taken out of the green belt.
- 12.17 Environmental Improvements: I consider that the possible improvements to the MTE should attract limited weight.
- 12.18 Ecological/Community: I also do not consider that the suggestions for ecological net gain, the provision of a parking area for the primary school and/or the provision of open space are anything other than measures that are necessary to mitigate the impacts of the development and to make it acceptable in amenity terms.
- 12.19 Whilst I accept that the matters being advanced by the Appellants are planning benefits to this scheme, I conclude that they are not of sufficient weight in this instance to be considered as the very special circumstances required by the NPPF to set aside Green Belt policy.
- 12.20 The appeal scheme represents inappropriate development in the Green Belt and I attach substantial weight to this in principle harm. However, in addition to that harm, I also add harm to the openness of the Green Belt, the harm arising because of the noise impacts both for existing industrial operators and future occupants of the new housing and commercial premises, and the harm resulting in the provision of inadequate parking. All these harms weigh against the development.
- 12.21 The Council accepts that it is not able to demonstrate a 5 year supply of housing

and the policies which are most important for determining the appeal are also out of date (paragraph 11d). In those cases, the tilted balance would normally apply. However, we are in a Footnote 7 case here whereby there are clear reasons for refusing (what is agreed to be) inappropriate development in the Green Belt unless very special circumstances apply. I have considered the Appellants' suggested very special circumstances in Section 9 of my proof and concluded that whilst they may be considered to be benefits of the scheme and I have given them weight they do not amount to very special circumstances.

The Planning Balance

- 12.22 The NPPF requires that substantial weight is given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations
- 12.23 The proposed development represents inappropriate development within the Green Belt and is therefore harmful and in accordance with the NPPF, I attach substantial weight to that harm. Furthermore, as I have demonstrated above, the appeal proposals harm the openness of the Green Belt and again, in line with the NPPF, I attach substantial weight to that harm.
- 12.24 Mr Davis has also assessed the submitted evidence on noise and concluded that the development will experience significant problems of noise pollution from the adjoining industrial estate, and particularly from Benfleet Scrap, which cannot be adequately mitigated and will lead to unacceptable living conditions for future residents and complaints against the noisy scrapyard. In my view that could have serious consequences for that operation and its ability to process waste, an increasingly important activity both locally and nationally in trying to adapt to climate change. He considers that there is good reason for refusal on noise grounds and I attach substantial weight to that harm.
- 12.25 However, the proposals also result in further harm through the lack of adequate vehicle parking for the commercial units, including provision of the displaced, existing parking. Bearing in mind the parking problems already experienced on the Manor Trading Estate which are not proposed to be addressed either by the appeal scheme or the proposed road improvement works, I consider that the

proposal will also add to those existing parking problems. The proposal has failed to demonstrate that sufficient parking can be made available and that the proposal will not compromise existing operations on the industrial estate. I attach significant weight to this harm.

- 12.26 Balanced against that harm are the substantial benefits of providing 68 market and affordable dwellings to help meet the Borough's housing need. However, I consider that these and the more limited benefits offered by the other considerations above do not clearly outweigh the substantial harm to the Green Belt, the unacceptable living conditions of future occupants and the potential adverse effect on an established scrap yard, nor the lack of adequate parking for the proposal. Consequently, I do not consider that very special circumstances exist which justify the inappropriate nature of the development and the harm that would arise.
- 12.27 As I have concluded that the development is inappropriate within the Green Belt and that there are no very special circumstances to justify making an exception in this case, Green Belt policy as set out in paragraphs 133-147 of the Framework provides a clear reason for refusing the development. It follows therefore that the 'tilted balance' in paragraph 11 of the Framework does not apply in this case.
- 12.28 I therefore consider the appeal should fail and request the Inspector to dismiss this appeal.