

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004**

**APPEAL BY THIS LAND DEVELOPMENT LIMITED
LAND EAST OF RAYLEIGH ROAD, THUNDERSLEY, ESSEX**

APPELLANT'S OPENING POINTS

Appearances

Rupert Warren KC instructed by CODE Development Planners, calling
Andrew Smith BSc (Hons), MSc, CMLI, fabrik Limited
James Donagh BA (Hons), MCD, MIED, Stantec
Liam Ryder MPlan MRTPI, CODE Development Planners.

Opening Points

1. The appeal proposals are for up to 455 new homes,(40% of which would qualify as affordable housing), new community facilities including a community hall and land for healthcare and early years and nursery provision as well as significant green infrastructure, multi-functional open space and other infrastructure.
2. The context for the appeal is firstly one of a serious shortfall of housing of all types both nationally and more importantly within Castle Point. The agreed position is that housing supply stands at 1.86 years and repeated failures of the Housing Delivery Test require the inclusion of a 20% buffer when calculating the need.
3. This Land Development Limited, the Appellant company, has brought forward the appeal proposals having carefully assessed the merits and demerits of providing housing on the appeal site; the second important aspect of the appeal's context is that the Local Plan process has failed

to deliver a plan which the Council supports since the adoption of the now expired and (agreed to be) out-of-date 1998 Local Plan. I say “which the Council supports” because the last emerging Local Plan was submitted for examination, was found sound subject to modifications in an Inspector’s report dated 3 March 2022, and was then withdrawn by the Council later that year.

4. The appeal site was proposed for allocation in the withdrawn plan for essentially the same development as is now proposed. Its release from the Green Belt was found to be procedurally sound and to pass (along with a set of other sites) the NPPF test of ‘Exceptional Circumstances’ (‘EC’). Whilst that is not the same as the test which now applies to the appeal, i.e., the Very Special Circumstances (‘VSC’) test, the planning history is agreed to be a material consideration and goes some way to explaining why, in the circumstances of a continuing unmet housing need, the appeal site is one which should be released from the Green Belt to meet some of that need.
5. The third contextual point is that the Local Plan process (which was proposed to recommence shortly after the withdrawal of the emerging plan in 2022) has still not yet crystallised in a form, or supported by overarching evidence or analysis, to which anything other than very limited weight can be given. The Council does not say that granting permission for the appeal scheme would be premature in the light of NPPF evidence. Indeed, the very earliest that one could expect a new plan is 2026 (though the Local Development Scheme says that is subject to examination, and contains no Main Modifications stage). Any release of land in the Green Belt to meet the pressing needs which the Council, in its corporate statement, recognise, must therefore come through the grant of planning permission. The main parties agree in the Statement of Common Ground (paragraph 3.8) that the Council is unable to meet its housing needs.
6. The upshot is that the presumption in paragraph 11(d) of the NPPF is engaged, subject to a finding of VSC – in other words, a planning judgement that the harm that the appeal scheme would cause in Green Belt terms and any other harm, would be clearly outweighed by the benefits of granting permission. It is a stringent test, but one which national policy applies to allow decision makers to judge whether the circumstances are right for permission to be granted notwithstanding Green Belt designation.
7. In this case, there is (perhaps unsurprisingly) very little dispute between the Appellant and the Council about the need for housing and affordable housing. The Council’s witness affords them substantial weight – which given the really very serious problems of overall supply and affordability, is obviously right.

8. The circumstances of the appeal proposal are also agreed to encompass the provision of community facilities and land – there may be some disagreement over weight here but the site is well located to meet such existing needs and due weight should be given to the way that a relatively large scheme like this one can meet wider needs.
9. Furthermore the scheme will enable an appreciable improvement in biodiversity (net gain) on the site, beyond what law or policy requires. Given the timing of the scheme, it would have potentially been open to the Appellant to provide less by way of ecological enhancement, but a much more positive approach has been taken both to BNG and to the provision of Green Infrastructure in general (around half the site will fall into this category once the scheme is complete).
10. There will be economic benefits associated with the development as it is constructed and due to its operation.
11. The site is one which, notwithstanding its Green Belt location, has much to recommend it as a place to meet a material part of the Castle Point existing shortfall. It is a good sustainable location in terms of travel and transportation patterns. In terms of development pattern and character, the site lies between an extensive area of commercial development to the north, and housing to the west and (more patchily, but nonetheless strongly present) to the south. The eastern boundary is countryside, but there landform, vegetation and planting will allow a defensible long-term boundary to be created there, as the EiP Inspector found in 2022.
12. The site is also unconstrained in important ways – there are no highways, flooding/drainage, ecological or other amenity issues which suggest that the appeal scheme is in the wrong place. Those matters too were thoroughly analysed in the previous local plan process, and through the course of this application – the Council’s reason for refusal and evidence does not suggest that objections to the grant of permission exist on these issues.
13. There will be a degree of landscape and visual harm, as Mr Smith’s evidence makes clear – the development is for up to 455 homes and other facilities. During the evidence there will be a debate about the key points of difference on landscape character and appearance, but it is possible to anticipate that somewhat having seen the proofs. Probably the most important point in gauging any landscape and visual harm is that the site is not nationally designated for its landscape quality. A relatively small part of the site is notated as the westerly part of an area of historic landscape, but that is agreed not to make the site itself a Valued Landscape for the purposes of the NPPF, and the extent of the effects on that area can be judged well on site.

14. The site is compartmentalised by mature tree belts and landform which would limit the geographical scope of any effects and ensure that they would be localised. It is certainly not the case – nor is this alleged by the Council – that wider Green Belt or landscape parcels would be affected by the appeal scheme. I have already mentioned the relationship with the urban area, something which is also clearly understood on site.
15. The Council gives some weight to the effect on Best and Most Versatile (‘BMV’) agricultural land; Natural England confirmed in its last consultation response that the area affected on site falls below the threshold for further discussion with them and have no objection to the grant of permission. Some relatively limited weight though should be given to the effect in the planning balance.
16. That leaves Green Belt impacts. The scheme would of course fall within the category of ‘inappropriate development’ for Green Belt policy, and it would affect the spatial and visual aspects of openness (very largely on the site itself). The NPPF indicates that substantial weight should be given to this in the balance. The scale of effect on openness is commensurate with the scale of the proposal (all being proposed new build housing, albeit all of a traditional kind). Mr Smith gives detailed evidence on the point in his proof.
17. It is also said for the Council that the appeal scheme would cause harm to the Green Belt purposes of preventing coalescence and limiting the effect of unrestricted sprawl on the countryside. Clearly there is some overlap with the impacts on openness, but Mr Smith and Mr Ryder both consider that the Council’s evidence here is overstated. The coalescence claimed between Thundersley and Daws Heath was carefully considered by the Local Plan Inspector, who concluded that the development of the site would ensure that a gap was maintained and coalescence prevented. The status of Daws Heath in the context of Green Belt policy is also worth noting.
18. There would be some harm to the countryside but judgements about the Green Belt purpose of assisting with the prevention of unrestricted sprawl are a little more nuanced than simply reflecting landscape and visual analysis. The appeal scheme is well related to the existing urban area, would be well contained and would benefit from defensible boundaries on all sides – it would also ‘read’, when built, as a well-designed part of the urban area rather than an ad hoc addition to it, which is what ‘unrestricted sprawl’ means. So the parties are a little way apart on those judgements.

19. But overall, the VSC planning balance components are relatively clearly identified. The aggregate of all the relevant points (or ‘circumstances’) prevailing here mean that the case for approving the scheme clearly outweighs the harm that the Green Belt (and the other – landscape/visual and BMV) would experience. This is an acceptable way for Castle Point to meet at least some of its very substantial housing shortfall – in a well-contained, sustainable location adjacent to a main settlement.
20. The Appellant’s evidence also covers points raised by local objectors – there are no other reasons (for instance on highways, ecology or flooding/drainage) which weigh in the overall planning balance.
21. For these reasons, in due course the Appellant will ask that the appeal be allowed and planning permission granted.

RUPERT WARREN K.C.

**Landmark Chambers
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