

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

APP/M1520/W/24/3338797

Inquiry sat 4-7 June 2024

APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. In the *Luton* case¹ the Court of Appeal re-emphasised that national planning policy “plainly contemplates that development may be permitted on land within the Green Belt, without the need to change its boundaries in the local plan, provided ‘very special circumstances’ exist”. This is a very special circumstances (“VSC”) case.
2. In Castle Point, the last Local Plan review, which balanced the area’s needs for development against Green Belt openness and other factors, was twenty six years ago, in 1998. All parties agree that even its surviving ‘saved’ policies are out of date and that it was not drafted on the basis of meeting the pressing housing needs which are relevant now. The Green Belt boundaries are drawn tight up against the edge of the developed areas² and are many years out of date.
3. The Council rejected the opportunity to review those boundaries in 2022, when it decided to withdraw a new Local Plan which had been found sound by its examining Inspector. That unprecedented act³ has led to further years of uncertainty and worsening housing deficit⁴, making Castle Point an object lesson in planning failure.

¹ *R(Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537 at [55] – CD 12.14.

² See the Proposals Map for the 1998 Plan: CD6.31.

³ There does not appear (to the Appellant team’s knowledge having researched it) to be another example of this having happened since the relevant provisions in the 2004 Act came into force. It is not suggested otherwise by the Council.

⁴ As the Council officers warned the members it might: see CD6.21 section 6.4, numbered sub-paragraphs setting out what are described as “very significant implications”.

4. It is accepted for the purposes of this appeal decision that the housing needs of the area comprise those generated by the Standard Method⁵, and that as a result there is only 1.86 years' worth of housing land supply. It is accepted that those outstanding needs cannot be satisfied on brownfield land within Castle Point's 1998 settlement boundaries⁶. So the stringent VSC test – where harms must be clearly outweighed by 'other considerations' – comes firmly into play here.
5. As the Council itself stressed at the inquiry, Green Belt is a spatial planning policy. It is not an environmental policy. It has its central purpose the restriction of new development (subject to a limited set of exceptions) on land outside certain settlements (keeping land 'permanently open'). However, deciding to meet housing by extending sustainable settlements is also a spatial planning policy⁷.
6. Often in such cases there are circumstances which indicate that, when seen overall, there are good reasons for not granting permission for housing in the Green Belt: for instance a relatively small housing shortfall; or a prematurity objection because an emerging plan will shortly be the place to decide the land use planning balance for the area; or because the particular parcel of Green Belt has additional high sensitivities such as landscape designations, or heritage constraints, or ecological issues.
7. There are no such issues in play in this appeal. It is actually the starkest of Green Belt cases: an intractable, long-standing and very substantial housing and affordability deficit, with an unchallenged need to develop in the Green Belt to meet housing needs; an out of date Green Belt boundary; and a sustainable site with very few if any constraints and which has been found sound as an allocation (on the basis of the same needs, and directly-applicable findings about Green Belt effects) by a recent Local Plan examining Inspector, only for the plan (and allocation) to be withdrawn on political grounds without a shred of planning justification. If those are not very special circumstances, it is difficult to see what might be.

⁵ See paragraphs 1.4-1.8 of CD9.2, the Addendum SCG.

⁶ See the Inspector's report, CD 7.1 paragraph 42.

⁷ Mr Hughes, cross examination.

The policy position

8. The main parties agree that this is essentially an NPPF appeal because the development plan policy suite is either non-existent (for instance GB1 in the 1998 Local Plan, which not saved) or out-of-date (the rest of the Local Plan). It is out of date not just because of the absence of a 5 year housing land supply, but because the policies saved in 2007 are themselves completely out of date⁸.
9. Mr Hughes therefore accepted⁹ that the Council does not say that any still-extant Local Plan policy would be breached by the appeal scheme.
10. The NPPF assessment essentially turns on the VSC test in paragraph 153. There are some points about the Green Belt tests that need addressing, but it is useful to look first at points about housing, affordable housing and natural environment policies in the NPPF, because they feed into whether VSC exist here.
11. There is no dispute first about the centrality of housing and affordable housing policies in this case. Mr Hughes' written evidence¹⁰ appeared to make something of the 2015 Written Ministerial Statement relating to housing demand and VSC, but he acknowledged that it did not apply in this case. Instead, it is agreed that:
 - (1) It is important that a sufficient amount and variety of land can come forward where it is needed and that the needs of groups with specific housing requirements are addressed (paragraph 60); and
 - (2) local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of 5 years' worth of housing (paragraph 77). This is acknowledged by Mr Hughes for the Council to be a minimum requirement.
12. Next, paragraph 180 of the NPPF draws a distinction in approach for decision makers, whose task includes "protecting and enhancing valued landscapes" on the one hand, but "recognising

⁸ The s.38(6) test of course still applies, but the main parties agree that (see next paragraph) that actually the scheme does not contravene what remains of the saved policies; and that material considerations indicating otherwise will depend on the outcome of the NPPF exercise – which is almost entirely encapsulated in the VSC exercise under paragraph 153.

⁹ In cross examination. Where I use the expressions "accepted" or "acknowledged" these are references to Mr Hughes' responses in cross examination.

¹⁰ Mr Hughes at paragraph 7.11 page 77.

the intrinsic character and beauty of the countryside” in other cases involving. The change in the NPPF from (old PPS2’s) injunction to protect the countryside for its own sake to recognising the intrinsic qualities of the countryside is not an accident. As Mr Ryder said, if the NPPF paragraph 180(b) represents any form of protection for undesignated countryside, it is of a much lower order (hence the very obvious point that the NPPF was deliberately drafted *not* to apply a test of ‘protecting’ to it)¹¹.

13. That is borne out by view of the Court, in the *Cawrey* case¹², where it was said that “undesignated” or “ordinary” countryside “may not justify the same level of protection but the NPPF, properly read, cannot be interpreted as removing it altogether.”. So not *removed altogether*, but approached in a different way, which obviously goes to the weight to be given to landscape and visual issues in a case like this.

14. Turning thirdly to the Green Belt policies, the following points apply:

- (1) Inappropriate development (as defined) in the Green Belt should be regarded as harmful by definition: paragraph 152.
- (2) VSC, which would justify granting permission for inappropriate development in the Green Belt, is a planning balance which needs to be clear (ie, to use an agreed gloss, decisively struck in favour of other considerations rather than Green Belt protection).
- (3) Slightly more thorny is the expression “substantial weight is given to any harm to the Green Belt”. The Council, through Mr Hughes, interpret this as an injunction to give substantial weight to every aspect of Green Belt harm where it occurs – in other words, to give substantial weight to inappropriateness, substantial weight to loss of spatial openness, substantial weight to loss of visual openness, and substantial weight to conflict with any of the Green Belt purposes. Mr Ryder, by contrast, reads the NPPF as advising decision makers to give substantial weight if there is harm to the Green Belt.
- (4) The plain meaning of the sentence is that if there is harm to the Green Belt, then substantial weight is advised to be given to it (I say *advised* because, subject to reasons, it is always up to the decision maker to decide what weight to give to any material consideration in a particular case); in other words, harm to the Green Belt gets substantial weight.

¹¹ This is why the review of NPPF conformity in Castle Point found that the saved landscape policy EC16 was not in accordance with the NPPF and why it is not relied on by the Council in this appeal: see Mr Ryder paragraphs 7.7.1-3 pages 31 to 32.

¹² *Cawrey Ltd v SSCLG* [2016] EWHC 1198 at [49] – CD 12.11.

- (5) His approach is corroborated by numerous decisions by your Inspectorate colleagues and indeed by a decision of the Secretary of State himself (the author of the relevant policy)¹³. Not a single contrary example, supporting Mr Hughes' multiple or disaggregated approach, has been put forward; that is telling. A different approach would on the face of it be inconsistent with those examples and would need some justification.
- (6) Mr Ryder was asked to accept that that the words do not 'preclude' a disaggregated approach, and he did so – but that was rather a red herring, because words 'not precluding' a certain meaning is not the same thing as that in fact being their correct meaning. The trouble with that way of approaching things is that we have long left behind the pre-*Tesco v Dundee* world¹⁴ where policy might have a range of reasonable meanings depending on the planning judgement of the decision maker.
- (7) Mr Ryder makes the additional point that a 'disaggregated' approach would render VSC unworkable. He is right about that. The idea that every aspect of Green Belt openness or purposes conflict – of whatever degree – should accumulate a great stack of considerations all of which attract the highest category of weight, just seems unreasonable and would be likely to render the policy unworkable.
- (8) Taken together, these points indicate that it would be a mistake to read paragraph 153 of the NPPF as meaning that substantial weight should be given to every single aspect of Green Belt conflict. There are several here – definitional, openness (degree disputed) and (to a limited degree) purposes; substantial weight should be given to the harm as a whole.
15. Mr Ryder was also quick to point out however that, even if one took Mr Hughes' approach, the circumstances in which we find ourselves in this case mean that VSC are present in any event; the almost complete failure to meet housing needs (especially affordable needs) is effectively the other side of the same coin as the protection of the area of land required to meet those needs. It is the out-of-date Green Belt which is constraining those needs, and the harms here are in effect *needed* in order to achieve the spatial policy objective of tackling the huge deficit of housing. So, in a sense it doesn't really matter even if one were to take Mr Hughes' approach in a case as stark as this.

¹³ See the summary of the decisions on this point at Mr Ryder's pages 28-29.

¹⁴ A reference to the seminal Supreme Court decision which established that the meaning of policy is a matter for the Court not a matter for a reasonable range of views by decision-makers: *Tesco v Dundee City Council* [2012] UKSC 13.

16. Before we come to the Green Belt evidence itself, it is also worth noting that the Council place far too much importance on the difference between the Exceptional Circumstances ('EC') test and the VSC test, in the circumstances of this case. Of course, the two are not identical, and the Court has held that the latter is more stringent than the former. Mr Ryder has been very clear about that himself. The Appellant is not arguing that one can simply "read across" the sound allocation to the grant of planning permission as if it mandated the outcome of this appeal.
17. So, the Council's point is aimed at something other than the Appellant's case. The real issue is what the Inspector found. The Inspector examining the withdrawn Local Plan found the evidence base on housing needs and site selection (including the Sustainability Appraisal and the Green Belt Pt 1 and 2 work) to be clear and adequate. He applied national policy to the facts of the case and found¹⁵ that 450 units on the appeal site would (a) cause harm to the openness of the Green Belt and two purposes, (b) would have a defensible boundary to the east as well as the existing boundaries in the other three directions and (c) would not cause coalescence with Daws Heath. He found that the allocation of the site would be sound, bearing in mind those points and the landscape and visual impacts of such a development. None of those points is affected by the fact that the overall soundness judgement was one relating to EC rather than VSC. They are freestanding judgements bang on point for this appeal.
18. In addition, there are considerations which arise in addition to the Local Plan Inspector's considerations which must be taken into account. The specific benefits of BNG, economy and community facilities, the fate of the Local Plan after the Inspector reported and the huge uncertainty which hangs over the future planning of the area are all germane to that judgement.

Green Belt effects

19. The appeal scheme proposes around 450 homes and other facilities on a site which is largely undeveloped at present, lying within the Green Belt. It has never been said that the scheme would not cause harm by way of inappropriateness, harm to openness and harm to purposes. It would cause harm in all those respects as the application documents said. It is the degree of that highly localised harm which is in dispute.

¹⁵ See CD 7.1 paragraphs 90-93.

Openness

20. The PPG gives guidance on ‘spatial’ and ‘visual’ ways of approaching openness in a Green Belt. These have come from reactions to decisions in High Court judgements (for instance the *Lee Valley* case¹⁶, which confirms that openness can have a visual component). The fact that openness can have a visual component is important – it is not solely to be equated with “lack of development” but overall needs to factor in the visual aspect too.
21. As Mr Ryder said, it is a matter of judgement how the decision-maker approaches the issue of openness, because it is in the end a simple question – by what degree would the Green Belt’s openness be affected?
22. The extent (in 3D) of proposed development would bring about a significant change to the *spatial* openness of the site. Mr Hughes’ ‘volumetric assessment’ is confessedly a bit rough and ready, but the Appellant does not challenge its generality; it is self-evident that there would be a plain and substantial change from undeveloped to developed with 450 homes. Mr Smith was accused in cross-examination of failing to undertake a volumetric analysis but one does not need such an exercise to assess the spatial impact. He does that in his evidence¹⁷.
23. The difficulty is the proper calibration of that harm. Mr Hughes’ analysis is that there would be a spatial impact at the *top end of the substantial scale* but although there obviously would be a marked effect, that view is an overstatement. Over half the site will remain free of built development (ie soft – grass, trees, hedges, water)¹⁸. One really has to calibrate judgements of that kind against all Green Belt effects – a larger development with more floorspace and a greater density, height, volume and impact on the character of the wider Green Belt would clearly be more impactful in spatial terms. Mr Hughes’ assessment appears to treat the appeal scheme as the most harmful conceivable example of spatial harm, but a more proportionate assessment is needed.
24. Then there is the effect of counter-balancing design – the effect on Green Belt spatial openness would to some extent be mitigated and there would be enhancements due to careful contextual design (siting of development parcels, the alignment of the main road, edge treatments).

¹⁶ CD 12.2.

¹⁷ See Mr Smith paragraphs 6.28 and 6.31. It is not a fair criticism that Mr Smith’s evidence ‘pays lip service’ to this – it is absolutely obvious that he took into account the manifest change that the scheme would bring. Please read those paragraphs again and look at the Planning Statement and the LVIA: it is simply incorrect to say (Council Closing paragraph 10) that spatial openness impact was something the Appellant “failed to assess”.

¹⁸ If the Council focus on spatial openness as equated with lack of built form, then clearly Mr Smith was right to draw attention to the absence of development across half the site – cp Council Closing footnote 3.

25. Similarly, the *visual effects* on openness would not be as severe as Mr Hughes judges. That is because he overstates the extent of visual openness in the baseline, and therefore fails to assess the difference correctly. This is because, as he made clear in answer to questions, that he does not take into account as relevant to the visual side of Green Belt openness anything other than buildings. He acknowledged by reference to my notional Lincolnshire example that visual effects on openness vary due to degree of enclosure, including by trees and vegetation, but was seemingly unable to see the logical consequences for his assessment here.
26. Ironically, Mr Hughes even gives you an example of how trees can affect Green Belt visual openness – his paragraph 5.19 cites the Secretary of State’s finding that tree planting associated with a certain scheme “aggravated” the impact on openness that the scheme would cause. The sentence can only mean that trees affect openness (both in the baseline and in a proposed design), and that is again just a matter of common sense.
27. The site at the moment is agreed to be compartmentalised by mature dense planting¹⁹ and this limits the visual aspect of openness in the baseline and would have a similar effect with the scheme in place. There are pockets and internal compartments of openness but the site overall contains substantial visual breaks and interruptions.
28. Furthermore, the visual effect on openness is agreed to be confined to the site and its immediate surrounds. The list of locations at Mr Hughes’ page 38 is rather misleading as it represents a list of locations from each one of which one has a snapshot or series of snapshots of parts of the site, in its compartmentalised form; as Mr Smith said, it is not a ‘goldfish bowl’ where one had untrammelled views through from all angles – this will have been most obvious on the site visit yesterday.
29. As a result, the visual openness of the Green Belt on site will be affected to a material degree. but not to the extent alleged by Mr Hughes; the combined effect on the two analysed aspects of openness would be marked – Mr Ryder described that as ‘moderate’ harm, which is entirely fair when seen in the context of a graduated scale from no harm to very substantial Green Belt developments on visually open sites.

¹⁹ See Mr Hughes paragraphs 5.118 and following; “existing vegetation plays an important role in ... enclosing parts of the site from views and provides some intimacy.”. See also his paragraphs 2.13-14.

Purposes

30. There will be some moderate or limited harm to the purposes of the Green Belt²⁰. The Local Plan Inspector found as follows²¹:

“The development of the site would cause harm to the openness of the Green Belt and some harm to its purposes as it would cause a loss of countryside and serve to reduce the strategic gap between Thundersley and Daws Heath”.

31. As Mr Hughes acknowledged, the purposes which were found relevant by the Inspector were (c) – loss of countryside, and (b) – reference to the strategic gap with Daws Heath. It is notable that he did not find that the development of the site would offend purpose (a).
32. Purpose (a) relates to unrestricted sprawl. It seemed at times as if Mr Hughes equated all Green Belt development with “unrestricted sprawl”²² but he accepted that was not the case²³. Whether development would fall into that category depends on whether it would fit with the settlement pattern and have defensible boundaries such that it would comprise a well-designed and meaningful addition to the built-up area, rather than something which caused harm.
33. The site would lie within the pattern of built development to the north, west and south, and its eastern and south east extents would be well-defined and defensible, as the Local Plan Inspector found. Its design would be well-considered, as the Parameter Plans show, and it would represent a high-quality addition to Thundersley which would not ‘read’ as *ad hoc* or expedient development straggling out into the countryside. There would be only a limited impact on purpose (a) at most.
34. That was what the Local Plan Inspector found having considered all the evidence, including both parts of the Green Belt study. In Green Belt Study Part 1, the site is subsumed within

²⁰ Purposes (a) to (c). NB the passage in Mr Ryder’s evidence (page 26) which records that the report to committee alleged harm to purposes (d) and (e) – indeed substantial harm to the latter; but that is not acknowledged not to have been correct, and the point withdrawn. See Mr Ryder paragraphs 7.4.12-19.

²¹ CD7.1, paragraph 90.

²² One recalls his comment that from the far views 12 and 13 one sees the site along with “all the urban sprawl” – ie the entire settlements of Thundersley and Rayleigh.

²³ As he acknowledged, otherwise the paragraph would have referred to “development” or “extension to the urban area” rather than “unrestricted sprawl”.

Parcel 4 (with a very small part of Parcel 5) – that Parcel is not only much bigger than the appeal site but it extends to the south of Daws Heath Road into the ancient woodland and a more remote area of countryside. It is not surprising that in Part 1, the authors found that seen as a whole, Parcel 4 served a ‘very strong’ role in relation to purpose (a).

35. However, it is also natural that when the same authors came to consider the site alone in Part 2 of the study, they reached a different conclusion – the site was judged to play only a “moderate” role in that purpose²⁴. Even that was potentially an overstatement, as Mr Ryder argued at the EiP itself²⁵. This led to the agreement in the Statement of Common Ground with the Council (for the EiP)²⁶ that *“landscaping requirements are included within Policy HO13 to mitigate landscape harm as recommended in this report. CPBC and TL are therefore satisfied that the Green Belt evidence supports allocation HO13”*.
36. It was against that background that the Inspector at the Local Plan examination considered the Part 2 Green Belt Study assessment that the development of the appeal site would cause only moderate harm to purpose (a)²⁷. Nothing has changed about the site or the generality of the approach to its development since that time and full weight ought to be given to the Inspector’s views on this point. Furthermore, it is perfectly understandable how the authors reached their view that the smaller, more urban-fringe part of Parcel 4 which comprises the appeal site was less sensitive and would cause less harm if developed than the entire parcel. The Council’s closing²⁸ wants you to focus on the Part 1 assessment of the much larger parcels rather than the site itself. That is just a wilful refusal to face what the evidence (produced for the Council itself) actually says when it looks *at the site itself*, and is a symptom of the Council overstating its case and wanting to disavow what the Inspector then went on to find. While the plan can be withdrawn, the evidence simply can’t be wished away like that.
37. As to purpose (b) – to prevent neighbouring towns from merging into one another – the authors of the Green Belt study found that the appeal site would continue to play a ‘very strong’ role in relation to this purpose. The Inspector found some harm to it. But to be clear, that harm is nothing to do with Thundersley and Rayleigh, which have already merged, as Mr Smith and Mr Hughes both said. There is a field in the appeal site’s north western extremity which borders the road but it is sandwiched between the fire station and housing and faces suburban housing

²⁴ CD6.2 page 36 – site SH07.

²⁵ See Mr Ryder, paragraph 7.4.9 page 25.

²⁶ Ibid paragraph 7.4.10, page 26.

²⁷ CD6.2 page 46 and 47.

²⁸ See paragraph 11.

across the road. It is in an urban location and the overall sense of place, of settlement identity, allows no real sense that there is a break here between the settlements any more.

38. The issue is the extent to which the purpose relates to the gap between Thundersley and Daws Heath. The Local Plan Inspector felt that there would be some harm, but not such as to cause coalescence (which is the relevant purpose in the NPPF); in finding that he judged that the retained distance and what he considered to be a defensible eastern boundary was sufficient to prevent loss of identities or blurring of sense of place. He was correct about that – the edge of Daws Heath is rather crisp whether seen on plan or in the flesh. There is a very noticeable change in character, brought about by the ancient woodland, the intervening fields and the mature (TPO'd) trees on the eastern boundary of the appeal site²⁹. As one walks the five or so minutes in either direction there is a real sense of leaving one area, entering a countryside gap and then finding oneself in a different kind of place, as will have been seen on the site visit.
39. It is interesting that the Inspector was content to reach those conclusions whilst continuing to elevate the status of Daws Heath to a town. The reasoning in the Green Belt review on that point³⁰ treats the settlement as a 'town' on the basis of local factors, but in the end whether that was right or wrong makes little difference. The Inspector proceeded on the basis that the gap was relevant to the second Green Belt purpose, found some harm to it but did not find coalescence. There is no sensible reason to diminish the weight to be given to that judgement.
40. As for purpose (c) – to assist in safeguarding the countryside from encroachment – the Part 2 Study found that the site made a strong contribution (rather than very strong contribution as Parcel 4 as a whole does) to the purpose, and the effect would also be strongly negative. That is due to the extent to which the undeveloped land within the site would be built on. Mr Hughes acknowledged that an assessment of degree needs to have regard to the degree of urban edge effects (ie the fact that the countryside here – as evidenced by the urban edge type uses of some rights of way, like dog walking – is 'peri-urban' in character).
41. Furthermore, the high level of containment on the site, and the absence of knock-on effects or wider impacts of the countryside development on the site tempers the degree of countryside encroachment harm that the scheme would cause.
42. A general point about the evidence which led to the findings in 2022. Mr Hughes does not undertake any form of comprehensive assessment of Green Belt parcels, simply saying that the Parcels 4 and 5 were high scoring in the Part 1 assessment and in his view it was not clear why

²⁹ The Part 2 Study rates the contribution of the Site to purpose (b) as 'very strong': page 36.

³⁰ CD6.2, paragraphs 6.25 and 6.32.

they were taken forward. He fails to grapple with the fact that there were other important factors in play that indicated that the appeal site (and some others) were appropriate to release from the Green Belt, factors which went well beyond the Green Belt purposes exercise.

43. In the EiP Statement of Common Ground³¹, the Council in 2022 agreed the statement that *“the allocation of the land east of Rayleigh Road (Policy HO13) demonstrates a proper and robust review of green belt boundaries with due consideration of the need to promote sustainable patterns of development. The site is largely surrounded by existing urban development with easy and short access to existing employment, retail, residential uses and public transport.”*³²
44. Part of the “existing urban development” is the Daws Heath Road housing, which is classic ribbon development from the twentieth century – it is pretty extraordinary that the Council advances the point that such housing is “characteristic of a countryside location”³³. One can imagine what the Council would say if someone came along and proposed a string of housing like that in the Green Belt now! The point is another symptom of the strain the Council’s case is under. The full story of how the site was judged to be an appropriate place to meet some of the pressing housing needs in Castle Point is therefore contained in the wider Local Plan work, for instance the SA, which the Local Plan Inspector was under a duty to assess for legal compliance. At paragraphs 24-26³⁴ of his report, the Inspector found the SA legally compliant. He also assessed and approved the Green Belt work and found its methodology appropriate and its findings clear – he noted that in conjunction with other work, it showed that Green Belt was going to be required to meet needs and that the Green Belt was not a reason to fail to meet those needs³⁵. Mr Hughes’ view about the evidence base for the Local Plan is therefore unsubstantiated, and at odds with the views of the Inspector who actually examined the plan.
45. So in relation to the Green Belt, there will be moderate harm to which substantial weight should be given in line with the NPPF. As part of the VSC exercise, the evidence also discloses key considerations in addition: (a) that the site was found sound as an allocation and its role in settlement pattern without causing coalescence with Daws Heath was acknowledged by the Inspector, something to which significant weight should be given³⁶, (b) the Green Belt is needed to ensure that housing objectives are met – both at the local plan level and now in the context of the huge housing shortfall – the Council does not dispute that there is insufficient brownfield

³¹ CD6.26.

³² Ibid paragraph 2.1.

³³ Closing paragraph 18.

³⁴ Pdf page 9 of CD 7.1.

³⁵ Ibid paragraphs 42 and 53.

³⁶ See for a similar situation the findings of the Inspector in CD8.1 at DL15 – the fact that the removal of the site from the Green Belt had been found sound in that case by the Local Plan Inspector was given “significant weight” when assessing an appeal after the withdrawal of the Local Plan.

land available to do that, and (c) there are no alternative sites which the Council suggests would be preferable to this one. In other words, despite the inevitable harm that 455 units would cause to openness and purposes, there was and remains an overwhelmingly strong case for the release of the site from the Green Belt.

Landscape and visual matters

General

46. The Inspector must of course make an assessment about the degree of harm to landscape character and visual amenity that the scheme would cause – the LVIA and Mr Smith in his evidence both recognise some harm – Mr Ryder gives it moderate weight in the planning balance. What is surprising is that the Council now alleges that significant harm would be caused to which significant weight should be given.
47. It is clear that this point has ballooned out of all recognition in the Council's case:
- (1) It was not suggested at pre-application, application, officers report or Members' resolution stages that there was landscape harm that even featured in the VSC balance, let alone had any life of its own.
 - (2) There was no response when Place Services were consulted on landscape – the point was clearly not considered of importance; officers did not chase or defer the resolution or suggest that members formed their own view about the landscape. It was effectively a non-point. The factual background should inform the weight to be given to this point in the appeal.
 - (3) Now Mr Hughes presents evidence about these things to the inquiry without expert qualifications³⁷, without undertaking a transparent GLVIA3-compliant exercise³⁸ and without criticising the methodology used in the LVIA submitted with the application³⁹. He accepts that the failure to employ the GLVIA3 method reduces the weight to his evidence in this respect⁴⁰.

³⁷ Mr Hughes paragraph 5.114.

³⁸ Cross examination.

³⁹ Mr Hughes paragraph 5.115.

⁴⁰ Cross examination.

Landscape

48. Mr Hughes contends that the site is highly sensitive in landscape terms and significant weight should be given to a significant harmful effect on it⁴¹. That is an overstated judgement.
49. First, the site is not of high landscape sensitivity – the LVIA says it is of moderate or medium sensitivity based on the methodology which Mr Hughes does not challenge. Mr Smith agrees⁴². It is not designated, has no Valued Landscape label (nor is it said that *any* of the Valued Landscape characteristics – rarity, cultural associations, scenic qualities, etc – apply to it) and is otherwise simply ordinary landscape of local value only.
50. Second, Mr Hughes assessment, perhaps because of the absence of GLVIA3 guidance in it, fails entirely to assess the site in its proper context. That is why there is insufficient assessment of the urban fringe location, of the variations in value across the site, of the way that the site interacts with the built components.
51. Mr Hughes accepts that only limited importance can be placed on the very small part of the site which falls within the Historic Landscape area⁴³.
52. Third, there is no sense in which the compartmentalised appeal site has a role to play in the wider landscape – it is divided from it and housing on the site would not be intervisible with the wider area. As Mr Smith explained when dealing with the design and assessment process, the LVIA used a Zone of Theoretical Visibility exercise and then assessed longer-distance views to establish that the site is effectively fully contained within its boundaries and views of housing would be at most seen from the very edge of the site in a number of places, but not further afield. Mr Hughes did accept that the effects on landscape would be localised.
53. For these reasons, bearing in mind the whole set of different landscapes that exist – and how much more sensitive many of them are, and how one can readily imagine landscape impacts of a much greater order than those present here – the views about sensitivity and harm promoted by Mr Hughes at the inquiry are not reliable and should be given little weight.
54. The LVIA is reliable, as is Mr Smith, who is a very experienced landscape expert. Attempts to suggest that somehow he had not done enough to inform his judgement adequately were unfounded:

⁴¹ Mr Hughes paragraph 5.215 page 66.

⁴² Mr Smith paragraph 6.7.

⁴³ This is consistent with the way that the officers dealt with the point in Appendix 1 of the Report to Committee CD 5.1.

- (1) It doesn't matter that Mr Smith accepted the instruction before going to the site, as he 'ideally' would have. The fixing of the inquiry by the Inspectorate prevented the attendance of the LVIA author and Mr Smith necessarily had limited time – but he was under a professional duty to reflect any change of mind when he did shortly thereafter go to the site. He said that nothing changed his mind.
- (2) Mr Smith relied on the LVIA as it is GLVIA3 compliant and deals with all the main points. There was no force in the criticism that the LVIA spent too little time on the 'key characteristics' of the site's landscape character area in the 2003 Essex LCA work – the rolling or undulating landform and its qualities (the points picked out in questions to Mr Smith from the Essex work) are fully recognised and appraised when considering the more granular Borough landscape work⁴⁴. In addition to which Mr Smith has been the site on multiple occasions to check whether he agrees with the LVIA.
- (3) An even less meritorious point was the suggestion made to Mr Smith that the LVIA was somehow flawed because it doesn't quote wording from a planning policy, viz., paragraph 180b of the NPPF. The way one recognises the intrinsic character and beauty of a specific piece of countryside is to analyse it using the Institute's guidance notes – these refer expressly to the intrinsic qualities of the place, as does the LVIA itself expressly in relation to the landscape character⁴⁵. Nothing substantive has been omitted (as Mr Hughes – who did not criticise the methodology of the LVIA – appeared to accept).
- (4) Not did it particularly assist to ask the landscape witness whether he thought the site in various views was "attractive" – the point of GLVIA3 is that it tries to move away from subjective or aesthetic opinions to more objective assessment. That is how the Institute fulfils the aim of paragraph 180b of the NPPF to recognise the intrinsic qualities of the countryside.

Baseline and effects on character

55. As the LVIA says, the landscape is of medium value and sensitivity in the relevant scale of assessment. It is a pleasant piece of ordinary countryside with some urban influences and some

⁴⁴ See also paragraph 4.12 of Mr Smith's proof, page 15, citing the 2010 Green Belt Landscape Assessment.

⁴⁵ See LVIA CD1.20 paragraph 3.3 and 2.6-2.9.

more purely rural aspects, especially to the east of the site. The LVIA and Mr Smith are both right to assess it in that way and Mr Hughes has over-valued the land in his evidence.

56. There will be mid-range or medium adverse effect on landscape character in a very localised way, according to Mr Smith⁴⁶, who takes a slightly more conservative approach to the net effects over time than Mrs Brockhurst does in the LVIA. They are both right to take into account when assessing the net effects the benefits of good design in a context which includes the edge of Thundersley⁴⁷.
57. Mr Ryder's view is that moderate weight should be given to the effect on landscape character in conjunction with the relatively limited effects on visual amenity⁴⁸.

Visual

58. The majority of the effects in this topic would be either on site or very close to the boundary, as Mr Hughes acknowledges. The site will change from largely undeveloped to just under half developed, and there will be harm to some views and receptors as set out in the LVIA. Mr Smith notes that those range from adverse effects (some local residents' views, a few points on BEN7 to the north side of the site) to neutral, with the effects being very localised⁴⁹.
59. I have covered the main issues here when making the submissions on visual openness; the main differences (apart from the fact that we don't have a transparent GLVIA3 exercise to look at from Mr Hughes) appear to be on the sensitivity and overall degree of visual impact. Mr Smith points out the partial nature of the viewing points that Mr Hughes prays in aid – for instance the views from Daws Heath Road through or next to existing houses are urban views, not views of the countryside. They contain no more than glimpses of the site and have been over-valued by Mr Hughes. Similarly, the views into the site from permissive paths have been over-valued by treating them as sensitive as views from PROW, which is contrary to the guidance in GLVIA3.

⁴⁶ Mr Smith paragraph 4.53 page 26.

⁴⁷ See in particular the LVIA approach endorsed by Mr Smith at his paragraph 4.52 especially the LVIA's paragraph 6.7-6.8.

⁴⁸ Mr Ryder paragraph 7.7.5 page 32.

⁴⁹ Mr Smith paragraph 6.17, page 48.

60. As Mr Smith said, the site is not a goldfish bowl comprised of a set of fully open and high-sensitivity views. The views are a mixed bag, some with urban influences, some with high degrees of enclosure already present, none with long-distance or scenic value. Some existing neighbours and some on PROW would (in parts of the site only) have harmful effects, but the assessment should remain proportionate.

BMV

61. It is agreed that limited weight should be attached to the harm to BMV. The site is not large enough to be reported to DEFRA and its change of use would not give rise to identifiable economic harm. Mr Hughes withdrew his points about social harm through its loss and clarified that landscape character was a repetition of the landscape character point.

Absence of other harm

62. The Council does not suggest that there would be any other harm. It has taken into account the technical work submitted and the responses of consultees. As Mr Ryder said, this encompasses:

- (1) Highways and transportation: Essex County Council highways consider the Transport Assessment to be robust and to demonstrate that there is no highways impact objection to the scheme, saying⁵⁰:

The work contained within the transport assessment in relation to junction capacity modelling contained very robust positions in relation to traffic growth, development traffic application and unit numbers which when taken together more than cover the change in traffic demands locally during the assessment period. The highway authority therefore considers the submitted transport assessment to be a thorough and robust analysis of the highway network.

Access to the residential development is proposed to be taken from two new access points onto the highway network, these junctions have been designed in accordance with the Essex Design Guide and visibility displays that are compliant with MfS requirements. Mitigation in the form of sustainable transport improvements are also to be secured to offer alternative

⁵⁰ CVD4.15.

forms of transport from the development to connect into cycle and walking network and also improvements to the bus service facilities and services in the vicinity of the site.

A comprehensive list of improvements and mitigation measures to promote sustainable travel has been identified within the vicinity of the site. These measures are proposed to mitigate the impact of the development on the highway network and considered acceptable by the highway authority.

- (2) The comment by Councillor Copsey that the County Highways Authority simply waves developments through was regrettable and, as I am sure he knows, was political grandstanding without regard to the evidence. Expert technical advice may sometimes result in conclusions which are difficult to hear and communicate to constituents, but in general there are risks for elected officials in denigrating their own technical advisers.
- (3) Air Quality is also covered by the technical work and there is no objection from any consultee.
- (4) No flooding or drainage issues arise: the site is in Flood Zone 1 and the drainage solutions have been approved in principle⁵¹.
- (5) There would be no material impact on the Hospice due to distance, intervening vegetation and the existing ambient environment. It is not clear on whose behalf Ms Harris felt she was speaking when she raised the Hospice at the end of her presentation – it was not the Hospice's. They have never objected to the site, either at allocation or as part of this application, presumably for the same reasons.

The weight to be given to the likely harm overall

- 63. Drawing those threads together, substantial weight should be given to the harm to the Green Belt by reason of inappropriateness and the other Green Belt harm; moderate weight should be given to effects on landscape and visual amenity, and some limited weight to the effect on BMV agricultural land.

⁵¹ CD 4.10.

Other considerations

64. Turning to the matters which weigh in favour of the grant of permission: these comprise several key benefits of the scheme and other relevant matters which together add up to the “other considerations” to which paragraph 153 of the NPPF refers. When reviewing the Council’s case⁵² it is something of an irony that the Appellant is accused of ‘glossing over’ the harms; but look at the paltry references to the housing and affordable housing need⁵³ and the complete absence of any response to the impasse that the Council has made for itself by withdrawing a sound plan. The Council’s closing⁵⁴ hides behind something that we agree is largely irrelevant here – the workings of paragraph 11d of the NPPF – but completely fails to face up to the fact that housing and affordable housing shortfalls hugely influence whether there are VSC.

Housing

65. In Castle Point there is an inseparable relationship between the meeting of housing needs and the effect of Green Belt policy – a look at the Policies Map from 1998, which is still in force⁵⁵ is enough to demonstrate that. The Green Belt essentially begins where the settlements ended 26 years ago – far from there being no Green Belt policy applicable in the area (as Ms Harris the former MP for the area mistakenly thought the Appellant was arguing), is it the legacy of this long-expired Local Plan which continues its stranglehold on the Borough serving the interests of the people of the area by ensuring that they have sufficient acceptable places to live.

66. The facts are very stark and are not in issue between the main parties:

- (1) There is 1.86 years’ housing land supply⁵⁶.
- (2) That is based (as per the NPPF paragraph 77) on the Standard Method calculation, which is agreed in the Addendum Statement of Common Ground to represent the correct approach for the appeal. The need is 355 units per year, i.e., a shortfall of 1,114 homes.

⁵² See Closing paragraphs 48-53.

⁵³ Barely one side of the closing.

⁵⁴ See paragraph 53.

⁵⁵ CD 6.31.

⁵⁶ Statement of Common Ground and Annual Monitoring Report CD 6.20.

- (3) Indeed, if there were any doubt about the proper basis for the calculation, and therefore the true extent of unmet need, regard can be had to the Housing Need Assessment⁵⁷ which makes it clear that there are no 'exceptional circumstances' here which would justify a lower figure. That is a point worth bearing in mind when we turn back to the reasons for the withdrawal of the previous Local Plan and the troubled waters which lie ahead for the housing aspect of any new local plan in the future.
- (4) That shortfall is part of a persistent record of under delivery, across South Essex, over the last 10 years which, as Mr Donagh set out, has given rise to a shortfall of about 10,000 homes. Castle Point is very much 'part of the problem' because it has averaged just 127 net additions over annum over the last 10 years, giving rise to the lowest level of housing growth across South Essex
- (5) That has translated into only a 3.4% growth in housing stock over that time, which is less than half the level observed across England and about one third of standard method local housing need⁵⁸. As Mr Donagh observed, Castle Point has an astonishingly low delivery of housing seen against the South Essex and England context since 2016⁵⁹.
- (6) Unsurprisingly, the housing delivery test or HDT (last figures, 2022) indicates that Castle Point has delivered only half the number of homes required, even after discounts to the requirement were applied.
- (7) Mobile homes, caravans and boats all contribute to Castle Point's past delivery, meaning that 'traditionally built homes' are in especially low supply. Mr Donagh pointed out that net supply in 2021 comprised 158 traditionally built homes, 68 mobile homes, 5 boats and a net loss of 26 caravans⁶⁰. That means that in the context of housing delivery running below requirements across South Essex, delivery in Castle Point is exceptionally low⁶¹.
- (8) Future identified supply is clearly below the level required, as Mr Donagh said⁶². The AMR indicates that supply is predicted to continue to fall to 1.44 years over the rest of the decade. According to the latest AMR, there are 6,370 homes required over ten years (2022 to 2032), but only 2,050 units identified in the supply. That is a projected shortfall of 4,320 homes⁶³.

⁵⁷ CD6.9, section 4, pages 57-59; see also Mr Donagh, page 14, para 3.2.4 and Appendix 1, page 19.

⁵⁸ See Mr Donagh, page 12 to 13, Figures 2.1, 2.2 and Table 2.4.

⁵⁹ See the HNA 2022 [CD 6.19], page 6, Figure 2.3.

⁶⁰ CD 6.20, page 10, Figure 5.

⁶¹ See Mr Donagh, page 12 and 13, Figures 2.1, 2.2 and 2.4).

⁶² CD 6.20, Page 13, Figures 8 and 9.

⁶³ CD 6.20, page 13, figure 9.

67. It is difficult to find a more serious housing supply situation anywhere in England, something caused in part by the out of date local plan and its Green Belt boundaries, but compounded by the withdrawal of the 2022 sound local plan before adoption – whatever the political soundbites about previous and new administrations in Castle Point may be, there is no credit to be taken for delivering housing in the Borough over the past quarter of a century; the current situation is really very serious and must be addressed.
68. Not to do so would be to fail in the clearest way to meet the requirements of the NPPF, as Mr Hughes recognised for the Council⁶⁴. He does not demur from the “serious and substantial housing land supply shortfall”⁶⁵ which prevails here. The Courts have made it clear that the degree of shortfall is relevant to the weight to be given. Hence Mr Hughes and Mr Ryder both attribute very high levels of weight to the fact that the scheme would contribute substantially to meeting the shortfall – some 200 of the 455 units would be delivered in the next five years with the remainder in the following period. That would equate to around 20% of the overall shortfall against the five year requirement.
69. The “other considerations” relevant to housing go rather wider than just the numerical shortfall:
- (1) Mr Hughes confirmed that this is not a case where the Council is arguing that a shortfall now will evaporate or even be materially reduced in the near future and therefore should be given less weight.
 - (2) The new local plan process, has not in two years (since the withdrawal of the last plan in June 2022) reached a point where any new evidence is relied on in this inquiry, or to a state where anything more than very limited weight can be given to that process. It is agreed that the very earliest that a new plan could be adopted is late 2026 – the reality is that the plan’s LDS⁶⁶ is over-optimistic because it does not contain any main modifications stage and adopts a timescale for post-deposit examination which is not reflective of any plan in recent history (let alone those with what might be called controversial aspects). The reference in the Council’s closing to “political will” to “progress the plan according to [the agreed timetable]” simply misses the point that the political will here (which led to the withdrawal of a sound plan) is for a lower housing number to be met on brownfield land with no Green

⁶⁴ Mr Hughes paragraph 6.9 page 71.

⁶⁵ He clarified in cross examination that his reference in paragraph 6.10 to the restrictions imposed by the Green Belt was not a claim that housing needs should be lower in Castle Point – something which of course the Local Plan Inspector expressly rejected.

⁶⁶ See Mr Hughes page 21, paragraph 4.11.

Belt releases – a scenario which is so far from the evidence that continues to be relevant that it looks more like wish fulfilment than sound planning.

- (3) Indeed, as Mr Donagh said, although we are not debating the merits of any new approach to housing numbers at this inquiry (as per the Addendum Statement of Common Ground), there is evidence before the inquiry that the Council’s own work shows that no case for departing from the Standard Method can be shown⁶⁷. It is self-evident that any new draft plan which seeks to argue a much-reduced housing requirement (as appears to be the political desire) will face a significant challenge, which does not bode well for smooth and rapid plan-making.
- (4) As Mr Ryder said when reflecting on the reasons given for the withdrawal of the last plan, the second of the three reasons set out (the wish to have lower housing numbers, which will require evidence to be put together to justify it) seems to be based on a political wish expressly unsupported by evidence, in effect a pre-judging of the housing requirement (“*A priority of this new Local Plan would be to produce a target housing number that genuinely reflects local need. As this housing target will be lower than previous proposals this must be supported by robust evidence*”)⁶⁸. That is a problematic basis not just for the withdrawal of a sound draft plan but also for what is supposed to be an evidence-led (not evidence-following) process.
- (5) The resolution to withdraw the plan was also based on the notion that “*all housing developments should prioritize brownfield development*.”⁶⁹ That may be a noble aim, but the problem was that the plan process that the motion was aimed at halting had just been through the very same brownfield capacity exercise, which the examining Inspector had found cogent and which indicated that less than half of the housing need was capable of being met on brownfield land⁷⁰. That was an endorsement of the evidence that the Council itself had put forward to the examination to justify the plan. At this inquiry it was said that further work was being undertaken to assess urban or brownfield capacity but unless Castle Point is going to annex part of a neighbouring borough or start reclaiming the sea in the Dutch fashion, comprehensive recent evidence indicates that exercise is unlikely to bear fruit.

⁶⁷ See above reference to CD6.19 pages 57-59.

⁶⁸ CD6.21 page 2 – the motion which was debated and resolved upon to withdraw the plan.

⁶⁹ Ibid.

⁷⁰ See CD7.1 paragraph 42, page pdf 13/58.

(6) In any event, at this inquiry Mr Hughes confirms that the Council is not arguing that there are alternative sites – including brownfield sites or sites in the settlement boundaries – which could meet the shortfall in housing land supply.

70. The problem that the resolution to withdraw the last plan gives the local planning authority now in cases like this is that it forces the Council to assert that there was something wrong with the evidence base and the Inspector’s conclusions on Green Belt⁷¹. Mr Hughes tried to do this by saying he didn’t understand how the Green Belt had been dealt with. That was feeble given the clear sequence of documents and the fact that site selection was covered in the SA as well as the Green Belt documents and was endorsed by the Inspector. Mr Hughes was simply in no position to undermine the work or the conclusions in the 2022 plan.

71. The housing problem here is therefore intractable if one prioritises the preservation of what the 2022 withdrawal motion called the “precious Green Belt”. Bearing in mind that it is not an environmental designation, but a spatial policy, taking that approach is absolutely guaranteed to lead to continuing housing delivery failure. That is precisely why this and other sites were deemed necessary in NPPF terms to be released from the Green Belt in the withdrawn plan. The importance of meeting some of the outstanding housing shortfall cannot be overstated.

Affordable housing

72. There is a connection between the overall housing delivery and affordable housing – the more of the former is consented, the greater the likelihood of delivering affordable homes. Here, the scheme would deliver 182 affordable units, a figure which is many times greater than the annual number that Castle Point has managed to produce over the past decade. As Mr Hughes himself characterised it, the affordable housing situation in the Borough is “dire”.

73. One can see why that is an accurate description. The position as revealed in the AMR and presented in Mr Donagh’s evidence is hard to take in at first glance:

(1) There have been rising prices and worsening affordability⁷².

⁷¹ See the Council’s Closing paragraphs 57-60.

⁷² Appendix 1, page 26 to 28 to Mr Donagh.

- (2) The 2022 Housing Needs Assessment links rising prices and private rents to shrinking supply⁷³, a pattern reflected in house price, transaction and private rent trends⁷⁴.
- (3) As Mr Donagh said, the ‘real world’ implication of this is that local people are being priced out of the market and are unable to exercise choice in the housing market. Access to housing is highly constrained.
- (4) Affordable housing delivery is virtually at a standstill - only 15 units a year have been delivered since 2018; the gross aggregate figure is 168 (17 per annum over the last ten years)⁷⁵.
- (5) Stock losses (especially sales to tenants) are likely to erode this poor performance even further. Stantec’s work estimates that the net change in affordable stock amounts to only 128 units – in other words only 13 per annum⁷⁶.
- (6) Castle Point's affordable housing need delivery is in the context of need for 326 affordable homes per annum⁷⁷
- (7) The effect on real people in the Borough is considerable: 52% of newly forming households cannot afford to entry level buy, 33% cannot afford entry level rent⁷⁸. These are the children of the residents of Castle Point, who either fill the waiting list for affordable housing (currently up to 659 households⁷⁹) or otherwise cause what the Council itself in its Corporate Plan⁸⁰ refers to as the Borough’s “acute need” for affordable housing, or simply leave.

74. The longer the severe shortfall of housing in Castle Point continues, the longer those conditions will prevail, with planning failure directly contributing to the limiting of life choices for people in this area. The Green Belt is an important spatial policy, but these points about the housing crisis in Castle Point put it in perspective. That is why Mr Ryder attributes weight to the affordable housing component of the scheme – over ten times the average annual net delivery of affordable units in the area over the past 10 years – such significant weight. It would not be right to muddle this up with overall housing need, which is a separate point.

⁷³ CD 6.19, Executive Summary Para 3.

⁷⁴ CD 6.19, page 20, 21, 24 and 25.

⁷⁵ CD 6.20, page 15, Figure 15 details this.

⁷⁶ Mr Donagh’s Appendix 1, page 47, paragraph 7.64, 7.65; page 48, paragraph 7.66, 7.77.

⁷⁷ HENA 2022, CD 6.19, page 75, table 6.2.

⁷⁸ HNA 2022, consistent with Standard Method, page 73, para 6.11.

⁷⁹ See Mr Ryder, paragraph 8.16.5.

⁸⁰ Ibid paragraph 8.7 page 38.

Economic benefits

75. Mr Ryder's evidence sets out what the economic benefits of the scheme will be⁸¹. With a relatively large scheme such as this, it is not surprising that the effects would be sizeable both during the construction phase (7 years in total, with a couple of hundred jobs supported (92 directly related to Castle Point) and £45m of additional GVA) and in the operational phase (£30m per annum GVA and additional expenditure and £1.2m Council Tax receipts).
76. Those numbers take into account 'netting' and intra-Borough movements. If new households arise, or existing homes are freed up for new occupiers, there is little or no double-counting of benefits. The figures as presented are robust and other than the most superficial commentary by Mr Hughes, they should be given full weight.
77. Mr Hughes accepted that his evidence about the benefits of housebuilding and house occupation being "generic" rather need to be seen in the light of the almost total absence of housebuilding in the rest of Castle Point over many years, a point he rightly acknowledged. This is not the place to say that benefits will simply be repeated or replaced anyway by other schemes.
78. These were the points that seemingly drove Mr Hughes to attribute only moderate weight to the economic benefits, but having heard the evidence tested it would be right to find, with Mr Ryder, that a scheme of this size in Castle Point should be given significant weight for its economic benefits.

BNG

79. The scheme will ensure over 10% net gain in biodiversity – that is chiefly because, as in many cases of agricultural land, the main fields are currently pretty barren as far as ecological interest is concerned, and a lot of effort has gone into the principles which one finds in the GI Parameters Plan⁸² and the BNG calculation work⁸³ to demonstrate that the scheme would exceed the 10% BNG marker.

⁸¹ Mr Ryder, pages 48-49, drawing on the report in his Appendix 6.

⁸² CD 1.8.

⁸³ CD 1.15.

80. This is recognised to be a marker to which moderate weight should be given⁸⁴ because there is no legal or policy basis for a 10% requirement in relation to the scheme. It is all additional benefit in this case.

81. The point occupies an interesting space in the VSC considerations because the Government places a heavy emphasis on biodiversity gain – it is one of the ways that one complies with paragraph 180 of the NPPF (the same paragraph that applies to the ‘recognising’ of landscapes); the strong performance of the scheme in biodiversity improvement terms is a relevant factor when considering overall compliance with paragraph 180 of the NPPF, as well as being a freestanding benefit.

Community benefits

82. There is no dispute between the main parties that the community hall provision would be a wider benefit than simply a piece of scheme mitigation and should be given moderate weight in the balance⁸⁵.

Other considerations

83. As Mr Ryder said, the NPPF VSC policy requires harms to be balanced against other considerations. The benefits I’ve just reiterated are fundamental to that exercise, but this appeal also captures some other important material planning considerations which are relevant to the planning balance. I shall return to them in a moment in relation to the overall balance, but they include: the absence of alternatives; the certain need for Green Belt land to be released to meet needs; the local plan evidence and Inspector’s findings about the site and its development effects; the nature of the decision taken to withdraw the plan and where that has left the Borough; and the clouded future for housing provision in the area, given the way that the new plan seems to be positioned vis-à-vis housing numbers and the Green Belt. These all combine to help give a rounded picture as to why it would be right to grant permission, and why the harms associated with this particular development are clearly outweighed by all the considerations now present.

⁸⁴ See Mr Hughes paragraph 6.21.

⁸⁵ See Mr Hughes paragraph 6.40-41.

Section 106 and conditions

84. The section 106 is being amended to pick up the couple of points raised in the session yesterday. It is agreed to secure the obligations sought by the Council and will ensure the delivery *inter alia* of the affordable housing at 40%, the sustainable transport measures (of great importance to the overall sustainability of the scheme) and the ecological mitigation under the RAMS programme. The contribution (as well as the SANG on site) will prevent any adverse impact on the protected sites either singly or in combination, as Natural England have confirmed⁸⁶.
85. It is still for the Inspector to consider the issue of overlap between the s.106 and the CIL regime in Castle Point. A contribution is sought (and provided) for education, and one for libraries, in circumstances where it is not really clear that there is evidential support. The Appellant has taken a conservative approach to this question and so the figures appear in the s.106, but the Inspector is asked to note the ‘blue pencil’ clause⁸⁷ and also the consideration of similar issues by his colleague Paul Thompson⁸⁸ a little over a year ago.
86. Conditions have undergone a thorough overhaul after yesterday’s session by Mr Hughes and Mr Ryder and subject to anything said today should be fit for purpose now. They are necessary and reasonable in relation to the phasing and implementation of the scheme – making adequate provision for reserved matters applications whilst allowing sufficient time for a site like this to come forward as planned.
87. The Parameter Plan relating to scale⁸⁹ has been amended to remove the reference to 11m and 13m maximum heights and to leave the reference to storey heights. The Council (whose suggestion the change was) is content that no prejudice would arise if you received that amended plan and determined the appeal on that basis and the Appellant is content for that to occur.
88. I note that the LVIA and DAS were prepared on the basis of maximum 11m and 13m heights – although the DAS makes it clear that the expectation is that the majority of homes will be lower to ridge height than the maximum. The change would remove any restriction on maximum height thus leaving that up to the Council at reserved matters stage; but it would provide a measure of certainty that a minimum baseline of unit types (ie two/three storey housing) has been approved in principle (if permission is granted on this appeal). That is very important for

⁸⁶ CD 6.41.

⁸⁷ ID8, clause 4.2 page 19.

⁸⁸ CD 8.1 paragraphs 57-59.

⁸⁹ CD1.9.

certainty of delivery but also to make good the way that the scheme would meet housing needs. 40% of the homes are affordable and are likely to be delivered by a specialist provider, who may well want to provide units to meet the need profile – some flats, some larger family houses. Ensuring that there is permission in principle at this stage for two and three storey housing is therefore essential.

Overall balance and VSC

89. Is this a situation where the undoubted harms to the Green Belt (and much lesser impacts on landscape/visual and BMV) are clearly outweighed by other considerations? As I said earlier, there is a very unusual profile to this balancing exercise. National policy advises that substantial weight should be given to Green Belt harm, and that is duly what has been done by Mr Ryder; but the reality here – undisputable and undisputed by the Council – is that the Green Belt boundary has not been formally reviewed in an adopted plan for 26 years, but was reviewed in the emerging (now withdrawn plan). The review said that the site should be released from the Green Belt as part of a concerted effort – promoted by the Council itself – to reduce the staggeringly bad housing deficit which has built up over the intervening quarter of a century.
90. The foundations of the Green Belt ‘objection’ here – the need for the land to be kept permanently open – have been almost entirely undermined. Indeed, the evidence powerfully demonstrates that the Green Belt *must* be realigned to strike a balance with housing needs. At the moment, you might be able to go onto footpath BEN7 next to and around part of the site, but for those who aren’t in the fortunate position of owning a home which (in 99.9% of cases) was standing there in 1998, you will have to take your mountain bike back to your parents’ house or your temporary accommodation at the end of the day. Local people doubtless enjoy the site as a ‘relief’, as it was put to Mr Smith, but being able to access a suitable home is a fundamental aspect of human existence which is not being facilitated by the planning system in Castle Point.
91. This is not just a rhetorical point. Green Belt is a spatial policy, as is meeting housing needs – the Green Belt has had Mr Hughes to speak for it, with his volumetric calculations and so on. But as is often the case in appeals like this, the inquiry has not heard from any of the many people who are on the Council’s housing waiting list, or who are still living at home (or who still have their 25 or 35 year old children living with them). Their voices have to be carefully discerned in the data that Mr Donagh spoke about – but they are unmistakeably present there.

92. So as I submitted earlier, the balance is clear. The harm would be unmistakeable, but it would not be as much as the Council alleges – their assessment is notably out of kilter with the views of the Local Plan Inspector on substantive matters like encroachment and defensibility of the boundary. That harm is ‘balanced’ against the benefits and other considerations, but in a very real sense the harm is *needed* to achieve some measure of repair to the disastrously dysfunctional housing situation in the Borough. The Council has nothing it can reasonably say to cast doubt on the need to redress the ‘dire’ affordable housing situation or the ‘serious and substantial housing land shortfall’ (to quote Mr Hughes). That is why the appeal proposition feels fundamentally correct, and why the Appellant has taken the step – never taken lightly – of appealing the refusal of permission.
93. But to end on a note which the main parties agree is entirely positive: the scheme which permission would enable to come forward is in an excellent location in sustainability terms and the consent framework would enable a very high quality development to be delivered. A really well-designed collection of homes, in proper biodiverse landscaping, with a modern approach to house design and townscape, would be good for the overall townscape and range of accommodation in Castle Point. Existing residents oppose the idea of the change to the site, but contemporary design and planning is capable of achieving outcomes that elevate the overall sense of place. That would be the case here.
94. For these reasons, and subject to the s.106 obligation when completed and the conditions, the Appellant respectfully requests that the appeal is allowed and permission granted.

RUPERT WARREN K.C.

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7 June 2024