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Dear Terry

**Planning application 23/0085/OUT – land east of Rayleigh Road, Thundersley**

Further to your helpful email of 20 September 2023, which outlines the remaining matters which require further consideration ahead of the determination of our planning, I wanted to take the opportunity to respond to the points raised initially in writing. This letter can then form the basis of our discussion in our meeting tomorrow morning, in addition to any further points which might require consideration based upon consultee and neighbour responses received to date.

**Very special circumstances**

We discussed in our previous meeting a number of the material considerations in favour of our scheme, including the housing land supply shortfall (which is significantly short of the five-year requirement), the over-provision of affordable housing against identified requirements in both adopted policy (and supplementary planning guidance) and the important contribution the proposed affordable housing can make towards rectifying historic shortfalls.

In addition to the above, I have also written to you (in addition to the information contained within our Planning Statement) regarding recent appeal decisions<sup>1</sup>, both within Castle Point, and in other local planning authority areas, where inspectors have determined the weight to be afforded to key material considerations in favour of schemes, cumulatively finding that very special circumstances exist. As discussed at our most recent meeting, we of course recognise that the context of the appeal sites, and land east of Rayleigh Road, are different, based upon site location etc, however, it is clear that there is mounting evidence of inspectors affording very significant weight to the provision of both market and affordable housing.

Whilst we recognise your advice that members will not take kindly to references to the now withdrawn local plan, the conclusions of the council's evidence base, and the findings of the examining inspector, cannot be ignored in this case. The examining inspector recognised that exceptional circumstances not only existed for land east of Rayleigh Road, but also for other sites across the borough, in light of the overall housing need, and a recognition that there are simply too few brownfield sites available in the borough to meet the identified housing needs.

In addition, the evidence base (and its conclusions in identifying land east of Rayleigh Road as an allocation) was found to meet the tests of soundness. This has been found to be a significant material consideration in a number of recent appeals for Green Belt sites, including the Hart Road appeal, and appeal decisions in neighbouring Basildon borough (as discussed in my letter of 9 August 2023).

We also note key references within the most recent appeals in Castle Point and in neighbouring authority areas, such as paragraph 84 in the Manor Trading Estate appeal decision that, *"In Castle Point there is widespread acceptance that an adequate housing supply must involve the use of Green Belt land."*

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<sup>1</sup> Please see my letters of 8 June 2023, in relation to the appeal decisions on Hart Road and Manor Trading Estate, in Castle Point, in addition to my further letter of 9 August 2023.



In addition to the key very special circumstances above, our planning statement outlines the important contributions that other material considerations in favour of the proposals make to cumulatively demonstrating very special circumstances in favour of the proposals. We trust that these will also be appropriately weighed in the overall planning balance.

### **Historic Landscape Designation**

Without wishing to refer back to the withdrawn local plan in too much detail (given that we are confident that our scheme is in compliance with adopted policies), it is important to note the context behind this particular designation (and how this has been assessed within our application, with mitigation appropriately identified in response).

The submitted landscape and visual impact assessment notes, at paragraph 1.28, that policy HO13 of the now withdrawn local plan required *“An urban design framework using a mix of urban design approaches built around the Arcadia approach in areas located within the Historic Natural Landscape and in the vicinity of important landscape features, and the Boulevard and Major Entry Point approaches, to create an attractive green, parkland environment, integrated into the existing landscape and topography.”*

The Arcadia approach is discussed in appendix two of the now withdrawn local plan. I enclose the definition of the urban design approach with this letter. The design and access statement (DAS) demonstrates that the design principles embedded in the application have been prepared in recognition of the natural and historic landscape. The DAS (on page 42) notes, *“The well vegetated field boundaries are a key element of the site’s landscape character and attractive setting. However, the 19<sup>th</sup> Century historic field boundaries and some of the associated tree belts running east west are now lost. So there is an opportunity to reinstate elements of this historic landscape, providing a connection to the past and a legible, structuring element to the layout.”*

On pages 90 - 92, the DAS discusses the character area for ‘The Paddocks’, which is the area of the site which includes the historic landscape designation, and also provides further detail regarding proposed landscaping within this area, to accord with the principles of the Arcadia approach. The landscaping response to the historic natural landscape has been one of retaining and enhancing historic field boundaries, and proposing a density and setting of development which is appropriate in this location.

Finally, it is clear that, at the time of preparing the now withdrawn local plan, the council considered the allocation of the site within part of the historic natural landscape designation to be appropriate and justified. The examining inspector also did not object to development within these identified areas.

### **Ecology – comments received from the Essex Badger Protection Group and the Essex Wildlife Trust**

#### *Response to comments raised by Essex Badger Protection Group (EBPG)*

The EBPG’s original comments received on 28 March 2023 noted that surveys were out of date. Since receiving the comments from the EBPG, we have submitted an addendum to the submitted Ecological Impact Assessment, which included a schedule of results further to additional survey work undertaken in the lead up to, and following, the submission of the planning application. Therefore, for the purposes of determining the planning application, the council can be satisfied that surveys are up to date and provide an accurate reflection of the habitats and species in proximity to the site.

With regard to the wider comments received from the EBPG, my covering email of 21 April 2023, which included the submission of the ecological impact assessment survey addendum, provided further comments from our appointed ecologist. Our consultant noted, *“an updated scoping survey was carried out in November 2022 and subsequent sett monitoring surveys were undertaken between 2<sup>nd</sup> and 23<sup>rd</sup> December 2022. Sett locations / activity levels have not differed significantly since the original surveys (see attached Addendum EclA, which should hopefully give EBPG some comfort). Additional and updated sett monitoring surveys (i.e. 21 consecutive days using trail cameras, trigger sticks etc) will be undertaken to inform subsequent RM applications and licensing requirements with proposed compensation and mitigation measures approved by Natural England.*



*Although setts will inevitably be lost, the proposed development has been designed to accommodate badgers as we understand them at this point in time. We know that a number of setts are present, including a large active main sett, and that the site is frequently used by badgers. An artificial sett will be created to compensate for the loss of Sett 8 (see paragraph 4.58 and 4.62 of the EclA), which will be located near the southern boundary (with good connectivity to the wider landscape) and planted up with new thorny species to provide extra shielding. Foraging and dispersal corridors will also be maintained / created to allow badgers to continue to move through the landscape (including underpasses where required) and access new foraging areas within the proposed development (see paragraph 4.64 and 4.65 of the EclA). In terms of construction phase impacts / mitigation, these are provided in paragraph 4.63 of the EclA (and include the measures bulleted within the EBPg response). These mitigation measures will be controlled via a CEMP.*

*It is considered that the information collected to date, and the compensation / mitigation measures provided in the EclA, are appropriate to inform an outline planning application, with further surveys undertaken to inform subsequent RM applications and Natural England licensing. Any further surveys / assessments are not considered to make a material difference to the conclusions drawn and the compensation / mitigation measures provided (especially as we have already confirmed the presence of a main sett on site, as well as a number of dispersal routes and foraging areas)."*

I would also take this opportunity to emphasise the intention of the applicant to retain significant areas of the site as multi-functional open space, which will serve a number of purposes including the provision of habitats. The scheme has been designed to enable wildlife to be accommodated within the proposals, providing new routes across the scheme and focussing on delivering biodiversity net gain. Indeed, 14.27ha of the site will be retained as multi-functional open space (of a total site area of 27.89ha). The applicant, and CODE, have been clear since the submission of the application (and in prior discussions with officers) that we would be happy to secure broad parameters identified on the submitted parameter plans within appropriately worded planning conditions, should the council consider these acceptable.

#### *Response to comments raised by Essex Wildlife Trust (EWT)*

With regard to the comments received regarding biodiversity net gain, the enclosed metric was submitted with the planning application, which provides detail regarding the onsite baseline value of existing habitats, and the on-site post intervention (including habitat retention, creation and enhancement).

With regard to the need for a biodiversity gain plan, section 7 of the submitted Biodiversity Net Gain Design Stage Report considers implementation, construction, management and monitoring plans. This section of the report notes that a Construction and Environment Management Plan (CEMP) for biodiversity should be produced, in addition to a Landscape and Environment Management Plan (LEMP), should outline planning permission be granted, to detail how retained habitats will be protected during the construction phase, to ensure their condition is not negatively impacted. The LEMP should cover a 30-year period. The report also notes the need for an audit report to accompany the CEMP and LEMP, as follows:

*"The audit report should include information in the "as built" metric compared to the original baseline plans and the "as built" habitat plan. Where the "as built" habitat plan differs from the original designs, more detailed information may be required, to ensure transparency about what has been delivered. Where differences occur, a copy of the same metric version, e.g. a completed workbook including the full calculations that lead to the final biodiversity unit scores, should be submitted. Summary results of metric calculations would not be sufficient. Where appropriate, detailed justifications for the choice of habitat types, distinctiveness and condition should be added to the comments column or provided separately in a report.*

*The audit report should also demonstrate compliance with the BNG good practice principles (Natural England, July 2021) (Section 4.0)."*

The strategy for biodiversity net gain, as outlined within the submitted application reports, does not anticipate the need for offsite credits, as appropriate provision is made within the red line boundary. A biodiversity gain plan would most appropriately be dealt with subject to outline planning permission being granted for the proposals, through the discharge of a satisfactorily worded planning condition to be agreed between parties.



I would also welcome your thoughts on EWT's comments, particularly in light of our specific responses which do not appear to have been taken into account in your earlier note. We submitted a response from our appointed ecological consultants to the EWT on 8 June 2023, which responds to the specific comments raised. I re-enclose this note for ease of reference. If there is disagreement with the response contained within the note, or if the Wildlife Trust has responded since to our additional comments, I would be grateful if we could please discuss this in more detail tomorrow. The submission schedule which I sent through to you on 19 September 2023 also provides a record of the submission of our response to the EWT's comments.

With regard to the potential negative impact upon Little Haven and Valerie Wells Wood nature reserves, in addition to nearby ancient woodlands (Pound Wood, Tile Wood and Starvelarks Wood), the submitted ecological impact assessment notes the following mitigation and enhancement measures, noting the potential for increased recreational disturbance:

- Creation of coherent ecological network of habitats providing ecological connectivity across the landscape. Achieved through the retention and enhancement of existing high value habitats and providing complementary habitats to create habitat mosaics. Including broad-leaved woodland/ scrub, wildflower meadow grassland, species rich scrub grassland, species rich wet/ marshy grassland, species rich hedgerows and a traditional orchard.
- Woodland Management Plan
- Sensitive lighting strategy
- Provision of waymarked walking routes (informal and formal)
- Provision of signage

These comments were also addressed in further detail within SES' response to the comments received from the Essex Wildlife Trust, which I submitted on 8 June 2023. The scheme has been designed to create a number of new circular routes to dissuade future residents from using Little Haven Nature Reserve. In addition, connections onto the existing Public Right of Way to the north east of the site (which provides access into Little Haven Nature Reserve) have been limited to just one new access point, a significant distance from the nature reserve, to further mitigate against recreational disturbance.

In addition, I note that the Wildlife Trust's comments are very similar to representations submitted to the now withdrawn local plan. Whilst the local plan has been withdrawn (based upon lack of member support, rather than in response to comments raised by the inspector), it is clear that the council weighed up the comments received from the Wildlife Trust in relation to land east of Rayleigh Road, Thundersley, and considered that with sufficient mitigation, the issues raised could be satisfactorily addressed. In similarity with the previous topics, I note that the examining inspector, in his report into the soundness of the now withdrawn local plan, concluded (at paragraph 93), *"The Policy and text should be amended so that it is clear that net gain in biodiversity should be measurable, that a buffer is applied to the neighbouring nature reserve, to ensure that Habitats sites are safeguarded, and to clarify the requirements for greenways to provide multi-use access so that it would be effective."* The inspector raised no concerns regarding the allocation of the site and its potential impacts upon the Little Haven Nature Reserve.

If the council's position has therefore changed contrary to the publicly available conclusions reached in the preparation of the now withdrawn local plan, I would be grateful for more detail regarding this tomorrow. Primarily, however, I am of the view that our previous response to the Wildlife Trust addresses the concerns raised, in addition to the detailed submitted with our planning application.

#### *Hadleigh and Daws Heath Complex Living Landscape*

As noted within the submitted LVIA and Ecological Impact Assessment, the site falls within the Hadleigh and Daws Heath Living Landscape. The map enclosed at appendix 14 of the submitted Ecological Impact Assessment notes that for land east of Rayleigh Road, the particular emphasis of the long term vision is for woodland and hedgerow creation. The multi-functional open space plan submitted with the scheme shows the proposals for new habitat creation and the retention and enhancement of historic field boundaries within the site. The proposed development, whilst providing new dwellings within the living landscape area, would accord with the principles of habitat creation and would retain a significant proportion of the site for the creation and retention of existing habitats.



Should you have any queries regarding the above in advance of our meeting tomorrow, please do not hesitate to contact me.

Yours sincerely

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