



Appeal Decision

Hearing held on 30 April 2024 and 1 May 2024

Site visit made on 1 May 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/M1520/W/23/3329585

Land South of Daws Heath Road, Thundersley, Benfleet, Essex SS7 2TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Rainier Developments Ltd; S. Barber; J.Cowell; and Stephanie Caten, Christopher John Mee and Nicholas Peter Mee (Executors for J. Mee deceased) against Castle Point Borough Council.
 - The application Ref is 23/0104/OUT.
 - The development proposed is up to 58 dwellings with associated vehicular access, parking, public open space, play space and attenuation basins, together with landscaping enhancements (all matters reserved except access).
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Decision

1. The appeal is dismissed and outline planning permission for up to 58 dwellings with associated vehicular access, parking, public open space, play space and attenuation basins, together with landscaping enhancements (all matters reserved except access) is refused.

Preliminary Matters

2. The planning application and appeal were made by Rainier Developments Ltd, S. Barber, J.Cowell and J. Mee. During the course of the appeal, I was advised that J. Mee had passed away. A copy of a probate certificate was provided and the appeal proceeds in the name of the Executors of the Estate of J. Mee alongside Rainier Developments Ltd, S. Barber and J. Cowell.
3. The description of development in the banner heading above is taken from the Statement of Common Ground ('SoCG') agreed between the main parties. It also reflects the description entered by the appellants on the planning appeal form.
4. The appeal seeks outline planning permission. Matters relating to appearance, landscaping, layout and scale are reserved for future consideration and while approval is sought for means of access to the site, the appellants confirmed at the Hearing that access in terms of internal circulation within the site was also reserved for future consideration. I have determined the appeal on that basis and having regard to the submitted 'Land Use Parameter Plan' and 'Proposed Site Access' Plan. I have also noted an Illustrative Masterplan. This shows one potential way that the site could be developed, but I have treated all details shown apart from means of access to the site as illustrative.

5. The Council did not determine the application within the prescribed period. Following the submission of the appeal, the Council resolved that permission would have been refused for two reasons. The second of these concerned the effect of the proposal on 'European Sites' which are protected by the Conservation of Habitats and Species Regulations 2017 and Ramsar sites which are similarly protected by Government policy, as well as on Hazel Dormice which are designated and protected as a European Protected Species. However, in response to the appellant's evidence and the submission of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) ('the s106') including mitigation for effects on European Sites, the Council indicated that it did not wish to pursue the second reason for refusal. I have considered the appeal on this basis.
6. Although not part of the Council's putative reasons for refusal, both main parties agree in the SoCG that there would be harm in respect of landscape effects. However, the weight to be given to this harm is a matter of dispute, and effects on landscape character and appearance are raised as a significant concern in many of the interested party representations. I have therefore considered this as a main issue.
7. Very shortly before the Hearing opened, the Council sought to submit a bundle of 'late evidence'. After hearing the views of parties, I was satisfied that most¹ could be material to my decision. Having agreed with the parties that the appellants should be afforded an opportunity to provide a written response to matters which they were unable to address during the Hearing, and allowing for opportunities for rebuttals from the parties if necessary, I was also satisfied that no party would be unfairly prejudiced by my consideration of these items of evidence and I therefore exercised my discretion to accept them.
8. The bundle also included copies of respective Statements of Case submitted by the Council and relevant appellant to an ongoing appeal concerning Land at Rayleigh Road, Thundersley² where an Inquiry was scheduled. The Council put it to me that it was prudent to have details of the current appeal status, but confirmed at the Hearing that it did not rely on the content of the statements in any way, seek to reference them, nor suggest that the outcome of my decision would be dependent on that appeal. Indeed, it remarked during the discussion that it did not think I needed the statements. In this context and given that the location and current status of the development was already clear to me from other submitted evidence and not in dispute, I considered the statements would not be material to my decision and I declined to accept them.
9. The Hearing finished sitting on 1 May 2024 but was adjourned rather than formally closed to allow the submission of some further documents. These were the executed s106 planning agreement; clarification from Essex County Council in respect of requirements for primary education; a written response from the appellants to the late evidence submitted by the Council; comments on this response from the Council; and an updated agreed list of suggested conditions to reflect discussion during the Hearing.

¹ Local Plan Proposals Map Extract in Green Belt showing Applications and Appeals; Land South of Jotmans Lane Appeal Decision, Land rear of 301 Rayleigh Road Appeal Decision, Land East of Manor Trading Estate Appeal Decision, Land at Brook Farm Decision Notice 20.03.24 and Land at Brook Farm Committee Report 19.03.2024.

² Appeal ref APP/M1520/W/24/3338797

10. Also after the Hearing finished sitting, the appellants brought decisions issued on 3 May 2024 on two appeals in the Three Rivers District Council area to my attention³. As these decisions included consideration of matters which are also material in the context of the current appeal, the main parties were invited to comment on their relevance and I have taken the representations made into account. The Hearing was subsequently closed in writing on 28 June 2024.

Main Issues

11. It is common ground between the main parties that the proposal would constitute inappropriate development in the Green Belt under the terms of the National Planning Policy Framework ('the Framework'). I concur with that position and consider the main issues to be:

- i) the effect of the proposal on the openness and purposes of the Green Belt;
- ii) the effect of the proposal on landscape character and appearance; and
- iii) whether or not the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

12. The appeal site is located between a footpath that runs alongside 112 Daws Heath Road and the Ragwood Riding Centre. Most of the site comprises open paddocks in equestrian use which are divided by vegetation or relatively low level fences. The site also includes a parcel of ancient woodland known as Valerie Wells Wood at the south east.

13. Up to 58 dwellings are proposed on the site. The Land Use Parameter Plan indicates that these would be provided within 3 parcels positioned towards the Daws Heath Road frontage. No development is proposed within the Valerie Wells Wood woodland parcel and a swathe of green space is indicated adjoining this parcel and along the boundary with West Wood which is also ancient woodland.

Green Belt

14. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.

Openness of the Green Belt

15. There is a small animal shelter towards the centre of the appeal site, but it is otherwise open and almost entirely free of buildings or other development. Although details of the appearance, landscaping, layout and scale of the development are reserved for future consideration, the presence of dwellings together with the access, parking, boundary treatment and other paraphernalia that would accompany residential development as well as the activity and traffic movements generated would inevitably cause a loss of openness. While the appellants highlight provision of significant areas of open space as part of the proposal, development would still occupy a fair proportion of the site area

³ Appeal refs APP/P1940/W/22/3311477 and APP/P1940/W/22/3311479

and is shown to extend across nearly the whole width of the Daws Heath Road frontage. As a result, I find that there would be a significant and permanent loss of openness on the site in spatial terms.

16. That said, there would be landscaped separation to the rear boundary and having regard to the degree of open space and the reasonable spacing that the illustrative details suggest could be provided between and around buildings, I see no firm reason that the development would have a disproportionate effect on the openness of the site. Adjoining woodland and existing development also restrict existing opportunities for open through-views across the site, and consequently, I consider that potential effects on spatial openness beyond the site boundaries would be unlikely.
17. In visual terms, the appellant's Landscape and Visual Impact Assessment and Green Belt Assessment ('LVIA') identifies that views of the development would be possible from Daws Heath Road as well as from nearby dwellings. Views would also be possible from the footpath adjacent to No 112 along the west boundary of the site, a bridleway within West Wood to the south and paths in Valerie Wells Wood/Cottage Plantation to the east. These viewpoints are all within close range of the site, and in many cases filtered by vegetation so that views would be intermittent which would help to moderate visual impacts. The LVIA also notes possible views from footpath Benfleet 7 adjacent to the Rayleigh Weir Industrial Estate. Although a little further out, these are still relatively close range views and would be heavily filtered by vegetation.
18. The Council suggested at the Hearing that the site would be visible more widely, but I was not directed to any specific viewpoints and based on my observations from the surrounding area at my visit, I consider opportunities for additional views to those identified in the LVIA would be likely to be negligible. Although landscaping is a reserved matter, the proposal also indicates that vegetation to the boundaries of the site would be supplemented by new planting to reinforce screening, albeit that screening is unlikely to be complete. On that basis, I find that while there would be a loss of Green Belt openness in visual terms, the impact would be limited and localised.

Purposes of the Green Belt

19. In addition to having essential characteristics of openness and permanence, the Framework sets out that Green Belt serves five purposes. Of these, I agree with the main parties that the purposes of checking the unrestricted sprawl of large built-up areas, preventing neighbouring towns merging into one another and assisting in safeguarding the countryside from encroachment are relevant in this case.
20. In considering these purposes, I have had regard to the Castle Point Borough Green Belt Review – Part 1 2018 ('the GBR') which provides an assessment of how Green Belt land within the borough contributes to the purposes of Green Belt. Parcel 4 which includes the appeal site is one of five parcels (from a total of 30) that was assessed as performing very strongly in relation to all three purposes and the Council argued that the 'very strong' assessed performance would also apply to the appeal site. However, Parcel 4 includes land to the north of Daws Heath Road and to the east and south east of the site and encompasses the entire width of the narrowest part of the Green Belt between Thundersley and Daws Heath along Daws Heath Road. To my mind, the extent of the parcel at around 60ha and variation in the nature and character of land

within it mean that the commentary and assessed contribution of the parcel as a whole cannot sensibly be applied directly to the appeal site without further interrogation.

21. I have also had regard to the Green Belt Boundary Review 2013 ('the GBBR') which considered the main part of the appeal site as parcel No 4. The GBBR commented that a redefined boundary would still allow for this part of the Green Belt to fulfil its purposes, although I note that the GBR indicates that it has evolved from earlier work including the GBBR and that while it draws on previous conclusions as appropriate, it supersedes all previous Green Belt Studies or Reviews.
22. I have therefore drawn my own conclusions based on the evidence before me and my observations.

Green Belt Purpose a) – to check the unrestricted sprawl of large built-up areas

23. The GBR comments that Daws Heath represents the remaining prominent isolated settlement within Castle Point, and is considered a 'large built-up area' in the context of the Borough. It identifies a clear, albeit relatively small, gap between Daws Heath and larger urban settlements which is comprised entirely of Green Belt and which is referred to as the 'Daws Heath Ring'.
24. The appeal site is part of the relatively small gap between Thundersley and Daws Heath at the narrowest point of this section of the Daws Heath Ring. Given the location of the site on the edge of Thundersley and that it is undeveloped and largely free of any built form, I find that the site contributes to the purpose of checking unrestricted sprawl. Notwithstanding provision for landscaping, the proposal would effectively result in the loss of the site to development and the outward expansion of Thundersley which would spread further to the south and east than the closest part of the existing settlement boundary.
25. Areas of woodland to the south and east of the site would provide for containment and a strong barrier to further expansion of the Thundersley urban area around much of the site boundary in these directions. However, part of the east boundary of the site adjoins the Ragwood Riding Centre and there are a group of bungalows at 154-164 Daws Heath Road just beyond the Riding Centre access which runs along the site boundary. These buildings are currently set apart from other nearby development by open fields/paddocks and woodland including on the appeal site. There are bungalows in Daws Heath and some in Thundersley including at 127 and 133 Daws Heath Road close by, but I saw that Nos 154-164 have a somewhat utilitarian appearance and character which does not relate particularly strongly to either settlement. Given these factors, I find that Nos 154-164 are appreciated as a standalone group sitting within a distinct gap between Daws Heath and Thundersley.
26. Even if dwellings on the appeal site were set back from Daws Heath Road as the appellants suggest, they would still be likely to be discernible from the street and the site access would be clear. There would be a close physical link between development on the site and Nos 154-164 and given the proximity, I agree with comments made by the appellants at the Hearing that these bungalows would be 'tied in' with Thundersley and would relate in stronger fashion to it. In my view, the proposal would lead to these dwellings being read and appreciated as part of Thundersley in contrast to the existing impression of

a standalone group and consequently the further outward expansion of Thundersley beyond the site. As a result, I cannot agree that the site as a whole is very well contained or that sprawl would be limited to the appeal site as the appellants asserted.

27. I appreciate that woodland would restrict further spread of Thundersley towards Daws Heath. In that sense, the proposal would not lead to totally 'unrestricted' sprawl and the integrity of the wider Green Belt between Thundersley and Daws Heath in serving this purpose would not be wholly undermined by the proposal. Nevertheless, I find taking these factors into account that there would be a notable expansion of the Thundersley urban area and significant harm to the contribution that this part of the Green Belt makes to the purpose of checking the unrestricted sprawl of large built-up areas.

Green Belt Purpose b) – to prevent neighbouring towns merging into one another

28. Daws Heath is a village rather than a town, but as the LVIA notes, cumulative erosion of separation of smaller settlements can impact perceived separation of larger settlements. Having regard to its characteristics, the GBR also considers Daws Heath as a 'neighbouring town' for the purposes of the study, and the appellants do not argue that this purpose would be irrelevant.
29. Insofar as it is part of a relatively narrow strategic Green Belt gap between Thundersley and Daws Heath, the appeal site undoubtedly contributes to the purpose of preventing neighbouring towns merging into one another.
30. Development on the northern side of Daws Heath Road which is within the Thundersley settlement boundary extends opposite approximately 70% of the appeal site frontage. The presence of these buildings give some sense that you have already entered or not yet left the settlement when travelling along Daws Heath Road and while the appeal site itself is open, the overall impression passing these buildings is not of being within an open corridor between the settlements.
31. However, even taking the appellants' measurements, the site extends 49m closer towards Daws Heath than the existing settlement edge to the north side of Daws Heath Road. Moreover, I have identified above that the proposal would lead to the bungalows at Nos 154-164 being appreciated as part of Thundersley alongside development on the site. In combination, these factors would bring Thundersley and Daws Heath notably closer to each other.
32. Based on my observations at my visit, dense woodland and the slight curvature of Daws Heath Road would prevent intervisibility between development on the appeal site or neighbouring bungalows and the Daws Heath settlement edge. However, the experience of a place is not static. The marked reduction in the width of the gap between Thundersley and Daws Heath would be noticeable on travelling between the settlements and there is other ribbon development along Daws Heath Road already present in the remaining gap so that it is not entirely open.
33. Woodland would remain a robust feature that would prevent actual coalescence of Thundersley and Daws Heath. Nevertheless, there would be an appreciable narrowing of the already small Daws Heath Ring in this location. Despite the lack of direct intervisibility, I find that the impression of separation between the

settlements which adds to their distinct character would be markedly reduced and there would be significant harm to the Green Belt purpose of preventing neighbouring towns merging into one another.

Green Belt Purpose c) – to assist in safeguarding the countryside from encroachment

34. In the SoCG, the parties agree that the site has urban fringe characteristics. Nevertheless, it is only along part of the northern edge and a limited section of the western edge that the site adjoins the Thundersley settlement boundary and I found adjoining development to have only a very limited presence from the further reaches of the site which are separated by intervening open land and boundary vegetation. Furthermore, the site may be separated from agricultural land to the north of Daws Heath Road by existing development, but it has a direct relationship with the adjoining woodland and equestrian facility within the countryside to the south and east. Despite the proximity and some views of adjacent development, the site is in equestrian use and its generally open and undeveloped nature remains the foremost quality on the site itself. In my judgement, the urban fringe characteristics are a fairly minor influence on the site overall, and I find that it is clearly appreciated as part of the countryside surrounding this part of Thundersley, distinct from the urban area.
35. Irrespective of provision for landscaping and open space, the proposed housing would be urbanising and would result in encroachment to the countryside. The site is contained to the south and part of the east boundary by woodland, but development would join with the bungalows at Nos 154-164 so that they would be read as part of Thundersley rather than a small cluster of buildings sitting within surrounding countryside as currently. It would also extend further south from Daws Heath Road than the existing settlement boundary which is closely drawn to the rear of frontage buildings along this side of the road. I find as a result that the development would be appreciated as a notable and awkward incursion to the countryside around Thundersley with significant harm to the purpose of assisting in safeguarding the countryside from encroachment.

Conclusion on Green Belt Openness and Purposes

36. The proposal would result in a significant loss of openness on the site in spatial terms and some loss of openness in visual terms. The effects on openness would be localised, but there would also be harm to three of the purposes of the Green Belt. I accept that the role and function of the wider area of Green Belt between Thundersley and Daws Heath would not be wholly compromised, but that does not mean that effects are of no consequence. In my judgement, harm to these purposes would in each case be significant. The harm to the openness and purposes of the Green Belt would be in addition to the harm arising from the inappropriate nature of the development which the Framework sets out is, by definition, harmful to the Green Belt.

Landscape Character and Appearance

37. The LVIA highlights that the appeal site is within the South Essex Coastal Towns Landscape Character Area ('LCA') G3 as identified by the Essex Landscape Character Assessment 2003 ('the ELCA'). LCA G3 is described in the ELCA as an area of very mixed character but unified by the overall dominance of urban development. Key characteristics include large areas of dense urban development and narrow bands and broader areas of gently undulating

farmland with a remnant hedgerow pattern separating some of the towns. Other characteristics noted include small to medium size semi-regular hedged fields, sometimes bounded by woodland in areas including Daws Heath and a high concentration of woodland in the Thundersley/South Benfleet, Daws Heath and Hockley areas.

38. As an open parcel with hedgerows, albeit gappy, and an area of woodland which is part of a relatively narrow band separating Thundersley and Daws Heath, the appeal site exhibits some of the characteristics of LCA G3. These features confer a pleasant, generally rural quality to the site although development within Thundersley is an influence on parts of the north and west boundaries of the site. The LVIA assesses the landscape quality, value and sensitivity of the overall site as medium, and the woodland parcel at the south east of the site as high. The Council does not challenge the findings of the LVIA in respect of landscape character and appearance and based on the evidence before me and my observations, I agree that these are reasonable assessments.
39. The proposal would inevitably alter the character of the site. However, no development is proposed within the woodland parcel and the illustrative details indicate that the majority of existing trees and hedgerows on the site could be retained. The illustrative details also show reasonably generous landscape buffers around the boundaries with areas of woodland. Furthermore, I have no firm reason to find that it would not be possible to bring forward a form of development that would adequately respect the character of Thundersley at reserved matters stage.
40. The settlement edge of Thundersley would be extended, but I consider given the above factors that the development would integrate acceptably with its surroundings. Adverse effects of the proposal on landscape character would be largely limited to the site itself, and I find that there would be only very limited harm caused to wider landscape character.
41. In terms of visual effects, I have already noted in relation to the first main issue that visibility of the development from the surrounding area would be limited and that potential viewpoints are all within relatively close range of the site. In many cases, there would also be filtering by vegetation, breaking up opportunities for views. Effects would further be reduced over time as vegetation around the site boundaries matured, softening views and providing for greater screening. Screening would not be complete and I appreciate that development would be clear in the foreground of some existing views towards surrounding woodland. Overall however, I consider that the visual impact of the development would be localised and for the most part limited to intermittent glimpses or transient views from points close to the boundaries. Where development would be visible, it would furthermore be seen as part of Thundersley.
42. For these reasons, I conclude that there would be some harm to landscape character and appearance. However, this harm would be limited and localised to the appeal site, and I am satisfied that over time, the proposal could assimilate well with its surroundings. The fact that this was not a putative reason for refusal and that no conflict with any development plan policies or the Framework has been identified in this respect further reinforces my view

that the harm would be limited. Nevertheless, it is a harm to be considered in the balance.

Other Considerations

43. The Framework identifies that inappropriate development should not be approved except in very special circumstances. It sets out that very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appellants have put forward a number of other considerations in favour of the proposal which I consider below.

Contribution to Housing Supply

44. The Framework highlights the Government objective to significantly boost the supply of homes. It is common ground that the Council is unable to demonstrate the 5-year supply of deliverable housing sites which would be required in this case and that the latest published position of a 1.86 year supply, which is equivalent to a shortfall of 1,634 dwellings, represents a substantial shortfall. Housing Delivery Test results also show past housing delivery at levels substantially below requirements, with delivery exceeding 50% in only one of the years 2018 - 2022 and even then, only slightly. The appellants highlight that under-delivery of housing has been a theme for a sustained period, that Castle Point's housing delivery record is one of the worst in the country and that shortfalls in housing supply are an issue across the wider housing market area too. In my view, all of this indicates a pressing and acute need for housing in the Borough.
45. In terms of future prospects for improvement, the SoCG confirms that there is currently no agreed strategy in place to address the shortfall in housing supply or facilitate a significant change in delivery performance. I note that the Council had prepared a new Local Plan which was found sound following examination, but that in June 2022, it took the decision to withdraw this plan rather than adopt it. The main parties agree that the withdrawn Local Plan ('the wLP') itself carries no weight, but that the evidence base documents and examining Inspector's post-hearing correspondence are relevant. This includes the Inspector's report on the wLP which identified that it would not be possible to rely on increasing the supply of housing within the urban area and avoid the need to alter the boundaries of the Green Belt to meet housing need. The report also identified that there were strategic-level exceptional circumstances to alter the Green Belt boundary in the interests of the proper long-term planning of the Borough.
46. The Council is preparing a new Local Plan which it advised will consider both the housing requirement and how to meet it, but this is currently in the early stages with no clear strategy identified. The Council was unable to say at the Hearing whether or not there would be a requirement to release Green Belt for development, and there can be no certainty at this stage that housing requirements will be significantly, if at all, reduced from the current level in an adopted Plan. Moreover, the Local Development Scheme January 2024 suggests adoption of a new Local Plan would not be until March 2026 and while the Council suggested that this could be earlier, I consider it far from clear that this would be realistic. On that basis, a new Local Plan to address the existing housing shortfall appears some way off even in a best-case scenario. There

would also be likely to be some lead-in time between adoption of a new Local Plan and any consequent significant uplift in housing completions.

47. Until a new Local Plan is in place, the Council advised that it is trying to accommodate as much development as possible on 'brownfield' land, but that does not alter the current 5 year supply position and there is no firm detail before me to show that this is having any significant effect on housing supply.
48. I concur with the statement in the SoCG that there are no realistic prospects of a strategy to address the shortfall in housing supply or see a significant change in delivery in the short term. Furthermore, the SoCG notes that Green Belt is tightly drawn around the existing urban area. From the information before me and in the absence of an up to date development plan, it is difficult to see how current requirements for housing will be meaningfully addressed without some development of Green Belt, and certainly not in the short-term.
49. The extent and duration of the past shortfalls in housing delivery and the overall supply position which seems very unlikely to see any marked improvement in the near future paint a dire picture of housing availability in the Borough. I am in no doubt that the lack of housing supply would have a range of serious social and economic consequences such as inability of households to access housing to meet their needs, overcrowding, potential homelessness and effects on quality of life.
50. In this context, I afford very substantial weight to the contribution that the proposal would make towards meeting needs for housing that are currently going unmet. However, the contribution to the overall supply picture and effect on reducing the shortfall would be relatively small. While that does not diminish the weight that I give the contribution, it does restrict the extent of the benefit.

Affordable Housing

51. The SoCG refers to the South Essex Housing Needs Assessment 2022 as identifying an annual net need for 326 affordable dwellings in the Borough. The Council has not disputed the appellants' evidence indicating that on average, there has been a net gain of just 9 affordable dwellings per year between 2014 and 2022 leading to a shortfall of 2,566 affordable homes against needs identified by the South Essex Strategic Housing Market Assessment Addendum 2017. Nor that there are a significant number of households on the housing register, long waiting times for affordable housing and worsening affordability.
52. It is evident that the substantial shortfall in affordable housing provision has persisted over a sustained period. The adopted Local Plan 1998 ('the LP') includes no specific threshold or requirement for affordable housing provision and the Council accepted that there was no clear prospect of meeting needs for affordable housing in the short to medium term. Having regard to the general housing undersupply situation noted above, it further seems almost inevitable that the affordable housing position is likely to worsen further.
53. The proposal includes 40% affordable housing provision which would provide up to 23 affordable dwellings. This would be more than double the net annual average number of affordable homes that have been delivered over 2014 – 2022 and in view of the woeful supply position noted above, I afford this provision very substantial weight.

Biodiversity Net Gain

54. The appeal site is undeveloped, but it is managed for equestrian use and while the proposal is for housing development, the appellants calculate that there would be an overall Biodiversity Net Gain ('BNG') of just over 61% habitat units and 64% hedgerow units. The Council's ecology consultee had queried the classification of grassland in the calculations, but the appellants have provided further explanation in response and the Council does not challenge their assessment. Mandatory requirements for a 10% BNG which are now in force would not apply to the appeal scheme, and the Framework requires only provision of a net gain. The level of BNG would far exceed what would be required, and I afford it significant weight.

Ancient Woodland

55. The appellants' Ecological Impact Assessment ('EcIA') highlights potential for enhancement to the ancient woodland on the site to improve its condition, including removal of understorey scrub, bracken and pathways used by the Riding Centre in order to support regeneration of the woodland understorey. The proposal also indicates provision of buffer zones on the site to protect areas of ancient woodland. The Framework highlights ancient woodland as an irreplaceable habitat and I consider the enhancements to the condition of such habitat to attract significant weight as a benefit of the proposal, albeit that there would be direct enhancement to only a relatively small parcel.

Economic and Social Benefits

56. There would be economic and social benefits associated with the proposal, including direct and induced employment and spend during construction as well as spending and support for local services by future occupiers. However, these have not been quantified in the evidence before me and would be likely to be fairly limited on account of the scale of the development. Employment opportunities would further be largely temporary during construction, albeit not exclusively. Overall, I give moderate weight to these benefits.

Suitable and Sustainable Site

57. The appellants argue that use of a suitable and sustainable site, supported by wLP evidence base, to help meet development needs is a further consideration in favour of the proposal. I have been referred to comments in the Sustainability Appraisal ('SA') Environmental Report for the wLP including that the site could be considered a reasonable alternative to sites proposed for allocation. However, comments stating that effects of development on the site could be considered similar to those of allocated sites are from the section of the SA specifically reviewing effects on local wildlife sites and ancient woodland. Other sections of the SA highlight effects on Green Belt and landscape as disadvantages of the site leading to its rejection as a proposed allocation in the wLP.
58. I am mindful of the purpose of the SA in supporting plan-making and it is common ground that the wLP carries no weight. The fact that the site was not proposed for allocation in the wLP is not therefore determinative. However, neither am I persuaded that the acceptance in the SA that, aside from Green Belt, effects on other social, environmental and economic themes would be similar to other sites constitutes support for the proposal in any real sense.

59. That said, no technical constraints to development have been identified and the SoCG confirms that Thundersley is one of the most sustainable settlements within the Borough to accommodate additional growth. The site would be within reasonable walking distance of some local facilities in Thundersley and Daws Heath as well as bus stops providing connections to larger centres. In these terms, the site could be considered generally sustainable and suitable for development though I consider this would attract no more than limited weight.

Other Matters

Heritage Assets

60. The appeal site is in the vicinity of a Grade II listed building at 96 and 98 Daws Heath Road and I have therefore had special regard to the desirability of preserving the building and its setting in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

61. 96 and 98 Daws Heath Road are a pair of timber framed cottages dating to the late 18th/early 19th century. The appellants' Archaeological and Heritage Assessment ('AHA') notes that the cottages were historically isolated but were surrounded by urban development in the 20th century. The intervening development means that there is no intervisibility between the listed building and the appeal site and that any historic functional connection between them is no longer apparent. On that basis, I agree with the main parties that the appeal site does not contribute to the special interest of the listed building as part of its setting and the proposal would have no effect on the significance of the listed building.

62. 137 Daws Heath Road to the north of the appeal site is a locally listed building which the AHA notes is likely to date from the 18th century. From the information before me, it has significance as a non designated heritage asset ('NDHA') which derives in part from its historic and architectural interest as an attractive pair of farm labourers cottages of simple form and appearance. The AHA identifies that No 137 was originally separated from the appeal site by a house which has since been demolished and that there is no evidence for any functional or historic link between the building and appeal site. Nevertheless and despite some screening by hedgerows, the undeveloped site is a remnant of the rural setting that the building would historically have sat within and in this context it makes some contribution to the building's significance.

63. This rural setting would be eroded by the presence of development on the appeal site. However, given that only part of the significance of No 137 derives from its setting and that the appeal site is only a part of this setting, the resulting harm to the significance of the NDHA would be limited. The Framework advises that in weighing applications that affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I return to this matter in my planning balance below.

Effect on Ragwood Riding Centre

64. The appeal site is currently used by Ragwood Riding Centre. The main yard and stables of the Riding Centre are not part of the site, but it was put to me that the inability to use the fields on the site would mean there would not be enough land for horses and the Centre would have to close resulting in loss of

employment and leisure opportunities. I have not been directed to any policy that would specifically protect the existing use, but the loss of employment here would temper the economic benefits of the proposal and with the loss of leisure opportunities would be a harm of the proposal. Be that as it may, the degree of harm would be fairly modest given the scale of the site. Furthermore, the weight that I give to this harm is limited given that I have only anecdotal evidence that the centre would have to close and that there is no firm detail before me to substantiate the assertion that it would be unable to continue.

Habitats Sites

65. From the information before me, the Benfleet and Southend Marshes Special Protection Area ('SPA') and Ramsar site, Foulness Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site as well as the overlapping Essex Estuaries Special Area of Conservation ('SAC') are vulnerable to the effects of recreation. The appeal site is located within the area from which most visitors to these sites are identified as originating from and the development could therefore result in additional visitors, increasing recreational pressure on these protected areas. This pressure, particularly when taken in combination with other plans and projects, could lead to an adverse effect on the integrity of the sites. In order to mitigate potential recreational effects of development, the s106 includes a financial contribution in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy ('the RAMS') towards a programme of strategic mitigation measures which have been endorsed by Natural England. The Council is satisfied that the s106 would ensure adequate mitigation such that the integrity of the SPA and Ramsar and SAC sites would not be adversely affected and I have no firm reason to find differently.
66. Had I found the proposal to be otherwise acceptable, I would need to formally consider effects on the integrity of these sites and the potential for mitigation within the framework of an Appropriate Assessment. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further as it could not be determinative.

Protected Species

67. The EcIA notes that surveys for reptiles, roosting bats and hazel dormice returned negative results and these species are considered likely absent from the site. On receipt of further justification for the hazel dormice survey methods provided as part of the appeal, the Council's ecology consultee is satisfied that sufficient ecological information is available to determine the application and that subject to conditions, effects on protected species would be acceptable. I have no firm reason to disagree.
68. The EcIA also set out that no badgers or setts were identified within the site or within 30m of the boundary. Interested parties refer to routes on the site used by badgers. However, there is no direct legislative protection for badger commuting or foraging grounds. Development may affect grounds in the short term, but the proposal would ultimately offer an overall BNG on the site as a whole with improvements to the quality and diversity of habitats which could support species including badgers.
69. Subject to planning conditions, I am satisfied that protected species would not be adversely affected by the proposal and I consider that biodiversity would be

conserved and indeed enhanced in accordance with section 40 of the Natural Environment and Rural Communities Act 2006 (as amended).

Other Appeal Decisions

70. A large number of appeal or Secretary of State decisions involving development in the Green Belt, both within Castle Point and elsewhere have been drawn to my attention by the main and interested parties. I note findings on both sides and the weight that has been given to different factors where the main parties have particularly sought to draw comparisons with the appeal before me. I also note distinctions in aspects of harm that were identified, including in respect of the purposes of Green Belt that were identified as relevant. Overall though, it seems to me that in each case there are differences in respect of factors such as the relevant policy framework; the site circumstances including relationship to surrounding land uses, development proposed and effects of development; main issues; housing land supply position and other factors so that none are directly comparable to the individual circumstances of this appeal. I have determined the appeal exercising my planning judgement having regard to the specific merits of the proposal that is before me.

Additional Matters Raised in Representations

71. Over 400 objections were submitted to the planning application raising additional concerns including in relation to traffic levels, highway safety, pressure on local infrastructure, flood risk and effects on the Hadleigh and Daws Heath Complex Living Landscape. I also note a comment in support of the proposal where social housing is included, referring to bringing housing stock into use. I have taken into account the representations made by interested parties and note the strength of feeling. However, none of the other matters raised alter my findings on the main issues or overall balance.

Planning Obligations

72. I have considered obligations within the submitted s106 in light of tests for obligations outlined at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ('the CIL Regulations'). These tests require that obligations (other than those requiring a sum to be paid in respect of monitoring) are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

73. The s106 provides that 40% of the proposed dwellings would be affordable and requires a scheme to be submitted which would, amongst other things, provide for a tenure split of 63% affordable rented dwellings and 37% shared ownership dwellings. Saved Policy H7 of the LP sets out that the Council will seek to negotiate a proportion of affordable housing where appropriate, but it does not specify a proportion and the proposal in this case would exceed the 35% provision sought on major sites by the Affordable Housing Developer Contributions Supplementary Planning Document ('SPD') 2023. However, I have given weight to affordable housing as one of the other considerations in favour of the proposal. I therefore consider that the stipulated provisions relating to affordable housing would be necessary to make the development acceptable in planning terms.

74. Obligations relating to the RAMS contribution would be necessary to mitigate effects of the proposal on the Benfleet and Southend Marshes, Foulness Estuary and Blackwater Estuary SPA and Ramsar sites and the Essex Estuaries SAC. Obligations relating to provision, management and maintenance of open space including play would be necessary to meet needs of future occupiers. Obligations relating to the provision of residential travel information packs and highway works would be necessary to ensure appropriate access and to support sustainable travel choices in accordance with the Framework.
75. Further obligations provide for financial contributions towards healthcare, education including primary education and early years and childcare, Hadleigh library and sustainable transport. The appellants queried at the Hearing whether the primary education contribution would be necessary in light of the Essex County Council 10 Year Plan 2024-2033 which suggested a surplus of places in the relevant school planning area. However, the County Council advise that while some capacity is shown across the wider school planning area, schools local to the site are at capacity. The CIL Statement of Compliance provided by the Council, representations by Essex County Council and Mid and South Essex NHS and clarification by the Council at the Hearing offer further explanation and justification for the other contributions sought. The s106 also includes Council covenants to ensure that contributions would be used for the intended purposes to make the development acceptable in planning terms and so would be necessary.
76. With regard to the evidence provided, I consider that all of these obligations would be required to address the impacts of the development, and I am satisfied that they would in each case be necessary to make the development acceptable in planning terms, directly related to the development proposed and fairly and reasonably related in scale and kind to it.
77. I find that each of the obligations in the s106 would comply with the tests at Regulation 122(2) of the CIL Regulations which are reflected in the Framework and can be given weight. I have therefore taken them into account.
78. The s106 also includes provision for monitoring fees. From the information before me, these would be fairly and reasonably related in scale and kind to the development and would reflect estimated costs of monitoring as set out in the Developer Contributions SPD and the Essex County Council Developers' Guide for Infrastructure Contributions 2020 so as to be in accordance with Regulation 122(2A) of the CIL Regulations.

Planning Balance

79. Section 38(6) of the Planning and Compulsory Purchase Act provides that the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, there is no saved policy within the LP establishing general principles for the control of development in the Green Belt. The Council does not suggest that there would be conflict with any policies of the development plan, including those that the SoCG lists as relevant to the appeal, and nor do I identify development plan conflict.
80. However, the Framework is an important material consideration that must be taken into account.

81. The proposal would be inappropriate development in the Green Belt which the Framework sets out is, by definition, harmful to the Green Belt and which should not be approved except in very special circumstances. The Framework further outlines that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
82. In addition to the harm arising from the inappropriate nature of the development, I have found that the proposal would harm the openness of the Green Belt. The effects on openness would be localised, but I have also identified significant harm to three of the purposes of the Green Belt. In accordance with the Framework, the harm that would be caused to the Green Belt attracts substantial weight.
83. I have also found that there would be harm to landscape character and appearance. This harm would be limited and localised and the Council has not identified conflict with the development plan or Framework in this respect. I give limited weight to this harm.
84. There would be harm to the significance of the locally listed building 137 Daws Heath Road. However, the harm would be limited. In isolation and taking a balanced judgement, I consider that the range of benefits of the proposal noted above would vastly outweigh the limited harm that would be caused to the significance of No 137 as a NDHA. Nevertheless, this is a harm to be weighed in the overall green belt balance.
85. There is little firm detail to substantiate that the proposal would force the closure of Ragwood Riding Centre, but even if I were to take a worst-case view, any consequent loss of employment and leisure opportunities would be of modest scale and I find that harm would be limited.
86. Against these harms, I give very substantial weight to the benefits of the provision of housing and affordable housing on the site noting longstanding failure to meet requirements and that a plan-led solution to address existing pressing needs is unlikely in the short to medium term. However, while not taking away from their importance, I consider the contributions that the proposal would make to housing and affordable housing supply to be modest relative to the overall degree of harm that would be caused to the Green Belt here. Even taken together with the significant weight that I give to the provision for BNG and enhancement of ancient woodland, the moderate weight to economic and social benefits and limited weight to the site sustainability, and setting aside unsubstantiated potential effects on Ragwood Riding Centre, I find that the collective other considerations would not clearly outweigh the harm that the proposal would cause to Green Belt by reason of inappropriateness and other harm resulting from the proposal. Consequently, very special circumstances do not exist and the Framework indicates that the inappropriate development in the Green Belt should not be approved.
87. Having found that very special circumstances do not exist, policies within the Framework relating to land designated as Green Belt provide a clear reason for refusing the development and paragraph 11 d) of the Framework does not therefore indicate that permission should be granted in this case.

88. Although I identify no conflict with the development plan, the Framework is a compelling material consideration which I find indicates that permission should be refused.

Conclusion

89. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Paul Tucker KC	Kings Chambers
Sam Hollingworth	Savills
Tom Sharman	Savills
Clive Self	CSA Environmental
Christian Cairns	Tyler Grange
Matt Grist	Jubb
Grant Stevenson	Rainier Developments and Strategic Land

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga	Cornerstone Barristers
Spencer Copping	WS Planning and Architecture
Stephen Garner	Castle Point Borough Council
David Bland	Castle Point Borough Council, Legal Services

INTERESTED PARTIES:

Rebecca Harris MP	Member of Parliament for Castle Point
John Knott	Ward Councillor
Tim Copsey	Local resident
Natalie Cousins	Local resident

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

- HD1 Speaking note of Rebecca Harris MP.
- HD2 Speaking note of John Knott.
- HD3 Speaking note of Tim Copsey.
- HD4 Proposed Site Access Plan SK_T_001 Rev P5 (correction to revision number stated on plan, no other change to plan), submitted by the appellants.

- HD5 Castle Point Borough Council Local Development Scheme January 2024, submitted by the Council.
- HD6 Castle Point Green Belt Review Part One 2018, submitted by the Council.
- HD6 Castle Point Green Belt Boundary Review 2013, submitted by the appellants.
- HD8 Email dated 30 April 2024 from Essex County Council Highways in respect of sustainable transport planning obligation, submitted by the Council.
- HD9 Map showing parties' positions on distances between Daws Heath and Thundersley, submitted by the Council.
- HD10 Essex County Council 10 Year Plan Meeting the Demand for Mainstream School Places in Essex, January 2024, submitted by the Council.
- HD11 Email dated 19 April 2024 from Essex County Council Highways with attached appeal decision ref APP/V1505/W/23/3325933 (Land South of Dunton Road, Basildon, Essex) in respect of sustainable transport planning obligation, submitted by the Council.
- HD12 'Response to Additional Evidence' note dated May 2024, submitted by the appellants.
- HD13 Certified copy of Planning Obligation by Agreement Made Under Section 106 of the Town and Country Planning Act 1990 dated 10 May 2024, submitted by the appellants.
- HD14 Letter in response to HD12 dated 14 May 2024, submitted by the Council.
- HD15 Updated list of agreed planning conditions and informatives, submitted by the appellants.
- HD15 Decision letter and site plan for appeals refs APP/P1940/W/22/3311477 and APP/P1940/W/22/3311479 in Three Rivers District Council, submitted by the appellants.
- HD16 Letter in response to HD15, submitted by the Council.
- HD17 Emails dated 2 May 2024 and 3 May 2024 from Essex County Council Infrastructure Planning in respect of primary education requirements.