



Department for  
Communities and  
Local Government

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Our Ref: APP/V1505/A/13/2204850  
Your Ref: 10.611

17 June 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MERIDIAN STRATEGIC LAND LTD  
AT LITTLE CHALVEDON HALL, HOMESTEAD ROAD, BOWERS GIFFORD,  
BASILDON, SS13 2JL  
APPLICATION REFERENCE: 13/00140/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Katie Peerless Dip Arch RIBA, who held a public local inquiry between 25 and 28 February 2014 into your client's appeal against a decision of Basildon Borough Council (the Council) to refuse planning permission for residential development of 750 homes together with a new neighbourhood centre (to include retail, health centre, primary school and extra care unit), associated new accesses and areas of public open space at Little Chalvedon Hall, Homestead Road, Bowers Gifford, Basildon, SS13 2JL in accordance with application reference 13/00140/OUT, dated 31 January 2013.

2. On 17 September 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because it involves proposals for residential development over 150 units or is on a site of over 5 hectares and would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees

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with the Inspector's conclusions, except where stated, and agrees with her recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

4. In reaching this position the Secretary of State has taken into account the Environmental Statement (ES) which was submitted by the appellant, the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Inspector's comments at IR6-9. The Secretary of State is satisfied that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

### **Matters arising after the close of the inquiry**

5. The Government published new planning guidance on 6 March 2014 after the close of the inquiry. The Secretary of State notes that this supersedes some of the Circulars and planning guidance that were previously relevant to this case, that the main parties were invited by the Planning Inspectorate to comment on any aspects of it that they felt would have a bearing on this case, but have confirmed that they have nothing further to add to their cases on this matter (IR3).

### **Policy considerations**

6. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case, the development plan for the District includes the policies from the Basildon District Local Plan 1998 (LP) that were saved following a review in 2007. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR12.

8. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (the Framework); the planning guidance; and the Community Infrastructure Levy (CIL) regulations. The Secretary of State notes that public consultation began on the Core Strategy Replacement Preferred Options Document (CSRPOD) in January of this year and agrees with the parties that it merits little weight (IR17).

### **Main issues**

#### **Harm to the GB**

9. The Secretary of State has had regard to the Inspector's comments about the harm to the GB at IR223-233. He notes that there is no dispute that the proposal represents inappropriate development (IR223), and he agrees with the Inspector that additionally there would be harm caused by loss of openness and permanence, by the encroachment into the countryside and to the purpose of preventing neighbouring towns from merging (IR233). The Secretary of State also agrees that the harm in respect of the purpose of preventing neighbouring towns from merging

into each other is moderate (IR231). In accordance with national policy set out in the Framework he attaches substantial weight to the harm to the GB.

#### Other harm

10. The Secretary of State agrees with the Inspector's assessment of highways impacts at IR234-238 and he shares her conclusion (IR237) that it cannot be concluded that the appeal proposal would not cause any unacceptable increase in traffic levels. He also agrees with the Inspector that the problem of lights from vehicles shining into the houses in Pound Lane could be minimised by designing the final scheme to ensure that the landscaping screened the roads (IR239), and that there is no convincing evidence that the risk of flooding in the local area would be increased if the proposed development were to go ahead (IR241).

#### Very special circumstances

##### *Housing supply*

11. The Secretary of State agrees with the Inspector's comments on housing supply at IR242-250. He agrees that the most compelling argument for allowing the proposal on the grounds of very special circumstances is the agreed lack of a five year housing supply and the time that will necessarily be taken to put an adopted Core Strategy in place (IR242). He also agrees that: the current LP is out of date in terms of housing supply policies (IR242); the proposed development would bring forward much needed new housing within a shorter timescale than is likely through the LP process (IR244); and, in order to meet housing need it is likely that the Council will have to release land from the GB (IR245). Like the Inspector the Secretary of State also considers that whilst it is possible that the appeal site, or parts of it, could come forward as a result of the consultation process into the Core Strategy, it is by no means certain (IR249). While he also notes that a preference has been expressed for an urban extension to the north east of Basildon, he shares that view of the Inspector that the two sites are not mutually exclusive (IR250).

##### *Other benefits*

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on the other benefits of the scheme which she identifies at IR251-257. Like the Inspector he agrees that there is no particular advantage to be gained by the establishment of an additional area of public open space adjacent to recreational land immediately to the east of Basildon in terms of defending the GB from erosion (IR251). He also agrees that the benefits of exchanging agricultural land for public space do not carry more than moderate weight, and that the benefits of gaining an area of public open space are seriously reduced by the fact that a similar amount of GB countryside would be lost (IR252). Like the Inspector (IR253) the Secretary of State considers that there might be scope for some ecological enhancements once the development was completed but that this would need to be balanced against the loss of a large area of open land that already provides wildlife habitats and the disruption that would be caused to the natural environment during the building process.

13. The Secretary of State agrees with the Inspector that the additional facilities proposed could help reduce the need for residents to travel out of Bowers Gifford for some essential services (IR254). He has also taken into account that there would be improvements to the bus service which would be of benefit to existing residents (IR255); agrees that if planning permission were to be granted for an outline application there is no reason to assume that the requirements of good design would necessarily be exceeded (IR256); and agrees that the proposal would contribute a number of jobs within the retail sector of the village hub and during the construction process which is a real benefit in the Thames Gateway South Essex growth area and weighs in favour of the proposal (IR257).

#### *Affordable housing*

14. The Secretary of State notes that the scheme would provide the level of affordable housing that is presently required through LP policy and agrees with her that this is a matter weighing in favour of the scheme, but not one to which any significant additional weight should be attached (IR258).

#### The balancing exercise

15. The Secretary of State has had regard to the Inspector's balancing exercise at IR259-266. He agrees with her that, whilst each site must be considered on its own merits, the Castle Point decision is a material consideration that must be taken into account when the merits of this proposal are weighed in the balance (IR260). The Secretary of State also agrees that the agricultural land that would be lost to housing would not be best quality and that the character of the remaining landscape would to a large extent be maintained through the landscaping scheme (IR262).

16. The Secretary of State has found at paragraph 9 above that, in addition to the harm caused by the proposals being inappropriate development, there would be harm to the GB caused by a loss of openness and permanence and by the encroachment into the countryside, and moderate harm to the purpose of preventing neighbouring towns from merging. He agrees with the Inspector that the vulnerable gap between Basildon and Bowers Gifford/ North Benfleet would be reduced and the character of the villages materially altered (IR262). The Secretary of State also agrees that the GB harm is significant in this case (IR265) and, in line with national policy set out in the Framework, attaches substantial weight to this harm.

17. The Secretary of State also shares the Inspector's view that to grant permission would in effect release a significant amount of GB land for development outside the LP review process and that this would conflict with Framework policy which makes clear that the preferred route by which such releases are decided is through the LP process (IR263).

18. In favour of the proposals the Secretary of State has found at paragraph 11 that the most compelling factor is the agreed lack of a five year supply of housing and the time that will necessarily be taken to put an adopted Core Strategy in place (IR242). He has also taken into account the other factors identified at paragraph 11 including that the proposed development would bring forward much needed new housing within a shorter timescale than is likely through the LP process and that, in

order to meet housing need it is likely that the Council will have to release land from the GB. Additionally the Secretary of State has taken into account the affordable housing that would be provided (paragraph 14 above) and the other benefits for the scheme identified at paragraphs 12 and 13 above including the jobs that would be provided.

19. Having had regard to the Inspector's comments at IR265, the Secretary of State also agrees with the Inspector that if this site was not in the GB, it would be strong candidate for housing development, being in a sustainable location and well related to existing settlements (IR265). He gives no additional weight to the Inspector's concerns regarding the scheme's intrusion into the countryside and how it would relate to the scale of the established settlement (IR265), as he is satisfied that he has taken sufficient account of these factors in giving weight to GB harm. However, the Secretary of State agrees that more confidence could be placed on the conclusions drawn by the traffic assessment if it had taken account of the additional developments that are proposed to come forward in the near future, but this concern alone would not warrant refusal of the outline proposals but adds weight to the other objections to them (IR265).

20. In his overall balancing of these considerations the Secretary of State has had regard to national policy set out in the Framework that inappropriate development should not be approved except in very special circumstances (VSCs) and that VSCs will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Although the Secretary of State agrees with the Inspector that the economic benefits, particularly in terms of housing supply are clear (IR265), he concludes that there are no considerations that would, separately or in combination, clearly outweigh the harm he has identified to the GB and other harm in order for the VSCs to exist that would justify allowing the appeal.

#### Conditions

21. The Secretary of State has considered the Inspector's comments at IR203-211 on the proposed planning conditions, the conditions she recommends in Annex 1 of the IR, and national policy set out in the Framework. The Secretary of State is satisfied that the conditions in Annex 1 are reasonable and necessary and would meet the other tests at paragraph 206 of the Framework. However, he does not consider that the conditions would overcome his reasons for dismissing the appeal.

#### Obligation

22. The Secretary of State has considered the submitted section 106 agreement, the Inspector's comments at IR212-221, national policy set out in the Framework and the CIL regulations. He agrees with the Inspector (IR221) that all the contributions are required to serve the new development or to mitigate its impact on the local infrastructure, are necessary in planning terms, and meet the criteria of the CIL regulations. However, he does not consider that the provisions of the agreement would overcome his reasons for dismissing the appeal.

## **Overall Conclusions**

23. The Secretary of State concludes that the appeal proposal is inappropriate development in the GB and, overall, would lead to significant harm to the GB overall, to which he attaches significant weight. Although there are clear factors in favour of the proposal including that it would bring forward much needed new housing within a shorter timeframe than is likely through the local plan process the Secretary of State does not consider that the harm to GB and other harm is clearly outweighed by other considerations such to justify allowing the appeal.

## **Formal Decision**

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for residential development of 750 homes together with a new neighbourhood centre (to include retail, health centre, primary school and extra care unit), associated new accesses and areas of public open space at Little Chalvedon Hall, Homestead Road, Bowers Gifford, Basildon, SS13 2JL in accordance with application number 13/00140/OUT, dated 31 January 2013.

## **Right to challenge the decision**

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

26. A copy of this letter has been sent to Basildon Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully



**James Henderson**

Authorised by Secretary of State to sign in that behalf

# Report to the Secretary of State for Communities and Local Government

by Katie Peerless Dip Arch RIBA

Date 22 April 2014

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TOWN AND COUNTRY PLANNING ACT 1990  
BASILDON BOROUGH COUNCIL  
APPEAL MADE BY  
MERIDIAN STRATEGIC LAND LTD.

*Richborough Estates*

Inquiry held on 25 - 28 February  
Site Visits on 24 and 27 February 2014

Little Chalvedon Hall, Homestead Road, Bowers Gifford, Basildon SS13 2JL

File Ref: APP/V1505/A/13/2204850

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Richborough Estates



## GLOSSARY AND ABBREVIATIONS

<b>BGNBRA</b>	<b>Bowers Gifford and North Benfleet Residents' Association</b>
<b>BBC</b>	<b>Basildon Borough Council</b>
<b>BH</b>	<b>Ben Hilder (landscape witness for the Appellants)</b>
<b>BS</b>	<b>British Standard</b>
<b>CD</b>	<b>Core Document</b>
<b>CIL</b>	<b>Community Infrastructure Levy</b>
<b>CS</b>	<b>Core Strategy</b>
<b>CSRPOD</b>	<b>Core Strategy Replacement Preferred Options Document</b>
<b>DAS</b>	<b>Design and Access Statement</b>
<b>DP</b>	<b>Development Plan</b>
<b>dpa</b>	<b>dwellings per annum</b>
<b>EA</b>	<b>Environment Agency</b>
<b>EEP</b>	<b>East of England Plan</b>
<b>EIA</b>	<b>Environmental Impact Assessment</b>
<b>ES</b>	<b>Environmental Statement</b>
<b>Ha</b>	<b>Hectares</b>
<b>HGV</b>	<b>Heavy Goods Vehicle</b>
<b>ID</b>	<b>Inquiry Document</b>
<b>LCA</b>	<b>Landscape Character Assessment</b>
<b>LP</b>	<b>Local Plan</b>
<b>LPA</b>	<b>Local Planning Authority</b>
<b>LVIA</b>	<b>Landscape Visual Impact Assessment</b>
<b>PADC</b>	<b>Policy Areas for Development and Change</b>
<b>PCPA</b>	<b>Planning and Compulsory Purchase Act 2004</b>
<b>PDL</b>	<b>Previously Developed Land</b>
<b>PPG</b>	<b>Planning Policy Guidance</b>
<b>RB</b>	<b>Robin Bennett (planning witness for the Council)</b>
<b>RR</b>	<b>Ray Ricks (planning witness for the Appellants)</b>
<b>SCG</b>	<b>Statement of Common Ground</b>
<b>SoS</b>	<b>Secretary of State</b>
<b>SPG</b>	<b>Supplementary Planning Guidance</b>
<b>SSSI</b>	<b>Site of Special Scientific Interest</b>
<b>TGSE</b>	<b>Thames Gateway South Essex</b>
<b>UDP</b>	<b>Unitary Development Plan</b>
<b>ZTV</b>	<b>Zone of Theoretical Visibility</b>

**File Ref: APP/V1505/A/13/2204850**

**Little Chalvedon Hall, Homestead Road, Bowers Gifford, Basildon SS13 2JL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Meridian Strategic Land Ltd. against the decision of Basildon Borough Council.
- The application Ref 13/00140/OUT, dated 31 January 2013, was refused by notice dated 18 September 2013.
- The development proposed is residential development of 750 homes together with a new neighbourhood centre (to include retail, health centre, primary school and extra care unit), associated new accesses and areas of public open space.

**Summary of Recommendation: That the appeal be dismissed**

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**PROCEDURAL MATTERS**

1. The Secretary of State has recovered this Appeal and directs that he shall determine it instead of an appointed Inspector. This is because it involves proposals for residential development over 150 units and is on a site of over 5 hectares (ha) and would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
2. The application is in outline with all matters reserved for future determination. However, the appellants have produced master plan showing their aspirations for how the site would be developed. The latest edition of this master plan, no. 1480 200 P11, has been updated to reduce the extent of the areas previously annotated as 'interim open space' which are intended to allow for future expansion and was considered at the Inquiry.
3. After the close of the Inquiry, the Government issued the final version of its Planning Practice Guidance (PPG) which supersedes some of the Circulars and planning guidance that were previously relevant to this case. The main parties were invited to comment on any aspects of the new guidance that they felt would have a bearing on this case but have confirmed that they have nothing further to add to their cases on this matter.

**MAIN ISSUES**

4. At the Inquiry, the Council confirmed that an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (the s.106 Agreement) had been entered into with the appellants and that this has satisfied reasons for refusal numbers 2 – 5, relating to the provision of affordable housing and measures to overcome the impact of the proposed development on local infrastructure in respect of education, health care, public transport and sports facilities. It was also agreed between the parties that the proposal represents inappropriate development within the Green Belt.
5. I therefore consider that the main issue in this case is now whether there are any material considerations that outweigh the harm caused by inappropriate development in the Green Belt, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances.

## **ENVIRONMENTAL IMPACT ASSESSMENT**

6. The proposal is Environmental Impact Assessment (EIA) development under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (EIA Regulations). An Environmental Statement (ES) has been produced to examine and evaluate the likely environmental effects of the development as required by Schedule 4 Part 2 of the EIA Regulations.
7. The ES was considered by the Planning Inspectorate and, following queries from a 3<sup>rd</sup> party relating to a comparison between alternative sites, a further review was undertaken on this topic, prior to the opening of the Inquiry. However, it was concluded that, whilst there were some areas where the information could have been more detailed, the ES was nevertheless adequate for the purposes of the EIA Regulations.
8. The Council has not raised any concerns about the adequacy of the ES, neither do they dispute any of the conclusions it has drawn; however, interested parties have queried the data on which some of the reports within the ES have been based, particularly those concerned with the traffic assessment and flood risk.
9. These matters and the objections raised in respect of them will therefore be considered in later sections of this report. However, there was no suggestion at the Inquiry that the ES was inadequate in respect of these matters, to the extent that it prevented a decision from being taken on them. The ES is therefore compliant with the EIA Regulations. I have had regard to the ES when arriving at my conclusions and recommendation on the proposed development.

## **THE SITE AND SURROUNDINGS**

10. The site lies in an area of countryside designated as Green Belt that creates a gap between Basildon to the west and Thundersley to the east. To the east of the site lies the village of Bowers Gifford and to the north is part of the 'Plotlands' areas of North Benfleet. The Plotlands are former agricultural land that was sold off in small parcels when farming became unprofitable for the owners and were initially used for holiday properties for residents of London. They have been developed at low densities and often included areas used for smallholdings but are now mostly used as permanent residential sites. The area of Plotlands adjacent to the appeal site is washed over by the Green Belt designation. Bowers Gifford is excluded from the Green Belt and, together with North Benfleet, lies to the north of the B1464 and the main A13 road and to the south of the A127.
11. The appeal site is a farm which, at the time of the site visits, largely consisted of uncultivated grass fields, separated by well established hedgerows interspersed with trees. Cattle are kept in some of the buildings of the farmyard, which also contains the now disused farmhouse at Little Chalvedon Hall. The farmyard is reached down Homestead Road, which is an unsurfaced track leading from Plough Lane, the link road between the B1464 and the A127 that runs north/south through Bowers Gifford and North Benfleet. There is a public footpath running north through the site which starts from the B1464 and skirts the western edge of the Plotlands, eventually meeting Burnt Mills Road to the north.

## PLANNING POLICY

12. New development is required to be considered against the policies in the adopted development plan unless material considerations indicate otherwise. The development plan for the District includes the policies from the Basildon District Local Plan 1998 (LP) that were saved following a review in 2007 and the Council has referred to policy BAS GB1 from this Plan, which aims to prevent inappropriate development within the Green Belt. Also relevant are policy BAS S5, which sets out affordable housing requirements for new development, policy BAS BE12, which sets the criteria against which housing development will be assessed and policies BAS C5 and BAS C13 which relate to environmental matters.
13. The National Planning Policy Framework (the Framework) is now a material consideration in the determination of planning applications and, where local plan policies are out of date or not in conformity with those in the Framework, it is the latter that will carry greater weight in any balancing exercise on the merits of a proposal.
14. Both the LP and the Framework have very similar aims in terms of Green Belt policy. The previously identified purposes of Green Belt designation have not changed and the Framework confirms that the essential characteristics of the Green Belt are its openness and permanence. Inappropriate development is harmful by definition and substantial weight must be given to any harm to the Green Belt. Paragraph 83 of the Framework makes clear that Green Belt boundaries should only be altered in exceptional circumstances, and then through the LP process.
15. The Framework also makes clear that one of its aims is to boost significantly the supply of housing. To this end, local planning authorities are required to identify a 5 year supply of housing land, together with a 5% or 20% buffer (depending on past performance in delivering against targets), that is based on the full, objectively assessed need for both market and affordable housing in their area. Paragraph 47 of the Framework notes that Local Plan policies for the supply of housing cannot be considered up to date if a 5 year supply of deliverable sites cannot be demonstrated.
16. The Council is presently in the process of producing its Core Strategy (CS) to replace the LP. To inform the emerging CS, the Council has commissioned 2 Landscape Studies<sup>1</sup> and produced a Green Belt Study Report<sup>2</sup> all of which are dated October 2013. Public consultation began on the Core Strategy Replacement Preferred Options Document (CSRPOD) in January of this year and it is therefore still some way from adoption and this necessarily limits the weight that can be accorded to the policies and allocations within it. The document contains proposals for 16,000 houses over the plan period of 2011 – 2031 and 9,100 of these (57%) would need to be in the Green Belt.
17. The area in which the appeal site falls is considered as Alternative Option 2 to Policy Area for Development and Change (PADC) 6, which proposes up to 2000 homes to the north east of Basildon. The CSRPOD rejected the option on

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<sup>1</sup> Taken from areas on Plan 1480 100 P11 – the latest version of the master plan submitted at the Inquiry

<sup>2</sup> CD7

grounds that included causing a detrimental effect on the character of Bowers Gifford and putting pressure on the strategic gap between Basildon and Thundersley. However, the parties agree that due to the early stage of the CS, it can be accorded little weight in any planning decision.

## THE PROPOSALS

18. The appeal site area within the 'red line' of the application covers a total of 29.53 ha<sup>3</sup> and this includes 8.52 ha of public open space, 3.27 ha of which is designated as 'interim' (i.e. could be used for development in the future) and 1.83 ha for a 'village hub'. Outside the 'red line', but within the control of the appellants, there is an additional 19.13 ha of adjoining land that is proposed to be kept as an area of permanent public open space and another 'interim' area of open space of 2.38 ha. As the application is in outline, the master plan is indicative only but it shows the appeal site accessed from 2 points on Pound Lane, from which most vehicular traffic would be diverted around a proposed neighbourhood hub, including retail units, a primary school and a health centre. These facilities would be secured through the s.106 Agreement.
19. The majority of the development would consist of up to 750 dwellings including 30% affordable housing. The public open space would also be secured through the s.106 Agreement and would include footpaths and cycleways linking the appeal site to the eastern sides of Basildon and Pitsea.

## OTHER AGREED FACTS

20. The Statement of Common Ground (SoCG) sets out the majority of the facts agreed between the main parties. At the Inquiry, the Council and appellants produced supplementary SoCGs relating to housing land supply<sup>4</sup> and the compliance of the s106 Agreement with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010<sup>5</sup>. The terms of the s.106 Agreement will be discussed in subsequent paragraphs.
21. In addition to the matters noted in preceding paragraphs, there is agreement between the parties that the LP is out of date in respect of housing land supply policy and that the Council does not, at present, have any adopted policy identifying a 5 year supply. It is also agreed that the identified supply of housing land is sufficient for between 0.9 and 1.55 years and that the 20% buffer is applicable, as the Council has consistently failed to meet its previous housing targets.
22. The parties also agree that, as previously noted, little weight can be given to the emerging CS as it is only at the consultation stage. The Framework therefore takes precedence on matters of housing land supply and in all other areas where there is any inconsistency with the adopted LP.
23. The Council now raises no objections on anything other than Green Belt grounds and agrees that the matters raised by third party objectors can be dealt with by condition or are not of sufficient concern to warrant refusal of outline planning permission.

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<sup>3</sup> These figures differ from those in the SoCG but reflect the totals shown on Plan 1480 100 P11, which is the latest iteration of the master plan that was considered at the Inquiry.

<sup>4</sup> ID8

<sup>5</sup> ID13

## THE CASE FOR THE APPELLANTS

24. This decision turns solely on the treatment of the Green Belt issue in the light of claimed very special circumstances. No other reasons for refusal are now alleged by the Council and the concerns of local residents with respect to traffic, flooding and ecology issues have all been addressed in the material contained within the ES, the statement on ecology submitted with the appellants' proofs of evidence and in the similar statements of the appellants' transport and flood risk witness. Although their concerns are genuine and well understood, on analysis they do not represent a substantial reason for refusing planning permission to this proposal.

### **Green Belt policy**

25. The force of the Green Belt policy objection is not underestimated. The Framework prefers Green Belt releases to result from the local planning process and that view has been reflected in a local recent decision of the Secretary of State<sup>6</sup> (SoS). It is also acknowledged that significant weight is normally attached to the fact that residential development of such sites inevitably involves the introduction of inappropriate development, causing a loss of openness and loss of countryside. Those considerations apply here.
26. However, it remains the case that national Green Belt policy acknowledges that, however desirable it may be that Green Belt releases result from the development plan process, nevertheless there is no requirement for that to be the exclusive means of release. It remains national policy that Green Belt land may be released by s.78 approvals for inappropriate development if the harm caused, including that arising from inappropriateness, is clearly outweighed by very special circumstances. The planning system requires each case to be considered on its own merits. Therefore, the Framework articulates the familiar very special circumstances test.
27. The meaning of Green Belt policy, as with all policy, is essentially a matter of law as per *Tesco v. Dundee*. The policies in the Framework have not amended previous Green Belt policy. Pronouncements by the Secretary of State are material considerations, but they do not have the status of the Framework, which is, and remains, the authoritative statement on national planning policy.
28. It is acknowledged that the proposals concern inappropriate development within the Green Belt, on a greenfield site which would therefore result in a loss of open countryside and this is intrinsic harm. It is intrinsic in the sense that it will arise in the case of the release of any greenfield, Green Belt land for an urban extension for housing. Such harm conflicts with the fundamental aim of keeping land in the Green Belt permanently open, inappropriate development is by definition harmful and the Framework requires that decision makers give substantial weight to any harm in the Green Belt.
29. In approaching the question of very special circumstances, individual circumstances do not need to be very special in isolation to be taken into account. The Courts have established that very special circumstances '*describe an overall state of affairs and therefore may be comprised of a number of circumstances which are more than the sum of their parts*': *R (Basildon BC) v First Secretary of State and Temple* [2004] EWHC 2759 (Admin)<sup>7</sup>.

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<sup>6</sup> Castle Point decision Appendix 3 of RB

<sup>7</sup> ID 22(c) Paragraphs 9, 10 and 17

30. A straightforward approach is to first identify the harm that arises and then the material circumstances, to test whether, as a whole, they establish very special circumstances that in combination outweigh all the harms, including that resulting from inappropriateness. The fact that harm to the Green Belt may be low is not of itself a very special circumstance, rather it is a material consideration relating to the weight to be accorded to the harm side of the scales.

### ***Green Belt Harm***

31. The harms that inevitably result are those arising from the inappropriateness of the development, the loss of countryside and that of openness. They are all real, material and not in dispute. That from the loss of openness is clear in respect of the majority of the appeal site other than the buildings and curtilage of Little Chalvedon Hall. However, it is important when weighing this harm to consider whether it extends beyond the boundaries of the appeal site and, if so, to what extent.

32. Here the evidence on landscape matters and the unchallenged Landscape Visual Impact Assessment (LVIA) is of considerable value. There is a significant difference between inappropriate development that has a strong or widespread effect on the appreciation of the openness of the Green Belt well beyond its immediate boundaries. A well mannered development on a scale that complements the settlements which it abuts and which is confined in a strong landscape framework with little visual influence beyond its boundaries may properly be judged to cause little harm.

33. The LVIA clearly concludes that any effects from the proposal would be very localised with no significant effect on landscape character. Moreover the landscape character and quality is not distinguished by any designation and is of indifferent or ordinary quality or 'Low - Poor', to use the language of the Environmental Assessment. Similar considerations apply when considering the weight to be given to the loss of countryside as discussed in subsequent paragraphs.

### ***Purposes of including land within the Green Belt***

34. The inevitable harm that would result from meeting the needs of the area for housing by the inevitable process of releasing land from the Green Belt has already been acknowledged; that is inappropriate development being located on formerly open countryside, albeit if indifferent landscape quality of and of little visual influence. Some such harm is intrinsic to all such releases including all the areas being considered in principle by the Council within the LP process. The more important issue is to identify the implications of the proposals for other Green Belt purposes.

#### ***Purpose 1: Preventing Urban Sprawl***

35. It is important not to double count harm. If, as alleged by the Council, paragraph 79 of the Framework regards the loss of openness to built form automatically as a loss to urban sprawl, it cannot then be alleged that there would be some additional harm to the first purpose arising from the creation of urban sprawl. The correct approach is to accept that there would be a loss of openness but then make a reasoned judgment as to whether the proposals are properly described as urban sprawl on their own merits, not merely because they are inappropriate urban development not allocated by a LP.

36. It would not be correct to characterise the proposals as urban sprawl. They are the antithesis of sprawl. The essence of the proposals is that they are a master-planned solution to the provision of development to supplement the existing settlement of North Benfleet/Bowers Gifford on its western side and to provide a complete interface with the land beyond that forms the eastern edge of Basildon. The essence of the scheme is its integration, in terms of layout, mix of land uses, and new highway framework for the settlement, with that which already exists so as to complement it and make it more sustainable. Paragraph 80 of the Framework is concerned with 'unrestricted sprawl'.
37. The appeal proposals would be a modern, well designed, mixed-use urban extension at a conventional density that is restricted on three sides by the existing settlement and on the west by its own strong landscape framework that can benefit from advance planting. The urban sprawl question has been considered by reference to the questions posed when this matter was tested in respect of the assessment of individual Green Belt sites in the Green Belt study<sup>8</sup>.
38. The analysis was criticised for regarding North Benfleet as a settlement for this purpose since it is washed over by the Green Belt. That is a misplaced criticism. The existence of the North Benfleet Plotlands and their character and qualities as developed land cannot be ignored. The technique of washing settlements over with Green Belt designation is of long standing, currently set out in paragraph 86 the Framework, but it does not wash the settlement away and they are not thereby removed from view. They remain settlements which, depending upon their individual qualities may serve to prevent the 'sprawl' of a proposed development, as they do here. The evidence base to the CS recognises North Benfleet as a settlement for these purposes. There is no criticism from the Council with respect to Bowers Gifford, since that is recognised as a 'Services Settlement' by policy CP1 of the CS.
39. The Plotlands of North Benfleet are obvious examples of the inefficient use of urban land otherwise known as urban sprawl. By contrast, the residential development would be of an urban form and efficient density wrapping itself around the southern and western edge of the settlement in a location where the Green Belt Study identifies '*the potential to accommodate large scale development*' as well as the provision of new local facilities to promote sustainability and the recreational potential of the area.
40. This is a point repeated, albeit in slightly different form, by the Landscape Capacity Study<sup>9</sup> which sees the opportunity for small to medium scale development to the north of the farm. The proposals intend to largely preserve the existing historic field pattern and to provide a robust landscape framework beyond which will lie the secured open space and Green Belt uses protected by the s.106 Agreement.
41. The resulting containment to this part of the conjoined settlement would be robust and, through the implementation of appropriate strategic landscape proposals and the provision of public open space beyond in perpetuity, offers a paradigm example of strong containment and is therefore, to that extent, beneficial to this Green Belt purpose. This is a material circumstance that can properly be weighed as part of the very special circumstances as a benefit to a Green Belt purpose.

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<sup>8</sup> CD7

<sup>9</sup> CD6



*Purpose 2: Preventing the merger of settlements*

42. The site is located in an area where the 'risk' or 'potential' for harming the gap between Basildon/Pitsea and North Benfleet/Bowers Gifford has been identified and was accepted as a legitimate concern in the evolution of the proposals.
43. The concerns here are obvious and twofold. First, there is a concern about the consequences for the merger of Basildon with Thundersley/ Benfleet in Castle Point. This is the 'vulnerable gap' about 1.25 miles wide identified in the LP. However, given the location of the site on the western side of the conjoined settlement, the gap between North Benfleet/Bowers Gifford and Basildon is the most relevant. There is the potential for development to take place at North Benfleet/Bowers Gifford that could link with Basildon in the west and thereby bring Basildon far closer to Thundersley. It follows that it is the gap with Basildon that needs to be considered first.

Basildon – North Benfleet/Bowers Gifford gap

44. This gap is narrow and will be made narrower by the appeal proposals. At its narrowest the remaining gap will be in the order of 350m whereas it is now some 140m wider. The scheme at its widest is in the order of 690m but that measurement is taken across the width of the scheme where it is already contained by the existing settlement. The risk of merger must come most from where the gap is at its narrowest.
45. In any event, it would be too crude to determine the issue by reference to dimension alone as effective gaps on a similar scale are not unusual in South Essex. This is a fact accepted in the Castle Point decision and there is no reference in the Framework to any particular dimensions. It is also a fact that the gaps between Thundersley and South Benfleet, which range from between 250 and 400m, function well.
46. There are 3 pertinent questions which are derived from the Green Belt Study. These consider whether, if the area was to be released for development, there would be a risk that settlements would physically merge, whether there would be a perception that settlements would merge if development took place and whether there are natural features or infrastructure that would form a clear boundary and would ensure development is contained.
47. As to perception, there is no suggestion in the LVIA that the proposals could be seen from either Burnt Mills Lane to the north or the A13 to the south. Anyone travelling north up Pound Lane would see the strong landscape framework retaining the gap. Those travelling on the north/south footpath which passes through the development would be very aware of the same containment and of the new open space to the west of the site. The LVIA has ascertained that the minor extension into the gap between Basildon and North Benfleet would be visually perceptible from a localised area only.
48. In respect of the third question, it is clear the result would be to reinforce the gap by complementing the existing open space provision to the east of Basildon with a similar provision connecting with it to the west of the appeal site and place it in appropriate Green Belt uses. Taken together with the strong landscape framework proposed it is the case that the proposals would be of benefit in reinforcing the separation between settlements at this point. At the core of the proposals are the arrangements to secure this gap in perpetuity.

49. The result would be that the physical, functional and visual separation of the two settlements in this area would be secured from pressure and the gap would be used for appropriate recreational and wildlife Green Belt uses, including enhancing and developing the TGSE Green Grid Strategy<sup>10</sup>. The result would be a benefit or improvement to this Green Belt function rather than the feared reduction in the utility or effectiveness of the gap.

#### Basildon/ Thundersley Gap

50. There would be an increase in the amount of built development in the wider gap between Basildon and Thundersley but this would not harm this gap. Asking the same three questions as above; first, it is plain that there would be no actual merger in this gap. The above submissions about the perception of merger are not only of equal application for this gap, they are stronger. These proposals have no influence on the gap to the east of North Benfleet/Bowers Gifford that has the interface with Thundersley.

#### *Purpose 3: Assisting in safeguarding the countryside from encroachment*

51. As previously noted, such harm is generic to any such proposal. The quality of the countryside lost should also be considered. It is without landscape designation, of little intrinsic quality with a limited degree of connection to the wider countryside and there is no agricultural objection.
52. The loss would be noticed by those who use the north/south footpath as that path would, in part, pass through the scheme. However, this has to be balanced against the fact that the path would be capable of use in all weathers, would accommodate cyclists as well as walkers and would pass through a landscaped setting with views over the new as well as the existing open space. Moreover there would be a choice of routes for north/south and east/west travel where none existed before, some through the open space for those who wish to avoid the scheme. These effects were assessed in the LVIA – the results of which are not disputed - as slight/moderate adverse reducing to negligible slight adverse in year 15, when the structural landscape planting would be fully established. It is important in cases such as this to take the long term view.
53. The wider consequences for the countryside would be advantageous in terms of the provision of some 24.78 ha of properly landscaped and managed open space beyond the structural landscaping, providing additional wildlife interest which would improve the quality of the countryside in the immediate area. Of this, some 5.65 ha would be designated as interim, as it could be developed in the future, but only if planning permission was granted for this use.

#### **Very Special Circumstances**

##### *Crisis of supply*

54. The guidance from the SoS in the statements of July 2013 and January 2014 on the likelihood of a shortfall in the housing land supply being found to be very special circumstances has been noted. The danger of piecemeal development in the Green Belt is obvious and potentially more deleterious than that achieved via development allocated by the LP process.

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<sup>10</sup> CD12

55. However, the statement is a generalisation. It expressly admits that the issue is fact specific. It would not be an expression of policy if it was so inflexible that it did not allow for exceptions. It works within the general Green Belt policy framework where there is no definition of what can amount to very special circumstances; this must be assessed on a case by case basis. It remains the case that the need for the delivery of housing land is capable of constituting very special circumstances.
56. In this particular case the Council is still using the saved policies of the 1998 LP some 15 years from its adoption and longer from its preparation. It can make no provision for today's housing needs. There has been a long and persistent pattern of under delivery in the Council's performance throughout the East of England Plan (EEP) period. The first annual target of 535 dwellings per annum (dpa) increased to 630 dpa because, in the first period, completions were only running on average at 240 dpa. Then the 630 dpa was not met year on year with the 10 year average net completions for 2002/2012 being 366<sup>11</sup>, so that by the one year when the target is exceeded (2011/2012), the annual residual target had increased to 778 dpa, a 45% increase from the original 535 dpa.
57. This is also reflected in the burgeoning total requirement figure over 5 years which was identified as 4,688 dwellings in the report to committee of September 2013. This rose to 5,469 dwellings in the January 2014 assessment and then to the figure of 6,639 dwellings by the time of the Inquiry. That is an increase of 41% over a period of 5 months.
58. This results in part from the acceptance of the new up-to-date assessment of need identified in the CS as 800 dpa minimum. As a result, the supply, which was confidently reported to members in September 2013 as 82%, or over 4 years supply, had dwindled to the alarming level of 1.5 to 0.9 years supply by the time of the Inquiry. The strong resistance to this proposal by objectors could be due to the misapprehension that the housing land supply remains at 4. 8 years as previously estimated.
59. The Council has been presiding over the preparation of a CS for the past 7 or 8 years since 2006, despite the express advice from the SoS when saving its policies in 2007, which stated that the exercise was undertaken '*to ensure...in particular, a continual supply of land for development*' and that the exercise '*is not an opportunity to delay Development Plan Document preparation*'. On the most optimistic outcome of the current CS process there will be no allocation of sites for the provision of housing land to meet objectively assessed needs, and the shortfall, until the adoption of the Allocations Document in late 2016.
60. This is because the approach of the CS, which is only out for consultation at the Preferred Options stage, is to create 15 strategic urban extensions largely through the release of Green Belt land around the main settlements. However, despite their strategic character, they are only identified conceptually as blobs on a map as PADCs, which are not, in any way, site specific. There is no mechanism identified for early release, and if there was, that would be outside the Local Plan process.

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<sup>11</sup> CD 8 Table 6 page 45.

61. Allocations alone will not produce houses. These are major strategic allocations (one for 2,000 units and another for 2,300 units for example) with their own issues to address and consequent long lead times. These would be unlikely to produce houses until about 2019.
62. This sort of delay is, or should be, unacceptable when the supply has now run down to the absolutely marginal levels of between 1.5 and 0.9 years supply and dwindling, with the CS assessing the current requirement from its own survey material at a minimum of 800 dpa and more, depending upon economic performance. This supply is therefore plainly insufficient even to carry the area over to the Allocations adoption. Additionally, the potential for slippage in the programme is manifest, with proposals to allocate over 8,000 houses in the Green Belt.
63. With this site, the supply would increase significantly and would deliver 750 units in the 5 year period. The site is broadly equivalent to one year's supply which should be given significant weight. This point is lent greater significance by the importance of the district to the Thames Gateway South Essex (TGSE) project and its ambitions for growth within the area, which strengthen the need to have the minimum requirements of the Framework available within as short a time as possible, since economic health and the housing land supply are acknowledged to be intrinsically linked. The boast of the CS is that *Basildon town is the largest employment centre in the TGSE* and Basildon Borough *'accounts for over half of all jobs in South Essex alone'*. It is simply unacceptable for one of the principal centres of employment and growth within the TGSE to so manifestly under-provide year on year for its minimum identified housing needs, particularly as the economy swings into upturn.
64. The adopted DP predates the EEP, the 'step change' in delivery requirement of PPS3 and the requirements of the Framework on the supply of housing. Progress towards a policy compliant LP has faltered and the most optimistic picture emerging from the fourth revision of the CS is for an allocations policy document to be adopted late in 2016. All that is clear at the present time is that a substantial number of large scale releases (9100 in total with c.4300 for Basildon alone) within the Green Belt around the settlements of the area will be required to meet even the minimum current identified housing requirement of 800 dpa. This is because the Borough lies wholly within the Metropolitan Green Belt and more than one half of its area is designated as such. This is likely to prove highly controversial and programme slippage would not, therefore, be surprising.
65. The last point introduces a very significant distinguishing feature from the sort of case the SoS may have had in mind when making the July Statement or refusing the appeal in Castle Point, which is, of course, wholly different in terms of the expected contribution to the TGSE project. The evidence base of the CS is redolent with the links between the economic performance of the area as anticipated by the TGSE agenda and the provision of adequate housing, both open market and affordable. This is not the usual reference to the economic consequences of construction; it is a structural link of far wider significance<sup>12</sup>.

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<sup>12</sup> CD 8 paragraphs 2.9, 2.11 to 2.22, 7.14 to 7.22, 7.22, which is echoed in the advice in RR Appendices paragraphs 2.2, 2.12, 2.16

66. If there are serious ambitions for regeneration and growth in the TGSE, the mismatch between need and ambition on the one hand and delivery on the other cannot be countenanced any longer than is strictly necessary. This is a shortfall in an adequate supply of housing land to meet objectively assessed needs to support that regeneration and growth. After all, *'a well functioning housing market is critical in supporting growth and competitiveness'*<sup>13</sup>. The extent of this planned growth was confirmed by the projects listed by the local MP in his statement to the Inquiry.
67. When striking the balance the following considerations also come into play:
- (i) The three generic harms (inappropriateness, loss of openness and countryside) are inevitable somewhere in the Borough if the demand to provide for the objectively assessed housing needs of the area is to be met by whatever means.
  - (ii) As is clear from the above, it is not the Council's evidence that their housing needs can be adequately supplied by land within the built up area of its settlements.
  - (iii) Likewise it is not the Council's evidence that these needs can be met by the use of previously developed land in the Green Belt, causing a lesser impact to either openness or the countryside. The crisis can only be solved by the release of Green Belt sites.
68. This site, whilst not chosen for one of the major Basildon PADCs, for which it was not appropriate given its scale, was identified by the evidence base for the CS as appropriate for *'strategic' or 'large scale development'*.<sup>14</sup> The recommendation is unequivocal. The scheme follows all the criteria recommended in the Landscape Capacity Study<sup>15</sup> and would provide all the benefits that it seeks. This was a major piece of work on a significant scale described by the Council in the published version for the public to rely on as *'a comprehensive and robust study'*.
69. All this work by the Council and its consultants is entirely consistent with the findings of the LVIA, which was prepared without knowledge of that work, and which is set out in the assessments for the LVIA.

#### *Other benefits of the scheme*

70. Another important factor is the nature of the proposal. This is not just another housing scheme. The wider community would derive benefits from the consolidation of North Benfleet/Bowers Gifford around a new, well designed and considered community hub, where none really exists at the moment. The settlement has a single parish council and a single residents' association. Bowers Gifford is the only identified Services Settlement in the CS without the benefit of a local centre.<sup>16</sup>

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<sup>13</sup> Investing in Britain's Future June 2013 extract in CD 8 paragraph 2.9 page 10.

<sup>14</sup> The Council, in the course of the inquiry sought to suggest that NE Basildon was preferred over the appeal site as a location for a PADC, but there was no evidence to that effect. Both are tier 3 sites for the purposes of CD7 and therefore in the same broad category moreover, BH Proof of Evidence paragraphs 7.29 and 7.30 highlights significant potential issues for the release of PADC 6.

<sup>15</sup> CD7 pages 448 to 455

<sup>16</sup> RR Proof of Evidence paragraph 4.89

71. The Design and Access Statement (DAS) describes a fully integrated scheme providing a sustainable centre with appropriate services in the form of a school, shops, health and community centre to provide for the needs of daily living where few now exist, for the benefit of both those who will live within the scheme as well as the existing community within the settlement.
72. There are many social and environmental sustainability advantages that would stem from these elements of the proposals. Whilst some of the facilities would be required to serve the residential development alone, there are free standing elements of the proposal that the population of the scheme alone would not justify; for example the shops, a school and a health centre. They will plainly be of wider benefit.
73. A substantial area of land would be devoted to land uses appropriate to the Green Belt, including the public open space, and secured in perpetuity via the s.106 Agreement. There is some 30 ha of the land within the applicant's ownership proposed for open space uses, of which 8.5 ha is within the residential area of the scheme and the remaining 21.5 ha lies in the gap to the west. Of this 21.5 ha, a total of 10.38 ha was originally proposed to be designated as interim open space to allow for the potential future expansion of the scheme if that was found to be appropriate.
74. However, in the lead up to the Inquiry, that interim designation has now been reduced to two areas totalling 5.7 ha of which only 2.38 ha is within the gap. This avoids concern over the potential for any future expansion of the settlement westwards into the gap. This is confirmed in the s.106 Agreement. These are important additional features, both of the social and of the environmental sustainability of the scheme.
75. Another free standing element of the proposals is that the provision of the public open space would be maintained in perpetuity outside the public purse. This space would assist in the delivery of the TGSE Green Grid Strategy in the area and provide the opportunity to create a number of east/west pedestrian links to improve the social and travel sustainability of the area.
76. Also there is the spin off benefit to the Council's own open space which it immediately adjoins - identified as in need of enhancement<sup>17</sup> - partly through the increase in scale, partly through the provision of a far better context in which it may be enjoyed, and also from the complementary nature of informal open space to the more formal provision within Basildon<sup>18</sup>. It would provide much needed green infrastructure to North Gifford where the Council have identified a need.<sup>19</sup> Despite the Council's concerns that everyone will be offering large scale open space to justify Green Belt releases, no rash of open space linked Green Belt proposals have been identified by the Council despite the Stanford le Hope decision of 2012.<sup>20</sup> This benefit should be valued on its own merits and given significant weight.

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<sup>17</sup> See footnote 19 below at 10.43.

<sup>18</sup> RR in cross examination referred to clear linkages, and "a whole lift to the character and quality" of the existing open space.

<sup>19</sup> PPG17 assessment extract in the Questionnaire paragraph 10.50 page 127.

<sup>20</sup> RR Appendix 3.

77. The provision of affordable housing at 30%, as set out in the s.106 Agreement, would produce 225 units over 5 years in a situation where there is an assessed need of 250 to 320 dpa, where performance is down to annual average provision at 110 dpa and there is evidence of an increase in homelessness.<sup>21</sup> A year's supply is a significant contribution worthy of being accorded significant weight.
78. It is correct that the requirement to provide affordable housing is normal and if housing is coming forward to meet the identified need then this consideration would not carry any weight. However the situation here is different and the Council is relying on the PADCs coming forward to deliver affordable housing. It remains to be seen if this will actually happen. As the low levels of house building in the area, combined with related issues of affordability, are recognised as matters that require addressing to assist in the economic growth of the area<sup>22</sup>, both the open market and affordable contributions from the scheme are of real economic and social importance.
79. The economic benefits which, aside from the structural aspect identified above, will lead to direct and indirect employment and expenditure on a very significant scale as set out in the specialist assessment<sup>23</sup> of which the only dispute was the likely quantum of retail employment which is plainly subject to refinement at the reserved matters stage. The locational sustainability of the proposals and the area will be enhanced by the public transport benefits which will be for the benefit of all residents of the area.
80. The landscape and visual impacts of the proposals are localised and are not significant. The accuracy of the LVIA that accompanied the application is not disputed: *'subject to the development coming forward as envisaged by the master plan and ES (most notably the retention and bolstering of as many of the hedgerows as possible, control of lighting and the new landscaped areas), then the conclusions of the ES are considered to be appropriate in terms of the assessment of landscape and visual effects. Mitigation could be adequately secured by attaching conditions to any permission granted if the development were found to be acceptable.'* This must be an important consideration to any urban extension application, particularly one within the Green Belt.

### **Conclusions**

81. The Council repeats all the well established advice about the openness of the Green Belt being its fundamental characteristic and the protection of the countryside from encroachment. However, this is a substantially underperforming authority and has been so for many years. It has exhausted its identified supply of sites on previously developed land and is having to promote sufficient land to accommodate more than 8,000 houses within the Green Belt within the latest version of the CSRPO.
82. This is a process which needs a real and modest boost by the release of a site such as this, if a total stall of the housing market in the area is to be avoided, with all the risks that entails to the TGSE. This appeal site can make a real and significant contribution to supply in a short time scale.

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<sup>21</sup> CD 8 pages 46, 49 to 50 and paragraph 7.19 p.72.

<sup>22</sup> RR Appendix 5 2.12, 2.13, 2.16, 5.7, 5.10 and 6.2

<sup>23</sup> RR Appendix 5 paragraph 6.4

83. Such a release would be evidence of a tangible commitment to the Framework agenda and that for the TGSE. Without its release, supply will plummet to unprecedented levels in an area where economic health is inextricably linked to its housing market. Without a substantial fillip to supply at this time, the housing market will risk being plunged further into crisis. This is something that should be avoided at all costs, particularly in an upturn.
84. The proposal does not prejudice the LP process and there is no complaint to that effect. These proposals are not a substitute for any of the proposed Policy Areas PADCs proposed in the CS, many of which are in the Green Belt. If all of the proposed releases are made, the plan will still be 1400 units short of the land required to support the minimum of 800 dpa as PADC15 is not yet locationally specific. Moreover, the 800 dpa identified is a minimum figure and the assessments recognise that economic performance within the TGSE is likely to require more.
85. To borrow from the decision in Stanford le Hope in Thurrock<sup>24</sup>, this is clearly a situation where *'management action is urgently required in order to meet current housing land delivery requirements and to ensure that later years do not become unacceptably loaded by the now projected shortfalls against the target.'* A site such as this can provide an immediate and real contribution to boosting the supply of housing land at the moment of greatest need and at least cost to the environment.
86. For all the reasons set out above the appellants request that the SoS takes the step of releasing this site because the balance of the very special circumstances is such that they clearly outweigh both the harm arising from inappropriateness and any other harm.

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<sup>24</sup> RR Appendix 3 paragraph 303



## THE CASE FOR BASILDON BOROUGH COUNCIL

87. The Coalition Government, like all those that preceded it, attaches great importance to Green Belts as the Framework tells us in precisely those terms. This scheme proposes to take what is an almost completely open site and cover it with 21.0 ha of built development. It would become the antithesis of an open Green Belt site. It would clearly harm three of the purposes of the Green Belt as well as its fundamental purpose. It was recommended for refusal by the Manager of Planning Services and was refused by the Council by 7 votes to nil. At the time of the committee report 225<sup>25</sup> people had objected. Stephen Metcalfe MP opposes the application 'in the strongest terms'.
88. The alleged very special circumstances are largely a re-statement of some of the usual benefits of providing housing where there is unmet demand. The SoS has made clear on two occasions that this is unlikely to outweigh the harm to the Green Belt, and other harm, so as to constitute very special circumstances.
89. A recent SoS appeal decision<sup>26</sup>, in this case in the adjacent Borough of Castle Point, where the housing need was greater, was issued within the last 7 months. That decision, on a proposal in the same strategic Green Belt gap, about 800m from the appeal site, which was less harmful in Green Belt terms than the appeal site, was refused. The decision was upheld by the High Court<sup>27</sup>. A site so close cannot be in such a different area in relation to the TGSE as has been suggested by the appellants. The logic of that decision indicates that there should be a refusal on this site.

### **Green belt policy**

90. Green Belts have been an essential element of planning policy for all our Governments since 1955. The Framework notes that *'the Government attaches great importance to Green Belts'*. Firstly, it is not in dispute that this development, for 750 houses, the neighbourhood centre and retail floorspace, is inappropriate development. What flows from being inappropriate development is that it is *'by definition harmful to the Green Belt and should not be approved except in very special circumstances.'*<sup>28</sup>
91. The policy is clear that: *'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.'*<sup>29</sup> Harm by definition alone would need to be given substantial weight in the determination of any planning application. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

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<sup>25</sup> By the Inquiry Rose Griffin said in unchallenged evidence that there had been 300 letters of objection from 239 houses.

<sup>26</sup> APP/M1520/A/12/2177157 – the 'Castle Point' Decision

<sup>27</sup> *Fox Land and Property Limited v Secretary of State for Communities and Local Government, Castle Point Borough Council* [2014] EWHC 15 (Admin) ID 22a

<sup>28</sup> The Framework Paragraph 87

<sup>29</sup> The Framework Paragraph 88

## ***Harm from this application***

### *Harm to the fundamental aim of preserving openness*

92. The site contains the small enclave of the buildings of Little Chalvedon Hall but, apart from that, it is completely open. It is fulfilling the fundamental aim of the Green Belt policy of preventing urban sprawl by keeping land permanently open. The application, if granted, would destroy this openness with 750 houses and the necessary facilities. It would be a massive incursion into the Green Belt.
93. It was accepted that paragraphs 252 and 253 of the Inspector's report on the Castle Point decision could apply to this site, apart from a very small caveat about the few farm buildings which, on a site of about 30 ha is insignificant. Similarly the conclusion of the SoS in that case, that *'the majority of the site would become urbanised and would lose its openness completely, contrary to the aims of the NPPF paragraph 79<sup>30</sup>* would also apply in this case.
94. The harm to this fundamental Green Belt aim should be given great weight and is separate from inappropriateness by definition and was treated as such in the Castle Point decision. There are many Green Belt cases where housing could, for example, replace an industrial series of buildings which would be inappropriate but could be said not to damage openness. This is not the case here.

### *Purpose 1: Preventing urban sprawl*

95. It would be totally contrary to this purpose to allow this appeal. The application site does not presently represent urban sprawl and the photo viewpoints<sup>31</sup> from the footpath going through the site confirm this fact. The Green Belt study<sup>32</sup>, when looked at in detail, clearly describes the middle of area 53 (where the appeal site is located) as being the exception for the area and that it was not an urban area but a place where there are fields.
96. The development would do very real harm to the first Green Belt purpose because it would replace open land with urban sprawl. It would allow substantial urban development to break the current eastern boundary of Basildon that has been so successful at stopping incursions. The idea that something ceases to be urban sprawl if well designed would effectively undermine Green Belt policy, which does not say that it is acceptable to develop in the Green Belt provided the development has been designed.
97. This is consistent with the interpretation of urban sprawl by the SoS<sup>33</sup> in the Castle Point decision. It is also consistent with the conclusions reached in that case where the SoS found that there would be moderate harm. That was a case where the appeal site was a relatively small isolated pocket of urban land surrounded by urban structures but, even taking account of those factors, there would be moderate harm. There would clearly be more harm without those factors being present, as on the appeal site. Size was a factor that was taken into account and it was considered that the small size of the proposed development reduced the harm in the Castle Point decision. Here, the site is 4.5 times the size of the Castle Point site.

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<sup>30</sup> RB Appendix 3 Paragraph 10

<sup>31</sup> BH Appendix 1 Photos 15-19

<sup>32</sup> CD 7

<sup>33</sup> RB Appendix 3 Paragraph 11

*Purpose 2: Preventing the merging of settlements.*

98. There would be substantial harm to this purpose if this scheme was permitted. The land currently fulfils the second purpose of preventing neighbouring towns from merging. The site is in a vulnerable gap between Basildon and Benfleet which is only 1.25 miles wide, as the LP recognises.<sup>34</sup> This was an analysis that followed an examination of whether the open areas should be included in the Green Belt and included a study of the defensible boundaries with reference to the Green Belt purposes.
99. That is part of the adopted development plan and should be given weight accordingly. It went through all of the correct processes, nothing has since changed on the ground and this gap is still vulnerable. The appellants could point to nothing that has reduced the vulnerability of this gap.
100. The LP is in precisely the same terms as the Framework with respect to development management policies. The previous policy<sup>35</sup> was '*wherever practicable a Green Belt should be several miles wide so as to ensure an appreciable open zone all round the built-up area*'.<sup>36</sup> This applies with particular force around London, which is indisputably the largest built up area. The gap is clearly vulnerable, being only 1.25 miles when several miles are desirable for an appreciable zone. The vulnerability is increased, not reduced, by Bowers Gifford and the Plotlands of North Benfleet which are included in the Green Belt because of their semi-rural nature. Building a large housing estate 690m wide in this vulnerable gap would damage this purpose. If the development went ahead, it would leave, at most, only about 350 m between the development and Basildon.
101. The appellants allege that the existing boundaries which so far, have successfully protected the Green Belt and which reflect field patterns, would be better replaced with a massive urban development and boundaries that do not follow field boundaries. The existing boundaries of the Green Belt are perfectly defensible. It is common ground that the eastern boundary of Basildon is a good robust boundary. This is set out in paragraph 3.7 of the LP.
102. The only other Green Belt boundaries with the appeal site are a small section of Pound Lane, Homestead Road leading to Little Chalvedon Hall and, to a lesser extent, the well vegetated back of Westlake Avenue Gardens. All these boundaries follow field boundaries and have lasted since the land was protected, with no incursions.
103. For completeness, although not Green Belt boundaries, the boundaries of the Plotlands to the west all follow field boundaries. The boundaries offered by this development, in contrast, would not use '*physical features that are readily recognisable and likely to be permanent*'<sup>37</sup>. Even the most up to date master plan, P11, reveals that there would be no hedge retained on the western boundary and by blocks 1, 2, 3, 4, 13 and 16, it would not even follow the field boundaries. Block 18 would cut the field in half. There is no physical feature that is readily recognisable that would be the new boundary. It would all be a new man-made boundary that has not yet been designed.

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<sup>34</sup> CD1 Paragraph 3.7

<sup>35</sup> Planning Policy Guidance Note 2 – Green Belts (PPG2)

<sup>36</sup> Paragraph 2.9 PPG2

<sup>37</sup> The Framework Paragraph 85 last bullet point

104. There is nothing in the design within the red line that would prevent expansion to the west because the whole scheme was originally designed to permit this.<sup>38</sup> Therefore, nothing in the design of the proposals tries to make the western boundaries permanent because the scheme was designed to achieve the reverse.
105. Whoever owns the open space, when faced with the costs of maintaining it, would be able to apply to vary any s.106 Agreement and make some case for development in this open space. It is therefore not certain that the agreement would keep this land any more protected than the current, very stringent planning test of very special circumstances in the Green Belt. The boundaries would, in fact, be worsened by replacing the defensible boundaries with ones which would be considerably less so and which would not reflect any physical features along most of the extent of the western boundary.
106. The emerging local plan, when looked at as a whole, does not give any support for the proposal. The latest decision, arrived at by the full Council on the recommendation of the Manager of Planning Services which appeared in the CSRPOR<sup>39</sup>, was taken with reference to all the documents in the evidence base. It rejected the appeal site largely because it *'would put significant pressure on the Green Belt separation between settlements.'*<sup>40</sup> That is the most up to date decision taken on which areas of the Green Belt should be released for housing.
107. The conclusion of the Landscape and Character Assessment was that the gap between Castle Point and Basildon was one where *'the potential for merging/coalescence is high if further development takes place'*<sup>41</sup>. This was in contrast to the north east of Basildon which *'contributes less to preventing merging/coalescence'*. When the individual areas are considered, there is no residential capacity noted for the appeal site in area 53B.
108. The Green Belt study, in the executive summary, notes that *'it is not the role of the Green Belt study to allocate land for development'*. It then goes through the stages and stage 5 notes *'... recommendations were provided that could be used to inform policy within the Council's Local Plan'*. These recommendations do not assume that all these areas will be developed; positive recommendations were to provide the Council with flexibility of choice in the plan making process<sup>42</sup> and the study identified more sites than required in the Green Belt. Choices made later went against the appeal site.
109. Area 53 is suggested to be in Tier 3, the lowest tier of opportunities identified where sites *'should only be considered after all primary areas have been explored'*.<sup>43</sup> However, even the opportunities in that area are limited. Whilst the words *'large scale'* are used, they could apply to many developments well below 750 houses. What is mandatory is that *'development should respect historic field patterns'*. It goes on to say *'the open views and rural break between Basildon and North Benfleet/Bowers Gifford should be protected to ensure that there are clear boundaries and separation between the settlements'*. This would not be achieved by this scheme. Therefore, when read as a whole, the studies done to inform choices for the CSRPOR do not provide support for this scheme.

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<sup>38</sup> DAS page 63

<sup>39</sup> CD 4

<sup>40</sup> CD 4 page 29

<sup>41</sup> CD6 3.1.11

<sup>42</sup> CD7 page 5

<sup>43</sup> CD 7 Page 5, also page 49 at 7.16

110. If the conclusions of the CSRPOP are considered to be wrong or unsound, they can be challenged through the CS consultation and Inquiry processes. That is the fairest and a most sensible way to proceed because judgments about the relative merits of different Green Belt sites can be made.

*Purpose 3 : Safeguarding the countryside from encroachment*

111. The third purpose of safeguarding countryside is fulfilled at the moment by the appeal site. It is clearly countryside and not urban fringe. This development would cause the direct loss of 21.0 ha of countryside.

112. The SoS judged that the Castle Point proposal would cause moderate harm to this purpose and that was despite all the factors which reduced the harm and were noted in paragraph 258 of the Inspector's Report. None of those factors are present in this case, so the harm must consequently be substantial.

*Conclusion on harm*

113. The Council's evidence shows that as well as the substantial weight to be given to harm by definition, there would be the following additional other harm:

- (i) Substantial harm to the fundamental purpose of keeping land permanently open.
- (ii) Substantial harm to the purpose of checking unrestricted sprawl;
- (iii) Substantial harm to the purpose of preventing neighbouring towns from merging; and
- (iv) Substantial harm to the safeguarding of the countryside from encroachment.

114. The SoS, when dealing with a site about 4.5 times smaller and separated from the rest of the Green Belt by the A130 in the same gap between Benfleet and Basildon, found that it would cause a moderate degree of harm to the first three purposes which, together, was 'a considerable level of harm'. The development of the appeal site would cause substantially more harm than that site.

***Absence of very special circumstances***

115. Whether considered in isolation or in combination, the list of circumstances put forward by the appellant do not clearly outweigh the harm to the Green Belt, such that it could be considered that very special circumstances exist.

116. The SoS has already set out that: '*The single issue of unmet demand for ... conventional housing is unlikely to outweigh harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt*'. On 17 January 2014, the SoS re-iterated this statement as a material consideration in planning decisions and it has rightly been referred to in appeal decisions.

117. Most of the other considerations set out by the appellants, including the housing land supply issues, affordable housing, the economic benefits of housing, the advantages of having the housing designed and coming with the open space required for it are largely different ways of relying on unmet demand.

118. The SoS has already explained that, as a matter of policy, unmet demand is unlikely to outweigh harm so as to be very special circumstances. In this case, where there is not just harm by definition but substantial harm to openness and substantial harm to 3 Green Belt purposes, it is even less likely to be very special circumstances.

119. The various points listed as forming the very special circumstances by the appellants are considered below.

*Limited harm*

120. This is not a consideration that can be counted in the balance against the identified harm. The amount of any harm can only be relevant in terms of the extent of the benefits that would be needed to outweigh it in the balancing exercise and is not a positive factor in favour of the proposals (see *Brentwood v SSE*<sup>44</sup>.)

*Absence of a 5 year supply*

121. Numerically the supply was agreed to be in the range of 0.9 -1.55 years. This is a better supply position than in the Castle Point decision where it was 0.7 years and where the SoS refused permission for a scheme that was much less harmful in Green Belt terms.

122. It would be wholly unfair to characterise the Council as not seeking to address the housing land supply difficulties in the appropriate way. They are promoting a CS, which is the way the Government seeks to have Green Belt releases allocated. The Government and the SoS have made it absolutely clear that decisions should be plan led where possible.

123. In addition, between 2011 and 2013, 2,675 houses have already been built in the Borough or have planning permission. In the last 2 years net completions have been 700 and 622 units.<sup>45</sup> In terms of housing provision, the Council is addressing the issue through the CS. It has been granting planning permissions and completions have gone up. The overall position is better numerically than at Castle Point and the CS is in a very similar place to where the emerging LP was in that case. The Castle Point site, which is 800m away, is not in a different strategic area where different planning judgments arise.

*Provision of more housing*

124. This is a restatement of the same point.

*Provision of affordable housing*

125. This is again a restatement of another normal aspect of the provision of housing. It is covered by the SoS statement. An absolutely standard requirement for the provision of affordable housing in a greenfield Green Belt site could not turn unmet demand into very special circumstances.

126. In any event, if this site came forward before the Green Belt releases, the Council could not ask for the provision that is being proposed for the new sites coming through the CS. This site would be providing 30% affordable housing and the CSRPOR sites are being required to provide 36%.

*Significant economic benefit of housing*

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<sup>44</sup> ID 22 (b)

<sup>45</sup> CD8 page 45

127. This is a restatement of another integral part of the benefits of housing where there is unmet need. It is something that the SoS would obviously have been alive to before making his policy announcement.

#### *Neighbourhood centre*

128. These are facilities that would only be required to serve the residential development. The largest, the school, is a very standard type of provision for a 750 dwelling scheme. Even accepting that the floor space for the shops is 2500 sqm, and not the apparently mistaken figure in the SoCG, this is very small in comparison with the amount of residential floor space which is 87,000 sqm. It is under 3% of the total. If 87,000 sqm of residential development are unlikely to amount to very special circumstances, a small retail element to serve it would not be remotely weighty enough to help. In addition, the retail element has no support, either in adopted or emerging policy and would also be inappropriate development.

129. In any event, the Economic, Retail and Community Benefits Statement<sup>46</sup> seems only to support a need for 2000 sqm gross of retail development by 2020 in all categories A1 to A5, so it would not seem likely that the 2500 sqm of A1, which is what is apparently being applied for, is needed. In fact, only about 1000 sqm of convenience and comparison floorspace is suggested<sup>47</sup>. The rest is service floorspace, which has not been applied for. This suggests that the small amount of convenience, comparison and services retail floorspace (if the latter is within the scope of the application) that would come forward is unlikely to add any real weight to a very special circumstances case where the unmet need for housing does not.

#### *High Quality Design*

130. The suggestion that high quality design, which is a normal requirement of every housing scheme, is another very special circumstance does not carry any real weight. The Framework requires good design of every scheme<sup>48</sup>.

131. However the submission carries even less weight in the circumstances where the scheme is in outline and there is, in fact, no detailed design. It is difficult to see how this goes above and beyond any normal level of design for an outline scheme. The Decision referred to by the appellants<sup>49</sup> where good design was held to be a positive factor was completely different, having engaged listed building and conservation area issues and the statutory duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. No such issues arise here.

#### *Open space*

132. There is no policy requirement in the Local Plan to have extra open space in this location. There has been no case made in evidence that this proposal would be remotely akin to that in Stanford Le Hope<sup>50</sup> where it was accepted that the open

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<sup>46</sup> RR Appendix 5

<sup>47</sup> RR Appendix 5 table 11

<sup>48</sup> Section 7 paragraphs 56,64 etc

<sup>49</sup> RR Appendix 2

<sup>50</sup> RR Appendix 3 paragraphs 19 and 20

space would relieve pressure from a SSSI. Natural England has not made any such point.

133. If Green Belt policy allowed the exchange of some land for open space in return for 750 houses, the Green Belt would not be safe. The fundamental aim of the Green Belt and its purposes take precedence over land use.<sup>51</sup>

*Landscape implications and biodiversity*

134. The landscape impacts in the LVIA<sup>52</sup> are assessed to be negative: i.e. harmful. This cannot be a positive that weighs against harm. So far as the limited biodiversity improvements that would arise, this is nothing unusual in the light of paragraph 109 of NPPF.
135. Some reliance has been placed on parts of documents that have been prepared for the emerging local plan to support the appellants' case. However, it is agreed that even the CSRPOD is at an early stage and should be given little weight<sup>53</sup>. That document rejects developing this site for, amongst other reasons, the significant pressure it would put on the separation of settlements.<sup>54</sup> More weight cannot be given to some parts of the preparatory work done for the CS than to the actual emerging document, which contains the latest proposals put forward by senior officers and approved by the Council, which is based on all the available information.
136. Therefore, the reliance on parts of the work done for the CS does not add anything to a very special circumstances case when the emerging CS does not support the site for housing. The Framework is clear that releases should be done through the plan process. That is the correct forum where all the sites can be looked at, rather than through this s.78 appeal, which cannot look at all the alternatives.

**Conclusions**

137. In conclusion, the evidence of the Council shows that the other considerations, even cumulatively, are not sufficient to clearly to outweigh the harm by reason of inappropriateness and all the other considerable amount of Green Belt harm in this case and the appeal should not succeed.

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<sup>51</sup> This is clear from paragraphs 79-81 of the Framework

<sup>52</sup> See BH Appendix 1 paragraph 5.6.5: Slight/moderate Adverse .. upon the Landscape Character ..at year 1. ... slight adverse impact at year 15. Visual harm see paragraphs 5.6.8 and at night 5.6.11

<sup>53</sup> CD14 paragraph 4.17

<sup>54</sup> CD 4 page 29



## THIRD PARTY REPRESENTATIONS

### **Stephen Metcalfe MP**

138. Mr Metcalfe has received unprecedented levels of correspondence from his constituents, all but 3 objecting to the proposed development. The main issue relates to the Green Belt and the appellants have to demonstrate very special circumstances to support their case, which they have failed to do. There are also issues relating to concerns over flooding, schools and a lack of infrastructure to support the scheme.
139. The proposals would bring about a fundamental change to the nature of the area. 750 homes and up to 2000 new residents would more than double the size of the existing settlement and are equivalent to a small town. The views of the residents should be heard, as should those of the Borough Council, which has weighed the evidence and voted against the proposal. To allow the development would not be in the spirit of localism. If policy is applied consistently, then the decision of the Council should be upheld.
140. Turning to the reasons given by the appellant in support of the application, it is accepted that there is, as yet, no 20 year housing plan but the Council is making good progress on identifying land and now has a 4.8 year supply.<sup>55</sup> Land has been identified for housing which does not include the appeal site. The Council has accepted that it will sometimes need to approve schemes that are unpopular, and has done so, but to approve this proposal would undermine both the Council and the Green Belt.
141. The development is not well contained; it would occupy Green Belt farmland and openness would be harmed. This infill development would be larger than the existing settlement and would overwhelm it.
142. In terms of job creation, the levels of unemployment in the constituency are lower than average and building houses will not create job opportunities. There are already thousands of jobs planned in the Thames Gateway<sup>56</sup> and this development is not needed to boost employment opportunities.
143. The local services that are proposed in the scheme, such as the surgery and the village centre, would not contribute to very special circumstances. They are needed to facilitate the development and are not needed for existing residents who already have shops and a community centre. The new school would also only be needed as a result of the new development as there is no shortage of primary school places for the children of existing residents.
144. The proposed development would not involve the Plotlands where the LP envisages only limited development could be accommodated, and would consequently have no benefits in terms of the re-generation of these areas. There will also be a huge impact on biodiversity and the proposals in this respect would only serve to mitigate the impact of the development.

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<sup>55</sup> When questioned on this figure, Mr Metcalfe stated it had been given to him by the Leader of the Council. It does not reflect the agreed position of a 0.9 – 1.55 year housing land supply and it was suggested that it was perhaps based on the previous figures taken from the now revoked East of England Plan. Mr Metcalfe stated that his views on the proposed development were not altered by the reduced availability of housing land agreed between the main parties.

<sup>56</sup> Including a £1.5 billion expansion and 12,000 jobs at Corringham, £200 million at Lakeside (Thurrock) power station, 2000 construction jobs in Basildon Town Centre and possibly 2000 jobs at Coryton Enterprise Park.

**Councillor Rose Griffin**

*Parish Councillor, Chair of Bowers Gifford/North Benfleet Residents' Association (BGNBRA) and member of the Flood Risk Action Group (FRAG)*

145. No local people want development on Little Chalvedon Hall Farm (LCHF) this slender belt of green which separates the villages from the small town of Pitsea. This stretch of Green Belt is welcomed by all in this well developed area of South Essex. All the reasons for retaining our Green Belt and preventing urban sprawl have been repeated time and again in the hundreds of letters of objection already submitted and do not need to be re-stated here.
146. When Nottingham Council bought the site as a long term investment for their pension fund this was confirmed in writing and local people were relieved as they were told it would continue as a working farm. However, within 2 years a planning application was put in for 1300 houses, shops, offices and other premises at a time when the elected Council were trying to put together a strategy which local people could approve.
147. After strong objections, local people were told that the appellants had listened to local concerns and had reduced the number of dwellings to 750 and that they would use the land which was not used for building to provide green, ecological space. However, when residents tried to buy two of the fields as a conservation area they were turned down as the fields had 'hope value,' this means that the land might be available for development at a later date.
148. Basildon Council has to build another 12,500 homes by 2031 as part of its new CS. Of this 12,500, the Council is looking to build 2,300 in the North East Basildon Urban extension, which includes North Benfleet, and about another 300 in the Bowers Gifford and North Benfleet Plotlands. Consultation has already started and the Leader of the Council attended a BGNBRA meeting to tell us more about the Council's draft CS, which would take specifically chosen pieces of land out of the Green Belt.
149. The BGNBRA had already communicated to residents the areas within the North East Basildon urban extension which could be lost. The BGNBRA has taken a neutral stance at the moment and is only acting as a communication vehicle. However, the feedback is that if development has to happen, the Council's plan to build along the A127 corridor is by far the lesser of two evils compared to building on Little Chalvedon Hall – particularly because the Council's proposal could enable exit and access routes without using Pound Lane, Burnt Mills Road or Rectory Road.
150. The BGNBRA are looking into drawing up its own Neighbourhood Plan and whilst such a Plan would give local people no control over the number of houses which the Council has to build locally, they could have a measure of control over the quality and design of those dwellings. More importantly they could also have a measure of control about where they are situated. It is true that strategies which eat into the Green Belt are not popular. However, local people know that unless they accept the inevitable, opportunist applicants will be hoping to be allowed to site development where it is not wanted.
151. Placing a huge development in the middle of the Green Belt would not create more green space, as claimed; it would increase the urban sprawl between Bowers Gifford/North Benfleet and Pitsea. Neither would this huge intrusion into a Green Belt area which hosts a number of wild species, including some protected species, create an improved ecological environment.

152. A former local shopkeeper has given evidence that 3 shops in Pound Lane had to close when the local Tesco's opened. Another shop may well put the local shopkeeper out of business and will undoubtedly affect the profitability in the new Morrisons and Aldi that are in the process of being built in Pitsea.
153. The local surgery had closed because residents prefer to use the medical centre in Pitsea. This does not support the submission that residents would use the proposed medical centre which intrudes on their Green Belt.
154. It has been said that Bowers Gifford does not have the facilities it needs and the proposed development would provide the village with a neighbourhood hub. However, there are already sufficient facilities at the Benbow Centre which have been listed in earlier objections.
155. Local people have also been told that the project would boost local economy by providing 207 construction jobs. However, the developer of the multi-million pound Bowers Gifford Sadlers Farm/A130 Improvement project recruited no local people. In fact, the manager in charge of the site was sacked for recruiting illegal immigrants. The workers who were employed lived in caravans on the site and the only boost to local economy was in their purchase of foodstuffs.
156. The proposed 2000 sqm of commercial premises would employ 73 permanent staff, but 750 new dwellings would surely bring in a much larger number of incomers seeking employment. Furthermore, it would be discriminatory to seek to employ only people living on the new development. Bringing in workers from outside would only further increase the volume of traffic on minor roads.
157. Turning to traffic, the 750 new dwellings plus the commercial area and the facilities in the village hub would increase the traffic by at least 1000 extra vehicles per day. The appellants seek to divert Pound Lane, the main thoroughfare, around the new village hub which includes a zebra crossing for school children. Trotting ponies would also have to use this diversion, slowing things down even more. The residents do not believe that this diversion would improve the flow of traffic.
158. The appellants' expert witness on transport reported that the pavements along Pound Lane were all 1.5m to 2m wide. Our measurements tell us that this is true in some places but in others the pavements are only 0.8 m wide. He said that there are pavements all along Pound Lane, when about half of Pound Lane has no pavements at all and in some places not even a grass verge to walk on.
159. The transport witness admitted that the Pound Lane/A127 junction was unsuitable for heavy construction traffic but residents were told that the experts would provide a solution and either use Burnt Mills Road or bring heavy construction traffic down Pound Lane from the A13 end. However, Burnt Mills Road is a minor road with no pavements and Pound Lane is also a minor road which would find it difficult to cope with the volume of heavy construction traffic. It is surprising that no account of the additional 200 to 300 lorries a day going to the new waste management site in Courtauld Road had been included in the Transport Report. Nor had any account been taken of the additional traffic that will be generated when the new giant port in Corringham is opened. However, the witness seemed to believe that a solution could be found to this potential huge increase in traffic.

160. The area is prone to flooding and has a poor road infrastructure which was not built for the number of proposed dwellings. Bowers Gifford was formerly known as the village on the marshes and used to have wooden dwellings built above the ground to protect them from the dampness held in the clay soil. The Anglo Saxon name for Benfleet literally means floating wood – in other words it was a swamp. The name Pitsea speaks for itself - most of it was once below sea level.
161. The Flood Risk Action Group was formed at the end of last year, in the neighbouring village of Rawreth, following a number of houses that had not previously flooded being submerged in water up to the window ledges. In the last few years, farmers in the area have reported fields being waterlogged which have not previously flooded.
162. The fact that the expert witness had used average data in his calculations of water runoff from the site in an area prone to flooding was queried. The fact that the computer programme he used gave a 24% lower run off rate than the well-known Wallingford on-line tool was also questioned.
163. This application is untimely following a recent spate of flooding, some of the blame for which has been placed on unsuitable SUDS systems in clay soil and run off from the 'improved' A130. The proposed development is also untimely in view of the fact that the recently formed Flood Risk Action Group is investigating the number of recent floods with Essex County Council and other agencies.
164. The current Coalition Government promotes localism in local planning. If local people are involved in a Neighbourhood Plan there is more likelihood of the Council taking the support of its communities with it. The BGNBRA therefore asks that the Appeal is refused and the local Council is allowed to get on with the necessary planning process without further hindrance.

**Councillor Robert Smillie**

*Resident of Bowers Gifford and chairman of the Bowers Gifford and North Benfleet Parish Council.*

165. The appeal should not succeed for the following reasons: - firstly, the development would not be sustainable. This new town in the middle of the village would only support a commuter community. The proposed shops and offices would provide very little additional employment and the school none at all, as it would force the closure of our current school.
166. Secondly, the closest industrial area, Burnt Mills, is fairly run down with a lot of empty units, which have been so for many years and are now only being taken so that landlords do not have to pay commercial rates on them when they are empty.
167. He has had a business on the Burnt Mills Industrial Estate since 1991 and has seen it at its peaks as well as its current troughs. Even in its best years there has been no provision for a bus service. The majority of people who work there are forced to come to work by car. Walking or cycling to the estate along Burnt Mills Road from Pound Lane can only be described as foolhardy.
168. There is little hope of cottage industries or home workers, as the provision of telecom and internet services is very poor. As the industrial estate and the local area are serviced by the same exchange, there is no real possibility of small businesses opening in either area, as most businesses now rely on web sites and email to conduct business.

169. Last year about half a mile of copper cable was stolen along the length of Pound Lane, and the village was cut off from telephone and internet for 4-5 weeks. Rather than replace the stolen cable with a fibre optic link which could be used to provide high speed internet, BT replaced the cable with more copper cable, so there seems to be no prospect of future improvement in the telecoms provision.
170. Many of the residents are unconvinced by the current proposal for 750 dwellings as in residents' initial meetings with the appellants they put forward a much larger number. They also discussed other areas adjacent to the proposed development site which would then 'probably' be able to get planning permission, bringing the total number of dwellings up to more than 2200.
171. Another reason for opposing the development is the increased traffic; if the development was to be sustainable then those living there should be able to walk or cycle to a place of work. It is extremely difficult to walk or cycle along Burnt Mills Road from Pound Lane between 8 - 9am or, worse still, between 4:30 - 5:30pm. This road link between North Benfleet and the Burnt Mills industrial estate, is very narrow, has no footpaths and lots of blind bends. Much of the traffic is fast moving vans, lorries and cars, which are difficult to avoid when walking or cycling.
172. Finally, the term 'mitigate' has been used extensively by the appellants, as if all the harm can be overcome. It is only possible to mitigate the harm for the new residents, not the existing residents as, when it is proved that the mitigation does not work, the situation could not be reversed.

***Councillor Bernie Foster***

173. He has studied the requests from the local residents, the information from the appellants and the evidence presented to the Inquiry. The overriding feedback received is that, like most rural communities, it is reluctantly accepted that there will eventually be some development within the proximity of Bowers Gifford and North Benfleet.
174. Currently there would appear to be two alternatives being proposed. The first, which has been opposed by every communication received, is the appeal proposal; a phased development of 750 houses and then possible subsequent phases until the original target of 1250 houses is, as nearly as possible, reached, splitting the village in two. This would cause significant disruption to the lives of both humans and animals plus a high level of stress due to the unknown final level of build. It is also at the narrowest part of the Green Belt separation.
175. The favoured alternative is to work with the Council to ensure that the agreed housing levels required in our area are built, but done so sympathetically for the benefit of the whole community and not purely to generate as much profit as possible. Residents understand that a business needs to make a profit but unlike residents and local councillors they do not have to live with the aftermath.
176. The appellants have gone to some length to explain how their plan would help Basildon reduce their increasingly widening affordable housing gap. But they have bought Green Belt, the cheapest land, and have agreed to provide 6% less than Basildon's required average. Hence, they would actually be widening the gap and making the situation worse, not better.

177. This project has failed to take any account of the community the appellants say they wish to help. They are quite reasonably not providing accommodation for travellers, who come under their own set of regulations, but that group are part of our everyday community so it is not right to ignore all their needs. This is just one example that shows a complete lack of understanding of what is required.
178. The proposal would take a significant number of people many years to build but Saddlers Farm also took a long time to construct and the nearest thing to a local labour force was a few people from Romford and a manger from Kent who was replaced before completion. The various and numerous traffic problems caused by lorries during construction have also been referred to.
179. The appellants managed to reach agreement with Essex County Council to not include the traffic generated by the RSBP Wetlands project, the DP ports build-up and the new recycling plant at this stage. But clearly all of these will have an impact both during the construction and after completion, significantly reducing any tolerance from the 88% road loadings they hope to obtain after their highway alterations.
180. It has been stated that the new planning changes were not meant to stop applications being passed but they were not meant to provide a way of destroying ancient communities that have, over the last few years, started to reunite and move forward. It is asked that whilst weighing up all the legal arguments it is noted that, unlike those regulations and calculations, the residents are people, not numbers. Unlike those who wish to build and walk away, we live here and raise our children here. Finally, allow us to work with Basildon and obtain a suitable solution, whilst retaining our and England's rural heritage.

**Councillor Brian Wall**

*Bowers Gifford and North Benfleet Parish Council*

181. He has lived in the Parish for nearly 30 years and spent many hours walking in the area. During that time he has become aware of some of the local effects of rain and surface water which could impact on the proposed development. In raising these he would stress that he has no particular qualifications in this matter apart from local knowledge.
182. The first is the very well known local effect of water runoff from Jackamans Farm at the southern end of Pound Lane. This appears as a stream of water flowing off the land at a point adjacent to number 55 Pound Lane after even light falls of rain, once the field has become saturated. Due to the road camber, most of it stays close to the kerb and goes down the surface drains but it is not uncommon for it to spread completely across the road. Generally it does not cause much of a problem to local people who drive through it slowly although it is much more hazardous if freezing occurs.
183. The proposal to widen the road between this area and London Road could lead to the removal of the natural banked edge of the field allowing more water to flow over a larger area along this stretch. Low temperatures could lead to potentially dangerous sheets of ice forming. Preventing water runoff completely could cause flooding in the Kelly Road houses running along the edge of the field.

184. A second well known situation concerns the surface water sewer running along Pound Lane, which is when water can be seen coming out of the manhole covers in jets. This occurs mainly at Burnt Mills Road / Pound Lane junction contributing to the regular flooding at this point.
185. In other locations, such as at the end of Homestead Road which is to be main road off the development site<sup>57</sup>, the excess water flows into Homestead Road where it is not a problem but if this becomes a major road with additional surface water from it, flooding could occur on this critical corner. In this case the water is mainly from the roads and gardens to the east of Pound Lane and would not be part of any water management plans for the new site.
186. The last is caused by the houses from Katherine Road to Grange Road being built on land below the level of the road surface in Pound Lane forming a natural barrier to water flow. From observation there is a trough of land which is below the natural water table when parts of the Little Chalvedon Hall land are saturated. He has observed that the ditches in this area do not overflow but that there is a gradual accumulation of water at the lowest part of this area which can become several inches deep, eventually joining up with the ditches to put a fairly well defined area under water to cause the flooding mentioned by other councillors. Some of this water drains into the foul water sewer causing automatic pumps to switch off resulting in the problems with sewage referred to.
187. Grants were made to households to provide systems to prevent water entering the houses. It should be noted that other residents who qualified for the grant refused to apply. He is concerned that the lagoons for the proposed SUDS system would be large, with the main ones located to the west of Osborne Road, which could lead to a rise in the water table above the level of the area which floods now.
188. He previously owned one of the four general stores, now reduced to one due to a lack of trade caused by people demonstrating their preference for supermarket shopping. He became aware of the separation between the populations of Bowers Gifford and North Benfleet in outlook and lifestyle and one of my aims in becoming a Parish Councillor was to promote the idea of unifying the two areas, forming common aims. Anybody with knowledge of the area would be aware that the universal success of the BGNBRA petition shows the depth of feeling the development has generated in the whole community.
189. The Parish Council has raised over £150,000 to develop local amenities and provide notice boards throughout the Parish. It is obvious that the proposed development would be a sanitized vision of modern living, good for glossy brochures but alien to the rest of the Parish and separating Bowers Gifford and North Benfleet, undoing all of the work that has been done to date.
190. The appellants have e-mailed the Council to say that they were aware of at least two people in favour of the scheme and that we must represent all residents' views in this matter. The Council has received no communication from any person supporting the development. We must therefore assume that in requesting refusal of this appeal we represent the overwhelming majority views of the Parish.

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<sup>57</sup> In fact, Homestead Road is not shown as the access into the site. A new road is shown on the indicative plan, running parallel to, but further to the east of, Homestead Road.

### **Tracey Calver**

191. Bowers Gifford feels like a community village and it came together to comment on the appellants' transport plan. The pavements are narrow and it is sometimes necessary to step into the road to pass other pedestrians. The road is already not wide enough to cope with the traffic that it takes. Although there may not be many houses in the village at present there are nevertheless plenty of cars and this would increase with the proposed development. Given these facts, and the hill between the village and the station, it is unlikely that people would cycle there and cycling is generally not feasible in the local area. It is unlikely that people can be persuaded to change their habits in this respect. A development of this size and the loss of the Green Belt would make a massive difference to the local area.

### **Laura Watts**

192. She opposes the proposed development of Little Chalvedon Hall Farm and believe that, if approved, it would have a strong negative effect on Bowers Gifford, North Benfleet, the district of Basildon and much of South Essex.

193. Little Chalvedon Hall Farm, a working dairy farm for many years, is worthy of its Green Belt status. The site helps to preserve the distinct setting and special character of the historic settlements of Bowers Gifford and North Benfleet, which both have a strong agricultural and small-holdings history; this is typified by the farming that continues there today, the variety of construction styles in the area and the absence of mass-developed uniformed housing. These proposals would destroy all of that and will reduce the number of working farms in Basildon and decrease the capacity for dairy production on both a local and national scale.

194. The site does not just assist in safeguarding the countryside from encroachment, it is the countryside and, therefore, it needs to be protected. The site aids the prevention of two districts – Basildon and Castle Point - from merging, and separates the settlements of Bowers Gifford and Pitsea. In doing so it is a haven for wildlife.

195. The Ramsar site of the Thames Estuary and Marshes (3UK141) supports intertidal habitats important to breeding and wintering birds; it is approximately 2km from the appeal site. Since the RSPB made improvements to Bowers Marsh, there has also been an increase in sightings by residents of the number and variety of birds using the appeal site. Building on Little Chalvedon Hall would spell the end of the site as a feeding ground or migratory-stopover for a variety of birds, which have been recorded using the site, including meadow pipits, redwing and fieldfare.

196. There are several ponds on the appeal site which support a large and breeding population of great crested newts. The habitat currently surrounding the ponds is typical of where the newts live and breed. The ponds would be replaced by pavements, roads and houses, if this application is approved. As great crested newts are a threatened species, it is illegal to intentionally kill, injure or disturb the animals or to damage their habitat. Approving this application would do precisely that and would run contrary to the Council's policy BAS C13, which does not permit developments that may adversely and materially affect any river, pond or lake. This development would spell the end of this district-important great crested newt population.



197. Similarly, the hedgerows on the site are home to a host of wildlife including common lizards, slow worms, grass snakes and adders. These reptiles are abundant in the high-quality hedgerows. In fact, the slow worm population on the site is considered to be exceptional and the assemblage of all the reptiles on the site is considered to be of County importance.
198. Despite the application promising to retain the hedgerows, in practice they, and the eco-systems they support, would be destroyed. Adjacent feeding and grazing pastures will be lost to tarmaced roads and concrete houses. The hedgerows and their inhabitants currently enjoy little human interference but the development would bring human activity, noise and light pollution.
199. Such pollution would also affect the bat population on the site which includes common and soprano pipistrelle, serotine and brown long-eared bats. On the proposed plans, the highest concentration of bat activity is currently around the roosts toward the centre of the site – the area with the least light and noise pollution. In the past century bat numbers have deteriorated, internationally and nationally; building development is often cited as the primary cause. It should not be allowed to happen to the district-important bat population of Little Chalvedon Hall.
200. The negative effect to wildlife posed by this application would not only be as a result of the completed development but would also occur during the building period which the developer proposes will be 7 years for the first phase of 750 dwellings. The construction period would be particularly harrowing for local wildlife which, due to noise and air pollution, would be driven from the site and possibly from the surrounding area, in order to find new homes. Many of these animals would have to travel some distance to find a similar environment and would not survive the local roads.
201. This application poses an inappropriate loss of Green Belt land, which would be detrimental to the local area, district, county and the respective residents and wildlife; it should not be approved.

## **WRITTEN REPRESENTATIONS**

202. The majority of the points raised in written representations, both at application stage and in response to the appeal, have been covered by those interested parties who spoke at the Inquiry and whose statements are reported in previous paragraphs. However, concerns have also been raised about a detrimental impact on residential amenity for occupiers of properties on the east side of Pound Land, which could be affected by lights from traffic travelling from the roads in the new development shining into their windows.

## **CONDITIONS AND OBLIGATIONS**

### *Conditions*

203. The list of suggested conditions that the parties have agreed should be attached to any planning permission is attached as Annex 1 to this Report. There are a number of standard conditions (1 - 4) relating to the timescale for implementing the development, its phasing and the submission of applications for reserved matters. The requirement to submit a design code for approval and thereafter follow that code in any application for reserved matters (5 - 6) is to ensure that each phase of the development is well related to the others and of a similar design standard.

204. A suite of conditions to cover the management of the construction phases of the development (7 - 10) are required to ensure that the impacts of the building process are sufficiently mitigated, in the interests of a wide range of matters, including highway safety, residential amenity, the protection of trees and hedgerows and protected species.
205. In the interests of ecological matters, conditions (11 - 12) are required to mitigate and compensate the impact of the proposed development on the natural environment.
206. Conditions (13 - 14) are required to ensure that the scheme does not increase the risk of flooding and that the development is provided with a sustainable surface water drainage system and a suitable foul drainage scheme.
207. A condition (15) requiring the submission, approval and implementation of a landscaping scheme is required to cover all phases of the development and to ensure that the indicative measures proposed on the master plan are put in place when full planning permission is sought, in the interest of the appearance of the development and its setting in the countryside.
208. There is a possibility that there are archaeological remains on the appeal site and a condition (16) and an approved scheme of investigation is required to ensure that the site is assessed and any finds analysed.
209. The location and type of any external lighting needs to be controlled, in the interests of visual and residential amenity and a condition (17) to this end is recommended.
210. Because of the previous use as a farm there is the possibility that parts of the appeal site may be contaminated. A condition (18) is therefore required to ensure that the land is investigated and mitigation carried out if found to be necessary.
211. All the above conditions meet the six tests set out in the Framework and are necessary to allow the proposed development to go ahead, should the SoS decide to grant planning permission.

#### *S.106 Agreement*

212. The contributions and obligations contained in the Agreement are required to comply with the CIL Regulations and, to be compliant, contributions must be necessary in planning terms, directly related to the development and fair and reasonably related in scale to it. The appellants and the Council have produced a supplementary SOCG<sup>58</sup> confirming that, in their view, the terms of the Agreement meet these criteria.
213. There is an agreed need for affordable housing and this is supported by policy BAS S5 of the LP and the Framework. The Agreement provides for a phased delivery of not less than 30% affordable housing in a mix of size and tenure to be agreed at reserved matters stage.

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<sup>58</sup> ID 13

214. There is no requirement for public recreational open space in the LP but it is promoted through the policies of the Framework and supported by the Council's Interim Planning Obligations Strategy. The extent of the dedicated open space is greater than would normally be required for a scheme of this size, but is justified by providing a strengthened open setting to the Green Belt boundary, as cited as a benefit of the proposal in the appellants case for very special circumstances.
215. In respect of the education contribution, the appellants have undertaken to provide land for a new primary school and the financial contribution that Essex County Council has requested towards early years childcare and primary education provision. This is based on the number of pre-secondary school places that the proposed development would generate and the shortfall in available places that this would cause. The calculations justifying this contribution are set out in the documentation sent to The Planning Inspectorate in response to the appeal.
216. The community hub is, again, not required through LP policy but forms part of the package of benefits proposed by the appellants in support of their case on very special circumstances. It has been noted that Bowers Gifford is the only 'Service Settlement' village allocated in the CSRPOR that does not have a centre and the Agreement would provide this. It would help to support the local economy and reduce the need to travel, as required by the policies of the Framework in Chapter 4.
217. The proposed highway works, public right of way, enhanced bus service and the provision of residential and commercial travel plans are all necessary to promote safe and sustainable forms of travel. They would mitigate the direct impacts that the proposed development would have on the local roads and transport systems and are supported by Chapter 4 of the Framework.
218. There is a requirement to provide additional sports provision to support the development in the Council's PPG17 Open Space Assessment 2010 and in chapter 8 of the Framework. The community sport contribution secured by the Agreement would be used towards the costs of providing a new all-weather surface for one of the pitches at the nearby Eversley Leisure Centre.
219. The traffic regulation order contribution is to be put towards the costs of any traffic regulation orders that are required by Essex County Council in relation to the highway works proposed to serve the site.
220. The proposed development includes a new doctors' surgery/medical centre to serve the needs of the new residents and the healthcare contribution sum is a security for this provision, to be repaid when these healthcare facilities have been provided to the Council's satisfaction.
221. I am satisfied that all the contributions are required to serve the new development or to mitigate its impact on the local infrastructure and are therefore necessary in planning terms. They therefore meet the criteria of the CIL Regulations.

## CONCLUSIONS

222. The numbers in square brackets in this section are references to previous paragraphs in this report upon which these conclusions are based.

### *Harm to the Green Belt*

223. As previously noted, there is no dispute that the proposal represents inappropriate development in Green Belt terms and that, in addition to the inherent harm that this would cause, there would also be a loss of openness which is one of the essential characteristics of the Green Belt. This adds to the harm which would need to be overcome if very special circumstances are to apply. **[4, 31]**
224. The other identified characteristic is the permanence of the Green Belt designation and, should the appeal proposal be granted planning permission, it would effectively mean the permanent loss of about 26 ha of Green Belt countryside. **[18, 87]**
225. It is also necessary to consider whether there is, in addition, any other harm to the purposes of including land within the Green Belt. 2 of the 5 purposes of the Green Belt (preserving the setting of historic towns and assisting in urban regeneration by recycling urban land) are not relevant to this site. It is agreed that there would be a loss of countryside to development and the purpose of safeguarding the countryside would not, therefore, be met. **[28, 34, 111]**
226. This leaves the 2 remaining purposes – checking unrestricted sprawl of large built up areas and preventing neighbouring towns from merging – over which the main parties have differing views on whether harm would be caused. Whether the proposed would be ‘unrestricted sprawl’ is the first point of disagreement. The Framework notes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. This is a slightly different concept from checking the unrestricted sprawl of large built up areas, as set out in the Green Belt purposes listed in paragraph 80 of the Framework. Once it is accepted that there would be a permanent loss of openness, that aim of the Green Belt designation would be harmed.
227. However, the development has been conceived as a concept with a clear design strategy and does not have the characteristics that would normally be associated with ‘urban sprawl’. **[36 - 39]** It would be contained by landscaping proposals on clearly defined boundaries and would not represent a random or piecemeal type of development. **[41]** It would not be connected to a large built up area – Bowers Gifford is a village - and to consider that the development would cause unrestricted sprawl would be to ‘double count’ the harm already identified and accepted through the loss of openness and an area of countryside. **[35]** Therefore, I conclude that there would be no additional harm caused by conflict with the purpose of checking urban sprawl.
228. In terms of the aim of preventing neighbouring towns from merging, the proposal is for a sizeable development that would result in a considerable amount of built form, albeit interspersed with open space. It would be sited in an area where the Green Belt is narrow and is interrupted by the village of Bowers Gifford. **[44, 100]** The neighbouring settlement at North Benfleet, which the development would also adjoin, is washed over by the Green Belt and, although developed at lower densities than Bowers Gifford, these Plotlands areas already reduce openness and contribute to a degree of urbanisation of the Green Belt gap.

229. The vulnerability of this gap has been recognised in planning policy for many years and it has long been considered important to maintain a sense of separation between the urban areas of Basildon/Pitsea and Thundersley/Benfleet in the Borough of Castle Point. **[98, 99]**

230. Although the appellants argue that the proposed reduction in this gap would not be readily perceived from public viewpoints, and refer to 'new' open space **[47]** the development would, when seen in the context of Bowers Gifford and North Benfleet, give the area an increased urban character and reduce the existing perception of a village environment in a countryside location. **[109, 141]** The extent of green open space between the development and Basildon/Pitsea would be minimal, at it closest only about 350m and the sense of a clearly defined separation between urban areas would be considerably eroded. **[100]**

231. It is the case that there are existing narrow Green Belt gaps in South Essex that are serving their function, but this is not an ideal situation and any further reduction in an area that already contains development is not to be encouraged. **[100]** Nevertheless, there would still be a gap maintained and the impact of the development would be tempered by the provision, through the s.106 Agreement, of a greater area of open space accessible to the general public. **[73, 75]** However, through the use of this space and the footpaths crossing it, there would be more opportunity for the public to experience the narrowing of the gap. There would therefore be additional, albeit moderate, harm to the purpose of preventing neighbouring towns from merging into each other. **[106]**

232. In addition, the Framework notes that the preferred method of altering Green Belt boundaries is through the Local Plan process. **[14, 25]** If planning permission were granted for this proposal, it would mean that the developed areas of the site would no longer function as Green Belt and this would have been brought about through an application made under s.78 of the Town and Country Planning Act 1990 (as amended) that is not supported through the adopted (or emerging) LP.

233. Therefore, in addition to the significant harm caused by inappropriate development, the additional harm to the Green Belt caused by loss of openness and permanence, the encroachment into the countryside and to the purpose of preventing neighbouring towns from merging, adds further weight to the objections to the proposals.

#### **Other harm**

234. Although not considered by the Council to be a reason for refusal, local residents have put forward strong objections to the proposals on the grounds that traffic from the development could not be satisfactorily accommodated on local roads. **[159, 171, 179]** The Highway Authority (HA) has no objections, provided that certain road improvements are implemented and these have been secured through the s.106 Agreement. It was confirmed at the Inquiry that all these improvements to junctions in the vicinity of the appeal site would take place on land owned by the HA. The fears that there would be some encroachment into private land are therefore unfounded.

235. It is, however, of some concern that it appears that at least 2 major new infrastructure projects have not been taken into account when the calculations for traffic levels were undertaken. **[157-159]** This is no criticism of the appellants' consultants who worked within the parameters given to them by the HA.

236. However, it was confirmed that traffic accessing the new recycling facility presently under construction in Courtauld Road, to the north west of North Benfleet, had not been factored into the calculations and it is likely that most of this traffic would be lorries. Neither had the proposed expansion of the port at Corringham, which would no doubt increase traffic on the A13 and A130, been taken into account. **[159]**
237. Although traffic would not necessarily use Pound Lane to reach these destinations, there is bound to be additional movements on local roads and when combined with additional traffic from the appeal site, this could have an adverse impact on congestion and highway safety on the smaller roads in the vicinity. **[191, 202]** Until this situation has been shown to have been considered together with the other factors influencing traffic levels on local roads, it cannot be concluded that the appeal proposal would not cause any unacceptable increase in traffic levels.
238. The proposed development would be more likely to deter the use of Pound Lane as a cut through between the A13 and the A127, as there would no longer be a straight run between the two roads and the traffic would have to divert round the village hub. Although there is a risk that some traffic would use other local roads instead, the most direct routes would then be via the A130 or the A132.
239. The problem of lights from vehicles shining into the houses in Pound Lane could be minimised by designing the final scheme to ensure that the landscaping screened the roads and that their final alignments took account of the position of the houses that could be affected.
240. Another major concern for local residents is the risk of flooding being increased by the proposed development. There are clearly problems in the area at present that have been exacerbated by the recent heavy rainfall. **[182-187]** There has also been criticism of the calculations done to support the FRA produced by the appellants but a detailed assessment cannot be finalised at this stage as the detailed layout of the scheme and the amount of hard surfacing proposed has not been established. **[162, 24]**
241. It was, however, clear from the evidence given by the appellants' witness on the subject that the existing surface water and sewage systems that are overloaded at present would not be relied on and the development would be served by new drainage infrastructure. Anglian Water, who are the water authority for the area have confirmed that there is capacity in their system to cope with the output from the development at the proposed connection points and I have seen no evidence to convince me that the risk of flooding in the local area would be increased if the proposed development were to go ahead. **[24]**

### ***Very special circumstances***

#### *Housing supply*

242. The most compelling argument for allowing the proposal on the grounds of very special circumstances is the agreed lack of a 5 year housing supply and the time that will necessarily be taken to put an adopted CS in place. The current LP is out of date in terms of housing supply policies and even if the CS progresses smoothly to adoption, some of the proposed allocations for housing are not likely to come forward for development until towards the end of the decade. **[56-61]**

243. It is no doubt a positive benefit that the appeal site is available now and would make a contribution that could amount, in total, to about a one year supply of housing land, based on current estimations, although delivered over a number of years. **[63]**
244. It is also the case that the proposed creation of many more jobs in the TGSE will need to be supported by new housing. **[63-66,]** This is an important growth area where there has already been an under delivery of housing and this backlog will need to be addressed if the economic aspirations of the area are to be realised. The proposed development would bring forward much needed new housing within a shorter timescale than is likely through the LP process. **[82]**
245. It is anticipated that, in order to meet these housing targets, the Council will have to release land from the Green Belt. The harm relating to inappropriate development, loss of openness and permanence and loss of countryside is therefore likely (depending on the final choice of site) to occur from any allocated site in the Green Belt. **[34, 51, 81, 67, 28]**
246. To inform its choices in this respect, the Council has commissioned a study<sup>59</sup> to investigate the capacity of the Borough's Green Belt land to accommodate housing. The area in which the appeal site is located (Area 53) is included in Tier 3 which, the study notes, should only be considered after all primary areas have been explored. **[109]** However, it also notes that Little Chalvedon Hall has the potential to accommodate large scale development. **[39]** Nevertheless, this comment must be read in conjunction with the previous caveat and the recommendation in the study that any development should respect the existing field pattern and that the open views between Basildon and North Benfleet/Bowers Gifford should be protected. **[109]**
247. The proposed development would cut across established field boundaries and, although these boundaries would be replaced by new planting of trees and hedges, this recommendation of the Green Belt study would not be met. The new development would extend beyond the edges of the established development in all directions except to the east. **[103]** Whilst it would be contained by North Benfleet and Bowers Gifford along some of its boundaries, there would be little logical justification for the way the remainder of the development boundaries have been drawn, particularly those to the west. **[103, 104]**
248. Some open space would be retained between Basildon and North Benfleet/Bowers Gifford but, as previously noted, the distances between areas of built development would be significantly reduced, impinging on the extent of the present open views. **[100]**
249. The Council has produced its CSRPOD using the Green Belt Study and the Landscape Character and Capacity Assessments to inform its choices. Although the countryside of the appeal site is of no particular quality and has no specific landscape designation, it has not been included as one of its preferred sites for housing development. **[106, 108]** Therefore, whilst it is possible that the appeal site, or parts of it, could come forward as a result of the consultation process into the CS, which is in progress at present, it is by no means certain, particularly given the extent of local opposition to the proposal. **[110]**

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<sup>59</sup> CD7

250. There has been a preference expressed for another site, suggested as an urban extension to north east Basildon delivering 2000 houses, close to the A127 trunk road (Policy Area for Development and Change (PADC) 6 in the CSRPOD). **[149, 174]** It is obviously not the role or purpose of this appeal decision to express a preference for one site over another before there has been an Examination of the emerging CS, but the appellants consider that the 2 sites are not mutually exclusive. **[84]** This may be so, but there is strong encouragement from the Framework and Government, through its localism agenda, to allow local planning authorities to determine where new housing in its area is to be sited and which areas of Green Belt should be released for this, if needed. **[14]**

*Other benefits*

251. The s.106 Agreement would establish an additional area of public open space adjacent to the largely Council owned open recreational land immediately to the east of Basildon. However, the Green Belt designation already gives strong protection from development and there is no particular advantage to be gained by this measure in terms of defending the Green Belt from erosion, as claimed by the appellants. **[101]**

252. Neither would the benefits of exchanging agricultural land, over which there are already public footpaths, for public open space carry more than moderate weight. There is no agricultural objection to the loss of the land, but in terms of open space it is already serving the purpose of providing an area for ecology and wildlife. Opening it up further to the public would allow for additional footpaths and cycle ways through the land and it would not have to be maintained at public expense and there is some support in the LP for enhancing the existing green space to the east of Basildon. **[76]** However, the benefits of gaining an area of public open space, which is already open land, are seriously reduced by the fact that a similar amount of Green Belt countryside would be lost. **[133]**

253. It might be that there would be scope for some ecological enhancements, once the development was completed, and the land would be managed for this purpose through the terms of the s.106 Agreement. However, these would need to be balanced against the loss of a large area of open land that already provides wildlife habitats and the disruption that would be caused to the natural environment during the building process, which would be phased over a number of years. **[74, 24, 200]**

254. The scheme would provide for the infrastructure required to support a development of this size through the s.106 Agreement but, in addition, would include some retail space centred on a 'village hub', which at present Bowers Gifford does not have. It is the only identified 'Service Settlement' village identified in the CSRPOD that does not have a centre and the proposed development would provide this. **[70]** There is, however, already a community centre and village shop which serves the existing community, but the additional facilities could help to reduce the need for residents to travel out of the village for some essential services. **[72]**

255. There would also be improvements to the bus service which, although required for the occupants of the new properties, would also be of benefit to existing residents. **[79, 217]**



256. I have no doubt that an acceptable design for the proposal could be secured, however there is nothing at this stage to suggest that there would be anything exceptional about the layout or detail that would add to the benefits of the scheme. Good design is required as a matter of course by current planning policy and the Framework and is expected to meet high standards. If planning permission were to be granted for an outline application, there is no reason to assume that these normal requirements would necessarily be exceeded. **[130-131]**
257. The proposal would contribute a number of jobs within the retail sector of the village hub and during the construction process. This is a real benefit in the TGSE growth area and weighs in favour of the proposal. **[79]**

#### *Affordable housing*

258. The scheme would provide the level of affordable housing that is presently required through LP policy. The percentage would be lower than currently proposed for major schemes in the CSRPO and would not, therefore, represent any advantage over sites coming forward through that process, other than in the speed of delivery. This is, as with the supply of market housing, a matter weighing in favour of the scheme, but not one to which any significant additional weight should be attached. **[77-78, 125-126, 176]**

#### *The balancing exercise*

259. The SoS has made clear that, in his view, the lack of a 5 year housing supply will very rarely amount to the very special circumstances required to set aside adopted Green Belt policy and justify the harm caused by inappropriate development. **[116, 118]** His statements have not changed Green Belt policy but have clarified the importance given to it by Government when considered together with one of its other major policy aims, that of boosting significantly the supply of housing. The wording of the statements has now also been included in paragraph 034<sup>60</sup> in the Methodology - Stage 5: Final Evidence Base section of the Housing and Economic Land Availability Assessment category of the PPG.
260. The SoS has recently (within the last 7 months) also refused to grant planning permission for a smaller scheme in the Green Belt that is only 800m from the appeal site. **[89, 97, 114]** Although this proposal was in a different Borough (Castle Point), the site was also within the TGSE development area and the housing land supply situation was worse than in Basildon. Significantly, the site was also in the same vulnerable gap between Basildon and Thundersley/Benfleet as the appeal site, with the harm being accorded to Green Belt by the SoS being described as 'moderate'. In this case, I consider the Green Belt harm would be significantly greater, due to the more open nature and larger size of the appeal site. Whilst each site must be considered on its own merits, the CP decision is a material consideration that must be taken into account when the merits of this proposal are weighed in the balance.
261. The recent court decision in *Hunston Properties Ltd v SSCLG & St Albans City & District Council 2013 EWHC 2678* concluded that while a decision may well turn on a number of factors including the scale of the shortfall, there is likely to be

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<sup>60</sup> Reference ID: 3-034-20140306

nothing 'very special' about a shortfall in a district which has very little undeveloped land outside the Green Belt. It was noted that the decision is ultimately a matter of planning judgment for the decision-maker but seems pertinent to the case in Basildon, where much of the Borough is designated as Green Belt and there is a significant shortfall of housing land.

262. The agricultural land that would be lost to housing in this proposal would not be of the best quality and the character of the remaining landscape would, to a large extent be maintained through the landscaping scheme, particularly in the longer term after the planting had become established. **[33, 51]** However, the combined harm to the Green Belt caused through inappropriate development, loss of openness, loss of countryside and the conflict with 2 of the purposes of including land within it would be significant. The vulnerable gap between Basildon and Bowers Gifford/North Benfleet would be reduced and the character of the villages materially altered, such that the present rural nature of the surroundings would be lost to suburban development that would be very close to the settlements of Pitsea and Basildon. **[109,139, 141]**
263. To grant planning permission would, in effect, release a significant amount of Green Belt land for development outside the LP review process, against the current intentions of the local planning authority and the wishes of the community that would be most affected. This would also conflict with the advice in the Framework, which makes clear that the preferred route by which such releases are decided is through the LP process. **[14]**
264. There are going to be difficult decisions to make on this subject and it is already envisaged that Green Belt land will be needed for housing in Basildon, as recognised by the local planning authority, which is progressing the proposals for such releases through the preferred route. The harm caused to the Green Belt by a scheme of this size in this location could only be justified by factors that were clearly of even greater magnitude. I consider that the factors weighing in favour of the proposal are not strong enough to indicate that this site should be released from the Green Belt without a full and robust public assessment of all other options, particularly as it has not been recommended for housing in the CSRPOR. **[106, 108]**
265. If this site was not in the Green Belt, it would be a strong candidate for housing development, being in a sustainable location and well related to existing settlements. Nonetheless, I would still have some concerns about the quality of the layout shown on the master plan for the scheme; in particular, its intrusion into the countryside and how it would relate to the scale of the established settlement. More confidence could also be placed on the conclusions drawn by the traffic assessment if it had taken account of the additional developments that are proposed to come forward in the near future. **[103 -104, 141,159]** Whilst these concerns alone would not warrant refusal of the outline proposals, they nevertheless add weight to other objections to them. However the site is in the Green Belt, the Green Belt harm is significant and although the economic benefits, particularly in terms of housing supply, are clear, they do not, in my view, outweigh that harm.
266. The proposals consequently conflict with the aims and objectives of LP policy BAS GB1 and paragraph 87 of the Framework, in that they would represent inappropriate development in the Green Belt and cause harm to openness and the purposes of including land within it. I have concluded that there are no

material considerations that would, separately or in combination, outweigh the harm caused by this policy conflict that would be sufficient to amount to the very special circumstances needed to justify the grant of planning permission.

### **RECOMMENDATION**

267. I therefore recommend that the appeal be dismissed.

268. Should the Secretary of State disagree with this recommendation, I suggest that the conditions set out in Annex 1 of this Report should be attached to any planning permission granted for the proposal.

*Katie Peerless*

**Inspector**

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground of Counsel He called Robin Bennett MTP MRTPI	Instructed by Basildon Borough Council Principal Planning Officer, Basildon Borough Council
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### FOR THE APPELLANT:

Mark Lowe QC He called Ben Hilder DipLA CMLI Ray Ricks DipTP MRTPI Martin Doughty BEng(Hons) CEng FICE FCIHT MAPM	Instructed by Boyer Planning Enplan Landscape Architects Richard Jackson Engineering Consultants
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### INTERESTED PERSONS:

Cllr. Rose Griffin-Twidell	Bowers Gifford/North Benfleet Parish Council, Bowers Gifford/North Benfleet residents' Association, Floor Risk Action Group
Cllr. Brian Wall Mrs Tracy Calver	Bowers Gifford/North Benfleet Parish Council Treasurer, Bowers Gifford/North Benfleet residents' Association
Cllr. Bernie Foster Cllr. Robert Smillie	Bowers Gifford/North Benfleet Parish Council Chair, Bowers Gifford/North Benfleet Parish Council
Laura Watts Rt. Hon. Stephen Metcalf MP	Local Resident Local MP

## **CORE DOCUMENTS**

- CD1** Saved' policies of the Basildon District Local Plan, adopted on March 1998, with Alterations in September 1999
- CD2** Interim Planning Obligations Strategy – 2008
- CD3** Basildon District PPG17 Open Space Assessment – March 2010
- CD4** The Local Plan Core Strategy Revised Preferred Options Report 2013
- CD5** Landscape Study Volume 1 Landscape Character Assessment –October 2013 (Specifically areas 51A, 51B, 52, 53A, 53B and 54)
- CD6** Landscape Study Volume 2 Landscape Capacity – October 2013 (Specifically areas 51A, 51B, 52, 53A, 53B and 54)
- CD7** Green Belt Study Report – October 2013 (Specifically areas 51A, 51B, 52, 53A, 53B and 54)
- CD8** Edge Analytics - Housing Growth Topic Paper – August 2013
- CD9** TGSE Strategic Housing Market Assessment – December 2013
- CD10** Strategic Housing Land Availability Assessment – December 2013 (Specifically the appeal site (SS0210), the SHLAA sites shown on the attached document, and those SHLAA sites relating to the Policy Areas for Development and Change in the Core Strategy Revised Preferred Options Report December 2013.
- CD11** Green Belts – Greener Future CPRE/NE 2010
- CD12** TGSE Green Grid Strategy 2005
- CD13** Basildon Borough Council 5 year Land Supply (2013 – 2018)
- CD14** Statement of Common Ground

## **INQUIRY DOCUMENTS**

- 1** Notes of Opening Statement for the Appellants
- 2** Summary Document of CD 11
- 3** Notes of Cllr. Bernie Foster's statement
- 4** Notes of Cllr. Rose Griffin – Twidell's statement
- 5** Notes of Cllr. Brian Wall's statement
- 6** Notes of Miss Laura Watt's statement
- 7** Mr Doughty's response to Cllr. Wall's comments
- 8** Supplementary Statement of Common Ground on housing land supply
- 9** Bundle of documents from BGNBRA commenting on ES topics

- 10 Extracts (p3 & 6) from Employment Densities (2<sup>nd</sup> Edition)
- 11 Saved Policies letter from GO-East dated 20 September 2007
- 12 S106 Agreement
- 13 Supplementary Statement of Common Ground on s106 and CIL regulations
- 14 Basildon Borough Housing Supply Trajectory and 5 Year Land Supply April 2013
- 15 Suggested locations for site visit
- 16 Notes of Cllr. Smillie's statement
- 17 Letter from Cllr. Mo Larkin, Mayor of Basildon to Bowers Gifford and North Benfleet Parish Council dated 29 January 2014
- 18 Notes of Cllr. Foster's closing submissions
- 19 Notes of Cllr. Griffin – Twidell's closing submissions
- 20 Closing submissions on behalf of the Council
- 21 Closing submissions on behalf of the Appellants
- 22 Legal Authorities – (a) *Fox Land v SoS CLG & Castle Point Borough Council*  
(b) *Brentwood Borough Council v SSE & Gray*, (c) *Basildon District Council v FSS v Mrs R Temple*

## PLANS

- A Master Plan 1480/100 P11

## PHOTOGRAPHS

- 1 Bundle of photographs of flooding in Bowers Gifford, submitted by Cllr. Griffin-Twidell

## Annex 1

### Recommended Conditions

#### *Implementation and Reserved Matters*

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) No development shall commence until a phasing plan for the delivery of the site has been submitted to and approved in writing by the Local Planning Authority. The development shall take place in accordance with the phasing plan unless otherwise agreed in writing by the Local Planning Authority.
- 4) No phase of the development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) for that phase have been submitted to, and approved in writing by, the Local Planning Authority:
  - (a) The scale of the development;
  - (b) The layout of the development;
  - (c) The external appearance of the development;
  - (d) The landscaping of the site;

The development shall be carried out in accordance with the approved details.

#### *Design Code*

- 5) Prior to the submission of the first of the reserved matters applications, a Design Code covering the built area of the development shall have been submitted to and approved in writing by the Local Planning Authority (LPA). The Design Code shall be prepared in accordance with the principles and parameters established in the outline application. It shall include both strategic and more detailed elements. Prior to the submission of the Design Code, the intended scope of the Design Code shall have been submitted to and approved in writing by the LPA. The scope of the Design Code shall include:-
  - (a) Architectural and sustainable construction principles (including Secured by Design),
  - (b) Character areas,
  - (c) Street types and public realm,
  - (d) Access principles, including bicycle and car parking,
  - (e) Boundary treatments,
  - (f) Building types and uses,
  - (g) Building heights,
  - (h) Sustainable Urban Drainage Systems,
  - (i) Building materials,
  - (j) Environmental performance,
  - (k) Landscaping within the built area,
  - (l) Implementation of the Design Code
  - (m) Details of the Design Code review period.
- 6) Any application for approval of reserved matters shall be in accordance with the Design Code approved by the Local Planning Authority under condition 5 and it shall incorporate a statement demonstrating that compliance. The development hereby permitted shall be completed in accordance with the approved Design Code.

### **Construction Management**

- 7) No development, including any phase of the development, shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The approved CEMP(s) shall satisfy the requirements set out in the submitted Environmental Statement, and the development shall adhere to the approved CEMP(s) throughout the construction phase(s) of the project. The CEMP, or each phase CEMP, shall include the following matters:
- (a) a construction travel plan for the construction phase including details of parking and turning for vehicles of site personnel, operatives and visitors;
  - (b) loading and unloading of plant and materials, clear of the highway;
  - (c) a Lorry Routing Plan;
  - (d) storage of plant and materials;
  - (e) provision of boundary hoarding and lighting, including hoarding to any adjacent housing/gardens;
  - (f) protection of trees, hedgerows and other natural features that are to be retained;
  - (g) details of the means of dust management;
  - (h) details of the means of noise mitigation;
  - (i) details of measures to prevent mud from vehicles leaving the site during construction;
  - (j) details of any site construction office, compound and ancillary facility buildings;
  - (k) lighting on site during construction;
  - (l) measures to ensure no on-site fires during construction;
  - (m) monitoring and review of the CEMP;
  - (n) details of any temporary surface water management measures required to be provided during the construction phase;
  - (o) Details of construction method statements with ecological review;
  - (p) Precautionary Methods of Working (PMW) for works, such as tree felling and consideration to bats and the demolition of any buildings;
  - (q) Details of protected species licences, where required (such as a bat licence for the demolition of buildings with known bat roosts);
  - (r) Details of appropriate habitat and species surveys (pre and during construction), and reviews where necessary;
  - (s) Measures to ensure protection and suitable mitigation to all legally protected species and those habitats and species identified as being of importance to biodiversity during construction, including installation of protective fencing along hedgerows and around retained trees/woodland, consideration and avoidance of sensitive stages of species life cycles, such as the bird breeding season, protective fencing and phasing of works to ensure the provision of advanced habitat areas and minimise disturbance of existing features;
  - (t) A summary work schedule table, confirming the relevant dates and/or periods that the prescriptions and protection measures shall be implemented or undertaken by a suitably qualified and experienced ecologist;
  - (u) A programme for Monitoring/Environmental Audits during the construction phase;
  - (v) Confirmation of suitably qualified personnel responsible for over-seeing implementation of measures detailed in the CEMP, as required, such as the appointment of an Ecological Clerk of Works or Construction Liaison Officer, including a specification of the role(s).



- 8) No development shall take place until a Materials Management and Soil Resources Plan (MM&SRP) has been submitted to and approved in writing by the Local Planning Authority. The MM&SRP shall include details of top soil stockpiling, local sourcing of materials/resources and the re-use and recycling of materials from demolition on site. Development shall be carried out in accordance with the approved MM&SRP.
- 9) The construction of any part of the development hereby approved shall not include the use on site of machinery, powered vehicles or power tools before 07:30 hours or after 18:30 hours on any weekday, nor before 07:30 hours or after 13:00 hours on any Saturday nor at all on any Sunday or Bank or Public Holiday.
- 10) No deliveries of materials or removal of spoil during the construction of the development shall take place before 08:00 hours or after 17:00 hours on any weekday or before 08:00 hours or after 13:00 hours on Saturdays. There shall be no deliveries of materials or removal of spoil during the construction of the development on Sundays or public holidays.

### **Ecology**

- 11) No development shall take place until a site-wide Habitat Management Plan (HMP) has been submitted to, and agreed in writing by, the Local Planning Authority. The HMP shall include details of the retention, protection and enhancement measures for retained habitats within the application site and shall be adapted as a 'living document' to be informed by detailed design of each phase of the development. The HMP shall include all relevant mitigation measures recommended in the Environmental Statement, submitted to support the application, including ongoing management responsibilities.
- 12) No development shall take place until an off-site Mitigation and Compensation Strategy (OMCS) in respect of the adjoining land edged blue on the submitted Planning Application Boundary Plan has been submitted to, and approved in writing by, the Local Planning Authority. The OMCS shall:
  - (a) provide full details of new off-site habitat(s) to be created, to compensate for loss of habitat on the development site, and new habitat to be provided for the translocation of protected species displaced from the development site;
  - (b) be in accordance with the findings and recommendations of the Environmental Statement submitted to support the application;
  - (c) provide a program for works to be undertaken, including a timetable for remediation, introduction of species and monitoring (as necessary);
  - (d) state the arrangements to secure the long term maintenance/management of the habitat(s) and translocated species.

The OMCS shall be implemented in accordance with the approved timetable under (c) above and no development shall commence until all pre-commencement requirements of the OMCS have been implemented to the written satisfaction of the Local Planning Authority.

### **Drainage**

- 13) No development, including any phase of the development, shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme should:
  - demonstrate that the surface water run-off generated up to and including the 100 years (1%) critical storm (including future climate change) will not exceed the run-off from the undeveloped site following the corresponding rainfall event;
  - provide details of the phasing/timescale for implementation of the scheme;
  - provide details of how the scheme will be maintained and managed after completion;

The approved surface water drainage scheme shall be implemented in accordance with the approved details.

- 14) No development, including any phase of the development, shall take place until a strategy for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of a timescale and/or phasing for its implementation together with details of how the scheme will be maintained and managed after completion. The scheme shall subsequently be implemented and maintained in accordance with the approved details.

### **Landscaping**

- 15) No phase of the development shall take place until a scheme of hard and soft landscaping for that phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of:
- (a) all existing trees and hedgerows on the land;
  - (b) any trees or hedgerows to be retained, together with measures for their protection during the course of development;
  - (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
  - (d) finished levels and contours of buildings and land;
  - (e) means of enclosure;
  - (f) car park, layouts;
  - (g) other vehicle and pedestrian access and circulation areas;
  - (h) hard surfacing materials;
  - (i) minor artifacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
  - (j) proposed and existing functional services above and below ground (e.g. drainage, power, communications, governing equipment (gas, electricity and other services), pipelines etc indicating lines, manholes, supports etc);
  - (k) bin storage and recycling facilities;
  - (l) provision for replanting in the event of landscaping elements dying;
  - (m) timescales for implementation of the scheme.

The development shall be carried out in accordance with the details approved.

### **Programme of Archaeological Work**

- 16) No development (including any works of site preparation) shall take place until a Written Scheme of Investigation (WSI) covering a programme of archaeological works has been submitted to and approved in writing by the Local Planning Authority. The development shall take place in full accordance with the approved WSI and the timescales contained therein. The WSI shall include:
- i. A phased programme and methodology of site investigation and recording to include:
    - a desk-based assessment;
    - a targeted archaeological evaluation;
    - where appropriate, targeted area excavation.
  - ii. A programme for post investigation assessment to include:
    - analysis of the site investigation records and finds;

- production of a final report on the significance of the archaeological interest represented.
- iii Provision for publication and dissemination of the analysis and report on the site investigation.
- iv Provision for archive deposition of the report, finds and records of the site investigation.
- v Nomination of a competent person(s) or organisation to undertake the work set out in the approved WSI.

### **External Lighting**

- 17) Details of any external lighting for each phase or building shall be submitted to and approved in writing by the Local Planning Authority before implementation of that phase or building. The lighting shall be installed in accordance with the approved details before first occupation of that phase or building and thereafter be retained and maintained as approved.

### **Ground Contamination**

- 18) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation shall not take place until conditions 18(1) to 18(4) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 18(4) has been complied with in relation to that contamination.

#### **1. Site Characterisation**

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos
- (ii) an assessment of the potential risks to:
  - human health
  - property, existing or proposed including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land
  - groundwaters and surface waters
  - ecological systems
  - archaeological sites and ancient monuments
- (iii) an appraisal of remedial options, and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

## 2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

## 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority.

## 4. Reporting Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 13(1) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 13(2), which is subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared which is subject to the approval in writing of the local planning authority in accordance with condition 13(3).

## 5. Validation Certificate

Prior to the completion and use of services at any property hereby permitted commencing, the developer shall submit to the local planning authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in condition 13(2) above.



## Department for Communities and Local Government

### RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.