



Appeal Decision

Inquiry held on 27 September 2022 to 14 October 2022

Site visit made on 27 September 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Appeal Ref: APP/V1505/W/22/3298599

Land North of Kennel Lane, Billericay CM12 9RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Gleeson Land against Basildon Borough Council.
 - The application Ref 20/01614/OUT, is dated 11 December 2020.
 - The development proposed is described as outline planning application with all matters reserved, except means of access, for the erection of up to 200 homes; new vehicular access comprising a new arm off the Laindon Road, A176 and Noak Hill Road roundabout; realignment of Kennel Lane to join the new access and associated closure of the Kennel Lane spur; together with car parking, landscaping, surface water drainage basins and associated works.
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Decision

1. The appeal is allowed and outline planning permission is granted with all matters reserved, except means of access, for the erection of up to 200 homes; new vehicular access comprising a new arm off the Laindon Road, A176 and Noak Hill Road roundabout; realignment of Kennel Lane to join the new access and associated closure of the Kennel Lane spur; together with car parking, landscaping, surface water drainage basins and associated works at Land north of Kennel Lane, Billericay, CM12 9RR in accordance with the terms of the application, Ref 20/01614/OUT, dated 11 December 2020, subject to the conditions contained in the Schedule attached to this Decision.

Preliminary Matters

2. The appeal has been lodged in response to the Council's failure to issue its decision within the prescribed period. The subsequent putative reasons for refusal form the basis for my consideration. The application was made in outline with all matters reserved for future consideration except for means of access into the site. The appeal has been determined in the context of the submitted parameter plans for land use, green infrastructure, building heights and accessibility. However, as the submitted site layout plan is marked as illustrative, it has been treated accordingly.
3. The documents set out in the attached schedule were submitted during the course of the Inquiry. I am satisfied that no one has been prejudiced as these were directly relevant and necessary for my Decision and all parties have had an opportunity to comment on them as required. During the course of the Inquiry, the Council advised that an appendix forming part of an interested party's representation to the planning application had been omitted from the

appeal documentation. Subsequently, the appellant has been given the opportunity to respond to this. I have taken account of this representation and the appellant's response in reaching my Decision. I am satisfied that no party has been prejudiced.

4. I closed the Inquiry in writing on 14 October following the receipt of an engrossed legal agreement pursuant to section 106 of the Town and Country Planning Act 1990 and a related Compliance Statement. The agreement sets out details for securing planning obligations in respect of employment and skills, healthcare, education, open space and its management, culture, play and sports provision, travel plan monitoring, affordable housing provision and a marketing strategy to prioritise local people.
5. It has been demonstrated that all of the obligations sought are reasonable and necessary to secure the mitigation required to make the appeal proposal acceptable. Overall, the legal agreement is compatible with all of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Therefore, I have taken it into account in my assessment. The weight attached to these obligations is set out in the relevant parts of my Decision.

Main Issues

6. The main issues are:
 - whether the appeal proposal is inappropriate development in the Green Belt and the effect on openness;
 - whether or not there is any other harm that would result from the appeal proposal; and
 - whether or not any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances required to justify the proposal.

Reasons

Green Belt considerations

Inappropriate development

7. The appeal site comprises an undeveloped parcel of undulating agricultural land which forms part of a wider expanse of more open countryside. It is situated within the Borough's designated Green Belt. The main parties' Statement of Common Ground ("SoCG") states that the appeal proposal constitutes inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ("the Framework").
8. Based on the evidence provided, I agree with this conclusion. Paragraph 147 of the Framework states that inappropriate development is, by definition, harm to the Green Belt and should not be approved except in very special circumstances.

Openness

9. The concept of openness has both a spatial and a visual dimension. The main parties have agreed that the perceived change to openness in both a spatial

and visual sense will be largely restricted to within the appeal site itself, limited parts of Kennel Lane and the neighbouring residential properties.

10. The appeal site immediately adjoins existing residential properties on the edge of Billericay along its most elevated boundaries. The mass of these buildings and their varied boundary enclosures which immediately frame the site are clearly evident on the skyline when viewed from the south. The occupants of neighbouring properties and the users of public footpath No 32, as they pass through the site, currently enjoy views of it in its current undeveloped form. In turn, these extend to more far-reaching views of the surrounding open countryside towards Basildon.
11. Nonetheless, the combination of the site's topography, existing built-up backdrop and abundance of foreground vegetation mean that the appreciation of its openness in both spatial and visual terms, in the context of the wider Green Belt is currently very limited from short, medium or even long-distance vantage points. Furthermore, the appeal site is currently very well-contained from its wider countryside surroundings by existing vegetation along the urbanised A179, and more sporadic vegetation along its edges with Kennel Lane.
12. The appeal proposal would introduce a built development footprint and volume in the form of homes and supporting development including public highways, driveways, gardens and boundary enclosures. These would extend across a large part of this currently undeveloped site. This change would be accompanied by increased activity from prospective occupants and visitors reasonably associated with a residential use. In combination, the appeal proposal would reduce both the visual and spatial sense of openness.
13. However, the appellant's landscape photomontages demonstrate that the existing high level of containment is capable of being maintained throughout the year and in places strengthened through careful landscape and design treatment. Overall, I concur with the main parties' assessment that very localised spatial and visual effects to openness would arise. Moreover, the proposed public open space would ensure that a degree of openness within the site itself would be retained, albeit it would be framed by new homes. This provision would also afford some new public vantage points, offering long distant views out of the appeal site across the surrounding open countryside.
14. In light of these characteristics, the proposed change would amount to a moderate level of harm to the openness of this particular Green Belt.

Purposes

15. The Council has previously assessed the contribution that the appeal site makes to the purposes of the Green Belt in its Green Belt Review 2017 (the 2017 Review). In light of the appeal site's edge of settlement location and undeveloped nature I agree with the Review's conclusion that it contributes to purpose (a) to check the unrestricted sprawl of large built-up areas; partially contributes to purpose (b) to prevent neighbouring towns merging into one another; and also contributes to purpose (c) to assist in safeguarding the countryside from encroachment. It is common ground, with which I concur, that the appeal site does not contribute to purpose (d) which seeks to preserve the setting and special character of historic towns; and purpose (e) which

seeks to assist in urban regeneration, by encouraging the recycling of derelict land and other urban land.

16. In terms of purpose (a), the appeal proposal falls within the Council's 2017 Review's definition of urban sprawl. However, the Council's witness at the Inquiry conceded that the contribution of the site to purpose (a) had not been recorded as being "strong" contrary to what his evidence had stated. Rather, the 2017 Review records that the site "contributes to this purpose". Moreover, throughout the course of this appeal no justified basis for the Council's more recent departure from the findings of its Green Belt Topic Paper 2018 (CD6.13) (the 2018 Topic Paper) has been demonstrated in respect to this particular purpose.
17. Although the proposed development would extend the existing built-up area into undeveloped Green Belt land, it would not project any further southwards or westwards than the existing built-up form. Moreover, the resulting pattern of development would be consistent with the existing irregular settlement form of Billericay and the site's outer boundaries would remain physically well contained by either built development or roads.
18. For these reasons, the appeal proposal would have a limited impact on purpose (a) which seeks to check the unrestricted sprawl of large built-up areas.
19. There is little difference between the conclusions of the main parties' assessments of the appeal proposal's effect on purpose (b). It is clear to me that the development of the appeal site would not in itself cause coalescence or merger with any other settlement. A far greater level of further development would be required in the remaining intervening area for this to occur. Moreover, I agree with the Council's concession during cross-examination, that the site's role is only relevant to maintaining separation with the built form of Noak Hill. For these reasons, I conclude that the appeal proposal would have a limited adverse impact on the purpose of preventing neighbouring towns merging into one another.
20. In terms of the contribution that the site makes to purpose (c), I agree with the main parties that encroachment into the countryside would result. Nonetheless, my site observations resonate with the Council's concession during cross-examination that this encroachment would be limited to the site itself and parts of its immediate setting along Kennel Lane, by reason of the site's physical and visual screening and its containment within wider viewpoints.
21. Consequently, I conclude that the appeal proposal would have a limited adverse impact on the purpose of safeguarding the countryside from encroachment.
22. In summary, in terms of these Green Belt considerations, I conclude that the appeal proposal is inappropriate development which is harmful by definition. The appeal scheme would also cause a moderate level of harm to the openness of the Green Belt and limited harm to the purposes of including this site within it. In line with the Framework these harms attract substantial negative weight.
23. Saved Policy BAS GB1 of the Basildon District Local Plan (the BDLP) defines the extent of the Borough's Green Belt. However, this policy does not have any specific control over development within it. Nonetheless, paragraph 147 of the

Framework directs the decision-maker to resist inappropriate development in the Green Belt except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Other effects

Character and appearance

24. In terms of its character and appearance, the appeal site's existing character is typical of many of the features of the much larger landscape character area LCA11 within which it sits. The site enjoys a high level of containment from the wider surrounding countryside as a result of the combination of peripheral vegetation and adjacency in part to the built-up area.
25. The appeal site does not fall within a valued landscape within the meaning of paragraph 174 of the Framework. The area within the site that is proposed for development would extend beyond that envisaged in the proposed allocation in the withdrawn local plan. However, in its wider setting, a substantial area of countryside would remain between the site and neighbouring settlements. Overall, the appeal proposal would not cause the substantial erosion of the countryside forming this part of the Borough. Despite the loss of the appeal site to development, the prevailing overall character and setting of Billericay's urban area would be maintained.
26. Furthermore, the appellant has demonstrated through their landscape evidence that a suitable mitigation strategy could be secured to limit the visual impact of the development throughout the year when viewed from public footpath No 32 and the site's immediate surroundings. There would also be an opportunity to soften the existing edge to the existing built-up area.
27. I am therefore satisfied that the resulting development has scope to sit comfortably and successfully assimilate with its existing residential and countryside context. The important finer details of the scheme can be adequately controlled by planning conditions and at the reserved matters stage to ensure this. Although the appeal scheme will change the character and appearance of the site, on this particular occasion this does not translate to unacceptable harm to the character and appearance of the surrounding area.
28. The scope of Policy BAS BE12 of the BDLP seeks to resist new residential development where any material harm to the character and appearance of the surrounding area would arise. As such, there is no conflict with this policy. Neither is there conflict with paragraph 174 of the Framework which states that decisions should recognise the intrinsic character and beauty of the countryside.

Traffic and highway safety

29. It is common ground that being directly adjacent to Billericay, the appeal site is accessible to a large range of services and facilities. However, the appeal proposal would still give rise to a notable increase in the level of traffic which would rely on the surrounding local highway network, including Kennel Lane. Set against this, the appeal proposal would secure improved connectivity across the appeal site from existing residential areas to the wider bus routes, public footpath and cycle network.

30. The submitted details of the proposed access off Kennel Lane and the associated changes to the nearby roundabout are uncontested by the Local Highway Authority and the Borough Council. The appellant's extensive assessment of the highway impacts¹ are also agreed. Furthermore, the imposition of the agreed schedule of planning conditions and planning obligations covering access, sustainable transport, pedestrian connectivity, and parking would adequately safeguard against any unacceptable highway related consequences of the appeal proposal. They would also ensure that the prospective occupants enjoy a good level of accessibility to local services and facilities. My assessment of these matters leads me to the same conclusion as the main parties and Local Highway Authority.
31. In this context, I am satisfied that the concerns raised by the interested parties about access and the capacity of the local highway network to safely support the appeal proposal are not supported by contrary evidence. Based on the uncontested submitted highway evidence, coupled with my own observations, which coincided with the school run, I do not find that there will be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network will be severe.
32. The resulting improvements to pedestrian connectivity across the appeal site from existing residential areas to the wider bus routes, public footpath and cycle network is a moderate benefit.
33. Overall, in the context of paragraph 111 of the Framework and Policy BAS BE12 of the BDLP, the predicted traffic and highway effects of the appeal scheme do not indicate to me that it should be refused. Consequently, subject to the imposition of suitably worded planning conditions to manage access and highway related details, there is no conflict with the development plan or the Framework in this regard.

Living conditions

34. The submitted illustrative layout shows built components in the upper section of the appeal site to be located to the south of existing dwellings on Windmill Heights and Bell Hill Close and to the west of Langham Crescent. Occupiers of these properties are currently able to look out across extensive rolling open countryside. From the submitted evidence and my site inspection it is clear that the appeal proposal would change those vistas. The appeal scheme would also change the existing visual and auditory experiences of those who use public footpath No 32.
35. Crucially, current Government guidance on determining planning applications indicates that planning is concerned with land use in the public interest rather than the protection of purely private interests. In terms of resulting levels of outlook, disturbance, privacy, daylight and sunlight, the submitted drawings demonstrate that there is sufficient scope in principle to secure appropriate separation distances, building heights and landscaping at the reserved matters stage. I find that although there would be change for those existing occupants, this would not amount to a situation which would lead to unacceptable living conditions.

¹ Core documents CD1.25, CD7.13 and CD7.13a.

36. I have already identified that the appeal proposal would establish new public vistas and greater connectivity which would, in part, offset the contextual changes which would be experienced by users of public footpath No 32. However, there is sufficient scope through planning conditions and the reserved matters to achieve a high-quality environment through the careful treatment of layout, design and landscaping.
37. The scope of Policy BAS BE12 of the BDLP extends only to safeguarding the amenities of adjoining residents. It states that permission for new residential development should be refused if it causes material harm to the character of the surrounding area, including the street scene, overlooking, noise or disturbance, overshadowing or overdominance. I have already concluded that there would be no harm to the character and appearance of the surrounding area. Moreover, significantly the Council has not made a case that neighbouring residents' living conditions will be affected to an extent that poses conflict with that policy. Overall, although there will be change as a consequence of the proposed development, I do not find that this represents a conflict with Policy BAS BE12 of the BDLP or the Framework.

Community infrastructure capacity

38. The appeal proposal will generate additional demands on healthcare and also early years, primary and secondary educational capacity. Interested parties have raised concerns about the capacity of these local services to support such increased demands. However, I am satisfied that the submitted legal agreement, which has been signed by the main parties and Local Education Authority, would secure appropriate educational mitigation to address this at an appropriate stage in the delivery of the appeal scheme. Moreover, there is no substantiated evidence before me to corroborate the interested parties' concerns about healthcare capacity to lead me to reject the Council's assessment on that matter.
39. Consequently, in the absence of harm there is no conflict with the BDLP or the Framework in these regards. However, as these obligations are mitigation, they do not constitute material benefits.

Flood risk

40. The appellant's evidence assesses flood risk both within the appeal site and beyond. My attention has been drawn to some unfortunate episodes of flooding in the vicinity of the appeal site and interested parties' concerns that this will be exacerbated by the appeal scheme.
41. Concerns about the adequacy of the submitted Flood Risk Assessment and Surface Water Strategy have been expressed by interested parties. However, the appellant's evidence is uncontested by both the Council and the Lead Local Flood Agency (LLFA) who have a working local knowledge of the area and crucially, no substantiated evidence was presented to me to demonstrate any methodological flaws in those assessments.
42. The appellant's evidence explains that they cannot address existing flood events outside the appeal site at the low spot along Kennel Lane because of consequential increased risk downstream and physical constraints associated with the existing culvert which falls within public control. However, that evidence also demonstrates that contrary to interested parties understanding,

discharge to the south-western watercourse is not proposed. Moreover, for more intense events it is predicted that larger reductions in the discharge rate can be achieved through the appeal scheme and there will be a significant reduction in the existing flows draining to this watercourse and associated culvert. Overall, the appellant has demonstrated that the proposed discharge rates from the appeal site will provide significant betterment off-site compared to the pre-development scenario.

43. Therefore, subject to appropriately worded planning conditions, I am satisfied that increased flood risk as a direct consequence of the appeal scheme can be avoided. The identified betterment relating to discharge rates represents a moderate benefit of the appeal proposal. Subject to the imposition of suitably worded planning conditions, there is no conflict with the development plan or the Framework in this regard.

Biodiversity

44. Although the appeal proposal will result in the loss of undeveloped countryside, the main parties' evidence confirms that this arable field is limited in the species it can support due to the nature of the existing monocrop farming activity. However, the edges are identified as supporting greater diversity and in particular the western edge.
45. The appeal scheme shows that the western edge is being retained as a green link that will connect to the proposed open space. The appellant's evidence identifies opportunities for the creation of a new species rich habitat to support new foraging activity for species originating from beyond the appeal site. I also acknowledge that linkages to existing wildlife corridors would be improved as part of the green infrastructure proposals.
46. The submitted ecological evidence demonstrates that appropriate mitigation can be secured to avoid any residual harm. Furthermore, a biodiversity net-gain of around 19% is proposed and this could be delivered as part of the green infrastructure proposals. The Framework only requires a net-gain, and the proposal therefore goes significantly beyond current policy requirements. Consequently, this aspect of the biodiversity proposals is a moderate benefit of the appeal scheme.
47. Time has elapsed since the supporting ecological studies were undertaken. However, there is consensus between the main parties that the lead in times for securing the approval of the reserved matters is such that any significant change in the baseline position is unlikely. However, I agree that as a precautionary approach, a planning condition requiring an updated Ecological Impact Assessment and Reptile Mitigation Strategy is necessary so that any unforeseen significant changes in the baseline position are detected and addressed through mitigation. A condition is also necessary to ensure that the appeal scheme is implemented in accordance with these studies.
48. The main parties agree that the appeal proposal would not give rise to increased recreational pressure of a level which would cause harm to the Norsey Woods Site of Special Scientific Interest (SSSI) and Mill Meadows, a designated Local Wildlife Site, SSSI and Local Nature Reserve. This is because of these sites' existing management arrangements, as well as the proposed provision of a significant area of open space within the appeal site.

49. Overall, the appellant has demonstrated that, subject to the above-mentioned conditions, the appeal proposal will not conflict with Policy BAS C1 of the BDLP or paragraph 180 of the Framework.

Archaeology

50. The submitted heritage evidence confirms that the appeal proposal would not affect any designated heritage assets. However, Mesolithic and Neolithic flintwork has been identified in the vicinity of the site and further isolated and residual finds can be anticipated. A low density and low complexity of Roman features have also been recorded from trial trench evaluation work which has been undertaken.
51. Nonetheless, the appeal site has been assessed as having a low potential for evidence of in-situ settlement activity dating to these and later periods. Any which might exist is predicted to be associated with peripheral activity. The Council has not disputed the proportionality of the submitted evidence in this regard. Moreover, neither the Borough Council nor Essex County Council has raised objection to the scheme on any heritage grounds and are satisfied that the necessary mitigation can be secured by an appropriately worded planning condition.
52. In the absence of evidence to the contrary, and subject to a planning condition to manage the implementation of appropriate archaeological works, I conclude that there would be no heritage harm in this instance. The appeal proposal does not conflict with the development plan or the Framework's heritage policies.

Summary of harmful effects

53. In summary, I find no other harm to add to the harm to the Green Belt as described earlier.

Other considerations

Council's Green Belt Review evidence base

54. I have had regard to the Council's Green Belt Review evidence which led to the selection of the appeal site as a draft housing allocation. However, the local plan examination did not reach a stage where the Inspector's conclusions on the release of the site were reached. In line with the Framework the withdrawn plan carries no material weight. However, in the absence of both an up-to-date local plan and clear demonstration of a material change in circumstances which justifies a different conclusion to be reached in respect to this particular site, that evidence base weighs very heavily in favour of the appeal proposal.

Past and future housing land supply and delivery

55. It is common ground² that the Borough's housing land supply falls within the range of 1.76 years and 2.3 years. However, during the round table discussion on housing supply the Council's revised position was reduced to around 1.89 years. The submitted evidence also demonstrates that in terms of overall housing delivery, the Borough is the 7th poorest performing out of the 328 local authorities nationally. In this regard the Council has failed to deliver its annual housing requirement since the 2016-2017 monitoring period. In the 3

² Core document ref CD7.26

years to January 2021 the Council has delivered only 44%, 45% and 41% of its requirement respectively.

56. The particular appeal scheme's significant contribution to boosting the Borough's overall housing land supply and delivery for an appropriate mix of households within the next 5 years is not disputed by the Council. Irrespective of the definitive supply figure, it is clear that the identified future housing land supply is substantially short of the 5-year requirement. My attention has been drawn to recent Decisions which will contribute to the housing land supply. Nonetheless, an acute level of shortfall would remain.
57. The Housing Delivery Test ("the HDT") results demonstrate that such inadequate housing delivery has been persistent. Furthermore, the submitted evidence does not indicate that there are other more suitable sites for housing development either in the Green Belt or elsewhere which would provide at least some prospect of an improving picture whilst a new plan is being prepared should this appeal be dismissed.
58. The persistent shortfall in housing delivery means the requirement for a HDT Action Plan 2021³ has been triggered as a sanction to address these serious failings. Significantly, the most critical step identified in the Council's HDT Action Plan has been severely delayed with the recent withdrawal of the emerging local plan. Moreover, the evidence which has been put before me demonstrates that there is no prospect of a plan-led solution to address the severe lack of supply in the short to medium term given the Council's recent decision to withdraw the emerging Local Plan from examination.
59. Crucially, during cross-examination the Council accepted that, consistent with the findings of the 2018 Topic Paper, there remains substantial unmet housing need that, in the absence of an up-to-date development plan, can only be met by the development of suitable Green Belt sites. This is set in a context where the BDLP's provision for the long-term expansion of the Borough's built-up areas did not extend beyond 2011. This concession heavily reinforces the reality of the ongoing inability of the Council to maintain the required pipeline supply of suitable, deliverable sites on a rolling 5-year basis.
60. In short, the evidence before me conveys at this particular moment in time the continuation of what is already an acute deficiency and extremely bleak outlook for local housing provision for a further protracted period. The capability of the appeal proposal to contribute significantly to addressing the identified extremely serious housing land supply and delivery deficits weighs considerably in favour of this appeal.

Ability to meet local housing needs

61. The appellant's Affordable Housing Technical Note⁴ confirms that once Right to Buy deductions are made, the 5-year position for completions represents only 2% of affordable housing needs. This is exacerbated by the uncontested affordable housing evidence which demonstrates an enormous shortfall in delivery of homes over the next 5-year period. This existing position is a clear symptom arising from the continuing overall housing land supply and delivery deficiencies of the Borough. There is a persistent trend of a significant number of people being unable to access their own affordable home in the Borough

³ Core document ref CD6.3

⁴ Core document Ref CD7.19

unless suitable, technically unconstrained, well located housing sites which are capable of meeting those needs, are brought forward now in advance of the new plan.

62. The appeal scheme proposes the delivery of 72 affordable units of a range of types and sizes to reflect the varied needs of the Borough. This is significantly in excess of the Council's upper range which is set out in Policy BAS S5 of the BDLP. The significance of this particular appeal scheme's level of contribution to boosting an appropriate mix of affordable housing in the Borough within the next 5 years is not disputed by the Council.
63. The submitted legal agreement contains planning obligations which are capable of securing the appropriate level and mix of proposed affordable housing provision and management of the nomination rights. The legal agreement, as a mechanism to ensure that the appeal scheme delivers the important housing benefits of the appeal proposal weighs very heavily in favour of the appeal proposal.
64. In summary, the evidence before me demonstrates an ongoing acute and continuing extremely bleak outlook for local affordable housing provision for a further protracted period. The capability of the appeal proposal to contribute significantly to addressing the existing and predicted very serious affordable housing shortfall within the next 5 years attracts considerable weight in favour of this appeal.

Marketing strategy

65. The submitted legal agreement contains planning obligations which are capable of securing the prioritisation of local people in the marketing of the proposed new homes in the first instance. This will ensure that the appeal proposal is capable of making a significant positive contribution to this area's current housing position in terms of the supply of housing which meets existing local needs in terms of type and affordability. As the mechanism to ensure that these important social and economic housing benefits are delivered locally as proposed, this agreement weighs very heavily in favour of the appeal proposal.

Economic impact

66. The proposed planning obligation will secure local employment and skills provision. The scale and nature of the appeal proposal is such that overall, it will provide a moderate economic benefit to the local economy during both the construction and post-construction phases. This is consistent with paragraph 81 of the Framework.

Whether very special circumstances exist

67. I have found that the appeal proposal represents inappropriate development in the Green Belt, which is harmful by definition. It will also cause moderate harm to openness and limited harm to the 3 purposes of including the appeal site in the Green Belt. In accordance with paragraph 148 of the Framework, any harm to the Green Belt must be given substantial weight, weighing against the appeal proposal.
68. In terms of other considerations, my findings in respect of the effect on character and appearance, living conditions, community infrastructure and archaeology are of neutral consequence to my assessment.

69. I have found that the current local planning policy context has and will continue to significantly hinder the supply and delivery of market and affordable housing in the Borough for a further protracted period. At this moment in time, the appeal proposal is an appropriate opportunity to significantly boost the supply of both market and affordable homes for local people in the short term in the absence of a new development plan for the Borough. I have concluded that these considerations both weigh considerably in favour of the appeal proposal.
70. I have also found that the appeal proposal will provide a range of other benefits. It will increase permeability within the local area by facilitating new routes which connect to the existing wider movement network. There will be off-site betterment in terms of flood risk through reductions in the existing discharge rates from the site. It will facilitate local biodiversity net-gains significantly above that sought by existing planning policy. It will contribute to the availability of local skills and training opportunities as well as contributing to the local economy at the construction and occupation stages. Each of these benefits weigh moderately in favour of the appeal proposal.
71. The demonstration of very special circumstances is an extremely high policy bar to cross. Overall, I conclude that the collective totality of the other considerations of this particular case, when set against the particular local policy context and absence of any technical barriers to development of this site clearly outweigh the harm identified by reason of inappropriateness, together with the harm to the openness of this part of the Green Belt and the 3 purposes for including this land within it. Consequently, in this particular instance very special circumstances do exist to justify allowing this appeal.

Conditions

72. An agreed final schedule of conditions was submitted jointly to the Inquiry subsequent to the relevant round-table discussion. This includes a number of pre-commencement conditions. I have had regard to the advice set out in the Planning Practice Guidance and in the Framework in terms of both the need for each condition and also for their clear, precise and enforceable wording. The circumstances and nature of this outline proposal mean that the pre-commencement conditions are necessary to make the development acceptable in planning terms. This is because a later trigger would limit their effectiveness.
73. The standard timescale conditions and the requirement for reserved matters to be agreed are necessary to accord with section 92(2) and section 92 of the Town and Country Planning Act 1990 respectively. Condition No 4 specifying a list of approved plans and documents is necessary in the interests of clarity. Conditions are also necessary to control the scope of the reserved matters in terms of the outstanding details set out in condition No 15.
74. Due to the appeal site's relationship with existing residential properties, condition No 5 is necessary and justified to ensure the construction phase is undertaken in accordance with appropriate environmental controls. Condition Nos 6, 13, 14 and 21 are necessary to ensure that the development is based upon the most up to date ecological baseline and does not have an adverse impact on and enhances local biodiversity as predicted. These conditions will ensure that the development accords with the Framework and the provisions of the Wildlife and Countryside Act 1981.

75. Condition Nos 7, 8 and 9 are necessary to manage any risks associated with on-site contamination. Condition No 10 is necessary to mitigate against any archaeological harm. Condition Nos 11 and 12 are necessary to ensure no flood risk arises from the development and that the off-site betterment predicted is secured. These conditions will ensure that the development accords with the Framework in these regards.
76. In the interests of highway safety and securing sustainable transport opportunities, condition Nos 16, 17, 18, 19 and 20 are necessary to manage the construction of the proposed access and associated highway works, works to public footpath No 32 and other proposed walking, cycling and bus infrastructure. Condition No 22 is justified as an alternative to securing necessary library provision for prospective residents.
77. Condition No 23 will secure an appropriate proportion of accessible and adaptable dwellings as part of the overall housing mix to be delivered. Condition No 24 will ensure appropriate water efficiency is integrated into the scheme. The main parties advanced these conditions to maximise the sustainable credentials of the appeal scheme, and as such meet the prescribed tests.

Planning Balance

78. For the reasons given earlier in this Decision, the appeal proposal does not conflict with the saved policies of the BDLP when taken as a whole. I have found that very special circumstances exist which justify allowing this particular development in the Green Belt. Consequently, national Green Belt policies do not provide a clear reason for refusing the development. There are no other policies within the Framework that indicate that the appeal proposal should be refused. Furthermore, the adverse impacts of granting permission in this particular instance do not significantly and demonstrably outweigh the benefits. Therefore, there is no justified basis to resist the appeal proposal.

Conclusion

79. For the reasons given above, I conclude that the appeal should be allowed, and outline planning permission be granted, subject to the conditions specified in the attached Schedule and the submitted planning obligations.

C Dillon

INSPECTOR

SCHEDULE OF CONDITIONS

1. Reserved Matters to be Submitted

Approval of the details of the appearance, landscaping, layout, and scale of the proposed development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development begins and the development shall not be carried out except in accordance with the details so approved.

2. Timing of Reserved Matters Submission

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this outline permission.

3. Timing of Reserved Matters Commencement

The development 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.

4. Approved Plans/Documents

The development hereby permitted shall be completed in accordance with the following approved plans/documents:

- Drawing 1297.01 – Site Location Plan
- Drawing 1297.02 – Site Survey Plan
- Drawing 1297.05A – Land Use Parameter Plan
- Drawing 1297.06A – Green Infrastructure Parameter Plan
- Drawing 1297.07 – Access and Movement Parameter Plan
- Drawing 1297.08B – Building Heights Parameter Plan
- Drawing ITB14677-GA-002C – Potential Shared Use Footway / Cycleway Along A176
- Drawing ITB14677-GA-008A – Potential Footway/Cycleway Link onto Hunters Avenue
- Drawing ITB14677-GA-009B – Potential Footway/Cycleway Link onto Windmill Heights
- Drawing ITB14677-GA-010 – Proposed Site Access from A176 Noak Hill Road
- Drawing ITB14677-GA-012 – Proposed Bus Stop Improvements – A129 Wickford Road
- Drawing ITB14677-GA-013 – Proposed Bus Stop Improvements – A176 Noak Hill Road roundabout with right turn lane
- Ecological Impact Assessment (the Ecology Partnership, Dec 2020)
- Flood Risk Assessment (Odyssey, Dec 2020) and Flood Risk Assessment Addendum (Odyssey, Feb 2021).

PRIOR TO COMMENCEMENT CONDITIONS

5. Construction Environmental Management Plan (CEMP), Site Waste Management Plan (SWMP) and Construction Logistics Plan (CLP)

A. No development shall commence until a Construction Environmental Management Plan (CEMP), Site Waste Management Plan (SWMP) and Construction Logistics Plan (CLP) has been submitted to and approved in writing by the Local Planning Authority. The Plans shall incorporate details of:

- a) construction traffic management.
- b) the parking of vehicles of site operatives and visitors
- c) details of access to the site.
- d) loading and unloading and the storage of plant and materials used in constructing the development.
- e) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate.
- f) wheel washing facilities.
- g) measures to control the emission of noise, dust, and dirt during construction.
- h) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- i) details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated by the developer's representatives to those residents consulted on the application. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.
- j) construction phasing plan.

B. The approved CEMP, SWMP and CLP shall be implemented in full for the entire period of the construction works.

C. No materials produced as a result of the site development or clearance shall be burned on site.

6. Construction Environmental Management Plan (Biodiversity)

A. No development shall commence until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority following the recommendations made within the Ecological Impact Assessment (The Ecology Partnership, December 2020).

B. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECow) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

C. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

7. Land Contamination (Site Investigation – Ground Gas)

No development shall commence until a site investigation has been carried out to fully and effectively characterise the nature and extent of any land contamination (ground gas) and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway- Receptor principle, in order that any potential risks are adequately assessed,

taking into account the sites existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority within three months of their completion.

8. Land Contamination (Submission of Remediation Scheme)

If identified as being required following the completion of the site investigation, no development shall commence until a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, has been submitted to and approved in writing by the Local Planning Authority and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority. If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing with the Local Planning Authority and all requirements shall be implemented and completed in accordance with the approved method statement.

9. Land Contamination (Implementation of Approved Remediation Scheme)

Following completion of measures identified in the remediation scheme, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved method statement(s).

10. Archaeological Investigation

A, No development shall commence until a programme of archaeological investigation has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

B. No development shall commence until the completion of the programme of archaeological evaluation identified in the WSI and confirmed by the Local Planning Authority's archaeological advisors.

C. For those parts of the site which have archaeological interest, a mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. For land that is included within the areas of mitigation, no development shall take place other than in accordance with the agreed mitigation strategy.

D. A post excavation assessment shall be submitted to the Local Planning Authority within six months of the completion of the archaeological investigation. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the mitigation strategy.

11. Surface Water Drainage Scheme and Flood Risk

A, No development shall commence until a detailed 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 scheme shall include but not be limited to:

- Limiting discharge rates to the 1 in 1-year greenfield rate for all storm events up to and including the 1 in 100-year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall should be demonstrated. Greenfield run-off rate calculations should be provided in line with the contributing area for the site.
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event. All basins should have suitable sediment forebays or similar.
- Provide rainwater reuse as much as possible throughout the drainage strategy.
- Include above ground green features throughout the site as much as possible, in order to enable interception storage/source control, and conveyance, but also benefits in terms of amenity and biodiversity.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all run-off leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

B. The approved scheme shall subsequently be implemented prior to first occupation and shall be retained at all times thereafter.

12. Surface Water Drainage Scheme and Flood Risk (Construction Phase)

A. No development shall commence until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and to prevent pollution has been submitted to and approved in writing by the Local Planning Authority.

B. The approved scheme shall be adhered to and implemented throughout the construction period.

13. Reptile Mitigation Strategy

A. No development shall commence until a Reptile Mitigation Strategy addressing the mitigation and translocation of reptiles has been submitted to and approved in writing by the Local Planning Authority.

B. The Reptile Mitigation Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g., native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance of the Receptor area(s).

- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

C. The Reptile Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained.

14. Ecological Impact Assessment

A. Prior to commencement of the development further ecological surveys shall be undertaken of the site. These shall inform an updated Ecological Impact Assessment and be submitted to the Local Planning Authority.

B. The ecological surveys shall be commissioned to

- a) establish if there have been any changes in the presence and/or abundance of protected species; and
- b) identify any likely new ecological impacts that might arise from any changes.

C. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development.

D. Works shall then be carried out in accordance with the new approved ecological measures and timetable.

DETAILS TO ACCOMPANY RESERVED MATTERS SUBMISSIONS

15. Application(s) for reserved matters consent (as relevant) shall be accompanied by:

- A. Tree Survey and Arboricultural Impact and Method Statement.
- B. A detailed Daylight and Sunlight Assessment (in respect of the proposed residential units and surrounding occupiers) and a Thermal Comfort Assessment (in respect of the proposed residential units).
- C. A sustainability and energy statement.
- D. An updated Biodiversity Survey and a Biodiversity Compensation and Enhancement Strategy for any identified protected and priority species in accordance with the updated Biodiversity Survey.
- E. A scheme of noise insulation for the proposed residential units.
- F. Full details of all external façade surfaces, including specifications, annotated plans and fire safety ratings.
- G. A detailed scheme for the provision of car parking / powered two-wheeler parking, Blue Badge parking, active and passive electric vehicle charging points and for any blocks of flats cycle parking.
- H. Details of the existing and finished site levels, the finished floor and ridge levels and the finished external surface levels.
- I. Full details of the internal layout of the proposed residential units which shall be designed to comply with the Technical Housing Standards - Nationally Described Space Standard (2015), or such updated guidance.
- J. External Lighting Strategy.
- K. A Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, for the development, including maintaining yearly drainage logs.

- L. A detailed refuse and recycling strategy, including the design and location of the refuse and recycling stores.
- M. A Landscape and Ecological Management Plan (LEMP).
- N. Full details of the private amenity, communal amenity and open spaces, including any children's play space.
- O. A Secure by Design Statement.

PRIOR TO OCCUPATION CONDITIONS

16. Kennel Lane/Noak Hill Road Junction Works

Prior to first occupation of the development, the access point at the Kennel Lane arm onto the Noak Hill Road Roundabout shall be realigned and all other works shall be completed as shown in principle on DWG ITB14677-GA-010. The approved visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction thereafter.

17. Public Footpath Upgrade

Prior to first occupation of the proposed residential development PROW footpath No. 32 located along the eastern side of the site shall be upgraded by means of surfacing and appropriate signing to improve accessibility. During construction phases the public's rights and ease of passage over public footpath No. 32 shall be maintained free and unobstructed at all times.

18. Walking and Cycling Infrastructure (Hunters Avenue / Windmill Heights)

Prior to first occupation of the development, improvements shall be provided to the access from Hunters Avenue and Windmill Heights as shown on drawings ITB14677-GA-008A and GA-009B.

19. Walking and Cycling Infrastructure

Prior to occupation of the 50th dwelling within the development, a new continuous shared footway/cycleway connection of a minimum width of 3 metres shall be provided from the existing subway on the A176 adjacent to the Southend Road / A176 Roundabout along the eastern side of A176 through the development, as shown on drawing ITB14677-GA-002C and shall connect into the new access arrangement at Kennel Lane.

20. Bus Infrastructure Enhancements

Prior to first occupation of the proposed development, bus infrastructure enhancements shall be provided to upgrade existing facilities on A129 Wickford Road to include new raised kerb facilities on both stops adjacent to Maple Mead and new shelter, raised kerbs, flagpole, timetable, and Real Time Information at the bus stops on both sides of the A176 Noak Hill Road to the south of the Kennel Lane Roundabout, as shown on drawings ITB14677-GA-012 and ITB14677-GA-013. Both sets of improvements shall be completed at the expense of the developer and to the satisfaction of the Highway Authority.

COMPLIANCE CONDITIONS

21. Landscape Replacement

Any plants, shrubs or trees required as part of the implementation of the landscaping

reserved matters for the development that die or are removed, damaged or become diseased within a period of FIVE years from the substantial completion of the development shall be replaced to the satisfaction of the Local Planning Authority in the next planting season with others of a similar size and species.

22. Superfast Broadband

All residential units within the development shall be fitted with superfast or compatible broadband capability which shall be maintained at all times thereafter.

23. Accessibility and Adaptability

A minimum of 10% of all residential units shall comply with Building Regulations Optional Requirement Approved Document M4(2) Category 2: Accessible and adaptable dwellings (2015 edition). Evidence of compliance shall be notified to the building control body appointed.

24. Water Efficiency

All residential units within the development shall comply with the water efficiency optional requirement in paragraphs 2.8 to 2.12 of the Building Regulations Approved Document G. Evidence of compliance shall be notified to the building control body appointed.

END OF CONDITIONS SCHEDULE

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Atkinson, of Counsel, instructed by Basildon Borough Council

He called:

Mr Humphreys of Basildon Borough Council

Also, for the round table discussions:

Ms Lyons of Basildon Borough Council

Ms Richardson of Basildon Borough Council

Ms McKay of Basildon Borough Council

Mr Lawrence of Essex County Council

Ms Cooke of Essex County Council

FOR THE APPELLANT:

Mr Litton of King's Counsel, instructed by Gleeson Land

He called:

Ms Simes of fabrik Limited

Mr Howard of i-Transport LLP

Ms Mulliner of Terence O'Rourke Ltd

Also, for the round table discussions:

Ms Tamblyn of The Ecology Partnership

Mr Smith of LLB Law

INTERESTED PARTIES:

Cllr Dr Moore of Basildon Borough Council on behalf of local residents

Ms Watkins local resident

DOCUMENTS RECEIVED AT THE INQUIRY

On behalf of the Council:

ID.2 Basildon Council Opening Statement

ID.10 Neighbour Letter (46e)

ID.11 CIL Compliance Statement (Final V6 03-10-2022 - Revised)

ID.13 Basildon Council Closing Statement

On behalf of the appellant:

ID.1 Appellant Opening Statement

ID.5 Maitland Lodge Statement of Common Ground - Planning (22-08-01)

ID.6 Maitland Lodge Statement of Common Ground – Transport

ID.9 Section 106 Summary Note (Final 03-10-2022)

ID.12 Landscape and Visual Representation to ID.10

ID.14 Appellant Closing Statement

Jointly for the Council and the appellant:

ID.4 Appeal Decision 3285386 (Eastgate Shopping Centre)

ID.7 Draft List of Conditions (Final 03-10-2022 Draft V10 - Revised)

ID.8 Section 106 Agreement (Engrossment Copy 03-10-2022)

By Interested parties

ID.3 Councillor Dr Moore copy of verbal statement made on behalf of residents.