



Department for
Communities and
Local Government

Our Ref: APP/M1520/A/14/2216062

Ms Nicky Parsons
Pegasus Planning Group
Unit 3 Pioneer Court
Chivers Way
Histon
Cambridge CB24 9PT

21 April 2017

Dear Ms Parsons

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY CHARLES CHURCH AND BURROWS AND DUNN LTD
LAND SOUTH OF JOTMANS LANE, BENFLEET
APPLICATION REF: CPT/122/13/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc (Hons) BArch IHBC, who held a public local inquiry between 8 and 11 September 2015 into your client's appeal against the decision of Castle Point Borough Council to refuse planning permission for the redevelopment of the site to provide up to 265 dwellings and associated access, parking, footpath improvements, ecological enhancements, open space and landscaping, in accordance with application ref: CPT/122/13/OUT, dated 28 February 2013.
2. On 31 March 2014, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or on sites of over 5 hectares, which 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, and proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR4.4-4.5, the Secretary of State is satisfied that the Environmental Statement and the Addendum to the Environmental Statement comply with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. The Secretary of State referred back to parties on 26 April 2016 to seek their views on the implications for this appeal, if any, of the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168. Responses received are set out in Annex A.
7. On 25 August 2016 the draft Castle Point New Local Plan 2016 (dNLP) was submitted to the Secretary of State for examination. An examination hearing into duty to co-operate was held on 12 December 2016. On 10 March 2017 the Inspector issued his Report on the Examination of the Castle Point New Local Plan 2016, which concluded that the duty to co-operate had not been complied with and recommended non-adoption of the New Local Plan under Section 20(7A) of the Planning & Compulsory Purchase Act 2004 (as amended).
8. At the meeting of the Council on 29 March 2017 the Council determined to withdraw the dNLP. A Notice of Withdrawn Plan was issued by the Council on 4 April 2017.
9. Other post-inquiry representations are also set out in Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of the material listed in Annex A may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

10. In reaching his decision, 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.
11. In this case the development plan consists of the saved policies of the Castle Point Borough Council Local Plan (LP), adopted on 17 November 1998. LP Policy GB1, which dealt with control of development in the Green Belt, was not saved. The Secretary of State has taken into account the Court of Appeal's decision that notwithstanding the failure to save LP Policy GB1, the Green Belt designation, shown on the Proposals Map, persists (IR5.1).
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). In the light of the Chief Planner's letter of 31 August 2015 and the Written Ministerial Statement of 17 December 2015, he considers that it is national policy that (subject to the best interests of the child) personal circumstances and unmet

need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. He therefore disagrees with the Inspector's view at IR11.56 that this is guidance.

Emerging plan

13. The Inspector has in his report referred to a version of the dNLP which was published and made available for consultation between January and March 2014. Subsequent to the inquiry an updated version of the Plan was consulted on between 16 May and 30 June 2016. Subsequent to the events set out in paragraphs 7 and 8 above, the dNLP was withdrawn.
14. Given the withdrawal of the dNLP, the Secretary of State takes the view that no weight can be afforded to the withdrawn policies.

Main issues

15. The Secretary of State agrees with the Inspector that the main issue in this case is whether the proposal represents an inappropriate form of development in the Green Belt and if so, whether there are any other considerations sufficient to outweigh the harm by reason of inappropriateness, and any other harm, and thereby justify the proposal on the basis of very special circumstances.

Green Belt impacts

16. For the reasons given at IR11.6-11.9, the Secretary of State agrees that the proposal would represent inappropriate development in the Green Belt, would harmfully and permanently reduce openness and would conflict with the purposes of the Green Belt. He further agrees that substantial weight should be given to any harm to the Green Belt.

Any other harm

17. The Secretary of State has carefully considered the Inspector's assessment of harm to the character and appearance of the area. For the reasons given in IR 11.10-11.14, he agrees that the degree of landscape harm caused by the proposal would be limited, and like the Inspector considers that it carries moderate weight against the proposal.
18. For the reasons given at IR11.15-19, he agrees with the Inspector that the proposal would have no harmful highway impact, and this is not a matter that weighs against the proposal. He has taken into account the representations which were made about flooding and drainage, including the views of the Environment Agency and Anglian Water (IR11.22 -24). He shares the Inspector's view that the proposal could lead to an improvement in the existing situation, and that issues around flooding do not weigh against the proposal. For the reasons given at IR11.20 and 11.25, he considers that issues around air quality and local services do not weigh against the proposal. Like the Inspector he considers that concerns about the potential impact of construction traffic can be addressed by means of conditions, or by the Highway Authority (IR11.21). He does not consider that this weighs against the proposal.

Other considerations

19. For the reasons given at IR11.26-11.41, the Secretary of State agrees with the Inspector that in the context of the Government's requirement for Councils to display a five-year supply of deliverable housing sites, the housing supply situation in Castle Point is falling well short of expectations. The Inspector considers that the correct figures for supply of

deliverable housing sites lies somewhere in between 0.4 years and 1.1 years (IR11.35). The Secretary of State has taken into account the judgment in *St Albans CC v Hunston Properties Ltd* [2013] EWCA Civ 1610, which indicates that in the absence of an adopted housing requirement, the full objectively assessed need should be used to calculate whether there is a 5-year housing land supply. On that basis, the Secretary of State agrees with the Inspector at IR11.35 that the correct figures lies much closer to the appellant's worst case of 0.4 years than the Council's best case of 1.1 years. He further agrees with the Inspector that the proposal would bring forward market and affordable housing in an area where there has been a longstanding failure to provide sufficient new housing, and that in view of the prevailing housing supply situation in Castle Point, that carries very substantial weight in favour of the scheme (R11.54).

20. For the reasons given in IR11.42-11.50, the Secretary of State agrees with the Inspector that the ecological benefits attract significant weight in favour of the proposal (IR11.45), that the site-specific improvements to connectivity and access attract moderate weight in favour of the proposals (IR11.48), and that the provision of open space and the financial contribution towards existing facilities carry no weight in favour (IR11.49). He further agrees that the creation or securing of jobs, the generation of economic activity in the construction process and the stimulation of the local economy carry a considerable degree of weight in favour (IR11.50).

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR9.1-9.13, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

22. Having had regard to the Inspector's analysis at IR10.1-10.7, the planning obligation dated 22 September 2015, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions, for the reasons given in IR10.3-10.7 that the various Schedules of the Agreement comply with Regulation 122 of the CIL Regulations. He considers that the provisions of the Agreement meet the tests at paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, he does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

23. In the absence of any Local Plan policy controlling development in general in the Green Belt, the Council made no reference to the development plan in its reasons for refusal, and did not rely on it in evidence (IR5.2). The Secretary of State agrees with the Inspector that no conflict has been identified with the development plan (IR11.51), and that there is no reason to conclude that the proposal is anything other than in accordance with the development plan (IR11.4). He has gone on to consider whether there are

material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

24. Given that the development plan is silent on Green Belt development policy, the Secretary of State considers that paragraph 14 of the Framework is engaged. He considers that the second limb of paragraph 14 applies, as specific policies in the Framework indicate that development should be restricted. He has therefore gone on to consider whether applying those policies indicates that the development should be restricted.
25. The proposal would represent inappropriate development in the Green Belt of a significant size. It would permanently reduce openness, and conflict with several of the purposes of designation. These harmful impacts on the Green Belt attract substantial weight. Harm to the character and appearance of the area attracts moderate weight.
26. In terms of the benefits of the proposal, the Secretary of State considers that in view of the prevailing housing supply situation in Castle Point, the provision of market and affordable housing attracts very substantial weight. He further considers that the ecological benefits attract significant weight, the improvements to on-site connectivity and access attract moderate weight and the economic benefits attract considerable weight.
27. The Secretary of State has considered carefully whether these considerations amount to very special circumstances which clearly outweigh the harm to the Green Belt and other harm. The Secretary of State has taken into account the extremely low housing land supply, and the withdrawal of the dNLP. This increases uncertainty about the future delivery of housing. He has also taken into account the Written Ministerial Statement confirming the Government's policy that 'subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances'. In the light of the change from guidance to policy (see paragraph 12 above), he considers that this policy carries more force than the Inspector attributes to it. Having considered the facts against this policy, he concludes that the considerations above do not clearly outweigh the harm to the Green Belt and any other harm, and that very special circumstances do not exist. The proposal is therefore in conflict with national policy on the Green Belt, which indicates that development should be restricted.
28. The Secretary of State considers that there are material considerations which indicate that this appeal should be determined other than in accordance with the development plan. He concludes that the appeal should be dismissed and planning permission refused.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the redevelopment of the site to provide up to 265 dwellings and associated access, parking, footpath improvements, ecological enhancements, open space and landscaping, in accordance with application ref: CPT/122/13/OUT, dated 28 February 2013.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an

application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. A copy of this letter has been sent to Castle Point Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

Maria Stasiak

Authorised by Secretary of State to sign in that behalf

Annex A Schedule of representations

DATE	CORRESPONDENT
Post-inquiry representations	
15 September 2015	George Lockhart (2 letters)
14 December 2015	Nicky Parsons, Pegasus Group
11 January 2016	Sharon Ainsley
8 February 2016	Rebecca Harris MP
25 July 2016	Phil Standen, Persimmon
26 July 2016	Nicky Parsons, Pegasus Group
4 November 2016	Sharon Ainsley (Jotmans Farm Action Group)
31 January 2017	Nicky Parsons, Pegasus Group
30 March 2017	Nicky Parsons, Pegasus Group
Representations received following the Secretary of State's reference back letter of 26 April 2016	
10 May 2016	Nicky Parsons, Pegasus Group (letter)
10 May 2016	Kim Fisher, Castle Point Borough Council
10 May 2016	Nicky Parsons, Pegasus Group (email)
11 May 2016	Rebecca Harris MP
1 June 2016	Kim Fisher, Castle Point Borough Council



Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 December 2015

The Town and Country Planning Act 1990

Appeal by

Charles Church and Burrows and Dunn Ltd

against the decision of

Castle Point Borough Council

Inquiry held between 8 and 11 September 2015

Land South of Jotmans Lane, Benfleet

File Refs: APP/M1520/A/14/2216062

Appeal Ref: APP/M1520/A/14/2216062
Land South of Jotmans Lane, Benfleet

- 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 Charles Church and Burrows and Dunn Ltd against the decision of Castle Point Borough Council.
- The application Ref.CPT/122/13/OUT, dated 28 February 2013, was refused by notice dated 1 October 2013.
- The development proposed is the redevelopment of the site to provide up to 265 dwellings and associated access, parking, footpath improvements, ecological enhancements, open space, and landscaping.

Summary of Recommendation: The appeal be allowed and planning permission granted, subject to conditions.

1. Preliminary Matters

- 1.1 The Inquiry opened on 8 September 2015, and sat on 9, 10, and 11 September 2015, when it was closed. Having visited the vicinity of the site briefly, on the day before the Inquiry opened, I carried out an accompanied site visit on 11 September 2015 which took in Jotmans Lane, the appeal site itself, and the public footpath across it, the proposed access points, the junction of Jotmans Lane and the B1006¹ and various parts of the existing estate to the east of the appeal site. After the Inquiry closed, I took in the site from Canvey Way², travelling by car in both directions, spent some time on Canvey Island, and visited the site off Glebelands, referred to below, on an unaccompanied basis.
- 1.2 Throughout the report, I have referred to the submitted documents through the use of footnotes. References thus [--] cross-refer to previous paragraphs in the report.

2. The Site and its Surroundings

- 2.1 As set out in the Statement of Common Ground³, the entirety of the appeal site covering 8.61 hectares, lies within a designated Green Belt. It is bounded by existing dwellings fronting Watlington Road to the east, Jotmans Lane to the north, a railway line on a raised embankment to the south⁴, and open farmland to the west. Further west is the raised carriageway of Canvey Way which acts as the boundary between the Borough of Castle Point, and neighbouring Basildon. There is a public footpath crossing the southern part of the appeal site.
- 2.2 The entirety of the appeal site slopes, relatively gently, from north to south and is currently divided into paddocks by timber post and rail fences to facilitate grazing by horses. To the east of the appeal site is an established residential area, predominantly inter-war housing, laid out to a grid iron plan. The existing vehicular access to the site is from Jotmans Lane.

¹ Known locally, and referred to hereafter, as Cemetery Corner

² The A130

³ ID1 referred to hereafter as SoCG

⁴ The Shoeburyness to Fenchurch Street line

3. Planning and Associated History

- 3.1 The appeal site itself has no relevant planning history. However, the issues raised in this case are similar, in many ways, to those involved in a previous scheme in the Borough of Castle Point, namely a proposed development on Land off Glebelands, Thundersley SS7 5TN where, contrary to the Inspector's recommendation, the then Secretary of State⁵ decided to refuse planning permission for a scheme providing up to 165 dwellings, in the Green Belt, in June 2013⁶. The reasoning behind the conclusion drawn in that case is a significant material consideration here.

4. The Proposal

- 4.1 The proposal is for up to 265 new homes of which 35% are proposed as affordable units. Three points of access are put forward. The first, providing vehicular and pedestrian access, would be from Jotmans Lane while the second, from Perry Road, would provide access for cyclists and pedestrians. Vehicular and pedestrian access would also be provided from Loten Road.
- 4.2 The originating application was made in outline with all matters, save for means of access, reserved for future determination. The appeal needs to be dealt with on the same basis, in the light of the plans set out in Annex D⁷, which identify the site, and give details of the various accesses, and associated works to provide them. Other plans, and a series of associated documents, were included with the application⁸. Amongst other things, the plans give details of how the proposal might be accommodated on the appeal site but given that appearance, landscaping, layout and scale are reserved matters, these have to be treated as illustrative only.
- 4.3 The owner of the appeal site controls a substantial landholding around it⁹. Part of this is included within the Greater Thames Marshes Nature Improvement Area. As part of the overall proposal, 7.8 hectares of this land will be made into an Ecology Area, subject to an Ecology Area Management Plan, under the terms of a condition, and the Agreement under s.106¹⁰, that I deal with below. The Ecology Area lies within the boundary of Basildon Borough Council but because the proposals within the Ecology Area Management Plan involve no development, there is no requirement for any parallel planning application.
- 4.4 Being EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, the original application was accompanied by an Environmental Statement¹¹. On 15th July 2015, an addendum to the ES was issued, updating transport and ecological matters¹². The procedural requirements associated with the ES Addendum have all been correctly followed¹³.

⁵ Referred to hereafter as SoS

⁶ CD-I1 Referred to hereafter as the Glebelands appeal

⁷ Which can be found at CD-A5, CD-A10, and CD-A11

⁸ CD-A1 to CD-A4, CD-A6 to CD-A9, and CD-A12 to CD-A18 (listed at ID1 Pages 7 and 8)

⁹ CD-A5 JLB-000-C: Boundary Plan gives details

¹⁰ ID42

¹¹ CD-B1 to CD-B3 Referred to hereafter as ES

¹² CD-B4 to CD-B6 Referred to hereafter as the ES Addendum

¹³ CD-B7 to CD-B12 refer

- 4.5 There has been no sustained suggestion that the ES, coupled with the ES Addendum, fails to meet the requirements of the relevant regulations. On my analysis, it clearly does, and should be taken fully into account in dealing with the appeal.
- 4.6 By decision notice dated 1st October 2013¹⁴, the Council refused planning permission for two reasons. The first, in simple terms, refers to the location of the site in the Green Belt, and the lack of very special circumstances. The second reason is to all intents and purposes, based on prematurity suggesting that the decision as to where new housing should be located in the Borough, ought to be resolved through the Local Plan process.
- 4.7 The appeal was recovered by the SoS on 31st March 2014 on the basis that *'the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which 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 and proposals for significant development in the Green Belt'*.
- 4.8 That the appeal was not heard until September 2015 was because of the ongoing litigation in relation to the decision of the SoS on the Glebelands appeal that I have referred to previously, and further below. Obviously, the question of whether Castle Point continued to have a Green Belt in place was pertinent, and the Inquiry could not open until that matter had been resolved.

5. Planning Policy

- 5.1 The statutory development plan for the area includes the saved policies of the Castle Point Borough Council Local Plan, adopted on 17 November 1998¹⁵. The appeal site lies within the boundaries of the Green Belt, as defined on the Proposals Map¹⁶. The Saving Direction, dated 20 September 2007¹⁷, did not include LP Policy GB1 which dealt with the control of development in the Green Belt. The failure to save this policy led to suggestions at the Glebelands Inquiry¹⁸, subsequently pursued in the High Court, and the Court of Appeal¹⁹, that there is no Green Belt in Castle Point. The Court of Appeal decided that notwithstanding the failure to save LP Policy GB1, the Green Belt designation, shown on the Proposals Map, persists. All parties accept that position.
- 5.2 In the absence of any LP policy controlling development in general in the Green Belt, the Council makes no reference to the development plan in its reasons for refusal²⁰, nor does it rely on it in evidence. Instead, the Council has been largely guided by the approach set out in the National Planning Policy Framework²¹, and the subsequent Planning Practice Guidance²².

¹⁴ CD-C1

¹⁵ CD-D1 Referred to hereafter as LP

¹⁶ CD-D2

¹⁷ CD-D3

¹⁸ CD-I1

¹⁹ CD-I2 and *Fox Land & Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298

²⁰ CD-C1

²¹ CD-H1 Referred to hereafter as the Framework

²² CD-H2 Referred to hereafter as the PPG, along with ID7 and ID28

- 5.3 Section 9 of the Framework deals with 'Protecting Green Belt land'. Paragraph 79 tells us that the Government attaches great importance to Green Belts and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 5.4 Paragraph 80 sets out the five purposes of Green Belt designation: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 5.5 Paragraph 83 makes clear that local planning authorities with Green Belts should establish boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.
- 5.6 In terms of the control of development in the Green Belt, paragraph 87 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 expands on that setting out that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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.
- 5.7 Paragraph 89 is clear that, apart from a series of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. Paragraph 90 lists other forms of development that can be deemed not inappropriate, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.
- 5.8 Section 6 of the Framework refers to 'Delivering a wide choice of high quality homes'. Paragraph 47 explains that to boost significantly the supply of housing, local planning authorities should, amongst other things, use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period; and identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 5.9 Section 1 of the Framework deals with 'Building a strong, competitive economy'. Paragraph 18 explains that the Government is committed to

securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

- 5.10 Under the heading 'Conserving and enhancing the natural environment', paragraph 109 of the Framework makes plain that the planning system should contribute to and enhance the natural and local environment by amongst other things, protecting and enhancing valued landscapes, and minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 5.11 In terms of the PPG, there are three passages, of direct relevance, which have been referred to by the parties. The first comes in answer to the question: do housing and economic needs override constraints on the use of land, such as Green Belt? The response sets out that the Framework should be read as a whole: need alone is not the only factor to be considered when drawing up a Local Plan. It continues: the Framework is clear that local planning authorities should, through, their Local Plans, meet objectively assessed needs unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. Such policies include those relating to, of relevance here, land designated as Green Belt²³.
- 5.12 The second relates to the question: do local planning authorities have to meet in full housing needs identified in needs assessments? The answer is that local authorities should prepare a SHMA²⁴ to assess their full housing needs. However, assessing need is just the first stage in developing a Local Plan. Once need has been assessed, the local planning authority should prepare a SHLAA²⁵ to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period, and in so doing take account of any constraints such as Green Belt, which indicate that development should be restricted and which may restrain the ability of an authority to meet its need²⁶.
- 5.13 To a large extent, the central question in this appeal is encapsulated in the third passage referred to: in decision taking, can unmet need for housing outweigh Green Belt protection? The answer given is that unmet housing need (including for traveller sites) is *unlikely* (my emphasis) to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development on a site within the Green Belt²⁷.
- 5.14 With that policy and guidance in mind, the situation in terms of emerging Policy warrants careful analysis. A full account of the situation is given in the

²³ ID7 contains the full extract from the PPG

²⁴ Strategic Housing Market Assessment

²⁵ Strategic Housing Land Availability Assessment

²⁶ ID7 refers

²⁷ ID28 refers, and includes the previous iteration

Council's evidence²⁸ but in summary, the Council prepared and submitted for examination a Core Strategy in 2010. The Inspector indicated that the Council had not made provision for sufficient land for housing and suggested that the way forward might be to identify land capable of early release from the Green Belt to enable larger sites for housing to come forward. In response, the Council undertook a review of Green Belt sites, concentrating on the urban periphery. A total of 30 sites were considered, including the appeal site²⁹.

- 5.15 At the same time, it became apparent that the basis for the Borough's housing requirement, the East of England Plan, was likely to be revoked and the Borough would have more autonomy in deciding its housing requirement. Further advice was received from the Inspector³⁰ on the perceived shortcomings of the Council's approach and shortly afterwards, the first draft of the Framework was released. Against that background, in September 2011, the Council requested that the Core Strategy be withdrawn.
- 5.16 Since that time, work has been undertaken by the Council to produce a Local Plan. An Initial Issues Consultation was undertaken between January and March 2012, and followed by work on the evidential base. After all that, a Draft New Local Plan was published and made available for consultation between January and March 2014³¹. This attracted significant objection with many arguing against the principle of giving up Green Belt land in order to meet identified housing needs. In response, the Council set up what it called a Task and Finish Group³² to consider the representations and map out a way forward. That process is in progress³³ but there is no clear timetable.

6. The Case for the Council

- 6.1 The case for the Council was presented to the Inquiry through the evidence of two witnesses³⁴ and summarised in their Closing Statement to the Inquiry³⁵, which I have used for the basis of presenting their case.
- 6.2 All agree that the appeal site lies within the Green Belt. The Framework sets out the great importance the Government attaches to the Green Belt and the need to keep it permanently open³⁶. Further, all agree that what is proposed is inappropriate development, harmful to the Green Belt by definition; harm to which substantial weight must be attached. Planning permission can only be granted if very special circumstances are shown. These will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations³⁷.
- 6.3 What we also know from the Framework, and subsequent Government statements, is the importance attached to the growth agenda, and the

²⁸ C1 Paragraphs 3.13 to 3.17

²⁹ CD-E5 to CD-E7

³⁰ CD-E22

³¹ CD-E1 to CD-E24 refer

³² Made up of a cross-party group of Members

³³ CD-O1 to CD-O17 refer and ID1 Paragraphs 4.2 to 4.8 set out the agreed position

³⁴ C1-C3

³⁵ ID39

³⁶ CD-H1 Paragraph 79

³⁷ CD-H1 Paragraphs 87 and 88

encouragement of sustainable economic development³⁸. Boosting significantly the supply of housing became a primary aim of planning policy and Councils were given firm instructions to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing³⁹.

- 6.4 However, at that stage, there was a lack of clear guidance as to how the Government expected local planning authorities to respond when a tension emerged between the two important policy aims of protecting the Green Belt, and boosting significantly the supply of housing, and what the Government expected to be the result when such clashes cropped up.
- 6.5 It is accepted that there was wording in the Framework suggesting that the Green Belt should take precedence⁴⁰, but no clear steer. In the early years of the Framework, there was uncertainty. If that uncertainty did not exist, there would have been no need for the Government to issue the guidance⁴¹ that eventually emerged in 2014. Even the appellant accepts its importance⁴².
- 6.6 This is not simply a general point; the uncertainty affected directly events in Castle Point. The Inspector who dealt with the Core Strategy effectively wrote off the Council's first attempt at a Local Plan indicating that more Green Belt land needed to be released to meet housing needs⁴³. While the then SoS went a different way, the Inspector who dealt with the Glebelands appeal clearly felt that meeting housing needs was more important than Green Belt protection⁴⁴. The Council's own review of its Green Belt boundaries was predicated on an understanding that land could be removed from the Green Belt to meet housing needs⁴⁵.
- 6.7 In that context, the introduction of the PPG in 2014, and in particular the combination of the three paragraphs that emerged by 2014⁴⁶ was of great assistance to an authority like Castle Point. It is accepted that the PPG says nothing that runs contrary to what is found in the Framework. The underlying Government policy remains but what decision-makers can take from this important further guidance⁴⁷ is how the Government expects the conflicting stands of policy in the Framework to be resolved.
- 6.8 It is clear, now, that the view of the Government is that housing and economic needs do not, necessarily, override constraints such as Green Belt and that the need to boost the supply of housing is not something to be considered in isolation. We know that the Framework means it when it says that Green Belt boundaries should only be altered in exceptional circumstances and only then, through the Local Plan process⁴⁸. We know now that a local planning authority

³⁸ CD-H1 Paragraphs 18-22 and CD-I31, CD-I32 and CD-I34 to CD-I36 for example

³⁹ CD-H1 Paragraph 47

⁴⁰ CD-H1 Paragraph 14 footnote 9

⁴¹ ID7 and ID28 refer

⁴² Ms Parsons in x-e

⁴³ CD-I21 to CD-I22h

⁴⁴ CD-I1

⁴⁵ CD-E5 Page 5

⁴⁶ ID7 and ID28

⁴⁷ A description accepted by the appellant through Ms Parsons in x-e

⁴⁸ CD-H1 Paragraph 83

does not have to meet in full identified housing needs where there are constraints, like Green Belt, which restrain the ability of the authority to meet those needs.

- 6.9 This should not be taken to imply that Castle Point believes that meeting those needs is not an important policy aim. However, it draws comfort from Government guidance which sets out that protecting the established, open, Green Belt, can be an even more important policy objective. It could be argued that the phrase '*can be*' does not go far enough. The announced view of the Government is that unmet housing need is *unlikely* to outweigh the harm caused by building in the Green Belt and constitute the 'very special circumstances' necessary to justify breaching the aim of Green Belt policy⁴⁹.
- 6.10 The Council does not argue that it is unreasonable for the appellants to raise the question of whether unmet housing need in the Borough, along with the other benefits claimed for their proposal, is sufficient to clearly outweigh the harm by reason of inappropriateness, and other harm, the scheme would cause. However, they do so against the background that it is only in exceptional circumstances that Green Belt boundaries should be altered⁵⁰, substantial weight must be attached to any harm to the Green Belt⁵¹, and if their argument is based on meeting housing need, it is unlikely to amount to the very special circumstances required to be shown.
- 6.11 It is small wonder that the appellant cannot point to a single example of a case where the SoS has, since the guidance was published, accepted that these extremely high tests have been passed.
- 6.12 This is the background, in terms of policy and guidance, against which the decision-maker must approach the voluminous evidence produced by the appellant on the question of housing needs, and housing land supply, in Castle Point⁵². It is abundantly clear that normally, the expectation is that these matters should be tackled through the Local Plan process, not ad hoc appeals. The reason why is obvious when one approaches the appellant's evidence on this matter. It became clear⁵³ that forecasting housing need for a Borough is fraught with uncertainties, arising from the use of econometric models, all of which differ from each other and critically, their dependence on assumptions fed into them, which can lead to varying results⁵⁴.
- 6.13 That should not be taken to mean that local planning authorities should steer clear of forecasting needs. Indeed they are required to do so, as part of their preparatory work for Local Plans, but that is the place where this work is most appropriately carried out, where there is the greatest opportunity for co-operation, or at least the fusing together of a series of different inputs and assumptions, leading to as near to a non-partisan view of objectively assessed need as can be achieved.

⁴⁹ ID7 and ID8 refer

⁵⁰ Which is effectively, if not technically, what is sought

⁵¹ CD-H1 Paragraph 88

⁵² A1 to A3 in the main, but also A4 to A6

⁵³ From Mr May in x-e

⁵⁴ A point accepted by Mr May in x-e

- 6.14 With that in mind, the Council was surprised at the reaction to comments it made in evidence⁵⁵ about the appellant's work in this area⁵⁶. The Council merely took the view that more attention should have been paid to the Housing Market Area, rather than Castle Point in isolation, which is exactly what the Framework dictates⁵⁷ and as is advised in the PAS Technical Note⁵⁸. We were told that the Courts had contradicted all this⁵⁹ but the judgement is rather opaque on the point.
- 6.15 As for the 'jobs led' scenario, which is an important part of the appellant's work, the PAS Technical Note⁶⁰ warns of some of the problems that can emerge from such an approach. It is not suggested that the work carried out on behalf of the appellant⁶¹ is unhelpful, or wrong. However, it is one amongst a range of possible approaches, and different results would be produced by other approaches that are equally plausible.
- 6.16 Much the same can be said of the approach the appellant takes to the analysis of housing land supply in Castle Point⁶². The Council, armed with detailed, local knowledge, is better placed to form a judgement on whether development on the sites highlighted will come forward, and over what timescale.
- 6.17 It needs to be understood that the central argument in this case is not about whether the housing land supply requirements of the Framework⁶³ are being fully met, or not. The Council accepts that they are clearly not being met in the present circumstances. The only relevance of the topic is to address the question of whether the housing land supply position in Castle Point is so dire that development that would otherwise be unacceptable in the Green Belt should be allowed to come forward on the basis that the very special circumstances required, exist. The Council accepts that '*very special*' in these terms does not necessarily mean very rare, or unique⁶⁴. However, the rule of thumb operated by the Council⁶⁵ is a sensible guide.
- 6.18 Whether very special circumstances exist in this case is, of course, a matter of judgement for the decision-maker, in the light of the evidence before him or her. Part of that evidence is the independent, Savills research paper of June 2015⁶⁶. It considers the sensible question of how local planning authorities, up and down the country, are getting on, in terms of delivering residential permissions, over a three year period, measured against their objectively assessed need.

⁵⁵ Mr Rogers in-c and x-e

⁵⁶ Principally A1 to A3

⁵⁷ CD-H1 Paragraph 47

⁵⁸ CD-I30

⁵⁹ *Satnam Millenium Ltd v Warrington BC* [2015] EWHC 370 (Admin) ID26

⁶⁰ CD-I30 Pages 32-33

⁶¹ By Mr May A1-A3

⁶² By Ms Parsons A4 to A6

⁶³ CD-H1 Paragraph 47

⁶⁴ Following the line of the Court of Appeal in *Wychavon DC v SoS for Communities and Local Government and K & L Butler* [2008] EWCA Civ 692 ID29

⁶⁵ Explained in the evidence of Miss Fisher C2

⁶⁶ ID17 is an extract, ID32 a full copy

- 6.19 What is shown is that far from being in some unusual category of poor performance, Castle Point, in spite of the vicissitudes that have beset progress with a new Local Plan, in spite of suffering more than two years of uncertainty when the very existence of its Green Belt was in question⁶⁷, is in fact in a category, in terms of the proportion of permissions granted, which it shares with many other local planning authorities. It is by no means in the worst category, where a number of local planning authorities appear to be. That puts matters into perspective rather. Castle Point is not in a uniquely bad position and it needs to be kept in mind that guidance from Government contemplates authorities with Green Belt not being able to meet their full, objectively assessed need. How in that context can very special circumstances have been demonstrated?
- 6.20 Clearly the provision of housing, including affordable housing, is a tangible benefit of the proposal. But, when viewed dispassionately, the Council is not in some uniquely bad situation which justifies it being treated differently from other authorities whose open land outside established settlements, is subject to Green Belt designation.
- 6.21 Through the Local Plan process, the Council will have to address the difficult question of whether any part or parts of the Green Belt can be sacrificed in order to meet housing needs. However, the Council must be allowed to seek the answer to this question properly, with the Framework and the PPG in mind, and with a proper opportunity, now that the guidance is clear, to weigh up if other approaches to housing provision within its boundaries can increase provision without the use of open Green Belt land.
- 6.22 It is obvious from the nature and scale of responses to the Draft New Local Plan that anything involving large scale building on permanently protected, open, Green Belt land is highly contentious, as one might expect. This controversy must be allowed to work itself out through the Local Plan process, in accordance with Government policy⁶⁸ and guidance⁶⁹.
- 6.23 It is important too to address the question of whether there is anything else, other than housing provision that might weigh in favour, alongside the benefits from the provision of housing and affordable housing, and tip the balance to the extent that very special circumstances are demonstrated. It is accepted entirely that such an 'in combination' approach is legitimate⁷⁰. The other considerations put forward by the appellant consist of ecological enhancements on nearby land, open space provision, and improved footpath and cycle routes.
- 6.24 As far as open space is concerned, it seems clear that all the scheme provides is that required by any development of the size proposed, as a result of local policy. The other claimed benefits relate more to the specific characteristics of the site and of course, they are positive attributes. But in reality, they are the

⁶⁷ Finally resolved in the Council's favour by *Fox Land and Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298 that followed CD-12, a challenge to the decision of the SoS on the Glebelands appeal CD-11

⁶⁸ CD-H1 Paragraph 83

⁶⁹ ID7 and ID28

⁷⁰ CD-C2 Page 33 and C2 Paragraph 5.3 shows that the Council has considered the application in this way

sort of general offering that is expected of any proposal of the scale proposed, being promoted in the face of difficulties, like Green Belt designation. The Council argues that the benefits, considered singly, or in combination, are nowhere near sufficient to clearly outweigh the harm that would flow from the inappropriate nature of the proposal, and the other harm that would result.

- 6.25 In terms of other harm, while neither the appeal site nor the surrounding land has any particular landscape designation, it plainly consists of attractive, publicly accessible, and visible, including from transport corridors, and footpaths, green fields. The appeal site is part of a visually important, and attractive, piece of open land, at the edge of the existing settlement, whose loss to buildings would clearly reduce openness, and be detrimental to the character and appearance of the area.
- 6.26 When questions were asked of the appellant's witness⁷¹ about the appeal site being part of the most significant piece of open Green Belt land on the western side of the Borough, between the built-up area, and the Borough boundary, it was done without reference to landscape sensitivity analyses. It is obvious from perusal of a map of the Green Belt, relative to the Borough boundary, that this south-west portion, including the appeal site, is the element of it that has the most valuable, countryside characteristics.
- 6.27 Allowing development of the appeal site would not only be harmful in itself, it would also act as a worrying precedent for the loss of more, or all, of it. It would also be premature in the context of progress with the Draft Local Plan because it would prevent the Council from acting on recent Government guidance and recasting the Draft Local Plan to accord with it, and to reflect the response of local people to the initial version.
- 6.28 In summary, all agree that the proposal would represent inappropriate development in the Green Belt, harmful by definition. It would reduce openness and conflict with the fundamental aim of Green Belt Policy, to keep land permanently open. That harm must be given substantial weight. There would be harm too to the character and appearance of the area.
- 6.29 The Government acknowledges that Councils with Green Belts might have difficulties meeting their full objectively assessed need. In that context, the benefits of bringing forward housing, and affordable housing, along with the other benefits, are nowhere near sufficient to clearly outweigh the harm by reason of inappropriateness, and the other harm identified. Very special circumstances do not exist, and planning permission should therefore be refused for what is a large housing scheme, in a long-established Green Belt.

7. The Case for the Appellant

- 7.1 The case for the appellant was presented through the evidence of two witnesses⁷². The position of the appellant at the start of the Inquiry is set out in the Opening Statement⁷³ and at the end of the Inquiry in the Closing Statement⁷⁴. I have used the latter as the basis for the following summary.

⁷¹ Ms Parsons x-e

⁷² A1-A6

⁷³ ID4

⁷⁴ ID53

- 7.2 Given the conclusion of the litigation that followed the SoS decision on the Glebelands appeal⁷⁵, the appellant does not dispute the existence of the Green Belt in Castle Point. While the SoS refused planning permission for the scheme there at issue, there are a number of points arising from the decision that are material. It was concluded that (1) at that point in time, the Council could only demonstrate a housing land supply of 0.7 years, a significant shortfall against the requirements of the Framework; (2) its supply of housing over more than a decade had been grossly inadequate; (3) there was an urgent need to make up for past failings in this respect; (4) the shortfall was severe; (5) the provision of 58 affordable housing units, as part of the scheme, was a significant benefit; (6) save for the Green Belt issues, the site was otherwise acceptable; (7) contrary to the conclusions of the Inspector, there was reason to be optimistic about the likelihood of the Council's new Local Plan being adopted by February 2014, because the Framework would act as a driver.
- 7.3 It is also relevant to note that the SoS took into account that the Council had acknowledged there would be a need to take land from the Green Belt, to meet even the lower end of the housing provision proposed at that time.
- 7.4 The Council considers that the appeal site shares many of the attributes of the Glebelands site⁷⁶. For that reason, some comparison is necessary.
- 7.5 Before embarking on an analysis of the proposal, it is necessary to address the development plan. It was accepted by the Council that the proposed development does not conflict with any policy in the adopted Castle Point Borough Council Local Plan⁷⁷. Having initially accepted that absence of conflict must represent accord⁷⁸, there was an attempt to resile from that position⁷⁹. However, simple logic dictates that if the proposal does not fall contrary to any policy in the development plan, then it must be in accordance with it.
- 7.6 It is accepted that in the context of national planning policy, as expressed in the Framework, the proposal would represent an inappropriate form of development in the Green Belt. In order for the proposal to gain permission, it would have to be shown that the harm by reason of inappropriateness, and any other harm, are clearly outweighed by other considerations, so that the required very special circumstances come into existence.
- 7.7 The Council contends that very special circumstances are not in play but their analysis errs in two crucial respects. First of all, the Council has defined a 'very special circumstance' as one which is unique to the site or, at the very least, incapable of frequent repetition⁸⁰. That is not the way the Courts have dealt with the matter⁸¹. Second, the Council has failed to consider the 'other considerations' in combination to see whether, together, they clearly outweigh

⁷⁵ CD-11, CD-12 and *Fox Land and Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298

⁷⁶ C2 Paragraph 5.7.7 and CD-C2 Page 36

⁷⁷ Mr Rogers in x-e

⁷⁸ Mr Rogers in x-e

⁷⁹ Mr Rogers in re-e

⁸⁰ C2 Paragraph 5.3 and CD-C2

⁸¹ ID29 - *Wychavon DC v Secretary of State for Communities and Local Government and K & L Butler* [2008] EWCA Civ 692 Paragraphs 21 and 26 in particular

the harmful impacts⁸². The evidence of the Council needs to be viewed through that filter.

- 7.8 A further plank of the Council's case to the Inquiry is that the approach of Government policy to the Green Belt has somehow changed since the Glebelands decision, and the advent of the Framework. Again, that is wrong. The Government policy in relation to the Green Belt, espoused in the Framework, has not changed since it was first published⁸³.
- 7.9 The Council relies on guidance in the PPG and specifically the passage⁸⁴: *Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt.*
- 7.10 That contention is however, unsurprising. As the recent SoS decision relating to a site at Aveley Sports Club, Thurrock made set out⁸⁵: *a written ministerial statement of 1 July 2013 confirms, in relation to housing, that the single issue of unmet demand 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* (emphasis added). That approach is wholly consistent with what the appellant proposes here. One would expect that in most instances, the single issue of unmet demand would be unlikely to provide the necessary justification. It is, however, a question of likelihood in the light of the specific circumstances of the case at issue.
- 7.11 In this case there are obvious differences to the position in Thurrock because the magnitude and duration of the shortfall in the provision of housing and affordable housing is much greater; Castle Point's lack of progress with their Local Plan, while Thurrock adopted on in 2011; the inclusion of the appeal site as a specific allocation in Castle Point's Draft Local Plan, after careful evaluation through the Local Plan process and a Green Belt Functions Assessment⁸⁶, a Green Belt Boundary Review⁸⁷, consideration and formal adoption by the Council (for consultation purposes) of the Draft Local Plan, and its sustainability assessment in accordance with the SEA Regulations⁸⁸; the likely time for adoption of any Local Plan in Castle Point being at some unspecified time in the future; and the presence of site-specific other considerations, in particular the Ecological Enhancement Area, the footpath upgrade, and the connecting cycleway.
- 7.12 The first of these factors requiring analysis is the situation in relation to housing land supply. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing sites. However, there is more to it than that.

⁸² Accepted by Miss Fisher in x-e though again there was equivocation in re-e

⁸³ A point accepted by Mr Rogers and Miss Fisher in x-e

⁸⁴ Reproduced at ID28

⁸⁵ ID12 Paragraph 30

⁸⁶ CD-E6

⁸⁷ CD-E5

⁸⁸ CD-E4

- 7.13 The Council has no identified objectively assessed need⁸⁹. The best evidence before the Inquiry is that presented by the appellant⁹⁰ which concluded that Castle Point's objectively assessed need is of the order of 562 dwellings per annum. There is no cogent evidence to suggest that this figure should be rejected – the Council accept that its derivation followed the methodology in the Framework and PPG, took account of all relevant factors, and used the widely recognised 'Chelmer' model⁹¹.
- 7.14 In terms of the criticisms advanced by the Council, it is not necessary for the purposes of determining objectively assessed need to first have an assessment for the entire Housing Market Area⁹². The idea that objectively assessed need should only be determined through a Local Plan examination cannot be correct. Otherwise, decision-making on proposals for housing would be all but impossible while the process was underway. The Council's approach has been rejected by the SoS previously⁹³.
- 7.15 In terms of housing supply, this is all but agreed⁹⁴ but two sites warrant attention. As a caravan site where people are living permanently, Thorney Bay is part of the Council's existing housing stock. Hence, the replacement of the caravans with new housing would need to take account of any loss of existing stock. It is not clear that the Council has done so. As far as 4-12 Park Chase is concerned⁹⁵, the 2007 grant of planning permission cannot sensibly be said to have commenced. It is not deliverable in Framework terms.
- 7.16 Further information was submitted⁹⁶ to reflect the exchanges at the Inquiry. It is clear that even if the Thorney Bay and 4-12 Park Chase sites are included, the Council cannot rely on a housing supply of more than 0.5 years, when set against their requirement.
- 7.17 That is clearly inadequate but the problem runs deeper. It is a matter of magnitude and duration and progress since the Glebelands decision is worthy of analysis⁹⁷. This is set out in the Draft Local Plan Annual Monitoring Report which at Table H2a⁹⁸ shows the deficiency of supply between 2001/02 and 2013/14. Table H2b⁹⁹ records that in 2014/15, the Council has delivered 202 net additional dwellings.
- 7.18 Not only does this fail against the Council's own suggested targets¹⁰⁰ but even if one were to maintain an approach consistent with the targets in the Glebelands decision (as was considered by the SoS) in order to improve on the housing supply of 0.7 years that then endured, the Council would have to be

⁸⁹ Confirmed by Mr Rogers in x-e

⁹⁰ Through Mr May A1-A3

⁹¹ Accepted by Mr Rogers in x-e – the provenance of the 'Chelmer' model is explained in A3 Appendix 13

⁹² ID26 refers as does A3 Appendix 13 Paragraphs 28 and 29

⁹³ A3 Appendix 3 and ID30

⁹⁴ As the appendix to C3 shows

⁹⁵ ID19

⁹⁶ ID30

⁹⁷ CD-I1

⁹⁸ CD-O16 Page 10

⁹⁹ CD-O16 Page 12

¹⁰⁰ Column 2 of Table H2a

delivering in excess of 200 dwellings every year. That would be the bare minimum necessary to keep pace with the woefully deficient rate of delivery then promulgated. In the three years since the Glebelands decision, the Council has delivered a total of 322 dwellings (75, 45 and 202) against a requirement of 600. The Council's position has got much worse, therefore¹⁰¹. Indeed, on the appellant's analysis, the Council can only demonstrate a 0.4 years supply of deliverable housing sites¹⁰².

- 7.19 The Council has sought to provoke comparison with other authorities with Green Belts¹⁰³ but it has been shown that none are in as bad a situation in terms of housing supply, as Castle Point¹⁰⁴. As a further point of comparison, Councillor Sheldon made reference to a paper prepared by Savills¹⁰⁵, and this was taken forward by the Council in closing.
- 7.20 However, upon exploration¹⁰⁶, it became obvious that the paper is not fit for the purpose it is being used for by Councillor Sheldon and the Council for the simple reason that it fails to address housing supply in a manner that complies with the approach set out in the Framework and the PPG. It should be rejected, therefore.
- 7.21 The Council's position in terms of affordable housing is accurately set out in the Draft Local Plan¹⁰⁷. Paragraph 13.12 says that: *The SHMA has identified the need for affordable housing in South Essex using a whole market model. It shows that across the housing market there is a need for at least 43% of new housing to be affordable. This requirement varies from district to district reflecting the profile of housing need and profile of housing market in each place. In Castle Point, there is a need for at least 73% of new homes to be affordable, assuming delivery at 200 homes per annum.*
- 7.22 That translates into a need for 146 affordable homes per year, on the Council's figures. Over the past four years, the Council has delivered 77 affordable homes, a shortfall of 507 units over the period. The Council accept that this situation is not likely to improve and is more likely to deteriorate¹⁰⁸. This is not a matter of sterile statistics. The figure of 507 represents an individual or family acknowledged by the Council to be in housing need; a need that has not been, and will not be, on current performance, met¹⁰⁹.
- 7.23 The proposal provides for 35% affordable housing. This is not a policy requirement of the adopted Local Plan nor does it appear in any other development plan policy. The Draft New Local Plan only requires 25% affordable housing as part of housing schemes in Benfleet, Hadleigh and Thundersley¹¹⁰. In that context, the provision of up to 93 affordable units not

¹⁰¹ A point accepted by Mr Rogers in x-e

¹⁰² ID30 Tables NP7 and NP7a

¹⁰³ A3

¹⁰⁴ ID31

¹⁰⁵ ID17 (extract) and ID32

¹⁰⁶ Councillor Sheldon in x-e

¹⁰⁷ CD-E1 refers. The point was accepted by Miss Fisher in x-e

¹⁰⁸ Accepted by Miss Fisher in x-e

¹⁰⁹ This was fairly acknowledged by Miss Fisher in x-e

¹¹⁰ CD-E1 Policy H 21 Page 120

only exceeds the number proposed at Glebelands (56) which the SoS found to be a substantial benefit¹¹¹ but, in view of the current situation, that is likely to deteriorate further, it must be seen as a significant benefit, that warrants considerable weight.

- 7.24 In terms of prematurity and precedent, it cannot be said that a proposal that covers only 0.3% of the Green Belt in Castle Point could possibly serve to derail the Draft New Local Plan. Moreover, given the scale of the development proposed and of the Council's housing shortfall, it is difficult to see how it might set a precedent for any future applications. In any event, a grant of planning permission for housing on the appeal site would mean that the Council's supply position would improve markedly, meaning that the balance of considerations in dealing with any future application would change.
- 7.25 In any case, what the Council appear to be suggesting is not that the proposal would be premature in relation to their Draft New Local Plan, but in terms of some other, notional, Local Plan that does not involve the release of Green Belt land for housing. That much is evident from material before the Inquiry¹¹². Such an approach cannot form the basis for sensible decision-making.
- 7.26 A number of other issues have been raised, mainly by interested parties. The issue of ecology does not weigh against the proposal. Indeed, viewed in the round, the scheme would bring ecological benefits. The Council did not cite ecology as a reason for refusal and Natural England¹¹³ has no objection. The appellant has considered the matter fully through the ES, ES Addendum, in evidence and through supplementary submissions¹¹⁴.
- 7.27 A number of points have been made too about highway capacity and safety. However, again this has been the subject of comprehensive analysis through the ES and the ES Addendum¹¹⁵ and there is no objection from the Council or the Highway Authority. Further explanation has been provided to set out the acceptability of the proposals in these terms¹¹⁶. Moreover, the proposal would bring forward improvements to the right-of-way that crosses the appeal site and connect up a cycle path.
- 7.28 It is clear that local people feel very strongly about flood risk and the disposal of surface water and sewerage. However, this was not a reason for refusal cited by the Council and no objection has been raised by the Environment Agency, or Anglian Water. Again this matter has been dealt with fully in the evidence¹¹⁷ and carries no weight against the scheme.
- 7.29 In landscape terms, no objection is raised by the Council in these terms and it was accepted that it is not a 'valued' landscape for the purposes of the

¹¹¹ CD-I1 Paragraph 21 of the Decision Letter

¹¹² CD-O9 Paragraphs 7.5 and 7.11 to 7.13

¹¹³ ID2

¹¹⁴ CD-B1, CD-B2 CD-B3 and CD-B4, A6 Appendix 11 and ID20

¹¹⁵ CD-B1, CD-B2, CD-B3 and CD-B4 and ID34

¹¹⁶ A6 Appendix 10 and ID34

¹¹⁷ ID33 and ID38

Framework¹¹⁸. The Council's Report to Committee made clear that a reason for refusal based on landscape impact could not be sustained¹¹⁹.

- 7.30 In weighing all these matters, as the Framework requires, it is accepted that the proposal would cause some Green Belt harm. However, the position of the appellant is that there are other considerations which clearly outweigh the harm by reason of inappropriateness, and any other harm. In simple terms, these are the benefits that would flow from the provision of market and affordable housing in light of the prevailing, serious undersupply of both in Castle Point, the improvements to the footpath and the cycle way, and ecology. On top of that, there will be economic benefits too, and newcomers will help achieve a better balance in terms of the age profile of the Borough. Very special circumstances to justify the development exist, therefore.
- 7.31 In terms of the Agreement under s.106¹²⁰, this has been designed to deal with the provision of affordable housing and financial contributions to allow for other impacts to be mitigated. The appellant is satisfied that these meet the tests of Regulation 122¹²¹.
- 7.32 To summarise, it is respectfully submitted that the appeal should be allowed and planning permission granted for the proposal.

8. Interested Persons

- 8.1 The appeal generated a lot of local interest as can be seen from the volume of correspondence relating to the original application¹²², and the appeal¹²³. The Inquiry was well attended and a lot of local residents, as well as Councillors, and the Member of Parliament, spoke. Many referred to notes which I have attached as Inquiry Documents. I have summarised here the various contributions made to the Inquiry in the order that they were presented. Others made written submissions to the Inquiry, which, again, I have attached as Inquiry Documents¹²⁴.
- 8.2 **Susan Buhr** a local resident¹²⁵ made reference to paragraph 109 of the Framework and in the light of the advice therein, raised concerns about the potential impact of the proposal on wildlife, and their habitats, and cast doubt on the survey work, carried out on behalf of the appellants, that has informed their conclusions about the impacts of the proposal. The point was made too that the site is part of a valued landscape which would be destroyed by building houses upon it.
- 8.3 **June Winter** a local resident explained that she had lived on Jotmans Lane since it was built and pointed out that the appeal site had always been open land and that it should remain that way. Concerns were also raised about

¹¹⁸ Miss Fisher in x-e

¹¹⁹ CD-C2

¹²⁰ ID42

¹²¹ Of the CIL Regulations 2010

¹²² CD-J3

¹²³ CD-J4

¹²⁴ ID6, ID13, ID14, ID24, and ID25

¹²⁵ ID8

traffic generation. In simple terms, the point was made that if houses need to be provided in Castle Point, they should be built somewhere else.

- 8.4 **Councillor David Cross**, the Member for St Mary's Ward, which includes the appeal site¹²⁶ told the Inquiry that the proposal raised issues which had engaged local residents to an extent not previously experienced. It would have a significant impact on the lives of existing residents through increased traffic at construction stage and after completion, all of which will have to pass through Cemetery Corner, a junction that is poorly designed. A lot of elderly people live on the Jotmans Estate – dust from construction site will affect them in a serious way. On top of that, there is the 'Benfleet Stink', the result of an inadequate sewer system, to consider. Another 265 dwellings connecting into that system, can only make an intolerable situation worse.
- 8.5 **Ian Harding** a local resident¹²⁷ highlighted the Green Belt status of the site, and the way in which the appeal site contributes to the purposes of designation. Attention was drawn to the population density of Castle Point and the suggestion made that the Borough is at breaking point, in terms of traffic, sewer capacity, and access to healthcare services. Aside from all that, the site has inadequate access, through Cemetery Corner, where there are frequent accidents. It was pointed out too, that the Borough has 1,350 empty homes that ought to be brought back into use – this would be enough to fulfil Borough requirements for the next 30 years.
- 8.6 **Win Dellow** a local resident expressed concern about access to healthcare facilities. The number of houses proposed will lead to a population increase in the region of 700, alongside increases elsewhere – how will hospitals cope with that influx?
- 8.7 **Nicola Shuttlewood** a local resident¹²⁸ made reference to the impact increasing the population of Benfleet would have on infrastructure provision, notably already stretched schools, GP surgeries, public transport, police and emergency services. Roads are already congested, and a danger to drivers and pedestrians. Against that background, large scale house-building is not feasible in smaller boroughs, like Castle Point.
- 8.8 **Robert Wastell** a local resident said that all house-building in Castle Point should be stopped until the inadequacy of the sewerage system has been addressed. It is not acceptable to build more houses in the area when existing residents have to put up with flooding which regularly inundates their gardens with raw sewage.
- 8.9 **Peter Sach** a local resident¹²⁹ spoke of the problems local residents have been experiencing with flooding for over 50 years and posited that building more houses, on land raised significantly above the existing houses, will only exacerbate those problems. Moreover, Jotmans Lane, and especially Cemetery Corner, cannot accommodate the extra traffic that would be generated. In

¹²⁶ ID9

¹²⁷ ID10

¹²⁸ ID11

¹²⁹ ID22

simple terms, new housing should not be built on Green Belt land suitable for growing food, when there are brownfield sites readily available.

- 8.10 **Alan Sopp** a local resident spoke of the need for a tanker to visit the local sewage treatment plant, 6 or more times a day, 7 days a week, to take away sewage, to relieve stress on the facility. More houses would make that already intolerable situation worse. On top of that, the existing road system cannot cope and improvements put forward will not change that. The existing infrastructure, in terms of education, and healthcare, in particular, is insufficient to cope with yet more incomers.
- 8.11 **Joseph Cooke** representing **Castle Point Labour Party** made the point that the site is prime agricultural land, suitable for food production, an important buffer between Benfleet and neighbouring Basildon and should not be built upon.
- 8.12 **Martin Fowler** a local resident¹³⁰ raised issues about traffic generation and the difficulties already encountered at Cemetery Corner – a junction of a design that would not be acceptable today. Aside from that, the construction of the road system in the existing estate was said to be inadequate and unable to cope with heavy construction traffic. The site is an important part of the Green Belt, which is best appreciated from the A130 towards Canvey Island, where the landscape opens up to provide a panoramic view. The development proposed would encroach into that vista in an incongruous manner. The site is allocated in the new Local Plan but it is but a draft, and the appeal site will surely be removed given the level of opposition to building on the Green Belt that has been expressed. An appeal against a refusal of planning permission is not the place to make strategic decisions that ought to be made through the development plan process.
- 8.13 **Sharon Ainsley** a local resident¹³¹ made a lengthy PowerPoint presentation, including film, music, and commentary, that covered a number of areas of concern. Chief amongst these were road conditions for existing drivers, pedestrians, and horses and their riders, and the dangers of additional traffic to them, and the environment generally, the historic and archaeological significance of Benfleet, and the availability of brownfield sites that should be developed before sites in the Green Belt are released. It was postulated that the site is very important in visual terms, as a break between the edge of Benfleet, the A130, and Basildon beyond. For that to be lost would be a huge blow to the community. Moreover, air quality is a very important, and topical factor – the proposal would make an already unacceptable situation, exacerbated by the emissions from container ships sailing along the Thames to and from Tilbury, worse. In short, the point was made that this part of Benfleet is home to a unique, settled, largely elderly, community and questions posed as to why should it have to change and why should a new demographic be accepted?
- 8.14 **Councillor Andrew Sheldon** the current Mayor of Castle Point¹³² made a number of points in objecting to the proposal, aided by visual material,

¹³⁰ ID15

¹³¹ ID16 – the memory stick contains the PowerPoint presentation

¹³² ID17

including films¹³³. In the first instance, it was highlighted that the proposal would not fulfil at least two of the reasons for designating Green Belt: to check the urban sprawl of large built-up areas, and to assist in safeguarding the countryside from encroachment.

- 8.15 There are clear, and important, views of the appeal site from the Fenchurch Street to Shoeburyness railway line, on leaving, and the approach to, Benfleet Station. It is a busy transport corridor. The site is part of the green gateway into the Borough, the last thing commuters see as they leave in the morning, and the first bit that hoves into view on the way home in the evening. The site has clear visual amenity, and should be protected. This visual amenity is also very clear to those passing to and from Canvey Island on the A130. It is this semi-rural character that has made Castle Point such an attraction to those moving to the Borough, often from built-up East London. This quality would be lost if the proposal was to go ahead.
- 8.16 On top of that, the proposal is premature. When the Draft Local Plan was published, members were unclear as to the relative weights that could be attached to Green Belt protection, and the need to meet housing requirements. The PPG offered some help but through the good offices of the Member of Parliament, and the then Planning Minister¹³⁴, a meeting was arranged with a representative of the Planning Inspectorate. It was explained by the latter that *'once you have got your objectively assessed need, you need to think about local constraints you want to apply.....which could include flooding, infrastructure, or Green Belt'*.
- 8.17 This reflected many of the representations received on the approach of the Draft Local Plan. More recently, yet further clarification has been received from the current Housing Minister¹³⁵. Dealing with all that is a major undertaking for a planning authority like Castle Point when there is a deadline of early 2017 for new Local Plans to be produced. There is some debate about what 'produced' might mean exactly but the Council is working towards that deadline, armed now with clarity about how the Green Belt constraint should be approached. A grant of planning permission for the proposal would prejudge that process, and would therefore be premature. In the Castle Point context, this is a significant proposal that has the potential to derail the approach the Council might take to its Draft Local Plan.
- 8.18 The case advanced on behalf of the appellant relies on the demonstration of 'very special circumstances'. In particular, it is suggested that, in terms of demonstrating a five-year supply of deliverable housing sites, the Borough is performing as poorly as any in the country. However, based on material produced by Savills, it is evident that this is not the case¹³⁶ and there are other authorities performing worse.
- 8.19 Also, the suggestion has been made that a grant of planning permission for housing on the appeal site would not make it more difficult to resist similar proposals elsewhere in the same stretch; a stretch that includes the

¹³³ These are included on the memory stick attached as ID16

¹³⁴ The Rt Hon Nick Boles MP

¹³⁵ The Rt Hon Brandon Lewis MP

¹³⁶ Extract attached to ID17; ID32 is the full document

Glebelands site where the SoS has previously refused permission. It appears to the Council that if permission was granted for housing on the appeal site, it would be very difficult for the Council to maintain a gap between the western edge of Benfleet and the A130.

- 8.20 For all those reasons, planning permission should be refused for the proposal.
- 8.21 **Peter Albrecht** a local resident, representing those living at 556 Benfleet High Road made a number of points of objection. First, attention was drawn to existing traffic problems, in Benfleet, and on the approaches to and exits from, Canvey Island. More traffic as a result of the development would only make those problems worse, as well as bringing more pollution. There are intolerable problems with the existing sewer system too; the proposal can only make those worse. Infrastructure, particularly in terms of healthcare will not be able to cope.
- 8.22 **Geoff Cook** a local resident talked of the prevailing problems with flooding due to inadequate surface water drainage and expressed the view that additional houses, with associated hard surfaces, could only serve to exacerbate those problems.
- 8.23 **Councillor Alf Partridge**¹³⁷ addressed the Inquiry about the origins of the Green Belt between Benfleet and Basildon (formerly part of Pitsea), and the importance of the buffer strip between the edge of Benfleet and the A130. As someone who has been heavily involved, Councillor Partridge spoke of the difficulties residents face with surface water flooding and how these have worsened in recent times as a result of development, despite the best efforts of those involved. The development proposed cannot but worsen that situation. On top of that, the road network continues to suffer as a result of additional traffic, partly resulting from development on Canvey Island. Again, the traffic generated by the proposal would make existing problems worse. The scheme would ruin the local area and cause extreme misery for existing residents.
- 8.24 **Councillor Alan Bayley** explained that while the need for more housing is accepted, the Government needs to revise housing policy to ensure that if Green Belt land must be used, it should be where it will not disrupt established communities. Consideration should be given to new settlements for specific groups like the elderly, in the manner addressed by New Towns. In Castle Point, existing traffic conditions are such that more housing cannot be accommodated. The same is true of the existing sewer system, schools, hospitals and other public services.
- 8.25 **Terry Lack** a local resident articulated serious concerns about the regularity of serious flooding as a result of the inadequate sewer system, with residents forced to use sandbags to protect their property. No-one is able to sort this out and more houses can only make the situation worse.
- 8.26 **Kate Hurree** a local resident told of her walk to work which has to pass under the railway bridge¹³⁸ where despite best efforts, flooding is all too prevalent.

¹³⁷ ID21

¹³⁸ On the route to Benfleet Station

The proposal would make that worse and make the trip to work very difficult, whenever there is heavy rain.

- 8.27 **Lesley Sach** a local resident¹³⁹ reiterated points made by Peter Sach, particularly in terms of the drainage difficulties and the question was asked whether young families should be moved into such a situation?
- 8.28 **George Lockheart**, a local resident of long standing said that what was an attractive area began to get worse 10 years or so ago, when the volume of traffic reached unacceptable levels, due in part to increases in car ownership. More house building can only make that worse. What is more, GP surgeries and schools are already overloaded – how will they cope with more people?
- 8.29 **Malcolm West** a local resident raised doubts about whether Cemetery Corner could be improved in a way that would allow it to cope with additional traffic, and the position of the Highway Authority. In simple terms, it was suggested that the point has been reached locally, where house building has to stop.
- 8.30 **Councillor Ron Hurrell**¹⁴⁰ made a number of points in opposition to the proposal centring on difficulties with the existing situation with traffic, and the sewer system, which residents should not have to put up with. The proposal will only worsen these difficulties. Moreover, as part of the Green Belt, the site has significant landscape value that would be spoiled forever by the scheme. The proposal should be firmly rejected.
- 8.31 **Frank Tietjen** a local resident pointed to the pressures on local GPs, dentists, and schools, and the drainage system. It was pointed out that vibration from the construction vehicles will cause damage to existing roads and buildings.
- 8.32 **Rebecca Harris** the Member of Parliament for Castle Point¹⁴¹ stressed the importance of the Green Belt to residents of the Borough, many of whom moved to the area from the East End of London to raise a family in a place that is safe, has good access to public transport and employment opportunities, decent schools, and a sense of space. The semi-rural nature of Benfleet would be seriously undermined if the proposal went ahead.
- 8.33 The timing of the proposal is wrong with the Council being close to completing work on adopting a Local Plan. It is accepted that the appeal site is part of an allocation in the Draft New Local Plan but that approach was taken forward before more recent Government guidance that made Green Belt protection more explicit. The negative response of the public to the suggested use of the Green belt for housing is important too. The proposal is being brought forward now because the appellant is aware of the risk that the Council will take heed of Government guidance, and follow the wishes of residents, by recognising the constraints of the Green Belt and seek to preserve undeveloped sites within it from development. That, of course, includes the appeal site.
- 8.34 Moreover, Castle Point is by no means among the worst performing Councils in terms of housing delivery. What matters most is completions and it is clear that while Councils have brought forward large Green Belt sites over the last

¹³⁹ ID22

¹⁴⁰ ID23

¹⁴¹ ID41

few decades, the country is still not building enough houses. That is because house building of that sort does not fit with the industry's business model. Using smaller, brownfield, and/or infill, sites is a more effective way and it is those sorts of sites that the Government is keen to see come forward.

- 8.35 The Council's work on its Draft Local Plan has thrown up an annual target of between 200 and 285 units. This number is not one that should be accepted because it includes undeveloped Green Belt sites but nevertheless, in the previous year the Council has granted permission for 202 homes, 200 of which were on land outside the Green Belt. That suggests the Castle Point Green Belt is fulfilling one of its functions – to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
- 8.36 Landowners and businesses in Castle Point have been working hard to identify and bring forward smaller, brownfield sites. Indeed, there is evidence that taking that approach encourages delivery on sites not previously listed in the SHLAA. Projections for next year are even higher and a look around the Borough will show up many such sites. The viability of these sites for housing would suffer if schemes like that at issue are allowed to come forward.
- 8.37 A grant of planning permission for the proposal would have harmful environmental, and strategic, consequences. On that basis, planning permission should be refused.

9. Conditions

- 9.1 A list of suggested conditions was submitted by the Council¹⁴² and these were discussed in detail at the Inquiry, with all parties, in the light of advice in the Framework¹⁴³, and the PPG¹⁴⁴. I have used the suggested conditions as a basis for those I set out in Annex E and deal with major issues around them below. However, I have also made more minor changes to some, in the interests of accuracy and precision.
- 9.2 As an outline application, conditions are necessary to deal with the submission and approval of the reserved matters, and eventual commencement¹⁴⁵. While one has not been suggested, to facilitate any subsequent application for a minor material amendment, a condition is required to set out the approved plans. Conditions have been suggested to deal with the submission of samples of external materials and boundary treatments¹⁴⁶. While it might be argued that these matters would be dealt with through reserved matters in any event, it seems to me reasonable, in the interests of clarity, to apply conditions to deal with these matters, though the conditions suggested can be combined so that the submission of details and implementation are dealt with together.
- 9.3 A series of conditions are put forward to deal with wildlife protection, what is termed the 'Biodiversity Mitigation Plan', the management of open space

¹⁴² ID37

¹⁴³ CD-H1 Paragraph 206

¹⁴⁴ CD-H2

¹⁴⁵ ID37 Suggested Condition 1

¹⁴⁶ ID37 Suggested Conditions 2 and 3, and 4 and 5

within the site, and biodiversity surveys in the event the development does not commence expeditiously¹⁴⁷.

- 9.4 In terms of wildlife protection, the suggested condition is necessary to ensure there are no adverse impacts. The 'Biodiversity Mitigation Plan' does involve some crossover with the Agreement under s.106. The Agreement deals with the implementation of an 'Ecology Area Management Plan' in the Fifth Schedule. A condition is required to secure details of what that might entail but obviously, the same nomenclature is necessary to ensure proper co-ordination between the condition and the Agreement. The suggested condition about the management of open space within the development is not necessary because this matter is dealt with fully in the First Schedule of the Agreement under s.106.
- 9.5 The proposed condition dealing with the need for additional surveys in the event development does not proceed within one year of any grant of permission seems to me unnecessary given that the suggested condition requiring details of wildlife protection, dealt with above, includes provision for what must take place in the event protected or priority species are encountered unexpectedly.
- 9.6 A series of conditions are put forward to deal with lighting on-site¹⁴⁸. This is a matter appropriate to deal with in this way, but one condition would suffice.
- 9.7 Conditions have been promulgated to deal with landscaping¹⁴⁹. Landscaping is a reserved matter so details of a landscaping scheme will be forthcoming in any event. In that context, the only requirements that need to be addressed by condition are the protection of any trees, shrubs and hedgerows scheduled to remain, in the course of construction, and the maintenance of the landscaping scheme. In terms of the latter, it is suggested that any tree that is lost during the lifespan of the scheme is replaced. Normally such a condition deals with the first five years of the life of the landscaping scheme, and I see no good reason to depart from that.
- 9.8 An array of conditions has been suggested, to deal with matters pertaining to the highway¹⁵⁰. Very many of these are unnecessary because the scheme layout is a reserved matter. However, it would be necessary to apply conditions to address visibility splays within the site, and as part of the new accesses, the completion of the estate roads and footways relative to occupation of the dwellings, the Residential Travel Plan, bus stop improvements, and works to Cemetery Corner. The management of construction vehicles is important too but this can be subsumed into a condition to secure a Construction Method Statement. Such a condition would be necessary to protect the living conditions of local residents from any unduly adverse impacts on their living conditions, and can also deal with wheel washing and the management of construction waste¹⁵¹.

¹⁴⁷ ID37 Suggested Conditions 6, 7, 8 and 10

¹⁴⁸ ID37 Suggested Conditions 9, 25 and 41

¹⁴⁹ ID37 Suggested Conditions 11, 12 and 13

¹⁵⁰ ID37 Suggested Conditions 14 to 34 (inclusive)

¹⁵¹ ID37 Suggested Condition 40

- 9.9 In terms of the improvements to the bus stops suggested, I do not regard a requirement for the provision of lay-bys as necessary, or indeed beneficial. If the bus has to pull into a lay-by to pick up or drop off passengers, that is likely to delay its journey because other drivers can be reluctant to allow the bus out. That is not in the best interests of encouraging those who habitually travel by car, to use the bus. In any event, the condition is best worded to allow flexibility in the improvement scheme to be produced.
- 9.10 The condition put forward to secure a surface water drainage scheme¹⁵² would obviously be of necessity and can be worded to ensure that run off rates are controlled to be no worse than what pertains at present. There is no need to apply a separate condition to relate implementation of that scheme to occupation of the dwellings because it is far more practical to require a timetable for provision as part of the scheme to be submitted. A similar condition would be required to deal with foul drainage¹⁵³.
- 9.11 While nothing of the type is expected to be encountered, it seems to me that it would be reasonable to apply a condition to deal with what must happen in the event that unexpected contamination is encountered in the course of construction¹⁵⁴. Given the potential for deposits, an archaeology condition seems apposite¹⁵⁵.
- 9.12 A condition has been suggested to address air quality, bearing in mind the proximity of the site to the A130 and the railway line¹⁵⁶. I understand that air quality is an important and topical issue, particularly in the South-East, but the ES and the addendum raised no significant difficulties in this regard. Moreover, the railway line is electrified so I do not see how it can cause difficulties. On top of that, if a condition was applied to require mitigation, it is difficult to see what form that could take. All in all, I am not satisfied that the suggested condition is necessary, or indeed workable.
- 9.13 As part of the scheme, the appellant has put forward improvements to the public right-of-way that crosses the appeal site and the provision of a connecting cycle route. I address these matters in my conclusions below but if planning permission was granted for the scheme, a condition would be necessary to secure these benefits.

10. Obligations under Section 106

- 10.1 In the lead up to the Inquiry, the appellant was proceeding on the basis of a Unilateral Undertaking to deal with various aspects¹⁵⁷. However, in the course of the Inquiry, the main parties were able to reach various accommodations which culminated in a draft Agreement under s.106¹⁵⁸. I allowed a short space of time after the Inquiry for this to be completed and a final certified copy of the signed and dated Agreement was received on 22 September 2015.

¹⁵² ID37 Suggested Conditions 35 and 36

¹⁵³ ID37 Suggested Condition 37

¹⁵⁴ ID37 Suggested Condition 38

¹⁵⁵ ID37 Suggested Condition 39

¹⁵⁶ ID37 Suggested Condition 42

¹⁵⁷ ID27

¹⁵⁸ ID36

- 10.2 Consideration of the Agreement must take place in the light of paragraph 204 of the Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010. In simple terms, to be accorded weight, obligations must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Clause 2.10 of the Agreement says that if the Secretary of State, or the Inspector, confirms clearly and unequivocally that a covenant in the Agreement does not satisfy one or more of those tests, then that particular covenant shall not take effect.
- 10.3 The First Schedule of the Agreement deals with the submission of a scheme for the provision of on-site Open Space, and the LEAP¹⁵⁹ within it, the terms and conditions of transfer, its future management, and the Off-Site Open Space Contribution. The latter consists of the sum of £2,133.41 per dwelling (index linked) to be paid to the Council and used to improve facilities for users of the South Benfleet Playing Fields and the Hadleigh Castle Country Park and for no other purpose. In view of the prevailing deficit of open space in the area, a matter I refer to in my conclusions below, these obligations meet the requirements of the Framework and the tests imposed by Regulation 122.
- 10.4 The Second Schedule deals with affordable housing which would make up 35% of the total. This is an important, and beneficial, aspect of the scheme and a mechanism is obviously required to secure it, in a form acceptable to the Council. On that basis, the covenants relating to affordable housing clearly meet the tests of Regulation 122.
- 10.5 The Third Schedule is directed towards health provision. The Health Contribution referred to in the Agreement is the sum of £326.04 for each dwelling to be paid to the Council and then transferred to NHS England and used only for providing or improving health facilities which are reasonably accessible to residents of the site, and for no other purpose. The proposal will clearly place some pressure on health services and the standard multiplier that has been used seems to me a reasonable way in which to arrive at a level of contribution. In that context, I am content that the Health Contribution accords with the Framework and meets the tests of Regulation 122.
- 10.6 The Fourth Schedule refers to waste management. The Waste Management Contribution is the sum of £305 per dwelling to be used by the Borough Council for providing or improving waste management facilities which serve the development. The scheme will clearly add to pressures on such facilities and the contribution is the only sensible way in which that could be alleviated. It meets the tests of Regulation 122 therefore.
- 10.7 The Fifth Schedule deals with the implementation of the Ecology Area Management Plan, and its future maintenance. The Ecology Area is an important facet of the scheme and prayed in aid by the appellant as a significant benefit. As I have set out above, details of the Ecology Area can be secured by condition but the timetable for implementation and future maintenance are clearly appropriate matters to be dealt with through the Agreement. On that basis, I am content that the covenants relating to the Ecology Area Management Plan clearly meet the tests of Regulation 122.

¹⁵⁹ Local Equipped Area of Play

11. Inspector's Conclusions

- 11.1 As set out above, the appeal was recovered by the SoS on 31st March 2014 on the basis that *'the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which 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 and proposals for significant development in the Green Belt'*. **[4.7]**
- 11.2 Against that background, the main issue to be considered in this case is, put simply, whether the proposal represents an inappropriate form of development in the Green Belt and, if so, whether there are any other considerations sufficient to outweigh the harm by reason of inappropriateness, and any other harm, and thereby justify the proposal on the basis of very special circumstances.
- 11.3 I deal with the impact on the Green Belt itself, first of all, before moving on to any other harm, and then other considerations. At the end of these analyses, I deal with the overall balance required.
- 11.4 Before embarking on all that, it is necessary to address the rather unusual situation in relation to the development plan. Neither the Council, not anyone else, alleges any conflict with the saved policies of the Castle Point Borough Council Local Plan. On that basis, I have no reason to conclude that the proposal is anything other than in accordance with the development plan.
- 11.5 However, that situation comes about because the policy therein, designed to address development in the Green Belt, was not saved. As a consequence, the approach of the Framework to development in the Green Belt is a material consideration of significant moment that, to a large extent, overrides the development plan. It is on the basis of that approach that I have dealt with the proposal. **[5.2, 7.5]**

Green Belt Impacts

- 11.6 It is common ground between the main parties that the proposal would represent an inappropriate form of development in the Green Belt. Given the manner in which paragraph 87 of the Framework approaches the construction of new buildings in the Green Belt, I concur with that conclusion. **[6.2, 7.6]**
- 11.7 As paragraph 79 of the Framework sets out, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The concept of 'openness' is not defined in the Framework, or elsewhere, but in general terms it is taken to mean the absence of built development. In that context, it is axiomatic that the imposition of up to 265 dwellings on the appeal site, with associated infrastructure like roads and pavements, would harmfully reduce openness, permanently. **[5.3, 6.2]**
- 11.8 Paragraph 80 of the Framework sets out the five purposes of the Green Belt. On my analysis, the proposal would not meet the first purpose: to check the unrestricted sprawl of large built-up areas; the third: to assist in safeguarding the countryside from encroachment; or, arguably, the fifth: to assist in urban

regeneration, by encouraging the recycling of derelict and other urban land. **[5.4, 8.3, 8.5, 8.14, 8.35]**

- 11.9 It is made clear in paragraph 88 of the Framework that substantial weight should be given to any harm to the Green Belt. That needs to be carried forward into the balancing exercise below. **[5.6, 6.2]**

Any Other Harm

- 11.10 In the first instance, there is a need to address the effect of the proposal on the character and appearance of the area. While it was alluded to in closing by the Council, this is not a matter cited as a reason for refusal. Nevertheless, it did form the focus of many interested persons' submissions. The Council accept that the site does not lie within a valued landscape for the purposes of paragraph 109 of the Framework. However, 'valued' is nowhere defined in the Framework and it is clear that local residents, and others, take a different view from the Council.
- 11.11 The appeal site is an expanse of pasture, over which there are views towards the A130 and beyond from the houses bordering the appeal site. There are views across it towards the settlement too, from the A130, and from the trains on the railway line. Building houses and their attendant infrastructure on an expanse of pasture, in the manner proposed, would cause a degree of harm to the character and appearance of the area.
- 11.12 From what I saw, viewed from the footpath crossing the appeal site, and from the A130¹⁶⁰, the western edge of the settlement which the appeal site borders has a rather motley appearance, with a wide variety of different boundary treatments in evidence¹⁶¹. I do not suggest that the settlement edge is unattractive but the proposal would provide the opportunity to plant a strong, landscaped boundary that would make for more attractive views into the settlement from the footpath, the A130, and trains¹⁶². Moreover, while the proposal would lead to the western extension of the settlement, the gap between the settlement and the A130 would not be closed completely, and ample space would remain to ensure a proper sense of separation.
- 11.13 Linked in many ways to that, a number of local residents have raised issues about the visual impact of the proposals. In simple terms, the concern expressed is that long-cherished views over open fields will be lost if the scheme goes ahead. That is axiomatic but it is a long-established principle of the planning system that there is no inviolable right to a view. It is a core principle of the Framework to always seek a good standard of amenity for all existing and future occupiers of land and buildings. If the layout of the proposed dwellings was carefully designed, something that could be addressed through reserved matters, then no-one need suffer an impact on their outlook that would undermine their living conditions to a significant degree.
- 11.14 On that overall basis, the degree of landscape harm caused by the proposal would be limited, and I attach only moderate weight to it, as a result. **[5.10, 6.25-6.26, 7.29, 8.2, 8.3, 8.11, 8.12, 8.13, 8.15, 8.23, 8.30, 8.32]**

¹⁶⁰ Evident too from the films and pictures included in ID16 and ID17

¹⁶¹ The Design and Access Statement includes photographs CD-A4

¹⁶² CD-A6 and CD-A7

- 11.15 Much was made of highways issues, in terms of capacity and safety but it is important to consider both aspects in the proper context. Paragraph 32 of the Framework tells us that development should only be prevented or refused where the residual cumulative impacts of development are severe.
- 11.16 Of course the proposal would generate traffic, and I accept that, at certain times, the local road system is congested. However, there is nothing unusual about that and there is nothing in the technical evidence to suggest that the road system could not cope with the additional traffic the proposal would generate. The Highway Authority raises no issue in these terms.
- 11.17 Similarly, I heard a great deal about local highway dangers, at Cemetery Corner in particular. However, having negotiated Cemetery Corner a number of times myself in the course of the Inquiry, it appears to me that there is nothing inherently dangerous about it because it provides reasonable visibility for drivers using the junction. The proposal would result in more traffic passing through it but again, the technical evidence does not support a finding that this would cause difficulties in terms of highway safety, if drivers use the junction sensibly. The Highway Authority raises no issue in this regard.
- 11.18 Moreover, the scheme is supported by a package of measures designed to mitigate the impact of the development on the local highway network and encourage non-car modes, including a Residential Travel Plan, improvements to bus stops on High Road, near the junction with Jotmans Lane, and improvements to Cemetery Corner. These have all been agreed with the Highway Authority¹⁶³.
- 11.19 Bringing those points together, while local feeling may be strong on the matter, the proposal would have no harmful highway impact, and certainly not one that could reasonably be described as severe. This is not a matter that weighs against the proposal, therefore. **[7.27, 8.3, 8.4, 8.5, 8.7, 8.9, 8.10, 8.12, 8.13, 8.21, 8.23, 8.24, 8.28, 8.29, 8.30]**
- 11.20 Points have been made too about the impact of additional traffic on air quality. I recognise that this is an important issue, particularly in the built-up South-East, but if the logic of the objection is carried through, then it would be very difficult to justify any development in the South-East, let alone the scheme at issue here. That would not square with the approach of the Framework to securing economic growth. In that context, issues around air quality must be a wider matter for Government to address, and not a matter that weighs against this particular proposal. **[8.13, 8.21]**
- 11.21 Concerns have been raised about the potential impact of construction traffic on local residents, and the road network. First of all, construction activity is bound to create some disturbance for local residents but that is no good reason to prevent development. Controls can be exerted over the construction process by conditions that allow a reasonable balance between the need to develop, and secure attendant economic benefits, and protect living conditions. In terms of the local road network, I saw at my site visits that roads in the immediate vicinity of the appeal site are not built to anything like modern standards and there would be some scope for damage to be caused by heavy

¹⁶³ CD-N1 refers

construction vehicles. However, I am content that this is a matter that would be kept under review by the Highway Authority and dealt with as necessary. **[8.4, 8.12, 8.31]**

- 11.22 Strong feelings were expressed too about flooding and the inadequacy of the local drainage system. Given the local people's regular experiences of flooding, over a long period, that is perfectly understandable. However, the representations I heard on this matter did not take account of the technical evidence, and were all based on the premise that the construction of more houses, and attendant infrastructure, in the manner proposed, would be bound to make the existing situation worse.
- 11.23 That assumption is not correct; it would be perfectly possible to design a surface water drainage scheme for the proposal that achieves a better run-off rate than the existing pasture.
- 11.24 If that is coupled with a well-designed foul drainage system, then, overall, the proposal could lead to an improvement in the existing situation. All that could be secured by condition in the event that planning permission was granted. Issues around flooding do not weigh against the proposal and that conclusion is one that the Environment Agency and Anglian Water share. **[7.28, 8.4, 8.8, 8.9, 8.10, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.27, 8.31]**
- 11.25 People raised issues around the pressures on already stretched local health, and other, services that incoming residents would bring. The appellant has sought to deal with this through a financial contribution, secured through the Agreement under s.106, based on an accepted multiplier. In my view, that would allow any additional pressure placed to be adequately mitigated. This is not a matter that weighs against the proposal, therefore. **[7.31, 8.5, 8.6, 8.7, 8.10, 8.21, 8.24, 8.28, 8.31]**

Other Considerations

- 11.26 The main plank of the appellant's case relates to the provision of housing, and affordable housing. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing sites¹⁶⁴. The Council has acknowledged in various places¹⁶⁵ that it has a record of persistent under-delivery of housing. However, there is more to the issue than that; the scale of the under-supply and its duration are important factors to consider too. The greater the extent of the under-supply, and its duration, the more weight the provision of new housing must attract in any balancing exercise. **[6.17, 7.12]**
- 11.27 The Castle Point Borough Council Local Plan covered the period up to 2001 and set a housing target of 107 dwellings per annum between 1986 and 2001. This housing target was not saved with other parts of the Local Plan in 2007. From 2001 until 2013, the Council's housing requirement was derived from the East of England Plan. This set that requirement as 200 dwellings per annum between 2001 and 2021.
- 11.28 When the East of England Plan was abolished, the Council was left without an adopted housing target in place. That remains the case. The Courts have

¹⁶⁴ ID1

¹⁶⁵ 2013/14 AMR is but one example CD-O12

held¹⁶⁶ that in the absence of such a target, the housing requirement that must be used in a decision-making context, to determine whether a Council can demonstrate a five-year supply of deliverable housing sites, is the full, objectively assessed need.

- 11.29 The Council advance the argument that objectively assessed need is a matter more appropriately dealt with through the Local Plan process. It is fair to say that it is a matter that might be more easily dealt with through such a process. However, in the absence of an adopted housing requirement, and bearing in mind the importance of an assessment of housing supply to decision-making, it is not a matter that can be avoided in dealing with appeals.
- 11.30 The appellant calculates the full, objectively assessed need for Castle Point to be 562 dwellings per annum¹⁶⁷. The 'jobs led' nature of the approach drew some criticism, as did the failure, so-termed, to take into account the wider Housing Market Area. However, it is fair to note that the Council's Draft New Local Plan makes reference to an objectively assessed need of between 400 and 500 dwellings per annum¹⁶⁸. As all acknowledge, the derivation of objectively assessed need is not an exact science, but in the context of the figures in the Draft New Local Plan, the appellant's calculation cannot be described as outlandish. It is fair to observe that there is no better explained analysis before the Inquiry. **[6.12, 7.14, 8.12]**
- 11.31 The appellant has also looked at the issue of supply and calculated that at 406 units over the next five years. On that basis, the appellant says that the Council can demonstrate 0.4 years supply of deliverable housing sites¹⁶⁹. In the course of the Inquiry, based on information that came forward from the Council¹⁷⁰, about sites at Thorney Bay and Park Chase, this was revised to, at best, given that the appellant has understandable doubts about them, 570 units, resulting in 0.5 years supply of deliverable housing sites¹⁷¹.
- 11.32 The Council's figures are, of course, important too. While the intentions of the Council towards it are not clear, the Draft New Local Plan¹⁷² is worthy of analysis. As set out above, mention is made in it of a full, objectively assessed need of at least 400 dwellings per annum¹⁷³. The appellant criticises the source of this figure¹⁷⁴, the Thames Gateway South Essex Strategic Housing Market Assessment, with some justification because having been prepared in September 2008, it is woefully out of date.
- 11.33 Nevertheless, having regard to that, and various factors¹⁷⁵, Policy H 1 of the Draft New Local Plan arrives at a housing requirement (in other words a constrained figure) of 200 dwellings per annum for the period between 2011

¹⁶⁶ CD-I3

¹⁶⁷ Through the evidence of Mr May A1-A3

¹⁶⁸ CD-E1 Paragraph 13.10

¹⁶⁹ Through the evidence of Ms Parsons A2 Paragraph 2.47 to 2.70 and Table NP7 in particular

¹⁷⁰ C3 in particular but also ID19

¹⁷¹ ID30 explains

¹⁷² CD-E1

¹⁷³ CD-E1 Paragraph 13.10

¹⁷⁴ A2 Paragraph 3.11

¹⁷⁵ CD-E1 Paragraphs 13.19 to 13.26

and 2031. Using that figure, and making allowance for under performance against it since 2011, and the buffer, the appellant calculates that the Council can demonstrate, at best, 1.65 years supply of deliverable housing sites. However, it is instructive, in this regard, to note that more recently, the Council has been working on the basis of an annual requirement of 285 dwellings per annum from 2012/13¹⁷⁶.

- 11.34 Using this figure, the appellant calculates that the Council can show, at best, 1.1 years supply of deliverable housing sites¹⁷⁷.
- 11.35 In all probability, the correct figure lies somewhere in-between 0.4 years and 1.1 years but, given the questionable derivation of the full, objectively assessed need in the Draft New Local Plan, and, the Council's misplaced optimism about what the sites at Thorney Bay and Park Chase will actually deliver, it is my view that the correct figure lies much closer to the appellant's worst case of 0.4 years, than the Council's best case of 1.1 years.
- 11.36 Whichever, the fact remains that, in the context of the Government's requirement for Councils to display a five-year supply of deliverable housing sites, the housing supply situation in Castle Point is falling well short of expectations. It is no exaggeration to describe the situation as chronic. Indeed, it has in all likelihood worsened since the Glebelands appeal¹⁷⁸. **[6.12-6.17, 7.2-7.3, 7.13-7.18]**
- 11.37 With reference to a paper prepared by Savills¹⁷⁹, and other comparisons, attempts were made to suggest that Castle Point is by no means the worst performing planning authority in the country. First of all, I would observe that the Savills paper measures a 3 year average of consents as a percentage of annual objectively assessed need¹⁸⁰. Castle Point may not be in the worst performing category on that measure but, importantly, that is not the measure the Framework requires. When housing land supply is compared to neighbouring authorities, who also have Green Belts, on a Framework compliant basis¹⁸¹, Castle Point comes out worst, by some distance.
- 11.38 Notwithstanding that, I am not convinced that such an exercise serves any useful purpose. The Framework requires local planning authorities to demonstrate a five-year supply of deliverable housing sites against their housing requirement, with an appropriate buffer. It does not contain any mechanism by which decision-makers can excuse an authority from that requirement because national, or more local, performance is falling short of expectations. Such a course would obviously frustrate the Government's stated aim to boost significantly the supply of housing. **[6.18-6.19, 7.19-7.20, 8.18, 8.34]**

¹⁷⁶ On the basis of the Greater Essex Demographic Forecasts 2013-2037 Phase 7 Main Report of May 2015 (Edge Analytics) CD-I29

¹⁷⁷ ID30 Table NP7b

¹⁷⁸ CD-11 Where it was concluded that there was 0.7 years supply of deliverable housing sites

¹⁷⁹ ID32 (see also extracts at ID17)

¹⁸⁰ ID32 Map 1

¹⁸¹ ID31

- 11.39 It is important to recognise too that the failure of the Council to meet their housing targets is long standing. As the appellant's evidence shows¹⁸², in only one year since 2001/02 has the Council met its annual housing target (2004/05). The cumulative shortfall of 691 units over the period 2001/02 to 2014/15 is very large. **[7.2, 7.17-7.18]**
- 11.40 Taking all those points together, in the prevailing housing supply situation, the delivery of the housing proposed must carry very significant weight in favour of the proposal.
- 11.41 The situation in terms of affordable housing is no less serious. For various reasons, including issues around viability, delivery of affordable housing in the recent, and not so recent, past has been very poor. The scheme at issue proposes 35% affordable housing (up to 93 units) which is well above the 25% rate expected by the Draft New Local Plan¹⁸³. Against that background, the affordable housing the scheme would provide carries substantial weight in favour of the proposal too. **[6.23-6.24, 7.21-7.23]**
- 11.42 A number of objections were raised about the proposal in terms of its ecological impact. Building on the appeal site would result in the loss of habitat, of sorts, but Natural England confirms that there would be no significant impact as a result. It is important to stress too that neither Natural England, nor the Council, raise any issues with the way the appellant has conducted surveys that have fed into the ES.
- 11.43 On top of that, as the appellant has set out¹⁸⁴, the Greater Thames Marshes have recently been designated as a Nature Improvement Area. The South Essex Marshes, situated to the south of the appeal site fall within that area. The proposal provides the opportunity to provide an Ecology Area within it to provide a quality farmland habitat which will connect with, complement, and enhance the adjacent habitats, secured through condition and the Agreement under s.106.
- 11.44 Paragraph 109 of the Framework says that the planning system should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures.
- 11.45 Viewed in the round, the proposal complies with that approach and, overall, would bring forward significant ecological benefits. These attract significant weight in favour of the proposal. **[6.23-6.24, 7.26, 8.2]**
- 11.46 In terms of connectivity and access, the scheme includes the provision of improvements to the existing public right-of-way that runs along the southern boundary of the appeal site. These involve the provision of a new cycle path and a boundary treatment to separate it from the field it runs through. This will enhance the appeal of the route to walkers and cyclists and open up routes

¹⁸² A2 Table NP5 Page 32 derived from the 2013/14 Annual Monitoring Report CD-O12

¹⁸³ CD-E1 Policy H 21 Page 120

¹⁸⁴ A6 Appendix 11

to the wider countryside. On top of that, it will contribute to longer term strategic plans for the National Cycle Network 16 route which will eventually link Basildon and Southend¹⁸⁵.

- 11.47 Paragraph 73 of the Framework explains that access to high-quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Paragraph 75 says that local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights-of-way networks, including National Trails. In terms of the Green Belt, paragraph 81 suggests that local authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access, and to provide opportunities for outdoor sport and recreation.
- 11.48 In that context, the site-specific improvements to connectivity and access, which can be secured by condition, would provide important benefits. However, they would be localised and as such, attract but moderate weight in favour of the proposals. **[6.23-6.24, 7.27, 7.30]**
- 11.49 Linked to that, the site lies within an area deficient in open space¹⁸⁶. Through the Agreement under s.106, the proposal would provide an on-site area of open space, with a LEAP and make a financial contribution towards existing facilities at the South Benfleet Playing Fields, and the Hadleigh Castle Country Park. However, all this would only serve to mitigate the impact of proposal and it would not lead to wider improvements. On that basis, while these elements are a welcome attribute of the scheme, they carry no weight in favour. **[6.23-6.24, 7.30]**
- 11.50 One of the core planning principles of the Framework is to proactively drive and support sustainable economic development. Paragraph 18 sets out that the Government is committed to securing economic growth in order to create jobs and prosperity. There can be no doubt that the proposal would create or secure jobs and generate economic activity in the construction process. Moreover, incoming residents will bring increased spend that will help stimulate the local economy¹⁸⁷. In the context of the focus of the Framework on economic growth, these factors must carry a considerable degree of weight in the overall planning balance.

The Balancing Exercise

- 11.51 First of all, it must be acknowledged that no conflict has been identified with the development plan.
- 11.52 In terms of other material considerations, paragraph 88 of the Framework sets out that '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.
- 11.53 The proposal would represent inappropriate development in the Green Belt. It would permanently reduce openness, the essential characteristic of Green

¹⁸⁵ A6 Appendix 10 Annex ITD-4

¹⁸⁶ CD-E17 Open Space Appraisal Update 2012 refers

¹⁸⁷ Estimated figures for jobs and expenditure can be found at A5 Paragraph 6.11

Belts, and conflict with several of the purposes of designation. As paragraph 88 of the Framework sets out, these harmful impacts on the Green Belt must attract substantial weight. On top of that, there would be a limited amount of harm to the character and appearance of the area, a consideration that attracts moderate weight.

- 11.54 Against that, the proposal would bring forward market and affordable housing in an area where there has been a long standing failure to provide sufficient new market and affordable housing. In view of the prevailing housing supply situation in Castle Point, outlined above, that must carry very substantial weight in favour of the scheme. Added to that, the proposal would bring forward significant benefits, overall, in ecological, connectivity, and economic terms.
- 11.55 I acknowledge that the PPG says: *Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt.*
- 11.56 However, this is guidance, not policy. Policy is found in the Framework and, notwithstanding the points made by the Council, the policy therein has not changed since it was introduced in March 2012. Moreover, use of the word *unlikely* in the PPG must be taken to mean that circumstances might arise when unmet housing need may well (clearly) outweigh harm to the Green Belt, and any other harm, particularly when there are attendant benefits that weigh in favour too. **[6.3-6.11, 7.7-7.8]**
- 11.57 On my analysis, the beneficial aspects of the proposal are more than sufficient to clearly outweigh the harm to the Green Belt, and any other harm. Very special circumstances exist, therefore, and planning permission should be granted for the scheme.
- 11.58 I reach that conclusion for a number of reasons. First of all it is instructive to note what was outlined by the then SoS in dealing with the Glebelands appeal. In paragraph 20 of the Decision Letter¹⁸⁸ it is stated that: *Whilst the Secretary of State broadly agrees with the thrust of the Inspector's overall conclusions on land supply and housing delivery, as set out in IR335-340, he does not agree with the Inspector's comment at IR339 that the current programme for adoption looks somewhat optimistic, especially in the light of the Council's experience with the now aborted Core Strategy (CS). In the Secretary of State's view, whilst the now withdrawn CS was in preparation, there were no real drivers to ensure that the Council pressed ahead. With the publication of the NPPF, he is more positive than the Inspector that the Council can achieve its programme for LP adoption, especially given the drivers within it. That consideration clearly played a part in the SoS's decision to dismiss the appeal.* **[7.2-7.4]**
- 11.59 However, events have not borne that out positive view. The Draft New Local Plan is currently sidelined and it is very obvious from elements of the Council's case that there is no political will to take it further forward. In arguing that the proposal at issue is premature, the point is not that it would be premature in

¹⁸⁸ CD-11

terms of the Draft New Local Plan but premature in terms of a different Draft Local Plan that takes a different approach to the provision of housing.

- 11.60 That different Draft Local Plan has yet to be prepared, or consulted upon, and it is very difficult to see how such a plan could possibly be in place by 2017 when the Government expects all local planning authorities to have an up-to-date plan.
- 11.61 It was suggested by several contributors that the built-up parts of the Borough have scope to provide the housing necessary. However, as set out, Policy H 1 of the Draft New Local Plan seeks to provide 4,000 new homes between 2011 and 2031 (or 200 dwellings per annum)¹⁸⁹. The Council is currently working on the basis of 285 dwellings per annum as a requirement but in order to provide even 200 per annum, over the plan period, there was found to be a need to allocate major housing sites in the Green Belt.
- 11.62 The sites identified include the appeal site¹⁹⁰ and, as far as I can make out, the site off Glebelands, previously considered by the SoS¹⁹¹. Those sites, and others, were selected following a rigorous process that included the Green Belt Review 2013, the Green Belt Functions Assessment 2010, and a Green Belt Landscape Character Assessment 2010¹⁹². In that context, I am highly sceptical of any suggestion that in preparing the Draft New Local Plan, the Council did not seek to identify as much land outside the Green Belt for housing as it could. So, even if the Council's requirement is taken to be as low as 200 dwellings per annum, sites will have to be taken out of the Green Belt to provide for that. **[8.5, 8.13, 8.16-8.17, 8.35-8.36]**
- 11.63 I sense, from the approach of the Council and other contributors, a feeling that the guidance in the PPG, referred to above, now means that authorities with Green Belts do not have to meet their full objectively assessed need and there is no requirement, as a consequence, to release Green Belt sites for housing. For my part, I do not believe the guidance goes that far. It appears to me that a Council with a Green Belt needs to consider their objectively assessed needs in the context of various constraints and reach a conclusion on what is a reasonable balance between respecting those constraints, and meeting housing needs. The presence of Green Belt is not an excuse not to attempt to meet those needs. **[6.3-6.10, 6.29, 8.16-8.17]**
- 11.64 While the Council might well be considering a change of tack in relation to the Draft New Local Plan, in the light of representations achieved, I would observe that even a deflated housing requirement of 200 dwellings per annum requires the release of sites, including the appeal site, from the Green Belt. That figure of 200 per annum would have to reduce very significantly if Green Belt releases were ruled out, and it is difficult to envisage how anyone examining a Plan that took such an approach, could conclude that it represented a reasonable balance between meeting needs, and protecting the Green Belt.

¹⁸⁹ CD-E1 Page 80

¹⁹⁰ As part of Policy H 14 CD-E1 Page 105

¹⁹¹ Policy H 13 CD-E1 Page 102

¹⁹² CD-E5, CD-E6 and CD-E7

- 11.65 Some points were made about precedent too but a grant of planning permission for housing on the appeal site would not necessarily mean that other Green Belt sites would follow. For one thing, the grant of planning permission for up to 265 houses on the appeal site would make a significant improvement to the Council's housing supply situation. On that basis, the weight to be attached to the benefits of any subsequent housing scheme on a site in the Green Belt would be reduced. The balancing exercise necessary would not be the same, as a result. **[6.27, 7.24-7.25, 8.17, 8.33]**
- 11.66 In that overall context, it is difficult to see how any meaningful housing is going to be brought forward in Castle Point, unless decisions are taken to approve schemes like that at issue, outside the plan-led system.
- 11.67 It is instructive to consider the comments of the Judge who dealt with the challenge to the SoS's decision on the Glebelands case in the High Court¹⁹³. He opined: *the justification for building much needed housing on this GB strip is narrowly balanced. Whatever its qualities as open land, the site does not have high landscape value and may still prove to be the least worst option for housing development. If the Secretary of State's optimism proves unjustified and other GB or open land is not released for housing development by a new Local Plan, the balance may tip in favour of this development on future consideration. In the absence of concerted effort and effective progress, the outcome of the present process may prove to be more of a temporary reprieve than a durable future for the appeal site.*
- 11.68 That situation has developed through the allocation of the appeal site, and other Green Belt sites, in the Draft New Local Plan but it neatly encapsulates the reason why I reach the conclusion that the beneficial aspects of the proposal at issue are clearly outweigh the harm to the Green Belt, and any other harm. Very special circumstances exist, therefore, and planning permission should be granted for the proposal subject to the conditions set out in Annex E. **[6.28-6.29, 7.30, 7.32, 8.20, 8.37]**

12. Recommendation

- 12.1 I recommend that the appeal be allowed, and planning permission granted subject to the conditions as set out in Annex E.

Paul Griffiths

INSPECTOR

¹⁹³ CD-E2 Paragraph 49

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Alun Alesbury of Counsel	Instructed by Fiona Wilson, Head of Legal, Castle Point BC
He called	
Steve Rogers	Head of Regeneration and Neighbourhoods, Castle Point BC
BA(Hons) MRTPI MCIH	
Kim Fisher	Chief Development Control Officer, Castle Point BC
MBA DipTP MRTPI	
Fiona Wilson ¹⁹⁴	Head of Legal, Castle Point BC

FOR THE APPELLANT:

Peter Goatley of Counsel	Instructed by Nicola Parsons, Pegasus Planning Group Ltd
He called	
Christopher May	Director, Pegasus Planning Group Ltd
BA(Hons) MRTPI	
Nicola Parsons	Regional Director, Pegasus Planning Group Ltd
BA(Hons) DipUP MRTPI	
Ian Dimbylow ¹⁹⁵	Associate Director, WSP UK
MEng CEng MICE MCIHT	

INTERESTED PERSONS:

Susan Buhr	Local Resident
June Winter	Local Resident
Councillor David Cross	Member for Jotmans Ward (St Mary's)
Ian Harding	Local Resident
Win Dellow	Local Resident
Nicola Shuttlewood	Local Resident
Robert Wastell	Local Resident
Peter Sach	Local Resident
Alan Sopp	Local Resident
Joseph Cooke	Castle Point Labour Party
Martin Fowler	Local Resident
Sharon Ainsley	Local Resident
Councillor Andrew Sheldon	Mayor of Castle Point
Peter Albrecht	Local Resident representing Residents of 556 Benfleet High Road
Geoff Cook	Local Resident
Councillor Alf Partridge	Local Council Member
Councillor Alan Bayley	Local Council Member
Terry Lack	Local Resident

¹⁹⁴ Took part in the discussion about Obligations

¹⁹⁵ Took part in the discussion about conditions

Kate Hurree	Local Resident
Lesley Sach	Local Resident
George Lockheart	Local Resident
Malcolm West	Local Resident
Councillor Ron Hurrell	Local Council Member
Frank Tietjen	Local Resident
Rebecca Harris MP	Member of Parliament for Castle Point
Russell Savage ¹⁹⁶	Local Resident
Susan Humphrey ¹⁹⁷	Local Resident

¹⁹⁶ Took part in the discussion about conditions

¹⁹⁷ Took part in the discussion about conditions

Annex B: DOCUMENTS

Castle Point Borough Council

- C1 Proof of Evidence of Steve Rogers
- C2 Proof of Evidence of Kim Fisher
- C3 Supplementary Proof of Evidence of Steve Rogers with Appendix

Charles Church and Burrows and Dunn Ltd (The Appellant)

- A1 Summary Proof of Evidence of Christopher May
- A2 Proof of Evidence of Christopher May
- A3 Appendices to Proof of Evidence of Christopher May
- A4 Summary Proof of Evidence of Nicola Parsons
- A5 Proof of Evidence of Nicola Parsons
- A6 Appendices to Proof of Evidence of Nicola Parsons

Core Documents

- CD-A1 Application Forms, Certificates and Services of Notice
- CD-A2 Planning Statement
- CD-A3 Statement of Community Involvement
- CD-A4 Design and Access Statement
- CD-A5 JLB-000-C: Boundary Plan
- CD-A6 JLB-MP-001: Master Plan 1
- CD-A7 JLB-MP-002: Master Plan 2
- CD-A8 JLB-P-001: Parameter Assessment Plan 1
- CD-A9 JLB-P-002: Parameter Assessment Plan 2
- CD-A10 1642-SK-13-A: Access Design
- CD-A11 1642-SK-15-A: Loten Road Access
- CD-A12 Transport Assessment
- CD-A13 Open Space Assessment
- CD-A14 Energy and Sustainability Assessment
- CD-A15 Surface Water and SuDS Statement
- CD-A16 Utilities Capacities Assessment
- CD-A17 Schedule of Submission Documents
- CD-A18 JBA 11/161-01: Illustrative Landscape Master Plan

- CD-B1 Environmental Statement: Volume 1 – Main Text
- CD-B2 Environmental Statement: Volume 2 – Technical Appendices
- CD-B3 Environmental Statement: Non-Technical Summary
- CD-B4 Addendum to Environmental Statement
- CD-B5 Addendum to Environmental Statement: Non-Technical Summary
- CD-B6 Addendum to Transport Assessment
- CD-B7 Advertisement in Local Press (16 July 2015)
- CD-B8 Covering Letter to Castle Point BC
- CD-B9 Covering Letter to PINS
- CD-B10 Covering Letter to Essex County Council
- CD-B11 Covering Letter to Statutory Consultees
- CD-B12 List of Statutory Consultees who received Covering Letter

- CD-C1 Notice of Decision dated 1 October 2013

CD-C2	Committee Report relating to the Originating Application
CD-C3	Council's minutes of Planning Committee
CD-D1	Saved Policies from the Castle Point Local Plan 1998
CD-D2	Proposals Map accompanying Castle Point Local Plan 1998
CD-D3	Schedule of Saved Policies from the Castle Point Local Plan and accompanying letter from the Secretary of State
CD-D4	Castle Point Local Plan 1998 – National Planning Policy Framework Consistency Check
CD-E1	Draft Local Plan 2014
CD-E2	Draft Local Plan Proposals Map 2014
CD-E3	Draft Local Plan Constraints Map 2014
CD-E4	Sustainability Appraisal and Strategic Environmental Assessment of the Draft Local Plan 2014
CD-E5	Green Belt Review 2013
CD-E6	Green Belt Functions Assessment 2010
CD-E7	Green Belt Landscape Character Assessment 2010
CD-E8	Housing Growth Topic Paper 2013
CD-E9	Housing Capacity Topic Paper 2013
CD-E10	Housing Site Options Topic Paper 2013
CD-E11	Additional Sites Sustainability Assessment 2013
CD-E12	Community Infrastructure Needs Assessment 2013
CD-E13	SHMA Review 2013
CD-E14	SHLAA Update Report October 2013
CD-E14a	SHLAA Schedule October 2013
CD-E14b	SHLAA Maps October 2013
CD-E14c	SHLAA Update October 2011
CD-E14d	SHLAA Schedule June 2012
CD-E14e	SHLAA Maps June 2012
CD-E14f	SHLAA Report May 2012
CD-E14g	SHLAA Report October 2014
CD-E14h	SHLAA Schedule October 2014
CD-E14i	SHLAA Maps October 2014
CD-E15	Preliminary Draft CIL Charging Schedule 2014
CD-E16	Whole Plan Viability Study 2013
CD-E17	Open Space Appraisal Update 2012
CD-E18	Playing Pitch Assessment 2012
CD-E19	Castle Point New Local Plan Issues Discussion Paper January 2012
CD-E20	Caravan Report September 2013
CD-E21	New Local Plan Sequential and Exception Tests for Housing Site Options November 2013
CD-E22	Core Strategy Inspector's Letter of 11 May 2011
CD-E23	Sustainability Appraisal Second Review October 2014
CD-E24	Castle Point Transport Evidence and Appendices
CD-F1	Essex Design Guide 2005
CD-F2	Essex Transport Strategy 2011
CD-F3	Essex Development Management Policies 2011
CD-F4	Greater Essex Integrated County Strategy 2010
CD-F5	Thames Gateway South Essex Planning and Transport Strategy 2013

CD-G1	Developer Contributions Guidance SPD October 2008
CD-G2	Draft Revised Developer Contributions Guidance SPD 2014
CD-G3	Residential Design Guidance SPD 2013
CD-H1	National Planning Policy Framework (NPPF) 2012
CD-H2	National Planning Practice Guidance – Extracts
CD-I1	Secretary of State's Decision and Inspector's Report on APP/M1520/A/12/2177157 (Glebelands) of 26 June 2013
CD-I2	<i>Fox Land and Property Ltd v Secretary of State for Communities and Local Government and Castle Point BC</i> [2014] EWHC 15 (Admin)
CD-I3	<i>Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council</i> [2013] EWHC 2678 (Admin)
CD-I4	<i>City and District Council of St Albans v The Queen (on the application of) Hunston Properties Ltd and the Secretary of State for Communities and Local Government</i> [2013] EWCA Civ 1610
CD-I5	Secretary of State's Decision and Inspector's Report on APP/M9565/V/11/2154021 (Stanford-le-Hope) of 22 March 2012
CD-I6	Secretary of State's Call-In Decision of 30 January 2014 on Houghton Regis North Site 1 – Land on the North Edge of Houghton Regis
CD-I7	<i>The Queen (on the application of Chelmsford BC) v The First Secretary of State and Draper</i> [2003] EWHC 2978 (Admin)
CD-I8	<i>The Queen (on the application of Basildon DC) v The First Secretary of State and Mrs R Temple</i> [2004] EWHC 2759 (Admin)
CD-I9	Letter from Nick Boles MP to Sir Michael Pitt, Chief Executive of PINS, of 3 March 2014
CD-I10	Written Statement to Parliament of 6 March 2014 on Local Planning
CD-I11	Letter from Nick Boles MP to Sir Michael Pitt, Chief Executive of PINS, of 13 March 2014
CD-I12	Blank
CD-I13	Central South Essex Marshes Living Landscapes of 31 March 2010 (RSPB)
CD-I14	Thames Gateway Parklands – Delivering Environmental Transformation November 2010
CD-I15	Thames Gateway South Essex: Green Grid Strategy April 2005
CD-I16	'Nature Nearby' Accessible Natural Greenspace Guidance Natural England March 2010
CD-I17	Analysis of Accessible Natural Greenspace Provision for Essex, including Southend-on-Sea and Thurrock Unitary Authorities Natural England and Essex Wildlife Trust 2009
CD-I18	Design for Play: A Guide to Creating Successful Play Spaces Play England and the Free Play Network 2008
CD-I19	Planning and Design for Outdoor Sport and Play Fields in Trust 2008
CD-I20	Secretary of State's Decision and Inspector's Report on APP/H1840/A/13/2199085 (Pulley Lane) of 2 July 2014
CD-I21	Letter of 6 July 2010 suspending Core Strategy Examination
CD-I22a	Inspector's Guidance to the Council following suspension of Core Strategy Examination July 2010
CD-I22b	Core Strategy Inspector's Note following suspension
CD-I22c	Core Strategy Inspector's letter to the Council of 11 May 2011
CD-I22d	Cabinet Report of 25 May 2011

- CD-I22e Council's response to Core Strategy Inspector of 31 May 2011
- CD-I22f Core Strategy Inspector's letter to the Council of 7 June 2011
- CD-I22g Council's further response to Core Strategy Inspector of 24 June 2011
- CD-I22h Core Strategy Inspector's letter to the Council of 6 July 2011
- CD-I23 Inspector's Report on Further Alterations to the London Plan of November 2014
- CD-I24 Further Review of the Thames Gateway South Essex SHMA by Edge Analytics dated 12 March 2015
- CD-I25 Thames Gateway South Essex Housing Market Trends Quarterly Report of April 2015
- CD-I25a Hometrack Quarterly Review of July 2015 provided by the Growth Partnership
- CD-I26 Commissioning School Places in Essex 2014-2019 Essex CC
- CD-I27 Appeal Decisions on APP/R3325/A/13/2209680 and 2203867 dated 3 June 2015
- CD-I28 PAS Five Year Land Supply FAQs
- CD-I29 Greater Essex Demographic Forecasts 2013-2037 Phase 7 Main Report of May 2015 (Edge Analytics)
- CD-I30 Objectively Assessed Need and Housing Targets: Technical Advice Note Second Edition of June 2015 prepared for PAS by Peter Brett Associates
- CD-I31 HM Treasury 'Plan for Growth' March 2011
- CD-I32 HM Treasury 'Fixing the Foundations' July 2015
- CD-I33 SoS Decision and Inspector's Report on APP/P2935/A/14/2217815
- CD-I34 PM and Chancellor's article in the Times on 4 July 2015
- CD-I35 Written Statement dated 6 September 2012 by Rt Hon Greg Clark MP: 'Plan for Growth'
- CD-I36 Written Statement dated 6 September 2012 by Rt Hon Eric Pickles MP: 'Housing and Growth'
- CD-I37 CLG Press Release dated 4 October 2014: 'Councils must protect our precious Green Belt land'
- CD-I38 CLG Response dated 11 August 2014: 'Development on the Green Belt'
- CD-I39 CLG Press Release dated 16 October 2014: 'New rules further strengthen Green Belt protections'

- CD-J1 Castle Point Borough Council's list of consultees on the original planning application
- CD-J2 Statutory and non-statutory consultation responses
- CD-J3 Third party responses
- CD-J4 Third party correspondence and representations on the appeal

- CD-K1 Appellant's appeal submission papers
- CD-K2 Castle Point Borough Council's appeal questionnaire and attachments
- CD-K3 Appellant's Statement of Case
- CD-K4 Castle Point Borough Council's Statement of Case
- CD-K5 SoS Recovery Letter

- CD-N1 Statement of Common Ground dated 31 July 2015 between the appellant and the Highway Authority

- CD-O1 Cabinet Report dated 21 September 2011
- CD-O2 Cabinet Report dated October 2012
- CD-O3 Full Council Meeting Agenda dated 5 December 2012

- CD-O4 Minutes of Full Council Meeting dated 5 December 2012
- CD-O5 Local Plan Task and Finish Officer Report dated 8 October 2014
(Agenda)
- CD-O6 Local Plan Task and Finish Officer Report dated 8 October 2014
- CD-O7 Local Plan Task and Finish Officer Report dated 29 October 2014
(Agenda)
- CD-O8 Local Plan Task and Finish Officer Report dated January 2015
- CD-O9 Cabinet Meeting Officer Report dated June 2015
- CD-O10 Local Development Scheme of January 2012
- CD-O11 Local Development Scheme of January 2014
- CD-O12 AMR 2013/14
- CD-O13 AMR 2012/13
- CD-O14 CPBC AH Note
- CD-O15 Task and Finish Group Report dated 26 January 2015
- CD-O16 AMR 2014/15
- CD-O17 Cabinet Meeting Officer Report dated 19 August 2015

Annex C: Inquiry Documents

ID1	Signed Statement of Common Ground
ID2	Consultation Response from Natural England (2 April 2015)
ID3	Extract from Inspector's Report on APP/F1610/A/13/2203411 (Stow-on-the Wold)
ID4	Appellant's Opening Statement
ID5	Appellant's List of Appearances
ID6	Written Submission of Mrs Marlene Curtis (British Horse Society)
ID7	Extracts from PPG - Reference ID: 3-044-20141006 and 3-045-20141006
ID8	Representation of Susan Buhr
ID9	Representation of Councillor Cross
ID10	Representation of Ian Harding
ID11	Representation of Nicola and Terry Shuttlewood
ID12	SoS Decision and Inspector's Report on APP/M1595/V/14/2214081 (Thurrock)
ID13	Representation of Mr M Powell
ID14	Representation of the Crocketts
ID15	Representation of Martin Fowler
ID16	Presentation of Sharon Ainsley (on memory stick)
ID17	Presentation of Councillor Andrew Sheldon (part contained on memory stick attached as ID16)
ID18	Order Decision: FPS/Z1585/7/75
ID19	Information relating to 4-12 Park Chase, Hadleigh
ID20	Note on ecological matters by Southern Ecological Solutions (undated)
ID21	Representation of Councillor Alf Partridge
ID22	Representation of Mr & Mrs P Sach
ID23	Representation of Ron Hurrell
ID24	Representation of Kate Meager
ID25	Representation of Kevin Futcher
ID26	Copy of <i>SatNam Millenium Ltd v Warrington Borough Council</i> [2015] EWHC 370 (Admin)
ID27	Unilateral Undertaking dated 9 September 2015, plus explanatory note
ID28	Extract from PPG – Reference ID: 3-034-20141006
ID29	Copy of <i>Wychavon DC v Secretary of State for Communities and Local Government and K & L Butler</i> [2008] EWCA Civ 692
ID30	Review of Mr Roger's Appendix SR1 put in by Ms Parsons
ID31	Information on other LPA's housing supply put in by Ms Parsons
ID32	Complete Copy of Savills' Paper: Residential Development – Who will build the homes we need? (see also ID17)
ID33	Paper on flood risk put in by WSP dated 4 September 2015
ID34	Paper on highway matters put in by WSP dated 10 September 2015
ID35	Copy of press coverage of sewage works
ID36	Draft Agreement under s.106
ID37	Suggested Planning Conditions
ID38	Paper on the operation of tankers serving the Wastewater Treatment Works put in by WSP dated 11 September 2015
ID39	Council's Closing Statement
ID40	Appellant's Closing Statement
ID41	Speaking Notes of Rebecca Harris MP
ID42	Completed Agreement under s.106 dated 21 September 2015

Annex D: PLANS

- A JLB-000-C: Boundary Plan
- B 1642-SK-13-A: Access Design
- C 1642-SK-15-A: Loten Road Access

Annex E: SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) 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.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: (insert plan numbers). JLB-000-C: Boundary Plan; 1642-SK-13-A: Access Design; and 1642-SK-15-A: Loten Road Access.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of all boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and each boundary treatment shall be completed before the dwelling it serves is first occupied.
- 7) No development shall take place until a Wildlife Protection Plan (WPP) has been submitted to and approved in writing by the local planning authority. This shall include details of measures to mitigate any impacts on protected and/or priority species, how these will be implemented before, and during the construction process, including method statements where necessary, and provisions for measures to be carried out in the event a previously absent protected or priority species is encountered in the course of construction. Development shall be carried out in accordance with the approved WPP.
- 8) No development shall take place until details of an Ecology Area Management Plan (EAMP) have been submitted to and approved in writing by the local planning authority. The EAMP shall include provisions for habitat creation and management for the life of the development, as outlined in the Environmental Statement, and the addendum to it, and *Ecosystem Services within the Greater Thames Marsh Nature Improvement Areas* (February 2013). Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until details of street lighting have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the street lighting serving it has been completed in accordance with the approved details and is operational.
- 10) No development shall take place until a scheme for the protection of all trees, shrubs, and hedgerows scheduled for retention, in the course of construction works, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be adhered to for the entire duration of the construction period.

- 11) Any tree planted as part of the landscaping works, which within a period of 5 years from the completion of the development dies, is removed, or becomes seriously damaged or diseased, shall be replaced in the next planting season with another, of similar size and species.
- 12) Within the confines of the site, there shall be no obstruction to visibility, above a height of 0.6m within the area of the 1.5m x 1.5m sight splay to be provided at the junction of any vehicular access and the adjoining highway. Such sight splays are to be provided before first occupation of the dwelling they serve and shall be retained as such thereafter. Any new boundary planting shall be set a minimum of 1m back from the highway boundary and any visibility splay.
- 13) None of the dwellings shall be occupied until the accesses to Jotmans Lane and Loten Road, the works proposed to the existing footway on Jotmans Lane, have been constructed in accordance with the approved plans. No dwelling shall be occupied until the estate road and footway serving it have been constructed.
- 14) Prior to first use of the vehicular access on to Jotmans Lane, a clear to ground visibility splay with dimensions of 2.4m x 43m as measured from and along the nearside of the carriageway, in both directions, shall be provided at its centre line and retained free of any obstruction to visibility thereafter.
- 15) None of the dwellings approved herein shall be occupied until details of a Residential Travel Plan (RTP) have been submitted to and approved in writing by the local planning authority. The RTP should include details of the provision of an annual report, a co-ordinator, and a Residential Travel Information Pack, to be provided for incoming residents. The RTP shall be implemented in accordance with the approved details.
- 16) No development shall take place until details of a scheme for the improvement of bus stops on High Road, adjacent to the junction with Jotmans Lane, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 17) No development shall take place until details of a scheme to improve the junction of High Road, Jotmans Lane, and Benfleet Park Road (Cemetery Corner), including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 18) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include details of (a) the route(s) to be taken by large scale plant and delivery vehicles to gain access to the site; (b) the parking of vehicles of site operatives and visitors; (c) loading, unloading and storage areas; (d) wheel washing facilities and their operation; (e) measures to control the emission of noise, dust and dirt during construction; (f) hours of working; and (g) a site waste management plan. Construction work shall be carried out in accordance with the approved CMS.
- 19) No 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, has been submitted to and

- approved in writing by the local planning authority. The scheme should demonstrate that surface water run off generated up to and including the 100 year critical storm, inclusive of an allowance for climate change, will not exceed the run off from the undeveloped site in the corresponding rainfall event and include a timetable for implementation and details of its management and maintenance in use. The surface water drainage scheme shall be implemented in accordance with the approved details.
- 20) No development shall take place until a foul drainage scheme, including a timetable for implementation, and details of its management and maintenance in use, has been submitted to and approved in writing by the local planning authority. The foul drainage scheme shall be implemented in accordance with the approved details.
- 21) If, during the course of implementing the development, contamination not previously identified is encountered, then no further development shall take place until a remediation strategy, including an implementation timetable, has been submitted to and approved in writing by the local planning authority. Any necessary remediation shall take place in accordance with the approved details.
- 22) No development shall take place until a programme of archaeological trial trenching has been undertaken in accordance with a written scheme of investigation, which shall include an excavation/preservation strategy, previously submitted to and approved in writing by the local planning authority. No development shall take place until the fieldwork has been completed and a post-excavation assessment shall be submitted to the local planning authority within six months of fieldwork completion.
- 23) No development shall take place until details of improvements to the public right-of-way, and the provision of a cycle path, including a timetable for their implementation, have been submitted to and approved in writing by the local planning authority. The improvements to the public right-of-way, and the provision of the cycle path, shall be implemented in accordance with the approved details.



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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.