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# Appeal Decision

Hearing held on 29 March 2023

Site visit made on 28 and 29 March 2023

**by Paul Thompson DipTRP MAUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 May 2023**

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**Appeal Ref: APP/M1520/W/22/3310483**

**Land Rear of 248 Hart Road, Thundersley, Benfleet SS7 3UQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Legal & General Affordable Homes against the decision of Castle Point Borough Council.
  - The application Ref 21/1137/FUL, dated 9 December 2021, was refused by notice dated 21 June 2022.
  - The development proposed is 46 dwellings with open space, playspace, landscaping, access and associated infrastructure.
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## Decision

1. The appeal is allowed and planning permission is granted for Demolish existing building and stables and construct 44. affordable dwellings including open space, play space, landscaping and associated access, infrastructure and parking arrangements, at Land Rear of 248 Hart Road, Thundersley, Benfleet SS7 3UQ in accordance with the terms of the application, Ref 21/1137/FUL, dated 9 December 2021, subject to the attached schedule of conditions.

## Procedural Matters

2. Despite the description of development set out above, I consider the description found on the Appeal Form better reflects the amended scheme before me and which the Council considered. The development proposed is therefore to 'Demolish existing building and stables and construct 44 affordable dwellings including open space, play space, landscaping and associated access, infrastructure and parking arrangements'.
3. Following determination of the planning application, on 22 June 2022 the Council withdrew its New Castle Point Local Plan 2018-2033. The plan had progressed through its Examination and the Inspector had reported on final modifications. Hence, in its Statement of Case the Council has confirmed it no longer seeks to defend its second reason for refusal relating to prematurity.
4. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') transpose the Habitats Directive and the Birds Directive into English law. The aim of the Directives is to conserve key habitats and species across the European Union by creating and maintaining a network of sites known as the Natura 2000 network. They require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.

5. The Officer Report identifies that the Council has carried out its own assessment, but my determination of the appeal means I also must undertake the same statutory duty. I have therefore dealt with this matter as a main issue and engaged with the main parties and Natural England accordingly.
6. The appellant has submitted amended plans in support of the appeal which did not form part of the original planning application. I am conscious that the appeal process should not be used as a means to progress alternatives to a scheme that has been refused. However, the plans only seek to alter the appearance of the dwellings to correct the position of photovoltaic panels to their roofs. Having regard to fairness and natural justice, I consider that interested parties would not be prejudiced if I were to consider the proposed amendments. My findings therefore relate to the amended plans.

### **Main Issues**

7. The Statement of Common Ground (SoCG) between the Council and appellants states the proposal is inappropriate development in the Green Belt, so it is not necessary for me to cover this point in any further detail. Therefore, based on the evidence before me, the main issues are:
  - the effect of the proposal on the openness of the Green Belt and purposes of including land within the Green Belt;
  - the effect of the proposal on the integrity of the features of European nature conservation sites at the Essex Coast;
  - other matters relevant to proposed development; and
  - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### *Openness and the Purposes of Including Land within the Green Belt*

8. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof are their openness and permanence. The openness of the Green Belt has a spatial aspect as well as a visual aspect. The National Planning Policy Framework (the Framework) also clarifies that the Green Belt serves five purposes, including to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment.
9. The appeal site is primarily a large paddock of land to the south of Hart Road but includes No 148 and the numerous structures, areas of hardstanding and manège to its rear. Its northern boundary adjoins other properties fronting the road. To the west are the buildings and grounds of the Cedar Hall School. To the east are a cul de sac of bungalows in Greenleas and the long gardens of houses in Rayleigh Road. To the south is a further paddock, which adjoins The Chase, a residential street with housing to either side. This includes a modern development of homes north of the street, this extends as far as the school, adjacent to the southern boundary of the site.
10. The boundaries to the site are generally enclosed by mature hedgerow and tree planting, which provide verdant or sylvan surroundings to much of the site.

However, the boundaries to the northern part of the site adjoining the school and neighbouring homes are more open. The existing buildings within the site, including the dwelling, are of varied footprint, scale, and height, so have different effects on openness and would be demolished for the dwellings.

11. The proposal is supported by a Landscape and Visual Appraisal, and I accept that a scheme of landscaping for the site would be likely to be integral to the layout of the appeal scheme and reflect planting found in the immediate environment. Despite this, the proposal is for a large area incorporating a significant increase in built forms and, at least in the short- to medium-term, it would be clearly discernible to occupiers of the adjacent properties, from along the proposed route into the site and from the south over the adjacent paddock and intervening planting, particularly during winter months.
12. The houses immediately southwest and the new school building have both reduced the openness of this part of the Green Belt and reinforced its urban fringe characteristics, but the proposal would further fragment the Green Belt. Moreover, parts of the Green Belt to the east would be further isolated from those to the south and west, so it would be less effective, a point which was accepted by the appellants at the Hearing.
13. For these reasons, the proposed development would result in a harm to the Green Belt through loss of openness in both visual and spatial terms. This would contribute to urban sprawl, in conflict with the purposes of including land within the Green Belt. Again, this point is agreed by the main parties but not the extent of harm caused by that conflict.
14. The SoCG confirms agreement that the evidence base documents for the withdrawn local plan remain relevant. This includes the Castle Point Green Belt Assessment 2019, which was used to establish the importance of the site, within a much larger parcel of land, to the purposes of the Green Belt. Moreover, the harm to checking the unrestricted sprawl of large built up areas and to safeguarding the countryside from encroachment were respectively adjudged to be moderate and minor. The appellants have also produced their own site-specific Green Belt Assessment and arrived at similar conclusions.
15. Based on the Council's evidence, the need to promote sustainable patterns of development and fact that housing could not be accommodated within the existing urban area, the Examining Inspector for Council's withdrawn Local Plan indicated there were exceptional circumstances for the parcel of land within which the site is situated to be removed from the Green Belt. Accordingly, as the appeal at Billericay<sup>1</sup>, given that the evidence informed a plan found to be sound, it is a material consideration to the determination of this appeal of significant weight.
16. The Examining Inspector identified that there would be limited harm to the Green Belt through loss of openness and to those purposes. While the proposal would not come forward through a comprehensive development, as envisaged for the parcel, due to the presence of other existing development, west at the school and houses to the southwest, the extent of the harms I have identified to the Green Belt would also be limited. Nevertheless, the proposal would be contrary to the main aims of Green Belt policy outlined in the Framework.

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<sup>1</sup> Appeal Reference: APP/V1505/W/22/3298599 - Land North off Kennel Lane, Billericay.

### *European Nature Conservation Sites*

17. The appeal site falls within the recreational disturbance Zone of Influence (ZOI) for several European nature conservation sites situated along the Essex coast, namely the Essex Estuaries Special Area of Conservation (SAC), the Blackwater Estuary Special Protection Area (SPA) and Ramsar sites; and the Benfleet and Southend Marshes SPA and Ramsar sites.
18. The qualifying features of the Benfleet and Southend Marshes SPA are wintering birds including: Common Ringed Plover, Dark-Bellied Brent Goose, Dunlin, Grey Plover and Red Knot. Waterbird assemblages are also important. The Ramsar site also qualifies due to these species.
19. The qualifying features of the Blackwater Estuary SPA are wintering and breeding birds including: Black-Tailed Godwit, Common Pochard, Common Ringed Plover, Dark-Bellied Brent Goose, Dunlin, Grey Plover, Hen Harrier, and Little Tern. Waterbird assemblages are also important. The Ramsar site also qualifies due to these species, but also for other flora and fauna present.
20. Moreover, the qualifying features of the Essex Estuaries SAC relate to the extensive habitats found across the European Sites that overlap it, including Blackwater Estuary, which feature, amongst others, sandbanks and mudflats and the flora that thrive there.
21. The European Site Objectives for the SPAs and SAC overlap and are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, or its Favourable Conservation Status, by maintaining or restoring the extent, distribution, structure and function of the habitats of the qualifying features; the supporting processes on which these rely; population of each of the qualifying features; and their distribution within the site.
22. All residential proposals contained within the ZOI for these sites covered by the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (RAMS) are required to have regard to the potential adverse effects from increased recreational disturbance.
23. In combination with further new housing expected to come forward in the ZOIs, the increased recreational pressure from the proposed development of 44 dwellings, would contribute to the disturbance of these habitats, including the key bird species, contrary to the relevant conservation objectives of the European Sites. In the absence of mitigation, the proposal therefore has the potential to result in likely significant effects on the European Sites and an AA is required.
24. RAMS sets out the strategy to mitigate the potential in-combination impacts of new housing development on European Sites. It includes a tariff that should be applied to new housing developments within the ZOI. The tariff was agreed based on housing projections from the participating authorities that would require mitigation up to 2038. The contributions made through the tariff are to fund education and communication and habitat-based measures, including habitat creation and enforcement and monitoring.
25. As the competent authority I have consulted Natural England (NE) as the appropriate nature conservation body. NE is satisfied that the avoidance and mitigation measures in RAMS are appropriate to avoid an adverse effect from

the proposal to the integrity of the European Sites and qualifying features. With the above in mind, I am also satisfied that there would be sufficient procedures in place to secure appropriate mitigation and ensure that it would be provided in a timely manner to accord with RAMS.

26. While the RAMS figure referred to in the Section 106 Legal Agreement (S106) does not match that referred to in NE's consultation response, it includes provision for the tariff to reflect the current amount prior to payment.
27. I therefore conclude that the proposed development, either alone or in combination with other plans or projects, would not adversely affect the integrity of the European Sites protected under the Habitats Regulations. Hence, it would accord with the habitats and species protection criteria set out in Policy EC13 of the Castle Point Borough Council Local Plan (Adopted 17 November 1998) and the Framework.

#### *Other Matters Relevant to the Proposed Development*

##### Access, Highway Safety, Traffic Congestion and Air Quality

28. Concerns are raised by interested parties regarding the suitability of Hart Road and the junctions further east to serve the proposal, including at times school drop-offs and pick-ups take place. The evidence before me demonstrates that the proposal, including any construction traffic, would be unlikely to result in highway safety or capacity issues to the surrounding road network and users, including in proximity of the adjacent school.
29. The appeal is supported by a Transport Statement and Road Safety Audit and the former was undertaken for a higher number of dwellings. The magnitude of vehicle trips likely to be associated with the proposal would be limited so is unlikely to result in a severe cumulative impact on the road network relating to highway safety or its operational performance and levels of congestion. I also note that school times are busy all over the country and it is not the appellants' responsibility to address existing issues associated with school pick-up or drop-offs, including the improvement of nearby junctions to enhance their performance. I also note that Essex County Council, as Local Highway Authority did not raise concerns, subject to planning conditions. Furthermore, the evidence before me indicates regular bus services are available and the site is situated within walking distance of shops, services, and facilities.
30. In addition, the appellants' Construction Environmental Management Plan, for highway impacts, commits to addressing any damage or defects associated with vehicle routes to and from the site to the A127, which would be controlled by a condition requiring compliance with the measures outlined therein.
31. I have not been referred to the site being within a declared Air Quality Management Area and there is no substantive evidence before me of an existing problem with air quality in the area or that traffic associated with the proposal would lead to harm to nearby residents in this respect. Furthermore, the Construction Environmental Management Plans would control emissions and dust from the site during the construction phase.

##### Appearance and Loss of Open Space

32. While there would inevitably be a change to the appearance of the site when viewed from neighbouring properties and within its surroundings, the proposal

would be of a layout and appearance that would be complimentary to the grain of development found within the locality. Similarly, the appeal site is private land, not accessible to the public, so its development would not result in the loss of public open space.

#### Flood Risk, Water Supply, Firefighting, Climate Change and Habitat

33. The proposal would add to hard surfacing within the site but there are sufficient details before me to be confident that the drainage scheme could be finalised by condition to ensure it would not lead to flooding elsewhere. Development of the site would therefore not adversely affect the potential of the land to mitigate against rainfall in the immediate vicinity. Furthermore, there is no firm evidence before me to demonstrate any drainage features would be likely to result in stagnant water that would, in turn, lead to problems with pests.
34. Despite concerns advanced regarding the mains water pipes in the locality, there is no substantive evidence before me from Anglian Water that would lead me to doubt that water supply could be facilitated to service the proposal. Similarly, the availability of water for firefighting purposes and the inclusion of sprinklers would need to be addressed through Building Regulations, as I have not been referred to relevant policies that specifically address such matters.
35. At the Hearing, I was referred to the implications of the site adding to an urban heat island effect, but there is no substantive evidence before me as to the precise effect that would result from the proposal. There is greater certainty that the proposal would deliver housing to a high standard that would be energy efficient, alongside biodiversity benefits.
36. The site is identified as part of the Thundersley Plotlands Local Wildlife Site (LWS) and there are concerns from interested parties that development of the site would result in loss of its ecological value. However, the evidence before me indicates the land is of low intrinsic and conservation importance and any protected species identified in the appellants' *Ecological Impact Assessment* utilising the site for foraging or commuting purposes would be able to continue to do so, including badgers and hedgehogs, subject to mitigation measures controlled planning conditions. Furthermore, the proposal would improve habitat and hedgerows within the site which would compensate for the loss of this part of the LWS. I note that the Council's officers did not raise any concerns in respect of such matters and there is no substantive evidence before me that would justify me arriving at a different conclusion.

#### Living Conditions

37. Due to the layout of the proposal and the intervening distances achieved, there would be unlikely to be harm caused to the living conditions of the occupants of neighbouring properties, particularly in terms of privacy, outlook, and daylight. The position of external public lighting would also be agreed by planning condition to reduce potential for disturbance to residents.

#### Need for the Development

38. While some concerns have been raised regarding the availability of empty homes, there is no substantive evidence before me to demonstrate this is a particular problem in the settlement or the Borough. Similarly, at the Hearing I was referred to the potential for other sites to be developed in preference of

the appeal site, including on brownfield land, but I have not been referred to specific sites and, in any event, I must consider the proposal that is before me.

39. Notwithstanding this, at the Hearing, interested parties identified that homes need to be in the right locations for people that need them, including young people with lower wages, and that house prices influence the availability of homes to local people, with greater competition given the proximity to London. The proposal would assist in the provision of homes for precisely those people.

#### Infrastructure Provision

40. Concerns have been raised that local infrastructure, including health services, would be unable to cope with additional development. However, there is no compelling argument that the proposed development would directly affect the capacity of local infrastructure and I note that the availability of infrastructure is a challenge nationally. Resisting the development on the grounds of the capacity of local infrastructure would not therefore be justified, particularly as contributions would be made to infrastructure in connection with the proposal.

#### Other Developments and Future Development Adjacent

41. Interested parties have referred to other developments of housing that have been permitted in Benfleet and Thundersley, some of which would be in the Green Belt. While this suggests that there has been continuous development and expansion within these settlements, there are no details before me as to how they would compare with the developments before me. In any event, based on my findings in this and the other main issues, there would be no harms associated with the proposal, except those that I have identified to the Green Belt. These can only be outweighed by very special circumstances relevant to the appeal before me. For these reasons, it would be unreasonable for me to seek to draw comparisons with any other scheme nearby either in favour or against the appeal scheme.
42. The appellants have committed through the S106 to ensure that routes to the south and east would not be used for vehicular links to future development, but I am mindful that future applications and appeals for such proposals would need to be considered on their own merits.
43. For the reasons outlined above, these other matters would not justify withholding permission for the proposed development.

#### *Other Considerations (Green Belt)*

##### Affordable Housing and Delivery

44. The appeal scheme would be wholly for affordable housing with a tenure split of nine homes for Affordable Rent and 35 for Shared Ownership. The provision of these homes and their governance by the Registered Provider would be secured through the S106.
45. The SoCG outlines that the Council is only able demonstrate no more than a 1.86-year housing land supply based on a housing need of 355 per annum for the period 2022-2027. It goes on to state the *South Essex Housing Market Assessment Addendum* (2017) formed part of the evidence base of the withdrawn local plan and calculated a net annual affordable housing need for

the Borough of 353 affordable homes per annum over the period 2014-2019 and then 291 per annum to 2036/7.

46. The SoCG also alludes to problems of delivery of affordable homes in the Borough. Moreover, the evidence before me demonstrates only 130 affordable homes were constructed between 2014 and 2022, but this does not include the 56 homes within existing stock transferred through Right to Buy over that period. The net figure of affordable homes built is therefore 74 or nine dwelling per annum, which equates to six percent of all homes built. When this is compared to the need set out above, there is a shortfall of 2564 homes over the period or 326 each year, and only three percent of needs met.
47. To add to this, data from DLUHC<sup>2</sup> presented in the appellants' report by Savills<sup>3</sup> indicates affordable housing stock within Castle Point represents only a small proportion of the total stock (5.41 percent), which is significantly below the Essex average of 14.21 percent and 16.4 percent for England. The Council therefore has very limited existing affordable housing stock and is falling significantly short of meeting its assessed need, with its residents facing long waiting times for properties<sup>4</sup>. Moreover, waiting times for 1-bed properties are 12-18 months, 18-24 months for 2-bed homes, and 30-36 months for a 3-bed house. As such, the outlook is very bleak for the significant number of households on the Housing Register<sup>5</sup>, which has increased year-on-year, but is unlikely to capture all those in need of affordable housing, with the overall housing need likely being much greater. To add to this, the appellants' evidence demonstrates there are considerable affordability problems with house prices and rent levels in the Borough, which are increasing.
48. It is impossible to ignore the reality that the under delivery of homes and the consequences of increasing house prices and decreasing affordability will be certain to have a significantly harmful impact on the lives of those households affected. The persistent under delivery of affordable housing in Castle Point and the unmet need for these homes therefore represent acute problems.
49. At the Hearing, the Council accepted there is a severe need for affordable housing, it is not meeting and has historically not met this need, and has to produce more homes. However, there is no substantive evidence before me that there is likely to be a marked improvement in the delivery of affordable homes or a plan-led solution in the short- to medium-term. Moreover, the Council withdrew a sound local and its indicative timetable for the production of a new Local Plan would result in adoption, at best, in March 2026.
50. Affordable housing is a scarce resource in Castle Point and the proposal would deliver more such homes than have been provided across the Borough in the last five years. This represents a significant provision, which would help to meet identified need for shared ownership homes in the Borough, specifically Thundersley<sup>6</sup>, and target identified needs for two- and three-bedroom homes, while securing a greater mix of tenures within the Borough.
51. Accordingly, for these reasons, I afford very substantial weight to the delivery of 44 affordable homes in this location.

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<sup>2</sup> Department for Levelling Up, Housing and Communities – Live Table 100.

<sup>3</sup> Affordable Housing Analysis, November 2022.

<sup>4</sup> Based on Affordable Housing Data provided to the appellants by the Council, as of 31 March 2022.

<sup>5</sup> 598, as of 31 March 2022.

<sup>6</sup> Help to Buy South, 4 December 2022.



52. I have been referred to the appeal decision at Rayleigh Road, Thundersley<sup>7</sup> but I am not aware of the evidence base that was before the Inspector for that appeal in relation to the need for affordable housing. In any event, the appeal before me differs in that the housing would be secured by S106.

#### Other Benefits Secured by the Legal Agreement

53. I have already referred to the payment required for RAMS above, which would be necessary to mitigate against the impact of the proposed development on European Sites. Similarly, the S106 also includes a schedule to secure a Residential Travel Information Pack including travel vouchers to encourage sustainable travel, which would be provided for occupants of all the dwellings. These obligations would therefore neither weigh for nor against the proposal.
54. The S106 includes provisions for access to a Public Access Path south for pedestrians, cyclists, and wheelchair users and similar provisions for pedestrian and cycle connections to the east. The S106 also makes provision for a management company for the open spaces and play space within the site to provide long term security.
55. As these obligations can only mitigate against the proposal, I afford them limited weight as benefits associated with it.
56. I am satisfied that these provisions outlined in the S106, and those relating to affordable housing, are supported by the Council's Developer Contributions Guidance SPD (2008). They also meet all the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and Framework paragraph 57. Moreover, they are directly related to the development because they would provide infrastructure through it and address European Sites impacted by additional development. The contributions are also reasonable in scale and kind, as they are informed by the latest evidence regarding what would be required to provide mitigation.

#### CIL Charging and the Legal Agreement

57. The Council's CIL Charging Schedule has been agreed, published and was effective as of 1 May 2023. Paragraph 12 of the *Castle Point Borough Council CIL Draft Charging Schedule, Examiner's Report, February 2023* (CIL) states the revised infrastructure schedule for the Borough. The contributions to healthcare, indoor sports facilities, libraries, and to deliver a MUGA set out in the S106 have been identified to be funded by CIL. These obligations would therefore fail to be necessary through the S106 and cease to be payable through its obligations.
58. The S106 also includes a financial contribution to primary education but the Examiners Report is categorical that CIL now excludes contributions to primary and secondary education facilities, because Essex County Council, as Local Education Authority, consider there is no demonstrable need for additional school places in the Borough relevant to the level of housing growth expected. At the Hearing, the Council was not able to provide any substantive evidence as to the reasons why the obligation should remain, so it too would cease to be payable through the obligation.

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<sup>7</sup> Appeal Reference: APP/M1520/W/19/3240145 - Land Rear of 301 Rayleigh Road, Thundersley.

59. For these reasons, these obligations would not meet the statutory tests as set out in Regulation 122 of the CIL Regulations. This does not affect the remaining obligations within the S106 agreement detailed above.

#### Additional Benefits

60. Future occupants would be likely to support local shops, services, and facilities through expenditure, which would constitute moderate benefits in social and economic terms, given the magnitude of the proposal.
61. The appellant's evidence on the labour market profile indicates that 9.5% of the local workforce is employed in construction industries, but there is no formal mechanism to ensure this would commute to the proposal either through employment or skills provision. However, it is likely there would be some contribution to such employment locally, so I afford this economic benefit a limited amount of weight.
62. I am mindful that biodiversity net gain is not yet a mandatory requirement of development, but the Framework is supportive of measurable attempts to secure such benefits. The benefits that could be secured by the proposal would not materialise without development and there would be a net gain through habitat and hedges and I afford this environmental benefit moderate weight given the nature and extent of the benefits outlined in the appellants' *Biodiversity Management Plan*.
63. All the dwellings would be of modular construction to minimise waste and to enable conversion for wheelchair use. The proposed homes would be built to a Net Zero Carbon Strategy, with forty achieving net zero carbon emissions and the remainder achieving an Energy Performance Certificate of 'A'. While such benefits may become mandatory in the future, there is no firm timescale for this. Accordingly, in advance of such legislation being enacted, and given the magnitude of the development, together these would amount to significant environmental and social benefits.

#### *Whether Very Special Circumstances Exist*

64. The appeal scheme is inappropriate development in the Green Belt. This is harmful by definition. The proposed development would reduce the Green Belt's openness and its effectiveness at checking the unrestricted sprawl of large built up areas and safeguarding the countryside from encroachment. This gives rise to additional harm, albeit I consider these to be limited. Be that as it may, these harms render the appeal scheme contrary to the Framework's aims in respect of the Green Belt. Moreover, Framework Paragraph 148 advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless these harms are 'clearly outweighed by other considerations.'
65. In terms of the other matters raised by interested parties, these are of neutral consequence to my assessment.
66. The evidence before me demonstrates the Council has persistently failed to deliver affordable homes in the Borough and a plan-led solution to the chronic shortage of housing is some way from being in place. The proposal would therefore represent a significantly important opportunity to provide a considerable boost to the supply of affordable homes for local people in the short term. I have afforded very substantial weight to this consideration in

favour of the appeal scheme. The appeal proposal would also provide a range of other economic, social and environmental benefits, of varying weight.

67. Considered together, I find that the other considerations in this case clearly outweigh the harm that I have identified. Accordingly, looking at the specific circumstances of this case I consider that very special circumstances exist which justify allowing the appeal.
68. I have considered the Council's argument that the grant of planning permission would set a precedent for other similar developments within the same parcel of the Green Belt. However, the circumstances of each application and appeal must be determined individually on their own merits, particularly in respect of very special circumstances. A generalised concern of this nature does not therefore justify withholding permission in this case.

### **Planning Balance**

69. I outlined above that the evidence before me demonstrates the Council is likely to only be able to demonstrate 1.86 years supply of deliverable housing sites. In such circumstances, the policies which are most important for determining the appeal would ordinarily be out-of-date, but the proposal does not conflict with the saved policies of the Council's Local Plan, when taken as a whole. Nevertheless, the Framework states permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
70. I have found that very special circumstances exist which justify allowing permission for this development in the Green Belt, so policies outlined in the Framework in respect of the Green Belt do not therefore provide a clear reason for refusing the development. There are also no other policies within the Framework that indicate permission should be withheld. Moreover, the adverse impacts of granting permission would not significantly and demonstrably outweigh the stated benefits, when assessed against the policies in the Framework taken as a whole. As such, the proposal would benefit from the presumption in favour of sustainable development, and amount to sustainable development. This would therefore justify the grant of planning permission.
71. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Representations were made to the effect that the proposal could affect an adjoining occupier, as it would replace open land that provides outlook beyond a private rear garden space, which assists with the occupier's disability. The occupier is therefore a person who shares a protected characteristic for the purposes of the PSED. I have also had regard to rights conveyed within the Human Rights Act.
72. I have found that the proposed development would not result in harm to the outlook from neighbouring properties, so the occupier would not suffer unacceptable harm to their living conditions. I am therefore satisfied a grant of planning permission would not unacceptably interfere with the occupiers right to a private and family life and home or discriminate against a person with a protected characteristic of disability. Therefore, whilst I acknowledge the occupiers' personal circumstances, I conclude that these are not matters which

outweigh the benefits of the proposal in respect of my aforementioned conclusions on the proposed development referred to above. It is proportionate in the circumstances to allow the appeal.

### **Conditions**

73. I have considered the list of conditions provided by the main parties and, where appropriate, amended the wording for clarity and removed tailpieces to conditions that circumvent the statutory route to vary conditions or deprive interested parties of the opportunity to comment.
74. I have imposed standard conditions relating to the commencement of development and compliance with the submitted plans, in the interests of achieving a satisfactory development.
75. Pre-commencement conditions are necessary to ensure works to remove invasive species are carried out, in the interests of the biodiversity of the site; that a Site Waste Management Plan is secured to control site waste and efficient use of resources; and that construction details of access roads suitable for refuse collection services are provided.
76. Conditions following demolition works are also necessary for a programme of archaeological work, to ensure the preservation of deposits; a detailed surface water drainage scheme and a scheme for its maintenance, to prevent flooding and other environmental harm from the developed site; and a similar scheme to minimise surface and ground water flooding during the construction phase.
77. It is also necessary for conditions to ensure the scheme accords with the benefits outlined above. Accordingly, details are required to be provided prior to occupation of the dwellings for independent verification of the strategy for energy efficiency to ensure the dwellings meet the identified standards; and the proposed dwellings shall meet the requirements of Part M4(2) of the Building Regulations for the needs of current and future users.
78. Furthermore, prior to occupation, the provision of visibility splays to Hart Road and from driveways within the scheme, are necessary in the interest of highway safety; and a scheme of external public lighting in the interests of living conditions of residents and the ecological sensitivity of the landscaped areas and adjoining land.
79. In the interests of maintaining the nature conservation value of the site, details of boundary features are required to ensure they would facilitate the movement of wildlife across the site, particularly for badgers and hedgehogs. Similarly, the details of security fences should be agreed for this reason and to provide relief for occupiers of nearby properties from the fences.
80. A condition is also necessary to ensure compliance with the two Construction Environmental Method Statements in the interests of the living conditions of nearby residents and ecology and biodiversity of the site and its surroundings.
81. Conditions are also necessary to ensure compliance with the measures to protect trees and other planting outlined in the Arboricultural Impact Assessment and Tree Protection Plan; the Specification for Soft Landscape Works and 10 year Management Plan; the biodiversity management of open spaces to secure ecological management of the site in perpetuity; the provision of appropriate obscure glazed glass where it is to be fitted, for reasons of

privacy; avoidance of unbound material of parts of driveways adjacent to the highway; and the provision of parking within each plot and for visitors.

82. Further conditions are reasonable to ensure the timely delivery of play and open spaces and their retention, the agreement of materials above slab level, and a scheme detailing how the dwellings would achieve recommended internal noise levels.

### **Conclusion**

83. The proposal would accord with the relevant saved policies of the development plan and there are no policies within the Framework that indicate that permission should be withheld. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

*Paul Thompson*

INSPECTOR

### **APPEARANCES**

#### FOR THE APPELLANTS

Mary Cook	Barrister (Town Legal LLP)
Sam Hollingworth	Planning Consultant (Savills)
Errin Marshall	Graduate Planning Consultant (Savills)
Annette Simpson	Director of Development and Partnerships (Legal and General Affordable Homes)
Vanessa Ross	Landscape Architect (Arc Landscape Design and Planning Ltd)
James Stacey	Affordable Housing Specialist (Tetlow King Planning)

#### FOR THE LOCAL PLANNING AUTHORITY:

Alison Hutchinson	Planning Consultant
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#### OTHER INTERESTED PARTIES

Avril Betts-Brown

Gillian Boutall

Mrs Bradley

Stephen Bristow

Mrs Burrell

Joan Clayton

William Clayton

Tim Copsey

Gavin Culff

Coral Elsegood

Tom Gibson

District Councillor for the Cedar Hall Ward

David Goodman

Janet Kendrick

Nicola McGee

Liz Palmer

Ray Perryman

Maurine Skeels

Richard Weldon

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be begun on or before the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 519/19/FUL/PL10.00 Rev B, 519/19/FUL/PL10.01 Rev B, 519/19/FUL/PL20.00 Rev, 519/19/FUL/PL20.01 Rev B, 519/19/FUL/PL20.02 Rev B, 519/19/FUL/PL30.00, 519/19/FUL/PL30.01, 519/19/FUL/PL30.02, 519/19/FUL/PL40.00 Rev B, 519/19/FUL/PL40.01 Rev B, 519/19/FUL/PL40.02 Rev B, 519/19/FUL/PL50.00 Rev B, 519/19/FUL/PL50.01 Rev B, 519/19/FUL/PL60.00 Rev B, 519/19/FUL/PL60.01 Rev B, 519/19/FUL/PL500.00, 519/19/FUL/PL1000, 519/19/FUL/PL1003 Rev A, 519/19/FUL/PL1004 Rev B, 519/19/FUL/PL1005 Rev A, 519/19/FUL/PL1006 Rev A, 519/19/FUL/PL1007 Rev A, 519/19/FUL/PL2001 Rev B, OS 2244-21.2 Rev B, OS 2244-21.3 Rev B, OS 2244-21.4 Rev A, 21328-HYD-XX-XX-DR-C-2600 P02, 21328-HYD-XX-XX-DR-C-2600 P04 and 21328-HYD-XX-XX-DR-C-2600 P05.
3. No works except demolition shall be begun until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority prior to excavation of the site. Any works identified shall be undertaken in accordance with the approved details.
4. No works except demolition shall take place until a detailed surface water drainage scheme for the site, including for the construction stage, based on the sustainable drainage principles and assessment of the hydrological and hydro geological context of the development as set out in the submitted

Flood Risk Assessment dated 5 November 2021 (Doc Ref 21328-HYD-XX-XX-RP-FR-0001), has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- Limiting discharge rates to 2.9l/s for all storm events up to and including the 1 in 100 year plus 40% allowance for climate change storm event.
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
- Timetable for implementation.

The approved scheme shall be implemented prior to the occupation of any dwelling and maintained as such.

5. Prior to the occupation of the dwellings hereby permitted, a management and maintenance plan for the detailed surface water drainage scheme for the site for the lifetime of the development, which shall also include any arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, and also for maintaining of yearly logs of maintenance, shall be submitted and approved in writing by the local planning authority. The yearly logs of maintenance shall be made available for inspection upon a request by the Local Planning Authority.
6. No works except demolition shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
7. Prior to the commencement of development, works identified within the submitted Invasive Species Management Plan dated 9th October 2020 (3545) shall be commenced to ensure the appropriate control and eradication of Himalayan Balsam and False Virginia Creeper on the site.

Notification of completion of such works shall be submitted to the local planning authority within two years of their commencement.

8. Prior to the commencement of development, a Site Waste Management Plan (SWMP) detailing strategic forecasts in respect of expected waste arisings from demolition operations undertaken on site and the measures to be used to ensure that all waste arisings are appropriately reduced/recycled or diverted and legally disposed of, shall be submitted to and approved in writing by the local planning authority. The approved SWMP shall be adhered to throughout the construction period.
9. Details of the construction of the access roads within the site shall be submitted to and agreed by the local planning authority in writing prior to commencement of their construction to demonstrate that they are able to accommodate the weight and turning manoeuvres of a 32 tonne refuse vehicle. The roads shall be constructed in accordance with the approved details prior to the occupation of any dwelling that they serve.
10. Prior to occupation of the dwellings hereby permitted, a report from an independent certified Standard Assessment Procedure (SAP) Assessor shall be submitted to and approved in writing by the local planning authority. The report shall confirm that 40 of the dwellings hereby approved achieve, as a minimum, net zero regulated carbon; and 4 of the dwellings hereby permitted achieve, as a minimum, an Energy Performance Certificate (EPC) rating of A.
11. Prior to the above slab level construction of any dwelling, details or samples of all materials to be used on the external surfaces of the proposed development shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
12. The proposed dwellings shall, as a minimum, meet the requirements of Part M4(2) of the Building Regulations 2010.
13. Development of the site shall be undertaken in accordance with the provisions of the submitted Construction and Environmental Management Plan (Biodiversity) Reference: OS 2244-21 Doc 5 Rev A dated December 2021 and the Construction Environment Management Plan (Construction) Reference: 21255-002 dated December 2021.
14. No works shall commence on site until the measures to protect those trees and hedgerows identified to be retained as set out in the submitted Arboricultural Impact Assessment (Reference: OS 2244-21 Doc 2 Rev A dated November 2021) and Tree Protection Plan (Drawing no OS 2244-21-2 Rev B) have been implemented. The protection measures shall be retained in situ for the duration of the construction of the development.
15. Prior to occupation of the dwellings hereby permitted, the access point at Hart Road shall provide a site access road at a minimum of 5.5m in width with 2m wide footways on either side as shown on AMA Drawing AMA/21255/SK001. The vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway with an appropriate dropped kerb vehicular crossing of the footway with clear to ground visibility splay. Such vehicular visibility splays of 2.4m x 43m in both directions, shall



be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times thereafter.

16. Prior to occupation of the 44th dwelling, all tree planting and landscaping works shall be carried out in accordance with the provisions of the Specification for Soft Landscape Works and 10 year Management Plan (Reference OS 2244-21 Doc 4 dated December 2021).
17. No occupation of any more than 33 dwellings shall take place until the Play Space and area of publicly accessible open space located on the southern part of the site as shown on the Soft Landscape Plan OS 2244-21.3 Rev B has been implemented. The Play Space and publicly accessible open space shall thereafter be retained as such.
18. Prior to first occupation of each dwelling, within the confines of each plot, the driveway to that dwelling shall be provided with a 1.5m x 1.5m visibility splay above a height of 600mm to at least 1.8m at the junction with of any vehicular access and the highway which shall be maintained free of obstruction in perpetuity thereafter.
19. Prior to occupation of each dwelling, the parking spaces for that dwelling shown on Plan reference 519/19/FUL/PL1004 Rev B shall be laid out and made available for use. Such parking spaces shall be retained solely for that use and for no other purpose.
20. Prior to occupation of the dwellings hereby permitted, details of any external public lighting of the proposed development shall be submitted to and approved in writing by the local planning authority. The fixed external lighting shall be installed in accordance with the approved scheme prior to final occupation of any of the approved dwellings and maintained thereafter. Only the approved public external fixed lighting shall be installed.
21. The visitor vehicle parking areas indicated on plan reference 519/19/FUL/PL1005 Rev A shall be hard surfaced, sealed and marked out in parking bays prior to the occupation of the dwelling nearest to the spaces. The vehicle parking areas and associated turning areas shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.
22. Any tree, shrub or herbaceous plant contained within the approved landscaping scheme identified within document OS 2244-21-Doc 4 and drawing number OS2244-21.3 Rev B dated 03/12/2021, dying or being damaged, removed or becoming seriously diseased within 10 years of the date of this permission shall be replaced by a tree of a similar size and species by the applicant or the applicant's successor in title, as formally approved by the local planning authority.
23. Prior to the erection of any security fencing around the site, details of such fencing must be submitted to and approved in writing by the local planning authority. Such details of fencing must include specifications of appropriate gates as well as location and number to allow for the passage of wildlife such as badgers and hedgehogs. Such fencing shall then be implemented and retained as approved.

24. Notwithstanding OS 2244-21.4 Rev A Hard Landscaping Plan, prior to the erection of any garden fences or walls provided to demarcate the extent of private amenity areas or any means of enclosure provided to the open land on the boundaries of the site, details shall be submitted to and approved in writing by the local planning authority. Such details shall include: the means by which hedgehog highways shall be provided within and through the site and how free access is to be achieved to and from the adjacent open land by badgers. The approved details shall be implemented prior to first occupation of any dwelling to which it relates and shall be completed prior to final occupation of the development. The approved measures shall thereafter be permanently retained as such.
25. Ecological management of the open spaces shall be undertaken in accordance with the provisions of the submitted Biodiversity Management Plan (Reference: OS 2244-21-Document 3 December 2021). This shall be reviewed on a ten yearly basis and any alterations to the management regime shall be submitted to and approved by the local planning authority.
26. The windows shown in a side elevation at first floor level to be obscure glazed on the approved plans shall be glazed to at least level 3 on the Pilkington scale. Such windows shall be installed and glazed prior to the first occupation of the building and shall thereafter be permanently retained as such.
27. Prior to the any above slab level construction of any dwelling, a scheme detailing how the dwellings hereby approved will achieve recommended internal noise levels in accordance with BS 8233:2014 shall be submitted to and approved in writing by the local planning authority. The dwellings shall thereafter be constructed in accordance with the approved scheme.
28. No unbound material shall be used in the surface treatment of a vehicular access within 6 metres of the highway boundary.

**END OF SCHEDULE**