
Appeal Decisions

Inquiry held on 11, 12, 13 and 14 October 2016

Site visit made on 14 October 2016

by P W Clark MA MRTPI MCMI

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

Decision date: 25 November 2016

Appeal A Ref: APP/J1535/W/16/3143247

C J Pryor, Cecil House, Foster Street, Harlow Essex CM17 9HY

- 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 Anderson Design and Build and C J Pryor family against the decision of Epping Forest District Council.
 - The application Ref EPF/2518/14, dated 17 October 2014, was refused by notice dated 5 August 2015.
 - The development proposed is 65 residential units together with associated car parking, open space and refuse and recycling facilities.
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Appeal B Ref: APP/J1535/W/16/3143248

Land at Harlow Gateway South, A414 London Road, Harlow Essex

- 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 Anderson Design and Build and C J Pryor family against the decision of Epping Forest District Council.
 - The application Ref EPF/2517/14, dated 17 October 2014, was refused by notice dated 5 August 2015.
 - The development proposed is for B1 (business) and B8 (storage and distribution) purposes.
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Decisions

1. Both appeals are dismissed.

Procedural matters

2. Appeal B results from what was originally a hybrid application on a larger site for part full planning permission for development of Plot A of site for B1 (business) and B8 (storage and distribution) purposes by C J Pryor Ltd and part outline planning permission for use of Plots B-E for B1 (business) and B8 (storage and distribution) purposes with all matters reserved save for access. This proposal was the subject of a Screening Opinion given on 15 April 2014 to the effect that the proposal would be EIA development.
 3. By e-mail dated 11 February 2015, the part of the application for outline planning permission in respect of plots B-E was withdrawn. In consequence, a request for a screening direction from the Secretary of State in respect of the reduced scheme was made by e-mail dated 26 February 2016. By letter dated
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14 March 2016, the Secretary of State directed that the development comprised in appeal B is not EIA development.

4. The applications and appeals were originally made in the name of Anderson Design and Build and C J Pryor Ltd. By e-mail letter dated 13 October 2016, this was corrected to Anderson Design and Build and C J Pryor family.
5. During the Inquiry, ambiguities were identified in drawing number 139/PL/02A relating to the layout of appeal site A. These were largely resolved by the substitution of that drawing by drawing AG065-003 revision D. Because this does not introduce any variation in the proposals for appeal A but simply clarifies an ambiguity, nobody would be prejudiced if my decision were based on it, which is what I have done.
6. A right of way (footpath 61) crosses part of appeal site A. The appeal scheme includes its diversion¹. A right of way (footpath 11) passes within appeal site B. The appeal scheme proposes its diversion². There is a separate procedure which would need to be followed to lead to the necessary Orders for these diversions. Although the effects of the proposed diversions may be material considerations in the determination of these appeals, the merits of the diversions and the procedures to lead to the necessary Orders are not before me in these appeals.
7. A planning obligation by way of Unilateral Undertaking was submitted, dated 20 October 2016. This would provide an electric car scheme, an estate management body, financial contributions towards the provision of affordable housing, primary and secondary educational facilities and additional NHS healthcare facilities and a construction training scheme in respect of appeal A and a restriction on its occupation until a contract had been let for the construction of appeal B. It would also have provided a construction training scheme in respect of appeal B. Because I have decided to dismiss both appeals in any event, I have not specifically considered the compliance of these provisions with the CIL regulations other than that making a connection between the occupation of appeal A and the construction of appeal B.

Main Issues

8. The main parties are agreed that the proposal in appeal A would be inappropriate development in the Green Belt and so, the remaining considerations in appeal A are
 - The effect of the proposal on the openness of the Green Belt
 - The effect of the proposal on the character and appearance of the area
 - Whether the proposal would be in a sustainable location
 - The effect of the proposal on the supply of housing in general and affordable housing in particular and
 - Whether any harm by reason of inappropriateness, together with any other harm, would be clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances required to outweigh any harm to the Green Belt.

¹ Paragraph 5.18 of Planning Statement October 2014 (document CD38)

² Paragraph 5.10 of Planning statement October 2014 (document CD38)

9. The main parties are agreed that the proposal in appeal B would be inappropriate development in the Green Belt and so, the remaining considerations in appeal B are
- The effect of the proposal on the openness of the Green Belt
 - The effect of the proposal on the character and appearance of the area
 - Whether any harm by reason of inappropriateness, together with any other harm, would be clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances required to outweigh any harm to the Green Belt.

Reasons

APPEAL A

Green Belt

10. The site of appeal A lies within designated Green Belt. Both parties are agreed that the proposal would represent inappropriate development in the Green Belt. The National Planning Policy Framework (the Framework, or NPPF) advises that the construction of new buildings is inappropriate in Green Belt, with certain exceptions. One of these is limited infilling in villages but the development of an estate of 65 dwellings in a scattered settlement of about 50 existing dwellings does not constitute infill, so the appeal proposal would not benefit from this exception.
11. Another exception is the redevelopment of previously developed sites in a way which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. Part of appeal site A is previously developed, as both parties agree, but a large part, more than half of it, is not and so the site as a whole would not benefit from this exception, irrespective of its relative impact. I therefore concur that the proposal would represent inappropriate development in the Green Belt.
12. The NPPF advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. These 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. That implies a balancing exercise and so, before that can be undertaken, it is first necessary to establish the degree of potential harm to the Green Belt and also any other harm.
13. The Framework tells us that Green Belt serves five purposes. Harm to the last of these (encouraging the recycling of derelict and other urban land) is incurred axiomatically by any development in the Green Belt but the other four are more susceptible to measurement of degrees of harm by reference to the concept of openness since the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. One of the essential characteristics of Green Belt land is its openness.
14. As part of the evidence to this Inquiry, the appellant submitted a Landscape, Visual and Green Belt Appraisal prepared by Influence Environmental Ltd. Its Green Belt Appraisal is in two parts; quantitative and qualitative.

15. Its quantitative findings are that building footprint would increase from 1673.98 sq m to 5557.01 sq m (6.2% of the site area to 20.6% of the site area) and that hard surfacing would decrease from 9221 sq m (34.2% of the site) to 7596.7 sq m (28.1% of the site). Undeveloped area would decrease from 16091.92 sq m (59.6%) to 13833.19 sq m (51.3%). The appellant assesses these quantitative effects as medium. The Council puts a different interpretation on these figures, pointing out that they represent an increase in building footprint of 232% but does not dispute their accuracy. I have no reason to disagree with their accuracy.
16. The appellant's qualitative assessment is made by reference to a number of viewpoints around the site from which a claim is made that the qualitative impacts would be predominantly positive. I disagree with this assessment because in the majority of instances the consultant's judgment depends on the dominant effects of existing arable fields around the site rather than from the changes which would be brought about by the development itself. The continued dominant effect of existing arable fields around the site would represent an absence of harm, not a positive benefit resulting from the proposal.
17. It is fair to say that the site is well screened and so any visual impact on openness would be limited but, from the very limited viewpoints from which the site would actually be experienced, the main beneficial visual effect would be the removal of the telecommunications mast from the site. This currently signals far and wide that there is development present. Its removal would make that perception far less widespread and so would be a noticeable perceptual benefit to openness.
18. Many people would find the view into the site from Foster Street itself more aesthetically pleasing by replacing a depot with housing but, in terms of openness the development would simply replace a view of one kind of developed area with another. The development itself would open up the site to public access making it abundantly clear to any number of people that it would no longer include an open, undeveloped paddock. The glimpsed views into the site from the bridleway to the south would be transformed, replacing a view of an extensive rural paddock in the foreground and a large shed beyond with a view of a housing estate in which the undeveloped area is fragmented into gardens and incidental amenity space. Any perception of openness would be lost.
19. Until recently, planning practice made a clear conceptual distinction between Green Belt openness on the one hand, meaning an objectively measurable absence of development, and visual impact on the other. A recent Court of Appeal decision³ has held that the concept of openness of the Green Belt is not narrowly limited to a volumetric approach and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case.
20. But it also tells us that the openness of the Green Belt has a spatial aspect as well as a visual aspect and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. It tells us that an

³ John Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466

earlier judgment⁴ which criticised an approach of discounting volumetric effects if they had little or no visual impact remains relevant guidance.

21. Applying these precepts to this appeal, it appears to me that the method adopted by the appellant's consultants, in which their assessment of the quantitative effects on Green Belt openness (medium adverse) is discounted by their assessment of the qualitative effects (low beneficial) to form an overall judgment (low adverse) adopts precisely the approach criticised in the relevant guidance of the courts. I conclude that the effect of appeal A on the openness of the Green Belt would be substantial, effectively more than doubling the extent of land which would be experienced as being developed, albeit that perception of that fact would only be realised from a limited and (as a result of the mast's removal) much less extensive range of viewpoints.
22. The proposal would therefore be contrary to policy GB2A in the Epping Forest District Local Plan Alterations (the Local Plan) adopted in July 2006. Amongst other matters, this asserts that planning permission will not be granted for the use of land or the construction of new buildings in the Green Belt unless it is appropriate. Although not precisely conforming to the words of NPPF policy on the Green Belt, this policy clearly shares and applies its general intent.

Character and appearance

23. Appeal site A is located in the countryside outside Harlow but within a settlement of about fifty, mostly residential, properties of individual design and appearance loosely strung out along about half a mile of Harlow Common and Foster Street. The age, form, materials and positioning of each building relative to the street vary greatly. Most properties are set well back from the road but a few are set back no more than a car's length. In the immediate vicinity of the site are a number of commercial operations including a sawmill to the south west and a yard to the east but none so intensely active as appeal site A itself.
24. In contrast to the semi-rural linear pattern of the existing settlement, the proposal would develop the site in depth with a residential estate of 65 dwellings selected from eight standard house types. Most would front closely onto the estate road or shared access. A few would be more set back. Most of the estate would comprise detached or semi-detached houses or short terraces of three, which are commonplace in the settlement, but there would also be four terraces of four or six properties each which would be an innovation locally.
25. So, the estate would have a more intense suburban character and appearance quite different from that of the rural settlement within which it would be positioned. However, the site only has a narrow frontage to Foster Street itself along which would be positioned two short terraces of three dwellings each, not untypical of the rest of the street.
26. There remains some ambiguity about the retention of the existing barn/workshop fronting onto Foster Street at the north-west corner of the site; the submitted Design and Access Statement comments correctly that it is unlisted and not of any significant quality but due to its materiality and location close to the road adds some character to Foster Street. On the originally

⁴ R (Heath and Hampstead Society) v Camden LBC [2007] EWHC 977 (Admin) P&CR 19

submitted plan it is shown retained for an unidentified purpose but on the substituted drawing it is shown greenwashed as though it is to be removed and replaced by amenity landscaping. If retained, it would narrow the view into the site from the street and so, minimise any adverse impact on Foster Street from the otherwise alien character of the new estate.

27. But, in any event, even if the barn were removed, the majority of the site would be sufficiently separate and well screened from Foster Street as to have little impact upon it. It would comprise as large a settlement as the rest of Foster Street and so could justify having its own character. I therefore conclude that, if it were not located in the countryside, the proposal would have an acceptable effect on the character and appearance of the area.
28. It would clearly not protect the quality of the rural environment in which it would be sited and so would be contrary to Local Plan policy LL2 which would not allow development in the countryside and also to subsection (i) of Local Plan policy CP2 which requires the rural environment and countryside character to be sustained and enhanced, protecting countryside for its own sake but it would comply with subsection (i) of Local Plan policy CP1 which requires, amongst other matters, at least the minimisation of impacts of development upon the environment. However, protection of the countryside for its own sake is no longer a policy supported by the NPPF. Instead, it advises that the intrinsic character and beauty of the countryside should be recognised and that the different roles and character of different areas should be taken into account. The previous, absolute primacy of the protection of the countryside is now replaced in government policy by a more nuanced approach, in which it is a matter to be taken into consideration in judging the overall sustainability of a proposal, which I do in my conclusions.

Sustainable location

29. Closing remarks made on behalf of the appellant point out that "locational sustainability" is not a concept known to the NPPF. That may be so, in the sense that sustainability does not depend on location alone but the eleventh of the government's core planning principles, set out in paragraph 17 of the NPPF is that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable. In this decision I use the phrase "sustainable location" as shorthand for "locations which are or can be made sustainable".
30. For the appellant, Mr Stoten demonstrates convincingly that there is a wide range of facilities within commonly accepted standard distances for cycling. Harlow has an extensive network of cycle facilities to which the site would be reasonably well linked near the western end of Harlow Common. Consequently, the location of the site would encourage, if not the fullest use of cycling, at least a good use of that mode.
31. The same cannot be said for walking or public transport. For these, although the site is not beyond reach, it is certainly located well outside the distances which would encourage their fullest possible use. The recommendations at paragraphs 9.5 and 9.6 of the appellant's Planning Statement have not been taken forward. These were that public transport services should be increased in the area to discourage car trips both now and in the future and that discussions with the County Council's Rights of Way officer should be held in

order to agree on the procedure and measures to restore the Shoe Lane footpath to improve pedestrian access from the site to the nearest bus stops in Church Langley. Both recommendations are a recognition that the site is not in a location which is presently sustainable.

32. As Mr Banner's closing remarks point out, the s106 obligations include an innovative package of measures which will encourage, facilitate and maximise drivers' take up of electric cars. As ultra-low emission vehicles, these are defined in the NPPF as a sustainable transport mode which the government seeks to favour, as paragraph 29 of the Framework points out. The first bullet point of paragraph 32 of the NPPF also advises that decisions should take account of whether the opportunities for sustainable transport modes have been taken up.
33. Paragraph 35 of the NPPF advises that plans should exploit opportunities for the use of sustainable transport modes and that developments should be designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles. The proposal would clearly do this. But it also advises that developments should be located where practical to give priority to pedestrian and cycle movements and have access to high quality public transport facilities. The proposal would clearly fail to do that in respect of pedestrians and public transport.
34. Finally, NPPF paragraph 34 advises that decisions should ensure that developments which generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. It also reiterates in similar terms a point made in paragraph 29 of the Framework, that solutions will vary from urban to rural areas. In this case, the location of the proposal in a settlement without more facilities than a pub, without public transport and beyond attractive walking distances to facilities would not minimise the need to travel but the proposal itself would include features which would maximise the use of one kind of sustainable transport mode.
35. In summary, I conclude that the proposal would not be in a sustainable location but that it would promote one kind of sustainable transport. It would be contrary to Local Plan policy CP1(v) which seeks to avoid further commuting especially where dependent upon private car use, although it would comply with Local Plan policy CP1(i) which seeks to minimise impacts of development upon the environment. The definition of sustainable transport in paragraph 4A.30 of the Local Plan differs from that of the NPPF and so the proposal would be contrary to Local Plan policy CP3 which requires a development to be accessible by sustainable means of transport and to policy CP9 which makes a number of requirements particularly referring to provision of public transport, cycling and walking.
36. Its location would not counter trends to a more dispersed pattern of living and so it would be contrary to Local Plan policy CP6 which seeks to counter such trends. It would also be contrary to policy ST1 which, even for development in rural areas, prefers locations with access to regular public transport and containing basic shops and other facilities.

Housing

37. Both parties are agreed that the Council cannot demonstrate a five-year housing land supply. Claims that it has a current shortfall of 3,100 dwellings and the worst housing land supply in the country are not contradicted. At the time of the signing of the Statement of Common Ground, the Council's objectively assessed needs were agreed to be 514 per annum. A report to the Council on 18 October 2016 advises that the effects of the latest household and population projections are to increase the objectively assessed need for the period of the emerging plan to 11,400. That equates to 518 per annum.
38. The Council has approved a draft Local Plan for consultation beginning 31 October 2016. That is reported to include provisions for developments to meet the objectively assessed need of 11,400 dwellings. But, the results of the consultation cannot be anticipated and the resultant plan has yet to be submitted for examination. Adoption is still some way off. In the meantime, the appeal proposal would represent 12.5% of one year's housing supply, which is a measure of the benefits it would offer; a significant rather than a major contribution but in a situation of some necessity.
39. On the other hand, the proposal offers no affordable housing on site but a financial contribution to the provision of affordable housing off-site. This would fund three houses or six flats, significantly less than the thirty-three on-site which would be required by Local Plan policy H7A.
40. There is little information against which to test the severity of this shortfall, other than the comment in the Council's committee report to the effect that the affordability gap in Epping Forest District is the highest in Essex and that there are in excess of 1500 applicants on its housing register. The 2006 Local Plan Alterations record a housing need survey completed in 2003 which indicated a requirement for 642 new affordable homes to be provided each year. This data is now more than ten years old but the Council's record on housing land supply in general suggests that its affordable housing requirements are unlikely to have been met in the interim period.
41. The provision of affordable housing is a benefit resulting from development, rather than a mitigation of a harm, so its absence cannot be regarded as harmful but it is one of the government's core planning principles that planning should proactively drive and support sustainable economic development to deliver the homes (amongst other matters) that the country needs and that every effort should be made to meet the housing needs (amongst other matters) of an area. Accordingly, I conclude that the provision of 65 dwellings would be a significant benefit of the proposal but offset to a major degree by the minimal contribution to affordable housing which would be made.

Other considerations

(i) Employment retention

42. The signed Statement of Common Ground between the parties agrees that the development proposed in appeal A is intended to enable the relocation of Hargreaves Services from appeal site A. This relocation would avoid the loss of employment which would otherwise occur from the development of site A and which the Council accepts in its committee report would not be desirable. No policy is quoted but table 1 in paragraph 6.27 of the appellant's Planning

Statement lists policy E4A, protection of employment sites, as a policy relevant to the proposals.

43. But, as Mr Banham's statement appended to Mr Anderson's evidence makes clear, if this relocation did not take place, Hargreaves would retain Foster Street as a single purpose Hargreaves Logistics site which could accommodate up to 80 HGVs of mixed configuration. He reports advice received from the Pryor family that they would consider a further lease of the Foster Street site beyond its present expiry date of 2022 in the event of there being no planning permission for its redevelopment. So, the same avoidance of employment loss would be achieved if the development proposed in appeal A did not proceed. Accordingly, this consideration does not amount to a compelling argument in favour of the appeal proposal.

(ii) Employment growth

44. It is also argued that relocation of Hargreaves Services from appeal site A is necessary to allow the business to grow. Mr Banham describes the contracts which the Hargreaves business has recently won and those to which it aspires for the future. Hargreaves has recently acquired the C A Blackwell Group based at Earls Colne in Essex and wishes to vacate their site. Mr Banham asserts, without contradiction, that Foster Street is too small for the current combined Blackwell/Hargreaves Logistics requirements, let alone the planned future expansion of these businesses. I have no reason to disbelieve him.
45. But he also points out that if appeal B cannot be developed into a purpose-built combined site for both businesses, Hargreaves would look to secure another smaller site to accommodate the Blackwell businesses. If the development of appeal B site into a purpose-built combined site for both businesses were foiled by the dismissal of appeal A and the refusal of permission for the redevelopment of the Foster Street site then the same consideration would apply, as Mr Nicol acknowledges in his evidence. So, it follows that it is not necessary to allow appeal A in order for the businesses to expand. Consequently, Mr Nicol's references to the Economic Plan for Essex and Mr Anderson's references to the Framework's support for economic growth do not amount to compelling arguments in favour of appeal A.

(iii) Cross-subsidy

46. The signed Statement of Common Ground between the parties agrees that the development proposed in appeal A is intended to enable the relocation of Hargreaves Services from appeal site A and that on this basis the maximum reasonable amount of affordable housing which should be provided on appeal site A is nil. This is because the appellant's Harlow Gateway South and Foster Street viability report shows that the development of site B in the way proposed (originally to suit Pryor's operations but now intended to suit Hargreaves's operations) would not be viable.
47. The argument between the parties turns on whether such a cross-subsidy (in which the development of appeal site A becomes an "enabling development" for the development of appeal site B) was justifiable in the public interest. In view of the reiterated arguments in the NPPF in favour of sustainable development, which encompasses economic growth, listed in Mr Banner's closing submissions, and the inclusion as one of the government's twelve planning principles that planning should proactively drive and support

sustainable economic development, I have no doubt that economic growth in general terms is regarded as being in the public interest.

48. However, I am less convinced that appeal site B is necessarily the only place to which Hargreaves could go were appeal A to be allowed. The appellant has submitted a report on the Pryor Group Site Search. This was confined to sites within or adjacent to the boundary of Harlow. That may have been appropriate for Pryor, which was Harlow based but Hargreaves is a company looking to expand into the south-east in general as their most southerly premises are currently in South Yorkshire, so they would not be so constrained. A third party objector claims that 170 sites are for sale or to let within a mile radius. Moreover, although a detailed examination of the fourteen sites considered in the Pryor search was not appropriate for this Inquiry, I agree with the Council's observations that, on the face of it, some of the analyses of the sites appear inaccurate⁵ and that some reasons for rejection appear superficial.⁶
49. Other than Mr Courtney's concern that Hargreaves would be a beneficiary as a private company, the parties did not address themselves to the question of whether, in this specific case, the diversion of resources which would otherwise have provided a public benefit in the form of affordable housing from one development to subsidise another specifically designed for the purposes of a specific occupant amounted to State Aid to that occupant and whether such State Aid would be legal. The matter was not raised during the Inquiry and I neither conclude on the matter nor take it into consideration because I have already concluded that it is not necessary in planning terms for Hargreaves to leave site A either to achieve employment retention or employment growth, nor that it is necessary for them to move to appeal site B in the event that they leave site A for other reasons to which I now turn. For these reasons I conclude that Part II of Schedule 1 of the signed Unilateral Undertaking which would make the occupation of any dwelling on appeal site A dependent on the letting of a contract for the construction of appeal site B is unnecessary and so would not comply with CIL regulation 122. I therefore take no account of it.

(iv) Noise

50. There are two aspects to this consideration. The first is the effect of the existing noise environment on the suitability of the site for residential development. The appellant's Noise Assessment report by Sharps Redmore dated 24 July 2014 is not disputed by the Council. This establishes that the noise climate in Foster Street is generally characterised by M11 traffic and is on the threshold of World Health Organisation (WHO) guideline values for continuous noise in outdoor living areas. The consultants recommend that to achieve WHO guideline values for indoor locations at night, windows should be fitted which would achieve a sound insulation of 23 dBA when closed but with trickle vents open. This could be secured by condition or when considering details of boundary fences.
51. The consultants also recommend that fences along the boundary with the commercial site to the east of the proposed development should be solid, robust and not less than 2m high in order to protect against any possible noise disturbance from that source. It is also recommended that provision be made

⁵ E.g site 4.9(a) is described as Land East of Fifth Avenue, when it is clearly west of Fifth Avenue.

⁶ E.g site 4.6(a) is said to have no vehicular access, which may be true but it is said to be bounded by Third Avenue to the south and Fourth Avenue to the north so it would be surprising if access could not be obtained.

- for an acoustic grade fence or other noise barrier at the south-west boundary in anticipation of occasional noise from the timber yard located to the south-west. These two recommendations could be secured by condition or when considering details of boundary fences.
52. The second aspect of this consideration is the effect of the removal of HGV traffic associated with the current and potential use of the site on the noise environment of residents along Foster Street and Harlow Common. This is discussed by the appellant's consultant in two technical letters dated 27 May 2014 and 15 July 2014 respectively, attached to the Noise Assessment report and elaborated further in Mr Gayler's evidence to the Inquiry.
 53. The calculation in the first letters is based on the effects of the actual operation of the previous site occupants (Pryor) on a position 10m back from the edge of the carriageway. The second letter and Mr Gayler's evidence calculates the effects on a position 5m back from the edge of the carriageway both of the actual operation of the previous site occupants and of their aspirations to expand.
 54. Both calculations of the "actual" operation confirm that the WHO threshold of acceptability for night-time noise ($40 \text{ dB}_{\text{Lnight, outside}}$) is not met by the existing operation of the site but that the WHO's Interim Target ($55 \text{ dB}_{\text{Lnight, outside}}$) is being met by current operations. Nevertheless, the removal of any HGV traffic from Foster Street as a result of the appeal proposal would still be classed as a major positive impact because Foster Street as a noise source would become less than half as loud albeit in a situation which requires no remediation to meet standards. Furthermore, the prevailing noise climate resulting from the M11 noise source would still be present to a degree not far short of that previously derived from Foster Street.
 55. Notwithstanding the assertion in section 2 of the appellant's report on the Pryor Group Site Search that "there has been a history of noise complaints regarding the operation of their current site", the Council records that it has had only one complaint about noise since 2013. Anecdotal evidence from representations made on the planning application point in both directions. But these all comment on the current operation, when what matters for the purposes of this appeal is the potential future situation.
 56. The calculations for the aspirational operations (of which the current operators, Hargreaves's, is the greater) suggests that the WHO's Interim Target would be reached, rather than exceeded, by Pryor's aspired expansion but is now expected to be breached by Hargreaves's aspired expansion. The avoidance of this outcome is put forward by the appellant as one of the considerations which should lead to a conclusion that there are "very special circumstances" which would outweigh any harm to the Green Belt.
 57. There are a number of detailed points underlying this overall assessment which need to be made clear before a conclusion is reached. The first is that the later assessments, covering the aspirations for expansion of the operation, are made specifically for the bungalow and two cottages opposite the entrance to the site, which are positioned about 5m back from the carriageway. The calculation or estimate is made for their external face. Traditional or historic windows would not reduce the external estimates of $55 \text{ dB L}_{\text{night}}$ (Pryor) or $58 \text{ dB L}_{\text{night}}$ (Hargreaves) to the level of $30 \text{ dB L}_{\text{AeqT}}$ continuous noise recommended in the 1999 WHO guideline values to avoid sleep disturbance in bedrooms at

night but there is no information to show the effects of modern double glazing, common in refurbished historic properties.

58. Secondly, there are few other dwellings positioned so close to Foster Street or Harlow Common along their length between the site and London Road. There are two or three others set back about ten metres back from the road but the majority are set back much further. Noise attenuates with distance, to a varying degree according to particular circumstances, but it is clear that any noise problem resulting from an expanded operation of the existing use of the site would be limited in extent.
59. On the other hand, the WHO guidelines are based on sound levels from continuous noise sources equalised over time (colloquially, this would be known as an averaging process), whereas in fact the traffic flow of HGVs to and from the site, even if aspirationally expanded, would not amount to a continuous noise source. As Mr Barke notes in his technical letter of 27 May 2014, "the traffic flow figures provided by Stomer are very low in the context of the standard calculation procedure". He and Mr Gayler use a recognised and technically valid method for scaling them up to make them comparable with the WHO guidelines for continuous noise but it needs to be remembered that the analysis is in fact derived from predictions of a number of discontinuous noise events so that, as Mr Barke's letter notes, the "method does rather "dilute" the effect and as such should only be used as a guide".
60. As the appellant's noise consultant acknowledged in response to my question, WHO guidelines advise that if the noise source is not continuous then the number and level of individual noise events should be considered (the L_{Amax} measure) as well as the averaged measure. The WHO guideline to avoid sleep disturbance at night is 45 $dB L_{Amax}$ measured indoors. There is no information about individual measurements of HGVs passing along Foster Street but Mr Gayler's estimate was that an HGV would generate something of the order of 70 $dB L_{Amax}$ at 5m, reducing to less than 60 at 20m. This gives a rough impression of the effect of each of up to 80 HGV noise events which might take place between 0600 and 0700 hours if Hargreaves's aspirations to expand the current operation on site were to be realised.
61. Technically, 0600 to 0700 is classed as night-time but, in fact, some people are beginning to stir at that hour, whereas the WHO guideline is for a continuous average noise for any of the night time period so a judgment of the extent of sleep disturbance likely to be actually caused by the continued operation of the site needs to be made. Mr Gayler's judgment is given at paragraphs 4.34-6 of his evidence. It is worth quoting extensively,

In my judgment it is not generally the case that noise levels from site traffic on Foster Street would be such as to necessitate a material change in behaviour, for example residents at those properties closest to the road having to keep windows closed for "most of the time" with no alternative means of ventilation, or lead to a diminishing quality of life for the current and immediate future scenarios. This is principally because the impact is a high level but short-lived effect for a limited period (albeit at a sensitive time). There is potential for such a material change of behaviour to occur were the aspirational future operational target achieved, because levels would be very much higher and above the WHO interim target, with the potential that actions such as closing existing windows may not achieve adequate levels of sound insulation.

He then quotes national Guidance criteria which illustrate the Lowest Observed Adverse Effect Level (LOAEL) and continues

This more closely illustrates what I judge is the effect of site traffic on Foster Street, principally because the effects are concentrated into a short but high level period of exposure (the hour between 0600 and 0700 hours when site traffic reaches a peak). It is conceivable that residents at those properties would close

windows for short periods to control noise and that some sleep disturbance may occur in the early hours of the morning only. As such, the conclusions of my subjective assessment align with the conclusions of my objective assessment in that there would be an adverse impact from noise from site traffic at a level which should (according to the NPSE⁷ and NPPF) be mitigated and minimised. Future operational targets could increase that impact to significant levels which the NPPF and NPSE advise should be avoided.

62. This is expressed cautiously and conditionally. That must be right because there is no certainty that Hargreaves's full aspirations for expanding the business would or could be accommodated within the existing site. Adding to that the thoughts that mitigation could be applied (or may have been already applied) to individual affected properties and that the number of properties likely to be adversely affected is small in number, I conclude that although the removal of potential traffic noise associated with vehicle movement to and from the existing site would be a benefit of the appeal proposal, it would only be a large benefit to a small number of people and then only in the event of contingent circumstances which may, or may not, arise.

(v) Highway safety

63. Foster Street is narrower than would be designed today for use by HGVs but the damage to highway verges noted by Mr Stoten is confined to the length of road to the east of the bridge over the M11 and it is only a supposition (albeit a reasonable one) that the damage is caused by HGVs originating from the appeal site. Such damage is frequently seen on rural roads, even those less used by HGVs. Both Harlow Common and Foster Street operate well within their capacity and would continue to do so with either the increased traffic resulting from the development proposed, or from the increased traffic resulting from Hargreaves's aspirations to expand. The removal of 14,580 km of HGV travel from Harlow Common and Foster Street is stated to have obvious environmental benefits but that needs to be balanced by the environmental effects of the addition of a greater mileage of vehicle trips from the proposed development.
64. Other than on the bridge across the M11, Harlow Common and Foster Street lack footways but for most of their length there are wide verges for pedestrian use. There are five recorded traffic accidents on Harlow Common and Foster Street within the past five years. None involved HGVs and, as the appellant's Transport Assessment records, overall, the number of accidents that occurred is within reason considering the nature of the roads, the traffic flows and the size of the study area. None of these considerations lead me to conclude either that there is a highway safety case to dismiss the appeal or that there is an overwhelming highway safety case to allow the appeal in order to secure the removal of Hargreaves's HGVs from the scene.

(vi) Housing

65. I concluded earlier that the provision of 65 dwellings would be a significant benefit of the proposal in a situation of some necessity, albeit offset to a major degree by the minimal contribution to affordable housing which would be made. The appellant's contention that the District's Housing requirement cannot be met without the release of Green Belt land is confirmed by paragraph 3.85 of the consultation draft of the Local Plan.
66. Reports to both Cabinet and Council confirm that the consultation draft Local Plan proposes that the housing target of 11,400 be met by a six-point

⁷ Noise Policy Statement for England

sequential approach. This includes allocating sites around Harlow. Draft Local Plan policy SP3 proposes allocations. They do not include appeal site A. The sequential approach also envisages the use of previously developed land within the Green Belt. This would accord with existing NPPF advice, as previously noted, but less than half of appeal site A is previously developed land. The emerging plan also entertains a limited release of Green Belt land to provide for housing on the edge of settlements but there is no information to show that Foster Street would be regarded as a settlement for the purposes of this emerging policy.

67. Mr Banner, in his closing submissions on behalf of the appellant, fairly asked the question: "if not here, then where?" Although the emerging local plan has still to be consulted upon and has still to be tested on examination it represents the best technically, professionally and politically-endorsed response to that question which is currently available. As the Council has freely acknowledged, that would endorse the development of the lesser half of the site which is previously developed. It does not endorse the development of the whole site.

(vii) Green Belt access

68. It may be a minor point but it needs to be recorded that in proposing to divert the public right of way which crosses the site but which has fallen into disuse, the proposals would reinstate and make provision for access to the bridleway to the south of the site and the continuation of the public footpath extending south from that. This would accord with the objective of NPPF paragraph 81 which looks for opportunities to provide access to the Green Belt but it would be open to the Highway Authority to require the reinstatement of the footpath anyway in the event that the appeal is dismissed, so this cannot be counted as a benefit of the scheme. Moreover, the proposal would not reinstate access to the part of the footpath extending north-eastwards from the site, so, on balance, would be harmful to Green Belt access.

(viii) Balance

69. Almost all planning decisions require a balancing exercise of some kind but for development within a Green Belt, advice in the NPPF is that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances and 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. I appreciate that the definition of appeal site A as Green Belt is a policy which affects the supply of housing and that relevant policies for the supply of housing should not be considered up to date if (as here) the local planning authority cannot demonstrate a five-year supply of deliverable sites and that where relevant policies are out of date, the NPPF advises that permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted.
70. Nevertheless, an essential characteristic of Green Belts is their permanence. There is no suggestion in the emerging plan that the site be removed from the Green Belt, so, notwithstanding the outdated definition of its boundaries, it is a policy which should continue to apply with full force in this case. Accordingly, it

is the test of the Green Belt balance which determines whether this proposal would be sustainable development for the purposes of NPPF paragraph 14.

71. The potential harm of appeal A is as follows

- Harm by definition to the Green Belt, which I have assessed as substantial in its effect on its openness
- Harm to the character of the countryside but otherwise an acceptable effect on the character and appearance of the locality
- Harm to the economic role of sustainable development because not located in the right place and harm to the social role of sustainable development through lacking accessible local services.

72. Its potential benefits are as follows

- the significant benefit of the provision of housing but offset to a major degree by the minimal contribution to affordable housing which would be made
- the claimed benefits of retaining and growing employment and the necessity of cross-subsidising the development of appeal B are unconvincing
- removal of noise from HGVs associated with the present use would be a large benefit to a small number of people and then only in the event of contingent circumstances which may, or may not, arise
- there is no overwhelming highway safety case to secure the removal of Hargreaves's HGVs from the scene.

73. These considerations do not clearly outweigh the harm to the Green Belt and other harm identified. Appeal A is therefore dismissed.

APPEAL B

Green Belt

74. As with the site of appeal A, that of appeal B lies within designated Green Belt. Both parties are agreed that the proposal would represent inappropriate development in the Green Belt. The Framework advises that the construction of new buildings is inappropriate in Green Belt, with certain exceptions, none of which apply in this case. I therefore concur that the proposal would represent inappropriate development in the Green Belt.

75. As noted in relation to appeal A, the NPPF advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. These 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. That implies a balancing exercise and so, before that can be undertaken, it is first necessary to establish the degree of potential harm to the Green Belt and also any other harm.

76. The Framework tells us that Green Belt serves five purposes. Harm to the last of these (encouraging the recycling of derelict and other urban land) is incurred axiomatically by any development in the Green Belt but the other four are more susceptible to measurement of degrees of harm by reference to the

concept of openness since the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. One of the essential characteristics of Green Belt land is its openness.

77. As with appeal A, so with appeal B, the appellant submitted a Landscape, Visual and Green Belt Appraisal prepared by Influence Environmental Ltd. Its Green Belt Appraisal is in two parts; quantitative and qualitative.
78. Its quantitative findings are that building footprint would increase from nil to 2249.3 sq m (7.7% of the site area) and that hard surfacing would increase from 8816.5 sq m (30.1% of the site) to 16648.4 sq m (56.8% of the site). Undeveloped area would decrease from 20481.5 sq m (69.9%) to 10400.55 sq m (35.5%). The Council points out that the hard surfacing is unauthorised development, that there is a valid enforcement notice which requires its removal and the reinstatement of the land to its former condition of rough pasture and that a certificate of lawfulness which recognises the legitimacy of an area of hardstanding refers to a different surfaced area to the north of the present site. Consequently, in its view, the quantitative effect of the proposal has been understated.
79. Notwithstanding that, full compliance with the enforcement notice has not been required by the Council, within its legitimate discretion, for some time. There is no dispute that the appellant's figures accurately reflect the current facts of the situation. I have no reason to disagree with them. They show that even if this site were to be regarded as previously developed land, the proposed development would have an impact on openness greater than that of the previous development and so would not fall into the exception to inappropriate development described in the sixth bullet of NPPF paragraph 89.
80. The appellant's assessment of these quantitative effects takes into account the volume and height of buildings as well as the extent of hardstanding to arrive at a judgment of a high effect on openness. The Council does not disagree. Although hardstanding can be regarded as a relatively open form of development causing less harm to the Green Belt than buildings which have an elevation and a volume, nevertheless, its use, for parking cars and for storing plant and machinery does have a measurable, volumetric effect on openness, albeit one which will vary from hour to hour and day to day. I therefore agree that it should be included within the assessment of quantitative effects on the openness of the Green Belt and that significant harm would be caused by the development as a whole.
81. In contrast to appeal A, the appellant's qualitative assessment of the effects of development on appeal site B are more focussed on the effects of the proposed development itself, particularly its intended landscaping. In my view, this is a more accurate assessment. The site is on elevated land in clear view from southerly approaches. I concur with the appellant's assessment of the visual effects on openness from these viewpoints as medium to high and adverse and I also agree that, over time, these viewpoints would become less extensive as landscaping matures.
82. As with appeal A, so with appeal B, the appellant moderates the quantitative assessment by reference to the qualitative. For the reasons already explained in my consideration of appeal A, I take the view that this follows a practice criticised by the courts. I conclude that although landscaping would reduce the visual effects over time, it would always remain the case that from more

limited viewpoints, such as the entrance to the site, the perception would not hide the reality of a site transformed from fully open to largely developed and that that would be a significant harm to the openness of the Green Belt.

83. The proposal would therefore be contrary to policy GB2A in the Epping Forest District Local Plan Alterations (the Local Plan) adopted in July 2006. Amongst other matters, this asserts that planning permission will not be granted for the use of land or the construction of new buildings in the Green Belt unless it is appropriate. Although not precisely conforming to the words of NPPF policy on the Green Belt, this policy clearly shares and applies its general intent.

Character and appearance

84. Like appeal site A, appeal site B is sited just outside Harlow but, in contrast to appeal site A, appeal site B lies in completely open countryside. It is fair to say that its countryside character is compromised by major transport infrastructure comprising the street lights, road signs, safety barriers and dual carriageway of the A414 road which passes the site and junction 7 of the M11 motorway which passes a few hundred yards to the south but otherwise, the site lies fully exposed to view on the southern flank of a ridge. There is little or no other development in sight in any direction.
85. In landscape terms the ridge forms the southern (outside) edge of the landscape bowl which contains the urban area of Harlow beyond, on its northern side. Open fields lie on either side of the A414 road. Beyond them, on either side, are tracts of woodland. One of these bounds the site on its east side.
86. In the distance, on the ridgeline, on either side of the A414 road are petrol filling stations. That on the west side of the road is adjacent to a single storey building formerly used as a restaurant. Beyond them, on the east side of the road is an open vehicle parking lot, with floodlighting, and a long low shed which is a showroom for the sale of vans. This collection of buildings represents the outer urban edge of Harlow.
87. Much of the proposal, in the form of the workshop, open compound and parking would be similar in character to this outer urban edge of Harlow but separated from it by the extent of the former outline part of the application. In consequence, it would appear as an isolated development in open countryside.
88. The proposal includes extensive perimeter planting. Mr Williams, in paragraph 3.2.4 of his proof suggests that the intention remains to implement the landscaping around the much larger site originally proposed. This could be required by condition (though none was included in the conditions suggested by the parties). It would partly fulfil the aspiration of the Harlow Area Landscape and Environmental Study of September 2004 for a linkage between the woodland to the east of the site and that to the west of the A414. There is no reason to disagree with his assessment that it would, after fifteen years, result in the development having a negligible visual effect on the landscape.
89. But, for the meantime, I conclude that the proposal would be highly damaging to the appearance of open, undeveloped countryside surrounding Harlow which characterises this south-facing slope. Through its proposed landscaping, it would comply with subsection (i) of Local Plan policy CP1 which requires, amongst other matters, at least the minimisation of impacts of development

upon the environment and, if it were not separated from the edge of Harlow, with policy LL3 which requires proposals on the edge of settlements to show a sensitive appreciation of their effect upon the landscape by extensive landscaping.

90. Because the development would be separated from the edges of Harlow by the now withdrawn part of the original proposal, I do not accept Mr Courtney's concession that policy LL2 should not apply. The proposal would be contrary to that policy which would not allow development in the countryside and also to subsection (i) of Local Plan policy CP2 which requires the rural environment and countryside character to be sustained and enhanced, protecting countryside for its own sake.
91. However, protection of the countryside for its own sake is no longer a policy supported by the NPPF. Instead, it advises that the intrinsic character and beauty of the countryside should be recognised and that the different roles and character of different areas should be taken into account. The previous, absolute primacy of the protection of the countryside is now replaced in government policy by a more nuanced approach, in which it is a matter to be taken into consideration in judging the overall sustainability of a proposal, which I do in my conclusions.

Other Considerations

92. The reports to the Cabinet and to the Council record a requirement for Epping Forest District to accommodate economic growth of around 10,000 new jobs. This confirms some of the points made by Mr Nicol in his evidence on behalf of the appellant.
93. I have already concluded that the relocation of Hargreaves from appeal site A to appeal site B is not necessary to secure either the retention or growth of Hargreaves employment. Other than the provisions of part II of Schedule 1 of the Unilateral Undertaking accompanying the appeals, which I have concluded to be unnecessary and so not complying with CIL regulation 122 and which I therefore take no account of, the occupation of appeal site B, were the appeal to be allowed, would not be restricted to Hargreaves. It would therefore be available to contribute to the accommodation of the required number of new jobs.
94. Mr Nicol suggests that the proposal would potentially support up to 155 to 185 jobs overall (plus multiplier effects and short-term construction jobs). But it is recognised that the current proposal is unviable.
95. Mr Banner, in his closing submissions on behalf of the appellant, fairly asked the question: "if not here, then where?" Although the emerging local plan has still to be consulted upon and has still to be tested on examination it represents the best technically, professionally and politically-endorsed response to that question which is currently available.
96. Reports to both Cabinet and Council confirm that the consultation draft local plan seeks to propose allocations to provide for the quantum of employment growth envisaged over the plan period. This will inevitably include the allocation of land which is currently Green Belt.
97. The agreed position statement on the Consultation Draft Local Plan confirms that draft policy SP2 provides that the Council will, over the plan period,

amongst other things, provide for approximately 10,000 new jobs. Paragraph C of the draft policy asserts that the new jobs will be delivered by allocating new employment land at appropriate locations across the District. Draft policy E1, paragraph F explains that the Council will be undertaking further work to enable specific employment land requirements and allocations to be identified within the Local Plan. An e-mail exchange which took place during the Inquiry (document 3B) confirms that the sites indicated within figure 3.6 of the emerging plan as published, (referred to as 3.4 in the e-mail exchange) are being considered for those allocations. They include the area originally proposed as appeal site B, of which the current area of site B forms a part.

98. It is locationally sustainable in that a good bus service passes the site and stops are within acceptable walking distance. Good access to Harlow's cycle network would be provided by an element of the proposal itself.
99. It has previously been used on a temporary basis as a highway compound. In 2002 it was considered by the Council itself as a potential site for a waste contractor's depot and scaffolding yard. More recently, in 2016 it was nominated as a development site in the now withdrawn Essex Waste local Plan. As Mr Courtney acknowledged in cross-examination, the site would be a good candidate for the kind of development now proposed, were it not within the Green Belt as defined. All these are arguments in favour of its potential selection.

Balance

100. Almost all planning decisions require a balancing exercise of some kind but for development within a Green Belt, advice in the NPPF is that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances and 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.
101. The Council has recognised (in paragraph 3.85 of its consultation draft Local Plan) that there is a need to review the extent of the Green Belt within the District which implies recognition that its Green Belt boundaries may be out of date. Where relevant policies are out of date, the NPPF advises that permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted. Although specific policies in the Framework do indicate that development in the Green Belt should be resisted, the Council's review of its boundaries and in particular the inclusion of this site within a list of sites being considered for release throws into question the force with which that policy should be applied to this particular case.
102. An essential characteristic of Green Belts is their permanence. In this case there is as yet only a suggestion in the emerging plan that the site be on a candidate list for removal from the Green Belt. It is clearly a good candidate but the emerging plan is yet to be subject to consultation and then examination so nothing should be presumed at this stage. Accordingly, it is the test of the Green Belt balance which continues to determine whether this proposal would be sustainable development for the purposes of NPPF paragraph 14.
103. The potential harm of appeal B is as follows

- Harm by definition to the Green Belt, which I have assessed as significant in its effect on its openness.
- Harm to the character of the countryside which I have assessed as initially highly damaging to the appearance of open, undeveloped countryside surrounding Harlow but reducing by the elapse of fifteen years to a negligible visual effect on the landscape.

104. Its potential benefits are as follows

- A small and unviable contribution to meeting the need for 10,000 new jobs by development of an employment site potentially supporting up to 155 to 185 jobs overall (plus multiplier effects and short-term construction jobs).

105. Clearly the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is not outweighed by other considerations and so I dismiss the appeal.

P. W. Clark

Inspector

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INTERESTED PERSONS:

Rachel Clements	Local resident
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DOCUMENTS submitted at Inquiry

- 1 Draft Unilateral Undertaking
- 2 [2013] EWHC 1138 (Admin)
- 3A Icen comments on Kift's validation report
- 3B E-mail 11 October 2016 interpreting draft Local Plan
- 4 e-mail letter correcting name of appellant
- 5 Drawing AG065-003 revision D
- 6 Clarification of existing use value of Harlow Gateway South site
- 7 Clarification of car parking provision at Foster Street South site
- 8 Appellant's view of planning balance
- 9 Suggested conditions
- 10 Advice of intentions concerning existing buildings in north-west corner of appeal site A

DOCUMENTS submitted (by agreement) following Inquiry

- 11 Signed Unilateral Undertaking
- 12 Supplementary statement of Common Ground in respect of draft Local Plan
- 13 Report to Cabinet 6 October 2016
- 14 Report to Council 18 October 2016
- 15 E-mail confirmation of proceeding to Regulation 18 consultation