



Appeal Decisions

Hearing Held on 22 - 24 August 2023

Site visit made on 24 August 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2023

Appeal A Ref: APP/B5480/W/23/3318906

Land to the South of St Mary's Lane, Upminster RM14 2QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Enable Care against the decision of the Council of the London Borough of Havering.
 - The application Ref P0928.22, dated 6 June 2022, was refused by notice dated 3 October 2022.
 - The development proposed is erection of Acquired Brain Injury Unit and 9 affordable dwellings with associated access, landscaping, parking and infrastructure.
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Appeal B Ref: APP/B5480/W/23/3322606

Land to the South of St Mary's Lane, Upminster RM14 2QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Enable Care against the decision of the Council of the London Borough of Havering.
 - The application Ref P1963.22, dated 1 December 2022, was refused by notice dated 24 April 2023.
 - The development proposed is erection of Acquired Brain Injury Unit and open space with associated access, landscaping, parking and infrastructure.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made in writing by the Council against the Appellant, and separately by the Appellant against the Council. These applications will be the subject of separate decisions.

Procedural Matters

4. The site falls within the Metropolitan Green Belt. The main parties have agreed that both schemes under Appeal A and B would represent inappropriate development in the Green Belt under the terms of the policies in the development plan, including those in the London Plan (2021) and Havering Local Plan (2021) (Local Plan), and under the terms of the National Planning Policy Framework (the Framework). I concur with that position.

5. Two separate unilateral undertakings (UUs) submitted as deeds under S106 of the Act were submitted on the 1 September 2023, one specific to each appeal scheme. I address these further below.
6. An updated version of the Framework was published on 5 September 2023, though the changes do not have any particular relevance to the appeal proposals. Consequently, I have not sought the views of the parties.

Main Issues

7. The main issues relevant to both appeals, for which I have combined my findings, are:
 - the effects, if any, of a previous permission on the site;
 - whether there is a need for an Acquired Brain Injury Unit (ABIU) and considerations in relation to the selected location;
8. The main issues specific to Appeal A are:
 - the effect of the proposal on the openness of the Green Belt;
 - the effects on the character and appearance of the area, including whether it would preserve or enhance the Cranham Conservation Area (the CA) and effects on the settings of the Grade II listed buildings, Cranham Hall and the Church of All Saints (the Church); and
 - considerations specific to the provision of housing;
9. The main issues specific to Appeal B are:
 - the effect of the proposal on the openness of the Green Belt;
 - the effects on the character and appearance of the area, including whether it would preserve or enhance the CA and the effects on the settings of the Grade II listed buildings; and
 - considerations specific to the provision of public open space.
10. The overall assessment for the schemes is whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify either or both of them.
11. The assessment that follows a positive outcome of the very special circumstances test is whether either or both schemes demonstrate compliance with development plan policies in relation to energy efficiency, whole life-cycle carbon, circular economy, urban greening, drainage, air quality and noise.

Context

12. The appeal site is located on the eastern outskirts of Upminster, to the east and north of playing fields associated with 'The Coopers Company and Coborn School'. In addition to being within the Green Belt, the site is also wholly within the CA.
13. The site is broadly rectangular and flat and extends to around 0.75 hectares in area. It is accessed via St Mary's Lane to the north via an existing access and

hardsurfaced track. Houses line the northern side of St Mary's Lane. To the east of the site is a cluster of four dwellings and their respective gardens. Lodge Cottage is on the corner of The Chase and St Mary's Lane. No 350 faces towards and is accessed via St Mary's Lane. Harefield House and Magnolia House are accessed via the Chase and are set back therefrom by varying degrees. This cluster of four detached dwellings and outbuildings is low density, well spaced and informally laid out.

14. Otherwise, despite the difference between the playing fields and agricultural uses, land to the south of the site is gently undulating, green and open in nature. To the far south is the relatively remote cluster of buildings which are the centrepiece of the CA, including Cranham Hall, the Church, and a small number of dwellings.
15. Appeal A seeks to construct a two storey building with rooms in the roofspace to be used as an ABIU comprising 32 bedrooms and associated functional rooms. Parking and landscaping would also be required in the ABIU portion of the site. In the southern part of the site, 9 No affordable dwellings would be constructed with associated access, parking and gardens.
16. Under Appeal B, the ABIU element would be the same as per Appeal A, but instead of the 9 No affordable dwellings, the southern portion of the site would be provided as an area of Public Open Space (POS).

Relationship with previous permission

17. Permission was granted in 2012 for the demolition of a warehouse building, removal of associated hardsurfaces and construction of three dwellings and detached garages¹ (the Permission). The planning unit then under consideration comprised the appeal site and land extending east and north, excluding Lodge Cottage and its garden.
18. As far as I can ascertain, the scheme proposed the construction of three dwellings within a red line area and for the remaining area edged blue to be provided as a landscaped space, with a landscaping scheme required by way of a pre-commencement condition (No 19).
19. The Permission is linked with a S106 of the same date. Under the S106, the owner and any successors in title are obliged to implement the Permission in accordance with the conditions and accept the revocation of the former permission for the warehouse without rights to compensation for such. The Council's evidence points to a combination of aspects, including the provision of the landscaped space, having tipped the balance towards a finding of very special circumstances for the Permission to have been granted.
20. I am unclear what extent of hardstanding exists now compared with what may have previously existed, though it is evident that there is no longer a warehouse building on the appeal site. From the limited specific evidence before me on this point, it also appears that No 350 St Mary's Lane, Magnolia House and Harefield House have been constructed since the Permission was granted.
21. The position of the Appellant is that the development of the three houses was undertaken in breach of condition 19 and that it is a true conditions precedent

¹ Under reference number P1401.11, dated 14 February 2012

which goes to the heart of the Permission². Thus, the Appellant claims that the development cannot be treated as having been permitted by the Permission and was unlawful³ but has gained immunity under the 'four year rule' under S171B(2) of the Act. Were the Appellant correct on this point, condition 19 and the S106 would not be relevant as they would not 'bite'.

22. Conversely, through the third reasons for refusal (RfRs), the Council claim that allowing either Appeal would prejudice any further enforcement action. These RfRs relate to the breach of conditions notice (BCN) dated 24 August 2018 in respect of the failure to discharge condition 19 of planning permission ref P1401.11 and three enforcement notices (ENs), also dated 24 August 2018, in connection with the residential use of land adjacent to the three aforementioned houses without the benefit of planning permission.
23. I have a copy of the decision notice pertaining to the Permission and was provided with a copy of the S106 on request. There are some references within the evidence to 2014 being the year in which the three dwellings were completed and occupied, and the Appellant's Landscape and Visual Impact Assessments (LVIAs) appear to show aerial photographs of the roofs of three dwellings in existence in the year 2020. The plans appended to the BCN and ENs also show three dwellings.
24. However, the evidence is far from clear on what specific act of development was undertaken, in what ways it departed from the Permission and by when it was substantially completed, and then, what operative date its use/s may have gained or will gain immunity under S171B(2) of the Act. In any event, both Appeals before me are appeals under S78 of the Act specific to the appeal site. Neither are applications under S191 of the Act to certify whether a development is lawful or not, nor are they appeals following the refusal of such. It is not within my remit under these Appeals to reach such a conclusion and risk fettering the discretion of any future decision maker/s in this regard. Similarly, it is not within my remit to determine that the BCN drafting errors highlighted by the Appellant render it incapable of effect.
25. At the hearing, it was accepted that a new planning permission/s could be granted on the appeal site irrespective of the status of the Permission and any enforcement proceedings. Therefore, my assessments have focussed on the merits of the respective schemes as they have been presented to me.

Need for, and location of an ABIU

26. In terms of an overview, the Care Act of 2014 requires that local authorities promote diversity and quality in provision of services in the care market. The London Plan 2021, in Policy S2 and elsewhere in its supporting text, also seeks to support the provision of high-quality new and enhanced health and social care facilities to meet identified need and new models of care.
27. An ABIU is essentially a care home (Use Class C2) which will primarily provide specialist nursing care and rehabilitation services for people who are living with an Acquired Brain Injury (ABI) and other neurological conditions. Under the specific definitions of a care home, an ABIU would fall to be considered a nursing home as it offers qualified nursing care to meet the needs of its patients.

² With reference to R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840

³ With reference to the Whitley Principle established in Whitley v Secretary of State for Wales [1992] 3 PLR 72

28. The national picture for ABI, supported by evidence from Nigel Newton-Taylor, is that by 2020, the number of admissions specifically for ABIs was at around 309,000, up from 239,000 in the year 2000, i.e., around a 29% increase in admissions. Mr Newton-Taylor's evidence indicates that the significant majority of service user referrals to ABI units are made by Clinical Commissioning Groups (CCGs). 112 CCGs were contacted to provide data and of those, 76 CCGs indicated that 68% of service users are placed 'out of area' with the lack of available beds being a significant contributing factor. A report from 2018, titled, A Time for Change⁴, also recommended that there should be a significant increase in neuro-rehabilitation beds. Given the evidence, I agree that the national picture points towards the need to promote an increase in appropriate services for ABI patients to meet quantitative and qualitative needs.
29. The evidence on the more locally-derived need is of Ms Goodwin, an employee of the Appellant who manages an existing facility at 1 Seawardstone Close (1SC). 1SC is in the north-east of London, opened in 2010, and was the first of its kind within London outside of the NHS to be built specifically for the purposes of providing care for adults with ABIs (or complex neurological conditions). Ms Taylor's evidence indicates regret at the high number of referrals that cannot be fulfilled at 1SC due to lack of capacity which can lead to patients being put further out of their respective home area or placed in alternative, less appropriate, services. She also indicates that the Appellant company, Enable Care, wishes to open more specialist facilities within London and the Home Counties to meet these unmet needs.
30. 1SC is registered for 29 patients. Based on the patient profile at the time of preparation, Ms Goodwin's evidence suggests that 19 of 29 patients were referred by CCGs, 4 were referred by local authorities, 3 were referred from a hospital neurological rehab unit, one was referred by an adult learning disability team, one was referred by an NHS integrated care board (ICB) and one was a private referral. It would seem that CCGs and ICBs are largely one and the same for these purposes and thus, of 29 patients, around 23 have been referred by the NHS in one form or another. Looking further into the referrals from the 19 CCGs for which geographical data is provided, Newham CCG have referred 4 patients; Barking, Dagenham, Havering & Redbridge CCG have referred 3; Waltham Forest NN have referred 3; 2 patients have come from West Essex; and from each of the following CCGs there has been 1 patient admitted: Haringey, Waltham Forest, West Ealing, Buckingham, Medway, South Gloucestershire and the Wirral. From this evidence I can deduce that around 3 of the most recently referred patients came from within the CCG specifically covering Havering and approximately 10 or more additional patients come from the wider north-east London area. The geographic origins of those 10 patients that came from other means of referral have not been provided.
31. Ms Goodwin's evidence touches on the other non-NHS facilities in the area, other than 1SC, operating within or just off the M25 that can serve North and East London: Marillac Neurological Care Centre (Marillac) which has 52 beds and is based in Brentwood, Essex and Jacobs Neurological Centre (Jacobs) which is a 60 bed care home in Sawbridgeworth, Hertfordshire. The evidence draws a distinction between 1SC and Marillac and Jacobs, placing emphasis on the holistic treatment provision and high care rating, but highlights that all

⁴ Time for Change – All Party Parliamentary Group on Acquired Brain Injury Report; September 2018

three had above 90% occupancy ratings in late 2022 at the time of their most recent inspections. Furthermore, Ms Goodwin's evidence highlights that 1SC has also operated a waiting list for over the past two years and has turned away 49 referrals in the past 9 months, including 14 from the CCG covering Havering.

32. A further piece of evidence is a supportive letter from Professor Bateman, Chair of the UK ABI Forum, which acknowledges his awareness of the limited provision for ABI patients generally, but particularly in the North East London area.
33. Mr Nichol, Chair of the Trustees of the Marillac, put forward his own evidence in respect of the local need for an ABIU and indicates that the proposed ABIU has not been directly supported by any of the local CCGs and that Marillac already takes patients from Havering/Essex and most other North and East London boroughs and is currently operating at around 96% capacity. He also highlighted his concerns about the pool of staff needed to run such a facility proposed on a profit-making basis, which would compete with the potential staff needed at Marillac, which itself aims to operate without detriment to staffing levels at NHS hospitals and facilities. His principal concern appeared to be staffing-related, but the secondary point he makes is that demand for ABIU placements is not easy to predict and that the need in this general location is not as pressing as is being stated.
34. The Appellant's Viability Evidence Statement of Case sets out that based on the gross development value (GDV) of the ABIU, the price that could be paid for the site would be far lower than for a scheme of housing on the same site. However, that exercise is based rather narrowly on a high density scheme on the site which it is assumed would be acceptable, rather than on a range of scenarios, and on assumptions which are also without comparables, such as the GDV of the ABIU itself. Whilst I understand the general principle put forward that residential schemes will often be favoured based on the higher prices that developers can offer for sites, that is likely to apply both within and outside of the Green Belt and is heavily influenced by the market value of housing in the given area, which the Appellant's evidence acknowledges is a popular one.
35. The Appellant's evidence also points to Local Plan Policy 6 as one which supports the current proposal. Paragraphs 7.4.6 and 7.4.7 of the Local Plan details that the target of 255 specialist accommodation units was derived from a 2015 Report. Despite that the target appears to stem from a need for housing for 'older' people as indicated in the supporting text, Policy 6 states that specialist accommodation is that which has been designed and built to meet the needs of the elderly, disabled, young or vulnerable adults. The lack of delivery of such units in the year 2021 – 2022 as evidenced by the Annual Monitoring Report (AMR) of that year indicates that a deficit of 255 units was accrued at that time. But without a picture of delivery over previous years, it may be hard to understand if this has been balanced out by an oversupply elsewhere, or if the scale of the deficit is much greater. Nonetheless, the scheme would provide 32 beds, which would make a valuable contribution towards the supply of specialist accommodation.
36. In terms of a greater analysis of the chosen location, it is clear from the Framework that inappropriate development is harmful to the Green Belt and

should not be approved except in very special circumstances. There is no specific policy requirement to undertake such an assessment but given that the target area of North and East of London is relatively broad, eliminating the other possibilities considered is a useful exercise when seeking to justify a Green Belt site. No alternative site assessment has been provided with either appeal, though the Appellant's evidence suggests that assessing possible alternative sites would be a massive exercise and finding an alternative site would be difficult.

37. The Appellant's evidence points towards an appeal decision⁵ for a retirement care village in the Cambridge Green Belt as a precedent for a comparison between land values for care home developments versus those for residential developments. However, from my reading of that decision it is also apparent that in that case, two alternative site assessments had been undertaken by the appellant. Whilst that Council did not identify any specific preferable alternative site/s, as is the case here, there was at least some evidence upon which a conclusion could be reached that non Green Belt sites had been considered and were not available, suitable or viable. However, the potential range of alternative sites, their suitability or otherwise, and other factors influencing pricing, is an unknown quantity in this case.
38. Drawing together all of the evidence, my view is that there is a need for ABIUs generally and another to serve the North and East of London would more than likely be able to provide more choice to patients and reduce capacity issues or waiting times. The absence of any direct support from local CCGs is unfortunate, but it seems likely that similar arrangements to that which exist at 1SC would continue to ensure that any available places were filled. However, despite the contribution it would make towards the Local Plan target for specialist accommodation, there is insufficient evidence to justify that the need for an ABIU is one that only a Green Belt site in Havering can meet based on the geographical distribution of anticipated patient referrals, or that if it is to meet the needs for Havering, that the scale of the unit has been specifically influenced by such.

Appeal A – Effect on Green Belt openness

39. The parties both acknowledge that the openness of the Green Belt has a spatial as well as a visual aspect. Considered in a spatial context, it is clear that any development on site would be a notable incursion into the Green Belt. The site is around 0.75 hectares in area, is presently free of buildings, and the proposal would introduce buildings and hardstanding across almost all of it, with some modest areas of landscaping.
40. Visually, insofar as there is an absence of any buildings on site, it is perceived as open and undeveloped. It is largely enclosed to the front and western side by shrubs and trees, some of which are evergreen, but above and through the gaps in between it is clear that the site is free of buildings and vegetated, albeit having been left to re-wild, the quality of the vegetation is rather scrubby. There is a more substantial tree belt to the rear of the site which backs on to the school playing fields and agricultural land beyond. This gives the site some degree of visual containment when viewed from St Mary's Lane, but its connection to the surrounding undeveloped land is still apparent. The small cluster of dwellings to the east undermine the coherence of the openness to a

⁵ Appeal Reference APP/W0530/W/21/3280395

degree, but their detached nature, informal layout and generous spacing from one another with interspersed trees helps to give them a semi-rural quality which aids the transition between the urban and rural areas. Due to the distance between the site and the school buildings the site does not read as being related to or grouped with them.

41. The combination of a blocky building with an elevation of around 50 metres in length, around 20 metres in depth and of a height of around 9.5 metres with a terrace arrangement of single storey dwellings behind it with a similarly elongated form, can only be regarded as having a significant visual effect on the openness of a site which is currently absent of any such features. Though there would be some open space between the two elements, their scale, form and visual impermeability could not be regarded as being compatible with, or in any way maintaining the visual dimension of openness.
42. In summary, in my view, the proposals under Appeal A would result in significant harm to the Green Belt, contrary to London Plan G2 and the expectations of the Framework.

Character, appearance, effects on CA and listed buildings

The significance of the assets

43. The Church (List Entry Number 1079925) is described in the listing details as small, dating back to c.1873, built in the Decorated style, and comprising nave and chancel with a north-east tower and spire and south porch. Its associative connections are with the architect, Richard Armstrong, for Richard Benyon, and built in memorial to General James Oglethorpe, the founder of Georgia.
44. Cranham Hall (List Entry Number 1358508) is noted in its listing description as having originally been built as a large mansion of late C16 or early C17 date which was the house of General James Oglethorpe; demolished circa 1789. The present three storey building has a late C18 main front elevation of stucco, with many classical features, though it is unclear if it incorporates any of the former building. The walls surrounding the Hall are separately listed, Grade II.
45. From the evidence⁶ and from my own observations, the significance of the CA is largely defined by the group of historic buildings, including the Church and Cranham Hall, which retain a relatively remote location in relation to the suburban development to the north and west. Whilst the Church is the centrepiece, with its prominent spire widely visible in the surroundings, there are other cottages and a fine quadrangle of brick-built slate-roofed farm buildings which are also a key element in the building group. The other key component of the CA's significance is its remoteness and the openness that surrounds it, and the open views to and from it. This openness contrasts with 'The Chase', the principal road route to the CA, which is more enclosed by the tree belts, but both elements combine to give the CA a rural quality which distinguishes it from the suburban area of Upminster.
46. The appeal site is within the CA, and thus, the effects thereupon fall to be considered under S72(1) of the Listed Building and Conservation Areas Act 1990 (the LBCCA). The site is more distant from the listed buildings, but as central components of the CA, the effects of development within the CA is

⁶ Including the Cranham Conservation Area Character Appraisal and Management Proposals document

capable of affecting the settings of the listed buildings. Thus, S66(1) of the LBCCA is also triggered.

47. The site does not have the same pristine quality of landcover as the playing fields or agricultural land, and its size and greater degree of enclosure by trees and vegetation make it harder to perceive as part of the integral openness. However, insofar as it is free of development and maintains that remoteness and degree of separation between the urban edge and the cluster of historic buildings at the CA's core, it contributes positively to its significance. The positive, albeit smaller contribution, of the site to the settings, and thus significance, of the respective listed buildings is made through the same means; by being deliberately absent of development, largely green, and by forming a part of the patchwork of land that maintains their remoteness from the urban edge.

The effects of the proposal

48. The scheme would involve the construction of an ABIU building around 50 metres long and 20 metres deep, extending east-west along the northern part of the site, set back only by its car parking. At around 9.5 metres high, the building would be of the height of a 3 storey building, but has been designed to appear as two, with a crown-style roof, the central part of which would be flat and green. Through the use of repetitive gable features with varied projections and use of differing materials, the ABIU would appear alike a commanding terrace of seven dwellings with a feature central section.
49. The affordable dwellings would also be built in a terrace formation, albeit with the easternmost dwelling set back behind the common building line. The single storey dwellings would have asymmetric pitched roof forms and would share a similar material palette with the ABIU. Parking for the dwellings would be in on-street bays on either side of the road between them and the ABIU. Some landscaping would feature in the car park for the ABIU and in public areas around and within the site.
50. For an area in which the immediate surroundings are relatively modest semi-detached and detached dwellings, the introduction of a large, blocky single building would represent a character change within the immediate streetscene. Though some larger buildings exist in the wider surroundings, i.e., Roe Court, New Place and Westbury Terrace, they do not influence the immediate character of St Mary's Lane surrounding the site. Similarly, the buildings associated with the School are set at such a distance away that the ABIU would not read as being as part of the same group, and they themselves are set within spaces which are more open in nature, i.e., the playing fields and the car park. Though the mass of the building would be broken up to a degree by the use of varied depths, gable features and varied materials, and considered in isolation of its context, could be considered well-designed, its introduction onto the site would result in a strident and incongruous form of development.
51. The single storey nature of the development in the rearward part of the site would respond more to the scale of the dwellings on the opposite side of St Mary's Road, but the unbroken terrace formation would still appear particularly harsh and urban in character. The impact of this aspect of the development would be less harmful owing to its position behind the ABIU and in front of an established tree belt, but it would still add cumulatively to the extent of the site

that would be more intensively urbanised and at odds with its immediately surrounding gentler urban form.

52. Therefore, notwithstanding the LVIA findings in relation to the limited resemblance of the site to the wider Thurrock Reclaimed Fen Landscape Character type⁷ or in respect to visual effects on the wider surroundings, I find that the proposal would be harmful to the character and appearance of the area, contrary to, in particular, Local Plan Policy 26 and London Plan Policy D4.
53. Returning to the effects on the designated heritage assets, despite that it would represent a proportion equal to around only 0.08% of the CA's total area, due to the scheme's cumulative scale, mass and siting, it would read as a sizeable urbanising intrusion into the CA. Views towards the CA and the Church spire, a key feature which indicates its presence, would also be more limited in views from St Mary's Lane by the ABIU, albeit marginally so. An urban incursion into the CA, particularly of the combined scale proposed, would fail to preserve or enhance the character or appearance of the CA and, conversely, would be harmful. By extension, this would result in harm to the settings of the respective listed buildings. The scheme is therefore contrary to Local Plan Policy 28, London Plan Policy HC1 and the expectations of the Framework.
54. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Under these terms, I consider that the harm to the significance of the CA would be of a less than substantial magnitude, and towards the low-moderate end of that scale of harm. The effects on the settings of the listed buildings would also be of a less than substantial magnitude, but of a lower level of harm. The public benefits of the scheme are considered below.

Housing considerations

55. It is common ground between the parties that based on the latest available Housing Trajectory (2019), the Council cannot currently demonstrate a five year supply of deliverable housing sites. Despite this, the Local Plan was found sound and was adopted in 2021. The Inspector's decision acknowledged a five year supply of deliverable housing land being a typical prerequisite of a sound plan, but that given the material increase in the housing requirement at a late stage in the examination, the Plan was found sound, subject to an immediate review. However, it was confirmed that the lack of a 5 year housing land supply did not justify the exceptional circumstances necessary to alter the boundaries of the Green Belt as part of the Plan at that time.
56. The uncontested evidence put to me at the hearing was that the current supply is in the region of around 4 years' worth, which must indicate that the deficit is equivalent to around the annual requirement figure of around 1,366 dwellings. The immediate review which might seek to address this is apparently underway, but the publication of the Regulation 18 stage draft plan is not expected until the Autumn.
57. Given that all 9 dwellings are intended to be affordable tenures, the need for affordable housing is also relevant. The evidence points to a requirement for 35% of all dwellings built annually to be delivered as affordable homes, i.e.,

⁷ The Land of Fanns Landscape Character Assessment, August 2016

around 478 per annum, with a preference for 70% of those to be social/affordable rent and 30% immediate tenures. The evidence from the Housing Position Statement (Technical Update October 2019 - dated August 2020) which cross referenced the earlier Strategic Housing Market Assessment (2016), is that the Council failed to deliver the required affordable housing provision between 2014 – 2017, delivering closer to half of the requisite amount. The AMR data for 2021-2022 indicates that only 12% of the total 624 houses built were affordable homes, i.e., around 70 dwellings. The Appellant's assertion is that the trend of acute under delivery does not appear to have been addressed by the adoption of the Local Plan.

58. The Local Plan target is also to provide a mix of housing in schemes through Policy 5, with an emphasis towards providing 3 bed dwellings (64%) and 15% and 16% of 2 and 4+ beds respectively. The aim of this Policy is to redress the issues identified in the Housing Position Statement of overcrowding and the particularly high need for 2 and 3 bedroom properties. The scheme would deliver 8 no. 3 bed affordable homes and 1 no. 2 bed wheelchair accessible home which the Council has confirmed would comply with Policy 5.
59. In situations where the Council is unable to demonstrate an adequate supply of housing land, the presumption in favour of sustainable development in paragraph 11 (d) of the Framework is triggered. This presumption requires that decisions are made to grant permission unless (i) any Framework policies that protect areas or assets of particular importance provide a clear reason for refusing the development, or (ii), where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole.
60. As the site is within the Green Belt, and the scheme as a whole constitutes inappropriate development that would harm its purposes and openness, protection is afforded by Framework paragraph 11 (d)(i) and footnote 7. Therefore, whilst the benefit of delivering housing and, in particular, affordable housing is still a public benefit that shall be weighed in the balance in the context of the acknowledged shortfall, the presumption in favour of sustainable development is disengaged.

Appeal B

Appeal B – Effect on Green Belt openness

61. The ABIU would be identical under Appeal B as for Appeal A in terms of scale, mass and design. It would also be sited in the northern portion of the site to respond to St Mary's Lane. Spatially, the harm from the Appeal B scheme would be reduced through the removal of the affordable housing from the rearward part of the site and its replacement with POS.
62. Visually, as the affordable housing would be lower in height (single storey) and situated against the more substantial southern tree belt, the removal of this element would not minimise the visual harm to the openness to any great extent. Therefore, from a visual perspective, the openness of the Green Belt would still be diminished by the introduction of a substantially scaled building on a presently open site. The harm to the openness of the Green Belt would still be substantial, despite the close association of the site with the urban area.

63. For the above reasons, Appeal B conflicts with London Plan G2 and fails to accord with the expectations of the Framework.

Character, appearance, effects on CA and listed buildings

64. Under Appeal B, the ABIU would still be of the same scale and design and would be sited in the same position. However, in place of the affordable dwellings and associated road, there would be a private rear garden for the ABIU and a separate area of POS. Both open areas would be landscaped, with the ABIU garden more formally so than the POS.
65. Given the similarities between Appeal A and Appeal B in respect of the ABIU, my findings are the same, in that it would still represent a strident and incongruous form of development relative to its local context. The removal of the terrace of dwellings from the scheme would make way for a garden and an area of POS which would be much less urbanising and softer but would not materially change the effects of the ABIU as the dominant feature of the scheme.
66. Consequently, even as an urban incursion of a reduced scale, the scheme under Appeal B would still harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. Similarly, by extension, there would be a degree of harm to the settings of the respective listed buildings. In this regard, the Appeal B scheme conflicts with London Plan Policy HC1 and Local Plan Policy 28.
67. Under the terms of the Framework, I consider that the harm to the significance of the CA would be of a less than substantial magnitude. As the harm from the scheme would be reduced, albeit minorly, the scale of harm would be towards the low end of such a scale. The effects on the settings of the listed buildings would also be less than substantial, but towards the minor end of the scale. I return to the public benefits of the Appeal B scheme below.

Public Open Space

68. The scheme intends to provide 0.28 hectares of the southern part of the site as an informally landscaped POS for use by members of the public alongside patients of the ABIU (who would also have access to the enclosed garden of the same).
69. The POS would be situated to the rear of the ABIU, accessed via a pedestrian pathway to the west of the site. The Council highlighted the concern about the visual obstruction of the access pathway by a poorly sited refuse bin and general lack of street presence and limited overlooking other than by the ABIU, which would render the space less likely to be used. A planning condition might be able to overcome the issue of the refuse bin siting, but the relatively discreet location of the POS at the rear of the site would not be changed.
70. In terms of need and the benefit of the provision of POS, the London Borough of Havering Open Space Assessment Report (2016) (OSA) details the quantity and quality of the numerous categories of POS in the Borough. I agree that the quantity of 'Parks and Gardens' and 'Amenity Greenspaces' appears the lowest of all of the southern part of the Borough within which the appeal site is located. However, in a broader context, the Local Plan explains that Havering is one of London's greenest boroughs with extensive open spaces.

71. The OSA also looks more specifically at accessibility to POS and sets a 5 minute walk time criteria for access to amenity green spaces, but a 15 min walk time for access to parks and gardens. The Appellant's Statement sets out that the two closest areas of such POS to the site are Clockhouse Gardens, some 10 mins walk to the west and Cranham Playing Fields, some 11 mins to the east. The Statement indicates that both are around '0.5 miles' or therefore, c. 0.8km away. A measurement of 5 mins walk from the appeal site would encompass fewer dwellings than the respective catchments of Clockwork Gardens or Cranham Playing Fields given the more dispersed nature of development in the immediate vicinity of the appeal site, indicating that fewer residents of the Borough would directly benefit from such a provision.
72. In terms of scale, to even be counted as an amenity green space within the OSA, the size must be of at least 0.2 hectares. It is clear from the evidence that whilst the scale of the POS at 0.28 hectares would exceed the minimum scale of an amenity greenspace to be considered as such, its size is relatively modest, particularly relative to the other aforementioned areas of POS.
73. From my reading of the OSA, the shortfall in POS typologies of certain open spaces in certain locations does not translate to a serious shortfall in POS here. Nonetheless, the Local Plan and London Plan support the provision of public open spaces and promoting the health benefits of access to such, echoing the Framework's promotion of the same, along with the aspiration to put the Green Belt to beneficial uses. In this context, there can be no doubt that the provision of POS would be a benefit of the scheme. However, the scale of the benefit would be tempered by reason of its location in both a broader and site-specific context, along with its modest scale.

Other Matters

Site Accessibility

74. The accessibility of the site was not a reason for refusal in either scheme, though this aspect and the related means to minimise reliance on private vehicles is offered by the Appellant as a contributory factor as to why very special circumstances exist in support of the schemes. For Appeal A, these considerations pertain to both residents of the proposed 9 houses and the employees and patients of the ABIU. For Appeal B, the accessibility considerations are more specific to the employees and patients of the ABIU. Both schemes would also operate under a Travel Plan Statement, with appointment of a Travel Plan Co-ordinator and dissemination of information about modes of public transport in the locality.
75. The evidence of Mr Wharton details the position of the site in relation to the surrounding road network and the range of modes of transport available, of both motorised public and private means, or on foot or bike. As the site is within a London Borough it can be tested using the Public Transport Accessibility Level (PTAL) rating in terms of accessibility to public transport. Whilst the site score of 1b, and only one above the lowest PTAL rating of '1a - very poor' is seen by Mr Wharton as crude, it is a relevant measure for all London Boroughs and in my view, the distance of the site from the higher frequency and wider range of bus routes and train links renders it relatively poorly in terms of accessibility considered in a London context. The relevant distances are not entirely prohibitive to ambulant individuals but are at the upper end of what would be reasonable when linked with a public transport

journey. Attracting employees to non-car modes is more difficult in such circumstances, particularly when combined with an employee shift pattern that would dictate commuting times to either arrival/departure before 08:00 or after 20:00, coinciding with winter hours of darkness when a few hundred metres walking distance may make a difference and where parking a vehicle on site is a realistic alternative.

76. I note the evidence of Mr Wharton that suggests that of the 74 staff at 1SC, around 50% live within around "5 miles" of that facility. Though it is encouraging that a large proportion of the staff body there have short journeys to work, it is difficult to draw any useful comparison with the proposal given the differences between the range of transport options available and lack of information about the modes of transport that they employ.
77. The discussion at the hearing led to a general acceptance that patients of the ABIU would be unlikely to travel to the site by means other than private vehicle. Visiting family members may also fall into a similar category around visiting hours, but would be more likely to have the option to travel by other means. That said, there is evidence to suggest that there would be a reduction in the distances that patients and their families would have to travel if the ABIU were to absorb referrals specifically from North and East London.
78. In respect of any future residents of dwellings under Appeal A, a range of everyday facilities are within reach of the site, including a supermarket, schools and open spaces. The proximity of these facilities and others that families would access regularly are likely to warrant some degree of reliance on private vehicles, but options would exist for some journeys to be made on foot, cycle or linked to a journey by public transport means.
79. In summary, I find that the site is moderately sustainably located with factors that pull in both directions. Consequently, in my view, this aspect neither offends nor exceeds any specific policies in this regard and weighs neither strongly in favour nor against either scheme.

Planning Obligations

80. The UU submitted in respect of Appeal A would provide for 9 affordable dwellings (6 social rent units and 3 shared ownership units); a financial contribution of £153,925 to offset the deficiency of 3.07 biodiversity units and achieve the necessary 10% biodiversity net gain (BNG); a carbon dioxide emission reduction contribution of around £50,917 to achieve the necessary offsetting measures; and a monitoring fee.
81. The UU submitted in respect of Appeal B would provide for the unrestricted public access to the 0.28 hectare area of POS to be managed and maintained in accordance with a scheme to be submitted and approved; and a carbon dioxide emission reduction contribution of £32,531. Subject to the provision of an entirely green roof along with other measures, the scheme under Appeal B would result in a 27.8% BNG benefit, hence the omission of a BNG offsetting contribution in relation to this scheme.

The Public Sector Equality Duty and interested party comments

82. I have given due regard to the Public Sector Equality Duty⁸ which requires that a public authority must advance equality of opportunity between people who share a relevant protected characteristic and those who do not. This does not imply that I assume all patients of the ABIU would share a particular protected characteristic on a permanent basis, i.e., disability, but given the purpose of the ABIU and the range of patients it could cater for, some may. In coming to my decisions, I have considered the duties incumbent upon me in this regard and the weightier implications of refusing permission.
83. I have also had regard to the submissions of those interested parties in support of the scheme and their reasons given. I have attributed weight to the material considerations put forward as to why either scheme should receive permission.

Whether Very Special Circumstances – Appeal A

84. The Framework states that substantial weight should be given to any harm to the Green Belt 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.
85. The provision of a 32-bed ABIU which would supplement the quantitative and qualitative choice of care facilities for those with specialist needs, likely catering for patients predominantly from the North and East areas of London, reducing some distances that patients and their visiting families may otherwise be referred for such. This would also contribute towards the requirement to deliver specialist accommodation against the Local Plan target. This is a notable public benefit of the scheme.
86. There would be economic benefits from the employment of staff at the ABIU. The written evidence quantifies this as 35 members of staff and the parking provision is based on the necessary daily staffing levels, though it was suggested at the hearing that the true number would be much higher and more in line with the staffing ratios at 1SC which has 74 employees for 29 patients. Despite not being able to specifically quantify the number of predicted employees beyond a range of 35 to 100, it is clear that this benefit should attract weight in favour of the scheme.
87. Appeal A would also result in the delivery of 9 affordable dwellings each with 2 or 3 beds, which the overall housing shortfall and under-delivery of affordable housing promotes to a weighty benefit in favour of the scheme, despite the relatively modest number of units proposed.
88. There would be economic benefits from the construction of both component parts of the scheme, which equates to jobs in the construction industry, albeit more temporary in nature. I attribute these economic benefits modest weight in favour of the scheme.
89. Aspects of the scheme such as the financial contributions necessary to achieve 10% BNG and carbon emissions savings, along with landscaping within the site itself, do not attract any particular weight in favour of the scheme. Whether or not the site benefits from previously developed status (PDL) would similarly not be a particular pull factor in favour of the scheme given the current absence of

⁸ Public Sector Equality Duty under the Equality Act, 2010

any built form on site. I have also indicated that, in my view, the accessibility of the site's location is not a factor which attracts any particular weight in favour of the scheme.

90. Drawing all these aspects together, the totality of these considerations does not outweigh the substantial weight I give to the harm to the Green Belt by reason of inappropriateness and harm to openness, or the identified conflicts with the development plan arising from the less than substantial harms to the significance of designated heritage assets and the character and appearance of the area. It follows that the very special circumstances necessary to justify the Appeal A do not exist.

Whether Very Special Circumstances – Appeal B

91. The ABIU component of the Appeal B scheme, unchanged from that proposed in Appeal A, would also be a notable public benefit in favour of the scheme in terms of providing specialist healthcare for ABI patients in North and East London, whilst also contributing towards the Havering needs for specialist accommodation. The direct and enduring employment benefits that would be associated with the ABIU attract positive weight, so too do the more time-limited construction jobs and economic benefits.
92. In place of the benefit of the affordable housing under Appeal A, Appeal B would deliver an area of POS. Whilst the harms to openness, designated heritage assets and the character and appearance of the area would be reduced by the omission of the built form, the benefit to be attached to such is also more modest by comparison to affordable housing. I nonetheless attribute the provision of POS modest positive weight in favour of the scheme.
93. The Appeal B scheme would also deliver BNG benefits in the order of 27.8% uplift in biodiversity units, 1080% uplift in hedgerow units and would achieve an urban greening factor of 0.59, exceeding the target of 0.4. These environmental benefits attract a modest degree of weight in favour of the scheme.
94. My finding in respect of the site's accessibility and PDL status, or otherwise, along with other measures that would be conditioned to mitigate the effects of the development, are of neutral effect on the overall planning balance.
95. In respect of Appeal B, I therefore conclude that the totality of considerations does not outweigh the substantial weight I give to the harm to the Green Belt by reason of inappropriateness and harm to openness, or the identified conflicts with the development plan arising from the less than substantial harms to the significance of designated heritage assets and the character and appearance of the area. It follows that the very special circumstances necessary to justify the proposal do not exist.

Other Matters

96. Under both Appeals A and B, the fourth RfRs concern a range of aspects in connection with the scheme in relation to energy efficiency, whole life-cycle carbon, circular economy, urban greening, drainage, air quality and noise. The Policy requirements in relation to these aspects largely come from a combination of Local Plan Policies 33, 35 and 36 and Policies SI1, SI2, SI3, SI4, SI7, G1, G4, G5 and D14 of the London Plan.

97. From the evidence, it is relatively clear that aspects such as air quality, noise and drainage are not so problematic that they could not be addressed by way of planning conditions. In respect of aspects such as to BNG and whole-life cycle carbon, the financial contributions detailed in the UUs have been influenced by the respective schemes' level of achievement against the relevant policy requirements. I have read and heard numerous concerns from the Council in relation to the lack of coherence across the reports on these topics, including, amongst other things, whether the green roof of the proposed building could achieve the numerous competing objectives for biodiversity and carbon dioxide reduction, in addition to hosting any necessary rooftop plant. The Appellant's position is that these aspects are addressed through the various reports, agreed suggested conditions and through the submitted UUs.
98. Having taken the purported benefits of the schemes at face value and having found that very special circumstances do not exist in either case, further forensic examination of these factors would not alter my findings in any event.

Conclusions

99. For the foregoing reasons and having regard to all other matters raised, Appeal A conflicts with the development plan, when taken as a whole. The conflict is not outweighed by other considerations such that I am compelled to make a decision other than in accordance therewith.
100. The alternative scheme under Appeal B also conflicts with the development plan when read a whole. The other considerations specific to that case do not indicate that a decision should be made other than in accordance therewith.
101. Therefore, both Appeal A and Appeal B are dismissed.

Hollie Nicholls

INSPECTOR

FOR THE APPELLANT:

Mr Jonathan Clay	Cornerstone Chambers
Mr David Fletcher	Strutt & Parker
Ms Marie Goodwin	Enable Care
Mr Mark Flatman	Liz Lake Associates
Ms Ruth French	Ryder Architecture
Ms Hannah Bryan	Ryder Architecture
Mr Jonathan Edis	HCUK - Heritage
Mr Thomas Glasson	BNP Paribas Real Estate
Mr Nigel Newton-Taylor	Healthcare Property Consultants Ltd
Mr Ian Wharton	Ardent Consulting Engineers

FOR THE LOCAL PLANNING AUTHORITY:

Mr William Flaherty	Principal Planning Officer
Mr Habib Neshat	Planning Officer
Mr Huw Trevorrow	Urban Design Consultant
Mr Azizul Karim	Heritage Consultant
Mr Raphael Adenegan	Strategic Policy Officer

INTERESTED PARTIES:

Mr Peter Nicol	Local Resident and Chair of the Trustees of Marillac Neurological Care Centre
Mr Frank Nash	Local resident

DOCUMENTS SUBMITTED:

Document 1	Appellant's submissions in respect of reason for refusal 3
Document 2	Enforcement Notice A dated 24 August 2018
Document 3	Enforcement Notice B dated 24 August 2018
Document 4	Enforcement Notice C dated 24 August 2018
Document 5	Written closing submissions of Mr Clay
Document 6	Reason for Refusal 4 Table
Document 7	Suggested use class restriction condition