



Appeal Decision

Site visit made on 24 July 2025

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th August 2025

Appeal Ref: APP/M1520/W/25/3358764

Land to the rear of 301 Rayleigh Road, Benfleet SS7 3XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Millen Land Group against the decision of Castle Point Borough Council.
 - The application Ref is 24/0579/OUT.
 - The development proposed is 9 dwellings and new estate road.
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Decision

1. The appeal is allowed and outline planning permission is granted for 9 dwellings and new estate road at land to the rear of 301 Rayleigh Road, Benfleet SS7 3XA in accordance with the terms of the application, Ref 24/0579/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application is submitted in outline with only landscaping reserved for a subsequent reserved matters application. I have treated the suggested landscaping on the site layout plan as illustrative and have taken it into account only insofar as establishing whether it would be possible, in principle, to build 9 dwellings and a new estate road on the site.
3. An executed legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted, in the form of a unilateral undertaking (UU). I gave the Council an opportunity to comment on the UU and have considered its response. I will return to the planning obligations in the UU below.
4. The National Planning Policy Framework (the Framework) was updated in December 2024. The Council's statement of case (SoC) and the appellant's final comments were submitted after that date, so I am satisfied the main parties have had an opportunity to comment on the revised Framework.
5. On 27 February 2025, Planning Practice Guidance (PPG) on Green Belt was updated to reflect the amended Framework. This took place after the Council had submitted its SoC, but before the appellant's final comments. In the interests of procedural fairness, I invited the Council to comment on the implications of the updated PPG for its case and then gave the appellant an opportunity to respond to the Council's comments in this regard.
6. I understand the Council is preparing a Draft Local Plan, which is at a relatively early stage of preparation. I am not aware of the extent of unresolved objections or whether its policies will be considered as consistent with the Framework. Consequently, in accordance with Framework paragraph 49, I give it little weight.

Main Issues

7. The main issues are:

- the effect of the proposal on the integrity of protected European sites;
- whether the appeal site is grey belt land and whether the proposal would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
- the effect of the proposal on biodiversity; and
- whether the dwelling type proposed represents an acceptable response to local housing need.

Reasons

Integrity of protected European sites

8. The appeal site lies within the Zone of Influence of the Essex Estuaries Special Area of Conservation (SAC) and the Blackwater Estuary and Benfleet & Southend Marshes Special Protection Areas (SPAs). The SAC and SPAs are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.
9. The SAC is a coastal estuarine system with associated mudflats, sandflats, sandbanks and inter-tidal zones. Its qualifying features include annuals that colonise mud and sand, cord-grass swards, salt meadows and scrubs. The Blackwater Estuary SPA supports nationally and internationally important populations of breeding and migratory bird species, such as the Little Tern, Hen Harrier and Dark-bellied Brent Goose. The Benfleet & Southend SPA also supports regularly occurring migratory species, such as Knot and Grey Plover, and an internationally important assemblage of waterfowl.
10. The protected sites' conservation objectives are to ensure their integrity, including the extent, distribution, structure, function and supporting processes of the habitats, and population and distribution within the sites of each of the qualifying features, is maintained or restored.
11. There is a threat to the sites from increased recreational activity, such as walking, dog-walking and water sports, which would disturb their qualifying habitats and species. It is likely the occupants of the proposed dwellings would make use of the sites for recreational activity, thereby increasing levels of recreational disturbance. Such an increase, alone or in combination with other plans and projects, would be likely to have a significant effect on the integrity of the protected sites.
12. The parties have agreed a financial contribution in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) and associated Essex Coast RAMS Supplementary Planning Document (SPD). The sum would be put towards an agreed programme of strategic mitigation measures. Natural England has been consulted as part of this appropriate assessment and has confirmed that the Essex Coast RAMS measures are sufficient to avoid an adverse impact on the integrity of the SAC and SPAs.

13. The Essex Coast RAMS SPD allows for tariff payments to be secured by UU. The planning obligation to secure the RAMS contribution in the UU before me is necessary to make the development acceptable in planning terms. It is directly related to the development and fairly and reasonably related to it in scale and kind, so it meets the statutory tests for use of planning obligations¹. I am satisfied this contribution would be adequately secured and would be effective mitigation for the proposal's effect on the integrity of the SAC and SPAs.
14. For the above reasons, I conclude the proposal would not have a significant effect on the integrity of protected European sites. This accords with the Framework, which requires adequate mitigation if significant harm to biodiversity cannot be avoided.

Whether grey belt land and whether inappropriate development in the Green Belt

15. There is no reference to development plan policies relevant to Green Belt in the Council's decision notice or report. I give full weight to the Framework as a material consideration.
16. Development in the Green Belt is inappropriate unless one of various exceptions applies, as set out in Chapter 13 of the Framework. One of these, at paragraph 155, applies to grey belt land subject to several tests.
17. Grey belt is defined in Framework Annex 2 as land in the Green Belt that does not strongly contribute to any of purposes (a), (b) or (d) in Framework paragraph 143. These are (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; and (d) to preserve the setting and special character of historic towns. PPG sets out considerations to inform judgements about the strength of contribution areas of land make to these purposes, to which I have had regard.
18. Taking into account the nearby Hart Road development currently under construction², the appeal site is enclosed on two sides by residential development, and on the other two by residential gardens. By forming a modest extension to the adjacent built-up area, the proposed pattern of development would not be incongruous. As such, the site does not contribute strongly to purpose (a).
19. Having regard again to the Hart Road scheme, the gap between Thundersley and Hadleigh in the vicinity of the appeal site is small and the site itself is a relatively small part of this. This, and the site's back land location, mean its contribution to visual separation between the settlements is very limited. The proposed development would not materially worsen the perception of visual separation, particularly as the line of mature trees to be retained would limit views of the scheme from the south. Overall, I find the site's contribution to purpose (b) is weak.
20. There is no suggestion the site strongly contributes to purpose (d). Given my conclusion on the first main issue, none of the policies relating to areas or assets in Framework footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development on the appeal site. Accordingly, I find the site is grey belt land.

¹ In Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and Framework paragraph 58

² Allowed appeal Ref APP/M1520/W/22/3310483

21. The tests for development on grey belt land are that: (a) it would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan; (b) there is a demonstrable unmet need for the type of development proposed; and (c) the development would be in a sustainable location, with particular reference to Framework paragraphs 110 and 115. The 'Golden Rules' in the fourth test do not apply because the proposal does not comprise 'major development'³.
22. There is little before me about the relationship between the area in which the appeal site is located and other areas of Green Belt across the rest of the Borough. However, as noted above, the site is a small part of a small gap between settlements. On the evidence before me including my own observations in the area, there is no immediately proximate countryside. Moreover, the busy Rayleigh Road acts as a physical barrier with less developed areas further east. The site's overall contribution to preventing encroachment on the countryside is therefore very limited. There is little to suggest the appeal site is critical to promoting urban regeneration elsewhere. For these reasons, I find the proposed development would not fundamentally undermine the ability of the remaining Green Belt across the Castle Point area to serve its five purposes.
23. The parties agree the Council is unable to demonstrate a five-year supply of deliverable housing sites. Therefore, in accordance with Framework footnote 56, there is a demonstrable unmet need for the type of development proposed.
24. There would be alternatives to the private car in the form of walking, cycling and nearby public transport, which would help mitigate impacts on air quality. On-site cycle storage could be secured by condition and would also help promote active travel. I am thus satisfied the proposed development would be in a sustainable location, having regard to Framework paragraphs 110 and 115, as was the Council.
25. Consequently, all the tests at Framework paragraph 155 are satisfied and I conclude the development is not inappropriate in the Green Belt. Given this, there is no need for me separately to consider the proposal's effect on openness.

Biodiversity

26. The appeal site is part of the locally designated Thundersley Plotlands Local Wildlife Site (TPLWS), which includes remaining blocks of plotland that provide a mosaic of grassland, woodland and scrub habitats. The site contains overgrown mixed scrub and woodland. The appellant's Botanical Survey confirms none of the plants present are protected, priority species and the woodland does not correspond to a type recognised as priority habitat.
27. The appellant's Preliminary Ecological Appraisal (PEA), undertaken by an experienced ecologist in 2024, found no indication of bat roosts but identified potential for bat foraging amongst perimeter trees. It recommends bat-friendly lighting design to mitigate disturbance to bat activities. The PEA found a low probability of other protected species on the site but recommends safeguards during construction owing to the site's dense vegetation and likely presence of nesting birds. It also recommends substantial ecological enhancements including bird and bat boxes/bricks, native and wildlife-friendly planting, habitat creation and

³ See the definition of major development in Framework Annex 2

permeable boundaries for transitory mammals like foxes and hedgehogs, as well as site management measures.

28. All these provisions and measures could be secured via conditions attached to an outline planning permission. There would be wildlife buffers immediately outside the area proposed for development. Further, the development would be subject to statutory biodiversity net gain (BNG)⁴, to which I shall return below.
29. Taking all this together, whilst some harm would occur through partial loss of the TPLWS, this would be limited given the modest ecological value of the site itself and the protections proposed. Ecological enhancements and BNG would enable wildlife still to pass through the site and maintain a connection to other wildlife habitats in the area. Consequently, I find significant harm to biodiversity would be avoided. I note the Council's senior ecological consultant also raised no concern subject to the ecological mitigation and enhancement measures proposed.
30. I have considered the comments of local residents about harms to wildlife, but there is no substantive alternative evidence that would lead me to a different conclusion on this matter.
31. For the above reasons, I conclude the proposal would have an acceptable effect on biodiversity. Accordingly, I find no conflict with the Framework, where it seeks to minimise impacts on, and provide net gains for, biodiversity.

Housing need

32. Saved Policy H10 of the Castle Point Local Plan 1998 (LP) expects all proposals for residential development to provide an appropriate range of dwelling types to satisfy a variety of housing requirements. Supporting text explains this is based on anticipated growth in demand for smaller dwellings and an apparent mismatch with the size of dwellings available. However, the evidence cited to support this assertion is some thirty years old, which reduces the weight I attach to it.
33. The full Local Housing Needs Assessment of 2023 referred to in the Council's decision report (DR) is not before me and I do not know the extent to which its findings have been tested, bearing in mind the status of the emerging Draft Local Plan noted above. The figures on need for market housing quoted from that study at paragraph 9.73 of the DR suggest a greater need for family-sized accommodation than for smaller homes. However, no corresponding evidence on dwelling sizes in the current housing stock has been provided. Overall, the available evidence on unmet housing need is insufficiently comprehensive for me to be clear about the current housing requirements to be satisfied.
34. I recognise smaller homes may suit younger first-time buyers or downsizers and that some small sites could accommodate a mix of dwelling types. However, the appeal site is constrained by its dimensions and existing trees and there is little before me to demonstrate it could successfully accommodate a variety of types of home. In any event, I am required to determine this appeal based on the scheme before me. Moreover, the Council accepts there is a need for three-bedroom market housing in the area, which the proposed development would help to meet.
35. Overall, the case for a mix of dwellings on the appeal site is not compelling and this, along with the other considerations noted above, outweighs the LP Policy H10

⁴ See PPG Reference ID: 74-001-20240214 onwards

requirement to provide a range of dwelling types in this case. There is no development plan policy basis before me to require affordable housing on the site. There is also no pertinent evidence of vacancies owing to lack of demand for new homes in the area, as has been suggested.

36. For the above reasons, I conclude the dwelling type proposed does represent an acceptable response to local housing need. Further, I find no conflict with the Framework where it requires the housing needs of different groups to be assessed and reflected in planning policies.

Other Matters

37. Previous declined proposals for the site, including a dismissed appeal⁵, involved a higher number of dwellings and, on the evidence before me, some at least had a different red line boundary to that currently proposed. These decisions also predate the recent changes to national Green Belt policy and guidance that are pertinent in this appeal, and the statutory BNG requirement which is a material consideration. Consequently, the circumstances in those other decisions are not directly comparable to those before me, and they do not outweigh my findings above.
38. Vehicle movements generated by nine new dwellings would result in a modest increase in traffic on the highway network. I also acknowledge the immediate approach to the site is through relatively quiet residential streets, and feeder roads are already busy. However, there is no compelling evidence the proposal would materially worsen levels of congestion or that there would be an unacceptable impact on highway safety, given the footways, crossings and lighting already present in surrounding streets. There would be sufficient off-street parking and turning space to accommodate future occupiers' vehicles and occasional deliveries, so I see no reason to expect an unacceptable increase in on-street parking nearby. I note the Highway Authority also had no concerns, subject to conditions.
39. None of the trees protected by a Tree Preservation Order would be removed and protection for all retained trees during construction could be secured via condition. External materials and finishes for the new dwellings could also be the subject of a condition, and I am satisfied their appearance would be acceptable in the context of the mixed dwelling styles in surrounding streets.
40. The retention of trees and biodiversity enhancements noted above would help safeguard the health and well-being benefits of living in a verdant environment, including in relation to air quality. Construction would inevitably cause some disruption, but this would be temporary and would be mitigated by a Construction Management Plan, which could be the subject of a condition.
41. Residents have expressed a range of other concerns including privacy, outlook, overshadowing, waste disposal, litter, flood risk, land ownership and the capacity of local infrastructure. These matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. There is no compelling evidence before me that would lead me to a different conclusion to the Council on these matters. Each proposal must be determined on its individual merits, so a generalised concern about precedent does not justify withholding permission in this case.

⁵ Application references 17/0032/OUT, 18/0767/OUT, 19/0545/OUT and appeal Ref APP/M1520/W/19/3240145

Conditions

42. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. I gave the parties the opportunity to comment on the conditions and have taken account of their responses. Planning permission is granted subject to the standard reserved matters conditions. I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interest of certainty.
43. A condition securing a Construction Method Statement is necessary to mitigate impacts on neighbouring occupiers while construction is taking place, and for highway safety. Conditions securing details and implementation of the access to the site, and car parking spaces within it, are necessary to achieve safe and secure access and in the interests of highway safety. A condition specifying the weight of refuse trucks to be supported on the internal roadway is necessary for the effective management of waste. A condition securing covered cycle parking is necessary to promote cycling as an alternative to the private car.
44. Conditions requiring approval of a tree protection plan and arboricultural method statement, and replacement of damaged trees, are necessary to protect retained trees during construction. Conditions relating to surface water drainage and foul water drainage are necessary to mitigate flood risk and ensure effective management of sewage from the development.
45. Conditions requiring a Construction Environmental Management Plan, a scheme of ecological enhancements as part of the reserved matters application, and submission and approval of a wildlife-friendly lighting strategy, are necessary for the reasons set out under the first main issue.
46. The deemed BNG condition, under paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 (as amended), ensures the development cannot commence until a Biodiversity Gain Plan (BGP) has been submitted to and approved by the local planning authority (Castle Point Borough Council). It is therefore unnecessary for me to attach a condition in relation to BNG. For the same reason, the planning obligations in the UU relating to BNG and associated legal/monitoring costs are not necessary to make the development acceptable in planning terms at this stage, and I have not taken them into account in my decision. This paragraph informs the appellant and any future owner and/or developer of their responsibility in relation to discharge of the deemed condition.

Conclusion

47. Although the proposal does not fully accord with LP Policy H10, I have found this is outweighed by other material considerations. I have also found the proposal satisfies the Framework's policies on habitats sites, Green Belt and biodiversity. Consequently, material considerations, including the Framework, indicate that a decision should be taken otherwise than in accordance with the development plan in this case. I therefore conclude the appeal should be allowed.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing Nos: RRB 003/Rev 1 Location Plan; RRB 001/Rev2 Site Layout Plan; RRB EL 001/Rev 2 Indicative Plans and Elevations P1-3; RRB S001/Rev 3 Site Sections; RRB 009/Rev3.1 SUDS Plan.
- 2) Details of landscaping ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place. These details shall include, but not be limited to:
 - i) a scheme of ecological enhancements, in line with the recommendations of the Preliminary Ecological Assessment by Britscape, dated February 2024;
 - ii) a programme for implementation of the scheme of ecological enhancements; and
 - iii) a management and maintenance strategy for the ecological enhancements.

The development shall be carried out as approved. The scheme of ecological enhancements shall be implemented in accordance with the approved details and thereafter managed and maintained in accordance with the approved management and maintenance strategy.

- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) No development shall take place, including any site clearance or ground works, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel and underbody washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

- 7) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.
- 8) No site clearance, preparatory work or development shall take place until a Construction Environmental Management Plan for Biodiversity (CEMP Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP Biodiversity shall include:
 - i) risk assessment of potentially damaging construction activities;
 - ii) identification of 'biodiversity protection zones';
 - iii) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - iv) the location and timing of sensitive works to avoid harm to biodiversity features;
 - v) the times during construction when specialist ecologists need to be present on site to oversee works;
 - vi) responsible persons and lines of communication;
 - vii) the role and responsibilities of an ecological clerk of works or similarly competent person;
 - viii) use of protective fences, exclusion barriers and warning signs; and
 - ix) containment, control and removal of any invasive non-native species present on site.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period for the development.

- 9) Notwithstanding condition 1, no development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall include but not be limited to:

- i) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) a timetable for implementation of the drainage scheme;
- iii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime; and
- iv) measures to minimise the risks during construction of off-site flooding from surface water run-off, and groundwater pollution.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 10) Notwithstanding condition 1, no development above ground level shall take place until a scheme for on-site foul water drainage, including connection point and discharge rate, has been submitted to and approved in writing by the local planning authority. The foul water drainage scheme shall be implemented in full accordance with the approved details prior to first occupation of the dwellings hereby permitted.
- 11) Notwithstanding condition 1, no dwelling shall be occupied until details of the vehicular access to the site have been submitted to and approved in writing by the local planning authority. These details shall make provision for:
- i) widening of the existing dropped kerb to 5.5 metres from the carriageway edge to the highway boundary at the site;
 - ii) construction of the shared access road to the development over highway land so that it also provides access to the dwelling at 20 Leighfields; and
 - iii) no unbound material to be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

The vehicular access shall be constructed in accordance with the approved details prior to first occupation of the dwellings hereby permitted and shall thereafter be retained in that form.

- 12) Notwithstanding condition 1, no dwelling shall be occupied until details of the car parking spaces have been submitted to and approved in writing by the local planning authority. These details shall include the hard surface materials to be used in the spaces. The car parking spaces shall be constructed in accordance with the approved details and shall thereafter be retained in that form. The car ports shall be retained as open structures and shall not be enclosed or infilled.
- 13) The internal shared surface roadway within the development shall be constructed to support the weight of a 32-tonne refuse collection lorry.
- 14) Prior to first occupation of the dwellings hereby permitted, details of secure and covered cycle parking shall be submitted to and approved in writing by the local planning authority. The approved cycle parking shall be provided in accordance with the approved details prior to first occupation of the dwellings and shall thereafter be retained.
- 15) Prior to first occupation of the dwellings hereby permitted, a lighting design strategy for biodiversity, in accordance with Institute of Light Professionals Guidance Note 08/23, shall be submitted to and approved in writing by the local planning authority. The lighting strategy shall:
- i) identify those areas/features that are particularly sensitive for protected species and that are likely to cause disturbance in or around their breeding sites and resting place or along important routes used to access key areas of their territory, for example, for foraging; and
 - ii) show how and where external lighting will be installed (through provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent protected species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed and thereafter maintained in accordance with the approved details.

End of schedule