

**TOWN AND COUNTRY PLANNING ACT 1990**

**Appeal pursuant to Section 78**

**ROCHFORD DISTRICT COUNCIL**

**STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY**

**Appeal by Colonnade Land LLP against the decision of Rochford District Council to refuse outline planning permission for:**

**Development of up to 326 residential dwellings, associated accesses and community uses**

**Site at: Land South of Coombes Farm, Stambridge Road, Rochford, Essex**

**Planning Application Reference No. 09/00528/OUT**

**Planning Inspectorate Reference: APP/B1550/A/09/2118433/NWF**

27<sup>th</sup> January 2010

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## 1.0 Introduction

- 1.1 This appeal is made against the decision of Rochford District Council, the local planning authority, to refuse to grant outline planning permission for the development of up to 326 residential dwellings, associated accesses and community uses on land known as 'Land South of Coombes Farm, Stambridge Road, Rochford, Essex' ("the appeal site").
- 1.2 The appeal site is located to the east of the market town of Rochford, bordering the existing settlement. It comprises an area of land of approximately 13 hectares which is in agricultural use.
- 1.3 The decision to refuse planning permission was issued by the Development Control Committee on the 19<sup>th</sup> November 2009 in line with officer recommendation.
- 1.4 The planning application was refused permission for the following reasons:

1. *The proposed development of up to 326 residential dwellings and associated community uses would not accord with the adopted development plan; the Rochford District Replacement Local Plan (2006) and would also not accord with the emerging Core Strategy submission which is currently at an advanced stage with submission to the Government scheduled for before the end of the year. There are no material planning considerations which indicate that this proposal should be determined favourably and not in accordance with the adopted development plan.*
2. *The Rochford District Replacement Local Plan (2006) shows the site to be within the Metropolitan Green Belt. Within the Green Belt, as defined in Planning Policy Guidance 2: Green Belts, planning permission will not be given for inappropriate development, except in very special circumstances.*

*The proposed development by virtue of the proposed change of use of the land from agriculture to residential and community uses would amount to inappropriate development in the Green Belt, which is by definition harmful. In addition, further harm to the Green Belt would be caused as a result of the proposed development including; the sprawl of a large built up area, the encroachment into the countryside, the loss of an open, attractive landscape close to where people live and the loss of opportunities for outdoor recreation close to an urban area. There is no need to release Green Belt in this location in order to retain an up-to-date five year supply of deliverable sites for residential development. No very special circumstances exist which would overcome the harm to the Green Belt and consequently the proposed development would be contrary to Planning Policy Guidance 2; Green Belts.*

3. *The applicant has failed to submit information which demonstrates that acceptable mitigation can be achieved to prevent adverse impacts by way of increased recreational disturbance to the Crouch and Roach Special Protection Area (SPA) or the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI). The Local Authority cannot therefore ascertain that the proposed development would not adversely affect the integrity of these wildlife sites, contrary to Regulation 48 (5) of the Habitats*

*Regulations 1994 and Planning Policy Statement 9: Biodiversity and Geological Conservation.*

4. *The proposed development would result in a change in the use of an area of land that lies within a Public Safety Zone from use for agriculture to use as public open space which is considered unacceptable because it would result in a significant increase in use of the land by members of the public, especially given the proximity, relationship and association of the public open space with a large new residential development.*

## **2.0 The Appeal Site**

- 2.1 This appeal concerns an area of land south of Coombes Farm on Stambridge Road, Rochford. The site is an area of approximately 13.68 hectares and is located to the east of the small market town of Rochford. At its closest point, the site is located approximately 500 metres east of Rochford town square and close to the built up western residential edge of the town.
- 2.2 The site is currently in agricultural use and is immediately bordered by a number of existing land uses to the north and west, namely residential properties, an allotment site, an adult learning centre with associated playing field, an area of public open space and a section of Stambridge Road. To the south the site directly borders agricultural land which in turn runs alongside a section of the River Roach. To the east, the site borders an area of agricultural land and Mill Lane, a quiet lane leading to Stambridge Mills along which there are a handful of residential properties.

## **3.0 Planning History**

- 3.1 The appeal site has not been the subject of previous applications for comprehensive residential or any other development.

## **4.0 Statutory Development Plan and Planning Policy**

- 4.1 The Rochford District Replacement Local Plan (RDRLP) was formally adopted on 16 June 2006. Various policies under the RDRLP have been saved by Direction dated 5 June 2009 issued by the Secretary of State, pursuant to paragraph 1(3) of schedule 8 to the Planning and Compulsory Purchase Act 2004.
- 4.2 Saved policies in the RDRLP (2006) in conjunction with saved policies in the Essex and Southend-on-Sea Replacement Structure Plan (ESSRSP) and all policies in the East of England (May 2008), form the "Development Plan" for the Rochford District administrative area.
- 4.3 The Secretary of State made a direction to 'save' only a limited number of policies within the ESSRSP, none of which are relevant to the determination of this appeal. All other policies within the Structure Plan expired on 27 September 2007.
- 4.4 The appeal site is located within an area of Metropolitan Green Belt as defined in the RDRLP (2006). As such, national planning policy under PPG2: Green Belts, is particularly pertinent in the determination of this appeal. Other

national planning guidance relevant to this appeal is listed in the Core Documents at appendix 1.

4.5 The following policies of the RDRLP (2006) are considered most relevant:

1. Policy HP1 – Overall housing provision
2. Policy HP2 – Housing Site Allocations
3. Policy HP5 – Infrastructure
4. Policy HP21 – Planning Obligations
5. Policy LT5 – New public open space
6. Policy NR 7- Local Nature Reserves and wildlife sites

4.6 By way of background to emerging policy, the Council's emerging Core Strategy is at an advanced stage of preparation, having already been submitted. The emerging Core Strategy has evolved through a series of stages, namely: Issues and Options; Preferred Options; Revised Preferred Options and Submission. Each stage has incorporated due consultation and appraisal of the options advanced at the preceding stage.

4.7 The Core Strategy Submission Document – the iteration of the Core Strategy which has been submitted to the Government for examination – was published for pre-submission consultation in September 2009. This enhanced previous iterations of the Core Strategy, together with new evidence, to develop Core Strategy policies. The Strategic Housing Land Availability Assessment (2009) (SHLAA) was particularly pertinent to this version of the Core Strategy since it evaluated that more dwellings were deliverable outside of the Green Belt than had previously been identified.

## 5.0 The Council's Case

5.1 **Reason for refusal No. 1** – *'The proposed development of up to 326 residential dwellings and associated community uses would not accord with the adopted development plan; the Rochford District Replacement Local Plan (2006) and would also not accord with the emerging Core Strategy submission which is currently at an advanced stage with submission to the Government scheduled for before the end of the year. There are no material planning considerations which indicate that this proposal should be determined favourably and not in accordance with the adopted development plan'*

5.1.1 As stated at Section 38(6) of the Planning and Compulsory Purchase Act 2004, proposals should be determined in accordance with the development plan unless other material considerations indicate otherwise.

5.1.2 In this case, the statutory development plan comprises the Regional Spatial Strategy (the East of England Plan, published 2008), saved policies in the Essex and Southend on Sea Structure Plan and saved policies in the Rochford District Replacement Local Plan 2006.

5.1.3 The appeal site is designated as Metropolitan Green Belt in the development plan (Rochford District Replacement Local Plan 2006). The large scale residential development of up to 326 residential dwellings and associated community uses, as proposed, is by definition inappropriate (and therefore harmful) in Green Belt terms under Planning Policy Guidance.

- 5.1.4 Furthermore, in addition to the harm arising from the inappropriateness of the development, considerable harm would arise also from the impact of the development in visual amenity terms.
- 5.1.5 As such, the proposal would not accord with the development plan and the Council does not consider that there are any material considerations that outweigh the conflict with the development plan.
- 5.1.6 In reaching the above-mentioned decision that there are no material considerations that outweigh the conflict with the development plan, the Council has considered the proposal in respect of Planning Policy Statement 3: Housing and the requirement at paragraphs 70 and 71 of this statement which advise how proposals for housing development should be considered in light of the absence or presence of an up-to-date 5 year supply of deliverable sites for housing.
- 5.1.7 With regard to PPS3, the Council considers that an up-to-date 5 year supply of deliverable sites for housing can be demonstrated for the Rochford District, without utilising the site in question, as detailed in the Strategic Housing Land Availability Assessment, published on the 2<sup>nd</sup> November 2009.
- 5.1.8 Similarly, in terms of other material considerations, the proposal would not accord with the Council's emerging Core Strategy - specifically proposed Policies H2 and H3 which detail the general locations for residential development in the District. These general locations have been identified following assessment, consultation and appraisal of potential options as part of the iterative production of the Core Strategy and form part of the Council's emerging strategy for the distribution of housing in the District.
- 5.1.9 If allowed, the proposed development would be contrary to the spatial planning objectives within the Council's emerging Core Strategy. In addition, the proposed development is, having regard to the need to minimise Green Belt release to the extent which is required, likely to affect the number of dwellings provided within the general locations identified in the emerging Core Strategy. This may well have an affect on the deliverability of some of the strategic infrastructure improvements in the District identified in the emerging Core Strategy.
- 5.2 Reason for refusal No. 2-** *'The Rochford District Replacement Local Plan (2006) shows the site to be within the Metropolitan Green Belt. Within the Green Belt, as defined in Planning Policy Guidance 2: Green Belts, planning permission will not be given for inappropriate development, except in very special circumstances.'*

*The proposed development by virtue of the proposed change of use of the land from agriculture to residential and community uses would amount to inappropriate development in the Green Belt, which is by definition harmful. In addition, further harm to the Green Belt would be caused as a result of the proposed development including; the sprawl of a large built up area, the encroachment into the countryside, the loss of an open, attractive landscape close to where people live and the loss of opportunities for outdoor recreation close to an urban area. There is no need to release Green Belt in this location in order to retain an up-to-date five year supply of deliverable sites for residential development. No very special circumstances exist which would*

*overcome the harm to the Green Belt and consequently the proposed development would be contrary to Planning Policy Guidance 2; Green Belts'.*

- 5.2.1 The Government attaches great importance to Green Belts and in particular to preserving their most important attribute, their openness. National Planning Policy Guidance 2; Green Belts places a general presumption against inappropriate development within the Green Belt and except in very special circumstances permission will not be granted for inappropriate development within the Green Belt.
- 5.2.2 The Council consider that the proposed development amounts to inappropriate development as defined by PPG2, which is harmful to the Green Belt, by definition.
- 5.2.3 In addition to the harm by definition, the Council consider that the proposed development would result in further, significant harm to the Green Belt.
- 5.2.4 In principle the development of only one residential dwelling would amount to inappropriate development in the Green Belt, subject to the dwelling not being for a purpose deemed appropriate in the Green Belt as detailed in paragraph 3.4 of PPG 2. However, in this case the proposal is for the erection of up to 326 residential dwellings and community uses. The scale and nature of this proposed development would create a significant built volume on the site which is currently open, flat agricultural land. The scale of the proposed development would significantly reduce the openness of the Green Belt and would therefore result in significant harm to the Green Belt.
- 5.2.5 The scale and nature of the proposed development would create an urban extension to the town of Rochford; creating rather than preventing the sprawl of a large urban area and would cause rather than prevent encroachment into the countryside, contrary to two of the purposes of the Green Belt.
- 5.2.6 The use of land designated as Green Belt can have a positive role to play in fulfilling several key objectives as identified in PPG2, however some land designated as Green Belt can help to fulfil the key objectives of Green Belt land to a greater or lesser extent. Whilst, the extent to which a particular area of Green Belt fulfils the objectives is not a material factor in determining whether the land should be continually protected, the Council consider that where a particular area of Green Belt contributes significantly to fulfilling the objectives this should be taken into consideration when considering whether a proposed development would result in any further harm to the Green Belt in addition to the harm caused by virtue of inappropriateness.
- 5.2.7 The location and character of the appeal site is such that this area of Green Belt is considered to be particularly valuable, playing a key role in fulfilling key Green Belt objectives as detailed in paragraph 1.6 of PPG 2.
- 5.2.8 The appeal site is composed of attractive, flat, open agricultural land which is well-maintained as it is still tilled. The site is bordered directly to the south by a section of the River Roach, links to more open countryside to the east, is bordered to the north by allotments and the edge of the settlement of Rochford and has a public right of way transecting the site west-east, linking to a wider network of countryside footpaths. The appeal site is an attractive landscape linked to the wider open countryside which provides a great recreational walking opportunity for nearby residents and provides an

important link to the surrounding countryside for residents of Rochford. The proposed development would significantly alter the existing character and use of the site for agriculture; transforming the open, natural, tranquil landscape to a heavily built up, largely hard surfaced landscape characterised by activity, such that the proposed development would result in significant further harm to the Green Belt.

5.2.9 The Council do not consider that any of the circumstances forwarded by the appellant, either individually or cumulatively amount to very special circumstances which overcome the harm that would be caused by the proposed development by reason of inappropriateness and other harm.

**5.3 Reason for refusal No. 4-** *'The proposed development would result in a change in the use of an area of land that lies within a Public Safety Zone from use for agriculture to use as public open space which is considered unacceptable because it would result in a significant increase in use of the land by members of the public, especially given the proximity, relationship and association of the public open space with a large new residential development.'*

5.3.1 The appeal site is located approximately 850 metres to the North-East of Southend Airport and a part of the application site, along the south-eastern edge lies within the existing Public Safety Zone (PSZ) for the airport. The application proposes that this land would be used to provide public open space.

5.3.2 The Council has considered the appropriateness of use of land within a PSZ for public open space with regard to the guidance issues by the Department for Transport (DfT Circular 1/2002) which discusses uses which would and would not be appropriate within a PSZ.

5.3.3 The public open space proposed would be an integral part of a large residential development rather than proposed in isolation and therefore intended for use by the public with ready access for people from the development and surrounding area. In addition, the current use of the land for agriculture results in a very low level of use by the public at present.

5.3.4 Consequently, the Council consider that the public open space proposed within the PSZ would reasonably be expected to increase the number of people congregating on the land beyond the current level and there is not a reasonable expectation of low intensity use of this space.

5.3.5 Overall, it is considered that the proposed use of that part of the application site which lies within the PSZ for public open space is unacceptable.

5.3.6 It is further noted that the boundaries of the existing PSZ may change if the airport were to expand, plans for which are currently at an advanced stage. This may result in the inclusion of more of the application site being within the PSZ, exacerbating the intensity of use within the PSZ.

**5.4 Reason for refusal No. 3-** *'The applicant has failed to submit information which demonstrates that acceptable mitigation can be achieved to prevent adverse impacts by way of increased recreational disturbance to the Crouch and Roach Special Protection Area (SPA) or the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI). The Local Authority cannot therefore*

*ascertain that the proposed development would not adversely affect the integrity of these wildlife sites, contrary to Regulation 48 (5) of the Habitats Regulations 1994 and Planning Policy Statement 9: Biodiversity and Geological Conservation.'*

- 5.4.1 The appeal site is located approximately 650 metres due west of an area of the River Roach which is designated as both the Crouch and Roach Special Protection Area (SPA) and the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI).
- 5.4.2 In response to the consultation on the application for the proposed development at the appeal site, Natural England advised the Local Planning Authority that based on the information provided they objected to the proposed development as there was insufficient information with the application for them to advise whether the proposal would not be likely to have a significant effect on the European and Ramsar sites in accordance with the Habitat Regulations, by virtue of increased recreational disturbance.
- 5.4.3 The applicant then submitted subsequent information which advised that a large area of Suitable Alternative Natural Green Space (SANGS) could be provided within land adjoining the appeal site, which they considered would provide adequate mitigation against adverse effects on the nearby protected wildlife sites resulting from the proposed development.
- 5.4.4 The Council accept that the provision of SANGS can in principle be a mechanism by which to provide acceptable mitigation against identified adverse effects on sensitive landscapes resulting from proposed development by virtue of increased recreational disturbance. However, in this case, the Council do not consider that the provision of SANGS as proposed would be an acceptable form of mitigation because the SANGS would be provided largely within an area of land designated as a part of the Public Safety Zone for Southend Airport.
- 5.4.5 As discussed at 2.3.2 - 2.3.6 above, the Council has considered the appropriateness of use of land within the Public Safety Zone as public open space. Similarly, the Council has considered the appropriateness of use of land within the PSZ as Suitable Alternative Natural Green Space.
- 5.4.6 To achieve the aim of steering recreational walkers, including dog walkers, away from the nearby areas designated as protected wildlife sites, the SANGS would have to exhibit certain characteristics. The Council also consider that if effective at steering people away from the nearby protected wildlife areas, the SANGS would be a well-used public open space and would not exhibit a low intensity use. The Council also consider that the level of intensity of use of the proposed SANGS by members of the public would be increased by virtue of the location of the SANGS adjoining the edge of a large residential settlement, adjoining another area of public open space serving the residents and visitors of the proposed development and other residents in the surrounding built up area.
- 5.4.7 As the Council do not consider that the SANGS would amount to a low-intensity public use, the provision of SANGS would be inappropriate within land designated as a Public Safety Zone.

- 5.4.8 Consequently, as the proposed mitigation is deemed to be unacceptable by virtue of the designation of the land on which the SANGS would be provided within a PSZ, adequate and acceptable mitigation has not been provided and the Council cannot be satisfied that the proposed development would not have an adverse impact on the protected wildlife within the nearby statutorily protected wildlife sites.
- 5.4.9 Without acceptable mitigation the Council cannot be confident that the proposed development would not have an adverse effect on the wildlife in the nearby protected wildlife sites. Planning Policy Statement 9; Biodiversity and Geological Conservation emphasises the importance of adopting a precautionary approach when considering the effects on protected wildlife that might result from proposals for development, therefore the proposed development would be contrary to PPS 9 without appropriate and acceptable mitigation.

## **6.0 Conclusion**

- 6.1.0 The proposed development would be contrary to the Development Plan. It would further be contrary to spatial planning objectives contained within the Council's emerging Core Strategy.
- 6.1.1 The Council consider that the proposed development would be contrary to national Green Belt policy, PPG 2. The proposed development would also be contrary to national planning policy concerning the protection of biodiversity, PPG 9.
- 6.1.2 The Council also consider that the proposed use of part of the appeal site that lies within the PSZ for public open space would not reasonably be expected to be a low intensity use by the public and would therefore be inappropriate.
- 6.1.3 The Council can demonstrate an up-to-date 5 year supply of deliverable sites for housing and therefore the Council consider that the proposed development should be not allowed by virtue of the need to ensure the supply of new residential dwellings in the District.
- 6.1.4 In light of the above the Inspector is respectfully requested to dismiss this appeal.

## **7.0 List of Core Documents**

- 7.1.0 Committee Report for planning application 09/00528/OUT
- 7.2.0 Addendum for Committee Report for application 09/00528/OUT
- 7.3.0 Rochford District Replacement Local Plan 2006 Proposals Map and relevant saved policies.
- 7.4.0 Rochford District Council's Core Strategy Submission Document (September 2009) (submitted to the Secretary of State January 2010)
- 7.5.0 Sustainability Appraisal / Strategic Environmental Assessment of Rochford Core Strategy Submission Document (September 2009)
- 7.6.0 Regional Spatial Strategy: East of England Plan: Government Office for the East of England (May 2008)
- 7.7.0 Planning Policy Statement 1: Delivering Sustainable Development (2005)
- 7.8.0 Planning Policy Guidance 2: Green Belts (amended March 2001)
- 7.9.0 Planning Policy Statement 3: Housing (November 2006)
- 7.10.0 Planning Policy Statement 7: Sustainable Development in Rural Areas
- 7.11.0 Planning Policy Statement 9: Biodiversity and Geological Conservation (August 2005)
- 7.12.0 Planning Policy Guidance 13: Transport
- 7.13.0 Planning Policy Guidance 16: Archaeology and Planning
- 7.14.0 Planning Policy Guidance 17: Planning for open space, sport and recreation (July 2002)
- 7.15.0 Planning Policy Statement 23: Planning and Pollution Control
- 7.16.0 Planning Policy Guidance Note 24: Planning and Noise (1994)
- 7.17.0 Department for Transport Circular 1/2002: Control of development in airport public safety zones
- 7.18.0 Strategic Housing Land Availability Assessment (SHLAA) (November 2009)
- 7.19.0 Annual Monitoring Report 2008-2009 (December 2009)
- 7.20.0 Suitable Alternative Natural Green Space (SANGS) guidelines. Version dated 12.06.08 supplied by Natural England.
- 7.21.0 Parking Standards; Design and Good Practice. September 2009. Essex County Council.