

**Town and Country Planning Act 1990
(As Amended)**

APPEAL BY

DAVID WILSON HOMES

Against the decision of

Rochford District Council

to refuse planning permission for

Comprehensive development of land to provide a sustainable urban extension comprising up to 330 dwellings with associated infrastructure including: new vehicular accesses onto Rectory Road; new on-site accesses and road network; cycleway and footpath network; public open spaces; landscaping, health facilities and local amenities

Land between Rectory Road and Clements Hall Way, Hawkwell, Essex

STATEMENT OF CASE

APPEAL REFERENCE: APP/B1550/A/09/2118700/NWF

1. INTRODUCTION

1.1 This statement is submitted pursuant to Rule 6(1) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and comprises the statement of case to be presented on behalf of David Wilson Homes ("the appellant") at the public local inquiry ("the Inquiry") to be held on 27th April 2010. The appeal is against 5 reasons for refusal issued by Rochford District Council ("RDC") and these are listed below.

- i The proposed development of up to 330 residential dwellings and associated infrastructure 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 to occur before the end of 2009. There are no material planning considerations which indicate that this proposal should be determined favourably and not in accordance with the adopted development plan.
- ii 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 Note 2: Green Belts, planning permission will not be given for inappropriate development, except in very special circumstances. The proposal by way of the excessive number of dwellings over and above that advocated in the emerging Rochford Core Strategy would result in inappropriate development leading to the unnecessary urbanisation and over development of the site to the detriment of the open character and appearance of the location.
- iii Notwithstanding the indicative nature of the submitted layout, it is considered the development would result in an overall form of development uncharacteristic and poorly related to the surrounding development pattern. The lack of integration by design and lack of sensitivity to the semi rural character of the site locality would fail to become part of the greater area of which it would adjoin to the detriment of the visual appearance and local distinctiveness of the area.
- iv The proposal by way of the introduction of three storey built form in prominent positions in the locality would provide a sharp contrast to the notable single storey character of the Rectory Road and Thorpe Road areas, that would, if allowed, prove over dominant and ill-fitting alongside established dwellings failing to respect local distinctiveness to the detriment of the character and appearance of the site locality.
- v As far as can be determined from the submitted plans the proposal includes the upgrade to adoptable standards of a section of Thorpe Road. This would encourage the inappropriate use of Thorpe Road by vehicles wishing to bypass the B1013/Rectory Road junction. The movement of vehicles associated with this use would lead to conflict and interference with the passage of vehicles to the detriment of that principle function and introduce a further point of possible conflict, being detrimental to road safety.

2. THE APPEAL Application

2.1 The Appeal application comprises the following documents:

- the application form and relevant certificates.
- a site location plan with the site edged red.
- Planning Statement.
- Site Layout Master Plan.
- Design and Access Statement
- Statement of Community Involvement
- Flood Risk and Drainage Assessment
- Transport Assessment
- Ecological Assessments
- Tree Survey

2.2 Shortly after the submission and validation of the planning application a soil contamination report was submitted and accepted by the Local Planning Authority.

2.3 The planning application was subject to 3 weeks of public consultation and responses were received from various statutory consultees, comments from the District Council's own arboriculturalist and comments from members of the public. In response further submissions were made, these included:

- A letter dated 22nd October 2009 confirming that the description of development could omit the word "approximately" and replace it with "up to." This was requested by the Local Planning Authority in order to set a maximum upper limit and to provide them with some flexibility in determining final numbers.
- A cover letter dated 5th November 2009 which included an addendum to the Design and Access Statement, a revised Master Plan and an additional Landscape/ecology strategy. The material was submitted to demonstrate that the site could be developed for up to 330 dwellings whilst protecting trees of acknowledged importance. The information also included changes to the design information in the Design and Access Statement in order to overcome concerns raised by Essex Design (the County Council's Design Team).
- A letter dated 12th November 2009 explaining in more detail the elements covered in the addendum to the Design and Access Statement and to clarify the relationship of plans within the Design and Access Statement.

- A letter dated 12th November 2009 setting out Heads of Terms for any Section 106 Agreement.
- A letter dated 17th November 2009 including a further revised Master Plan, illustrating how changes to the management of the internal road layout (not a matter for determination) could overcome the concerns raised by the Highway Authority regarding rat running along Thorpe Road.

2.4 Additional technical information was submitted to the Environment Agency in the week beginning 16th November and this has led to a retraction of the original objection by the Environment Agency.

2.5 The Highway Authority are in support of the further revised Master Plan submitted by letter dated 17th November 2009. Although this new plan was originally not accepted as a formal amendment to the planning application by the local authority, it was appended to the Committee Report and RDC has since confirmed that they will no longer pursue the fifth reason for refusal relating to the Thorpe Road access (see Council's letter dated 11th January 2010). At the time of writing it is anticipated that this issue will be agreed as common ground. If not, then the appellant will show that it would be possible to impose a planning condition requiring the submission of traffic management details in order to meet the stated concern relating to through traffic along Thorpe Road.

3. The PROPOSALS

3.1 The appeal proposals seek planning permissions for the following in outline form:

- Development of the site within the area defined on the location plan referenced 09/114/01, August 2009;
- Up to 330 residential dwellings at a density range between 20 and 50 dwellings per hectare and between 8m and 16m in height depending on character area and the need for marker buildings as illustrated by the further revised Masterplan;
- 35% affordable housing
- Two points of access onto Rectory Road forming T junctions (plan for approval is: D540-023) to serve up to 200 dwellings, connection to the

northern section of Thorpe Road to serve up to 115 dwellings and private drive connections to Clement Hall Way to serve up to 15 dwellings.

- Widening/improving part of the Rectory Road footway on its northern side
- Principles for cycle and pedestrian access through the site subject to reserved matters layout
- Open space of 3.19ha of which 0.625 would be children's play areas
- Local amenities of 0.29ha, including parking and landscaping to serve a medical facility of circa 500 sq.m and a convenience retail element of up to 100 sq. m (gross floor area)
- Relocation of Gas Main which crosses the site as part of the ground works
- The proposals include details of the necessary improvement to the Rectory Road/Main Road/Hall Road junction (D540-04), which would be either the subject of a financial contribution in a legal agreement or implemented through Section 278 of the Highway Act.

4. THE SITE AND SURROUNDINGS

4.1 A Statement of Common Ground provides a full site description and is not repeated here.

4.2 The site is in several ownerships and the owners have arranged themselves into a consortium. The appellant has an option to purchase the land and is therefore in full control of the site. Should permission be granted the site will be purchased according to the terms of the option and implementation can progress.

5. GOVERNMENT POLICY GUIDANCE

5.1 The following Government Planning Policy Guidance notes and Statements are relevant in the preparation and consideration of this Appeal and the Appellant will refer as appropriate to this National Policy advice in demonstrating that the Site can be developed.

- PPS 1 - Delivering Sustainable Development;
- PPS Planning and Climate Change: Supplement to PPS 1;
- PPG2 - Green Belts
- PPS 3 - Housing;
- PPS4 - Planning for Sustainable Economic Growth

- PPS7 - Sustainable Development in Rural Areas
- PPS 9 - Biodiversity and Geological Conservation and the accompanying document Planning for Biodiversity and Geological Conservation: A Guide to Good Practice;
- PPS 10 - Planning for Sustainable Waste Management;
- PPS 12 - Local Spatial Planning;
- PPG 13 - Transport;
- PPG 16 - Archaeology and Planning;
- PPG 17 - Planning for Open Space Sport and Recreation;
- PPS 22 - Renewable Energy;
- PPS 23 - Planning and Pollution Control;
- PPS 25 - Development and Flood Risk.

5.2 These policy guidance and statements will be considered in order to provide a base from which the case is developed (see below).

6. ADOPTED DEVELOPMENT PLAN CONTEXT

6.1 For the purposes of the Inquiry the Adopted Development Plan comprises the Rochford District Replacement Local Plan 2006 – Saved Policies (“RDRLP”) and the Regional Spatial Strategy for the East of England (“EEP”) (May 2008).

6.2 East of England Plan

6.3 By reference to Policies SS1, SS2, SS3, SS4, SS5, SS6,SS7,SS8, SS9 and H1 it will be demonstrated that a new development and growth framework now applies to the Region and that many of the policies in the RDRLP have been superseded. The analysis of the EEP will focus on whether there are sufficient exceptional policy reasons to justify consideration of Green Belt land for new development within Rochford District and thereby create a policy basis for the release of the appeal site. Reference will be made to the review of the EEP.

6.4 Rochford District Replacement Local Plan 2006 (“RDRLP”)

6.5 The RDRLP runs until 2011 and not all the policies have been saved. On 5th June 2009 the Secretary of State wrote to Rochford District Council and issued direction under paragraph 1(3) of Schedule 8 to the Planning

and Compulsory Purchase Act 2004, saving a number of policies in the Replacement Local Plan. These policies are saved until superseded by the Local Development Framework. The saved policies retain the Green Belt status of the site through policies R5 and R6.

6.6 The appellant's case will necessarily have regard to the lifespan of the RDRLP when considering the appropriateness and suitability of the appeal proposals. By reference to the EEP and the Submission Core Strategy ("SCS") it will be shown that the whilst the Green Belt policies remain relevant, the adopted RDRLP includes a number of policies which have been superseded in respect of the development strategy it promotes. As a consequence more recent strategies would indicate that there are exceptional reasons for the release of this Green Belt appeal site.

6.7 Other policies which will be referred to, particularly in relation to planning conditions and the planning obligation include:

- Policy CS1 which seeks to create a more sustainable form of development
- Policy CS2 which seeks to ensure that new development exhibits high levels of environmental quality
- Policy CS3 which seeks to reduce the need to travel by the motor car in favour of more sustainable travel patterns
- Policy CS4 which has the aim of promoting more compact settlements with appropriate densities in new development, sufficient facilities and locations for growth which take advantage of existing facilities.
- Policy CS6 promotes the use of design statements when formulating proposals in order that final designs take on board key requirements.
- Policy CS8 and 9 relate to the retention of character and place as ingredients in producing quality development together with landscaping
- Policy CS10 promotes the construction of energy efficient buildings and the use of water conservation measures

- Policy HP1 sets out the housing provision in relation to the County Structure Plan and Policy HP2 sets out the site allocations to meet that requirement.
- Policy HP5 explains that obligations to deliver necessary infrastructure will be sought including education, health care, affordable housing and public transport
- Policy HP6 seeks to achieve high standards of layout and design in accordance with the Essex Design Guide and lists those key criteria that need to be addressed.
- Policy HP7 which requires a statement of measures to achieve energy and water conservation.
- Policy H8 seeks 15% or more affordable housing on sites of 1ha or more
- Policy HP9 which enables rural sites to be developed for affordable housing where
- a need exists.
- Policy HP10 which seeks to ensure that schemes design out crime
- Policy HP13 seeks to encourage 10% of housing as 'mobility' housing
- Policy HP21 which sets the context for seeking planning obligations
- Policy EB1 which seeks to encourage employment development on existing employment sites
- Policy TP5 requires new development to be appropriately related to public transport routes
- Policy TP8 sets out car parking standards for new development (between 2 and 3 spaces per dwelling).
- Policy LT2 which sets out criteria for designing new playing pitches and Policy LT5 which explains the criteria for provision of public open space.
- Policy LT9 and LT10 explain that new children's play areas will be expected and that play space provision generally must accord with the District Council's standards.
- Policy NR8 which sets out the importance of protecting and preserving where appropriate trees and hedgerows, waterfeatures and other landscape and ecological habitats of importance.

7. Supplementary Planning Guidance

7.1 Of relevance to the appeal are SPD 1 –Education contributions, SPD2 – Housing Design 2007, SPD 3 - Playing Pitch Strategy and assessment, and SPD 5 - Vehicle Parking Standards. Reference to these will be made in regard to the obligations and planning conditions considered necessary for the appeal proposals. The urban design evidence will have regard to SPD2 to demonstrate the acceptability of the proposals.

8. Submission Core Strategy 2009

8.1 The case will have regard to the documents prepared by RDC in the lead up to the publication of the SCS, including the Preferred Option 2007, and Preferred Options 2008 (revised following Government Office Intervention). This is necessary to demonstrate that the site is in an area that has been identified for new housing to meet EEP growth targets for a number of years. This review will also assist in confirming that exceptional reasons exist for removal of the appeal site from the Green Belt and that the emerging policy is a consideration that could be taken as a very special circumstance for planning permission to be granted in advance of the adoption of the Core Strategy.

8.2 It will be necessary to consider the emerging policies in the SCS and to explain what weight should be attached to them given the stage reached in the development plan preparation process. The appellant's case is that the broad strategy of the SCS is likely to remain unaltered but the detailed wording of the policies, including the quantum of housing and employment land to be required on Green Belt sites may change. In support of this, the evidence will review the availability and deliverability of previously developed land to support the contention that more housing on Green Belt sites is necessary within Rochford District.

8.3 The evidence will have regard to all the emerging policies of the SCS, in particular Policy H1, H2, H3, H4, H5 as they relate to housing land requirements, locations for new housing development and Policy ED4 in relation to the employment strategy. The evidence will consider the difference between emerging Policy H2 and Policy H3 relating to safeguarded land and examine whether a greater emphasis should be

placed on making best use of Policy H2 sites, further supporting additional development above that anticipated in the SCS. Reference will be made to the emerging Green Belt policies GN1 and Appendix H1 and Policy CLT1, CLT2, CLT 3, CLT4, CLT 5, CLT 7 and CLT10. The policy evidence will necessarily consider the review of the EEP and examine how that might affect the dwelling requirement in the District. It is the appellant's case that given the limited opportunity for development within urban areas and in terms of the advice on flexibility in PPS12, housing numbers will invariably increase. Reference will be made to the Hockley Area Action Plan Issues and Options document.

9. The Main Case

- 9.1 By reference to recent appeal decisions, the matters which may be taken to constitute very special circumstances will be reviewed and explained. It will be the appellant's case that a variety of considerations, when considered in the round can constitute very special circumstances. This includes the provision of a 5 year housing land supply, providing sufficient affordable homes, the emerging policy circumstances affecting a proposal, the suitability of a site for development compared with other alternatives.

The extent to which the proposals are consistent with emerging Planning Policy, and whether the evidence justifies the exceptional release of the site and very special circumstances

- 9.2 The appellant's case is that EEP policy and emerging strategies in the SCS establish the exceptional reasons necessary for the release of Green Belt land and that the area within which the site is located is appropriate in that context. This emerging policy provides a material consideration that, together with others, is a very special circumstance. Most of the policies in the adopted RDRLP will be shown to be superseded by the new growth agenda and that in view of the emerging policy situation planning permission can be granted despite the Green Belt designation of the site. This, with other considerations, contributes towards very special circumstances. In support of this, a review of the development opportunities within the urban area which are deliverable, available and suitable, will be provided. Reference will be had to the Local Development Scheme, Annual Monitoring Reports 2005 to 2009, Strategic Housing land Availability Assessment 2009, Employment Land Study 2008 and Urban Capacity Study 2007 to demonstrate that there is less developable land

within urban areas than RDC anticipate thus providing, in part justification, for the release of this site for up to 330 dwellings.

The suitability of the location and emerging policies in the Submission Core Strategy – very special circumstances

- 9.3 By reference to a plan, other SHLAA submission sites and particularly PPS3/PPG2 criteria, the appellant will explain why the appeal site is coincident with the 'south Hawkwell' location identified at Policy H2 of the SCS. This evidence will explain why the site appeal site is suitable, particularly in sustainability terms, and explain why alternate sites nearby are not appropriate within the context of emerging Policy H2 of the SCS. This will provide the Inspector and Secretary of State with sufficient evidence to determine that the circumstances of the site in terms of emerging policy, sustainability and other policy criteria mean that they can grant planning permission in advance of the adoption of the Core Strategy, whilst complying with PPG2 and PPS3.

Where a new Green Belt boundary should be drawn

- 9.4 Evidence will explain how and where, a logical and appropriate Green Belt boundary should be drawn in a post development scenario. The assessment will consider the physical impact of the site and conclude that whether 175 dwellings are promoted or 330, the affect on the Green belt would be the same. Consequently, the evidence will show that making best use of the appeal site for up to 330 dwellings is compliant with emerging and established policy and that if rolling back of the Green Belt is supported in the manner proposed then there is a case for allowing up to 330 dwellings at the appeal site to comply with PPS3 criteria for making efficient and effective use of the site. The evidence will explain where the Green Belt boundary should be located in order that the Inspector and Secretary of State may be aware of the implications of granting planning permission in relation to this National designation.
- 9.5 The evidence will demonstrate that there are other considerations amounting to very special circumstances. By reference to appeal decisions the nature and extent of what contributes towards very special circumstances will be considered.

1. Housing Land Supply

9.6 RDC do not consider there to be a lack of housing land supply. The evidence will examine the relevant policies relating to the five year housing land supply, examine the evidence for a five year housing land supply in the District and explain why there is not a five year supply within the District. The appellant's consider there to be just over 1 year of housing land supply. On the basis of this assessment, our case is that paragraph 71 of PPS3 as controlled by paragraph 69 is engaged and that this together with impact of providing insufficient, decent quality homes for all is a consideration that forms a very special circumstance. In support of this assessment it will be necessary to review the Strategic Housing Land Availability Assessment, Urban Capacity Study, Call for sites schedule 2008 and Annual Monitoring Reports. Reference will be made to the EEP review and the policy guidance in PPS12 relating to flexibility and how this relates to the circumstances of this appeal case and future land supply.

2. Affordable Housing

9.7 The Council consider that their failure to provide for affordable housing is not a very special circumstance to justify planning permission. The appellant will provide evidence to demonstrate that the backlog of affordable housing, together with the limited housing land supply would adversely harm social and community objectives connected with providing all with a decent affordable home – one of the Government's prime objectives. Reference will be made to the SCS and Housing Needs Survey together with the Thames gateway South Essex Sub-Regional Housing Strategy 2008-11.

3. Other material considerations

9.8 Evidence will be submitted to explain that whilst the contributions and benefits of the scheme do not constitute very special circumstances, they are material considerations that weigh in favour of the appeal scheme. In particular reference will be made to the large amount of open space, the ecological enhancements which link into Spencer's Park and the proposed medical facility. In particular, the evidence will explain how the proposals create public access to a site that is otherwise private. This will include public access to the woodland and footway links to Spencer's Park, cycle links through the site and access to wider recreational/leisure facilities.

10. Whether there are urban design reasons to justify refusal of permission
 - 10.1 The reasons for refusal consider that the nature of the submitted layout for up to 330 dwellings does not relate well to the surrounding development pattern and lack of integration by design and sensitivity to the semi rural surroundings is detrimental. Evidence will be submitted which explains that the further revised Masterplan is illustrative. Evidence will demonstrate that it is reflective of the constraints and opportunities of the appeal site. Moreover, it will be submitted that it would be inappropriate to slavishly follow the existing development pattern in the vicinity of the site and that a new approach, which builds on local character, is an appropriate solution. In this way the scheme complies with PPS3 guidance that sites are developed, in a way that makes efficient and effective use of land, provided they are of a high quality. The evidence will include a review of the surrounding area and explain how variation in building heights, including the carefully managed introduction of building heights up to three storey's, supports legibility in the built form and is integral to the creation of a varied and interesting townscape. The density will be shown to be acceptable. Reference will be made to the Design and Access Statement, the Addendum document, further revised Masterplan and Essex Design.
 - 10.2 It will be necessary to explain how the indicative layouts relate to the locality and are appropriate in terms of the density in relation to surrounding area. In this regard evidence related to surrounding density patterns will be submitted as will evidence related to the Council's own conclusions on residential densities to demonstrate the acceptability of the proposals. Evidence will explain how the designs set out in the Design and Access Statement and the Addendum Document will be carried through to implementation phase and conditions will be recommended to achieve this.
- 11.0 Statement of Common Ground Matters
 - 11.1 Reference will be made to the statement of common ground to explain that neither RDC nor the appellant are at odds with each other on matters relating to:

- ecological mitigation and enhancement;
- loss of trees;
- drainage and flooding;
- highways and transport improvements.
- Archaeology

11.2 Where necessary, the evidence will review the strategy for ecological mitigation in relation to bats, badgers and reptiles and explain why conditions and obligations adequately deal with necessary mitigation.

11.3 Reference will be made to trees and the protection orders in place on the site. It will be demonstrated by reference to the Statement of Common Ground and other relevant material/plans that the proposals do not result in harm that would prejudice the development of the appeal site and that the proposed landscape strategy and opportunities for active management outweigh any perceived harm.

11.4 Reference will be made to the submitted Flood Risk Assessment and it will be demonstrated that there is neither a flood risk nor a surface water or foul drainage impact that cannot be controlled by planning conditions to ensure satisfactory infrastructure provision.

11.5 A statement of common ground relating to highway matters is to be submitted. Where necessary evidence concerning the capacity of the surrounding roads and junctions will be reviewed. The statement will review the necessary areas in which either contributions or benefits in kind will be made to secure necessary highway and transport improvements.

12. Delivery and Phasing

12.1 The evidence will review PPS3 criteria covering delivery and explain how the appeal scheme will be delivered. Reference will be had to phasing, necessary ground works and by reference to a timetable, a trajectory for housing delivery.

13. Legal Agreement

13.1 A Section 106 Agreement is to be signed and submitted prior to the start of the Inquiry. It will identify the obligations necessary to deliver the

development including broad phasing triggers, contributions and where appropriate formulas to deliver contributions. The agreement will explain the management regime for infrastructure that is not to be adopted and the contributions to be made towards maintenance. If a management company is necessary, the mechanisms for its implementation will be explained.

- 13.2 If there is no agreement then a Unilateral Undertaking will be submitted and the evidence will have regard to Circular 05/2005 and any documentation that the Local Planning Authority refers to relating to this matter.

14. Consultation Responses

- 14.1 An extensive and lengthy consultation exercise was undertaken by RDC in relation to the proposals. The responses received in relation to the Appeal Proposal are summarised in the Committee Report dated 3rd December 2009 and are provided in the questionnaire submissions. The evidence will have regard to those aspects of third party representations, and Rule 6 party submissions which are not covered in the above. If further submissions are made in the context of this appeal then it may be necessary to deal with these in evidence, through rebuttal statements.

- 14.2 The appellant undertook his own public consultation prior to an application being submitted and reference will be made to the Statement of Community Involvement.

15. Whether any permission should be granted subject to conditions

- 15.1 A schedule of conditions is currently being prepared and it is hoped that this will be agreed with RDC. Where agreement cannot be reached the evidence will explain why the appellant's proposed conditions meet the appropriate tests in the Circular 11/95.