

Response of CLLLLP to the Matters and Issues

### **1) Spatial vision**

#### *a) Does the CS present a clear spatial vision for the Borough?*

There are significant failings in the spatial vision for the Borough as set out in the Core Strategy, which are considered further in response to the other matters and issues. These issues have been identified by CLLLLP through its representations, and more recently through the evidence to the Coombes Farm inquiry.

In summary, it has been established that:

- i. No comparative assessment in terms of the contribution to the Green Belt of the proposed broad housing growth locations in the Green Belt has been undertaken by the Council to support their identification;
- ii. No comparative assessment in terms of the effect on the landscape of the proposed broad housing growth locations in the Green Belt has been undertaken by the Council to support their identification;
- iii. No comparative assessment in terms of the highways impacts of the proposed broad housing growth locations in the Green Belt has been undertaken by the Council to support their identification and
- iv. The sCS is yet to be informed by a Habitat Regulations Assessment (HRA).

#### *b) Will it deliver sustainable development in accordance with national and regional policy?*

The submission Core Strategy (sCS) fails to identify a suitable strategy for the delivery of sustainable development in accordance with national and regional policy for a number of reasons, which are summarised above.

However, in addition to the above, the sCS also fails to identify a suitable strategy for the delivery of sustainable development in the context of the Habitats Regulations. The addition of Matter and Issue No. 9 to the list is evidence of the importance of the Habitat Regulations and by extension the representations of Natural England.

As confirmed in the Blyth case, the inquisitorial nature of the EiP will require consideration as to whether the issues raised by NE in their original objections, relating to the housing growth numbers and the proposed expansion of the Southend Airport, and other considerations, such as the proposed re-allocation of the employment land at Stambridge Mills (SM), meet the requirements of the Habitats Regulations.

In relation to SM, the substantial works to the flood defences that would be required to enable the development to satisfy issues of flood risk (the site being located within Flood Risk Zone 3) would be likely to have a significant effect on the C&R SPA SSSI. Similarly, the introduction of additional residents in this location would increase the potential for further residential disturbance in close proximity to the C&R SPA SSSI and would need to provide, on site and closely associated with the development proposals, Alternative Natural Green Space to mitigate the risks of increased disturbance on the C&R SPA SSSI.

As such, the proposals for SM would be likely to have a significant effect on the C&R SPA SSSI.

In this context, the failures in respect of the sCS go far further than just national and regional policy. It is simply not possible to find the sCS sound in the context of unresolved objections from NE to any part of the sCS. Any such decision, if extraordinarily taken, would be subject to Judicial Review (JR).

We will return to the above issues, respectively, when considering:

- The housing growth locations
- Flood risk and PPS25
- Habitat Regulations

c) *Is the approach in the CS consistent with the requirement in Paragraph 4.5 of PPS12 that the CS should make clear spatial choices about where development should go in broad terms?*

The sCS attempts to identify a number of spatial options for development in broad terms. However, it fails on a number of significant points.

Firstly, as clarified by the Planning Policy Officer (PPO) at the recent Coombes Farm inquiry, the Council has not undertaken a comparative assessment of the effects of the spatial choices about where development should go in terms of the contribution to the Green Belt, the effect on landscape character and highways impacts.

The PPO clarified in cross examination (XE) is that the Council has only considered certain locations only in the context of certain other locations, not in the round. This fact is exemplified by the response proffered in the identified alternatives to the identified broad locations at Policy H2 of the Preferred Options document that states East Rochford (ER) is:

*“It is considered that west Rochford is a more suitable location given its proximity to the train station, town centre and its relationship with area of significant employment growth potential at London Southend Airport and its environs. Traffic flows from new development to the east of Rochford would be predominantly be through the centre of the town centre resulting in significant congestion.”*

The PPO confirmed that the consideration of ER was only in respect of West Rochford (WR), not other broad locations. We consider this narrow focus of assessment manifestly fails the tests of soundness in PPS12, in particular the test requiring the sCS to be the most appropriate strategy when considered against the reasonable alternatives.

The dismissal of a sustainable location for growth in favour of less sustainable locations, which we consider all other broad locations to be in the context of ER, is clearly neither sustainable nor sound.

In terms of the relative merits of ER, the planning application at CF has confirmed that, the CF site is sustainable in all regards as no technical objection to the proposed development was put forward by any of the statutory consultees. Nor did the Council maintain any reasons for refusal of the proposed development at CF other than that which related to inappropriate development in the Green Belt.

Whilst the sCS clearly makes choices regarding the broad locations for development, these choices have been made in the context of a flawed evidence base and as such have resulted in the erroneous exclusion of East Rochford as a sustainable development location. In this context, the choices contained within the sCS are neither justified by a robust and

credible evidence base, or the most appropriate strategy when considered against the reasonable alternatives.

*d) Does the topic based approach hinder the expression of a spatial strategy to an unacceptable extent? Should the topic based visions be drawn together to provide a strategic spatial policy so as to provide a clearer picture of the intended development pattern?*

Whilst CLLLP has not submitted representations that raise this specific issue, there is clear logic to the construction of a strategic spatial policy that is less 'topic based' and more flexible in its interpretation of the broad development locations.

We should add that, despite what CLLLP considers to be the erroneous dismissal of ER as a broad location for growth, the identification of SM for residential use confirms that ER is considered by the Council to be a suitable broad location for residential growth. In this context, were the Council to adopt an approach that is less 'topic based', if the Council continues to consider SM a suitable location for residential development, the sCS should consequently identify ER as an acceptable broad location for residential growth.

## **2) Location and supply of new homes**

*a) Will the strategy deliver the number of new homes required to meet the RSS requirements?*

The RSS requires the provision of a minimum of 4,600 residential dwellings in the years 2001 to 2021, with the provision of a minimum of 250 net additional dwellings for the period 2021 onwards.

Policy H1 of the RSS confirms that Rochford delivered 810 dwellings in the period April 2001 to March 2006, which equated to an annual average delivery rate of 160 dwellings over the five year period. This represents a shortfall in provision over the period April 2001 to March 2006.

Since then, the Annual Monitoring Report for 2009 confirms that the net residential dwelling completions for the following periods were:

- April 2006 – March 2007: **449**
- April 2007 – March 2008: **169**
- April 2008 – March 2009: **102**

The completions in the period April 2006 – March 2009 total **720** dwellings. Therefore, the completions in the period April 2001 – March 2009 total **1,531**. The AMR provides a projected delivery figure for the period April 2009 – March 2010 of **218**. Whilst the accuracy of this figure is questioned by the CLLLP, for the purpose of assessment, it is the most appropriate basis to use and confirms the actual and projected delivery figure for April 2001 – March 2010 totals **1,749**.

The sCS contains a different set of figures, the justification for which is not clarified in the sCS and provides further concerns regarding the accuracy of the sCS as it is clearly at variance with the published evidence base. Taking the figures in the sCS for the period March 2001 to March 2010 totals **1,649**.

This gives a residual requirement for a minimum of between 2,851 and 2,951 net additional dwellings over the period April 2010 – March 2021.

CLLLP has expressed concern that the identification of Green Belt sites as be available to deliver housing in the next five years is overly optimistic and fails to take account of the necessary timescales for the adoption of the Site Allocations DPD, which will remove specific sites from the Green Belt, but also for the planning and building processes. Taken together, it is considered unlikely that any of the broad Green Belt locations identified as having capacity to deliver housing in the next five years will be capable of doing so. Should this failure be borne out, the shortfall in deliverable (in accordance with the definition at paragraph 54 of PPS3) sites for housing in the short term (five year period) will place a significant and unrealistic burden on delivery in the medium and long term (five to fifteen year period).

CLLLP considers the only realistic method of addressing potential shortfalls in delivery is through the identification of a number of additional housing locations and reserve sites, which could be brought forward as necessary to address shortfalls in delivery.

Finally, the housing trajectory contained within the sCS fails to take account of historic shortfalls in plotting a straight line from the start to the end of the RSS period.

*b) Is the CS consistent with PPS3 particularly in respect of the following:*

*i) the requirement to address housing delivery for at least 15 years from the date of adoption;*

The sCS is required to identify sufficient land to provide for housing delivery for at least 15 years from the date of adoption. CLLLP considers the sCS should identify sufficient housing land, in accordance with the adopted RSS, to meet the required provision to 2026 at the earliest. The identification of sufficient housing land to meet the required provision to 2026 provides for an adoption date of the sCS of 2011.

At present, the sCS identifies provision to 2025 which allows for an adoption date of 2010. CLLLP considers it unlikely that the sCS will be adopted before the end of 2010.

As such, an adoption date of 2011 is considered to represent a more realistic and flexible timescale for the adoption of the sCS, if it is found to be sound without major changes. For reasons relating to flood risk and the Habitats Regulations, this anticipated adoption may in fact be conservative.

CLLLP also considers the calculation of the five year housing land supply has failed to take account of the guidance issued to the Planning Inspectorate by the Department of Communities and Local Government or of PPS3 (in particular paragraph 54).

*ii) bearing in mind that Green Belt releases may be necessary, does the CS provide the appropriate context and give adequate guidance for a subsequent site allocations DPD readily to identify the land needed without having to re-visit strategic considerations;*

In order to address the potential for shortfalls in delivery, CLLLP considers the sCS should identify further broad locations for housing growth, or a number of reserve locations that could be brought forward to address such shortfalls.

In this context, the sCS does not provide the appropriate context for future Green Belt release as the strategic considerations may need to be re-visited to identify further broad locations or reserve locations for housing growth.

iii) Is there sufficient flexibility and will the CS deliver a continuous supply of housing land?

Set in the context of the responses to the previous matters and issues, CLLLLP does not consider there to be sufficient flexibility within the sCS to deliver a continuous supply of housing land.

c) Are the broad locations identified for the supply of new housing the most appropriate when considered against all reasonable alternatives?

As confirmed above, the identification of the broad locations for housing growth identified in the sCS has not been based on a thorough and detailed assessment of the broad locations in the context of the alternatives as is required by PPS12.

In evidence at the Coombes Farm inquiry, the PPO confirmed that no comparative assessment in terms of the contribution to the Green Belt, the effect on the landscape and the highways impacts had been undertaken by the Council to support the identification of the proposed broad housing growth locations.

Clearly, the failure to consider these issues per se is sufficient to confirm that the sCS has not been informed by a robust and credible evidence base. However, combined with the confirmation that the broad locations identified were not assessed in the context of the reasonable alternatives also means the sCS fails the tests of soundness in PPS12.

Furthermore, the late publication of the Strategic Housing Land Availability Assessment (SHLAA) (after the close of the consultation on the sCS) has fundamentally undermined the evidence base. Not only was the consultation on the sCS not informed by a transparent evidence base, many of the conclusions of the SHLAA are fundamentally flawed (those specific to SM are a case in point and will be assessed further at the examination).

A number of objections have been submitted regarding the merits of the various broad locations for housing growth put forward in the sCS. Whilst CLLLLP confirmed it was content to focus on the merits of East Rochford rather than criticise other broad locations, the Inspector will need to consider the relative merits of the broad locations in conducting an assessment of the alternatives. In assessing the various locations, the following issues will need to be considered:

- East Rochford: through the withdrawal of two of the reasons for refusal originally contained within the Decision Notice, the Council has confirmed that there are no technical development control issues for refusing the planning application for the residential development at Coombes Farm. The attached Statements of Common Ground confirm that, inter alia, the Council does not object to the residential development of the site on grounds of sustainability, loss of agricultural land, highways and traffic, ecology and biodiversity, the effect on the public safety zone, noise, air quality etc.
- West Rochford: residential development at West Rochford in the broad location identified in the sCS would result in significant effects on the Green Belt and landscape setting of the site. In terms of Green Belt, the broad location is not well contained and as such does not present clear and robust defensible Green Belt boundaries. Furthermore, development at West Rochford would result in significant encroachment into the open countryside; would put Rochford at risk of merging with the nearby settlements of Rayleigh, Hawkwell and Stroud Green; and would encourage unrestricted sprawl. In addition, the May 2007 Core Strategy Preferred

Options (Regulation 26) Draft identified “the railway bridge at the eastern end of Hall Road is a severe constraint on traffic movements.”

- Ashingdon locations: concerns regarding the impact of residential development in the Ashingdon locations were identified by the Council in the May 2007 Core Strategy Preferred Options (Regulation 26) Draft as being affected by heavy congestion, with “congestion on Ashingdon Road being amongst the worst in the district” [paragraph 4.6.20]
- f) Is there adequate evidence of local circumstances that both warrant and allow the introduction of local policies in relation to CSH and BREEM standards (Policies ENV9 and ENV10), in accordance with PPS1 Supplement on Climate Change especially paragraphs 31-33?

CLLLP does not consider sufficient evidence has been put forward to justify the introduction of local policies in relation to CSH and BREEAM and reserves the right to address these issues in further detail at the examination following the response of the Council to the Matter and Issue.

- g) Is there evidence to demonstrate that the requirements of policy H6 (lifetime homes) will not have an unacceptable impact on the deliverability (viability) of new housing?

CLLLP does not consider sufficient evidence has been put forward to justify the requirements of policy H6 in relation to lifetime homes and reserves the right to address these issues in further detail at the examination following the response of the Council to the Matter and Issue.

### **3) Affordable Housing**

- a) Is Policy H4 consistent with the requirements of PPS3, notably the requirement at paragraph 29 to reflect an assessment of the likely economic viability of land for housing within the area?

As identified at the Pre-Hearing Meeting, the issue of affordable housing is to be subject of further evidence from the Council.

At present, CLLLP is concerned that insufficient evidence has been put forward to justify the requirements of policy H4 in the context of the Wakefield case and reserves the right to address these issues in further detail at the examination following the response of the Council to the on economic viability issues.

Affordable housing delivery must be viewed in the context of past rates of provision, outstanding need (identified in the 2004 Housing Needs Survey as 291 affordable homes per annum) and the ability of the Council to deliver in the future. The historic failure to deliver affordable housing, set against the identified need as at 2004, confirms the ever increasing imbalance between demand and supply of affordable housing.

### **4) Employment and Economic Development.**

- a) Will the Core Strategy ensure that sufficient land is available to meet the additional jobs required by the RSS in the most appropriate locations?

CLLLP does not consider sufficient land has been identified by the Council to meet the requirements of the adopted RSS, or the proposed increased targets set out in the review of the RSS to 2031.

CLLLP is also concerned that the Council has failed to consider the reasonable alternative sites for employment, in particular Three Ashes Farm. In the context of the identification of Purdeys Industrial Estate in the Council's Employment Land Study 2008 as fit for purpose and suitable for expansion, the failure to identify Three Ashes Farm as suitable for employment growth demonstrates the failure to consider the reasonable alternatives to those locations identified.

Furthermore, the identification of a number of existing employment locations for residential redevelopment could have unintended consequences on the employment provision within Rochford. The redevelopment of established employment locations for residential use, which the Council's own Urban Capacity Study identifies as being potentially unsustainable as it would create the need for alternative sites to be found for employment use, will also concentrate the employment provision in fewer locations. This would act to restrict local employment availability in a number of the settlements in Rochford.

CLLLP considers the most sustainable approach to the identification of sufficient land to meet the additional job targets of the RSS is to concentrate growth around existing established employment locations, which the evidence base confirms are fit for purpose and suitable for expansion.

#### ***5) Infrastructure Requirements (including transport)***

- a. *Does the CS clearly identify critical infrastructure to support the development proposed, and does it articulate what, when and by whom it will be provided?*

CLLLP does not consider sufficient evidence has been put forward to justify the proposed infrastructure requirements set out in the sCS and reserves the right to address these issues in further detail at the examination following the response of the Council to the Matter and Issue.

- b. *Are critical decisions which should be made in the Core Strategy being delegated to the Transport SPD?*
- c. *Is there adequate evidence to demonstrate that the requirements of the proposed standard charges are reasonable and will deliver the infrastructure necessary to support new development?*

CLLLP does not consider sufficient evidence has been put forward to justify the proposed standard charges set out in the sCS and reserves the right to address these issues in further detail at the examination following the response of the Council to the Matter and Issue.

- d. *Is there adequate justification to depart from the PPS13 requirement that parking standards should be expressed as maxima? (Policy T8)*

CLLLP does not consider sufficient evidence or adequate justification has been put forward to justify a departure from the requirement of PPG13 to express parking standards as maxima and reserves the right to address these issues in further detail at the examination following the response of the Council to the Matter and Issue.

## **6) Retailing and Town Centre Uses**

- a) Does the Core Strategy establish the strategic context for the preparation of AAPs for Rayleigh, Rochford and Hockley?

## **7) Flood Risk**

- a) Is the Core Strategy and supporting evidence consistent with the requirements of PPS25, particularly with regard to proposed development at Stambridge Mills?

As expressed plainly in the representations of the Environment Agency, the sCS is neither legally compliant nor sound in the context of flood risk, with particular reference to the policies relating to Stambridge Mills.

The original Opinion of Peter Village QC, which was submitted to the Council prior to the Pre-Hearing Meeting confirmed the necessary evidence base has not been provided to support the identification of Stambridge Mills as a suitable site for residential redevelopment.

In summary, the Council has failed to provide evidence that the Sequential Test and Exception Test of PPS25 have been applied in accordance with the guidance. The Core Strategy Topic Paper 1: PPS25 Sequential Test falls woefully short of what is required to satisfy the requirements of PPS25.

Furthermore, the sCS is not supported by a compliant Strategic Flood Risk Assessment (SFRA). The South Essex Flooding and Water Study Project Manager has confirmed that the 2006 SFRA was produced prior to the publication of PPS25 and is therefore not 'compliant' with the requirements of PPS25. The principal issues being its failure to address 'other sources of flooding' in addition to fluvial and tidal flooding and the fact that it is based on out of date climate change levels.

The scheduled date for the publication if the updated SFRA is December 2010 and this is considered to be the earliest date at which changes to the sCS could be made that accord with the guidance contained within PPS25.

It is significant that the May 2007 Core Strategy Preferred Options (Regulation 26) Draft confirms that the "Council will not allocate sites which are considered sensitive due to landscape designations, biodiversity issues or where they may be at risk of flooding" [our emphasis]. It is not clear why the Council has chosen to divert from its original path.

## **8) Monitoring**

- a) Does the Core Strategy contain effective mechanisms for monitoring?

## **9) Habitats Regulations**

- a) Is the Core Strategy in compliance with the requirements of the Habitats Regulations?

The sCS is yet to be informed by a Habitat Regulations Assessment (HRA). The latest representations from Natural England confirm that, as of 9 November 2009, the HRA was in preparation and therefore could not have informed the production of the sCS.



It is notable that the original representations of NE highlighted the importance of producing a HRA back in July 2007, giving more than sufficient scope to produce a compliant HRA that satisfied the requirements of NE.

In the absence of an approved HRA, none of the policies of the sCS, or the overall vision can be considered sound or legally compliant.

**S.78 TOWN AND COUNTRY PLANNING ACT 1990**

**IN THE MATTER OF LAND SOUTH OF COOMBES FARM, STAMBRIDGE  
ROAD, ROCHFORD**

**APPEAL BY COLONNADE LAND LLP**

**PINS REF: APP/B1550/A/09/2118433**

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**CLOSING SUBMISSIONS  
ON BEHALF OF THE APPELLANT**

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**PETER VILLAGE QC  
4-5 GRAY'S INN SQUARE  
GRAY'S INN  
LONDON WC1R 5AH**

*These Closing Submissions contain abbreviations. Witnesses are not always given their full title. No discourtesy is intended thereby.*

### Introduction

1. I endeavour not to repeat the Opening Submissions, which should be deemed to be incorporated into these Closing Submissions. But I ask you to re-read them.
2. These c/s will broadly follow the issues which have been identified by the S/S.

### Whether the proposed development constitutes “inappropriate development”

3. The Appeal Site lies within the Green Belt. There is no dispute that the Appeal Scheme constitutes inappropriate development within the meaning of PPG 2 for which very special circumstances must be demonstrated.

### Whether there are material considerations, including very special circumstances, which justify release of the appeal site for residential development

#### *Weight to be given to the RDRLP*

4. RDC’s first r/r relies upon conflict of the Appeal Scheme with the RDRLP. But this is misplaced, given that there is no dispute that little weight should be accorded to the RDRLP housing strategy, as Hollingworth agreed in xx. This is because the housing strategy within the RDRLP, which was based on the requirements of the SP, has been superseded by the housing requirements of the RSS (2008).

#### *Weight to be given to the sCS*

5. R/R 1 also refers to conflict with the sCS. In his oral opening, Lopez suggested “considerable weight” should be attached to the sCS which was consistent with Hollingworth’s written evidence where he suggested that the sCS was at a “very advanced stage”<sup>1</sup> and should be accorded “substantial weight”<sup>2</sup>. In xx, when I put it to him that it could clearly not be accorded “substantial weight” because of the

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<sup>1</sup> p/e para 2.9

<sup>2</sup> Ibid. 4.13

provisions of para 18 of *The Planning System*, and given the objections made (to which I shall shortly refer) Hollingworth qualified that merely to “weight”. In re-x there then followed one of the most excruciatingly embarrassing moments in inquiry history as Lopez (realising the serious consequences to the case which he had only moments before opened so high), quite improperly embarked on an exercise of trying to get his witness to change his answer. To Hollingworth’s eternal credit, he did not change his answer, and re-affirmed his response given in xx.

6. In fact, no material weight may be given to the sCS, for the following reasons.
  - a. The advice in *The Planning System* was published in January 2005 at a time when the previous version of PPS 12 (Sept 2004) was extant, and which included the infamous para 4.24 which included advice that “The presumption will be that the development plan document is sound unless it is shown to be otherwise as a result of evidence considered at the examination”. That advice was found to be erroneous in law in the Blyth case cited in my O/S at para 7. As a consequence, it is now established that Inspectors have an inquisitorial role at an examination, irrespective of whether any objection has actually been made. Thus, in considering the weight to be attached to any DPD, it is now irrelevant that no objection has been made in respect of any particular policy. That policy will be subjected to scrutiny at the examination by the Inspector to see whether it is sound, irrespective of whether any objection has been made.
  - b. As it happens, substantial objections have been made in this case. Natural England has made an objection which goes to the heart of the soundness of the plan, namely whether a compliant Habitats Directive assessment has been undertaken by RDC in the sCS’s preparation. NE says it has not, and the examination Inspector has indicated that she will consider that issue. Hollingworth agreed in xx that this issue has the ability to cause considerable delay to the adoption of the sCS in the event it was well founded.
  - c. A substantial objection has been made by the EA with respect to Stambridge Mills. There has been no suggestion in the ILG “briefing note” (the status to which I will comment on shortly) that this objection has been withdrawn.

Anderson confirmed that in a telephone conversation with the EA on 13/4/10 (a transcript of which you now have) it confirmed that the objection stands.

- d. All that is said is that ILG has commissioned specialist advice<sup>3</sup> on flood protection and commissioned an FRA which has been submitted to the EA<sup>4</sup>. But it is clear from the EA's response (one of continued maintenance of the objection) that the FRA is inadequate.<sup>5</sup>
- e. On the contrary, on the vexed question of safe access and egress (Hollingworth confirmed in xx that this was one of the main issues raised by the EA) discussions are "ongoing"<sup>6</sup>. This is a very important issue having regard to the "Exceptions test" in PPS 25 and the EA has made it clear that this is why the site would be regarded as undeliverable and undevelopable as defined in PPS 3<sup>7</sup>
- f. There are other objections too. Anderson confirms that there are objections from residents or residents' groups in relation to West Rochford. As Mr Woolf's rebuttal note says at paras 6.3-6.4, to assume that the allocation will be included in the adopted CS simply undermines the plan-making process and implies that any objections made to such allocations will be set aside. Such assumption subverts the entire plan-making process". Indeed, Hollingworth agreed in xx that the participation of the public at the plan-making stage was of the "greatest importance" and their objections had to be considered carefully.
- g. Although it is clearly not a matter for this inquiry to determine, there is also strong evidence, based on what has been heard at this inquiry, that the sCS is unsound, and it is to that issue that I now turn.

### *Unsoundness of the sCS*

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<sup>3</sup> Briefing Note 3.2

<sup>4</sup> Ibid 3.6

<sup>5</sup> Neither ILG nor RDC has considered it necessary to submit the FRA to the inquiry.

<sup>6</sup> Briefing Note 3.6

<sup>7</sup> See EA objection, Anderson Appx 17, half way down 2<sup>nd</sup> page

7. This is not the forum to decide whether the sCS is sound; but it is relevant, in the consideration of the weight which should be attributed to the sCS, to take account of the fact that the CS examination will have to consider the soundness of the sCS.
8. By section 20(1) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), local planning authorities must submit every development plan document (“DPD”) to the Secretary of State for independent examination. By section 20(5)(b) of the 2004 Act, one of the purposes of the independent examination of a DPD is “... to determine ... whether it is sound.” Since one of the DPDs will be the CS, any such CS must satisfy the test of “soundness”.
9. The requirement of soundness is explained in greater detail in PPS 12. Paragraph 4.52 of PPS 12 provides:

“To be “sound” a core strategy should be JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY.”

10. In order to be “justified”, PPS 12 explains that a CS document must be “... founded on a robust and credible evidence base” and “the most appropriate strategy when considered against the reasonable alternatives”<sup>8</sup> Paragraph 4.37 of PPS 12 explains in greater detail the need for a CS to be “... based on thorough evidence.” The evidence base should, according to paragraph 4.37, contain two elements. First, it should consist of “... evidence of the view of the local community and others who may have a stake in the future of the area”. Second, it should contain “... evidence that the choices made by the plan are backed up by the background facts”.
11. One of the most important aspect of the sCS is that it provides for the release of a substantial amount of GB land – providing some 2,745 dwellings in the plan period – see o/s para 13.
12. Yet crucially, as it emerged in evidence from Hollingworth, there has been no comparative assessment, either in terms of contribution to the GB or effect on the landscape, of the allocated GB locations with other reasonable alternative locations.

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<sup>8</sup> PPS 12, paras 4.36 and 4.52

Thus, and specifically as concerns the East Rochford location, there has been no consideration (let alone a robust and credible one) of the effect on the integrity of the GB by the release of land in that location rather than at West Rochford. Nor has there been any comparative consideration in landscape terms<sup>9</sup>. Nor has there been any comparative consideration in terms of impact on the highway network. Of course there *has* been a *purported* consideration of the relative accessibility of East and West Rochford to the railway station, but that is only one of a basket of considerations which relate to matters of sustainability – see the CS Preferred Options, page 30<sup>10</sup>, in which RDC purported to consider East Rochford against one of the alternative locations (West Rochford). But although East Rochford was (erroneously) considered to result in “significant congestion” and was rejected for that reason, it was not considered against the Ashingdon sites in terms of impact on the highway network.

13. It is significant, however, that East Rochford was at least a candidate for consideration as an alternative location. It cannot therefore be suggested that East Rochford was not a “reasonable alternative” for the purposes of PPS 12.
14. RDC’s approach to the formulation of its CS is the very antithesis of a robust and credible evidence base in which reasonable alternatives are considered. It cannot be suggested that RDC’s strategy for the release of GB land can be found to be, on the basis of a robust and credible evidence base, ***the most appropriate strategy when considered against the reasonable alternatives***. This is a matter upon which the sCS examination Inspector is statutorily obliged to determine in considering “soundness”. Indeed, it is one of the objections made by EA – that “the Core Strategy does not explore alternatives to accommodate their required growth targets. We therefore cannot be certain that policy H1 represents the most appropriate policy because there is no clear comparison against alternatives”.<sup>11</sup>
15. It is therefore pellucid that no material weight may be attributed to a strategy which, on the face of it, clearly fails the criteria in PPS 12 which determine soundness.

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<sup>9</sup> There was a half-hearted attempt by Hollingworth to suggest that there was a contribution to the assess

<sup>10</sup> Hollingworth Appx 3

<sup>11</sup> Anderson Appx 17, towards bottom of second page.

16. When I come to consider the impact on the GB, I shall return to RDC's strategy, and I shall comment on the evidence of relative impact of development of the Appeal Site against the preferred locations, and in particular West Rochford in respect of which a planning application has been made.<sup>12</sup>
17. Finally, in considering the weight to be attached to the sCS, I should add that no issue of prematurity has been raised by the LPA. Indeed, in light of PPS 3 para 72, it would be impossible to refuse the appeal scheme on grounds of prematurity. Indeed, to do so would be to subvert the whole process of requiring a 5 year HLS to be demonstrated. The whole purpose of the delivery mechanisms in PPS 3 was to ensure that delivery of housing is not held up. Delays within the planning system pending adoption of DPDs used to be endemic. The invocation of prematurity as a reason for refusing planning permission where there is a serious five year HLS shortage would have the effect of neutering the delivery process contained within PPS 3.
18. In conclusion on this issue, I submit that no material weight may be given to the sCS. Thus, the conflict alleged in R/R 1 is not a proper basis for withholding planning permission.

### *Housing Land Supply*

19. This case is, at its heart, a housing land supply case. The VSC relied upon by the Appellant is the absence of a five year HLS. It is accepted by RDC (Rogers xx) that as a matter of principle, that the absence of a 5 year HLS would constitute a VSC for releasing GB land.
20. We start by considering the relevant five year period. This is agreed as 2010 to 2015 (xx Hollingworth). When applying the principles of para 54 of PPS 3, this means that *at the point of assessment* the question is whether the site is “available **now**”, “offers a suitable location for development **now**” and “there is a reasonable prospect that housing will be delivered on the site within five years” (my emphasis). As Anderson

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<sup>12</sup> See letter from Barton Willmore of 12/4/10. It is perplexing that BW has been unwilling to release its planning application to be considered by the inquiry, notwithstanding an early indication that to the Appellant that it would. Nevertheless, the red line application plan helpfully sets out the extent of the encroachment into the countryside and enables an assessment of this alternative.



was at pains to point out, (and as stated in para 7 of the CLG advice) all three tests of deliverability must be met.

21. Turning to the requirement, Hollingworth says the requirement is 1,250. The Appellant, through Anderson, says it is 1,471 dwellings (see o/s para 11). Tellingly, and extraordinarily, there was no challenge in xx by Lopez to Anderson's evidence. Perhaps this is unsurprising given the clear advice in the CLG advice note that in identifying the level of housing provision to be delivered over the five year period, **“housing provision figures in the most recently adopted part of the development plan, adjusted to reflect the level of housing that has already been delivered (within the lifetime of that part of the plan)”**<sup>13</sup>. Hollingworth's explanation as to why this advice does not apply was, frankly, incomprehensible, but given Lopez did not pursue his argument, I need say no more.

22. Supply. The issues relating to supply are:

- a. Whether windfalls should be included;
- b. Whether the four allocated GB sites should be included as counting towards the 5 years HLS;
- c. Whether Stambridge Mills should be counted towards the 5 year HLS;
- d. Whether Star Lane should be counted towards the 5 year HLS;
- e. Mr Barnes's other sites

### *Windfalls*

23. The windfall argument was a diversion introduced by Hollingworth in x/c. He confirmed in xx that they should not be included given the clear injunction in para 59 of PPS 3. It was not pursued in xx by Lopez. Any potential contribution of windfalls must therefore be ignored.

### *The sCS Allocated Sites*

24. The principal debate was whether the four sCS Allocated Sites should be included in the five year HLS. It is clear they should not, for a number of reasons, each one of which provides a decisive answer.

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<sup>13</sup> CLG Advice note para 5(ii)

- a. When assessed against the tests of deliverability in para 54 of PPS 3 and para 6 of the CLG advice note:
- i. **The sites are not available now.** They are not allocated sites in an up to date adopted plan. No planning permission exists for their development. At the moment they are broad locations within the sCS and the Site Allocations consultation draft DPD, which is (according to the LDS) not to be adopted until Dec 2011. They are not sites which have been tested through the sCS examination and for the reasons already given, no material weight may be given to their allocation.
  - ii. **The sites are not suitable.** Again (by reference to the CLG advice note para 6) none of the sites are allocated in an adopted DPD, and none have planning permission. Each of the four sites lies within the GB and development of them would constitute inappropriate development. Whilst the case for their release could be made (as with the Appeal proposal) through the development control process (and indeed, there is an appeal in relation to the South Hawkwell site, which the Council is resisting) that case has not yet been made.
  - iii. **Be achievable.** There is no evidence before the inquiry as to the deliverability of any of the sites. In particular, it is significant that Bellway has, notwithstanding being represented by counsel at this inquiry, not produced any evidence of the Hall Road site's deliverability. The fact that a planning application has been made does not constitute such evidence, given that there are many reasons, often based on contractual obligations, as to why planning applications are made. Given that the onus is (as Hollingworth agreed in xx) on the LPA to prove that the five year HLS, no evidence has been produced as to the deliverability of those sites. That should be contrasted with the Appeal Scheme. Consistent with the many desperate points advanced by Lopez, and completely contrary to the evidence of his own witness who confirmed, in terms, in xx that he did not challenge the deliverability of the site by 2015, he sought to challenge the deliverability of the site. This was an absurd exercise. Anderson (in response to this new point) produced letters from Persimmon and McGarrell Reilly (for market housing) and Rochford Housing

Association (for affordable housing) demonstrating developer interest. And there was no challenge to the timeline in Barnes' Appx 2. The Appellant owns the Appeal Site and there are no constraints to its immediate delivery of houses in accordance with the unchallenged timeline. Needless to say, there were no questions on this issue of Mr Anderson.

- b. Given that para 7 of the CLG advice note requires each of those tests of deliverability to be met, and not one of them is met, that is an end to any suggestion that they should count towards the 5 year HLS. But the matter goes further than that.
  - c. Para 5 (iii) of the CLG advice note identifies the categories of sites which may be included, and the emphasis is very much on sites allocated in adopted plans or sites with planning permission. It does not, as Hollingworth agreed, include Greenfield allocations in unadopted plans.
  - d. Hollingworth prays in aid para 7 of the CLG advice note, but to no avail. The reference to unallocated sites is clearly a reference to unallocated brownfield sites, referred to in para 5(iii). But even if that is wrong, the reference is, again, to specific sites, not broad locations, and thus the four allocations in the sCS cannot be counted.
25. Hollingworth sought to bolster his case by reference to what he referred to as the Wokingham case study which he says indicated the acceptability as a matter of principle of including allocations in a draft plan in the five year supply. In trying to make this comparison, he missed the point completely. The observations of the examination Mr Salter were entirely predicated on the back of his conclusion, inherent in his report at para 4.12, that the plan was sound and that the allocations could therefore be counted towards the five year supply. Mr Salter was not engaged on a PPS 3 five year HLS assessment.

26. However, as Mr Woolf notes<sup>14</sup>, the Wokingham Case Study is instructive for this reason. In the space of a year, and after the Inspector had confidently endorsed the trajectories in the 2008 AMR, the 2009 AMR reduced the reliance on the five year supply by some 375 units. Woolf also provides an analysis of the up to date position. Hollingworth said in xx that he did not challenge Woolf's conclusion that the real supply in the five years was 200-300<sup>15</sup>. Thus, what the true value of this case study is to demonstrate why it is essential to apply the tests of deliverability in PPS 3 para 54 rigorously.
27. In addition, a further reason why the four allocated locations cannot be relied upon to deliver any houses is for the reason set out by Woolf at paras 5.13 – 5.16, expressly endorsed by Barnes in x/c, and not subject to any xx or challenge by Lopez.
28. Indeed, the very short cross-examination of Mr Anderson did not begin to grapple with any of these points. For the above reasons, it would be perverse to include the four (broad location) allocations in the assessment of the five year HLS. They have been rightly excluded by the Appellant.

#### *Stambridge Mills*

29. This is another allocation in the sCS which should be excluded from the five year assessment, by application of the criteria in para 54 of PPS 3 and para 6 of the CLG Advice note. The 200 units which it is now said it will deliver in the 5 years<sup>16</sup> should be excluded.
- a. **The site is not available now.** It is an allocated employment site in the RDRLP. No planning permission exists for its development. It is not a site which has been tested through the sCS examination and there are substantial live objections in relation to its allocation by the EA<sup>17</sup>. This was confirmed in the EA's telephone message.
  - b. **The site is not suitable.** Again (by reference to the CLG advice note para 6) the site is not allocated in an adopted DPD, and does not have planning permission. The site lies within zone 3a (high probability of flooding) for

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<sup>14</sup> Woolf rebuttal note para 6.6

<sup>15</sup> Ibid para 6.7

<sup>16</sup> ILG Briefing Note (para 4.2)

<sup>17</sup> See Anderson Appx 17

which a sequential assessment must be undertaken, according to PPS 25. There is a substantial debate to be had, based on the objection of the EA, as to whether the Stambridge Mills site passes the sequential test. The EA's view is that it does not and that it would be better to develop in zones with lower probability of flooding.<sup>18</sup>

c. **Be achievable.**

- i. There is no evidence before the inquiry as to the deliverability of this site. ILG has appeared at the inquiry by counsel and a planning consultant. It has produced a "Briefing Note", which inexplicably has two versions with material differences. Notwithstanding that Mr Dagg vacillated between calling a witness to speak to it, making a statement himself and not calling any witness, no opportunity has been afforded to the Appellant to test the veracity and accuracy of the "Briefing Note" and accordingly, very little weight may be attached to it.<sup>19</sup>
- ii. There are strong reasons to challenge its deliverability. Barnes explained in xx that he had assessed its viability two years ago and said that he considered his viability assessment then was still valid today. Hollingworth said that he considered that, because of the "substantial new flood defence works"<sup>20</sup> required of it, there were issues of viability, such that it would not be expected to deliver the full quantum of affordable housing. Why RDC should be supporting a development allocation which clearly cannot deliver affordable housing at the policy required rate of 35% at the expense of a development that will deliver affordable housing at the full rate, is unclear.
- iii. In addition to the issue of viability, Barnes gave evidence as to the site's inherent unattractiveness for a flatted (or mainly flatted) scheme. This analysis of current market conditions is precisely what the CLG

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<sup>18</sup> Ibid, bottom of page 2

<sup>19</sup> The procedure at an examination, where the Inspector takes on the role of inquisitor, (although not a Spanish Inquisition!) is of course different. The examination process, which is not intended to be an adversarial process and where there is no cross-examination, relies on written representations and affords them the same weight as oral representations.

<sup>20</sup> ILG para 3.3

note encourages in assessing whether a development site is “achievable”.

30. The fact that ILG has refrained from fielding a single witness to assist the inquiry (and, if it could, rebut the evidence about viability) is very telling. I invite you to conclude that Stambridge Mills should be excluded from the supply calculation.

*Star Lane*

31. This site was put into the SHLAA as making a contribution of 75 units in 2010-2015. Mr Anderson explained (and was not xx'd on the point) that a team member had spoken to the principal of ILG who confirmed that the site would come forward as part of a larger scheme. There was no indication of early phasing, and Anderson explained why that would be unlikely as developers would not wish to develop piecemeal without knowing their full infrastructure liability. For these reasons, it has been excluded.
32. I do not set out the three tests of deliverability again, but it clear does not have pp and is not allocated for residential development. The same points arise.

*Mr Barnes' assessment*

33. Barnes undertook an assessment of all sites over 5 units in the SHLAA. It was undertaken as recently as between 6-8 weeks ago, and thus is considerably more up to date than the SHLAA itself. It is difficult to fathom the point Lopez was trying to make in this respect.
34. Barnes' assessment was precisely the kind of PPS 3 assessment which RDC should have undertaken but did not. Mr Dagg was right to commend Mr Barnes' professionalism and ability. Mr Barnes had undertaken a market based assessment, fully considering current market conditions and the viability and attractiveness of development. This was based on a professional approach. The nit-picking criticisms of Mr Barnes by Lopez were desperate and entirely devoid of merit, especially absent any such attempted analysis from Hollingworth. Mr Barnes was correct to exclude Stambridge Mills, Star Lane and the other 127 units from coming forward in the five years.

### *Affordable Housing*

35. It is not claimed that the provision of 35% affordable housing (114 units) would represent a VSC. But it is an important benefit as part of the scheme as a whole that such housing would be provided, especially given the miserable (per Hollingsworth, “poor”) level of performance by RDC over the past ten years, which has actually delivered on 112 units. At a time when viability calls into question the delivery of the full policy requirement, the provision of this level of affordable housing is an important material consideration.
36. Quite how, as Lopez sought to suggest in xx of Anderson, that the Appeal Scheme would “threaten” (sic) delivery of the RDC AH strategy will, I fear, remain one of the great mysteries of life. The Appeal Scheme is plainly wholly beneficial to housing delivery, both market and affordable.

### *The Five Year Supply Calculation*

37. I therefore come to the five year supply calculation. It is set out in my Opening submissions, paras 9 – 21, and it has not changed save for the reduction in the total provision by 50 units to take account of the revised figure for Stambridge Mills. At best, (and ignoring the 127 deductions of Mr Barnes) the supply is no more than a year.<sup>21</sup>
38. If one makes the adjustments set out in para 18 of the O/S, and removes the 50 units, the supply reduces to 163, which represents 0.55 year.
39. But as Anderson explained in x/c (and there was no challenge) even if one adds back in the 775 units from allocated locations, against a requirement of 1,508 there is still a very substantial 5 year HLS deficit. I shall now turn to consider the consequences of this, and whether this would amount to VSC.

### *Harm to the Green Belt*

40. It is, of course, accepted that there is definitional harm. In this case, however, given that the housing strategy of RDC is dependent on large scale release of GB harm, the

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<sup>21</sup> At para 17 of the Opening Submissions, the supply is given as 340. Deducting 50 would give a supply of 290, which is just less than the annual requirement of 294 as set out in para 11 of the Opening Submissions.

weight which may be given to that harm must be substantially reduced. In truth, the consideration of whether this site should be developed for residential development must depend on the “other harm” to the GB which arises from the development proposals.

41. The Appeal Site is dominated by very substantial detractors, namely the 33kv and 132 kv power lines, Purdey’s industrial estate and Stambridge Mills. The suggestion from Ms Rogers that these features did not detract from the landscape was, frankly, incredible in the sense that it was not credible. You will have formed your own assessment on the site inspection, but all of these features, cumulatively but also individually, infect the character of this urban fringe location. The comparison with the quality of the landscape at West Rochford is marked.
42. In addition, the extent of enclosure given by those detractors and other urban and suburban features is very substantial. The site extends out in visual terms only at the easterly and north easterly corner<sup>22</sup> and as demonstrated in the BvS’s visual containment plan, to a very limited degree only.
43. It is agreed that the harm to the purposes of the Green Belt does not extend to purposes 2, 4 and 5 in para 1.5 of PPG 2. The same cannot be said of the West Rochford location which clearly would offend the second purpose – preventing towns merging into one another as well as a substantial encroachment into the countryside with no long term defensible boundary.

#### *Encroachment*

44. There is a disagreement as to whether the Appeal Site can be categorised as open countryside. For the reasons just explained, it is certainly not open and the visual connection to the north is very limited. If and to the extent that there will be encroachment, this is a harm that flows from all the other alternative sites in Rochford, as Rogers readily conceded. Indeed, as I have just observed, the point applies with very much more force in respect of West Rochford, especially as the site will be widely visible from Hockley Woods. In this respect the site lies at 5m AOD

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<sup>22</sup>Rogers p/e para 2.19



whereas the beautiful Hockley Woods lies at 65m AOD, and which enjoys an extensive footpath network.

45. The extent of the encroachment by the Appeal Scheme would be substantially limited by reason of the strong boundaries and physical features which enclose the site (all of which can be readily appreciated from BvS's appx 6), but also the embankment to the south of the site (the boundary with Purdey's industrial estate).

#### *Checking Unrestricted Urban Spawl*

46. The first identified purpose of GBs is to check the unrestricted urban sprawl of large built up areas. It is doubtful that Rochford could be described as a large built up area, but in any event the development of the Appeal Site would not lead to unrestricted urban sprawl. Indeed, it was conceded by Rogers that the Appeal Scheme would provide a firm and defensible boundary. This is not a matter of trivial importance as Lopez suggested in xx of Anderson. It is essential, when defining GB boundaries, that they are strong and defensible, as PPG 2<sup>23</sup> makes clear. Although there presently exists a strong and defensible boundary, that will remain the position after implementation of the Appeal Scheme. The unrestricted urban sprawl would remain checked, but with an altered boundary to accommodate much needed residential development.

47. By contrast, none of the other Rochford sites (either at West Rochford or the Ashingdon sites) (as Rogers conceded) could be said to have strong and defensible boundaries. Indeed, this was a criticism made in the consultation draft Allocations DPD of at least the Ashingdon sites and some variants of the West Rochford sites. Again, this clear advantage of the Appeal Scheme over other locations is something which should have been picked up if RDC had undertaken any GB comparison assessment.

#### *Loss of open attractive landscape/loss of opportunities for outdoor recreation*

48. The other aspects of r/r 2 which Rogers dealt with were an alleged loss of an open attractive landscape and the loss of opportunities for outdoor recreation. She made it clear in xx that she had considered both these points in her assessment of the harm to

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<sup>23</sup> See esp. paras 2.6-2.9

the GB. This approach was manifestly misconceived. By contrast, the Appellant made it clear (through BvS and Anderson) that these two issues were wholly separate from the consideration of harm to the GB. Accordingly they were dealt with separately by BvS (who left the consideration of harm to the GB – a planning designation - to Anderson). This is because of the clear advice in PPG 2, para 1.6 and 1.7. the uses listed in para 1.6 (which include opportunities for access to the open countryside, opportunities for outdoor sport and outdoor recreation, and the retention of attractive landscapes) are not material matters for the inclusion of land in the GB *or in its continued protection*.

49. I suggest that the inclusion of these matters by Rogers in her assessment of harm to the GB was legally irrelevant and led from a failure to read and or understand the provisions of para 1.7 of PPG 2.
50. In any event they have been carefully assessed by a distinguished landscape architect. BvS has assessed the quality and character of the existing site. She did so in the LVIA contained within the ES. In opening I stated that the ES had never been the subject of any adverse criticism from RDC<sup>24</sup>. It was not the subject of any adverse criticism by Rogers in her evidence in chief either. Indeed, she told the inquiry that she did not take issue with any of the conclusions of the LVIA. Yet in xx she told the inquiry that she considered the impact on the visual effect would be substantial.
51. The LVIA's visual impact assessment was based on the blue book Landscape Institute method of assessing visual impact. That is included in Appx 8 of the ES, figs 8.1 and 8.2. That is an objective methodology for assessing the visual effect of development. The unchallenged conclusion of BvS – and there was no xx of her on this crucial issue – was that after mitigation the effect of the development on the ten landscape character areas (shown in fig 8.4 of the ES) ranged from either minor adverse, negligible or minor beneficial<sup>25</sup>. Thus, Rogers' assertion simply ignored the objective assessment of the ES – which neither she nor Lopez challenged.
52. In conclusion, there will be no material loss of open attractive landscape. Indeed, the Appeal Site and a wider area (the blue line land) will be opened up for public access,

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<sup>24</sup> O/S para 2

<sup>25</sup> See ES para 8.104

and the whole area will benefit from the implementation of a high quality landscape scheme (BvS Appx 5) of ANGS.

53. As to the other allegation of loss of opportunities for outdoor recreation, rather than face up to the fact that its position had changed following withdrawal of reasons 3 and 4, Rogers (in her x/c) suggested that her real concern was to the quality of the open space rather than quantitative provision. This was no doubt due to considering the force of the point made in the O/S at para 31. Unfortunately, this change of tack demonstrates how opportunistic and cynical RDC has been in the presentation of its case. First, as to the overall quantum of provision, that is dealt with by BvS in Appx 4. It was unchallenged in xx. Second, as to the quality issue, that too was dealt with by BvS in x/c. She explained how the management plan would improve the man made landscape which had been subject to agrico-industrial use, substantially increasing its biodiversity interest, with the planting of tussocky grass and wildflower meadows. Again, this was unchallenged in xx.

*Other material considerations*

54. I have set out during the inquiry the very considerable measure of agreement on many other issues including loss of agricultural land, highways and traffic, biodiversity, the effect on the public safety zone, aircraft noise and so on. I would stress the dictum of Sullivan J (as he then was) in Poole v Secretary of State for Communities and Local Government [2008] EWHC 676 as to the value of statement of common ground and how parties are entitled to rely on them without fear of having a point taken against them by the S/S without the point being expressly drawn to their attention by the Inspector.

*S. 106 and Conditions*

55. There are no outstanding issues in respect of the S. 106 which will be amended and submitted within 7 days of today.

56. You have the respective positions in respect of conditions, and I have nothing further to add.

Overall Planning Balance

57. The definitional harm to the GB and any other harm, (which I submit is on any basis minor) must be balanced against the clear and substantial five year housing land supply shortfall, somewhere in the region of a half to one year. In the context of the need identified in the RSS, the supply is outstandingly unacceptable.
58. The Appeal Scheme is urgently needed to address that very substantial shortfall, as serious as Anderson has ever before come across. The substantial shortfall clearly amounts to a VSC which should permit the release of this site for development.
59. The Appellant has gone to great lengths to bring forward an exemplary scheme, in design and sustainability terms, through the multi-disciplinary input of John Thompson and Partners and BvS, which will provide a very high quality environment. There are no other development control reasons for refusal. Accordingly, I respectfully submit that planning permission should be granted. We invite you so to recommend to the S/S.

**PETER VILLAGE QC**

**Friday, 16 April 2010**

## **Addendum Statement of Common Ground**

### **Coombes Farm**

#### **1 Introduction**

- 1.1 This Addendum Statement of Common Ground has been prepared by Icení Projects Ltd (Icení) and Rochford District Council (RDC)
- 1.2 It describes those additional matters of common ground between the Appellant and RDC relating to the appeal against the decision of RDC to refuse the outline planning application for the residential development of up to 326 dwellings with all matters except access to the site, reserved for subsequent approval. These additional matters of common ground have been established between the Appellant and RDC following the agreement of the previous Statement of Common Ground (submitted to the Planning Inspectorate on 5 February 2010). They have been established to further narrow the focus of the inquiry and establish the matters remaining in dispute.
- 1.3 Accordingly, this Addendum Statement of Common Ground should be read alongside and in unison with the previous Statement of Common Ground.

#### **2 Additional Matters of Agreement**

- 2.1 The additional matters of agreement have been established:
- 2.1.1 The appeal site is contained wholly within Flood Zone 1 and its development for residential use is acceptable in flood risk and drainage terms, subject to the imposition of the requisite planning conditions;
- 2.1.2 The potential for increased risk of birdstrike resulting from the proposed development can be mitigated against adequately by the imposition of a suitable planning condition to ensure suitable landscaping;
- 2.1.3 The levels of noise that future residents of the site would experience resulting from existing air traffic or any other existing noise source was not considered to be unacceptable such that planning permission for the proposed development should be refused;
- 2.1.4 The air quality that future residents of the site would experience, was not considered to be unacceptable such that planning permission for the proposed development should be refused;
- 2.1.5 Air pollution resulting from construction dust could be mitigated against effectively by use of planning conditions;

- 2.1.6 Any land contamination issues that might arise during development can be adequately controlled through the imposition of a suitable planning condition;
- 2.1.7 The provision of Alternative Natural Green Space (ANGS) within the 'blue line' area, together with the imposition of the necessary planning conditions and legal agreements relating to the nature of and long term management of this area, would be acceptable mitigation against the increased risk to the nearby European wildlife sites; SSSI and SPA site by virtue of recreational disturbance;
- 2.1.8 The proposed use of the land at the site that lies within the Public Safety Zone (PSZ) as public open space in the form of public open space proposed, is acceptable within the PSZ, subject to the imposition of suitable planning conditions;
- 2.1.9 The proposed use of land within the 'blue line' that lies within the PSZ as public open space in the form of Alternative Natural Green Space (ANGS) is acceptable within the PSZ subject to the imposition of suitable planning conditions;
- 2.1.10 The relevant regulations contained within the Habitats Regulation 1994 have been satisfied both on the part of the Council and Natural England;
- 2.1.11 Following submission of further information to RDC by the developer after the date of refusal of the application RDC no longer contends that the appellant has failed to submit information that 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). Accordingly, the Council will not be presenting evidence at the inquiry in defence of reason for refusal number 3 and has, by virtue of its letter dated 3 March 2010, withdrawn reason 3 from the decision in relation to application 09/00528/OUT;.
- 2.1.12 Following submission of further information to RDC by the developer after the date of refusal of the application RDC no longer contends that the proposed 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 in the form of public open space proposed would be unacceptable because it would result in a significant increase in use of the land by members of the public. Accordingly, the Council will not be presenting evidence at the inquiry in defence of reason for refusal number 4 and has, by virtue of its letter dated 3 March 2010, withdrawn reason 4 from the decision in relation to application 09/00528/OUT;.
- 2.1.13 The Council does not object to the appeal proposals on the basis of the impact on brickearth deposits based on issues of economically viability;

2.1.14 There is no objection to the appeal proposals on the grounds of the loss of Best and Most Versatile (BMV) agricultural land;

2.1.15 The Council does not object to the appeal proposals on the basis of any potential impact on the local wildlife site adjoining the site by virtue of increased recreational disturbance;

2.1.16 The Council accepts that the evidence presented with the application documentation is sufficient to confirm that there would be no ecological constraints to the residential development of the appeal site.

On behalf of Rochford District Council

Signed.....

Dated.....

Printed.....

Position.....

On behalf of the appellant

Signed.....

Dated.....

Printed.....

Position.....

**S.78 TOWN AND COUNTRY PLANNING ACT 1990**

**IN THE MATTER OF LAND SOUTH OF COOMBES FARM, STAMBRIDGE  
ROAD, ROCHFORD**

**APPEAL BY COLONNADE LAND LLP**

**PINS REF: APP/B1550/A/09/2118433**

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**OPENING SUBMISSIONS  
ON BEHALF OF THE APPELLANT**

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**PETER VILLAGE QC  
4-5 GRAY'S INN SQUARE  
GRAY'S INN  
LONDON WC1R 5AH**



*These Opening Submissions contain abbreviations. Witnesses are not always given their full title. No discourtesy is intended thereby. Reference to the SoCG is to the revised SoCG (with new para numbering).*

### **Introduction**

1. This is an appeal against the refusal of outline planning permission for 326 residential dwellings, associated accesses and community uses on 13.68 ha of land south of Coombes Farm, Stambridge Road, Rochford. Other than means of access, all matters are reserved for subsequent approval.
2. The planning application was accompanied by an Environmental Statement, which has not been the subject of any adverse comment from RDC. The S/S is statutorily obliged to take account of its contents before reaching a decision. In addition, the application was supported by a Design and Access Statement (“DAS”), a Masterplan and a Parameter Plan<sup>1</sup>.
3. There is a SoCG dated 5/2/10 and an Addendum SoCG dated <sup>13.4.10</sup> today. Amongst other things, the SoCG describes the appeal proposals, the appeal site and surrounding area. By letter dated 3<sup>rd</sup> March 2010 to PINS<sup>2</sup>, RDC confirmed that reasons for refusal 3 and 4 have been withdrawn.
4. The remaining two (policy) reasons for refusal substantially overlap. Given the appeal site is not allocated for development in the Rochford District Replacement Local Plan and given the site’s green belt status, the single issue for determination is whether there are material considerations, including very special circumstances, which justify release of the appeal site for residential development.

### **The case for release of the Appeal Site for residential development**

#### *The Development Plan*

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<sup>1</sup> A revised Masterplan, Parameter Plan and amendments to the DAS have been produced [Anderson Appx 30]

<sup>2</sup> Anderson Appx 3

5. The Development Plan comprises the RSS (the East of England Plan 2008) and the saved policies of the Rochford District Replacement Local Plan (2006) (“the RDRLP”)<sup>3</sup>.

*Emerging Core Strategy*

6. There is in preparation a Core Strategy, which has been submitted to the S/S for examination. Aspects of that submitted CS (“sCS”), in particular the issue of the reliance on the Stambridge Mills site for housing delivery, are the subject of substantial objections from the Environment Agency and others, including the Appellant, which go directly to issues of soundness. There are also substantial objections in relation to a number of the identified locations for residential development. Accordingly, and in accordance with government advice<sup>4</sup>, the sCS cannot be afforded material weight in the determination of this appeal. That part of the first reason for refusal, which purports to attribute weight to the sCS, is therefore misconceived.
7. Further, and in any event, it is clear that it is for the sCS examination Inspector to determine the soundness of the sCS (see Section 20(5)(b) of the Planning and Compulsory Purchase Act 2004, as explained by the Court of Appeal in Blyth Valley BC v Persimmon Homes [2008] EWCA Civ 861, para 40) irrespective of whether an objection has been made. Not only are there objections made by the EA and the Appellant which go directly to the soundness of the sCS, a fundamental objection has been raised by Natural England regarding non-compliance by the sCS with the Habitats Directive<sup>5</sup>. Until all of these objections have been resolved, it is impossible to attribute any material weight to the sCS.
8. As to the other part of R/R 1 - alleged conflict with the RDRLP - that must be seen in the context that the RDRLP was adopted on 16<sup>th</sup> June 2006 and its strategy for the delivery of housing pre-dated the RSS which was published in 2008. Clearly, the latter takes precedence and the weight which can be given to the RDRLP is accordingly substantially diminished. Plainly, if very special circumstances exist

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<sup>3</sup> SoCG para 5.1

<sup>4</sup> The Planning System: General Principles: para 18

<sup>5</sup> 92/43/EEC 21<sup>st</sup> May 1992

which justify development within the Green Belt, such circumstances will be capable of overcoming conflict with the out-of-date RDRLP.

*Five Year Housing Land Supply*

9. Policy H1 of the RSS requires the delivery of a minimum<sup>6</sup> of 4,600 (net) new dwellings in the twenty year period 2001-2021, an average of 230 per annum. In the eight year period 2001 to 2009, a total of 1531 units were delivered<sup>7</sup>. Accordingly, in the twelve year period 2009-2021 there is a minimum residual requirement of 3,069 dwellings, an annual average of a minimum of 256 dwellings<sup>8</sup>.
10. The AMR projected delivery figure for 2009-2010 was 218 dwellings, a figure the correctness of which the Appellant does not accept. However, using that figure, the actual and projected total delivery figure for the nine year period 2001 to 2010 totals 1,749, against an overall requirement in that period of 2,070. There is, therefore an accumulated shortfall over that period of 321 dwellings.
11. **The five year housing land supply requirement would, therefore, on that basis be  $230 \times 5 = 1150 + 321$  (accumulated shortfall) = 1471 dwellings, an annual average delivery rate of 294.2 dwellings per annum.**
12. The AMR identifies the five year supply in the period 2010-2015 of 1,440<sup>9</sup>, which already clearly indicates a shortfall. However, even that figure is hopelessly optimistic when an assessment is carried out against para 54 of PPS 3 and the Revised CLG advice note<sup>10</sup>.
13. RDC does not dispute that there is a specific need to release Green Belt land in Rochford<sup>11</sup>. This is in order to deliver the residential development required pursuant

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<sup>6</sup> Para 5.5 of the RSS states that the figures should be regarded as *minimum targets* because the overall identified requirement “falls significantly short of what is needed based on evidence about housing pressure, affordability and household projections. The proposed review of this RSS, Policy IMP3, will bring forward proposals for higher growth during the period 2011-2021, as well as setting requirements to 2031”.

<sup>7</sup> SoCG para 6.2.4

<sup>8</sup> RDC AMR [Anderson Appx 13, Table 4.3]

<sup>9</sup> AMR Table 4.10

<sup>10</sup> Revised 29<sup>th</sup> March 2010

<sup>11</sup> SoCG para 6.1.4

to policy H1 of the RSS. The sCS clearly identifies a need for the release of Green Belt land to make provision for 2,745 dwellings in the plan period<sup>12</sup>.

14. In particular, and this is a fundamental “category” error in the approach of RDC, it relies for its five years supply upon a total of 775 dwellings coming forward by 2015 on unallocated, greenfield, Green Belt sites, specifically at South Hawkwell (175), East Ashington (100), West Rochford (Hall Road) (450) and West Hockley (50)<sup>13</sup>.
15. Irrespective of the weight which may be attributed to the sCS, these sites may simply not be counted for the purposes of a five year HLS. Reliance on these sites is in flagrant disregard of para 54 of PPS 3 and the Revised CLG Advice Note.
16. Another example of RDC’s misconceived approach to the assessment of the five year HLS can be seen by reference to a site known as Stambridge Mills, an RDRLP allocated employment site. The site is not deliverable within the meaning of para 54 of PPS 3, especially given the outstanding Environment Agency objection to its allocation within the sCS for residential use<sup>14</sup> (it lies within flood risk zone 3, its allocation is not supported by a compliant Strategic Flood Risk Assessment and it has not been subject to sequential testing). The SHLAA identifies this site as capable of accommodating 250 dwellings (flats) in the period 2010-12. Given the nature of the development (flats, for which there is little market appetite), that it is not even the subject of a planning application, and in light of the fundamental issues of flood risk which the EA believes are insuperable, the prospect of it delivering any dwellings within the period to 2015 is negligible.
17. The Appellant therefore considers that the true five year supply should be adjusted by deducting 775 (the unallocated Green Belt sites), 250 (Stambridge Mills) and 75 units (Star Lane Brickworks, identified as making a contribution in 2014-15<sup>15</sup>), a total of 1,100 units. The actual supply is therefore  $1,440 - 1,100 = 340$  units. **This equates to a five year HLS, on this basis, of 1.15 years.**

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<sup>12</sup> sCS para 4.6

<sup>13</sup> AMR Table 4.10 and Fig 4.4 [Anderson Appx 13]; and SHLAA (unpaginated and no para numbers, but 9<sup>th</sup> page in from the front) [Anderson Appx 14]

<sup>14</sup> Anderson Appx 17. Note that the EA consider that the site will not satisfy the requirements of the exceptions test.

<sup>15</sup> According to the landowner, this is proposed to be part of a much larger site which is being assembled, and which will not come forward by 2015.

18. In addition, the Appellant considers that there are other flaws (as explained by Mr Barnes) which indicates that the requirement is greater (1,508, ie 302 dwellings pa)<sup>16</sup>; and the net supply is even less (213, as a finding by Mr Barnes that some 127 units identified in the 5 units and above category will not come forward before 2015). **On this basis, the HLS is 0.7 year.**
19. On either basis, it is plain that there is a very serious shortage of housing land within Rochford and that there is a clear, demonstrable need to deliver more residential development within Rochford. It is recognised by all that this will involve the release of Green Belt land; and that therefore, as a matter of principle, the need for housing in Rochford constitutes very special circumstances capable of overcoming the definitional harm set out in PPG 2.
20. In addition, given that Rochford does not have a five year supply of housing land, this would additionally constitute a very special circumstance of sufficient weight to overcome the definitional harm in PPG 2.
21. It is clear, beyond doubt, that RDC is actually planning to fail to deliver the RSS requirement. As much is plain from its response to the consultation on the East of England RSS roll-forward<sup>17</sup> in which RDC concedes that the housing targets in the RSS are unlikely to be delivered by 2021.

#### *Provision of Affordable Housing*

22. The Appeal Scheme will also make an important contribution to the supply of affordable housing in Rochford, with 35% affordable housing provision<sup>18</sup> (some 114 units) which is precisely 2 units more than were delivered in Rochford for the whole of the period 2001-2008<sup>19</sup>. This existing miserable rate of delivery of affordable housing in Rochford, when set against an identified need of 131 units per annum<sup>20</sup>, underlines the housing delivery crisis which exists in this district. Astonishingly,

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<sup>16</sup> This figure includes a further 37 dwelling shortfall, arising out of an incorrect assessment of identified delivery in the AMR

<sup>17</sup> Anderson Appx 24, response to Question 1

<sup>18</sup> 70% social rented, 30% intermediate

<sup>19</sup> SoCG para 6.2.6

<sup>20</sup> Thames Gateway South Essex Housing Group SHMA [Anderson Appx 25]

RDC's housing strategy led to the delivery of precisely zero AH units in the year 2008/09<sup>21</sup>.

23. There can be no dispute, therefore, that the Appeal Scheme will make an important contribution to the supply of market and affordable housing land in Rochford and it is agreed that the appeal site is capable of accommodating up to 326 residential dwellings<sup>22</sup>.

*Impact on Purposes of Including Land in the Green Belt*

24. Given the acceptance by RDC that there will have to be substantial releases of Green Belt land, any development within the Green Belt could be expected to result in some encroachment into the countryside. But not in this case. The site enjoys a strong visual containment, with defensible boundaries. It represents a natural "rounding-off" of the existing urban area. The point is best appreciated by a site inspection, but is amply illustrated by considering the photographs at Ms Schoenaich's Appxs 6 & 13, which demonstrate how existing development provides a strong visual containment of the site.
25. It is agreed that development of the site will not lead to the merging of neighbouring towns into one another<sup>23</sup>. Given the rounding-off nature of the development and the defensible boundaries created, it would not constitute unrestricted urban sprawl.
26. In addition, in terms of the effect on the visual amenity of the area, the Appeal Site is dominated by strong landscape detractors including one 33kv power line and one 132kv power line, Stambridge Mills and the industrial areas to the south (the stacked cars) at Purdey's industrial estate.
27. The Appeal Scheme would result in change, but not necessarily for the worse. It is agreed<sup>24</sup> that in principle, the proposed scale of development of 1-3 storeys (or a maximum height of 12m) is appropriate for the site and in keeping with the surrounding land context. One pylon will be removed and the 33kv overhead power line will be diverted underground. A comprehensive scheme of landscaping within

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<sup>21</sup> SoCG para 6.2.6

<sup>22</sup> Ibid. 6.1.3

<sup>23</sup> Ibid. 6.1.6

<sup>24</sup> Ibid. 6.7.19

and on the perimeter of the site will be implemented, and this includes a landscaping strategy for the provision of ANGS within land under the control of the Appellant but outside the red line boundary<sup>25</sup>.

28. In the circumstances of a clear need for more housing, the Appeal Site is entirely appropriate for release from the Green Belt having regard to the five purposes of including land in the Green Belt.
29. Finally, I should just deal with the entirely misconceived submission made by Barton Willmore on behalf of the developers of the West Rochford (Hall Road) site that the granting of planning permission now would be premature. The advice relied upon by Barton Willmore pre-dated the advice in PPS 3 para 72, namely that, in the context of the determination of a planning application (whether or not there is a five year HLS), “LPAs should not refuse applications solely on the grounds of prematurity”, and therefore that part of the document has been superseded. It is telling that Barton Willmore has overlooked that crucial advice in PPS 3. In any event, all of the large scale green field residential applications in Rochford are in respect of Green Belt sites. The alleged harm which would flow from granting planning permission for the Appeal Scheme would not be avoided by the West Rochford site (whatever that application eventually comprises) given that it *too* is a Green Belt site. Further, given that no application has (until 12<sup>th</sup> April 2010) been made, the suggestion that there has been a failure to compare the two applications is absurd.
30. However, for the reasons given by Mr Anderson in his evidence<sup>26</sup>, development of the Appeal Site should be preferred to the development of land north of Hall Road, West Rochford, land to the south of Ashingdon, and the land to the east of Ashingdon. The Appellant certainly invites comparisons of the Appeal Site with those other locations if such is considered necessary before releasing the Appeal Site for residential development. It is inconceivable that the S/S could express a preference for West Rochford given its markedly different landscape character and lack of any long term

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<sup>25</sup> Schoenaich Appx 5

<sup>26</sup> Para 4.50

defensible boundary. Development in that location would, as Mr Anderson observes, put Rochford at risk of merging with Rayleigh, Hawkwell and Stroud Green.<sup>27</sup>

*Other matters raised in R/R 2*

31. The alleged loss of opportunities for outdoor recreation close to an urban area is manifestly misconceived and a travesty of the true position. The Appeal Site is currently private and there are no public rights of access to it, save for the public right of way from Rocheway to Mill Lane and which will be retained, and further provision will be made for new pedestrian footpath links within the Appeal Site<sup>28</sup>. The Appeal Scheme would make provision of 4.16 ha of public open space within the Appeal Site (including a village green), as well as a further 5.72 ha of ANGS including the provision of a 2km circular walk within the wider land-holding. This will represent a considerable enhancement to the provision of outdoor recreation within the area. R/R 2 was drafted at a time when RDC maintained an objection to the utility of the proposed ANGS on the grounds of conflict with the Public Safety Zone. As already stated, RDC no longer maintain that objection.

*Development Control Issues*

*Sustainable Location of Appeal Site*

32. The Appeal Site is in a sustainable location being in “close proximity” to retail facilities in the town centre, community facilities, education, leisure and local employment centres<sup>29</sup>. The Appeal Site lies approximately 900m east of Rochford railway station, which has services running every 8 minutes during peak periods. The nearest bus stops are located to the north of the application site on Stambridge Road.
33. It is significant that one of the locations identified and considered suitable by RDC for future housing provision in the sCS, Stambridge Mills, is located further distant from the town centre and railway station than the Appeal Site.

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<sup>27</sup> Anderson p/e para 4.50

<sup>28</sup> Schoenaich Appx 11

<sup>29</sup> SoCG para 3.10



34. So far as highway matters are concerned, it is agreed, first, that the proposed site access can be achieved in accordance with standards<sup>30</sup>, and second, the existing road and junction network can satisfactorily accommodate the increase in traffic which is predicted<sup>31</sup>. Works are proposed to increase the capacity of the junction at Southend Road and this will be dealt with by a Grampian style condition<sup>32</sup>. Accordingly, there is no objection to the development from ECC Highways, subject to the imposition of conditions and financial contributions<sup>33</sup>. Importantly, it is agreed that the fact that traffic volume may increase within the centre of Rochford is not considered of sufficient concern to warrant refusal of the development<sup>34</sup>. This is significant because in RDC's Core Strategy Preferred Options document, the Appeal Site's East Rochford location was rejected because it was said that traffic flows from new development in this location would be "predominately be through the centre of the town centre resulting in significant congestion"<sup>35</sup>. Clearly, that fundamental premise for rejecting this location was wrong.

35. In terms of ecological impact, Natural England is satisfied that proposed mitigation measures to provide ANGS would be sufficient to mitigate any potential impact on the Crouch and Roach Special Protection Area or the Crouch and Roach Estuaries Site of Special Scientific Interest<sup>36</sup>. As I have already explained, RDC no longer maintain any objection to the ANGS, some of which falls within the Public Safety Zone of Southend Airport, and thus R/R 3 and 4 have been withdrawn. I should also add that Southend Airport has never objected to the Appeal Scheme and it is agreed that the imposition of a planning condition would ensure that landscaping on the site would not increase the risk of birdstrike.

36. Although the application was made in outline, the DAS produced by the award-winning John Thompson & Partners demonstrates the very high standard of design to which the Appeal Scheme aspires.

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<sup>30</sup> Ibid. 6.3.1

<sup>31</sup> Ibid, 6.3.5

<sup>32</sup> Ibid, 6.3.4

<sup>33</sup> Ibid, 6.3.3

<sup>34</sup> Ibid. 6.3.6

<sup>35</sup> Core Strategy Preferred Options, page 30 [Hollingsworth Appx 3]

<sup>36</sup> SoCG para 6.4.2

37. There are no other development control reasons for refusing planning permission.

*Conclusion*

38. We shall in due course invite you to report to the S/S that there is a demonstrable and urgent need to deliver more housing in Rochford and that given the acknowledged need to release Green Belt land, very special circumstances exist for the release of the Appeal Site; further, there are no other development control reasons for refusing planning permission; and accordingly that planning permission be granted.

**PETER VILLAGE QC**

**13<sup>th</sup> April 2010**

## **Statement of Common Ground**

### **Coombes Farm**

#### **1 Introduction**

- 1.1 This Statement of Common Ground has been prepared by Icenl Projects Ltd (Icenl) and Rochford District Council (RDC)
- 1.2 It describes those matters of common ground between the Appellant and RDC relating to the appeal against the decision of RDC to refuse the outline planning application for the residential development of up to 326 dwellings with all matters except access to the site, reserved for subsequent approval.

#### **2 Appeal Proposals**

- 2.1 The appeal proposal seeks approval for the development of the site to provide up to 326 residential dwellings, associated accesses and community uses.
- 2.2 The Appellant contends that the proposals would deliver a development density of a minimum of 30 dwellings per hectare on the developable area of the site (10.84ha), which excludes structural landscaping, service runs, points of access and the area identified for potential future community use.
- 2.3 The application was submitted in outline with all matters reserved, apart from means of access to the site.
- 2.4 0.11 hectares of the site is to be reserved for community use and there is open space provision of up to 4.16ha comprising 2.68 hectares of structural landscaping and up to 1.48 hectares of local public open space within the red line area.
- 2.5 Access to the site is proposed from two locations; to the north east from Stambridge Road and to the south west of the site from Rocheway, requiring the provision of two new accesses.
- 2.6 There is an existing public right of way footpath that runs east-west through the centre of the site. Although this public right of way footpath is not identified on the Illustrative Masterplan as being retained in its current position or form the proposed development would retain public access through the site.

- 2.7 The proposed residential development focuses on the provision of family dwellings, with a small proportion of flatted accommodation proposed to provide a balanced housing provision. The mix of dwelling types to be provided on site is the subject of determination at the reserved matters stage, but the Illustrative Masterplan that accompanies the application confirms that the site can accommodate a mix of dwellings of the following order:
- 29% 2-bedroom dwellings
  - 56% 3-bedroom dwellings
  - 15% 4-bedroom dwellings
- 2.8 The proposed development has been designed to provide for up to 35% affordable housing which exceeds the provision targets set out in Policy HP8 of the 2006 adopted local plan.
- 2.9 The application includes an Illustrative Masterplan layout and drawings showing parameters for access and routes through the site, site layout, building heights and level changes.

### **3 Description of the Site and Surrounding Area**

- 3.1 The site (red line boundary) covers an area of 13.68 hectares, 10.84 hectares of which comprises the residential developable area and with 2.68 hectares of structural landscaping. The site is set within a wider site (blue line boundary) that is controlled by the Appellant which covers an area of 19.4 hectares.
- 3.2 The existing site is agricultural land which is currently in active agricultural use. The site is privately owned such that general public access is not currently possible over the entire site, save for the public right of way running through the site.
- 3.3 The wider site is bounded by Stambridge Road and existing residential properties fronting Stambridge Road to the north, Stambridge Mills and Mill Lane to the east and the River Roach to the south. To the west, the site boundary abuts the existing urban area and includes; allotment gardens that are accessed off Stambridge Road and Rocheway, the residential properties to the eastern end of Rocheway, the Adult Education Centre, which lies to the south of Rocheway, and the playing fields to its rear.
- 3.4 The topography of the site is characterised by a gentle rise from the south-east to the north-west, from approximately 5.0m (AOD) to approximately 8.0m (AOD).

- 3.5 There are a number of mature trees located to the western boundary of the site, between the site and the Adult Education Centre and the playing fields to its rear. There are no trees located within the main area of the site. Where existing trees are located within close proximity to the boundary the majority of the healthy tree specimens will be retained.
- 3.6 The site is crossed by overhead power lines, which will be diverted underground by the development proposals.
- 3.7 At its closest point, the site is located approximately 500 metres east of Rochford town centre where local amenities and facilities can be found and approximately 900 metres east of the Rochford Railway Station.
- 3.8 Rochford Railway Station is on the London Liverpool Street to Southend Victoria line with services running approximately every 8 minutes during peak periods and including stops at Hockley, Rayleigh, Wickford, Billericay, Shenfield and London Stratford. The service between Rochford and London Liverpool Street takes approximately 50 minutes.
- 3.9 The nearest bus stops to the site are located to the north of the site on Stambridge Road, with the number 60 service between Southend-on-Sea to Paglesham running five services a day and the number 515 school service.
- 3.10 Rochford contains a number of community facilities in close proximity to the site, including the retail facilities of the town centre, education, leisure and local employment centres. The centre acts predominantly as a top-up retail location, with the majority of retail spending directed towards out of centre retail facilities and Southend.
- 3.11 In addition to the Adult Education Centre, which borders the site, there are a number of educational facilities in the local area including Waterman Primary and Nursery and Stambridge Primary. Also accessible to the site is the Rochford Medical Practice and Rochford Library, both of which are situated near the town centre, between the site and the Railway Station. Whilst the Rochford Medical Practice might be in fairly close proximity to the site, the Primary Care Trust have expressed a view that current health provisions in the area are currently full to capacity and have therefore requested that the possibility of including within the Section 106 offer, the provision of some land.
- 3.12 There are a number of recreation grounds and parks located close to the site including the sports pitches located to the south of the Adult Education Centre.

3.13 There are two principal employment areas in proximity to the site; Purdey's Industrial Estate, situated to the south of the site over the River Roach, and London Southend Airport, which is situated to the south west of the site. In addition to these, Rochford town centre also provides local employment for residents.

#### **4 Relevant Planning History**

4.1 There is no relevant planning history.

#### **5 Development Plan Policies**

5.1 The East of England Plan (2008) and the Rochford District Replacement Local Plan (2006) form the statutory development plan for the site.

5.2 The following policies are of relevance to the appeal proposals:

*i. East of England Plan (2008)*

- Policy H1.
- Policy ENV 3.

*ii. Rochford District Replacement Local Plan (2006) (Saved Policies)*

5.3 Other saved policies of direct relevance to the application proposals include:

- CS1: Moving Towards Sustainable Development;
- CS2: Protecting and Enhancing the Built and Natural Environment;
- CS3: Reducing the Need to Travel;
- CS4: Accessible and High Quality Housing and Services;
- CS6: Promoting Good Design and Design Statements;
- CS7: Conserving and Enhancing Heritage;
- CS8: Retaining Character of Place;
- CS9: Emphasising the Value of Landscaping;
- CS10: Energy and Water Consumption;
- HP 1: Overall Housing Provision

- HP 2: Housing Site Allocations
- HP 5: Infrastructure
- HP21: Planning Obligations
- TP10: Aviation and Noise;
- LT5: New Public Open Space.
- NR 7: Local Nature Reserves and wildlife sites
- Although Policy HP8: Affordable Housing and Policy TP8: Car Parking Standards are saved policies the requirements of these policies have been effectively superseded.

iii. Rochford Core Strategy Submission Draft, September 2009

- 5.4 The Rochford Core Strategy Submission Draft document was published for public consultation between September and November 2009. The Council submitted the Core Strategy Submission document to the Secretary of State on the 14<sup>th</sup> January 2010 for critical examination by the Planning Inspectorate. The soundness of this document has therefore not yet been tested.
- 5.5 Draft policies and guidance set out within the draft Core Strategy will be considered as part of evidence.

iv National Planning Guidance and Other Documents of Relevance

- 5.6 In addition to the statutory development plan, the following national planning guidance and other strategic planning guidance and advice documents are relevant to the appeal proposals:
- Planning Policy Statement 1 – Delivering Sustainable Development;
  - Planning Policy Guidance 2 – Green Belts;
  - Planning Policy Statement 3 – Housing;
  - Planning Policy Statement 7 – Sustainable Development in Rural Areas;
  - Planning Policy Statement 9 – Biodiversity and Geological Conservation (August 2005);
  - Planning Policy Guidance 13 – Transport;
  - Planning Policy Guidance 16: Archaeology and Planning

- Planning Policy Statement 17 – Planning for open space, sport and recreation;
- Planning Policy Statement 23: Planning and Pollution Control
- Planning Policy Guidance Note 24: Planning and Noise (1994)
- Planning Policy Statement 25 – Development and Flood Risk;
- National Housing and Planning Advice Unit guidance and advice documents;
- Rochford Annual Monitoring Report 2008/9;
- Rochford SHLAA, November 2009;
- Department for Transport Circular 1/2002; Control of development in airport public safety zones;
- Aerodrome Safeguarding Advice Notes 1,2 and 4.
- Suitable Alternative Natural Green Space (SANGS) guidelines. Version dated 12.06.08 supplied by Natural England.
- Parking Standards; Design and Good Practice. September 2009. Essex County Council.
- Third Party Risks Near Airports and Public Safety Zone Policy: A Report to the Department by Consultants, Department of the Environment, Transport and the Regions, October 1997
- Public Safety Zones: A Consultation Document, Department of the Environment, Transport and the Regions, 1997
- Risk Criteria for land-use planning in the vicinity of major industrial hazards, UK Health and Safety Executive, HMSO, 1989
- Reducing risks, protecting people, UK Health and Safety Executive, HMSO, 2001

## **6 Matters Not In Dispute**

6.1 The following matters are not in dispute:

### *1. General Matters*

- The site is located within the Green Belt.

Draft SOCG prepared by Icen Projects and Rochford District Council 03.02.10

Appeal Ref: APP/B1550/A/09/2118433/NWF



- The site lies in Flood Zone 1.
- The appeal site is capable of accommodating up to 326 residential dwellings, associated accesses and community uses as proposed in the appeal scheme.
- The Council do not dispute that there is a specific need to release Green Belt land.
- The Green Belt boundary restricts development opportunities within the existing settlement area.
- The proposed development of Coombes Farm would not put Rochford at risk of merging with another town. Beyond the application boundary, the wider landholding controlled by the Appellant is also bounded by Stambridge Mills, the River Roach and to the south of the River Roach by Purdeys Industrial Estate.

*ii. Housing Matters*

- Under the provisions of the Policy H1 of the East of England Plan, Rochford has a requirement to deliver a minimum of 4,600 (net) new dwellings over the period 2001-2021.
- Within the monitoring year 2006-2007, 449 residential units were delivered.
- Within the monitoring year 2007-2008, 169 residential units were delivered.
- Within the monitoring year 2008-2009, 102 residential units were delivered.
- The total number of housing units delivered between April 2001 – March 2009 amounts to 1531 units at an average annual delivery rate of approximately 191 units per annum.
- The Five Year Housing land supply statistics set out within the AMR for 2008/9 includes the provision of 775 (period 2010/11 to 2014/15) units in broad growth locations set out in the emerging Core Strategy the soundness of which are yet to be tested at EIP.
- Rochford District Council has not delivered any affordable housing in the last year and for the period 2001-2007 112 units were delivered.

*iii. Transport Matters*

- The proposed site access can be achieved in accordance with standards.
- All traffic generation and distribution is agreed for all modes of travel.
- ECC Highways have no objection to the proposals subject to the imposition of conditions and financial contributions.

Draft SOCG prepared by Icenl Projects and Rochford District Council 03.02.10

Appeal Ref: APP/B1550/A/09/2118433/NWF

- The proposed increase in traffic as a result of the development would not cause any roads or junctions to exceed capacity (save for the junction at Southend Road).
- Works to the Southend Road junction can be secured by means of conditions and/or legal agreement as appropriate.
- The existing road and junction network can satisfactorily accommodate the increase in traffic which is predicted from the proposed development.
- The fact that traffic volume may increase within the centre of Rochford (including the Conservation Area) is not considered of sufficient concern to warrant refusal of the development.
- Highway safety concerns can be dealt with by means of conditions and/or legal agreement as appropriate.

#### iv Ecology

- Natural England raised an objection (23 October 2009) to the proposed development following initial consultation<sup>4</sup> on the proposal because they considered that insufficient information had been submitted with the application to enable them to be able to advise the Local Planning Authority that 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 during the operational phase of the development.
- Natural England are now satisfied (letter dated 12 November 2009) that subsequently proposed mitigation measures to provide Suitable Alternative Natural Green Space (SANGS) would be sufficient to mitigate any potential impact on the SPA/SSSI/Local Wildlife site
- Wildlife present within the application site would not present any constraints to the proposed development, providing any necessary planning conditions were imposed.
- Badgers and Great Crested Newts are considered likely to be absent from the site and do not, therefore, present any constraints to development.
- Natural England has confirmed that the bat, bird and reptile mitigation outlined in the report produced by Ecology Solutions is adequate and can be secured by means of conditions.

#### v. SPA Open Space Mitigation

- In principle the provision of land within and to the south/south east of the site would be sufficient to offset any concerns regarding potential impact on the SPA/SSSI and Local Wildlife Site.

Draft SOCG prepared by Icenl Projects and Rochford District Council 03.02.10

Appeal Ref: APP/B1550/A/09/2118433/NWF

- In principle the area of open space outside of the application red line boundary and which the Appellant has advanced as 'mitigation' against the projected impact on the SPA/SSSI can be secured by means of a Grampian condition together with a legal agreement to ensure on-going maintenance.

vi. Public Safety Zone

- Open space is capable of being a permissible use in Public Safety Zones (PSZ's) in particular circumstances. Children's play grounds, playing fields and sports grounds are some examples of open space uses that would not be permissible within PSZ's.
- New Public Open Space could be considered to be an acceptable use within a PSZ providing there was a reasonable expectation that the use would be low intensity.
- Golf courses and allotments are open space uses that are considered to be acceptable uses within PSZ's.

vii. Other Matters

- Detailed design is a reserved matter.
- The proposals provide an appropriate level of open space.
- Rochford Council has raised no fundamental objection to the proposals on the grounds of air quality impact subject to securing mitigation and monitoring by means of conditions.
- London Southend Airport has confirmed that it has no objections to the proposals subject to the imposition of conditions regarding bird strike, landscape design and noise insulation of properties.
- The issue of the appropriateness of the proposed development within a Public Safety Zone is a matter for the Local Planning Authority to consider and is not a matter on which London Southend Airport has a duty to comment.
- RDC do not consider that a potential (and currently unquantifiable) deficiency in indoor and outdoor sports facilities warrants refusal of the proposals.
- RDC do not consider that the possibility that proposed redevelopment could sterilise brick earth deposits could form the basis of a refusal of planning permission.
- There is no objection from ECC (Education) provided that contributions are made to Secondary School education.

- On the advice of the Environment Agency the proposed development is in accordance with PPS25 and is deemed acceptable in relation to Flood risk and drainage subject to the imposition of planning conditions.
- There is no objection from Anglian Water.
- The Primary Care Trust does not object to the proposals subject to the provision of land for their use.
- The indicative mix (percentages of number of bedrooms) of housing is accepted by RDC (Housing) and the agreement to provide 35% affordable housing is supported.
- RDC consider that the exact proposed dwelling type and size (i.e. flats/houses and number of bedrooms) and tenure mix (shared ownership or social rented) of affordable housing can remain unspecified at this stage and until the final agreement of the proposed Section 106 agreement relating to affordable housing provision, to enable future flexibility and ensure that the mix is resilient to changing local need.
- There are no objections in relation to archaeology subject to the imposition of a condition.
- There is no in principle objection to the diversion of the existing public footpath.
- A public right of way will be maintained through the site.
- There are no in principle objections in relation to trees and landscaping. It is agreed that detailed proposals, measures for protection and construction methodology will be required.
- Issues of potential land contamination can be adequately addressed through the imposition of a condition to secure further intrusive investigation works.
- In principle, the proposed scale of development of 1-3 storeys or a max height of 12 metres, in accordance with the proposed parameters is considered to be acceptable and in keeping with the surrounding context, subject to the proportion of 1-3 storeys proposed in relation to the overall quality of urban design achieved on the site and with regard to the surrounding green belt and residential context.
- There are no overriding considerations in relation to utilities which would prevent the granting of consent.

## **7 Matters In Dispute**

7.1 Principally and in conjunction with the reasons for refusal given by RDC the following matters are in dispute:

- The Appellant disputes that RDC can demonstrate an adequate 5 year housing land supply;
- The Appellant disputes that there are no very special circumstances to overcome the harm of developing in the Green Belt.
- RDC disputes that land at Coombes Farm represents a suitable site to meet growth requirements in Rochford.
- RDC disputes that there are material planning considerations that indicate that this proposal should be determined favourably and not in accordance with the adopted development plan.
- The Appellant disputes that 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.
- The Appellant disputes that they failed to submit information that 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 Appellant disputes that 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 would be 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.
- The contribution that the proposed development scheme will make towards the achievement of strategic infrastructure provision as identified in the emerging Core Strategy Submission document and necessary as a result of the district's housing supply requirements.