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## Appeal Decision

Inquiry opened on 31 January 2017

Site visit made on 7 February 2017

**by David Prentis BA BPI MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 March 2017**

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### **Appeal Ref: APP/Z1510/W/16/3146968**

### **Land off Western Road, Silver End, Essex CM8 3SN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Braintree District Council.
  - The application Ref 15/00280/OUT is dated 27 February 2016.
  - The development proposed is up to 350 residential dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation.
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for up to 350 residential dwellings (including up to 40% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation at Land off Western Road, Silver End, Essex CM8 3SN in accordance with the terms of the application, Ref 15/00280/OUT, dated 27 February 2016, subject to the conditions set out in the attached schedule.

### **Preliminary matters**

2. The Inquiry sat for 5 days from 31 January to 3 February and on 7 February 2017.
3. The application was in outline with all matters reserved for subsequent approval. It was supported by an illustrative development framework plan. An alternative illustrative development framework plan was submitted in support of the appeal together with illustrative access details showing one way in which the site could be provided with two vehicular access points to Western Road. I have taken this illustrative material into account in reaching my decision.
4. The Council resolved that, had it been in a position to determine the application, it would have been refused for 7 reasons<sup>1</sup> which may be summarised as follows:
  - 1) the site lies outside the development boundary of Silver End and would amount to an unjustified intrusion into the countryside, harmful to the rural setting of the village

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<sup>1</sup> The reasons are set out in full in the Council's Statement of Case

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- 2) the Council does not accept that the proposal would amount to sustainable development, as defined in the National Planning Policy Framework (the Framework), having regard to:
- the excessive amount and unsuitable location of the development
  - the lack of availability and capacity of local services
  - adverse landscape impacts
  - harm to the setting of the Grade II listed Bowers Hall, together with its associated curtilage buildings, and to the setting of the Silver End Conservation Area
  - the failure to demonstrate that safe and suitable access could be provided
  - the absence of proposals to enhance the sustainability of the proposal, including in relation to early years/childcare services, funding for school transport and the extension of bus services at the start and end of the day to provide improved access to rail services at Braintree and Witham
  - the failure to demonstrate that mineral deposits at the site cannot be worked economically
- 3) the proposal would enclose Bowers Hall, to the detriment of the setting of the farmstead. It would also be harmful to the character and appearance of the Silver End Conservation Area in that the key eastern approach would assume an inappropriately urban appearance
- 4) the proposals could sterilise a potentially economically workable mineral deposit
- 5) the application does not demonstrate that a safe and suitable access to the public highway could be provided
- 6) the application does not demonstrate that the traffic generated would not adversely affect the functioning of the wider highway network, including junctions at Galleys Corner (A120) and the Rivenhall End junction with the A12
- 7) the absence of planning obligations relating to affordable housing, early years/childcare facilities, primary education, off-site highways works, health care, bus service enhancements and management of open space.

In this decision I refer to these as the putative reasons for refusal (PRR).

5. Statements of Common Ground (SoCG) were agreed between the Council and the appellant in relation to heritage, landscape and planning matters. There were also SoCG agreed between the County Council and the appellant in relation to highways and transport, minerals and education. The Council did not take a different view on any of the matters agreed by the County Council.
6. A Unilateral Undertaking (UU) was submitted at the Inquiry. This was not signed before the end of the Inquiry because of the need for some changes which did not become apparent until the final day. I therefore allowed a period following the Inquiry for a signed version to be submitted. The UU would make

provision for financial contributions to off-site open space, health care, early years/childcare facilities, primary education and school transport for secondary school pupils. The UU also contains provisions relating to arrangements for managing and maintaining green infrastructure, safeguarding land for an early years/childcare facility, an offer to transfer that land to the County Council and the arrangements for implementing a travel plan.

7. The Council submitted written evidence of compliance with Regulations 122 and 123 of the Community Infrastructure Levy Regulations (where relevant) and with the tests for planning obligations set out in the Framework. Further information was provided at the Inquiry in answer to my questions. The need for these obligations was not disputed by any party at the Inquiry and I see no reason to take a different view. I consider that the obligations are consistent with the Regulations and the Framework and have taken them into account in my decision accordingly. I return to some of the individual obligations below.
8. The Council did not pursue PRR1 for reasons explained below. Having considered the illustrative access plan and the highways and transport SoCG, the Council did not pursue PRR5 or PRR6. PRR2 was not pursued insofar as it relates to the capacity of local services, safe and suitable access, early years/childcare services and funding for school transport.
9. The application was accompanied by an Environmental Statement (ES). At the Inquiry the Council confirmed that it was satisfied with the ES. No other party has queried the adequacy of the environmental information and I have taken the ES into account in reaching my decision.
10. In closing, the Council made reference to a High Court judgment in the case of *Watermead*<sup>2</sup>. A Court of Appeal decision in respect of this matter was expected imminently. I therefore allowed a period for any final submissions in the light of that decision. In the event, the Court of Appeal decision was not received in the timescale anticipated. I therefore invited the appellant to make final submissions on the High Court decision, which I have taken into account.

### **Main issues**

11. The main issues are:

- the extent to which the services and facilities needed to serve the proposed development would be available, would have sufficient capacity and would be accessible by sustainable modes of transport
- the effect of the proposal on the character and appearance of the area
- the effect of the proposal on the historic environment
- the effect of the proposal on mineral resources

### **Reasons**

*Housing land supply and policy context*

12. The development plan includes saved policies of the Braintree District Local Plan Review 2005 (BDLP), the Braintree District Council Core Strategy 2011 (CS) and the Essex Minerals Local Plan 2014 (EMLP).

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<sup>2</sup> *Watermead Parish Council v Aylesbury Vale DC* [2016] EWHC 624 (Admin)

13. The Council and the appellant agreed that the Council is not able to demonstrate a 5 year supply of housing sites, as required by the Framework. There was not agreement over the precise amount of supply, with the Council promoting a figure of 3.8 years and the appellant suggesting that the figure is 3.1 years<sup>3</sup>. However, the Council and the appellant agreed that the remaining difference between them was not likely to have a material bearing on the outcome of this appeal. Consequently, neither side called detailed evidence on this matter. For the purposes of this decision, I am satisfied that the range is sufficiently narrow that it is not necessary for me to comment further on the difference between the parties. I have approached my decision on the basis of a range of 3.1 to 3.8 years.
14. In accordance with paragraph 47 of the Framework, it follows that relevant policies for the supply of housing are not to be considered up-to-date. PRR1 refers to CS policy CS5 and BDLP Policy RLP 2. These policies seek to protect the countryside by restricting development outside settlement boundaries. The Council accepts that these are relevant policies for the supply of housing and that is the reason why it did not pursue PRR1. In my view the Council was right to take this approach. Having regard to the housing land supply position, only limited weight should be attached to the conflict with these policies.
15. The Council has started work on the preparation of a new local plan (eLP). Consultation on the draft eLP took place in 2016. The Council and the appellant agree that it should be given limited weight at this early stage of preparation, a view which I share.

#### ***Availability and accessibility of services and facilities***

16. The CS defines Silver End as a Key Service Village – one of 6 such settlements in the District. They are described as:  
  
*...large villages with a good level of services, including primary schools, primary health care facilities, convenience shopping facilities, local employment, frequent public transport to higher order settlements and easy access by public transport to secondary schools.*
17. The Council argued that the characteristics of Silver End have changed since the CS was prepared and that this designation will not be carried forward into the eLP. However, the eLP is at an early stage and little weight can be attached to what it may ultimately say about Silver End. To my mind the CS provides the starting point although it is also necessary to go on to consider how things may have changed since it was adopted in 2011. Moreover, I attach little weight to CS Policy CS1 which sets out levels of housing provision for the key settlements over the period 2009 to 2026. That is a relevant policy for the supply of housing which is not to be regarded as up-to-date.
18. One factor which has changed is the level of local employment. A local Councillor gave evidence that employment opportunities within Silver End are now more limited following the closure of some locally important businesses. On the other hand, Silver End is relatively close to employment opportunities in both Witham and Braintree, which are two of the three main towns in the District.

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<sup>3</sup> The disagreement related to whether the Liverpool or the Sedgefield approach should be used in the calculation

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### *Education facilities*

19. Many of the written representations draw attention to pressures on primary education facilities. The appeal scheme would generate a requirement for about 105 primary school places. Silver End Primary School is located about 500m from the site entrance on Western Road. The school has recently been expanded to accommodate planned growth in the area and is unlikely to be able to accommodate children from the appeal site. The County Council has commented that further expansion is unlikely to be possible unless additional land can be made available. However, the County Council states that there is a reasonable degree of confidence that Cressing Primary School, which is about 2.5 miles away, could be expanded to provide sufficient primary school places to serve the appeal proposal. The UU would secure a proportionate contribution to the provision of additional school places. The UU allows for expansion either at Cressing or at Silver End, although the evidence suggests that expansion at Cressing is more likely to be achievable.
20. In the light of the UU, neither the Council nor the County Council maintained an objection in relation to primary education. Even so, one consequence of the appeal proposal would be that some primary school children from Silver End would need to travel to Cressing. As that is a journey which is unlikely to be walkable I regard this as a disadvantage of the appeal scheme.
21. There are secondary schools with capacity to serve the appeal scheme in Witham and Braintree. School transport is currently provided from Silver End and the County Council has confirmed that pupils from the appeal site would be eligible for such transport<sup>4</sup>. The UU provides for a contribution to the additional costs of school transport which would arise as a result of the location of the appeal site, which is a little over 3 miles from the nearest secondary school. I therefore consider that this is a location which has easy access to secondary schools by public transport.
22. The County Council has identified a shortage of early years/childcare facilities in Silver End. It is proposed that a new facility would be provided within the appeal site. The County Council assesses that the appeal scheme would generate a need for around 31 places and that the smallest viable unit would be a 56 place facility. The UU makes provision for a suitable area of land to be safeguarded for this purpose and offered to the County Council. Further provisions would address practical issues such as access and utilities. There would also be a proportionate financial contribution to the cost of constructing the new facility.
23. The new facility would require planning permission in its own right and further funding would be needed. However, having regard to the scale of the appeal site I see no reason why the design and layout of the proposed housing scheme could not satisfactorily accommodate the suggested facility. The Council and the County Council are satisfied that the UU addresses the need generated by the appeal scheme and I share that view. Being within the site, the facility would be highly accessible to the new residents and I have no doubt that it would promote social wellbeing.

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<sup>4</sup> Document LPA4, paragraph 7.8

### *Health care*

24. There is a GP practice located centrally within Silver End, which is combined with the practice of the St Lawrence Surgery, Braintree. Several of the written representations have expressed concerns about the pressures on GP services. Responding to the application, NHS England sought a proportionate financial contribution to the cost of providing additional health facilities. The UU would secure an appropriate contribution to provision either at Silver End or at the St Lawrence Surgery.

### *Access to other facilities within Silver End*

25. Local shopping facilities are available at the Broadway, where there is a convenience store and post office, newsagent/off-licence, pharmacy and a hot food takeaway. Other community facilities near the Broadway include a library, a sports ground and the memorial gardens. At the Inquiry the Council agreed that Silver End has facilities which are sufficient to meet the day to day needs of most people. That seems to me to be a fair assessment. There is no reason to think that the capacity of any of these services would be insufficient to cope with additional use by new residents of the appeal scheme.
26. The highways and transport SoCG notes that the walk time from the site access to the shops would be about 12 to 13 minutes. This is characterised as a '*convenient walk or cycle ride*'. Of course it is also necessary to factor in additional walk time within the site, which would vary according to the location of any given property. I note that Manual for Streets (MfS) states that walkable neighbourhoods are characterised by having a range of facilities within a 10 minute walk. However, MfS makes clear that this is not an upper limit. Moreover, it is relevant to consider the nature of the walking route. In this case I saw that this would be mainly flat, passing through pleasant residential areas with adequate footways and lighting. I see no reason to disagree with the SoCG insofar as it relates to the site access and the southern part of the site.
27. Having said that, the SoCG does not specifically address the northern part of the site which is at some distance from Western Road. The alternative development framework shows a potential pedestrian link from the western side of the site to Daniel Way. The link exists presently on an informal basis but the appellant informed the Inquiry that there is an area of privately owned land between the site boundary and the public highway. Discussions with the owner of that land are in progress. The Council argued that, if planning permission were to be granted, it should be subject to a Grampian condition requiring the provision of a pedestrian/cycle link at this point. The appellant agreed that such a condition could properly be imposed if it were found to be necessary, whilst maintaining that it would not be necessary because (in the appellant's view) the site would be sufficiently accessible without it.
28. If a link to Daniel Way were provided, houses in the northern part of the site would be likely to have walk times to the centre of Silver End which would be comparable to those from houses in the southern part of the site. Without such a link the walk times would be significantly extended. I consider that this would be a real disincentive to making trips within the village on foot. In the terms of the Framework, the scheme would fail to take up the opportunities for

sustainable transport modes<sup>5</sup>. In my view a Grampian condition is necessary to make the development acceptable in planning terms.

*Access to services and facilities in other settlements*

29. Silver End lies between Braintree and Witham, two of the three main towns in the District. These higher order centres provide a range of opportunities for employment, shopping and leisure activities. Witham is on the railway line from Ipswich to London, which also provides rail services to Chelmsford and Colchester. There is a bus service running between Braintree and Witham which stops in Western Road, close to the proposed access. This offers a reasonably frequent service, Monday to Saturday. The buses run until the early evening, with the last bus from Witham leaving at around 19.30hrs. These services would provide a reasonable level of accessibility for those travelling to the nearby towns for work, shopping and leisure activities at these times. The proposals include measures to relocate and upgrade the bus stops which could be secured by a condition.
30. PRR2 and PRR7 refer to the need to extend bus services into the evening period. The Council's main concern under this heading was that people commuting to London by rail from Witham may choose to drive to the station because of the lack of evening bus services. That may well be the case for a proportion of rail commuters, depending on their working hours and place of work. However, there was no evidence before the Inquiry to show that this would apply to such a large number of people that it would be an important factor in this case. Nevertheless, the lack of evening and Sunday bus services would also limit public transport accessibility for some work and leisure trips and this should be recognised as a disadvantage.
31. A local Councillor gave evidence that the nature of local roads is such that relatively few people would choose to cycle as a means of travelling outside the settlement of Silver End. From what I saw of the local road network I have no reason to doubt that evidence.

*Conclusions on the first main issue*

32. Silver End has a range of local facilities, sufficient to meet most day to day needs. Subject to the Grampian condition referred to above these would be reasonably accessible on foot. The UU would secure appropriate and proportionate contributions to mitigate the impact of the proposal on early years/childcare facilities, primary education and health care. Although the availability of employment in Silver End is more limited than it was at the time it was designated as a Key Service Village, there is reasonable accessibility to employment opportunities in a range of higher order settlements.
33. The need for some children to travel out of Silver End to attend a primary school in a nearby village is a disadvantage, as is the lack of bus services in the evenings and on Sundays. However, drawing together all of the above factors, I consider that the services and facilities needed to serve the proposed development would be available, would have sufficient capacity and would be reasonably accessible by sustainable modes of transport. The proposal would accord with CS Policy CS11 which seeks to ensure that the infrastructure,

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<sup>5</sup> The Framework, paragraph 32

services and facilities required to meet the needs of the community are delivered in a timely manner.

***The effect of the proposal on the character and appearance of the area***

34. The site comprises two fields separated by a ditch and a hedgerow. The northern field is used as horse paddocks and the southern field is in arable production. To the west is modern residential development on the edge of Silver End. Bowers Hall, a Grade II listed farmhouse set in a large curtilage, adjoins the south west corner of the site. Most of the former farm buildings, including a large 19<sup>th</sup> century barn, are in separate occupation and are used for the storage of cars. To the south the site has a frontage to Western Road, which is bounded by a substantial hedgerow. There is a ribbon of 20<sup>th</sup> century development fronting the southern side of Western Road for around half the length of the appeal site frontage. There is open farmland to the east and north east and, to the north west, there are extensive residential curtilages of properties fronting Sheepcotes Lane.
35. The site falls gently from west to east towards a watercourse along the eastern boundary. Public Footpath 53 (FP53) runs close to Western Road along the full extent of the southern edge of the site inside the boundary hedge. Beyond the site it continues eastwards across the next field before turning north on slightly higher ground which is at a similar elevation to the western edge of the appeal site. From this section of FP53 there are panoramic views of the appeal site and the eastern edge of Silver End.

*Landscape character*

36. The site lies within the 'Central Essex Farmlands' landscape character area as identified in the Essex Landscape Character Assessment. The characteristics described in that document are similar to those in the more local Landscape Character Assessment for Braintree District which places the site in the 'Silver End Farmland Plateau' character area. The key characteristics described in the latter document include gently undulating farmland, irregular predominantly large agricultural fields marked by sinuous hedgerows, small woods and copses, a scattered settlement pattern, a network of narrow winding lanes and a mostly tranquil character.
37. The Council and the appellant disagreed as to whether the site should be regarded as part of a valued landscape, as that term is used in the Framework. The site is not subject to any landscape designations. Whilst this is one indication of its value, it is not determinative. The *Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA3)* set out a range of factors that can help in identifying valued landscapes which I have taken into account<sup>6</sup>. The Council emphasised that the site is representative of the wider landscape character area, that it has recreational value and that it has historic and cultural interest associated with the adjoining listed buildings. It was suggested that, together, these factors indicate that the site should be regarded as a valued landscape.
38. The site forms part of an undulating agricultural landscape and includes a large field with some good hedgerows. There are some trees and copses nearby, although tree cover within the site itself is limited. There is a single oak which

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<sup>6</sup> Box 5.1



is subject to a Tree Preservation Order and there are other trees within the hedgerows. The character of the site is also affected by the edge of the built-up area of Silver End and by traffic on Western Road. It is not particularly tranquil and has few landscape features other than the boundary hedgerows. Thus, whilst it exhibits some of the characteristics of the *Silver End Farmland Plateau*, in my view it is not a particularly important example.

39. A public footpath traverses the site which provides the residents of Silver End with an opportunity to experience the countryside. That adds some recreational value. There are glimpsed views of the roofscape and chimney of Bowers Hall. These are heavily filtered by trees even in winter views. In visual terms there is only a limited connection between the Hall and the appeal site. The roof of the 19<sup>th</sup> century barn is a more distinctive feature. However, in the elevated views from FP53 to the east it is the modern housing development along the skyline which dominates and catches the eye. In my view the adjoining listed buildings have only a limited effect on the landscape value of the appeal site. My overall assessment is that, while the site has some scenic quality, it does not possess any characteristics which make it other than a pleasant but essentially ordinary tract of rural landscape. I do not think that it should be regarded as a valued landscape for the purposes of the Framework.
40. The Council has carried out an assessment of the capacity of land around Braintree to accommodate development<sup>7</sup>. This work identified a distinction between the two fields comprising the appeal site. The northern field was assessed as having a close physical and visual relationship with adjoining housing at Silver End and the small-scale and enclosed nature of the land was contrasted with the more open character of the adjoining farmland. This part of the site was described as having a medium-high capacity to accommodate development. The southern field is within an area which is assessed as having a medium-low capacity to accommodate development. However, the southern field is only part of a much larger parcel of land described in the Council's study as Parcel 2c. Within that much larger parcel, the appeal site is the part most closely related to the existing built form of Silver End. It is therefore likely to have a higher capacity than the parcel as a whole.
41. The appeal scheme would result in the loss of characteristic features of the landscape, including agricultural land and some hedgerows. The most notable hedgerow loss would be on the Western Road frontage where most of the existing substantial hedgerow would need to be removed to create visibility splays. The new housing would result in the loss of the current open character and would be locally prominent. There would also be some additional highway infrastructure with the introduction of right turn lanes and footways on the northern side of Western Road and the formation of two access roads into the site.
42. The alternative development framework shows one way in which green infrastructure could be an integral part of the design. This is an illustrative drawing. Nevertheless, I see no reason why the Council could not secure an appropriate response to the landscape context at reserved matters stage. The development framework shows substantial areas of open space along the eastern edge of the site and around Bowers Hall. Development is shown to be set back from Western Road sufficiently for a replacement hedge to be planted

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<sup>7</sup> Braintree District Settlement Fringes: Evaluation of Landscape Capacity Analysis Study for Braintree and Environs 2015

behind the visibility splays required for the new accesses. In the main the existing hedgerows are shown as being retained and reinforced with new planting. The TPO oak is shown as being retained as a feature of the layout. There are therefore opportunities for the mitigation of landscape impacts to be integrated in the design of the scheme.

43. The landscape and visual impact assessment (LVIA) submitted with the application assessed the effect of the proposal on landscape character as a moderate adverse impact. Having regard to all the above factors, I agree with that conclusion.

#### *Visual impacts*

44. The Council and the appellant agreed that the visual impacts of the proposal would be localised. It was also agreed that the main visual receptors would be the occupiers of residential properties adjoining the western edge of the site and people using FP53. There would be significant changes to the views from houses backing on to the site. However, the scale, location and orientation of the proposed houses would be controlled at reserved matters stage. No doubt full consideration would be given to any potential impacts on the living conditions of the adjoining residents as part of that process. There is no reason to think that satisfactory living conditions could not be maintained.
45. There would be a significant impact on the views experienced by users of FP53. The current open views across the site to the north would be curtailed and the path would skirt a housing estate rather than being in the countryside as it is now. On the other hand, these effects would mainly be experienced within the approximately 350m of FP53 which lies within the site. Once past the site, the effect would diminish over a relatively short distance. The appeal scheme would be clearly seen from the section of FP53 which runs northwards. The effect would be to bring the edge of the built-up area, which is already apparent on the skyline, closer to the viewer. Even so, this part of FP53 would still provide the experience of being in the open countryside, much as it does now.
46. The Council and the appellant disagreed over the effectiveness of mitigation. I agree with the Council that the loss of openness would be a permanent effect on landscape character. With regard to the effect on views, the Council was concerned that planting proposed along the eastern site boundary would not be effective because it would be at a lower level than the appeal site. The agreed landscape sections which were provided during the course of the Inquiry are helpful in assessing this point. Although the eastern edge is the lowest part of the site, the changes in level are not great. Moreover, to my mind the design objective of new planting here would not be to hide the proposal. Rather, the intention would be to help to integrate the new development into its surroundings in a way which is sympathetic to the existing landscape character. The sections show that, in time, the proposed planting could be of sufficient height to be effective. The details of mix of species and density of planting would be determined at reserved matters stage.

#### *Conclusions on second main issue*

47. To summarise, the proposal would result in moderate harm to landscape character and there would be some significant adverse visual impacts,

- particularly for users of FP53. However, the visual impacts would be localised and mitigation could be achieved as part of the detailed design of the scheme.
48. CS Policy CS8 seeks to ensure that development proposals have regard to the character of the landscape and its sensitivity to change. Amongst other matters proposals should enhance the natural environment by creating green networks to link urban areas to the countryside. Policy CS9 promotes good design and the protection of the historic environment, requiring development to respect and respond to local context. BDLP Policy RLP 80 seeks to protect distinctive landscape features and to ensure that development is integrated into the local landscape. Policy RLP 81 encourages the retention and planting of native trees and hedgerows and Policy RLP 90 seeks a high standard of layout and design.
49. The alternative development framework shows one way in which these policies could be addressed, insofar as it can at this outline stage. Ultimately compliance with these policies could only be secured at reserved matters stage. On the basis of the information before me I see no reason why the policies could not be complied with. I have not identified any inherent conflict with them.

### ***The effect of the proposal on the historic environment***

50. Although there are numerous heritage assets in the locality the Council and the appellant agreed that the heritage assets which require detailed consideration in this case are Bowers Hall and barns, the Bowers Hall moat and the Silver End Conservation Area. I share that view.

#### *Bowers Hall and barns*

51. Bowers Hall is a Grade II listed building. The listing description records that it is a timber framed structure dating from the 17<sup>th</sup> century and that the interior has exposed beams and original doors and panelling. The Hall also has a large chimney stack with a moulded brick cap which is a prominent feature. The Hall has both historic and architectural interest as an example of the vernacular architecture of the period. The listing description also includes '*barns and outbuildings to the south east*'. The most prominent of these is a large early 19<sup>th</sup> century<sup>8</sup> threshing barn built on a north/south axis in the south east corner of the complex. A lower barn, of similar age, was built on a north west/south east axis between the threshing barn and the Hall. Other outbuildings are thought to be of little heritage significance and some may post-date the listing.
52. The threshing barn is of historic interest due to its impressive scale, its timber frame construction and the evidence it holds regarding the agricultural technology of the 19<sup>th</sup> century. The Hall and the barns were originally an isolated farmstead. Their survival as a recognisable farm group adds to both their individual and their collective interest. All of the above factors contribute to the significance of the designated heritage assets.
53. The coherence of the farmstead has been eroded by changes in ownership and land use. There is no longer any agricultural use and the Hall is a private dwelling. The threshing barn, and the spaces around the barns and outbuildings, are in separate ownership and are used for storing cars. There appears to have been a deliberate attempt to reinforce the separation of the two land uses through subsequent changes. A modern 4 bay garage with

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<sup>8</sup> This date was ascertained by map evidence but it is understood that the building may be older

accommodation above has been built between the Hall and the barns. The style of this building is sympathetic to the barns but its scale and siting have the effect of enclosing the Hall and separating it from the historic farm buildings. The Hall has a separate access and drive which is partially screened from the car storage operation by a fence and tall hedge.

54. The Hall is set within extensive grounds which include gardens, paddocks, stables and the former moat. (The moat is discussed further below). The grounds contribute to its significance because they enable the Hall to be seen as a free-standing structure in a sylvan setting. In addition, there is a pond and paddocks which may be vestiges of the former agricultural role of the farmstead. This is an aspect of the setting which can be seen in views from Western Road. The views from Western Road provide a good opportunity to appreciate the scale of the decorative chimney stack in relation to the roof of the Hall. The threshing barn can also be seen from Western Road.
55. The appeal site adjoins the boundary of the Hall complex and is within its setting. Historic mapping shows that the southern field of the appeal site was in the same holding as the Hall in 1839 although the association may well be older. It seems probable that the threshing barn was built to process grain from land which included a significant part of the appeal site. During the early 20<sup>th</sup> century Bowers Hall and its land (including the appeal site) were bought by the Silver End Development Company. This purchase was intended to supply food to the garden village which was being constructed at Silver End at that time.
56. In assessing the contribution the appeal site makes to the significance of the Bowers Hall complex the first point to note is that the ownership link and the functional link are no longer in existence. Moreover, since the separation of the barns from the Hall, changes to the immediate surroundings of the Hall have tended to reinforce its enclosure. Nevertheless, the appeal site remains in agricultural use and immediately adjoins the former farmstead. The current land use therefore adds something to the ability to understand and appreciate the significance of the listed buildings.
57. As noted above, the visual links between the appeal site and the listed buildings are not strong. Only the chimney and part of the roof of the Hall can be seen, and then only in filtered views. The roof of the threshing barn is a more prominent feature<sup>9</sup>. The most important views are those from the westernmost section of FP53. In these relatively close views the impressive height and scale of the barn can be appreciated. The chimney stack of the Hall is visible. The listed buildings can also be picked out in longer views from FP53 to the east of the appeal site. At this range the chimney stack is hard to discern. Whilst the threshing barn can be seen it is a minor element in a panoramic view. These middle distance views add little to the ability to experience the heritage assets.
58. The main effect of the appeal scheme would be to remove the agricultural land use which was formerly associated with Bowers Hall. The Council emphasised the cumulative nature of this effect. This once isolated farm group now has 20<sup>th</sup> century development to the west and south. The appeal scheme would introduce new housing to the north and east, separating the Hall and barns

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<sup>9</sup> Views of the lower barns and outbuildings are very restricted

from the open countryside. That would have a negative impact on the significance of the heritage assets.

59. The illustrative alternative master plan shows ways in which impacts on views could be mitigated. A buffer of open space, around 30m wide, is suggested adjacent to the eastern and northern boundaries of Bowers Hall and barns. This layout would help to reinforce the sense of the Hall as a free-standing building which could be seen in the round within a predominantly green setting. The suggested separation distance would avoid any sense of the Hall being hemmed in by modern development. Moreover, the layout could preserve the closer views from FP53 which enable the height and scale of the threshing barn to be appreciated. Indeed, some additional views may be obtained from within the open space. The extent to which such views would be preserved and/or created would depend on the amount and type of planting around this part of the appeal site boundary, a matter which would be determined at reserved matters stage.
60. It must be acknowledged that views from further back in the appeal site would be impacted by new development or curtailed altogether. In addition it is likely that the middle distance views from the east would be lost. That said, I have commented above that the middle distance views add little to the ability to experience the heritage assets in any event.
61. My overall assessment is that the scheme would not preserve the setting of the listed buildings at Bowers Hall and barns. The effect on the setting of the listed buildings would result in some harm to the significance of the listed buildings. In assessing the degree of harm, it must be noted that setting is only part of the significance of any heritage asset. In this case the fabric and architecture of the assets are important aspects of their significance which would be unaffected by the proposal. Moreover, the coherence of the farm group as a whole (albeit somewhat eroded), that part of the setting which falls within the curtilage of the Hall and barns and the views from Western Road would all be preserved. Insofar as views from within the appeal site contribute to setting, mitigation could be incorporated in the scheme at reserved matters stage.
62. For all these reasons I conclude that the proposal would result in less than substantial harm to the significance of Bowers Hall and barns. I would characterise the degree of harm as minor. Nevertheless, mindful of the relevant statutory duty<sup>10</sup>, I attach considerable importance and weight to this harm. The Framework requires the harm to be balanced against the public benefits of the proposal<sup>11</sup>. I return to that balance in the conclusion to my decision.
63. BDLP Policy RLP 100 seeks to protect listed buildings and their settings. In that there would be some harm to the setting of the Hall and barns, this policy would not be complied with. However, the policy is not consistent with the approach to the historic environment set out in the Framework which requires harm to heritage assets to be balanced against public benefits. I therefore attach limited weight to the conflict with Policy RLP 100 and greater weight to the advice in the Framework.

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<sup>10</sup> Planning (Listed Buildings and Conservations Areas) Act 1990, section 66

<sup>11</sup> The Framework, paragraph 134

### *Bowers Hall moat*

64. The moat is a non-designated heritage asset. The Essex Historic Environment Record (HER) identifies it as a Medieval feature. The moat appears on historic maps up to 1938 and the HER indicates that it was filled during the 1940s. Today there is a raised platform in the centre of the former moat with a depression to one side. Otherwise there is little evidence of the moat to be seen above ground. No building within the formerly moated enclosure has been identified. Nevertheless, the moat has evidential value in that it indicates the likely location of the precursor to the 17<sup>th</sup> century Hall. For the same reason, it has group value as part of the Bowers Hall complex – thereby adding to the significance of the listed buildings. The moat may contain archaeological evidence of past occupation and, if so, that would add to its significance.
65. The significance of the moat is mainly understood through historical records. To the extent that it can be experienced at all as a visible physical feature, this can only be done from within the northern part of the Hall complex. Even though the appeal site immediately adjoins the northern section of the moat, it makes no material contribution to the ability to experience the heritage asset. If buildings were constructed close to the boundary this could potentially disturb archaeological deposits. However, the alternative development framework shows that there would be an open space buffer at this point. Subject to appropriate mitigation being included in the layout, which could be secured at reserved matters stage, the appeal scheme would have no impact on the significance of the moat. Nor would there be any impact on the contribution that the moat makes to the significance of the Hall complex as a whole.

### *Silver End Conservation Area*

66. The Silver End Conservation Area Appraisal (CAA) notes that the Silver End Garden Village was developed from 1926 to 1932 by Francis Crittall to provide a new factory and housing for his workers. The conservation area has both historic and architectural interest. Planned as a garden village, and containing a concentration of early Modern Movement houses, it is an example of new ideas in town planning and architecture which were current at that time. A significant amount of new housing development took place to the east of the conservation area during the latter part of the 20<sup>th</sup> century. This eastwards expansion included the land between the conservation area and Bowers Hall. The appeal scheme would not have any direct impact on the conservation area and would be separated from it by modern housing development. Consequently, mindful of the relevant statutory duty<sup>12</sup>, I find that the character and appearance of the conservation area would be unaffected by the appeal scheme and would thus be preserved.
67. The main disagreement between the Council and the appellant related to the weight to be attached to any impact on the setting of the conservation area. There are two ways in which the appeal site may contribute to the significance of the conservation area. First, there is a historic association in that the appeal site forms part of a larger area of land purchased by the Silver End Development Company in order to supply food to the garden village. Second, one of the approaches to the conservation area is via Western Road. The Council argued that the rural character of this approach is important to the

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<sup>12</sup> Planning (Listed Buildings and Conservations Areas) Act 1990, section 72

- understanding of the origins of the conservation area as a planned settlement in the countryside.
68. The historic association no longer exists and can only be understood by reference to documentary records. In addition, the appeal site is separated from the conservation area by intervening 20<sup>th</sup> century housing. In my view the ability to understand this association would not be materially affected one way or the other by the outcome of the appeal.
69. The CAA identifies a number of significant views, of which almost all are internal to the designated area. There is one identified significant view out over countryside which is adjacent to the primary school. That is a view to the south of the village which would be unaffected by the appeal scheme. I saw that the settlement has been designed such that views along the main thoroughfares are generally terminated by buildings. The CAA does not identify any important designed views into or out of the designated area. To my mind the nature of this particular conservation area is such that the setting makes only a limited contribution to its significance as a designated heritage asset.
70. Even so, the approach along Western Road does add (to some extent) to the ability to understand the origins of the garden village. The importance to be attached to that contribution should reflect the fact that this is only one aspect of the setting of the conservation area as a whole. There are other approaches to the conservation area and other locations where the designated area is much closer to the countryside. The appellant calculates that the distance along Western Road from the south west corner of the appeal site to the conservation area is about 280m<sup>13</sup>. Modern housing is already readily apparent along this part of Western Road. Moreover, there is already a more or less continuous run of 20<sup>th</sup> century ribbon development on the south side of Western Road opposite the appeal site<sup>14</sup>. For all of these reasons I consider that the contribution that the appeal site makes to the significance of the conservation area is very limited.
71. Turning to the impact of the appeal scheme, the alternative development framework shows one way in which this could be mitigated by setting back the development along Western Road and reinstating a new hedgerow behind the new visibility splays. Subject to appropriate detailed design, which could be secured at reserved matters stage, my overall assessment is that the effect of the appeal scheme on the significance of the conservation area would be so limited that it should attract little weight in the planning balance. In that there would be some harm (however minor) to the setting of the conservation area there would be conflict with Policy RLP 95 which seeks to preserve the settings of conservation areas. However, like Policy RLP 100, this policy is not consistent with the Framework. For the same reason, I attach limited weight to the conflict with Policy RLP 95 and greater weight to the advice in the Framework.

### *Conclusions on the third main issue*

72. The main impact on the historic environment would be minor harm to the significance of Bowers Hall and barns. In the terms of the Framework this would be less than substantial harm. There would be no harm to the

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<sup>13</sup> The figure was not disputed

<sup>14</sup> This extends about half way along the appeal site frontage

significance of the Bowers Hall moat. The harm to the significance of the Silver End Conservation Area (resulting from a change in its setting) would be so limited that it should attract little weight in the planning balance.

***The effect of the proposal on mineral resources***

73. The appeal site is located within a Minerals Safeguarding Area (MSA) where EMLP Policy S8 seeks to safeguard mineral resources of national and local importance. The policy sets out a consultation requirement for proposals, such as this, which are for more than 5ha of development within an area which is safeguarded for sand and gravel. The policy goes on to state that proposals which would unnecessarily sterilise mineral resources should be opposed. Where the local planning authority considers that surface development should be permitted, the policy requires that consideration is given to prior extraction of minerals.
74. Borehole data was submitted in support of the appeal. The minerals SoCG records that the County Council<sup>15</sup> and the appellant agree that the northern field within the appeal site is unlikely to contain a viable deposit of sand and gravel. It also notes that the southern field contains a sand and gravel deposit around 10m in depth. Allowing for a 100m buffer zone between the excavation and residential properties, and a 20m buffer to other boundaries, it is agreed that the southern field could yield around 657,000 tonnes of sand and gravel. The appellant accepted that this volume is sufficient to be of economic importance. The main disagreement between the Council and the appellant related to the practicalities of prior extraction.
75. I accept the appellant's evidence that there would be significant practical difficulties in extracting the minerals from the appeal site. First, there would be limited space for processing the sand and gravel on site. Whilst the northern field might offer a possibility for processing it is close to several residential properties. In theory the minerals could be processed at the nearby Bradwell Quarry but there is no obvious reason why the owners and/or operators of that large and established facility would be agreeable to importing a competing source of sand and gravel. The need for processing could be reduced by dry-screening the minerals but that would reduce the market for them.
76. A second difficulty is the lack of a good means of road access for an aggregates operation. The Council's evidence accepted that the road links are '*not ideal*'. This is because of weight/height restrictions on the southern route to the A12. Consequently, all the HGV traffic would need to pass through the village of Silver End to the west of the site. The possibility of a haul road linking to the existing Bradwell Quarry was suggested but this would be subject to the agreement of other owners and/or operators which, as noted above, may not be forthcoming.
77. There would also be significant doubts about the suitability of the site for housing if prior extraction were to take place. If the full depth of sand and gravel were extracted this would leave a deep and steep-sided bowl shape<sup>16</sup>. The land could perhaps be re-profiled using material from within the site. However, I accept the appellant's calculation that this would still leave a

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<sup>15</sup> The County Council is the Mineral Planning Authority – the Council accepted the content of the SoCG

<sup>16</sup> The minerals SoCG included a scenario in which only 5m depth of mineral would be extracted, leaving a smaller void. However, at the Inquiry no party suggested that, in practice, this would be a likely scenario.



depression up to 7m deep. That seems to me to be an unattractive proposition as a potential housing site. A further possibility explored at the Inquiry was that the excavation could be filled (or partially filled) with inert waste. That scenario would significantly increase the number of HGV movements imposed on the local road network. Moreover, there is some doubt regarding the availability of a sufficient supply of inert fill material.

78. Drawing together all of the above points, it appears to me that, on balance, prior extraction is unlikely to be a practical solution to the potential sterilisation of mineral reserves at this site. In my view there was sufficient information before the Inquiry to satisfy the policy requirement for prior extraction to be considered before permission is granted for surface development.
79. At the Inquiry there was discussion about whether a hypothetical planning application for prior extraction would be found to be in conflict with EMLP Policy S6. The disagreement between the parties on this point turned on alternative interpretations of the policy. However, as there is no such application before me it is not necessary for me to come to a finding in relation to Policy S6. My conclusions on prior extraction have been reached by reference to the evidence before the Inquiry on the practical considerations pertaining to the appeal site.
80. It is also appropriate to consider the timescale for prior extraction because it is relevant to the overall planning balance. At the Inquiry the Council's minerals witness accepted that excavation and infilling could take up to 10 years. Even if there were no infilling, extraction could take 4 to 6 years<sup>17</sup>. These figures were not disputed by the appellant's minerals witness and I see no reason to doubt them.

#### *Conclusion on the fourth main issue*

81. It is common ground that a mineral deposit of economic importance would be sterilised by the appeal scheme. However, the requirement of EMLP Policy S8 to consider prior extraction has been satisfied. If the proposal is found to be acceptable in principle then Policy S8 would not provide a reason for withholding planning permission.
82. The Council placed emphasis on paragraph 144 of the Framework, together with related advice in Planning Practice Guidance. This paragraph states that local planning authorities should give great weight to the benefits of mineral extraction. It is important to bear in mind that the EMLP was adopted in 2014 and post-dates the Framework. It can therefore be assumed that it is consistent with the Framework and that the EMLP does indeed give great weight to the benefits of mineral extraction. I return to the interaction between paragraphs 144 and 14 of the Framework in the concluding section of my decision.

#### **Other matters**

##### *Social and economic considerations*

83. There is currently a shortage of deliverable housing land in the District, with the identified supply being around 3.1 to 3.8 years. The Council and the appellant agreed that the appeal site could make a significant contribution to addressing this deficit. This is an important factor weighing in support of the

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<sup>17</sup> Inspector's note – these estimates were given by Ms Tomalin in answer to questions from Mr Carter

appeal. The Strategic Housing Market Assessment has identified a need for over 200 affordable dwellings per year, a figure which is well above the recent rate of delivery. The ability of the scheme to deliver 40% of the units as affordable housing is a further important positive factor.

84. Whilst it has been identified that health and education facilities are under pressure, appropriate mitigation would be secured through the UU. Provision of land for an early years/childcare facility within the appeal site would meet the needs of the appeal scheme and would also facilitate the provision of additional capacity. This would be beneficial to the wider community.
85. The scheme would bring economic benefits in terms of investment and employment during the construction phase. The new residents would generate additional expenditure within the local economy. Whilst there would be a loss of productive agricultural land, this would not be the best and most versatile land as defined in the Framework. My overall assessment is that the proposal would bring significant social and economic benefits to which I attach substantial weight.

#### *Environmental considerations*

86. The application was supported by an Ecological Appraisal and by the ES. The site is not subject to any nature conservation designations. Much of the site comprises arable and pastoral land of limited conservation value. One important hedgerow (as defined in the Hedgerow Regulations) has been identified, which would be retained and enhanced. The majority of the hedgerows would be retained although the substantial hedgerow along the southern boundary would need to be removed. Bat activity has been identified, particularly along the eastern boundary. There are also some notable breeding bird species. Other protected species have been considered and their presence is thought to be unlikely.
87. The illustrative alternative development framework shows how mitigation could be integral to the layout of the site, with linear habitat features being retained and enhanced with new green infrastructure. The attenuation basins could be designed to maximise their potential to enhance biodiversity. The Ecological Appraisal identifies specific mitigation measures in relation to bats and breeding birds.
88. The ES considers the impact of Bradwell Quarry and a proposed waste facility on the proposed houses, concluding that there would be no significant adverse effects.
89. Overall, the scheme would have some adverse impacts on habitats and species. However, I consider that appropriate mitigation could be secured through the reserved matters and through conditions. Subject to that, the adverse impacts are likely to be fully mitigated and there may be some modest gain to biodiversity. I conclude that impacts on biodiversity should not weigh significantly for or against the appeal.

#### *Other matters raised in the representations*

90. Those who spoke at the Inquiry and those who made written representations raised a number of concerns, many of which have been covered above. One point raised by several people is the scale of the proposed development, particularly when considered alongside other planned development at Silver

End. Attention was also drawn to the amount of housing under consideration at other locations in the surrounding area. Such concerns are understandable. Nevertheless, the Council's evidence explains why its current assessment of housing need is well above the level of need reflected in the CS. The evidence also sets out some of the measures the Council is taking to address the need for housing in the District.

91. Concerns were also expressed regarding highway safety and the capacity of the highway network. The application was supported by a transport assessment and there was a SoCG on highways matters. The illustrative access drawing shows one way in which the site could be provided with vehicular access to Western Road. I saw that, subject to the removal of the hedgerow, it would be possible to achieve the necessary visibility splays. The highway authority is satisfied that the proposed junctions would operate safely and I see no reason to take a different view. The SoCG notes that the traffic generation and distribution set out in the transport assessment is agreed by the highway authority and that the modelling of key junctions in the wider network has shown that there would not be any severe traffic impacts.

### **Conclusions**

#### *The development plan*

92. The proposal relates to a greenfield site, outside the settlement boundary of Silver End. As such it would conflict with CS policy CS5 and BDLP Policy RLP 2. These policies seek to protect the countryside by restricting development outside settlement boundaries. It would also conflict with Policies RLP 100 and RLP 95 because there would be some harm to the settings of Bowers Hall and barns and the Silver End Conservation Area. I have not identified any conflict with Policies CS8, CS9, CS11, RLP 80, RLP 81 and RLP 90 which relate to landscape, historic environment, infrastructure, trees and design. Nor have I identified conflict with EMLP Policy S8 in relation to prior extraction of minerals. Nevertheless, the conflict with Policies CS5, RLP 2, RLP 100 and RLP 95 leads me to conclude that the proposal should be regarded as being in conflict with the development plan as a whole.

#### *Other material considerations*

93. The Council cannot demonstrate a 5 year supply of housing sites. In accordance with the Framework it follows that relevant policies for the supply of housing are not to be regarded as up-to-date. I note that the Council is taking steps to boost the supply of housing. Nevertheless, having regard to the current housing land supply position, I consider that only limited weight should be attached to the conflict with Policies CS5 and RLP 2.
94. BDLP Policies RLP 100 and RLP 95 seek to protect listed buildings, conservation areas and their settings. However, the policies are not consistent with the approach to the historic environment set out in the Framework which requires harm to the significance of heritage assets to be balanced against any public benefits. I therefore attach limited weight to the conflict with Policies RLP 100 and RLP 95 and greater weight to the advice in paragraph 134 of the Framework, which I turn to next.
95. The failure to preserve the setting of Bowers Hall and barns is a matter of considerable importance and weight, notwithstanding my conclusion that the

degree of harm would be minor. For the reasons given above, I consider that the effect of the appeal scheme on the setting of the conservation area, and hence on its significance, would be so limited that it should attract little weight in the planning balance. I attach substantial weight to the significant social and economic benefits which would flow from the delivery of new housing, including affordable housing. These public benefits would, in my view, be sufficient to outweigh the harm to the significance of the heritage assets. The proposal would therefore accord with the Framework insofar as it relates to the historic environment.

96. I now return to paragraph 144 of the Framework which I referred to under the fourth main issue. Amongst other matters, it states that local planning authorities should not normally permit other development proposals in mineral safeguarding areas where they might constrain future use for these purposes. For the reasons given above I consider that there would be significant practical difficulties in extracting the minerals from the appeal site. It appears to me that the appeal scheme is unlikely to constrain potential future use of the site for mineral extraction because mineral extraction is unlikely to happen in any event. I do not regard the appeal scheme as being in conflict with the Framework as it relates to minerals.
97. Having regard to my finding that the appeal site is not a '*valued landscape*', together with my conclusions on the historic environment and minerals, my overall conclusion is that this is not a case where there are specific policies of the Framework that indicate that development should be restricted. In these circumstances paragraph 14 of the Framework requires the adverse impacts to be weighed against the benefits.
98. For the reasons given above, I consider that the main adverse impacts would be the sterilisation of a mineral resource, the harm to the setting of Bowers Hall and barns and harm to the landscape. With regard to minerals, it is relevant to bear in mind that this is neither a preferred site for mineral extraction (as identified in the EMLP), nor is it a reserve site. Whilst the site is within a MSA, I attach only limited weight to this factor because prior extraction is unlikely to be a practical solution here. Moreover, even if it were a practical solution, the timescales involved would negate (or largely negate) the benefit of an early contribution to housing delivery.
99. I have concluded that the proposal would result in moderate harm to landscape character and that there would be some significant adverse visual impacts, particularly for users of FP53. However, the visual impacts would be localised and mitigation could be achieved as part of the detailed design of the scheme. I have commented above on the degree of harm to the setting of the listed buildings.
100. Turning to the benefits, I attach substantial weight to the social and economic benefits of the delivery of housing, including affordable housing. The provision of land for an early years/childcare facility would also be a benefit to which some weight should be attached. My overall assessment is that the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. Consequently, material considerations indicate that permission should be granted notwithstanding the conflict with the development plan.

## **Conditions**

101. The Council and the appellant submitted a Comparison Table of suggested conditions on which there was a wide measure of agreement. I have considered those suggestions in the light of Planning Practice Guidance and in some cases I have merged conditions or adjusted detailed wording to reflect that guidance and in the interests of clarity.
102. Conditions 1 to 3 are standard conditions for outline planning permissions. I have reduced the standard time periods because the ability to make an early contribution to housing delivery has been an important matter in this case. Conditions 4 and 5 limit the amount and height of the development to ensure that it is consistent with the parameters envisaged when the assessments supporting the application were carried out. Condition 6 requires details of levels in the interests of the character and appearance of the area. Condition 7 seeks compliance with parking standards to ensure that proper provision is made for the vehicles of the occupiers.
103. Condition 8 requires a scheme of archaeological investigation in order to protect the archaeological potential of the site. Condition 9, which deals with potential contamination, is needed to manage risks of pollution. Condition 10 requires a Construction Management Plan to be approved. This is necessary in the interests of highway safety, amenity, air quality and managing risks of pollution and flooding during the construction process. Condition 11 requires details of tree protection measures in the interests of biodiversity and the character and appearance of the area. Conditions 12 and 13 deal with the protection of habitats and nesting birds and condition 14 requires submission of a Landscape and Ecology Management Plan, all in the interests of protecting and enhancing the biodiversity of the site.
104. Condition 15 requires approval of details of noise mitigation to protect the living conditions of future occupiers. Conditions 16 and 17 deal with details of surface water drainage, and subsequent maintenance thereof, in the interests of managing risks of flooding and pollution. Condition 18 sets out matters to be included in the landscape reserved matters submission in the interests of the character and appearance of the area. Condition 19 requires approval of details of external lighting in the interests of mitigating impacts on biodiversity and protecting the character and appearance of the area. Condition 20 relates to details of refuse and recycling storage in the interests of sustainable development.
105. Condition 21 seeks to ensure that 40% of the units are delivered as affordable housing, in accordance with development plan policy and the Framework. The Council and the appellant agreed the principle of the condition but suggested alternative drafting. I have preferred the appellant's drafting which, whilst less prescriptive, appears to me to cover those matters which are important in terms of securing the policy objective of delivering affordable housing. I also note that the appellant's drafting is similar to conditions used in other appeal decisions which were before the Inquiry<sup>18</sup>.
106. Condition 22 requires the new access to be built as a first operation on site in the interests of highway safety. Condition 23 requires provision of a pedestrian/cycle link to Daniel Way. For reasons discussed more fully under the

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<sup>18</sup> CD11.2 – APP/C1625/A/13/2207324, condition 20 and CD11.5 – APP/X0360/2209286, condition 12

first main issue, I consider that this condition is necessary to ensure that the scheme would take up the opportunities for sustainable transport modes. Conditions 24, 25 and 26 require provision of bus stop enhancements, a footway along Western Road and a pedestrian crossing. These conditions are also needed in the interests of promoting sustainable transport modes. Condition 27 requires new planting to be set back from the visibility splays in the interests of highway safety. Condition 28 requires any diversion Order for FP53 (if needed) to be obtained at an early stage to ensure continued accessibility and safety for those using the path.

107. Some conditions require matters to be approved before the start of development. This is necessary for conditions 8 to 12 and 28 because these conditions address impacts arising during construction. It is necessary for conditions 14 to 16, 21 and 23 because these conditions may affect the design and/or layout of the development.

*David Prentis*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

|  |  |
|--|--|
| Paul Shadarevian<br>and Matt Lewin         | of Counsel, instructed by Braintree District<br>Council                      |
| He called                                  |  |
| Adrian Gascoyne<br>FSA MCIfA               | Head of Place Services, Essex County Council                                 |
| Gill Wynne-Williams<br>BA(Hons) DipLA CMLI | Managing Director, Wynne-Williams Associates                                 |
| Claire Tomalin<br>BSc MTP MRTPI            | Principal Planner, Minerals and Waste Planning<br>Team, Essex County Council |
| Terry Hardwick<br>BSc MA MRTPI             | Planning Consultant  |

### FOR THE APPELLANT:

|  |   |
|--|---|
| Martin Carter  | of Counsel, instructed by Peter Dutton of<br>Gladman Developments Ltd |
| He called  |   |
| Stephen Barry<br>BSc MBA FRICS CGeol                   | Technical Director, Wardell Armstrong LLP                             |
| Gail Stoten<br>BA(Hons) MCIfA FSA                      | Heritage Director, Pegasus Group                                      |
| Jonathan Berry<br>BA(Hons) DipLA CMLI<br>AIEMA MArborA | Partner, Tyler Grange LLP   |
| Peter Dutton<br>BA(Hons) MCD MRTPI                     | Senior Planner, Gladman Developments Ltd                              |

### INTERESTED PERSONS:

|  |   |
|--|---|
| Cllr Philip Hughes<br>Cllr James Abbott<br>BSc(Hons) | Member of Silver End Parish Council<br>Member of Braintree District Council and Essex<br>County Council |
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|               |  |
|---------------|--|
| Blaise Gammie | Education Department, Essex County Council |
|---------------|--|

*Local residents*  
Robert Gordon  
Jonathan Barker  
Colin White

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

|         |  |
|---------|--|
|         | <i>Documents submitted by the Local Planning Authority</i>           |
| LPA1    | Appearances  |
| LPA2    | Opening submissions  |
| LPA3    | Extract from EMLP  |
| LPA4    | Statement of Compliance with the CIL Regulations                     |
| LPA5    | Open Spaces Action Plan  |
| LPA6    | Closing submissions  |
| LPA6(a) | Bovis Homes & Miller Homes v SSCLG [2016] 2952 (Admin)               |
| LPA6(b) | Watermead Parish Council v Aylesbury Vale DC [2016] EWHC 624 (Admin) |

|         |   |
|---------|---|
|         | <i>Documents submitted by the appellant</i>       |
| GLD1    | Appearances                                       |
| GLD2    | Opening submissions                               |
| GLD3    | Draft UU (day 1)                                  |
| GLD4    | Draft UU (day 5)                                  |
| GLD5    | Closing submissions                               |
| GLD5(a) | Supreme Court Practice Direction                  |
| GLD5(b) | Forest of Dean DC v SSCLG [2016] EWHC 421 (Admin) |

|          |   |
|----------|---|
|          | <i>Agreed documents</i>                         |
| LPA/GLD1 | Conditions – comparison table (day 1)           |
| LPA/GLD2 | Planning SoGC                                   |
| LPA/GLD3 | Landscape SoCG                                  |
| LPA/GLD4 | Note on calculations for re-profiling solutions |
| LPA/GLD5 | Landscape sections                              |
| LPA/GLD6 | Conditions – comparison table (day 5)           |

*Other documents*  
Bundle of letters submitted by Cllr Abbott

## **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

|      |  |
|------|--|
| GLD6 | Completed Unilateral Undertaking dated 8 February 2017 |
| GLD7 | Addendum to closing submissions dated 17 February 2017 |



### **Schedule of conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 1 year from the date of approval of the last of the reserved matters to be approved.
- 4) The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 350 dwellings, public open space, landscaping, surface water attenuation and associated infrastructure.
- 5) No building erected on the site shall exceed three storeys in height, with the exception of any rooms within the roof space.
- 6) Any reserved matters application relating to the scale and layout of the development shall be supported by a plan or plans that provide full details of all finished floor levels of all buildings, expressed relative to existing site levels and Ordnance Datum.
- 7) Car parking across the development shall be provided in accordance with the minimum standards set out in the '*Essex Parking Standards: Design & Good Practice*' (2009), which are adopted by the local planning authority for the assessment of planning applications.
- 8) No development or preliminary ground works shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 9) No development shall take place until a comprehensive survey to assess the nature and extent of any contamination on the site has been carried out and a report of the survey findings together with a remediation scheme to bring the site to a suitable condition (in that it represents an acceptable risk) has been submitted to and approved in writing by the local planning authority. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with '*Model Procedures for the Management of Land Contamination, CLR 11*'. The remediation scheme shall be implemented and completed prior to the commencement of the development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified it shall be reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a further remediation scheme shall be submitted for the approval in writing of the local planning authority. The further remediation scheme

shall be implemented and completed prior to the first occupation of any part of the development hereby approved.

Following completion of the remediation scheme a validation report undertaken by competent persons confirming that the remediation has been carried out in accordance with the documents and plans comprising the approved remediation scheme shall be submitted to the local planning authority.

- 10) No development shall take place, including any ground works or site clearance, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall provide for the following all clear of the highway:
- a. the parking of vehicles of site operatives and visitors
  - b. loading and unloading of plant and materials
  - c. safe access to/from the site
  - d. storage of plant and materials used in constructing the development
  - e. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - f. wheel and underbody washing facilities
  - g. measures to control the emission of dust and dirt during construction
  - h. a scheme for recycling/disposing of waste resulting from demolition and construction works
  - i. a scheme to control noise and vibration during the construction phase, including details of any piling operations
  - j. a scheme for safeguarding public rights of way
  - k. hours of demolition and construction work, including the operation of plant and machinery, the delivery of materials and the removal of waste
  - l. a scheme to minimise the risk of off-site flooding caused by surface water run-off and/or groundwater

The approved CMP shall be adhered to throughout the construction period.

- 11) No development shall take place, including any ground works or site clearance, until details of the means of protecting trees, shrubs and hedges within and adjacent to the site has been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with recommendations of the tree mitigation strategy set out in the Arboricultural Assessment submitted by FPCR dated November 2016 and shall include the protection of roots from injury or damage prior to or during the development works. The local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site. The approved means of protection shall be installed prior to the commencement of any building or engineering works or other activities on the site and shall be adhered to throughout the construction period.
- 12) No development shall take place, including any ground works or site clearance, until details of the means of protecting retained habitats on site have been submitted to and approved in writing by the local planning

- authority. The details shall be generally in accordance with the recommendations of the FPCR Ecology Appraisal. The approved means of protection shall be installed prior to the commencement of any building or engineering works or other activities on the site and shall be adhered to throughout the construction period.
- 13) No clearance of trees and shrubs in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the local planning authority. If such a survey reveals the presence of any nesting birds, then no development shall take place within those areas identified as being used for nesting during the period specified above.
  - 14) No development shall commence until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include the provision of nest/roost sites for bats and birds together with arrangements for long term habitat management. Development shall be carried out in accordance with the approved LEMP prior to the first occupation of any dwelling house hereby approved and shall be permanently retained as such thereafter.
  - 15) No development shall commence until a scheme for protecting the development from environmental noise has been submitted to and approved in writing by the local planning authority. The scheme shall be generally in accordance with the Noise Assessment produced by Wardell Armstrong dated July 2015. No dwelling hereby approved shall be occupied until any noise protection measures relevant to it have been carried out in accordance with the approved scheme.
  - 16) No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. If the development is undertaken in phases then no phase shall commence until a scheme for that phase has been so approved. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-ecological context of the development. The approved scheme shall be implemented in accordance with the timing/phasing arrangements embodied within it, or within any other period agreed in writing by the local planning authority, and shall thereafter be permanently managed and maintained as such.
  - 17) Prior to first occupation of any dwelling hereby permitted, a maintenance plan for the surface water drainage system shall be submitted to and approved in writing by the local planning authority. The plan shall identify who is responsible for the various elements of the surface water drainage system, the maintenance activities and frequencies required and the methods of reporting and logging such activities. Thereafter the surface water drainage system shall be permanently maintained in accordance with the approved plan.
  - 18) Any scheme of landscaping submitted pursuant to Condition 1 of this planning permission shall incorporate a detailed specification of all soft and hard landscaping works, including all fences and walls. This shall include details of all plant/tree types and sizes, planting numbers and distances, soil specification, seeding and turfing treatment, areas of

wildflower grassland, colour and type of material and method of laying for all hard-surface areas.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.

All planting, seeding or turfing contained in the approved landscaping details shall be carried out in the first planting and seeding seasons after completion of the relevant phase of the development, unless otherwise previously agreed in writing by the local planning authority.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the dwelling to which the hard landscaping relates.

Any trees and plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written consent to any variation.

- 19) All applications for approval of reserved matters submitted pursuant to Condition 1 of this planning permission relating to the appearance, layout and scale of buildings (whether this is for the development as a whole or for a particular phase) shall be accompanied by a Lighting Scheme. The Lighting Scheme shall comprise a layout plan and manufacturer's technical details of the external lighting to be installed, including a schedule of luminaire types, mounting, height, aiming angles, luminaire profiles and energy efficiency. No dwelling shall be occupied until the external lighting relevant to that dwelling is available for use. All external lighting shall be installed, maintained and operated in accordance with the approved details and there shall be no other sources of external illumination unless otherwise agreed in writing by the local planning authority.
- 20) All applications for approval of reserved matters submitted pursuant to Condition 1 of this planning permission relating to the appearance, layout and scale of buildings (whether this is for the development as a whole or for a particular phase) shall be accompanied by details of the location and design of the refuse bins and recycling materials separation, storage areas and collection points. Where the refuse collection vehicle is required to go onto any road, that road shall be constructed to take a load of 26 tonnes. No dwelling shall be occupied until the refuse bins and, where applicable, storage areas and collection points, for that dwelling have been provided and are available for use.
- 21) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- i) the numbers, type and location on the site of the affordable housing provision which shall consist of not less than 40% of the dwellings
  - ii) the tenure, which shall be split 70% affordable rented and 30% intermediate with the dwellings distributed across the site (and if the scheme is undertaken in phases across each phase of development)
  - iii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing, with no more than 80% of the open market dwellings being occupied before the affordable housing is completed and available for occupation (this timing will apply to each phase if the scheme is undertaken in phases)
  - iv) the arrangements for the transfer of the affordable housing to a Registered Provider or for the management of any affordable housing if no Registered Provider is involved
  - v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements (where appropriate) for the subsidy to be recycled for alternative affordable housing provision
  - vi) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced
  - vii) that the affordable homes are built to the standards set by the Homes and Communities Agency at the time of development
- 22) The site access (or accesses) shall be constructed to at least base course level, with the provision of suitable visibility splays, in accordance with a detailed design which has been approved as a reserved matter pursuant to Condition 1 before the commencement of any other part of the development hereby approved.
- 23) No development shall commence until a scheme for the provision of a pedestrian/cycle way linking the pedestrian/cycle routes within the site to Daniel Way has been submitted to and approved in writing by the local planning authority. The pedestrian/cycle way shall be provided in accordance with the approved scheme prior to the occupation of any dwelling hereby approved (or, if the development is undertaken in phases, in accordance with an implementation programme forming part of the approved scheme) and shall thereafter be permanently retained as such.
- 24) Before first occupation of any dwelling hereby approved, the existing bus stop on the eastbound carriageway of Western Road shall be relocated and upgraded in accordance with a detailed design and specification to be submitted to and approved in writing by the local planning authority. The relocated bus stop shall be in a position outside the visibility splays and the detailed design and specification shall provide for a raised kerb (to provide level access), a shelter, a flag, real time passenger information and road markings. Before first occupation of any dwelling hereby approved, the bus stop opposite the site on the westbound carriageway of Western Road shall be upgraded by the provision of real time passenger information in accordance with a specification to be submitted to and approved in writing by the local planning authority.
- 25) Before first occupation of any dwelling hereby approved, a 2m wide footway shall be provided across the Western Road frontage of the site to

the west of any new access to be provided into the site to link to the existing footway on Western Road to the west of the site. If there is to be more than one access into the site, the required footway shall extend between the access points to be formed. The footway shall be provided in accordance with a detailed design and specification to be submitted to and approved in writing by the local planning authority and shall make appropriate connection with Public Right of Way 53 Silver End.

- 26) Before first occupation of any dwelling hereby approved, a pedestrian crossing on Western Road shall be provided as part of the access arrangements to be approved as a reserved matter pursuant to Condition 1. This shall include a pedestrian refuge, with associated dropped kerbs and tactile paving, and shall be located in the vicinity of the access (or accesses) to be provided and the bus stops serving the site.
- 27) Any new boundary planting to the Western Road frontage of the site shall be planted a minimum of 1 metre back from the highway boundary and from the line of any visibility splay required to be provided to serve the access (or accesses) into the site, whichever is the further.
- 28) In the event that it should be necessary to divert Public Right of Way 53 Silver End, no development hereby approved shall be commenced until such time as an Order securing the diversion of the existing definitive right of way has been secured.

*End of conditions*