
Appeal Decision

Inquiry held on 27, 28 and 29 June and 10 July 2017

Site visit made on 29 June 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 21 August 2017

Appeal Ref: APP/J1915/W/17/3166872

**Land to the north of Park Farm Industrial Estate, Ermine Street,
Buntingford SG9 9AZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Weston Homes Plc (Mr David Poole) against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/1391/FUL, dated 6 June 2016, was refused by notice dated 7 December 2016.
 - The development proposed is the erection of 43 dwellings including access via Ermine Street, landscaping and open space.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 43 dwellings including access via Ermine Street, landscaping and open space at land to the north of Park Farm Industrial Estate, Ermine Street, Buntingford SG9 9AZ Caledonian House, in accordance with the terms of the application, Ref 3/16/1391/FUL, dated 6 June 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Revised plans were submitted following the Council's determination of the application and further revisions made after the appeal was lodged¹. The revisions sought to meet some of the reasons for refusal and the concerns of neighbouring occupiers. The revisions include the introduction of a footpath link at the western end of the site, changes to the proposed plots adjoining the existing dwellings at 5 and 6 Applewood and the industrial units to the south-west of the site, together with minor changes to the proposed car parking spaces. It is apparent that the changes have been discussed with the interested parties directly affected and have been considered by the Council. The Council has not objected to the introduction of the revised plans. As such, I am satisfied that taking the revised plans into account would not prejudice the interests of any party concerned with the outcome of the appeal.
3. The Council has confirmed that the revised plans would overcome reason for refusal 6, concerning the impact of the proposal on the health and safety of the occupiers of Park Farm Industrial Estate, and reason for refusal 5 in respect of the privacy of neighbouring occupiers at 6 Applewood and future occupiers of

¹ See final list of revised plans at Inquiry Document 1

proposed plot 51. There are no outstanding objections to these matters and I see no reason to consider them further. It was also confirmed that the Council's outstanding concerns regarding reason for refusal 2 are to do with the legibility and surveillance of the proposed footpath link and the appearance of the fence enclosing the north end of Park Farm Industrial Estate (PFIE). I deal with this matter below.

4. The appellant has also submitted a signed and dated Unilateral Undertaking (UU)². Together with the revised plans, the UU provides for the mix of affordable housing house types and tenures sought by the Council. The Council has, therefore, confirmed that its remaining concern in respect of affordable housing relates to the number of units to be provided.
5. The UU would secure financial contributions towards first, middle and upper education, children and young people's facilities, library services, outdoor sports facilities, sustainable transport, youth facilities, fire hydrants and the maintenance of on-site open space. The Council is content that these obligations would overcome reason for refusal 7 relating to the effect of the proposal on local services and infrastructure. Nevertheless, I need to be satisfied that the UU would meet the tests set out in the Community Infrastructure Levy Regulations 2010 (CIL Regs). I shall return to this matter later in my decision.
6. Following the Inquiry, the appellant was asked to provide further information on ecological surveys in accordance with Circular 06/2005³. Further information has been submitted and I return to this topic under 'Other Matters' below.
7. I have framed the main issues having regard to the above considerations.

Main Issues

8. The main issues are:
 - the effect of the proposal on the supply of employment land in Buntingford necessary to provide a sustainable balance of jobs and housing;
 - whether adequate information has been provided to demonstrate that noise from the adjoining industrial units would not harm the living conditions of future occupiers;
 - whether the layout of the proposal would provide a satisfactory link to the existing footpath network and whether the appearance of the existing fence at the northern end of PFIE would be appropriate in a residential setting;
 - whether the proposal would provide for an adequate number of affordable housing units, particularly having regard to the absence of affordable housing in the adjoining recently approved scheme for 13 residential units;
 - the effect of the proposal on the living conditions of neighbouring occupiers at 5 Applewood and future occupiers of proposed plots 52, 53 and 56 with regard to overlooking.

² Inquiry Document 2

³ Biodiversity and geological conservation - statutory obligations and their impact within the planning system

Reasons

Employment Land

9. The appeal site is a vacant, undeveloped area of land located to the north of PFIE. It forms the larger part of an Employment Area in the East Herts Local Plan Second Review 2007 (LP) which Policy EDE1 reserves for Use Classes B1 (business), B2 (general industrial) and, where well related to the transport network, B8 (storage and distribution). Policy BUN6 confirms that the appeal site is reserved for Classes B1 and B2. It is common ground that the appeal proposal for residential development is contrary to these policies. Policy BUN6 reserves the smaller, remaining part of the Employment Area for live/work units, although planning permission has been granted for 13 dwellings on that land⁴.
10. The designation is carried forward to Policies ED1 and BUNT3 of the Emerging District Plan (EDP). However part III of Policy ED1 sets out criteria for the consideration of development which would cause the loss of an existing Employment Area. The criteria include that the retention of the employment use has been fully explored without success; improvements to the site which would make it more attractive to alternative Class B1, B2 or B8 uses should be considered and the potential and suitability for alternative uses should be discussed with Council officers. Evidence of marketing the site for at least 12 months should also be provided.
11. The EDP has been published for Pre-Submission consultation and there is an unresolved objection to the designation of the appeal site as an Employment Area under Policy BUNT3. Therefore, in accordance with paragraph 216 of the National Planning Policy Framework (the Framework), I can give limited weight to the application of the policy to the appeal site.
12. Policy BE1 of the made Buntingford Neighbourhood Plan (NP) only permits the change of use of land in employment use to non-employment use where there is evidence of marketing the site over a period of at least 12 months, which demonstrates that there is no realistic prospect of use of the site for employment, and that the strategic need for the proposed use clearly exceeds the need for continued employment use. Since the appeal site is not currently in employment use, strictly, this policy is not applicable to the appeal proposal. However, together with EDP Policy ED1, it indicates that the current policy approach to the consideration of non-employment use of employment sites allows a degree of flexibility.
13. Such flexibility accords with Framework paragraph 22 which seeks to avoid the long term protection of allocated employment sites where there is no reasonable prospect of the site being used for that purpose. In those circumstances alternative uses should be treated on their merits having regard to market signals and the relative need for different uses to support sustainable communities. Policies EDE1 and BUN6 of the LP do not provide for any alternatives where there is no realistic prospect of employment allocations being developed over the long term. Consequently, I consider that they are not consistent with the Framework and can be afforded no more than moderate weight.

⁴ Application refs 3/13/0813/OP and 3/16/1392/REM

14. A Council commissioned Employment Study⁵ points to the proportionately large amount of new housing under construction or with planning permission in Buntingford. As a consequence, it finds that the working population will rise by around 2065 (compared with the position in 2015) taking into account the appeal scheme and another proposal at Luynes Rise. The report, therefore finds that the employment base of the town should be expanded. The Council also argues that the growing population of the town will require other supporting services and facilities and that these could include non-class B employment uses. The appeal site is closer to the town centre and residential areas than other employment locations and is, therefore, well placed to accommodate such uses.
15. I recognise the Council's aim of achieving sustainable, balanced growth. Nevertheless, the Framework promotes a plan-led system and the appeal site is not reserved for such non Class B uses in the current or emerging development plan. Policy BE4 of the NP allows for the conversion of residential to commercial use in the High Street and it is open to the Council to consider whether the EDP should make further provision for facilities or services to support the expected population growth in the town.
16. The Council's evidence refers to low vacancy levels for industrial/light industrial floorspace in East Hertfordshire in the period since 2012 and rents rising to a peak of £7.60 per square foot although, very recently, those trends have not continued. Moreover, there is no evidence of recent new Class B1 development in Buntingford. There are four main employment locations in the town⁶ providing some 7.35ha of undeveloped employment land, excluding the appeal site. That stock is likely to decrease by around 1.38ha following Hertfordshire County Council's resolution to acquire the remaining employment land at London Road to build a school⁷. Nevertheless, the Council has not provided evidence to dispute the appellant's contention that, based past trends, the remaining stock of employment land in the town is unlikely to be fully developed before the end of the emerging development plan period in 2033, notwithstanding the growing working population.
17. There was a measure of agreement between the employment land witnesses⁸ that PFIE ranks third or joint fourth in terms of the quality of employment locations in the town and, having visited them, I concur with that assessment. It was also recognised by the Council's witnesses that it would be inappropriate to take access to potential employment development at the appeal site through the recently approved 13 unit residential scheme. This means that access would need to be via the existing PFIE. There is no agreement in place with the owner to provide that access. Moreover, the existing access to PFIE is not open for 24 hours of the day and the new access to the appeal site would involve the loss of existing parking spaces.
18. There is little evidence to show that meaningful discussions on improvements to the site to make it more attractive to alternative Class B uses took place before the planning application, the subject of this appeal, was determined by the Council. Nevertheless, in oral evidence, the Council suggested that the site

⁵ Wessex Economic Buntingford Employment Study 2014 appended to Mr Cobbold's proof

⁶ London Road, Buntingford Business Park, Buntingford Business Park Extension and Watermill Industrial Estate

⁷ Report at Inquiry Document 3

⁸ Mr Cobbold for the Council, Mr Stephenson for the appellant

access could be improved. However, given the constraints identified above, it is not clear how worthwhile improvements could be secured.

19. As well as the 13 unit scheme, which adjoins the appeal site's eastern boundary, planning permission has been granted for 25 sheltered housing units on land adjoining its northern boundary. It would be reasonable to expect the close proximity of residential uses on two sides to result in the need for measures to control activity on the appeal site in order to safeguard the living conditions of neighbouring occupiers. Together with the access constraints, this factor would reduce considerably the attractiveness of the appeal site as an employment location.
20. The appeal site has been marketed for employment use since around 2007. Whilst there appear to have been breaks in this activity, there is no dispute that the site has been marketed for at least the last 12 months. Although there have been a limited number of enquiries, no significant interest has emerged. The Council accepts that the site would not be suitable for Class B2 or B8 uses and that Buntingford as a whole can be regarded as a secondary location for Class B1 uses due, amongst other things, to its size, the absence of major employers and distance from the strategic transport network. It was also agreed that the town is unlikely to attract substantial office development. Rather, it is envisaged that the site would be more suitable for light industrial users, perhaps with an element of office floorspace, primarily serving local needs or co-working. However, the Council also recognises that speculative employment development in Buntingford is unlikely.
21. The appellant's evidence includes a viability appraisal for light industrial and/or Class B8 development of the appeal site. It found that the development would produce a negative residual value of £2.75m. This excludes land acquisition costs. The Council did not dispute the appraisal's methodology or inputs, nor did it dispute the appellant's contention that office development of the site would be no more viable. Nevertheless, whilst recognising that employment development of the site is not viable in the short term, the Council points to the town's growing population and the loss of employment land at other locations as factors which could alter the position before the end of the emerging plan period. However, the appraisal assumes a robust rental value of £8.00 per square foot which is higher than the peak rental for light industrial floorspace in East Hertfordshire identified in the Council's evidence. Furthermore, I have already concluded that there is little to suggest that the supply of employment land is likely to be taken up over the plan period. Nor is the town's status as a secondary employment location likely to change fundamentally before 2033. Therefore, it is difficult to see how the large negative value found in the current appraisal might be eliminated so as to make employment development of the site viable.
22. It was argued by the Council that other uses, which could provide employment and support the local community, such as healthcare, may attract public funding. However no policy or programme to deliver such uses was identified. Nor is there evidence that they would be viable, even with public funding.
23. The Council has referred to a letter⁹ from PMC Polythene Ltd which occupies a significant amount of warehouse and office floorspace on PFIE. The company received what it considered to be a disappointing response from the Council to

⁹ Appendix HI20 of Mrs Izod's proof

a 2012¹⁰ enquiry about relocating to the appeal site in larger premises. The concerns were primarily related to the scale of the proposed building. The company says that it has struggled to find an alternative site to build a new warehouse in Buntingford and would consider submitting a revised plan in the event that the appeal is dismissed. There is no detail in the PMC letter to explain why other employment locations in the town do not meet its needs or to demonstrate that the development anticipated would be viable. As such, I give limited weight to the letter.

24. Taking all of the above consideration into account, I find that there is no realistic prospect of Class B1 or B2 at the appeal site in the short term or even in the longer term. In practice therefore, development of the site for housing would have a very limited negative effect on the supply of employment land in Buntingford. Nor, having regard to the supply of employment land elsewhere in the town, would the proposal have a materially harmful effect on achieving a sustainable balance of jobs and housing. I have already concluded that only moderate weight can be given to LP Policies EDE1 and BUN6. Section 38(6) of the 2004 Act¹¹ requires consideration to be given to whether the appeal should be determined other than in accordance with the development plan. Relevant matters in this case include the requirements of Framework paragraph 22 and the relative need for the proposed housing to support sustainable communities. I address these matters in the Planning Balance below.

Noise

25. Reason for refusal 4 alleges that insufficient evidence was provided to demonstrate that proposed plots 25 to 29 would not be adversely affected by noise from the adjoining units on PFIE (in particular PMC Polythene). The planning permission for the industrial estate is for Class B1 use which, by definition can be carried out in a residential area without detriment to amenity by reason of noise, amongst other things¹². Moreover, the permission includes planning conditions which limit the hours of operation to 0700 to 1900 Monday to Friday and 0700 to 1300 on Saturdays.
26. Following the determination of the application the subject of this appeal, a revised Noise Impact Assessment (NIA) was submitted¹³. The Council was concerned that this assessment included a higher background noise level than the initial assessment and considered that this was due to the presence of construction noise from the adjoining Redrow Homes site; since this was a temporary noise source it and should have been excluded from the assessment. However, it seems that the difference in the background readings was because the revised NIA readings were taken over a longer period, but at times when there was no activity at the Redrow site. Furthermore, the difference between the two sets of readings would not change the mitigation required. The revised NIA also applied a 3dB acoustic feature correction to reflect the distinctive nature of the noise from the PFIE units. These matters were not challenged by the Council. On this basis, the appellant's evidence found that an acoustic attenuation of value of 17dB would be required to achieve the desired internal ambient noise level set out British Standard 8233:2014.

¹⁰ Appendix JS5 of Mr Stephenson's proof

¹¹ Planning and Compulsory Purchase Act 2004

¹² Town and Country Planning (Use Classes) Order 1987 as amended

¹³ Dated 10 March 2017, Reference Document SP1 of Mr Petrasso's proof

27. Components of the background noise included traffic noise from the A10 road and bird song as well as machinery and forklift truck movements associated with the PMC operation. This is consistent with what I heard on the site visit. Noise from the PMC operations was an identifiable, but not dominant, element of the overall noise climate. I also saw on the site visit that there are windows at ground and first floor levels in the end wall of the industrial units and a further window, three fire doors and a ventilation opening in the rear wall which would face proposed plots 25 to 29. The Council, raised the possibility that noise may be emanating from the roof of the industrial units. However, that part of the structure does not appear to be penetrated by openings and, therefore, I consider that the majority of the industrial noise is escaping through the openings in the walls.
28. There was some dispute over how BS8233 and BS4142 should be applied in this case. Nevertheless, the parties agreed that the use of standard double glazing (with a configuration of 8mm/6-16mm/4mm) together with trickle ventilators would be sufficient to ensure an acceptable internal noise environment in the affected dwellings. In addition, the appellant has proposed the erection of a 2m high acoustic fence to the rear of the industrial units. Whilst the Council argues that the effect of this fence has not been tested in the revised NIA, the appellant considered that it would reduce noise levels by at least 10dB and Reference Document SP8 of his proof indicates that such fences can typically achieve noise reductions of more than 16dB(A). This indicates that the acoustic fence would reduce the noise in the gardens of plots 25 to 29 to below the level recommended in BS8233.
29. The Council points out that this standard refers to steady, rather than intermittent, noise. Nevertheless, given the limitation on the times of operation of the industrial units and the overall nature of the background noise I am not persuaded that the fluctuating component (the forklift trucks), would be sufficiently intrusive so as to adversely affect the living conditions of, or lead to complaints by, future occupiers.
30. The Council also considers that the use of double glazing and trickle ventilators would not be an appropriate means of mitigation as, to be effective, it would require occupiers to have their windows and doors shut. It would not, therefore, allow for 'purge' ventilation by opening the windows and doors to dissipate heat or cooking smells, for example. However, occupiers would have the option to open windows at the front of the building and, at ground floor level, the acoustic fence would reduce noise reaching the rear of the dwellings, even with the windows open. Considered together with the existing planning restrictions on the operation of the industrial units, I consider that the noise experienced by future occupiers would not lead to a material change in behaviour and attitude from what might otherwise be the case. In accordance with the relevant advice in the Planning Practice Guidance¹⁴ the proposed mitigation would, therefore, be appropriate.
31. Mr Joynes raised the question of whether proposed plot 30 would also be adversely affected by noise from PFIE. This plot would be located adjoining the car parking and manoeuvring area of the existing industrial units. This area is currently enclosed by a palisade fence which would offer no noise attenuation. Nevertheless, there is no substantive evidence to indicate that plot 30 would be

¹⁴ table at paragraph reference ID: 30-005-20140306

affected by noise from the industrial units to a greater degree than plots 25 to 29.

32. The appellant confirmed that the double glazing configuration referred to above would be used throughout the scheme. Moreover, it was suggested that the palisade fence could be replaced by an acoustic fence. This would help to reduce the noise level in the external areas of plot 30 in the same way as the acoustic fence proposed to the rear of plots 25 to 29; it could be secured by a planning condition.
33. Consequently, with planning conditions to secure appropriate mitigation measures in place, I consider that it has been adequately demonstrated that noise from the adjoining industrial units would not harm the living conditions of future occupiers. As such, the proposal would not conflict with LP Policy ENV25 which states that noise sensitive development should not be exposed to noise nuisance from existing noise generating sources, taking into consideration the degree to which the design of the proposal provides noise protection. Nor would it conflict with paragraph 123 of the Framework insofar as it has similar aims.

Layout

34. Access to the proposed development would be via an extension to the road proposed in the 13 unit scheme. Vehicular access would terminate with a turning area close to the western boundary of the site. A 2m wide link would lead from this turning area to public footpath number 35 which runs along the site's western boundary. The Council recognises that it is unlikely that such a linkage would be provided if the site were developed for employment use. However, it is concerned that the position of the link and the orientation of the adjoining dwellings would not make the route legible for users or provide adequate passive surveillance.
35. The new link would be located between the side wall of proposed plot 30 and the end wall of existing industrial Unit 31. It would also be offset from the alignment of the access road. This arrangement offers less legibility and passive surveillance than the layout favoured by the Council which would see plots 30 to 33 reoriented to face a more centrally positioned link. However, such a layout would terminate the view from the new access road with the side wall of the proposed dwellings and the outlook from the rear of those dwellings would be to the end wall and car parking and manoeuvring area of the existing industrial units. Neither of these outcomes would be desirable. Inevitably, therefore, layouts need to achieve a compromise between differing urban design objectives. The Council referred to By Design: Urban Design in the Planning System. Whilst I recognise that many of the aims of that document may still have relevance, it has been withdrawn and replaced by the Planning Practice Guidance. Therefore, I can give it little weight.
36. The eastern end of the proposed link would be visible to those approaching on foot or by bicycle along the proposed access road. Its presence could be enhanced by the appropriate use of surface finishes, street furniture, lighting and signage, all of which could be controlled by a planning condition. Therefore, I consider that the link would be reasonably legible from the proposed development.

37. The proposed link would be quite short and allow inter-visibility of both ends. Plot 30 would have a window, albeit serving a landing, in its side elevation facing the link. It is also proposed to enclose the side boundary of the property with a 1.5m high fence with a trellis above. The end wall of industrial Unit 31 also has windows at ground and first floor levels facing the link, although I recognise that the unit would normally be occupied only during working hours. Nevertheless, collectively, these features would allow a degree of oversight of the link by occupiers of the adjoining properties.
38. The Council also expressed concern that proposed plots 30-33 would present a 1.8m high garden fence to existing footpath 35. However, this fence would take up a short proportion of the overall length of the footpath, much of which has little or no passive surveillance. To the north of plot 33 the proposed car parking area and communal garden would be relatively open and bounded by railings which would allow views through to the footpath. There would be a further gated link to the footpath from the communal garden and proposed Block B would have windows facing the footpath. Moreover the proposal includes re-surfacing this section of the existing footpath and it would be served by lighting in the proposed car parking area. Consequently, I consider that there would be adequate passive surveillance of the proposed link and improved surveillance of the existing footpath as it passes the site.
39. Bearing in mind also that the allocated employment use of the site would be unlikely to provide any link to the existing footpath, I consider that the proposed layout would offer an improvement to the existing footpath network.
40. Regarding the existing metal palisade boundary fence at the northern end of PFIE this would need to be replaced by an acoustic fence, the details of which could be secured by a planning condition. I consider that such a fence, together with planting in the adjoining verge, would not be out of place in the proposed setting.
41. As such, I find that the proposal accords with LP Policies SD1, ENV1 and TR12 and insofar as they require development to create sustainable movement patterns, be compatible with the layout of the surrounding area and provide safe, convenient, comfortable and attractive cycle and pedestrian routes. It would also accord with sections 4, 7 and 8 of the Framework to the extent that they have similar objectives.
42. Reason for refusal 2 also cites LP Policies TR7 (car parking standards) and TR14 (cycle storage facilities). However, there is no firm evidence to show that the proposal does not meet the requirements of these policies.

Affordable Housing

43. Policy HSG3 of the LP requires residential developments of 15 units or more or over 0.5 hectares to provide affordable housing at a level of up to 40%. The submitted UU provides for 17 affordable units and, therefore, meets the requirements of the policy if the appeal scheme of 43 dwellings is considered in isolation. However, paragraph 3.11.3 of the LP and paragraph 6.4 of the Council's Affordable Housing and Lifetime Homes Supplementary Planning Document (SPD) advise that 'the phasing of a development, or the sub-division of a site into separate parts, in order to create sites that are below the threshold, will not exclude the developer from providing affordable housing.' The SPD goes on to state that, 'where a site can be clearly identified,

irrespective of land ownership, the entire site will be used to determine whether the site meets the site size criteria.'

44. The Council considers that the appeal scheme and the adjoining scheme for 13 dwellings should be considered as a single site for the purposes of Policy HSG3. There is no physical demarcation between the areas of land, the schemes share an access road and there is continuity in their layout and appearance. The Council's evidence refers to the physical dependency of the plots at the boundary between the schemes, although this has been reduced in the revised scheme. Both schemes are currently being progressed by Weston Homes, although they did not make the outline application for the 13 unit scheme and does not own any of the land.
45. The 13 unit scheme makes no provision for affordable housing since it falls below the 15 unit threshold and, at the time the Council determined the application, it was not aware that a proposal would come forward for the appeal site. The Council therefore, argues that the appeal scheme should make up the shortfall by providing five additional affordable units equating to 40% of the total of 56 units proposed in both schemes.
46. I recognise the close physical and functional relationship between the two schemes which have now emerged. However, the areas are treated differently in the LP. Under Policy BUN6 the site of the 13 unit scheme is reserved for live/work units, whereas the appeal site is reserved for Class B1 and B2 uses. Whilst the 13 unit scheme for the smaller site was for dwellings, rather than live/work units, its approval indicates that the Council was persuadable that such development would be acceptable. In contrast, the refusal of the appealed residential application indicates that the Council considers that a different approach should be taken with regard to the appeal site. Consequently, I consider that the owners/promoters of the sites were justified in progressing them separately on the basis of their treatment in the development plan and that this did not amount to an artificial sub-division the land.
47. I note that the Council's planning policy consultation response on the outline application for the 13 unit scheme¹⁵ considered that the definition of the size of that site was chosen to fall just below the 0.5 hectare threshold. However, no similar concern applies to the appeal scheme and it is not, therefore, a matter for this appeal.
48. Consequently, I find that the proposal makes adequate provision for affordable housing in accordance with LP Policy HSG3 and the SPD, even having regard to the absence of provision in the approved scheme for 13 units.

Living Conditions

49. Policy ENV1 of the LP requires proposals to respect the amenity of neighbouring and future occupiers with regard to privacy, amongst other things. The LP does not specify the separation distances necessary to maintain the privacy of occupiers where there are facing windows. However, NP Policy HD4 requires new housing to have appropriate regard to the standards set out in the Design Code at its Appendix 4. These standards include a minimum

¹⁵ Inquiry Document 10

separation distance of 23m where windows in habitable rooms face each other, such that direct overlooking is possible.

50. The dwelling at 5 Applewood has three evenly spaced first floor windows serving bedrooms in its rear wall. These windows would face towards the rear elevation of proposed plots 52 and 53 at a distance of around 16m¹⁶. At first floor level there would be one bedroom window in the rear elevation of Plot 52 and two such windows in plot 53. Whilst one of the windows in plot 53 would be offset from the rear of No 5, the degree of offset would not significantly reduce the potential for mutual overlooking. Nevertheless, within the appeal site, an existing tree belt runs along the boundary the boundary with No 5. Although it is mainly comprised of deciduous species, the planting is sufficiently wide and dense that it would significantly filter, if not completely screen, views between the existing and proposed first floor windows, even when the trees are not in leaf. Therefore, notwithstanding that the distance between the facing habitable room windows would be considerably less than the NP standard, the tree belt would prevent direct overlooking.
51. The NP standards do not refer to separation distances between habitable rooms and neighbouring gardens. However, the tree belt would also filter views between the windows of No 5 and the garden area of proposed plot 56.
52. Therefore, I consider that the proposal would not harm the living conditions of the neighbouring occupiers at 5 Applewood or future occupiers of proposed plots 52, 53 and 56 with regard to overlooking. As such it would not conflict with the underlying aims of the NP or LP Policy ENV1.
53. The Council has expressed concern that there may be pressure from occupiers to have the tree belt reduced or removed. However, there is nothing to suggest that the occupiers of any of the dwellings in Applewood have exerted such pressure to date. Moreover, the tree belt is tall enough that it could be reduced in height and still prevent direct overlooking at first floor level. In addition, a planning condition could be used to require the retention of the tree belt. A proposed 1.8m close boarded fence on the boundary would prevent overlooking at ground floor level.

Other Matters

54. Concern has been expressed locally regarding noise and disturbance to neighbouring occupiers during the construction period. A degree of noise and disturbance is likely to be unavoidable whenever new development takes place. However, this would be a temporary situation. A planning condition could be used to control the hours of working in order to limit the effects.
55. Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Therefore, the use of conditions to secure necessary ecological surveys should only be required by planning conditions in exceptional circumstances. An Ecological Assessment¹⁷ of the site was submitted with the application which recommended further surveys for reptiles and bats. The Council suggested that those surveys were inadequate to allow proper mitigation measures to be formulated. Following the Inquiry further surveys were requested and reptile,

¹⁶ Undisputed measurement shown on drawing WH178/16/P/10.04-FUL Rev D

¹⁷ Ecology Solutions June 2016

bat and badger survey reports were submitted¹⁸. These reports cover the appeal site and the site of the adjoining 13 unit scheme. They were also submitted to the Council in connection with that scheme and were considered to be acceptable.

56. The reptile report finds that reptiles were not present on the site and that no mitigation measures are necessary. The bat survey finds that, whilst bats are commuting through the site to forage elsewhere, the timings of the detector registrations suggest that there may be a roost nearby but not on site. The report, therefore, recommends mitigation in the form of retention of site boundary vegetation, the provision of bat boxes within retained trees and ensuring any external lighting has regard to the potential presence of bats. These measures could be secured through the use of appropriate planning conditions.
57. The badger report found no active setts or badger activity on the site. It nevertheless recommends precautionary measures to protect badgers during the construction works. These measures could be secured by a planning condition.

Planning Obligations

58. Regulation 122 of the CIL Regs states that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. Policy IMP1 of the LP requires development schemes to make appropriate provision for affordable housing, sustainable transport, open space and recreation facilities and education facilities, amongst other things, through the use of planning obligations.
59. I have already concluded that the proposal would make adequate provision for affordable housing in accordance with LP Policy HSG3 in terms of the number of units to be provided. The criteria for affordable housing set out in Policy HSG4 include the size, type and tenure of the units, which are to be determined by reference to the housing needs of the area. The mix of units proposed accords with the housing needs identified by the Council's Housing Development and Strategy Manager. I am content, therefore, that the affordable housing obligation meets the Regulation 122 tests and have taken it into account.
60. The UU provides for the provision and maintenance of the proposed on-site Amenity Green Space. This is necessary to ensure satisfactory living conditions for future occupiers and to safeguard the character and appearance of the area. As such, I consider that this provision meets the Regulation 122 tests and have taken it into account.
61. The UU makes provision for payments to the District Council of £5,720.41 towards Children and Young People Facilities and £38,730.83 towards Outdoor Sports Facilities. The proposal includes dwellings likely to be occupied by families and would, therefore, lead to additional demand for such facilities. It does not provide them on site. The Council's Planning Obligations and Open Space, Sport and Recreation Supplementary Planning Documents set out the

¹⁸ Inquiry Document 19

- amount of contributions by reference to the number and size of dwellings proposed.
62. Following discussion at the Inquiry, the Council prepared a further statement on the contributions to the District Council¹⁹. Buntingford Town Council has identified a need to provide additional equipment at the Norfolk Road Playing Field to which the Children and Young People Facilities payment could contribute. The Council's statement confirmed that no other developments have contributed to this project and, therefore, the pooling restrictions set out in CIL Regulation 123 do not apply. I am satisfied, therefore, that the Children and Young People Facilities contribution meets the requirements of Regulation 122 and have taken it into account.
63. The Council's statement confirms that at least five previous developments have made contributions towards outdoor sports facilities since 2010, albeit that it appears that the term has been used generically. The PPG advises that Authorities who refer to generic types of infrastructure, rather than specific projects, in their section 106 agreements will be unable to collect more than five contributions towards those generic funding pots due to the Regulation 123 restrictions (paragraph reference ID: 25-101-20140612).
64. The Council has suggested that the UU be amended to refer specifically to outdoor gym facilities, rather than Outdoor Sports Facilities and that the Town Council would use the previous contributions for other projects such as tennis courts and re-surfacing. However, even if the UU was amended as suggested, there would be no change to the generic terms of the previous section 106 agreements or legal mechanism to control how those contributions are spent. I am not persuaded, therefore, that the Council's suggestion would overcome the pooling restriction. As such, I have not taken the Outdoor Sports Facilities contribution into account. Since at least five contributions have already been made to such facilities, I consider that the absence of a further contribution would not have a harmful effect on the provision of local infrastructure.
65. The UU makes provision for payments to the County Council for first, middle and upper school education facilities, youth and library facilities and sustainable transport facilities. The proposal would generate additional demand for such facilities and Hertfordshire County Council has produced evidence to indicate that existing provision in Buntingford does not have the capacity to accommodate that demand. The County Council's Planning Obligations Guidance Toolkit sets out the amounts of the contributions by reference to the proposed housing mix.
66. The Toolkit also requires developments to provide fire hydrants for all new residential development. The provision of fire-fighting infrastructure is necessary and relevant to the development in order to ensure public safety. The County Council's statement also confirms that none of the contributions sought would be caught by the pooling restrictions. I am satisfied, therefore, that all of the County Council contributions meet the requirements of Regulation 122 and have taken them into account.

¹⁹ Inquiry Document 14

Conditions

67. The Statement of Common Ground sets out a list of 18 suggested planning conditions. Following the discussion on conditions at the Inquiry, it was agreed that suggested condition 6 (withdrawal of permitted development rights for gates, walls and fences) was not justified in the circumstances of the proposed development and that suggested condition 9 (road safety audit) was not necessary. Furthermore, the requirements of suggested condition 18 (hours of construction works) could be incorporated into suggested condition 10 (construction method statement). With minor amendments, I find that the remaining conditions meet the tests set out in the PPG. Suggested condition 17 should be re-worded to accord with my findings on the noise issue.
68. A condition specifying the approved plans is necessary in the interests of certainty. A condition requiring a programme of archaeological work is required to safeguard below ground heritage assets. A condition requiring the approval and implementation of a surface water drainage scheme is necessary in order to avoid flooding. I have amended suggested condition 8 to require the provision of visibility splays to be consistent with the approval of reserved matters for the 13 unit scheme. The condition is necessary in the interests of highway safety. A condition requiring the approval and implementation of a construction management plan is necessary for the same reasons and to safeguard the living conditions of neighbouring occupiers.
69. Conditions requiring further approval of existing and proposed ground levels, external materials, the treatment of existing trees, excavation works and ground levels in relation to trees, a scheme of hard and soft landscaping and the maintenance, and replacement if necessary, of proposed planting are all required to safeguard the character and appearance of the area. I have already referred to the need for conditions to deal with noise and ecology mitigation.

Planning Balance and Conclusion

70. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing land. The supply is put at 3.1 to 3.6 years depending on the methodology used. In any event, it amounts to a considerable shortfall. In these circumstances Framework paragraphs 49 and 14 advise that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
71. I have found that there is no reasonable prospect of the site being used for the allocated employment use and, therefore, that the proposal would have a limited negative effect on the supply of employment land in Buntingford. Whilst the proposal conflicts with LP Policies LP EDE1 and BUN6, only moderate weight can be given to those policies. I have not found other harm and, therefore, the adverse impacts of the proposal are modest.
72. In accordance with Framework paragraph 47, the provision of 43 dwellings in a District where there is a considerable shortfall amounts to a significant benefit. The delivery of 17 affordable units, on site, in a mix which meets the District's housing needs would be a further very significant benefit. The proposal would also generate a receipt through the New Homes Bonus. As such, the relative need for proposed alternative use of the site for housing as a means of

sustaining the local community is greater than the allocated employment use. The proposal therefore merits the support of Framework paragraph 22.

73. I have also found that the creation of a link to footpath 035 on the western side of the site would be a benefit which is unlikely to be secured by development of the site for the allocated employment use.
74. Overall, therefore, I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal. The proposal, therefore benefits from the presumption in favour of sustainable development set out in paragraph 14. This consideration outweighs the conflict with LP Policies EDE1 and BUN6.
75. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Appearances

FOR THE COUNCIL

Annabel Graham Paul of Counsel, instructed by the Council's Legal Services Manager

She called

Christopher Cobbold MA MBA MRICS Director, Wessex Economics

Hazel Izod MA BSc(Hons) Principal Planning Officer, East Hertfordshire District Council

Ciaran MacCullagh MA MSc BA(Hons) Assistant Conservation and Urban Design Officer, East Hertfordshire District Council

Simon Joynes BSc(Hons) MSc CEnv H MCIEH AMILM Chartered Environmental Health Practitioner and technical advisor to East Hertfordshire District Council

FOR THE APPELLANT

Christopher Katkowski of Queen's Counsel, instructed by Peter Luder of Weston Homes

He called

John Stephenson FRICS MCIARB Senior Director, Grant Mills Wood Chartered Surveyors

Peter Luder BA(Hons) MUP MRTPI Head of Planning, Weston Homes plc

Silvio Petrasso BSc(Hons) MIOA CMIOSH ACIEH MIIRSM IMAPS Associate Director, Stansted Environmental Services Ltd

Documents Submitted at the Inquiry

- 1 List of Revised Plans
- 2 Signed version of the Unilateral Undertaking dated 26 June 2017
- 3 Hertfordshire County Council report to consider the acquisition of land for a new first school at London Road, Buntingford dated 23 June 2017
- 4 Buntingford Neighbourhood Plan, made version
- 5 Full copy of the Savills Report dated 4 November 2016, extracts from which appear in Mr Cobbold's evidence
- 6 Extract from the Planning Practice Guidance on noise
- 7 Extract from BS4142
- 8 Illustrative Plan Showing Site Context ref WH178/17/P/05.03
- 9 Appellant's Opening Statement
- 10 Planning Policy Officer comments on application ref 3/13/0813/OP
- 11 Appendices to the Hertfordshire County Council Report (Inquiry Document 3)
- 12 Extract from BS8233
- 13 Decision notice for application ref 3/16/1392/RM
- 14 East Hertfordshire District Council further statement on planning obligations
- 15 Email and attachments from Peter Luder dated 7 July 2017 in respect of Council Managed Leisure Facilities
- 16 Council's closing submissions
- 17 Appellant's closing submissions
- 18 Court of Appeal judgement dated 30 June 2017 in the case of Barwood Strategic Land II LLP v East Staffordshire DC and the Secretary of State for Communities and Local Government

Documents Submitted after the Inquiry

- 19 Ecology Solutions: Reptile Survey Report May 2017, Bat Survey Report June 2017 and Badger Survey Report June 2017.

**Schedule of conditions attached to
Appeal Ref: APP/J1915/W/17/3166872
Land to the north of Park Farm Industrial Estate, Ermine Street,
Buntingford SG9 9AZ**

- 1) The development to which this permission relates shall be begun within a period of three years commencing on the date of this notice.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans:

WH178/16/P/05.01-FUL Rev A; WH178/16/P/05.02; WH178/16/P/10.01-RM;
WH178/16/P/10.02-FUL Rev D; WH178/16/P/10.04-FUL Rev D;
WH178/16/P/25.01; WH178/16/P/25.02-FUL Rev A; WH178/16/P/25.03-FUL Rev B; WH178/16/P/25.04-FUL Rev A; WH178/16/P/25.05-FUL Rev A;
WH178/16/P/25.06-FUL Rev A; WH178/16/P/25.07 -FUL Rev A;
WH178/16/P/25.08-FUL Rev A; WH178/16/P/25.09-FUL Rev C;
WH178/16/P/25.10-FUL Rev B; WH178/16/P/25.11-FUL Rev C;
WH178/16/P/25.12-FUL Rev A; WH178/16/P/25.13-FUL; WH178/16/P/25.14-FUL Rev A; WH178/16/P/35.03-FUL Rev B and WH178/16/P/35.04-FUL Rev B.
- 3) No development or groundworks shall take place until the applicant 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. The development shall thereafter be carried out in accordance with the approved scheme, and this condition will only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
- 4) No building hereby permitted shall be occupied until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment shall be provided to the Local Planning Authority. The development shall be implemented in accordance with the approved scheme. Where a sustainable drainage system is to be provided the submitted details shall:
 - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 5) Prior to the first occupation of the development hereby approved, visibility splays of 2.4m x 90m to the south and 2.4m x 215m to the north shall be provided and permanently maintained at the junction of the proposed access road and Ermine Street. Within the splays, there shall be no obstruction to visibility between 600m and 2m above the carriageway level.
- 6) Prior to the commencement of the development hereby approved, a Construction Management Plan shall be submitted to and approved in writing

by the Local Planning Authority. Thereafter the development shall accord with the approved details. The Construction Traffic Management Plan shall include details of:

- construction vehicle numbers, type and routing;
 - traffic management requirements;
 - construction and storage compounds (including areas designated for car parking):
 - siting and details of wheel washing facilities;
 - cleaning of site entrances, site tracks and the adjacent public highway;
 - timing of construction activities. No plant or machinery shall be operated on the site outside the hours of 0730 to 1830 on Mondays to Fridays, 0730 to 1300 on Saturdays and at no time on Sundays or Bank Holidays;
 - post construction restoration/reinstatement of the working areas and temporary access to the public highway.
- 7) Prior to the commencement of development hereby approved, detailed plans showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to, and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
- 8) Prior to any above ground building works being commenced, the external materials to be used in the construction of the buildings hereby permitted shall be approved in writing by the Local Planning Authority and the development shall thereafter be implemented in accordance with the approved materials.
- 9) All existing groups of trees and hedges shall be retained, unless shown on the approved drawings as being removed. Thinning groups, crown reduction, raising or thinning for selected trees shall only be carried out in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to occupation of any adjoining dwelling. All trees and hedges on and immediately adjoining the site that are to be retained shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to design, demolition and construction', for the duration of the works on site. In the event that trees or hedging to be retained become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging to be retained dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed with the Authority.
- 10) Before any works commence on site, details of the design of building foundations and the layout, with positions, dimensions and levels, of (a) service trenches (b) ditches (c) drains (d) other excavations on site insofar as they may affect trees and hedgerows on or adjoining the site, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 11) The soil levels within the root spread of trees/hedgerows to be retained shall not be raised or lowered.
- 12) Prior to the commencement of the development, full details of both hard and soft landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate: (a) Proposed finished levels or contours of open areas (b) Means of enclosure (c) Car parking layouts (d) Other vehicle and pedestrian access and circulation areas (e) Hard surfacing materials (f) Minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs and lighting (including lighting serving the new footpath link and existing footpath 035. The lighting scheme shall have regard to the presence bats)) (g) Proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines, etc. indicating lines, manholes, supports. etc.) (h) Retained historic landscape features and proposals for restoration, where relevant (i) Planting plans (j) Written specifications (including cultivation and other operations associated with plant and grass establishment) (k) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate (l) Implementation timetable. Thereafter the development shall proceed in accordance with the approved details and timetable.
- 13) Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.
- 14) A schedule of landscape maintenance for a minimum period of five years shall be submitted to and approved by the Local Planning Authority and shall include details of the arrangements for its implementation. Maintenance of the landscaping shall be undertaken in accordance with the approved schedule.
- 15) The building envelope of the proposed dwellings shall be constructed so as to provide sound attenuation against external noise of not less than 17dB(A), with windows shut and other means of ventilation provided. Acoustic fences not less than 2m high shall be constructed so as to provide sound attenuation against external noise of not less than 10dB(A) to the rear of proposed plots 25 to 29 and between the end walls of Park Farm Industrial Estate Units 31 and 32 in accordance with a scheme which shall first be approved in writing by the Local Planning Authority. The fence between Units 31 and 32 shall include a secure means of access to the fire hydrant within the appeal site. The noise mitigation works shall be completed before the dwellings on plots 25 to 29 and plot 30 are occupied and shall be retained thereafter.
- 16) Prior to the first occupation of the permitted dwellings a scheme for the provision of bat boxes within retained trees on the site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the permitted dwellings.
- 17) No works involving the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations and/or pipe culverts have been submitted to and approved in writing by the Local Planning Authority. The measures may include (a) the creation of escape ramps which may be achieved by edge profiling of trenches and excavations or by the placement of planking at the end of each working

day (b) open pipework greater than 150mm in outside diameter being blanked off at the end of each working day (c) storage of materials in containers to minimise the chance of badgers coming onto site and potentially injuring themselves.