



Department for  
Communities and  
Local Government

Our ref: APP/J3530/W/15/3138710

Richard Brown  
Richard Brown Planning Limited  
18 Redwood  
Burnham  
Buckinghamshire  
SL1 8JN

31 August 2017

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD  
LAND AT CANDLET ROAD, FELIXSTOWE, SUFFOLK  
APPLICATION REF: DC/15/1128/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Clive Hughes BA(Hons) MA DMS MRTPI, who held a public local inquiry on 27-30 September 2016 into your client's appeal against the decision of Suffolk Coastal District Council to refuse your client's application for planning permission for the erection of 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure, in accordance with application ref: DC/15/1128/OUT, dated 13 March 2015.
2. On 13 April 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant outline planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Procedural matters**

5. The Secretary of State agrees with the Inspector at IR3-4 that no interests would be prejudiced by determining the appeal on the basis of the amended plan, and he has proceeded on that basis.

## **Matters arising since the close of the inquiry**

6. On 16 February 2017, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the Inspector's Report on the Felixstowe Peninsula Area Action Plan (FPAAP) and the Site Allocations and Area Specific Policies Development Plan Document (DPD).
7. On 18 May 2017, the Secretary of State wrote further to the main parties to afford them an opportunity to make representations on the Supreme Court judgment on the cases of Cheshire East BC v SSCLG and Suffolk Coastal DC v SSCLG, which was handed down on Wednesday 10 May 2017.
8. On 27 June 2017, the Secretary of State wrote further to the main parties to afford them an opportunity to make representations on the Suffolk Coastal District Council Housing Land Supply Assessment (1 April 2017 – 31 March 2022) published in June 2017.
9. A list of representations received is set out at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. Two applications for partial award of costs have been made; one by Suffolk County Council against Christchurch Land & Estates (Felixstowe) Ltd and, and one by Christchurch Land & Estates (Felixstowe) Ltd against Suffolk Coastal District Council. These applications are the subject of separate decision letters.

## **Policy and statutory considerations**

11. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
12. In this case the development plan consists of the Suffolk Coastal Local Plan Core Strategy and Development Management Policies (CS) adopted in July 2013; the saved policies of the Suffolk Coastal District-wide Local Plan (incorporating First and Second Alterations) (2006); the Felixstowe Peninsula Area Action Plan (FPAAP) and the Site Allocations and Area Specific Policies Development Plan Document (DPD), both adopted on 26 January 2017. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR15, along with those set out at IR21, which now form part of the development plan. He notes that policies AP170 and AP208, referred to at IR20, have been superseded by the FPAAP and no longer form part of the development plan.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

### *Emerging plan*

14. A Local Plan Review is being carried out. This is at a very early stage, with an Issues and Options consultation being carried out between 18 August and 30 October 2017. Given the early stage of preparation and the lack of firm proposals at this stage, the Secretary of State considers that the emerging plan carries limited weight.

### **Main issues**

15. The Secretary of State considers that the main issues are housing land supply; the weight attaching to development plan policies; landscape character; the benefits and impacts of the proposal; and provision of community and other services and facilities.

### *Housing land supply*

16. The Secretary of State has taken into account the Inspector's analysis at IR117-129. For the reasons given in IR117-124, he agrees with the Inspector at IR123-4 that due to the terms of Policy SP2, and the Council's failure to meet the cited timescale, the CS requirement figure of 7,900 (which gives an annual figure of 465) is out of date and cannot reasonably remain in place. He has gone on to consider what the appropriate requirement figure would be. For the reasons given at IR125-126, he agrees with the Inspector that a requirement figure in excess of 11,000 seems more realistic. He has taken into account the fact that the Inspector for the CS Examination concluded in 2012 that the best available estimate of the OAN for 2010-2027 would be 11,000 new dwellings (IR121), but that figures in excess of 11,000 were not subjected to an examination in public (IR125). He therefore concludes that on the basis of the material which was before the inquiry, a requirement figure of 11,000 is appropriate.

17. Since the inquiry was held, relevant documents have been published. The Suffolk Coastal District Council Housing Land Supply Assessment 1st April 2017 – 31st March 2022 (HLSA) was published in June 2017. It draws on the conclusions of the Ipswich Policy Area Strategic Housing Market Assessment (SHMA), which was published in May 2017. An appeal decision relating to Woodbridge Road, Bredfield (APP/J3530/W/16/3165412) was issued on 14 June 2017. The Council has further provided material relating to discussion of the SHMA at the Bell Lane inquiry (APP/J3530/W/16/3160194).

18. The Secretary of State has considered whether the figure of 11,000 should be amended in the light of this new information. The SHMA identifies an OAN figure of 460dpa, roughly in line with the CS figure. He has taken into account that the HLSA acknowledges that this figure has not been tested, and that this will happen as the Local Plan Reviews progress (paragraph 8 of the HLSA). The Secretary of State considers that testing of the SHMA figure is particularly important in this case. He notes that the SHMA highlights several uncertainties: e.g. the causes of UPC cannot be satisfactorily explained, and hence excluding it from future projections could either underestimate or overestimate trend-driven demographic change; migration and household formation are difficult to measure for the past and even more difficult to predict for the future; and there are difficulties in identifying the appropriate housing market uplift. In the light of these uncertainties, the Secretary of State considers it is important that the SHMA is subject to consultation, scrutiny and independent objective testing. He further considers that it is not

appropriate or necessary for him to attempt to resolve these uncertainties within this appeal process.

19. He agrees with the Bredfield Inspector's reasoning in paragraph 11 of his decision letter that the fact that the recently adopted DPD was found sound based on a housing requirement of 7,900 homes does not alter the fact that the OAN is identified in the CS as 11,000 homes, and that the Framework states that the housing requirements of an area should be based upon this.
20. For these reasons, he considers that the OAN set out in the SHMA carries limited weight, and considers that a figure of 11,000 for the OAN is appropriate in the current case. That gives an annual figure of 647, and a CS target figure between 2010-11 and 2015-16 of 3882.
21. The Secretary of State agrees with parties that the under delivery should be made up in the next 5 years (the Sedgefield method). Set against an annual figure of 647, the housing delivery figures set out in Appendix C of the HLSA indicate a cumulative shortfall of 1866 (3882 – 2016), and an annual shortfall figure under the Sedgefield method of 373.
22. The Secretary of State agrees with the Inspector's reasoning in IR127-129, and concludes that a 20% buffer should be applied. Applying this buffer to the figures above gives an annual requirement of 1,224  $((647 + 373) \times 1.2 = 1,224)$ .
23. The Secretary of State has gone on to consider housing supply. The Inspector's consideration at IR130-135 is superseded by the consideration of this issue at the Bredfield hearing on 6 June 2017, where the Council put forward a supply figure of 3,757 (paragraph 15 of the Bredfield decision). Given this is a more up-to-date assessment by the Council, the Secretary of State prefers this figure. He notes that the figure for 2016-17 completions in the HLSA is higher than the figure put forward at the Bredfield hearing, and that the number of dwellings which have planning permission has also increased since the Bredfield hearing. He considers, in line with the Bredfield Inspector, that the recent increase in completions could have reduced the overall extent of the under provision, albeit that annual completions remain below the annual target of 647.
24. Overall the Secretary of State considers that that the supply of housing is 3-3.5 years.

#### *Weight attaching to development plan policies*

25. The Secretary of State agrees with the Inspector at IR180 that there would be conflict with CS Policies SP19, SP21, SP29, DM3 and FPP2, which deal with settlement policy and boundaries. These policies are consistent with some elements of the Framework, which seek to protect the countryside. However, the Secretary of State considers that overall they are out of date by virtue of inconsistency with the Framework, as there is no 5-year housing land supply as required by the Framework. Given that the housing land supply is only 3-3.5 years, he considers that these policies carry moderate weight.

#### *Landscape character*

26. For the reasons given at IR138-151, the Secretary of State considers that overall there would be moderate harm to the setting of Felixstowe/Walton, and moderate harm to the character of the countryside. Although the site is large, and he agrees with the Inspector that there would be considerable visual harm to the immediate area (IR144) and significant harm to the character of FP057 (IR146), he further agrees that the harm would

be limited and highly localised (IR151). He gives the harm moderate weight. For the reasons given at IR148, he agrees with the Inspector that the harm to the AONB would be very limited; however, given the importance that the Framework attaches to conserving landscape and scenic beauty in AONBs, he gives this harm moderate weight. He further agrees with the Inspector at IR151 that there is conflict with CS Policies SP15, SP19, SP21 and SP29.

#### *Benefits and impacts*

27. For the reasons given in IR153-155, the Secretary of State considers that the economic benefits of the proposal carry moderate weight. For the reasons given in IR156 he considers that the benefits of the provision of market and affordable housing carry significant weight. However, as there is no mechanism to secure the proposed business units, the community facility or the care home/assisted living spaces, he considers that these carry limited weight in the planning balance.

28. The Secretary of State considers that the loss of BMV agricultural land carries moderate weight against the proposal.

#### *Provision of community and other services and facilities*

29. For the reasons given in IR159-166, the Secretary of State agrees with the Inspector that subject to the imposition of conditions and the submitted unilateral undertaking, the proposals make adequate provision for community and other services and facilities, in line with local and national policy (IR166).

#### **Planning conditions**

30. The Secretary of State has given consideration to the Inspector's analysis at IR167-170, the recommended conditions set out at the end of the IR (Annex pages 37-42) and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

#### **Planning obligations**

31. Having had regard to the Inspector's analysis at IR171-2, the signed and dated unilateral undertaking, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR172 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

#### **Planning balance and overall conclusion**

32. The appeal proposal conflicts with a number of development plan policies as set out above, and the Secretary of State considers that it is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. In the absence of a 5-year housing land supply, paragraph 14 of the Framework applies. It states that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.
34. The Secretary of State considers that the harm to the setting of Felixstowe/Walton and to landscape character carries moderate weight, and that the very limited harm to the AONB also carries moderate weight. He further considers that the loss of BMV agricultural land carries moderate weight against the proposal.
35. He considers that the provision of the housing, including the affordable housing, carries significant weight in favour of the development, and that the economic benefits carry moderate weight. He further considers that the proposed business units, the community facility and the care home/assisted living spaces carry limited weight in favour of the development.
36. The Secretary of State considers that there are no specific policies in the Framework which indicate that this development should be restricted. He further considers that the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits. Overall he concludes that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
37. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted, subject to conditions.

### **Formal decision**

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission, subject to the conditions set out in Annex B of this decision letter, for the erection of 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure, in accordance with application ref: DC/15/1128/OUT, dated 13 March 2015, as amended by the substitution of a revised plan as set out in paragraph 5 of this decision letter.
39. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
41. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or

if the Local Planning Authority fail to give notice of their decision within the prescribed period.

42. A copy of this letter has been sent to Suffolk Coastal District Council and all other parties who asked to be informed of the decision.

Yours faithfully,

*Maria Stasiak*

Authorised by Secretary of State to sign in that behalf

## Annex A – Summary of representations

### Representations received in response to the Secretary of State's reference back letter of 16 February 2017

Party	Date
Suffolk Coastal District Council	1 March 2017
Suffolk County Council	2 March 2017
Richard Brown Planning Limited	2 March 2017
Pegasus Planning	2 March 2017
Felixstowe Society of Allotment and Leisure Gardeners	1 and 3 March 2017
Felixstowe Town Council	2 March 2017

### Representations received in response to the Secretary of State's reference back letter of 18 May 2017

Party	Date
Suffolk Coastal District Council and Cornerstone Barristers	24 May and 1 June 2017
Richard Brown Planning Limited	31 May 2017
Felixstowe Society of Allotment and Leisure Gardeners	29 May 2017
Felixstowe Town Council	31 May 2017

### Representations received in response to the Secretary of State's reference back letter of 27 June 2017

Party	Date
Suffolk Coastal District Council	7 July 2017
Richard Brown Planning Limited	6 July 2017
Felixstowe Society of Allotment and Leisure Gardeners	6 July 2017
River Debden Association	8 July 2017
Felixstowe Town Council	11 July 2017
Suffolk Coastal District Council	19 July 2017

### General representations

Therese Coffey MP	11 October 2016
Suffolk Coastal District Council	28 July 2017
Suffolk Coastal District Council	15 August 2017
Suffolk Coastal District Council	18 August 2017
Suffolk Coastal District Council	29 August 2017



## Annex B – Conditions

- 1) Plans and particulars showing the detailed proposals for all the following aspects of the development (“the reserved matters”), or within a phase, shall be submitted to the local planning authority and the development shall not be commenced before these details have been approved:
  - i. The siting of all buildings and the means of access thereto from an existing or proposed highway;
  - ii. The design of all buildings, including the colour and texture of facing and roofing materials;
  - iii. Landscaping;
  - iv. A landscape design showing the planting proposed to be undertaken, the means of forming enclosures, the materials to be used for paved and hard surfaces and the finished levels in relation to existing levels;
  - v. The layout of foul sewers and surface water drains; and
  - vi. The alignment, height and materials of all walls and fences and other means of enclosure.
  
- 2)
  - a) Application for approval of any reserved matters must be made within five years of the date of this outline permission and then
  - b) The development hereby permitted must be begun within either three years from the date of this outline permission or within two years from the final approval of the reserved matters, whichever is the later date.
  
- 3) The development hereby permitted shall be carried out in full accordance with Drawing No. YOR.2258\_036.A and generally in accordance with the Indicative Masterplan (Drawing No YOR.2258\_010M) unless otherwise agreed in writing by the Local Planning Authority.
  
- 4) Prior to development commencing a phasing plan for the development of the whole of the site shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall be undertaken in accordance with the approved plan or as otherwise agreed in writing by the Authority from time to time.
  
- 5) Before the development is commenced, or any phase of development commenced, details of the areas to be provided for storage of refuse/ recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved details and shall be retained thereafter for no other purpose.
  
- 6) Prior to the commencement of development, a Construction Management Plan shall be submitted to the local planning authority for approval. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
  - i. The parking of vehicles of site operatives;
  - ii. Loading and unloading of plant and materials;
  - iii. Storage of plant and materials used in the construction of development;
  - iv. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - v. Measures to control the emission of dirt; and
  - vi. A scheme for recycling/disposing of waste resulting from demolition.

- 7) No development shall take place until a Dust Management Plan has been submitted to and approved in writing by the Local Planning Authority and the recommendations of which must be implemented during the construction phase of the development unless otherwise agreed in writing.
- 8) Prior to any development commencing on any phase within the site a scheme for protecting noise sensitive properties within the site from road traffic noise shall be submitted to and approved by the Local Planning Authority. All works which form part of this scheme shall be so far as they relate to any specific property before such property is occupied.
- 9) Although site investigation has not previously identified any contamination associated with this site, if any contamination is encountered anywhere on the site during the development, it must be reported to the Local Planning Authority. Where remediation is necessary a scheme shall be prepared and agreed in writing with the Local Planning Authority prior to any works which may disseminate or bury the contaminant or put any site operative at risk and thereafter implemented in accordance with the measures specified in the agreed scheme.
- 10) No development shall commence commencing on any phase within the site until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.
- 11) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.
- 12) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 13) Prior to the commencement of development a scheme for the provision and implementation of water, energy and resource efficiency measures, during the construction and occupational phases of the development shall be submitted to and agreed, in writing, with the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the construction and occupancy of the development. The scheme shall be constructed and the measures provided and made available for use in accordance with such timetables as may be agreed.
- 14) Prior to the commencement of development, a scheme for the provision and implementation of rainwater harvesting shall be submitted and agreed, in writing, with the Local Planning Authority. The works/scheme shall be constructed and completed in accordance with the approved plans/specification in conjunction with the development to which it relates.
- 15) Any planting, seeding or turfing comprised in the approved details of landscaping in respect of any phase shall be carried out in accordance with the phasing arrangements for

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

16) A landscape management plan, including the long term design objectives, management responsibilities and maintenance schedules for all landscape areas, SUDS and play areas, other than privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development. The landscape management plan shall be carried out as approved.

17) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the dwellings are occupied. Development shall be carried out in accordance with the approved details.

18) Concurrent with the first reserved matters application, an amended flood risk assessment (FRA) including surface water storage on site to be provided and sized to contain the 1 in 100 year + 40% climate change event has been submitted to and approved in writing by the Local Planning Authority.

19) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- i. Limiting the surface water run-off generated in all events up to the 1 in 100 year critical storm to no more than 43l/s (1.37 l/s/ha or QBAR), so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- ii. Provision of attenuation storage to manage the volume of surface water generated in all rainfall events up to and including the 1 in 100 year return period event including allowances for climate change (40%);
- iii. The pipe diameters of the surface water drainage network shall be determined during the detailed design stage and calculations shall be submitted which demonstrate they are sized to adequately convey the critical duration 1 in 100 year return period rainfall event, including allowances for climate change. A fully labelled network diagram showing all dimensions (pipe numbers, gradients, sizes, locations, manhole details etc.) of every element of the proposed drainage system should be submitted;
- iv. In the event of exceedance flows that surpass the critical duration rainfall event or a blockage/failure occurs within the drainage network/flow control device the attenuation features shall incorporate an emergency spillway and appropriate freeboard as part of their design;
- v. Confirmation that the existing drainage ditches, downstream to watercourse, are free from obstruction and able to adequately drain to watercourse without causing nuisance or damage. It is proposed that all surface water runoff generated from the proposed development will be discharged to existing drainage ditches via attenuation and a controlled discharge rate (43 l/s);
- vi. All surface water management features must be designed in accordance with CIRIA (C753) The SuDS Manual so ecological, water quality and aesthetic benefits can be achieved in addition to the flood risk management benefits;
- vii. Plans and drawings showing the locations and dimensions of all aspects of the proposed surface water management scheme. The submitted plans should

demonstrate that the proposed drainage layout will perform as intended based on the topography of the site and the location of the proposed surface water management features. In addition, full design details, including cross sections of the proposed attenuation features will be required;

viii. Details of the future adoption and maintenance of all aspects of the surface water drainage strategy. The local planning authority should be satisfied that arrangements are in place for the long term maintenance and management of the surface water management scheme;

ix. Infiltration testing shall be carried out on the site in accordance with BRE 365, and the use of infiltration as the means of drainage if the infiltration rates and groundwater levels show it to be possible;

x. Confirmation, in writing, of the East Suffolk Internal Drainage Board's acceptance of the proposed surface water runoff rates should be submitted;

xi. A full hydrological analysis of the ordinary watercourse which flows through the site, including information regarding the watercourse capacity and calculations to demonstrate that the proposed road crossing culverts/bridges will be suitably sized to convey the 1 in 100 year flood event, including allowances for climate change. The mitigation measures shall be fully implemented in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

20) No development shall commence until details of the implementation, maintenance and management of the strategy for the disposal of surface water on the site have been submitted to and approved in writing by the local planning authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.

21) No more than three hundred (300) dwellings hereby permitted shall be occupied until the flood risk asset register template has been submitted, in the required form, to and approved in writing by the Local Planning Authority.

22) No development shall commence until details of a construction surface water management plan detailing how surface water and storm water will be managed on the site during construction is submitted to and agreed in writing by the Local Planning Authority. The construction surface water management plan shall be implemented and thereafter managed and maintained in accordance with the approved plan.

23) No development shall commence until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions, and:

- i. The programme and methodology of site investigation and recording;
- ii. The programme for post investigation assessment;
- iii. Provision to be made for analysis of the site investigation and recording;
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v. Provision to be made for archive deposition of the analysis and records of the site investigation;

- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; and
- vii. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

24) No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 23 and the provision made for analysis, publication and dissemination of results and archive deposition.

25) No development shall commence on each specific reserved matters phase until details of the estate roads and footpaths, (including layout, levels, gradients, surfacing and means of surface water drainage), related to that phase, have been submitted to and approved in writing by the Local Planning Authority.

26) No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least Binder course level or better in accordance with the approved details.

27) The new estate road junction with Candlet Road, as shown on WYG drawing No. A085774\_007 Rev. B inclusive of cleared land within the sight splays to this junction must be formed prior to any other works commencing or delivery of any other materials. Full details of the junction shall be submitted to and approved by the Local Planning Authority prior to the commencement of development.

28) No development shall commence on each specific reserved matters phase until details of the areas to be provided for the manoeuvring and parking of vehicles including secure cycle storage, related to that phase, have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be delivered in conjunction with the development they are intended to serve, and shall be retained thereafter and used for no other purpose.

29) No more than ninety nine (99) dwellings shall be occupied until the footway/ cycleway along the north east side of Candlet Road from the site access to the Grove Road Heath Centre, as shown on WYG Drawing A085774\_010 Rev. A, and the footway link adjacent to Gulpher Road, as shown on WYG Drawing No. A085774\_007 Rev. B, have both been completed in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.

30) No dwelling shall be occupied until footpath 24 has been enhanced with a metalled surface and street lighting, from the site access to Ataka Road (as generally shown in WYG drawing A085774\_014), has been carried out in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.

31) No dwelling shall be occupied until a Zebra Crossing on the High Street, as shown on the WYG Drawing A 085774\_011 Rev. A, has been completed in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.

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# Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA(Hons) MA DMS MRTPI

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

Date: 11 January 2017

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**TOWN AND COUNTRY PLANNING ACT**

**SUFFOLK COASTAL DISTRICT COUNCIL**

**APPEAL BY**

**CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD**

Inquiry opened on 27 September 2016

Land at Candlet Road, Felixstowe, Suffolk IP11 9RD

File Ref: APP/J3530/W/15/3138710

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**File Ref: APP/J3530/W/15/3138710**

**Land at Candlet Road, Felixstowe, Suffolk IP11 9RD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Christchurch Land & Estates (Felixstowe) Ltd against the decision of Suffolk Coastal District Council.
- The application Ref DC/15/1128/OUT, dated 13 March 2015, was refused by notice dated 12 June 2015.
- The development proposed is up to 560 dwellings including a local community centre, a 60 bedroom extra care home and 50 assisted living units, 2 small business units and open space provision with associated infrastructure.
- The inquiry sat for 4 days on 27 to 30 September 2016; an accompanied site visit took place on 4 October 2016.

**Summary of Recommendation: That the appeal be allowed.**

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**Procedural Matters**

1. At the Inquiry applications for costs were made by Christchurch Land & Estates (Felixstowe) Ltd (the appellant) against Suffolk Coastal District Council (SCDC) and by Suffolk County Council (SCC) against the appellant. These applications are the subject of separate Reports.
2. On 13 April 2016 the Secretary of State (SoS) directed that he would determine the appeal. The reason for this direction was that the appeal involves proposals for residential development of over 150 units or on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. As part of the preparation of a section 106 Obligation, up to date title information was obtained by the appellant. The Land Registry-filed plans showed that the boundaries of the two titles differed slightly in three places from the boundary as shown on the site location plan submitted with the planning application. An amended site location plan (Drawing No YOR.2258\_036.A) was submitted with the supplemental proof of Richard Brown (Document CLE6: Plan 4) and at the Inquiry I was asked to substitute this plan for that originally submitted.
4. The three changes, which are indicated in blue on Drawing No YOR.2258.040.A (Document CLE6: Plan 3), are minor (amounting to less than 1% of the original site) and each involves a slight reduction in the site area. No additional land outside the original application site is to be included. As the site area is reduced I do not consider that any interests would be prejudiced by this appeal being determined on the basis of the amended plan. The Illustrative Masterplan has also been amended to accord with this reduction in the site area.

**Reasons for refusal**

5. At its meeting on 10 June 2015 the Council's Development Management Committee resolved to refuse planning permission for the following reasons:
  1. *The site lies in the open countryside outside the defined physical limits for Felixstowe where there is a presumption against new development in recognition of its intrinsic character and beauty. Policy SP21 limits new*

*development to that which of necessity requires to be located there. The site would breach the strong physical "barrier" Candlet Road and would lead to development with countryside on three sides which does not promote sustainable development. Candlet Road is a heavily trafficked route with no footpaths. It is also the main vehicular route to the town from the A14 for residents, visitors and tourists. As such it forms a strong physical "barrier" that denotes the extent of the existing built up settlement. The proposed development would be isolated and not well related to the established built up area of Felixstowe and the villages and has poor access to services and facilities required by future residents and is therefore not an appropriate housing site nor is it in a sustainable location. The inclusion of a footpath on Gulpher Road and crossing over Candlet Road does not overcome the concerns identified. Future residential development in the Felixstowe peninsula area should be brought forward in the Action Area Plan. The proposal is not considered to be sustainably located and as such is contrary to the provisions of the National Planning Policy Framework and Policies SP1, SP1A, SP19, SP21 and SP29 and DM22 of Suffolk District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013.*

*2. The proposal fails to make adequate provision/ contributions (and/ or agreement to provide) for community and other facilities/ services for the occupants of the dwellings. The applicant have not entered into the necessary legal agreement, which is required to ensure the following infrastructure requirements/ facilities are provided:*

- The provision of a third of the dwellings as Affordable Housing,*
- Financial contributions towards Secondary School Places, Pre-school Places and Libraries, Financial contributions towards Highway Improvements and a Traffic Regulation Order in order to address the highway and pedestrian safety concerns,*
- The provision of Play Space and Sports Space,*
- A Management plan to deal with the provision, maintenance and transfer of open space and play space equipment.*

*The proposal is therefore contrary to the National Planning Policy Framework and Policies SP1, SP11, SP16, SP17, SP18, SP26, DM2 and DM32 of the Suffolk District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013.*

*3. The application does not provide sufficient information to enable the archaeological potential of the site to be suitably assessed and this is a requirement prior to the determination of any application.*

*4. A development of this scale normally requires a minimum of two points of vehicular access for highway safety and accessibility in an emergency. As currently proposed the single access is not acceptable and gives rise to road safety concerns. The application is therefore contrary to Policies DM21 and DM22 of the Suffolk District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013.*



5. *The proposed development does not provide a continuous surfaced and lighted link for walkers and cyclists from the site to the local roads leading to Walton High Street, the nearest service centre. Footpath 24 which runs from the south side of Candlet Road to recreation Way and Ataka Road is an un-surfaced route with no lighting, and cannot be considered suitable for an intensification of use. Such a lack of connectivity will be likely to result in an increase in vehicle trips from development here which is not sustainable in transport terms. The proposal is therefore contrary to Policies SP1, SP1A, DM21 and DM23 of the Suffolk District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013.*
  6. *The Transport Assessment for this application is not complete, as it does not include the committed development C12/2395, which is for retail use on the Felixstowe rail station site. Should that permission proceed, it will result in additional impact on the road network, and particularly on the signal-controlled junction of High Road with Garrison Lane. This needs to be assessed before the application is determined.*
  7. *The proposed development will extend the urban area and built form beyond the existing strong urban edge formed by Candlet Road to the south, into what is currently open and attractive countryside, albeit somewhat moderated by the presence of extensive horse grazing paddocks associated with the livery business which exists on site. The landscape becomes characterised by temporary paddock electric fence ribbons, and dominant weed infested grassland because horses are selective grazers. The proposed development would alter the character of the immediate site from what is currently horse grazed pasture to a landscape of mixed use but mainly residential housing. This is a significant but localised effect on landscape character. The development, with its illogical and unconstrained boundaries, will extend development closer to the Area of Outstanding Natural Beauty and protected landscapes which is considered to be potentially harmful to the short and long distant [sic] views from protected landscape areas. The proposed landscape management plan and advanced mitigation planting do not wholly overcome the concerns to landscape harm in this instance, although it is acknowledged that visible impact will moderate as the indicated mitigating planting grows and matures. The proposal is therefore considered to be contrary to Policies SP1, SP1A, SP15 and DM21 of the Suffolk District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013.*
6. There is an error in the second reason for refusal where, in the second bullet point, it incorrectly refers to secondary school places. This should read primary school places. The appellant was fully aware to this typographical error and was not prejudiced by it.
  7. On 11 July 2016 the Council's Planning Committee agreed that reasons for refusal Nos 3, 4, 5 and 6 would not be defended at the Inquiry as it was anticipated that these matters would be agreed through a Statement of Common Ground (SoCG) (Document DC3.1). In the event, several separate SoCGs were submitted in respect of Housing Requirement & Five Year Housing Land Supply (Document ID1); Drainage (ID15); Archaeology (ID16); Transport (ID24 & GEN3); and Education and Early Years (ID25).

8. A Unilateral Undertaking (UU) was submitted by the appellant. SCDC and SCC agree this overcomes reason for refusal 2, although there is an outstanding issue concerning the way in which the issue of primary school provision has been dealt with in the UU. This is discussed later in this Report. A draft version of the UU (Document ID14) was presented and discussed at the Inquiry and a signed copy was submitted following the close of the Inquiry (Document PID1) in accordance with an agreed timetable.

### **The Site and Surroundings**

9. The appeal site, which following the reduction in area as set out in paragraphs 3 and 4 (above) has an area of 30.76ha, is located to the north of Candlet Road (A154) and to the east of Gulpher Road, a designated "Quiet Lane". There are two dwellings within the overall site boundary but which do not form part of the appeal site. These dwellings, Cowpasture Cottage and Cowpasture Farm, together with their gardens, form small islands excluded from the appeal site.
10. The site is of irregular shape and is slightly undulating with its highest point in the centre. It is mostly laid to grass used as grazing for horses. There is a sizeable stables complex at Abbey Farm close to Gulpher Road which includes two ménages and a small wind turbine in the centre of the site. Much of the site is divided into small fields by fences and electrified tapes. There are small industrial units close to the southern boundary, accessed from Gulpher Road, and a golf driving range along the western boundary. This was not in use at the time of my visit, its car park being used for caravan storage.
11. To the west, north and east is agricultural land, the land to the east being separated by Grove Wood to which there is public access. There are playing fields, with a pavilion and substantial car park, next to Grove Wood, the car park is also used by visitors to the Wood. This Wood also extends to the south of the site and adjoins existing allotments that are situated between the site and Candlet Road. There are lay-bys either side of Candlet Road. To the south east of the site, and fronting Candlet Road, is the Grove Medical Centre and Pharmacy which has a substantial car park to the rear.
12. There is a public footpath (FP24) that runs from Candlet Road into the site adjacent to the western boundary of the allotments. The footpath then turns to the east and joins another footpath (FP19) in Grove Wood that runs north/south close to the eastern boundary of the site. To the south, FP24 links with a path on the southern side of Candlet Road that runs through to High Road West/ High Street, Walton. Candlet Road (A154) is a busy main road that is one of the main routes into Felixstowe from the A14. It broadly forms the northern boundary of the settlement with housing and the commercial centre of Walton to the south.
13. The site does not benefit from any local or national landscape designation. The boundary of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) lies about 300m north of the site. The Deben Estuary Special Protection Area and Site of Special Scientific Interest is approximately 2.4km away.

### **Planning Policy**

14. The development plan for the area comprises the Suffolk Coastal Local Plan Core Strategy and Development Management Policies (adopted 5 July 2013)

(the CS) and the saved policies in the Suffolk Coastal District-wide Local Plan (incorporating First and second Alterations) (the Local Plan) that were not superseded by the adoption of the CS in 2013. The relevant policies are set out in the Officers' Report to the Development Management Committee.

15. In respect of the matters at issue in this appeal, the key policies are listed in paragraphs 2.8 and 2.9 of the (unsigned) SoCG (Document GEN2) although this list omits CS Policies SP2 and SP29. The principal policies referred to at the Inquiry were CS Policies SP1, SP1A, SP2, SP15, SP19, SP21, SP29, DM21 and DM22 (Document CD E1).
16. CS Policy SP1 sets out the Council's strategy for the achievement of sustainable development. Policy SP1A says that when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (the Framework). It reiterates parts of paragraph 14 of the Framework. Policy SP2 says that the CS will make provision for 7,900 new homes across the District in the period 2010 to 2027. Land for new homes will be distributed in accordance with Policy SP19. The policy says that "*An early review of the CS will be undertaken, commencing with the publication of an Issues and Options Report by 2015 at the latest*". It adds that this review will identify the full, objectively assessed housing needs (FOAHN) for the District and proposals to ensure that this is met.
17. CS Policy SP15 says that the policy of the Council will be to protect and enhance the various landscape character areas (LCAs) either through opportunities linked to development or through other strategies. It says that in addition to the protected landscape of the AONB the valley of the River Deben is one of the valleys considered to be particularly significant.
18. Policy SP19 sets out the settlement policy. It identifies that Felixstowe/ Walton and the Trimley villages will accommodate 22% of the total proposed housing growth. This objective is expanded upon in Policy SP21 which says that in this area additional housing will be created and that in the short to medium term this will represent organic and evolutionary growth in Felixstowe and the Trimleys while preserving the prime agricultural land for essential food production. The policy also seeks to expand the local employment base alongside that provided by an expanded port function. The policy refers to a dispersed pattern of future development and says that it is the cumulative impact rather than individual development schemes that are likely to be critical and will drive the need for developer contributions.
19. Policy SP29 seeks to limit development outside defined settlements, such as Felixstowe, to that which of necessity requires to be located there and accords with other policies. Policy DM3 expands on Policy SP29 and sets out the types of new housing that will be allowed in the countryside. The current proposals do not fall into any of the cited categories. New housing will be directed to, and integrated within, settlements with defined physical boundaries. Policy DM21 says that proposals that comprise poor visual design or otherwise seriously detract from the character of their surroundings will not be permitted. Policy DM22 sets out various requirements for proposals for new development. Policy DM2 says that the Council, subject to various thresholds, will expect 1 in 3 new housing units to be affordable housing.

20. The cited saved policies of the Local Plan are Policies AP170 (Felixstowe: Restraint) and AP208 (Felixstowe: The urban fringe). These policies are dated and it is agreed that they carry only limited weight when compared with the CS and the Framework.
21. The emerging plans include the Felixstowe Peninsula Action Area Plan: Proposed Submission Document (April 2016) (FPAAP) and the Council's Site Allocations and Area Specific Policies: Proposed Submission Document (April 2016). The review of the CS referred to in Policy SP2 is expected to commence in Spring 2017. The Examination of the FPAAP commenced on 30 August 2016. The appeal site is not listed as a preferred site for development but is being promoted. Relevant policies include Policy FPP1 which identifies that 590 dwellings are proposed for Felixstowe. Policy FPP2 covers similar matters as CS Policies SP19 and SP29 in respect of settlement boundaries and development outside these boundaries. Policy FPP27 requires new residential development to provide accessible green spaces.

### **The Proposals**

22. The application is in outline form with all matters, apart from means of access to the site, reserved for future determination. The details of the site access, which would be from a signal controlled junction off Candlet Road, are shown on Drawing No A 085774\_007 in Appendix A of Document GEN3.
23. The proposals involve the demolition of all existing buildings within the site and include the construction of a maximum of 560 dwellings, a community centre, a 60 bedroom extra care home, 50 assisted living units, 2 small business units and open space with associated infrastructure.
24. There is no mechanism to ensure the delivery of the community centre or the small business units. The details of the development, as set out in several of the documents before the Inquiry, also refer to the provision of a small convenience store as part of the community centre. At the Inquiry it was confirmed that this store, which is not mentioned on the planning application form, does not form part of the proposals for which permission is sought.
25. The Illustrative Masterplan shows that the development would be largely set in from the site boundaries to allow for additional planting and that the centre of the site would remain open as public open space. The community centre would be to the east of this space while the business units would be sited close to the site entrance. New footpaths and cycle routes would be provided within the site. Off-site works would include a pedestrian crossing linking FP24 with the pedestrian route to the commercial uses in the centre of Walton. A new shared footway/ cycleway would be provided along the northern side of Candlet Road as far as the Grove Medical Centre and Pharmacy and a zebra crossing would be provided adjacent to the Gulpher Road/ Walton High Street junction.

### **Other Agreed Facts**

26. It is agreed that, subject to the imposition of conditions, there is no dispute between the parties concerning archaeological matters (Document ID16) or flood risk, surface water management or drainage matters (Document ID15). It is agreed that the proposals do not impact on any other designated or non-designated heritage assets. It is further agreed that subject to the submission

of a signed and dated UU there is no dispute between the parties concerning highway, transport and rights of way matters (Document ID24).

27. Concerning education and early years matters, there is no dispute between the appellant or SCC subject to the completion of an appropriate UU (Document ID25). There is a dispute between SCDC and the appellant concerning the provisions of the UU.

28. The site contains best and most versatile agricultural land, Grades 1 and 2.

## **The Case for Christchurch Land & Estates (Felixstowe) Ltd**

### ***Five year housing land supply***

#### *Full Objectively Assessed Housing Need*

29. The evidence of the Council's witness demonstrated that it has misunderstood the law and policy context in which this issue must be addressed. Citing Hickinbottom J in Stratford, which was later consolidated in Gallagher (Document CLE1: Appendix 3), it is clear that it is implicit in paragraph 47 of the Framework that the need is for a local planning authority to meet the FOAHN, for market and affordable housing, as far as consistent with the policies set out in the Framework even when considering development control decisions.
30. The PPG makes it clear that the development plan is the starting point but it is capable of being overtaken by subsequent evidence. In West Berkshire (Document CLE1: Appendix 20/21) the Court accepted that the Inspector was entitled to depart from the figure in the development plan for the reasons he gave in his Decision. He was entitled to conclude that the other material considerations he identified outweighed the annual housing requirement figure in the CS and that the housing requirement identified in the CS no longer provided an appropriate basis for the calculation of a five-year supply. In this appeal, therefore, the Council's position is misconceived.
31. The starting point is the housing land supply SoCG which reveals a dichotomy between two figures – 7,900 and 11,000. The Council is not advancing a figure between the two and so if the SoS rejects 7,900 then the Council does not have a five-year housing land supply in any circumstances. The issue, therefore, is whether the figure of 7,900 is now out of date.
32. It is agreed that the figure is based upon the Regional Spatial Strategy which was prepared before 2006 and that it does not reflect the FOAHN which is at least 11,000 and that a reassessment of the FOAHN is likely to produce a figure greater than 11,000. The contemporary reflection of housing needs is not 7,900. That figure only has traction because it has been adopted as the base figure in the CS. In the light of West Berkshire it is essential to consider whether it has been overtaken by events.
33. It was agreed by the Council that the CS Inspector had a dilemma; whether to require the withdrawal of the plan as not reflecting contemporary housing needs or whether to pass it subject to an early review. The Council persuaded the CS Inspector to adopt the latter approach on the assurance that the early review would commence in 2015. This plan was passed on this highly conditional basis. The Council has failed to commence the review at the time advertised to the CS Inspector. The Framlingham Inspector was told it would commence in

autumn 2016; this Inquiry has been told it will commence in spring 2017. The condition on which the CS was passed has not been met; more slippage may occur.

34. In Framlingham (Document CLE1: Appendix 11) the Inspector already found that 7,900 is not up to date for precisely these reasons. A further year has now passed. This body of evidence robs the 7,900 figure of any legitimacy. It should now be regarded as being out of date. While the Council offered various reasons for failing to meet the time limit for the review that is not the point. Objectively, there has been a failure to deliver and some further step must be taken to rectify the situation. This is reflected by the Framlingham Inspector.
35. The Council's suggestion that the policy requirement in CS Policy SP2 is optional is plainly wrong. The promise to carry out the review was clearly the central consideration that persuaded the CS Inspector to find the plan sound. Overall the principle in Dacorum (Document CD F6) applies in this case:

*"Mr Kingston conceded, rightly in my view, that if the Council failed to carry out the review within the timescale given in paragraph 29.9 of the CS, that is to say by 2018 at the latest, it would not be able to say that the policies for housing development in the CS were up to date".*

#### *The buffer*

36. The Framlingham Inspector was unequivocal on this matter; it should be 20%. The SoS needs to address this matter now. The Inspector assessed delivery by reference to the FOAHN figure and found the under performance to be very significant. Lewis J in Cotswold (Document CLE1: Appendix 22) confirmed this to be the correct approach. The position is clearly set out in Christopher May's proof which reveals a prolonged year on year failure to meet published targets. A 20% buffer is clearly appropriate.

#### *The "August update"*

37. The Council sought to inflate the supply side by adding sites which qualified for inclusion in the period April to August 2016. This is the wrong approach as identified by the Inspector in the Staunton Decision (Document CLE1: Appendix 27). This shows the Council's unreasonable behaviour as it has published a paper to the AAP Inspector in which it has explicitly eschewed the update as it does not provide a full housing land supply update.
38. The appellant invites the conclusion that the contemporary evidence reveals that the Council's five-year housing land supply falls substantially below the minimum five year threshold. In these circumstances it is agreed that paragraph 49 of the Framework is engaged and following Suffolk Coastal (Document CD F8), all the policies that restrict housing development are to be regarded as being out of date. This Decision should be made following the application of paragraph 49. In any event, following the principle in Dacorum, the CS should be regarded as being out of date regardless of any judgement on housing land supply.

#### ***Landscape character***

39. In this case the primary material is all agreed and the differences are limited to marginal judgements about the severity of effects. The Council praised the

submitted LVIA and took no issue concerning the rigour of its approach nor its conformity with the process prescribed in the Guidelines for LVIA.

40. The Council's impact complaints were as set out in Document ID3 and Table 1 of Mr Flatman's proof. He agreed this was the worst case assessment of visual effects and that, on his evidence at its highest, the visual effects were "*highly localised as to both area and severity*". This is an extraordinarily light impact and strongly suggests this is the right place in which to meet future housing needs. The main parties differed only as to a handful of scattered views in and around the boundary of the AONB. A six-foot gap in a fence at 1.2km distance should be regarded as insignificant.
41. The argument about character effects is equally constrained by the full agreements set out in Table 1 of Mr Flatman's proof. Four character areas are identified and the differences between the main parties are marginal. The impacts are conspicuously minor and contained, again suggesting that this is the right site. It is conceded that there is a minor adverse impact on views out from the AONB. Paragraph 115 of the Framework is relevant with appropriate weight applied.
42. The suitability of the site to accommodate development implied by the limited differences between the main parties is reinforced by the 2008 study; the 2009 Entec study; and the Officers' report to the Planning Committee. All confirm the ability of the site to accommodate residential development and the relative superiority of the site compared to others.
43. The appellant's conclusion is that the degree of landscape harm arising from the development of the appeal site is remarkably confined in both space and severity and, further, that this is the most appropriate location in which to meet housing needs when compared to other candidates around Felixstowe.

### ***Sustainable development***

44. The Framework well understands that the three limbs of sustainable development are irreconcilable as it is not possible to address economic and social needs without causing an impact on the environment. Paragraph 8 of the Framework implies that a balance must be struck between these policy objectives by insisting that they should be pursued simultaneously. In this case the environmental harm is minimised by the landscape impacts as set out above. No form of environmental harm, other than landscape impact, is advanced by the Council.
45. Concerning the social dimension, the appellant cites the provision of affordable housing in an accessible location close to local community facilities and the enhancement of non-car borne modes of transport to those facilities as well as the provision of public open space and possibly a community centre. The site has access to the town centre by bus, bicycle and on foot. In the light of the SoCG on Highways, the Council's witness did not support the Council's original suggestion that this would be an "isolated, gated community".
46. The economic dimension is advanced by the provision of housing. However, the Port of Felixstowe is a powerful driver of the sub-regional economy. The development plan is aligned with the New Anglia Local Enterprise Partnership (LEP) to promote the success of the Port as it brings substantial economic

benefits to Felixstowe and the wider economy. The LEP recognises the need for a comparable relationship between employment generation and housing provision; housing needs to keep pace or the success of the Port will be retarded. This was recognised in the Officers' report. The economic benefits of the housing at this local level are specific and profound. The proposals should be regarded as sustainable development.

### ***Community services/ facilities***

47. The issue is articulated in the second reason for refusal. SCC considered that an insufficient range of contributions had been provided to address the external costs of the development. These matters were discussed before and during the Inquiry by the parties such that the appellant and SCC are now in full agreement as to the scale and nature of the contributions properly required by the proposals. The UU provides for a full policy compliant affordable housing contribution whose quantity, character and deliverability are all agreed.
48. The physical highways contributions have been agreed for some time and are set out in the SoCG on Highways. The SoCG agrees that the development would provide residents with good facilities to travel by sustainable modes. The site is well connected to services, facilities and public transport interchanges. The measures will improve the site's accessibility. The initial dispute concerning contributions towards public rights of way and the implementation of the travel plan are now agreed and set out in the second SoCG on Highways matters.

### ***Education***

49. The appellant and SCC have reached a comprehensive agreement on this; the supporting evidence is in the SoCG. This agrees that there is not surplus capacity to accommodate the 35 pupils associated with Kingsfleet Primary School. The evidence, therefore, is that there is a need to expand primary school provision. At present SCC has not decided how to make that provision. There are two possibilities; on-site provision of a new school or financial contributions towards an off-site provision. SCC does not want to commit itself at this stage and so the appellant and SCC agreed that a sensible approach is to provide for both possibilities, in the alternative, in the UU.
50. SCDC has argued that the SoS is disentitled from entertaining this planning application as it has not assessed the consequences of building a school on the site. This fails to understand the reality of the position. SCDC has failed to recognise the difference between a private law legal instrument entered into between two contracting parties and the public law process of making an application to develop land. The UU does nothing more than reserve an area of land that might be the subject of a future planning application to replace public open space with a school. The UU does not pre-empt that process or pre-determine it. It might only be material if the quantum of public open space was compromised by the subsequent provision of a school. However, the Council's witness accepted that the over-provision of public open space in the scheme is over 2ha. In policy terms the loss would have no consequences.
51. If the SoS has any concerns about the reservation of land in this way, or if he considers that it is not CIL compliant, he can acknowledge the accepted need for primary school places as set out in the SoCG and the agreed payments. The issue need go no further. The complaint by SCDC is misconceived.



### ***The planning balance***

52. If SCDC can demonstrate a five-year housing land supply the balance is struck in accordance with s38(6) of the Act. If not, paragraph 14 of the Framework applies. Paragraph 14 also applies if the principle set in Dacorum is applied.
53. It is obviously important to note from the outset that the Council's witness accepted that, in the context of paragraph 14, the harm does not significantly outweigh the benefits of permitting the development. The appellant agrees with that position. So all relevant expert witnesses agree that if the paragraph 14 approach is applied, permission should be granted. It is not suggested that this binds the SoS, but it is heavily persuasive on this most important question.
54. The benefits of the scheme are as stated above. The need for housing to keep pace with the expansion of employment opportunities at the Port of Felixstowe is a profound benefit. The proposals also provide specialist accommodation for the elderly which has the collateral benefit of freeing up other houses. Access across Candlet Road is improved and the scheme helps to secure the viability of the bus service. There are also wildlife and public open space benefits. The overall impact of these to the public interest is extremely significant.
55. The harm is relatively muted. The landscape harm mostly arises on the site and its immediate environ. It is acknowledged that there is some impact on the AONB related to views out from the AONB which are described as minor or minor/moderate. Beyond this, the absence of harm is a conspicuous feature of the proposal. It is necessary to attach any appropriate residual weight to the out of date policies for the supply of housing. This harm does not significantly outweigh the benefits of granting permission.
56. If the s38(6) presumption applies then the appellant contends that the accumulated benefits of bringing forward this scheme early represents material considerations sufficient to overturn the statutory presumption. The appellant invites the SoS to grant permission qualified by conditions and the UU.

### **The Case for Suffolk Coastal District Council**

#### ***Context***

57. The benefits of a plan-led planning system are well understood and were acknowledged by the appellant's planning expert witness. These development proposals are all in the countryside in the upper valley slopes of the River Deben. It is possible that part of the highest point in the site, shown as public open space, would be required for a primary school. The matter of a primary school is the subject of a separate Position Statement (Document ID30). This all runs directly counter to the development plan strategy for growth in Felixstowe in that they involve the development of a site separated from the built up area by the strong northern boundary of the town formed by the wooded corridor of Candlet Road and the allotments. This is far from being "immediately abutting existing built up areas" as sought in CS Policy SP21.
58. It would represent an illogical extension of the town, disconnected visually and spatially from the urban area involving the development of 31ha of the best and most versatile agricultural land. It would have adverse consequences for landscape character and sustainability. There would be direct conflict with the development plan. There has been no attempt to argue that the proposals

accord with that plan or that material considerations indicate that permission should be granted if the supply of housing land in the district exceeds 5 years. The appellant's case relies on there being no five-year housing land supply.

59. The CS, adopted in 2013 (and subject to a legal challenge resolved in 2015) provides a clear strategy to meet the housing need in advance of the early review. The only strategic allocation is at Adastral Park. The officers' recommended site in Felixstowe, which included the appeal site, was rejected in 2008 in favour of a dispersed strategy. It is accepted that Felixstowe and "the Trimleys" are delivering well against the adopted requirement. The FPAAP, due to be adopted this year, is consistent with the CS, is deliverable and well-timed bearing in mind paragraph 4.76 of the CS. If the SoS is satisfied that the Council can demonstrate a 5 year supply there is no evidential basis for allowing the appeal.

### ***Housing land supply***

60. The agreed base date is 1 April 2016 and the best evidence of housing land supply is that the requirement figure is 7,900 which is an up to date development plan figure. The appropriate buffer is 5%. The annual requirement with a 5% buffer applied, and using the Sedgfield method to address historic undersupply is 651 giving a 5 year requirement of 3,254. The available supply, as of 1 April 2016, is 3,757 dwellings which is a 5.8 year supply. If all the disputed sites are removed it becomes a 5.3 year supply.
61. The supply is the result of a positive plan led commitment to boosting the supply since the CS was adopted. At that time the supply was 3.7 years. SCDC's approach to planning applications has improved supply considerably. The biggest boost to supply is the allocations in the Allocations Plan and the FPAAP. These plans are being examined and are due for adoption shortly. The issues between the parties are (i) the requirement figure and whether the CS figure should be replaced; (ii) the buffer; (iii) whether it is legitimate to use the August 2016 update; and (iv) the available supply for which the difference between the parties is just 286 dwellings.

### ***The requirement***

62. The starting point is the development plan. CS Policy SP2 sets out a requirement of 7,900 dwellings. The examination of this was informed by an assessment of the FOAHN figure for SCDC of 11,000. The 7,900 figure is not derived from an analysis based on paragraph 47 of the Framework and its adoption was only possible due to a commitment to an early review of the CS. That review was due to start by 2015 at the latest. However, failure to meet that date does not make the figure out of date for the purposes of assessing land supply.
63. The appellant contends that the 7,900 figure should be replaced by an untested assessment of need on publication of the Options and Issues paper; an untenable contention. The figure of 7,900 was clearly the figure to be used until the review is adopted. The CS does not say what happens in the event that the 2015 deadline is not met. If the Council was to delay an early review then 7,900 would, arguably, be out of date. A number of steps are necessary to replace the 7,900 figure; an estimate of housing need based on projections for this District only could not meet the paragraph 47 requirement.

64. The first task for a decision maker, therefore, is to assess whether the Council is on track to adopt an early review. Objectively, the review is due to be adopted in late 2019. Since the review of the Plan is due 6 years after adoption and 7 years before the end of the 17 year plan period, this clearly meets the burden of the policy requirement to conduct an early review. The review is being carried out 2 years earlier than would normally be expected.
65. The Inspector in the Framlingham case did not have the benefit of the information now before this inquiry and so he failed to grapple with these arguments. The information concerning joint working with neighbouring authorities and the range of material considerations since that decision are set out in Document ID13.
66. Concerning the appellant's contention that 7,900 is out of date because the Council said, in policy, that it would do something and then did not, this pays no regard to the proper approach to the interpretation of the CS or its objectives. The *Dacorum* case, relied upon by the appellant, is not comparable to the present situation as that relates to a concession by an advocate to a hypothetical situation.
67. There is no authority to support the contention that the Inspector/ SoS is required to reach a judgement on the FOAHN in this appeal. While the SoS is entitled to adopt another figure as a requirement figure in this case, there are many reasons for not doing so. Unlike West Berkshire, this is a post-Framework plan adopted in order to provide a plan led approach to the delivery of growth. The technical complexity of the appellant's evidence should not blind anybody to their inherent weaknesses. They cannot replace the HMA assessment required for paragraph 47. They vary considerably and have not been the subject of consultation, independent examination or other form of independent testing. They do not include the starting point of the 2014 household projections which suggest needs of 8,900 dwellings – a lower level of growth. There is therefore no reason to replace the 7,900 figure.

#### *The buffer*

68. The appellant claims persistent under-delivery such that a 20% buffer should be applied. SCDC's case is that there is no basis for this finding and points to the recent and significant increase in delivery such that the undersupply is now in retreat. In the last year, completions exceeded the requirement by 99 dwellings and information from developers is that these higher rates are expected to continue.
69. SCDC points to the recent improvements in delivery and to recognise the reasons for the historic undersupply as recognised in paragraph 2.06 of the CS. The Council's estimate of supply against delivery is that there remains a 5 year supply even if the 20% buffer is applied, as set out in Document ID28 (Table 3).

#### *The "August update"*

70. The appellant's response to this and the September Position Statement is both wrong in principle and ironic. The reasons for the August update are set out in the inside cover and are further explained in paragraph 1 of the Position Statement to the Examining Inspector dated September 2016. SCDC has not updated the base date and there is no intention to rely on sources of supply

which qualify for inclusion post 1 April 2016. The benefits alluded to in paragraph 51 of the Staunton Decision are realised in this way while the problems do not arise.

71. SCDC relies only on the August update insofar as it provides better evidence than was available in June as to the sources of supply that ought to be included in an assessment of supply as at 1 April 2016. The appellant puts no reliance on it at all, despite it increasing some figures while reducing others. The net effect raised the bottom line from 4.8 years to 5.3 years (5% buffer).
72. The appellant's position is ironic bearing in mind the process that the witnesses underwent in a collaborative fashion. As the August update provides better evidence of supply at 1 April 2016 there should be no objection to reliance upon that evidence. While the September Position Statement might have been phrased more fully/ clearly there is no inconsistency and nothing in the appellant's point.

#### *Sources of supply*

73. The issue is whether some of the sources of supply referred to by the Council are genuinely deliverable in the sums and at the time set out in the trajectory. SCDC has taken a conservative approach. The June assessment may have been too conservative, hence the August update which was prepared as a response to the Examining Inspector. The conservative approach is seen by the fact that the Framlingham and Leiston Neighbourhood Plans are at a relatively advanced stage and both provide further housing but are not relied upon for the land supply figures.
74. Overall, SCDC's assessment remains conservative but the best evidence is that whether the 5% or 20% buffer is applied, it can demonstrate a five-year housing land supply.

#### ***Landscape Character***

75. SCDC's witness judged the effect of the development on landscape character to be major adverse even at year 15. This is a permanent loss of landscape resource in the valley of the River Deben, recognised as being "particularly significant" in CS Policy SP15. This is not a policy for the supply of housing and so carries full weight. No enhancements are claimed for this site. It is accepted that the proposals would cause material harm to the landscape.
76. Candlet Road forms a strong and well wooded boundary to the settlement along the ridge line of the plateau, the land gently falling away to the north towards the River Deben. The edge of the AONB is just 300m to the north. The effect of the LCT is moderate adverse at year 15; the intrusion into the landscape is cautioned against in the SCC Guidelines. While the effect on the AONB is relatively minor, it carries significant weight due to the national importance of AONBs. That is agreed.
77. There are only limited differences in the assessments of the landscape witnesses. The LVIA is recognised to be a robust document subject to the corrections and comments by the Council. The degree of harm to landscape character and visual amenity as identified by the witnesses demonstrate the relatively narrow degree of difference on professional judgement and the fact that the impact on all receptors is adverse. There is no compensating landscape

feature introduced by the scheme. The appellant has introduced a novel category of impact (major neutral) and describing the impact on the landscape resource of the site as temporary. The assessment of the impact on footpaths through the site should be kept distinct from the visual impact assessment.

78. The landscape impact involves Grade 1 and 2 soils and extensive stretches of rural footpaths. The appellant's case is based upon there being a need for 560 dwellings to be provided in the countryside so has adopted a less than neutral stance on the impact. The appellant emphasises that the impact is localised, but the scale of the development makes the localised area extensive in itself. The receptors around it are judged to have a high sensitivity to change as evidenced by the Council and a local resident. This may explain the difference between the opinions of the witnesses as to the acceptability of the development in landscape terms.
79. In comparison to the status quo, the northern and western boundaries, as shown on the Illustrative Masterplan, would be weak. It would introduce a new built up area in the countryside, divorced from the existing settlement. The settlement is now hidden from Gulpher Lane, a Quiet Lane, and from the footpaths through Grove Wood and beyond. The harm is sufficient to conflict with CS Policy SP15 and weighs heavily against the proposals in the balance.
80. The appellant's reliance on a 2008 Officers' report as part of the early stage preparation for the CS is surprising given its age and context and so can be given very little weight. It was prepared on the basis that Felixstowe should make a strategic release of land rather than the dispersed strategy now adopted. This site is not exactly the same as that now under consideration; it says that the land to the east of Gulpher Road (where this appeal site lies) is more sensitive and shows a lower capacity to absorb development than the land to the west (which is outside the current site).

### ***Sustainable development***

81. The development is not sustainable. It represents an ad hoc release of land which is strategic in scale and significantly harmful in its effect on local landscape and the setting of Felixstowe. The appellant acknowledges that the proposals will inevitably cause some harm in landscape character and visual amenity terms and that there are no significant environmental benefits other than potential biodiversity enhancements within the site. It fails to accord with the development plan and does not meet the environmental dimension of sustainable development.
82. The offence it causes to the plan led system is further support for this conclusion as land in Felixstowe is coming forward to meet the requirements of the CS and promote the development plan strategy for growth. This involves a range of sites abutting the built up area in an organic and evolutionary way. Consultation on the LP Review will commence in spring 2017 in the context of an assessment of the FOAHN within the HMA to be published by December 2016. This is the sustainable way to plan for growth in Felixstowe.

### ***The planning balance***

83. It is not suggested by the appellant that if the development plan carries full weight in this decision permission should be granted. It is implicit that there

are no material considerations which indicate otherwise in the event of a planned decision. The need for balance arises, therefore, if the SoS finds that there is no five-year housing land supply. This would require the tilted balance as set out in paragraph 14 of the Framework. It still remains necessary to weigh the benefits and the development plan policies.

84. The benefits consideration must include the question of delivery and the contribution the site can make to address the current shortfall. Applications by developers are often supported by evidence demonstrating delivery within 5 years. This is different in that the site is owned by individuals and that the appellant has a promotion agreement which involves seeking planning permission. This has also involved participation in the FPAAP process such that the site is an omission site. Letters from house builders, submitted during the Inquiry, indicate commercial interest in developing the site. There is very limited evidence of interest in delivering the other components including the assisted living units and the extra care facility.
85. The appellant's estimate of 200-300 dwellings in the five year period sounds optimistic bearing in mind the number and range of matters to be resolved including archaeology, the TRO and off-site highway works. The five year period would overlap with the period in which the CS Review is consulted upon and adopted.
86. Nevertheless the benefits of housing and affordable housing are recognised regardless of the delivery timescale. There are social and economic benefits that are also recognised and their weight should be in proportion to the undersupply and the extent of their ability to address undersupply. Only by doing that will the paragraph 47 objective of boosting the supply of housing be met. It is acknowledged that one of the Council's witnesses conceded that the balance of benefits and harm favoured the grant of permission but that needs to be seen in the light of later evidence concerning the timing of delivery which, in the Council's opinion, reduces the weight that can be given to the benefits.

### **The Case for Suffolk County Council**

87. SCC concluded that provided all the proposed conditions as set out in the SoCGs are imposed on any outline planning permission, and that such permission is the subject of all planning obligations as agreed between SCC and the appellant being secured through a UU, then SCC is content that the appeal be allowed.
88. Consistently with the SoCGs formulated before and during the Inquiry, and subject to the imposition of the various conditions, SCC is content that its objections on drainage/ flood risk; archaeology; and highways/ transportation will be satisfactorily met. The evidence on drainage/ flood risk and archaeology has not been challenged either in advance of or at the Inquiry so the case for imposing the conditions is unimpeachable. Indeed the SCC's case has not changed an inch since proofs were exchanged save a short erratum on education matters.
89. The appellant withdrew all evidence on highways that had been relied on and left as an area of disagreement in the first SoCG (public rights of way contribution and travel plan implementation bond). It withdrew its evidence on education. Consequently there is no evidence before the SoS even inviting any departure from the imposition of all planning conditions and obligations.

90. Concerning education, the development would give rise to a demonstrable need for a contribution towards a new primary school, whether provided locally or on-site. The single concern of SCDC relates to the propriety/ competency of reserving the 2.06ha primary school site. In this the SCDC case is lacking in evidence and is, in any event, misconceived not least in misunderstanding what the reservation of land, as per the UU, would signify in planning terms. There is no mention in the SCDC note on Education (Document ID30) of the opportunity given at the Inquiry to challenge or undermine any part of the SCC case on education or, more generally, on CIL compliance.
91. The scheme, if approved, would not include the grant of planning permission for a school. It simply reserves land allowing a future planning application for, and delivery of, a school. Once reserved, and until required by SCC, the land would remain as accessible public open space. SCDC's view that the reservation of the land would transform its planning status is flawed. It would not. It follows that CIL is not engaged by reservation of the land. If SCDC had any queries in this regard the SCC witness could have been called to answer questions.
92. SCDC does not challenge the appropriateness of the reservation in planning terms. There is clear justification for the reservation of the land while giving SCC flexibility as to whether on-site provision is the most appropriate way forward. SCC cannot crystal-gaze as to the future. In the alternative, education infrastructure contributions are appropriately sought and these are CIL-compliant. SCC has justified them and this evidence was unchallenged. With regard to SCDC's belated attempt at expressing concern, it has presented no evidence. SCC is the education authority; it has not frozen SCDC out of the discussions. It does not prevent SCDC from adducing its own evidence but that Council has chosen not to do so.

### **Oral Representations made at the Inquiry against the proposals**

93. **Guy Pearce** spoke on behalf of the 240 members of the **Felixstowe Society of Allotment & Leisure Gardeners**. Their concerns relate to the loss of tranquillity and loss of security in respect of the Candlet Road allotments which abut the appeal site on two sides. The site is not well connected to the town and there are concerns about the traffic implications of the new junction. The Walton Green development was not included in the modelling. While the re-provision of the lay-bys is welcome that on the west-bound side is close to the roundabout while there is not room for the one on the east-bound side. It would be more dangerous to use. The proposed footway/ cycleway touches the boundary of the allotments so there would be a need for a retaining wall which could have an unfortunate visual impact. There is a need for better security fencing and gates to protect the allotments.
94. **Robin Whittle** spoke on behalf of the 700 members of the **River Deben Association**, of which he is the Chair, and whose aims are set out in Document ID12. The Deben Estuary Plan (Document ID19) is a material consideration and it includes land around this site. Objectives of the Plan include safeguarding the estuary from new development and conserving the landscape, natural environment and heritage. Opportunities to enhance them should be taken and the estuary landscape should be safeguarded from the visual intrusion of modern development. The importance of the tranquillity of the area is

recognised as an important part of the character of the estuary as is the geodiversity.

95. **Kimberley Williams** has been a Town Councillor for Walton for 6 years and lives in Gulpher Road, in a house overlooking the site. She had received dispensation from the Council to address the Inquiry. She stated that Gulpher Road is a popular Quiet Lane that is well used by locals. She was concerned that a five-year housing land supply is not relevant as this is a lengthy process. The vacuum arising from the review having started late, resulting in the Framework taking precedence, is partly due to central Government cut-backs. This should not lead to a loss of weight to the local plan as this has been drawn up by a democratically elected body. It is necessary to consider the economic climate in which the targets were missed.
96. Great weight should be given to the loss of tranquillity for the allotment holders and the impact on the Deben Estuary. The planning permissions for housing at Ferry Road and north Walton will result in traffic congestion and infrastructure issues. The benefits will not outweigh the harm. Much of the site will be developed; more if the school is provided. The harm is not localised and it will result in the loss of a vitally important site and cause a significant loss of amenity. The development would not be well related to the town.

### **Written Representations against the proposals**

97. **Dr Therese Coffey MP** asks that the District Council's decision be upheld. The site forms an important part of the green fields around Felixstowe with Candlet Road as a physical barrier between the built environment and the open countryside. This development would infringe that barrier detracting from the beauty of the countryside and broadening the size of the town. There is no overriding need for housing in this location as other sites have been put forward in Felixstowe. This is not a sustainable location. This is in conflict with the Local Plan and the Framework.
98. **Felixstowe Town Council** recommended that the appeal be dismissed. The proposals are contrary to the Local Plan and the underlying policies in the Framework. The Council's housing requirement can be met from sites already identified. These proposals are contrary to CS Policies SP1A, SP19, SP21 and SP29. The Council has demonstrated a full five-year housing land supply and since then further planning permissions have been granted. The emerging FPAAP has been subject to widespread consultation; the Town Council has been closely involved in that process and endorsed the final Preferred Options draft. The FPAAP demonstrates that the housing numbers required can be delivered within the plan period.
99. The appellant seeks to put forward a requirement in excess of the CS. The Local Plan Inspector endorsed the CS requirement for 7,900 dwellings, not the 11,000 which is identified as being the longer term need. The Council has commenced its review as required. The Council's approach should not be pre-empted by a piecemeal approach conceived in isolation. The proposal extends development across a clearly defined boundary, Candlet Road.
100. Concerning specific policies, CS Policy SP1 is contravened as the site is in conflict with SP1 a, c, d, k and l. It does not represent a sustainable form of development. It fails to contribute to the balance between employment,



housing growth and environmental capacity; fails to contribute to appropriate infrastructure; fails to demonstrate that it maintains or enhances a sense of place; and fails to demonstrate that it would create or promote the inclusive urban community that Felixstowe possesses. Concerning Policies SP19, SP21 and SP29 it is not contested that the site lies outside the existing settlement boundary and in the countryside. Emerging policy provides the required housing elsewhere. It does not comprise the necessary organic and evolutionary growth immediately abutting the existing built up area while the CS seeks to resist new development in the countryside.

101. There would be further conflict with saved Policy AP 28 as the site makes a positive contribution to the setting of Felixstowe. In the absence of a demonstrable need for additional allocations at the present time it should be properly resisted. The FPAAP is in the final stages of preparation and it demonstrates that the required housing can be achieved without a major departure from policy. The proposals would be in conflict with proposals for a link road as it would result in a second interference with the free flow of traffic within a short distance on Candlet Road. There is now a five-year housing land supply and the proposals conflict with the CS. It is for future process of local plan evolution to consider any replacement of current policy.
102. **Cllr Mike Deacon**, Town and District Councillor whose ward includes the appeal site strongly opposed the application and endorsed the representations of Felixstowe Town Council.
103. **Mrs Carol Florey** says that her objections to the planning application still stand. There are further objections based on support for the FPAAP which is at the preferred options stage. A target of 1,760 houses has been set, all within the settlement boundary as defined by Candlet Road. This boundary allows the necessary housing while maintaining areas of outstanding beauty, the countryside and prime agricultural land where possible. This proposal significantly intrudes into and would impact upon these areas. The housing requirement can be met without this site.
104. **Julie Cornforth** says that the land is at risk from flooding from rivers and the sea. Press reports have identified that building houses in flood risk areas is a recipe for disaster. The agricultural land is Grade 1; the best. Gulpher Road is the last remaining country lane and accessible natural green space in Walton/Felixstowe and is much loved and enjoyed by residents for recreational purposes. Once this Quiet Lane is gone there is no countryside left at all.
105. In respect of the original planning application there were **93 letters of objection** to the development **from third parties**. These objections covered a wide range of issues including:
  - More appropriate sites within the area of development and other areas are available
  - High quality landscape character
  - Existing infrastructure is unable to cope
  - Will decimate wildlife at the Grove
  - Will lose high quality agricultural land

- Loss of livery
- Will set a precedent
- Increase in traffic
- Loss of important area used by residents of Felixstowe
- Brownfield sites are available
- Will have a negative impact on the AONB
- Loss of lay-by used by nearby allotment holders
- No need for market housing of this kind in the town
- There is a five-year land supply in Felixstowe and surrounding villages
- Land being kept in its current form outweighs the benefits
- Candlet Road is a natural barrier – a gateway to the countryside
- Gulpher Road is a designated Quiet Lane

### **Conditions**

106. Several lists of suggested conditions were submitted during the Inquiry by the District Council (Document ID27), the County Council (Document ID23) and as appendices to various SoCGs. These were discussed at a round table session during the Inquiry. A composite list of conditions, as amended at the Inquiry and agreed by the principal parties, was submitted by the District Council following the close of the Inquiry (Document PID2).

### **Unilateral Undertaking**

107. During the Inquiry the appellant submitted a draft UU (Document ID26) which was discussed at a round table session during the Inquiry. The UU makes provision for financial contributions towards bus stops either side of Grove Road, Felixstowe, for upgrading various public footpaths, the making of a Traffic Regulation Order in respect of the speed limit in Candlet Road; affordable housing; on-site open space provision and maintenance; education provisions including a pre-school contribution, a pre-school site, a primary school contribution and either a primary school site or a primary school land contribution; travel plans including a travel plan implementation bond. The District Council expressed concern about the validity of the primary school site forming part of the UU as this did not form part of the planning application (Document ID30).

108. A signed and dated version of the UU (Document PID1) was submitted after the close of the Inquiry in accordance with an agreed timetable.

## **Inspector's Conclusions**

109. The following considerations are based upon the evidence given at the Inquiry, the written submissions and my inspections of the site and surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of this Report.

### **Proposals and plans [3, 4, 22-25]**

110. The application is in outline form with all matters other than means of access to the site reserved for future consideration. The proposals include the construction of a maximum of 560 dwellings, a community centre, a 60 bedroom extra care home, 50 assisted living units, 2 small business units and open space with associated infrastructure. In accordance with CS Policy DM2, 33% of the housing would comprise affordable housing units.

111. An amended site location plan was submitted to the Inquiry (Drawing No YOR.2258\_036.A; produced in the supplemental proof of Richard Brown (Document CLE6: Plan 4)). This reduces the size of the site and involves no additional land outside the original site boundary. No objections were raised to the amended plan being substituted for that submitted with the original application. I am satisfied that no interests would be prejudiced by this and have based my recommendations on this amended plan.

112. An Illustrative Masterplan has been submitted which is indicative only. Full details of the development would need to be the subject of conditions requiring that they be submitted to the Local Planning Authority for its approval at a later date. The proposals include a number of off-site highway works which are set out in detail in the SoCG on Highway and Transport Matters (Document GEN3) and the Addendum SoCG on Transport Matters (Document ID24). These have all been agreed by the County Council as Highway Authority.

### **Planning Policy [14-21]**

113. The parties agree that the development plan comprises the Suffolk Coastal Local Plan Core Strategy and Development Management Policies (adopted 5 July 2013) (the CS) and the saved policies in the Suffolk Coastal District-wide Local Plan (incorporating First and Second Alterations) (Local Plan) that were not superseded by the adoption of the CS in 2013. The emerging plans include the Felixstowe Peninsula Action Area Plan: Proposed Submission Document (April 2016) (FPAAP) and the Site Allocations and Area Specific Policies: Proposed Submission Document (April 2016).

114. The policies in the Local Plan carry limited weight due to their age and the publication of the Framework. The policies in the emerging plans carry only limited weight at present as they are at a relatively early stage in the plan-making process. I have also had regard to the Framework and in particular to the paragraphs that relate to housing land supply, the countryside, landscape and sustainable development. Also relevant is Planning Practice Guidance (PPG).

### **Main issues [5-7, 26, 27]**

115. SCDC did not defend reasons for refusal Nos. 3, 4, 5 and 6 as the main parties agreed that these matters could all be dealt with by agreement. Various SoCGs were submitted before and during the Inquiry. They also agreed that

any outstanding requirements relating to these matters could be secured either through the use of planning conditions or by Agreement. The issue of how the education and early years matters could be resolved remained a live issue between the appellant and SCDC although agreement was reached between the appellant and SCC on this issue.

116. The main issues are :

- Whether the Council is able to demonstrate a 5-year supply of housing against a FOAHN and the implications of this in terms of national and local policy;
- The effect of the proposals on the landscape character of the area;
- Whether the proposals comprise sustainable development as defined in the Framework;
- Whether the proposals make adequate provision for community and other services and facilities including affordable housing, education, libraries, play and sports space and open space management; and
- Whether the benefits of the development are sufficient to outweigh any identified harm (the Planning Balance).

**Whether the Council is able to demonstrate a 5-year supply of housing against a FOAHN and the implications of this in terms of national and local policy [29-38, 59, 60-74, 95-99, 101, 103, 105]**

117. Paragraph 47 of the Framework says that local planning authorities should identify and update annually a supply of deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5 or 20% depending on past delivery. This must be applied having regard to the Government's view as to what constitutes sustainable development and to the context of this paragraph which is to boost significantly the supply of housing.

118. There is disagreement between the main parties concerning whether the Council can demonstrate a five-year housing land supply. In a joint Revised Position Statement submitted to the Inquiry (Document ID28) the Council's position was that it had a housing land supply of 5.8 years. The appellant considered it to be 1.3 to 2 years. In addition, there was further disagreement as to how CS Policy SP2 should be interpreted.

119. Concerning the requirement, I will consider CS Policy SP2 first and then consider the housing land supply as these are directly related. I shall also look at the necessary buffer; sources of supply that were in dispute; and then the August update and September Position Statement.

*The requirement [29-35, 62-67]*

120. The CS says, at Policy SP2, that the Council will make provision for at least 7,900 new homes across the District in the period 2010 to 2027. This figure is based on the revoked Regional Spatial Strategy (2008) and is not the up to date FOAHN for the District. Paragraph 3.27 of the CS explains that the forecast model commissioned from Oxford Economics identified a total housing need for

the District for the period 2010 to 2027 of 11,000 new homes. It says that this is the FOAHN as required by paragraph 159 of the Framework.

121. There is a requirement in paragraph 47 of the Framework that local planning authorities should ensure that their local plan "...meets the full, objectively assessed needs for market and affordable housing in the housing market area...". The hearings for the CS Examination were held in late 2012. The Inspector, in his Report, concluded that 11,000 new dwellings should be taken as the FOAHN for the period 2010-2027 as being the "...best available estimate of need at this point..." (Document CD E5; paragraph 48). To avoid delay in having a plan in place the Council proceeded on the basis of the 7,900 figure, incorporating a proposal to review the housing requirements by 2015. The Inspector concluded that an "...early review would be preferable to the alternative of suspension and likely withdrawal of the plan..." (paragraph 53). The Council recognises that adoption of the CS was only possible due to a commitment to an early review of the plan.
122. SCDC promoted the CS on the basis of providing 7,900 new homes over that period. It was recognised that this figure is not based on an assessment of the FOAHN for the district; it is not derived from an analysis under paragraph 47 of the Framework. It is artificially low. Nonetheless, that is the figure that appears in CS Policy SP2. After setting out the requirement, the Policy goes on to say that an early review of the CS will be undertaken "commencing with the publication of an Issues and Options Report by 2015 at the latest". This was one of the main modifications to the Plan as set out by the Inspector in the Appendices to his Report. It was in the context of these modifications that he found the overall level of housing provision to be justified and appropriate.
123. That review has not yet commenced. The Inspector in the Framlingham Inquiry (Document CD F7) was advised in early 2016 that the Options and Issues Report for the review would be published in Autumn 2016; I was advised that Spring 2017 was more likely. The terms of Policy SP2, requiring publication by 2015, have not been met. The Council argued that unless the 7,900 requirement remains in place there would be a policy vacuum. Due to the terms of Policy SP2, and the Council's failure to meet the cited timescale, I do not see how that requirement figure can reasonably remain in place.
124. That was the conclusion of the Inspector in the Framlingham Inquiry. He concluded that not to accept that the requirement of 7,900 dwellings is out of date would be contrary to the clear message of paragraph 47 of the Framework that local planning authorities should seek to boost significantly the supply of housing. It would also run counter to Dacorum in which it was conceded that if a review had not been carried out in accordance with a paragraph (not a policy) in the CS that Council would not be able to say that the policies for housing in the CS were up to date. That is similar to the case here and I have come to a similar conclusion. The Council has failed to comply with the timescale as set out in Policy SP2 and so the requirement figure in that policy is out of date.
125. Having concluded that the requirement figure in Policy SP2 is out of date, it is necessary to consider whether there are other figures that could reasonably be used to fill the policy vacuum, as it was described by the Council. The CS Examining Inspector was given the figure of 11,000 as being the best estimate of need but this was not achieved as a result of collaborative working with

neighbouring authorities. The appellant came up with other estimates based upon the Chelmer Model and using the Sedgefield approach to past under supply. These calculations all produced figures well in excess of 11,000. I acknowledge that these calculations have not been subjected to the rigors of an examination in public but, in conjunction with the figure given to the Examining Inspector, they do indicate that the promised review is likely to result in a significant increase in the Policy SP2 requirement figure.

126. I have taken into account the various factual changes since the Framlingham Decision as listed in Document ID13. These show that progress is being made towards the publication of the Issues and Options consultation document and that other plans such as the FPAAP are emerging. The Council issued a call for sites in September/ October 2016. Housing allocations are being made in Neighbourhood Plans for Leiston and Framlingham but these have not yet been made and so still carry limited weight. However, while these are indications of future intent, the current position remains that no reliance can be placed on the requirement of 7,900 as it is in an out of date policy. A requirement figure in excess of 11,000 seems more realistic.

*The buffer [36, 68-69]*

127. The Framlingham Inspector noted that the CS Examining Inspector based his conclusion that a 5% buffer was appropriate on evidence that predated the Framlingham Inquiry by about 4 years. That evidence would now be almost 5 years old and so cannot carry much weight today. The Framlingham Inspector concluded that given the persistent under supply of housing against the CS requirement over the first 5 years of the plan period, and other factors, it was "entirely appropriate to apply a 20% buffer to the housing requirement".

128. The uncontested figures as set out in Table 3 of Mr May's evidence (Document CLE1; p 25) show that for the five year period 2010/11 to 2014/15 housing completions always fell below the CS annual requirement; it is only in the year 2015/16 that the CS requirement has been exceeded. To be fair to the Council, the completions figures for the three years to 2015/16 have shown an upward curve and the expectation, based upon starts and information from house builders, is that the requirement will be exceeded again in 2016/17.

129. As stated above, however, the CS requirement figure of 465 dwellings per year is based upon a requirement figure of 7,900. It is therefore artificially low and not based upon a FOAHN, the best estimate for which at the time of the CS Examination was 11,000 dwellings. That would give a requirement of 647, well above the completion figure for 2015/16 and above every year's housing completion figure since 2007/08. In all these circumstances I conclude that the Council has a record of persistent under delivery of housing and so a buffer of 20% is appropriate.

*Supply [37, 38, 70-74]*

130. The SoCG on Housing Requirement and Five Year Housing Land Supply (Document ID1) set out a summary of the parties' positions. The Council acknowledged that there is an arithmetic error in the Housing Land Supply figures published on 20 June 2016 and set out in Table 1 (page 7) of the SoCG. The figures in the first two rows (planning permissions not started and planning permissions under construction) are incorrect. The correct figures are used in

Table 2 (page 8) and result in a reduction in the Council's calculation of the five-year housing land supply from 6.3 years to 5.4 years (with a 5% buffer) or from 5.5 years to 4.7 years (20% buffer). The final table in the SoCG sets out the Council's position taking account of its "August update" published on 30 August 2016.

131. These tables were subsequently amended before the close of the Inquiry by the submission of a position statement "Revised Positions on the 5 year Supply of Deliverable Sites" (Document ID28). This sets out various deductions in the supply side such that the difference between the parties is reduced to 286 dwellings. The reductions in supply that are agreed by the Council reduce the supply of sites with planning permission (Row 1 of Table 2) from 1,897 to 1,836 dwellings; windfalls (Row 3) from 200 to 150; and the Adastral Park contribution (Row 4) from 375 to 350. This reduces the supply position from 5.4 years to 5.2 years (5% buffer) or 4.7 years to 4.6 years (20% buffer).
132. The appellant considered that further reductions were appropriate such that the supply was less than 5 years even with a 5% buffer. These included Adastral Park where only 165 dwellings were anticipated within the 5 year period and a reduced windfall allowance.
133. The Council sought to increase the level of supply by submitting a revised Housing Land Supply Assessment (August 2016) (the August Update) (Document CD G19). This document incorporates the reduction in supply arising from the arithmetical correction and was produced in response to a question raised by the Local Plan Inspector. It also increased supply by including sites not identified in the June 2016 Housing Land Supply figures as there had been material changes since 1 April 2016 such that these sites were now considered to be part of the supply figures. There are a variety of reasons for bringing the sites forward, including the conclusion of a legal challenge to one decision and permission being granted on appeal on another site.
134. I am concerned about the inclusion of the August Update as it is not a full review of the 5 year position. The base date remains at 1 April 2016 and the revised figures include sites that only qualified for inclusion after that date. In a Post Hearing Statement (September 2016) (development CD G21) in respect of the emerging FPAAP the Council says that best practice and recent appeals suggest that if a mid-year review was to be undertaken it should be a full review. That seems fair. A partial review, which includes previously unavailable sites, does not ascertain whether previously available sites are still available or look at any other variables. In respect of an appeal in the Forest of Dean (Document CLE1; Appendix 27) the Inspector concluded that to include any sites that would not have qualified for inclusion at the base date would serve to make the whole exercise unreliable. That is a reasonable conclusion.
135. I am not convinced that it would be fair to increase the supply side in accordance with the August Update without looking at any other changes to the assessment. It would result in a skewed assessment and so I have not taken it into account. I consider that the June position, adjusted to take account of the arithmetic error and as set out in Table 2 of the position statement (Document ID28) is the most accurate representation of the position.
136. I conclude on this issue that the requirement figure in the CS is out of date by reason of the Council's failure to comply with the provisions of CS Policy SP2.

The requirement figure of 7,900 dwellings was to be the subject of an early review. That review did not commence by 2015 as stipulated in the policy. The only other figure put to the CS Inspector was a requirement of 11,000. If that figure is used then the Council does not have a five-year housing land supply.

137. If the SoS considers that the requirement figure of 7,900 dwellings remains current then it is necessary to determine what the buffer should be as this has a significant impact on the five-year housing land supply position. In the light of all the evidence I have concluded that this should be 20% due to the Council's persistent under delivery of housing. In these circumstances, and without any further adjustment to the supply from the identified sites, the Council once again cannot demonstrate a five-year housing land supply. This means that paragraph 49 of the Framework is engaged and the tilted balance, as set out in the second limb of the fourth bullet point of paragraph 14, should be applied.

**The effect of the proposals on the landscape character of the area [39-43, 57, 58, 75-80, 93-96, 97, 101, 105]**

138. The planning application was accompanied by a LVIA (Document CD A9) whose methodology and principal conclusions were not seriously challenged at the Inquiry. While there were a few differences of opinion between the expert witnesses, these were relatively minor and were confined to judgements about the severity of the likely impact of the proposals. Based upon the evidence at the Inquiry, the written representations and my accompanied and unaccompanied site visits, I broadly agree with the LVIA's conclusions.
139. The harm to the landscape character that would arise from the proposals would relate to both its intrusion into the countryside and its visual impact. In terms of intrusion, the site lies in open countryside to the north of Candlet Road. It lies within the valley of the River Deben, one of ten river valleys identified in CS Policy SP15 as being particularly significant. The policy seeks to protect and enhance this character area and as it is not a policy for the supply of housing it carries full weight.
140. Candlet Road is a tree-lined, busy road that forms a clear and well-defined northern boundary between the built up part of Felixstowe/ Walton and the largely undeveloped countryside to the north. It contains the built up area in a clear and logical manner; the boundary is defensible. Apart from the two dwellings on "islands" omitted from the appeal site albeit within the overall site boundary and the commercial units close to Candlet Road, this area to the north of Candlet Road supports countryside uses including horse grazing and stabling, allotments, woodland, playing fields and various agricultural uses.
141. The proposed development would result in an irregularly-shaped residential enclave almost entirely surrounded by countryside uses. Even where the site has a boundary with Candlet Road, the treed nature of the land either side of this road means that it would not relate visually with the residential development to the south. The western boundary would be defined by the Quiet Lane of Gulpher Road, and the eastern boundary by the finger of woodland in Grove Wood, which would provide some degree of containment. However, the northern boundary would be especially weak with just a field between the proposed housing and the northern extent of Gulpher Road.



142. The strong physical and visual boundary of Candlet Road is an important part of the landscape character of the area. The countryside to the north makes a significant and positive contribution to the setting of the settlement. The appeal proposals would harmfully breach that boundary and provide no equivalent boundary between the built up area and the countryside. That would be harmful to the setting of Felixstowe/ Walton and would be in conflict with CS Policy SP15.
143. In terms of its visual impact, this is a large site that lies outside the settlement boundary for Felixstowe/ Walton. It is clear that the proposed development would substantially alter the character and the appearance of the site from being predominantly used for horse grazing and stabling into a predominantly residential use. That is an inevitable consequence of residential development in the countryside.
144. The development would result in considerable visual harm to the immediate area. Most affected would be users of the public footpath (FP024) that runs adjacent to the western boundary of the allotments and which then runs in an east/ west direction across much of the site. My observations indicate that this path is not especially well used as the grass is not worn down and the fact that it crosses a few small fields occupied by horses would deter some walkers. Also significantly affected would be the users of Gulpher Road, a Quiet Lane that forms the western boundary of the site. This harm is reduced by the presence of the existing buildings at Cowpasture Farm and the former golf driving range, as well as its car park that is in use for caravan storage.
145. The harms identified by SCDC are set out on Drawing YOR.2258.038 (Document ID3) which demonstrates just how localised the harms are. There would be views of the site from footpaths FP028, 020 and 005 when travelling towards the site and from bridleway BR027. Views to the east from the eastern end of this, close to Gulpher Road, would be particularly affected and there would be considerable harm. However, such views are over relatively short distances and the footpath network extends further into the countryside.
146. I consider that the parties have underestimated the impact of the proposals on users of FP057 which runs through Grove Wood to the east of the site. This is a tranquil woodland path. The Illustrative Masterplan shows planting within the site close to that eastern boundary but nonetheless the proposals would bring residential development, including an access road, quite close to the path. While views of the houses would be filtered by existing and proposed trees, the presence of housing, with its associated noise and activity, and a road in proximity to the path would be significantly harmful to its character.
147. Further afield lies the AONB which is, at its closest point, about 300m distant. The main views of the site, however, are from public footpaths and are rather more distant, being 1 to 1.5km away. I visited all the identified viewpoints and found that in many of these views the glimpses of the site are quite fleeting, being through openings in hedges into fields. While the housing on the site would be visible it would not dominate what are generally quite extensive panoramic views. Existing trees and hedges screen or filter views of the site and future planting would further reduce any visual impact.
148. Paragraph 115 of the Framework says that great weight should be given to conserving landscape and scenic beauty in AONBs. In this case the impact is on

views out from the AONB; there would be no harm to the fabric of the AONB itself. Due to the distance of these viewpoints from the appeal site and the fleeting nature of many of the views, the harm would be very limited indeed.

149. The proposals would also alter the character of the allotments as the housing would be close to its western and northern boundaries. While there is significant traffic noise from Candlet Road, the impact of this reduces towards the north of the allotments. There is also likely to be some noise from the use of the business units, stables and maneges but it is likely that the houses would generate additional noise from vehicles and general domestic activities.
150. There would be a loss of outlook for the occupiers of a number of houses in and around Gulpher Road, but these are private views and the housing would not be so close or intrusive as to be overbearing or dominating.
151. I conclude on this issue that there would be some harm to the setting of Felixstowe/ Walton and harm to the character of the countryside. Although the site is large, the extent of the harm would be limited and highly localised. In cross examination the Council's planning witness agreed that if paragraph 14 of the Framework is engaged, then the harm does not significantly and demonstrably outweigh the benefits of permitting development. It is, nonetheless, not in dispute that there is some harm to the landscape character of the area, including views from the AONB, and that there is conflict with the development plan. In particular, there is conflict with CS Policies SP15, SP19, SP21 and SP29. The weight that can be given to these policies is set out in the planning balance.

**Whether the proposals comprise sustainable development as defined in the Framework [44-46, 81-82, 93, 96-97, 100, 105]**

152. The Framework says that the policies within it as a whole constitute the Government's view of what sustainable development means in practice. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 says that these roles must not be undertaken in isolation and that economic, social and environmental gains should be sought jointly and simultaneously through the planning system. It is therefore necessary to balance the economic, social and environmental dimensions of this development.
153. In economic terms, the benefits of providing housing are not in dispute. It would provide employment during construction and future residents would be likely to use local shops and other businesses which would ensure that such facilities remain viable. There is also an immediate need for more housing in the area and there is no identified five-year housing land supply. However, the CS goes further in that it states that the growth of jobs in Felixstowe, driven by the expansion of the Port, means that employment is now out of balance with the availability of housing.
154. The Officers' report to Committee recognised this as an economic benefit of the proposals. It cites the Draft Strategic Economic Plan produced by the LEP which recognised the importance of housing development in the LEP area. New housing is considered vital to an attractive housing market: the pace of development needs to be increased. It says that this is needed to stimulate economic growth and create both short term and long term employment.

155. The Report also sets out that the LEP advises that the economic value of each new home in New Anglia, based upon a calculation that without an addition of 100,000 dwellings to the housing stock the economy of the LEP area would underperform by about £3.7bn in 2026, would be £36,700. This site, therefore, could generate £20,552,000 of economic value.
156. The social dimension includes the provision of up to 560 dwellings in an area where there is a shortfall of provision and no five-year housing land supply. The mix of market (373) and affordable homes (187) would fully accord with the requirements of CS Policy DM2. The need for affordable housing is set out in the SHMA; the completion rate in 2013/14 was just 17. The site is in an accessible location within walking distance of shops and other facilities in Walton. Improved access across Candleton Road forms part of the package of off-site highway works. There are bus stops nearby and Felixstowe station is in walking distance. The community facility, if provided, would be a benefit. However, as there is no mechanism to ensure its provision, it cannot carry weight in the balance.
157. In environmental terms there would undoubtedly be harm arising from the loss of a green field site. While that is inevitable for any development in the countryside, it nonetheless weighs against the proposals. There is also some harm to views out from the AONB. This carries limited weight due to the distance involved and the presence of existing trees and hedges which restrict such views. I have identified that the environmental harm is limited and localised and this reduces the weight that it carries.
158. On balance, therefore, while there is some environmental harm this is significantly outweighed by the economic and social benefits of the development. I conclude that the proposals comprise sustainable development as defined in the Framework. This weighs in favour of the development.

**Whether the proposals make adequate provision for community and other services and facilities including affordable housing, education, libraries, play and sports space and open space management [47-57, 87-92, 105]**

159. The various SoCGs that were submitted before and during the Inquiry demonstrate that agreement was reached between the appellant and both SCDC and SCC on most issues. This agreement is subject to the imposition of various conditions and the completion of the UU. I have recommended that the necessary conditions be imposed on any permission granted. The UU has been completed and submitted.
160. The only outstanding issue concerns education. The issue is not between the appellant and the SCC, as education authority, but between the appellant and SCDC and relates to the mechanism for dealing with this matter as advanced by the appellant and as set out in the UU. SCDC's concerns relate to the potential impact of the terms of the UU on the validity of any permission granted. The appellant and SCC have signed the SoCG on Education and Early Years Matters (Document ID25) and SCC is satisfied that the UU is valid and it meets its requirements.
161. The SoCG advises that about 25% of the site lies within the catchment area for Kingsfleet Primary School and that there is insufficient capacity in that school to accommodate the 35 pupils likely to be generated by this development

(25% of the total number of pupils likely to be generated by the whole scheme). There is spare capacity at Maidstone Infant School and Causton Junior School to accommodate the remaining 75% of the children. There is therefore a need to expand primary school capacity but SCC has not yet decided how best to make that additional provision. The appellant and SCC have sought to keep their options open by, in effect, providing an either/ or in the UU. Either the appellant cedes a parcel of land to SCC for the construction of a school or, if the school is to be built elsewhere, the appellant would provide a financial contribution.

162. The UU makes provision for the appellant to reserve land of not less than 2.06ha in area in a location within the site as agreed in writing by SCC. The appellant is also covenanted to pay a financial contribution of £725,000 which represents the proportional build cost for the primary school. If SCC notify the appellant that the school is not to be built on the site, then a further financial contribution of £45,302.58 is payable. SCC is wholly in support of these provisions.
163. SCDC (Document ID30) is concerned that if the site is considered to be a sustainable location for a school in the context of this development and other developments in the area then it could (and should) form part of the description of the development so that its benefits and disbenefits can be considered alongside the current proposals. SCDC acknowledges that the UU is enforceable and that the financial contribution meets the CIL tests. The concern is that it has not been shown that it is necessary to reserve land here so the UU cannot be given any weight in the planning decision. The site is considered by SCDC to be poorly located to serve other future developments in the area. There was no evidence before the Inquiry to demonstrate that it is necessary to make this provision on this site.
164. I am not a lawyer, but it seems to me that the UU is fully enforceable and that it makes adequate provision for the primary school children likely to be generated by the development. The UU provides for the reservation of some of the site for a particular purpose should it be needed. This is completely separate from the public process of making and determining a planning application. If SCC opts to build a school on the site then planning permission would be required and a further planning application would have to be made. The determination of that application would give SCDC the opportunity to consider whether this is an appropriate location for a primary school. The UU does not remove SCDC from this decision making process; it simply provides a locational option that SCC may choose to pursue.
165. I agree with SCDC that the possible future provision of a primary school on part of the site can carry no weight in this appeal decision as it does not form part of the proposals currently under consideration. If SCC chooses to build a school elsewhere then this would trigger the need for financial contributions and the reserved land would continue to be used as public open space (POS) within the site. There is no issue concerning the reservation of land indicated as being POS on the Illustrative Masterplan in terms of the quantum of such provision within the development as SCDC agrees that even without this land the amount of POS exceeds that required for this development.

166. I conclude on this issue that subject to the imposition of various conditions as identified in the SoCGs and the submitted UU that the proposals make adequate provision for community and other services and facilities. This is in accordance with the development plan, and in particular CS Policies SP16 (Sport and Play), SP17 (Green Space) and SP18 (Infrastructure); the CIL Regulations; and paragraph 204 of the Framework.

### **Conditions [87, 89, 106]**

167. If the SoS is minded to allow the appeal I recommend that conditions 1 – 31 (inclusive) as set out in the Annex to this Report be imposed on any permission granted. These conditions were discussed at the Inquiry and an agreed list, amended to take account of the round table discussion at the Inquiry, submitted following the close of the Inquiry. In addition to the standard outline planning permission conditions it is recommended that the plans are identified for the avoidance of doubt as the site boundary was amended during the Inquiry and that phases of development are identified at the outset to avoid future doubt.

168. Further conditions are required in respect of refuse/recycling facilities, noise attenuation measures and contamination in the interests of the living conditions of future residents. Details of foul and surface water drainage are necessary as no such details have been submitted; for the avoidance of flood risk; to ensure that sustainable drainage principles are employed; and to protect ground water supplies. Piling needs to be controlled to protect groundwater. Energy efficiency measures need to be identified and approved in the interests of sustainable development.

169. Construction and Dust Management Plans are necessary in the interests of highway safety and to protect the amenities of adjoining residents and allotment holders. A landscaping scheme, together with details of future management, needs to be submitted and implemented in the interests of the visual amenities of the area. Details of external lighting need to be submitted and approved for the same reason. A programme of archaeological investigation is necessary in order to advance understanding of heritage assets which otherwise may be lost.

170. Details of estate roads and footpaths, including the timing of their provision, together with details of visibility splays need to be approved in the interests of highway safety and to protect the living conditions of future residents. Details of parking facilities, including the storage of bicycles, need to be provided and the approved facilities retained in the interests of highway safety and the living conditions of future residents. The footway/ cycleway along Candlet Road and the zebra crossing on the High Street need to be provided in the interests of the living conditions of future residents and to promote sustainable forms of travel.

### **Unilateral Undertaking [87-92, 107-108]**

171. The UU was submitted by the appellant and covers the matters set out in paragraph 107 (above). As set out in paragraphs 87-92 (above) SCC is content with its provisions subject to various planning conditions. The only issue between SCDC and the appellant concerns primary school provision in the area and whether the inclusion of land reserved for this purpose should have formed part of the planning application. There is no dispute concerning the legality or enforceability of the UU or the financial contributions that would be payable. I

have already concluded that, in my opinion, the UU is worded in such a way that SCDC still have absolute control over where a future primary school would be located as it would need separate planning permission. I have also concluded that as the school does not form part of these proposals its provision on the site cannot weigh rather for or against the proposals.

172. Overall, however, the UU secures benefits not only for future residents of the site but also for other residents and businesses in the area. I would point out, however, that the provision of the proposed business units and community centre are not secured by this Undertaking.

### **The Planning Balance**

173. The starting point in the planning balance is whether SCDC can demonstrate a five-year housing land supply as this determines the weight that can be given to relevant policies in the development plan. The importance of this in the balance was emphasised during the Inquiry by the evidence of SCDC's planning witness. Under cross examination this witness conceded that if the Council does not have a five-year housing land supply and paragraph 14 of the Framework is engaged, then the identified harm would not significantly and demonstrably outweigh the benefits.
174. There are two limbs to this issue. First, whether CS requirement of 7,900 new homes is out of date due to the final paragraph of CS Policy SP2; and, second, whether the Council can demonstrate a five-year housing land supply.
175. Concerning the first limb, I have concluded that the provisions of that policy are clear and that the timescale it sets out has not been met. I do not agree with the Council that in these circumstances the requirement figure of 7,900 dwellings, which was only accepted as a temporary measure, can reasonably continue to be used. It is out of date. To still use it would fly in the face of the Government's objective of significantly boosting the supply of housing.
176. On the second limb, for the reasons set out above I have concluded that the Council has a record of persistent under delivery of housing and so a 20% buffer should be provided. This, taken in combination with my conclusions on the first limb, means that the Council cannot demonstrate a five-year housing land supply. Relevant policies for the supply of housing, therefore, cannot reasonably be considered to be up to date.
177. If the SoS accepts that conclusion, then paragraph 14 of the Framework is engaged. In those circumstances all parties at the inquiry are agreed that planning permission should be granted given the Council's concession that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.
178. The benefits of granting permission include the provision of up to 560 dwellings, of which 187 would be affordable housing units. These benefits are recognised by Council and this provision carries considerable weight in support of the proposals. There is no certainty as to the timescale for the likely delivery of the dwellings (ie whether they will be delivered within the next 5 years), but evidence to the Inquiry from house builders was positive (Documents ID21 & 22. This provision is all the more important given the lack of a five-year housing land supply and the imbalance, identified in the development plan,

between employment and housing in respect of the Port of Felixstowe. The other economic and social benefits of providing additional housing are set out above in the section on sustainable development which concludes that these benefits are significant. This carries significant weight in favour of the proposals.

179. The harm arising from the proposals is both limited in scale and highly localised. The fact that it would breach the strong physical boundary of the settlement by being located on the northern side of Candlet Road would not set a precedent given that the Grove Medical Centre and Pharmacy, with its extensive car park, is located to the north of that road. Nonetheless, there would be a major encroachment into the countryside and a resultant impact on users of public footpaths and a Quiet Lane in the area.

180. The harm to the AONB would be limited to long distance views out from the AONB and these views themselves are mostly limited to views through gaps in hedges or over field gates and there are some intervening trees. There would be some harm to these views but this would be very limited. Nonetheless, there would be conflict with CS Policies DM3, SP15, SP19, SP21 and SP29 and with emerging Policy FPP2 of the FPAAP and this weighs against the proposals.

### **Overall Conclusions**

181. I am satisfied that the consideration of the revised site location plan, which involves a reduction in the overall site area and does not include any additional land outside the original site location plan, is acceptable and would not prejudice any interested parties.

182. The proposals are in conflict with policies in the development plan as they involve housing provision in the countryside outside the confines of Felixstowe/Walton. Policies for the supply of housing, however, are out of date insofar as the requirements of CS Policy SP2 have not been met and the Council is unable to demonstrate a five-year housing land supply. I have found that this would be a sustainable form of development. In accordance with paragraph 14 of the Framework, Government advice is that planning permission should be granted unless the impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

183. I have found that the harm arising from the proposed development is limited and localised. The economic and social benefits are not significantly and demonstrably outweighed by the identified environmental harm. I therefore recommend that conditional outline planning permission be granted.

### **Recommendation**

**File ref: APP/V3500/W/15/3138710**

184. I **recommend** that the appeal, as amended by drawing No YOR.2258\_036.A dated 09.09.2016, be allowed and that planning permission be granted subject to Conditions 1 – 31 (inclusive) as set out in the Annex to this Report.

*Clive Hughes*

Inspector

## APPEARANCES

### FOR CHRISTCHURCH LAND & ESTATES (FELIXSTOWE) LTD:

Anthony Crean QC	Instructed by the appellant
He called	
Christopher May	Director, Pegasus Planning Group
BS(Hons) MRTPI	
Brian Denney BA(Hons)	Landscape and Environmental Planning
DipLA CMLI CENV MIEMA	Director, Pegasus Group Ltd
Richard Brown MSc	Director, Richard Brown Planning Ltd
*Paul Hart	Solicitor, Shakespeare Martineau
**Victoria Balboa	Director, WYG Environment Planning Transport
BSc(Hons) MCIHT	
**Stephen Clyne LCP	Principal, EFM
(Dip SMS) Cert Ed MAE	
* For sessions on conditions and Unilateral Undertaking only	
** These witnesses each produced written statements but were not called during the Inquiry	

### FOR SUFFOLK COASTAL DISTRICT COUNCIL:

Harriet Townsend of Counsel	Instructed by the Solicitor to the Council
She called	
Desi Reed BSc(Hons)	Planning Policy and Delivery Manager, SCDC
MPhil MRTPI DMS	
Mark Flatman CMLI DipLA	Director, Liz Lake Associates
BA(Hons)	
Jane Crichton BA(Hons)	Senior Planner, Lanpro Services
MSc MRTPI	

### FOR SUFFOLK COUNTY COUNCIL:

Juan Lopez of Counsel	Instructed by Emma Bethell, Principal Planning and Environment Solicitor
He was supported by	
*Faye Minter BA MA	Senior Archaeological Officer, SCC
*Simon Curl BSc	Flood and Water Manager, SCC
*James Cutting BA(Hons)	Planning Strategy Manager, SCC
BTP MRTPI	
*Luke Barber BSc FDCE	Road Safety Audit Team Leader, SCC
* These witnesses each produced written statements but were not called during the Inquiry	

### INTERESTED PERSONS:

Guy Pearse	Felixstowe Society of Allotment & Leisure Gardeners and local resident
Robin Whittle	Chair; River Deben Association and local resident
Cllr Kimberley Williams	Walton Town Councillor and local resident



## **CORE DOCUMENTS**

- CD1 Documents A1–A27 Planning application documents
- CD2 Documents B1-B4 Consultation documents, officer report & decision notice
- CD3 Documents C1-C5 Appellant's appeal documents
- CD4 Documents D1-D7 Statements of common ground & related inquiry documents
- CD5 Documents E1-E13 Development plan policy documents and guidance
- CD6 Documents F1-F11 Planning permissions and appeal decisions
- CD7 Documents G1-G23 Other documents

## **DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE APPELLANT**

- CLE1 Proof of evidence and appendices of Christopher May
- CLE2 Proof of evidence and appendices of Brian Denney
- CLE3 Proof of evidence and appendices of Richard Brown
- CLE4 Proof of evidence and appendices of Victoria Balboa
- CLE5 Proof of evidence and appendices of Stephen Clyne
- CLE6 Supplemental proof of evidence of Richard Brown

## **DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE DISTRICT COUNCIL**

- SCDC1 Proof of evidence and appendices of Desi Reed
- SCDC2 Proof of evidence and appendices of Mark Flatman
- SCDC3 Proof of evidence and appendices of Jane Crichton

## **DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE COUNTY COUNCIL**

- SCC1 Proof of evidence and appendices of Luke Barber
- SCC2 Proof of evidence and appendices of Simon Curl
- SCC3 Proof of evidence and appendices of Faye Minter
- SCC4 Proof of evidence and appendices of James Cutting
- SCC5 Rebuttal proof of evidence and appendices of Chris Ward on Travel Plan matters
- SCC6 Rebuttal and erratum on Education and Early Years Matters of James Cutting

## **OTHER DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY**

- GEN1 Email (30.08.16) containing updated housing land supply details
- GEN2 Planning Statement of Common Ground (unsigned)
- GEN3 Statement of Common Ground on Highway and Transport Matters (signed)

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID1 Statement of Common Ground: Housing Requirement & Five Year Housing Land Supply
- ID2 Stratford upon Avon DC v SoS CLG and J S Bloor (Tewkesbury) Ltd etc [2013] EWHC 2074 (Admin)

- ID3 Drawing No YOR.2258\_038: Extent and level of visual effects set out in evidence of Mark Flatman
- ID4 Summary proof of evidence of Desi Reed
- ID5 M Flatman Fig 10: Encroachment into the open countryside
- ID6 M Flatman Fig 02: Landscape character
- ID7 Indicative masterplan annotated with areas of built development and hard surfacing
- ID8 Land off Woods Lane, Melton, Woodbridge: Illustrative Masterplan
- ID9 Opening submissions on behalf of Suffolk Coastal District Council
- ID10 Opening submissions on behalf of Suffolk County Council
- ID11 Email dated 26 September 2016 flagging up proposed application for costs by the appellant
- ID12 Aim of the River Deben Association
- ID13 Council's list of factual changes since the Framlingham Decision
- ID14 Draft Unilateral Undertaking (Number 2) - withdrawn
- ID15 Statement of Common Ground on Drainage Matters
- ID16 Statement of Common Ground on Archaeology Matters
- ID17 Council's notification letter and list of persons notified
- ID18 Timetable: Suffolk Coastal Local Development Scheme 2012-2015
- ID19 Extracts from The Deben Estuary Plan (April 2015)
- ID20 Summary proof of evidence of Jane Crichton
- ID21 Letter dated 3 June 2016 from Taylor Wimpey to Mr S Roper
- ID22 Letter dated 1 August 2016 from Bloor Homes to Mr S Roper
- ID23 Draft conditions (Suffolk County Council)
- ID24 Addendum Statement of Common Ground on Transport Matters
- ID25 Statement of Common Ground on Education and Early Years Matters
- ID26 Draft Unilateral Undertaking (version 2) (replaced ID14)
- ID27 Draft conditions (Suffolk Coastal District Council)
- ID28 Revised position on the 5 year supply of deliverable sites
- ID29 Extract from Planning Practice Guidance (16-049-20140306)
- ID30 Position statement on Education by Suffolk Coastal District Council
- ID31 Costs application on behalf of Suffolk County Council
- ID32 Closing submissions on behalf of Suffolk County Council
- ID33 Closing submissions on behalf of Suffolk Coastal District Council
- ID34 Closing submission on behalf of the appellant
- ID35 Suggested itinerary – Inspector's site visit

#### **DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY**

- PID1 Signed Unilateral Undertaking dated 7 October 2016
- PID2 Composite list of agreed conditions

#### **PLANS**

- A Drawing No YOR.2258\_036.A – Site boundary plan (revised)
- B Drawing No YOR.2258\_010M – Indicative Masterplan (revised)

### **ANNEX: Suggested conditions (31 conditions)**

- 1) Plans and particulars showing the detailed proposals for all the following aspects of the development ("the reserved matters"), or within a phase, shall be submitted to the local planning authority and the development shall not be commenced before these details have been approved:
  - i. The siting of all buildings and the means of access thereto from an existing or proposed highway;
  - ii. The design of all buildings, including the colour and texture of facing and roofing materials;
  - iii. Landscaping;
  - iv. A landscape design showing the planting proposed to be undertaken, the means of forming enclosures, the materials to be used for paved and hard surfaces and the finished levels in relation to existing levels;
  - v. The layout of foul sewers and surface water drains; and
  - vi. The alignment, height and materials of all walls and fences and other means of enclosure.
- 2)
  - a) Application for approval of any reserved matters must be made within five years of the date of this outline permission and then
  - b) The development hereby permitted must be begun within either three years from the date of this outline permission or within two years from the final approval of the reserved matters, whichever is the later date.
- 3) The development hereby permitted shall be carried out in full accordance with Drawing No. YOR.2258\_036.A and generally in accordance with the Indicative Masterplan (Drawing No YOR.2258\_010M) unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to development commencing a phasing plan for the development of the whole of the site shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall be undertaken in accordance with the approved plan or as otherwise agreed in writing by the Authority from time to time.
- 5) Before the development is commenced, or any phase of development commenced, details of the areas to be provided for storage of refuse/ recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved details and shall be retained thereafter for no other purpose.
- 6) Prior to the commencement of development, a Construction Management Plan shall be submitted to the local planning authority for approval. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
  - i. The parking of vehicles of site operatives;
  - ii. Loading and unloading of plant and materials;
  - iii. Storage of plant and materials used in the construction of development;

- iv. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - v. Measures to control the emission of dirt; and
  - vi. A scheme for recycling/disposing of waste resulting from demolition.
- 7) No development shall take place until a Dust Management Plan has been submitted to and approved in writing by the Local Planning Authority and the recommendations of which must be implemented during the construction phase of the development unless otherwise agreed in writing.
  - 8) Prior to any development commencing on any phase within the site a scheme for protecting noise sensitive properties within the site from road traffic noise shall be submitted to and approved by the Local Planning Authority. All works which form part of this scheme shall be so far as they relate to any specific property before such property is occupied.
  - 9) Although site investigation has not previously identified any contamination associated with this site, if any contamination is encountered anywhere on the site during the development, it must be reported to the Local Planning Authority. Where remediation is necessary a scheme shall be prepared and agreed in writing with the Local Planning Authority prior to any works which may disseminate or bury the contaminant or put any site operative at risk and thereafter implemented in accordance with the measures specified in the agreed scheme.
  - 10) No development shall commence commencing on any phase within the site until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.
  - 11) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.
  - 12) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
  - 13) Prior to the commencement of development a scheme for the provision and implementation of water, energy and resource efficiency measures, during the construction and occupational phases of the development shall be submitted to and agreed, in writing, with the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the construction and occupancy of the development. The scheme shall be constructed and the measures provided and made available for use in accordance with such timetables as may be agreed.

- 14) Prior to the commencement of development, a scheme for the provision and implementation of rainwater harvesting shall be submitted and agreed, in writing, with the Local Planning Authority. The works/scheme shall be constructed and completed in accordance with the approved plans/specification in conjunction with the development to which it relates.
- 15) Any planting, seeding or turfing comprised in the approved details of landscaping in respect of any phase shall be carried out in accordance with the phasing arrangements for such planting and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced on the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 16) A landscape management plan, including the long term design objectives, management responsibilities and maintenance schedules for all landscape areas, SUDS and play areas, other than privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development. The landscape management plan shall be carried out as approved.
- 17) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the dwellings are occupied. Development shall be carried out in accordance with the approved details.
- 18) Concurrent with the first reserved matters application, an amended flood risk assessment (FRA) including surface water storage on site to be provided and sized to contain the 1 in 100 year + 40% climate change event has been submitted to and approved in writing by the Local Planning Authority.
- 19) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
  - i. Limiting the surface water run-off generated in all events up to the 1 in 100 year critical storm to no more than 43l/s (1.37 l/s/ha or QBAR), so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
  - ii. Provision of attenuation storage to manage the volume of surface water generated in all rainfall events up to and including the 1 in 100 year return period event including allowances for climate change (40%);
  - iii. The pipe diameters of the surface water drainage network shall be determined during the detailed design stage and calculations shall be submitted which demonstrate they are sized to adequately convey the critical duration 1 in 100 year return period rainfall event, including allowances for climate change. A fully labelled network diagram showing all dimensions (pipe numbers, gradients, sizes, locations, manhole details etc.) of every element of the proposed drainage system should be submitted;
  - iv. In the event of exceedance flows that surpass the critical duration rainfall event or a blockage/failure occurs within the drainage network/flow

control device the attenuation features shall incorporate an emergency spillway and appropriate freeboard as part of their design;

v. Confirmation that the existing drainage ditches, downstream to watercourse, are free from obstruction and able to adequately drain to watercourse without causing nuisance or damage. It is proposed that all surface water runoff generated from the proposed development will be discharged to existing drainage ditches via attenuation and a controlled discharge rate (43 l/s);

vi. All surface water management features must be designed in accordance with CIRIA (C753) The SuDS Manual so ecological, water quality and aesthetic benefits can be achieved in addition to the flood risk management benefits;

vii. Plans and drawings showing the locations and dimensions of all aspects of the proposed surface water management scheme. The submitted plans should demonstrate that the proposed drainage layout will perform as intended based on the topography of the site and the location of the proposed surface water management features. In addition, full design details, including cross sections of the proposed attenuation features will be required;

viii. Details of the future adoption and maintenance of all aspects of the surface water drainage strategy. The local planning authority should be satisfied that arrangements are in place for the long term maintenance and management of the surface water management scheme;

ix. Infiltration testing shall be carried out on the site in accordance with BRE 365, and the use of infiltration as the means of drainage if the infiltration rates and groundwater levels show it to be possible;

x. Confirmation, in writing, of the East Suffolk Internal Drainage Board's acceptance of the proposed surface water runoff rates should be submitted;

xi. A full hydrological analysis of the ordinary watercourse which flows through the site, including information regarding the watercourse capacity and calculations to demonstrate that the proposed road crossing culverts/bridges will be suitably sized to convey the 1 in 100 year flood event, including allowances for climate change. The mitigation measures shall be fully implemented in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 20) No development shall commence until details of the implementation, maintenance and management of the strategy for the disposal of surface water on the site have been submitted to and approved in writing by the local planning authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 21) No more than three hundred (300) dwellings hereby permitted shall be occupied until the flood risk asset register template has been submitted, in the required form, to and approved in writing by the Local Planning Authority.
- 22) No development shall commence until details of a construction surface water management plan detailing how surface water and storm water will

be managed on the site during construction is submitted to and agreed in writing by the Local Planning Authority. The construction surface water management plan shall be implemented and thereafter managed and maintained in accordance with the approved plan.

- 23) No development shall commence until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions, and:

- i. The programme and methodology of site investigation and recording;
  - ii. The programme for post investigation assessment;
  - iii. Provision to be made for analysis of the site investigation and recording;
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; and
  - vii. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.
- 24) No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 23 and the provision made for analysis, publication and dissemination of results and archive deposition.
- 25) No development shall commence on each specific reserved matters phase until details of the estate roads and footpaths, (including layout, levels, gradients, surfacing and means of surface water drainage), related to that phase, have been submitted to and approved in writing by the Local Planning Authority.
- 26) No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least Binder course level or better in accordance with the approved details.
- 27) The new estate road junction with Candlet Road, as shown on WYG drawing No. A085774\_007 Rev. B inclusive of cleared land within the sight splays to this junction must be formed prior to any other works commencing or delivery of any other materials. Full details of the junction shall be submitted to and approved by the Local Planning Authority prior to the commencement of development.
- 28) No development shall commence on each specific reserved matters phase until details of the areas to be provided for the manoeuvring and parking of vehicles including secure cycle storage, related to that phase, have been submitted to and approved in writing by the Local Planning Authority. The

approved details shall be delivered in conjunction with the development they are intended to serve, and shall be retained thereafter and used for no other purpose.

- 29) No more than ninety nine (99) dwellings shall be occupied until the footway/ cycleway along the north east side of Candlet Road from the site access to the Grove Road Heath Centre, as shown on WYG Drawing A085774\_010 Rev. A, and the footway link adjacent to Gulpher Road, as shown on WYG Drawing No. A085774\_007 Rev. B, have both been completed in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.
- 30) No dwelling shall be occupied until footpath 24 has been enhanced with a metalled surface and street lighting, from the site access to Ataka Road (as generally shown in WYG drawing A085774\_014), has been carried out in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.
- 31) No dwelling shall be occupied until a Zebra Crossing on the High Street, as shown on the WYG Drawing A 085774\_011 Rev. A, has been completed in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority.





## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.