



Appeal Decision

Inquiry held on 8, 9, 10 and 24 August 2017

Site visit made on 10 August 2017

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 11 October 2017

Appeal Ref: APP/P1560/W/17/3169220

Land north west of Sladbury's Lane, Clacton, Essex CO15 4BG

- 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 Mr R Giles against the decision of Tendring District Council.
 - The application Ref 15/01351/OUT, dated 27 August 2015, was refused by notice dated 11 August 2016.
 - The development proposed is for an outline planning application for residential development up to 132 dwellings and open space, including provision for a sports field, new vehicular access via Sladbury's Lane (All matters reserved).
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for residential development up to 132 dwellings and open space, including provision for a sports field, new vehicular access via Sladbury's Lane at land north west of Sladbury's Lane, Clacton, Essex CO15 4BG in accordance with the terms of the application, Ref 15/01351/OUT, dated 27 August 2015, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application is in outline form with all matters reserved for future determination. The Statement of Common Ground (SoCG)¹ states that the proposal is for up to 132 dwellings with open space including a sports field and access via Sladbury's Lane. Although the application was submitted in outline, a series of house types was included as part of the application, along with street scenes, but the status of these was illustrative only. The Appellant also submitted an indicative site plan that demonstrates how a layout of 132 dwellings could be achieved with a roundabout from Sladbury's Lane. The only application plans submitted for approval were therefore:
 - Existing Site Location Plan (ref 256.214.00) and
 - Built Development Parameters Plan (ref 256.213.02)
3. The application is supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Transport Assessment, a Noise Survey, a Flood Risk and Wastewater Assessment and Revised Flood Risk and Wastewater Assessment, an Ecology

¹ INQ3

Appraisal, an Aboricultural Impact Assessment, a Utilities Statement and a Note about Policy EN2.

4. At the Inquiry, a S106 Unilateral Planning Obligation (UU) was submitted by the Appellant. This addresses all of the matters sought by the Council in connection with the provision of community and other services arising from the development. The UU is signed and dated 24 August 2017 and is a material consideration in this case. I return to the UU later in this decision.

Main Issues

5. In the light of the above I consider the main issues are:-
 - Whether the Council is able to demonstrate a 5-year supply of deliverable housing sites sufficient to meet the full objectively assessed need (OAN) for housing and the implications of this in terms of national and local policy;
 - The weight that can be given to Policy EN2 of the adopted Local Plan and Policy PPL6 of the emerging Local Plan;
 - The effect of the proposals on the character and appearance of the area and in particular, on the Local Green Gap between Clacton-on-Sea and Holland-on-Sea;
 - The planning balance: Whether the proposals comprise sustainable development as defined in the NPPF and whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits.

Reasons

Background

The appeal site and its setting

6. The appeal site comprises 8.6 has of agricultural land (a mix of Grade 3a; 3b – good to moderate and Grade 4 - poor) to the west of Sladbury's Lane. It lies outside of the settlement boundary identified within both the adopted Tendring District Local Plan (LP) and the emerging Tendring District Local Plan (ELP). In the LP it lies within a Local Green Gap designation. In the ELP it lies within a Strategic Green Gap. The southern extremity of the site lies within Flood Risk Zones 2 and 3. Further to the east are the Holland Marshes SSSI and the route of Picker's Ditch that is designated as protected public open space.
7. The site is located on the north-eastern edge of Clacton, about 3kms from the town centre. It is about 1.5kms from Gorse Lane Industrial Estate to the north. The town centre has a wide range of shops for both everyday/convenience and comparison shopping needs. It also has three secondary schools and a number of primary schools, including Holland Park, which is about 800m from the site. In addition, the town has employment opportunities and local leisure and community facilities. It is identified as an urban settlement in the LP and a strategic urban settlement in the ELP where development should be focussed.
8. The site currently comprises farmland and consists of two arable fields which spilt the site in two, one to the north and one to the south. The field to the south of the site is separated from that to the north by a hedgerow, ditch and

with some mature trees set amongst it. Around the perimeter of the fields are further lengths of additional hedging, fencing and trees.

9. The site lies immediately adjacent to the Valley Farm Holiday Park (a protected caravan site) to the west. Sladbury's Lane runs off to the south and east. To the north, beyond an adjoining agricultural field is the Colchester to Clacton railway line. A line of electricity pylons crosses east/west beyond the northernmost boundary. The topography of the site is a general slope in a north to south direction, from about 11m AOD to 2.5m AOD towards the southern boundary.
10. Sladbury's Lane is an unclassified road which forms part of a link between the B1033 and the B1032 on the eastern edge of Clacton. Within the built up area the carriageway is of sufficient width for two vehicles to pass although a vehicle weight limit of 7.5 tonnes is imposed across the Picker's Ditch. Further to the north east is the junction with Burrs Road, an unclassified road which runs north west from Sladbury's Lane, which it joins as the minor arm of a priority T-junction about 0.5kms north east of the site. Burrs Road then passes over the Colchester to Clacton railway line on a barrier controlled level crossing into the Burrsville area.

Planning History

11. The parties agree that there is no relevant planning history for the appeal site, although it is acknowledged that the land off Sladbury's Lane has been promoted over many years, by its owners, for inclusion as a residential development site in the Local Plan, albeit unsuccessfully to date.

The Proposals

12. The planning application was submitted in outline with all matters of detail reserved for future determination. The development would be accessed from Sladbury's Lane by means of a new 3-arm compact roundabout outside No 44 which would act as a "gateway" feature at the start of the 30mph limit at the edge of the urban area and help reduce vehicle speeds. The indicative site layout plan shows that the site could accommodate 132 dwellings comprising 12 two-bed; 64 three-bed and 56 four-bed houses.
13. The total site area is about 8.6 has. The built-up area comprises some 4.24 has with the remainder (about 4.36 has) being used for open space. The scheme provides for about 30% of the dwellings to be affordable units (about 40 units on a 132 unit scheme). The proposals include a children's play area, informal open space with a perimeter landscape buffer and sustainable drainage features. The formal open space has been removed due to topography.²

Planning Policy

14. The development plan for the area includes the saved policies of the LP which was adopted in December 2007. Paragraphs 1.1 and 1.4 of the LP state that the document covers the period up to 2011. Policy EN2 also refers to 'within the plan period'. The LP was prepared under the transitional arrangements provided by the 2004 Planning and Compulsory Purchase Act and its policies are subject to a Saving Direction from the SoS which allows them to be used in

² CD4.19 Design and Access Statement paragraph 5.1

- the determination of planning applications, with relative weight in accordance with paragraph 215 of the National Planning Policy Framework (NPPF).
15. The District Council has undertaken consultation on a 'Preferred Options' draft of its ELP and, at the time of writing, is undertaking consultation on the 'Publication' draft with a view to submitting the plan to the SoS in October 2017 to begin the process of examination. The weight that can reasonably be attached to policies in the ELP is subject to paragraph 216 of the NPPF and is a matter dealt with by the Appellant and the Council in their respective evidence. I deal with this in issue two below. Both parties agree that the ELP is still progressing through the plan making process and cannot be afforded 'full weight' in the determination of planning applications until it has been adopted.
 16. A number of policies in the LP and ELP were referred to at the Inquiry. The reason for refusal only cites LP Policy EN2. This is a restrictive policy that says that during the plan period, land within Local Green Gaps, as defined on the Proposals Map, will be kept open, and essentially free of development. This is to prevent the coalescence of settlements and to protect their rural settings. Minor development proposals may be permitted if they do no harm, individually or collectively, to the purposes of a Local Green Gap or to its open character. It identifies the uses that are appropriate in the Local Green Gaps which may include improvement of existing leisure and recreational facilities; development for agricultural purposes and improvement of public rights of way.
 17. Paragraph 6.9 of the LP sets out the aims of Local Green Gaps. Their primary purpose and function is to maintain separation between the main urban areas of the District. They also seek to maintain separation between urban areas and free standing smaller settlements that surround them, or between physically separate built up neighbourhoods. By conserving the countryside between residential settlements, local green gap policies aim to preserve the open character of these important breaks between settlements. The approach will also maintain the individual character and landscape setting of town, villages and neighbourhoods.
 18. The specific purpose of the Local Green Gap in the location of the appeal site,³ as set out in paragraph 6.11 of the LP is to:
 - (i) *Safeguard the unspoilt countryside gap between the railway line and Picker's Ditch to maintain clear separation and distinction between the identity and character of Holland-on-Sea and the Bursville area of Greater Clacton; and*
 - (ii) *Preserve views from both areas, and for train passengers, over this attractive wedge of rolling landscape.*
 19. In the ELP the Green Gaps are renamed Strategic Green Gaps under Policy PPL6. The Great Clacton/Holland-on-Sea Gap is proposed to be retained in its entirety. Within Strategic Green Gaps the Council will not permit development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities. Planning permission may be granted if the applicant can demonstrate (a) that there is a functional need for the development to be in that specific location; (b) the development would not compromise the open setting between settlements or neighbourhoods; and (c) the development would involve the creation of Green Infrastructure.

³ Great Clacton/Holland-on-Sea

Whether the Council is able to demonstrate a 5 year supply of deliverable housing sites sufficient to meet the full objectively assessed need (OAN) for housing and the implications of this in terms of national and local policy.

20. It is common ground that the Housing Market Area (HMA) for the assessment comprises Braintree, Colchester, Chelmsford and Tendring Council areas and these areas form a sound basis for assessing housing need; and the 5-year land supply period is 1 April 2017 to 31 March 2022.
21. The Planning Practice Guidance (PPG) confirms that *‘establishing future need for housing is not an exact science – no single approach will provide a definitive answer’*. However, it goes on to clarify that *‘Household projections published by the Department for Communities and Local Government should provide the starting point estimate for overall housing need...; The household projections are trend based...may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends...; plan makers should make an assessment of the likely change in job numbers ...; [and] the housing need number suggested by household projections should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings ...’*⁴
22. There is disagreement between the parties concerning the Council’s 5-year housing land supply. The matters in dispute concern the requirements (the OAN) and the available supply of deliverable sites. The Council’s final position, as confirmed at the Inquiry is that it has 5.1 years of supply, whilst the Appellant’s view is that the supply amounts to some 4.03 to 4.79 years.
23. In terms of housing requirements, the Council has applied an objectively assessed need (OAN) requirement of 550 dwellings per annum (dpa) in its 5-year supply calculations. This figure is recommended in the latest update of the OAN Study dated November 2016 by Peter Brett Associates (PBA Study)⁵ on behalf of authorities in the HMA. It is lower than the DCLG 2014-based household projections for Tendring of 625 dpa. However, the PBA Study indicates that the official demographic projections for Tendring are not robust, due to a discrepancy between the Census estimates in 2001 and 2011 and the ONS *‘components of change’* statistics. The discrepancy is 10,533 or 7.6% of the census based estimate for 2011 and is referred to as the *‘Unattributable Population Change’* (UPC).
24. The PBA Study uses an alternative demographic starting projection of 480 dpa and applies a market signal uplift to obtain an OAN figure. With a market signal adjustment applied PBA recommended an OAN range of 500-600 dpa with 550 dpa adopted where a single figure was needed for the period 2013-2037.
25. The Appellant’s position is that the DCLG 2014-based household projections represent the most recent official projections and they indicate an increase in households equivalent to 625 dpa between 2013 and 2037. It is argued that this should be uplifted to 670 dpa to account for vacancy rates and second homes. It is not submitted that uplift is required for market pressure, economic growth or affordable housing. The Appellant’s position is that an OAN figure of 670 dpa should be applied.⁶

⁴ Paragraph Ref ID 2a-015-20140306; Paragraph Ref ID 2a-018-20140306and Paragraph Ref ID 2a-019-20140306

⁵ CD3.1

⁶ CD7.9

26. In the absence of an up-to-date Local Plan, the calculation set out in the PBA Study represents the most recent estimate of OAN. However, the contents of the PBA Study have not been tested at a Local Plan examination. It will be first tested at the EIP into the ELP; the outcome of this will not be known for some time. It is possible that a Local Plan Inspector, after consideration of the unresolved objections, might conclude that the PBA Study is flawed. Indeed this uncertainty is reflected in the PBA Study at paragraph 8.37:-

"For now, our analysis of the latest demographic data suggests that the correct 'demographic starting point' remains 480 dpa, with a large potential for error."

27. At the Inquiry the Council referred to earlier reports by Edge and Hollis but I note that that work is based on past trend rates projected forward. As the PPG makes clear⁷ such projections may require adjustment if formation rates have been suppressed historically by under-supply and worsening affordability of housing. The PBA Study shows that Tendring experienced an increase in house prices of 70% between 2002 and 2012 – the joint highest increase in Essex.⁸ PBA's approach is based on Hollis as the demographic starting point with a market uplift giving an OAN of 500-600 dpa.
28. Mr McDonald appraised and explained the UPC but he only accounts for Tendring's UPC and does not take into account the implications for the HMA where the other authorities rely on DCLG projections. The Local Plan Expert Group has advised the Government that it should not be open for plan makers to reject the use of official projections due to perceived concerns with UPC albeit this is not formal guidance.
29. Mr McDonald advanced a range of figures in his evidence to the Inquiry. Adjusting the latest household projections to correct for the inaccuracies in the migration flow data, he suggests a housing need of 420-540 homes per year without uplift depending on the assumptions made. However, I note that the ONS explicitly states that the maximum error attributable to migration is 5-6,000 population. This is equivalent to 47-57% of the total UPC. The remainder is due to Census errors. The ONS view must be treated with importance as it is the Government body responsible for population estimates and processing the data. Taking its figures gives a range of up to 483-510 dpa. However, 510 is the minimum figure to be derived from the ONS margin of error according to its Note, and it is only a starting point at that. Applying a market uplift of 15% results in an OAN of 587. This is the very lowest figure that should be taken for the purposes of this appeal given that the starting point could well be higher than 510 dpa. Historic under-delivery should also be taken into account because these figures are only trend based.
30. Given the prevailing uncertainty, it is not appropriate for me in the context of this S78 Inquiry to attempt to resolve OAN without further more detailed consideration of the UPC, its alleged causes and significance for the HMA. For similar reasons it would not be appropriate for me to revert to the official projections pending resolution. Taking into account all of the evidence that is before me I consider that the higher figure in the range put forward by the PBA Study, 600 dpa, should be adopted as the housing requirement (OAN) for this appeal.

⁷ Paragraph Ref ID 2a-015-20140306

⁸ CD3.1 Page 14 Table 2.3

31. In terms of housing supply, the Council says that the 5-year housing land supply requirement (2017-2022) is 550 dpa, which with the shortfall (826 dwellings) added and a 20% buffer gives a total requirement of 4,291 dwellings against a total supply 4,395 dwellings which equates to 5.1 years supply. Following PBA's advice, the Council has agreed the figure of 550 dpa for the purposes of the ELP. The ELP makes provision for a minimum dwelling stock increase of 11,000 dwellings over the period 2013-2033.
32. The Council says that it can demonstrate that it can now meet this requirement. It refers to the Housing Supply Position and Housing Trajectory Report ⁹ which sets out, in detail, the Councils' 5-year housing supply calculation. The report shows that the Council can demonstrate a 5.1 year supply of deliverable housing land and it is claimed that this is a robust figure that makes conservative assumptions about delivery. It is noteworthy that the 550 dpa figure is used from the PBA Study as the source of the housing requirement; that the 826 dwelling shortfall acquired between 2013 and 2017 is proposed to be addressed in the next 5 years in line with the Sedgefield approach; a 20% buffer has been applied to both the base line requirement and the shortfall, in recognition of Tendring's persistent under-delivery in recent years and the Council has not relied on any sites allocated in the LP or ELP that are yet to obtain planning permission.
33. The Appellant considers that the Council has over-estimated the supply for the 5-year period 2017 to 2022 by 717 units if the OAN is 600 dpa. The disagreement relates to the contribution from 11 large site commitments. There is no disagreement in relation to the supply from small sites or other elements of the supply calculation such as the Sedgefield approach or the 20% buffer which is applied.
34. I note that the NPPF requires there to be a "realistic prospect" that sites will come forward within 5 years. It does not require certainty. This was emphasised in the *St Mowden Developments Ltd v Secretary of State for Communities and Local Government* [2016] EWHC 968. The Council's supply needs to be "deliverable" which means, among other things, that there is a "realistic prospect" that houses will be built on the identified sites, within the 5-year period. There can be no certainty that houses will come forward. Nor does the NPPF require as much for a site to be considered deliverable.
35. Moreover, I must have regard to NPPF paragraph 47 footnote 11 which establishes that:-
- "To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans".*
36. The footnote does not tell the decision maker to assume that each of the deliverable sites will yield their full quota within the 5-year period. It is for the Council to demonstrate that the sites it has identified will on the balance of probability deliver the numbers it says will be delivered. It is noteworthy that

⁹ CD3.9 - Local Plan Committee Report dated 12 June 2017

the PPG makes it clear that it is LPAs that need to provide robust evidence to support the delivery of sites.¹⁰ This requires a site by site assessment based upon evidence, normally derived from iterations with developers and comparable historic evidence from similar sites, among other things.

37. Following a narrowing of issues at the Inquiry, 11 sites are disputed, all of which are large sites with planning permission. In none does the Appellant say that the site is not deliverable at all, nor in general does the Appellant question the annual yield assessed by the Council. However, the Appellant does take issue with the timing of implementation where it is claimed that no evidence has been produced by Mr Guiver at all. At my request, both parties produced a summary of the sites in dispute.¹¹ These show the deliverability of those 11 sites in tabulated form. Mr Dodkins attached a spreadsheet in his Appendix 2 which includes his assessment of the Council's Housing Site Trajectory.
38. Overall I consider that the Appellant's assessment of supply from large specific sites is the more realistic taking into account the St Mowden judgment,¹² and in accordance with the PPG and footnote 11 of the NPPF. There are several reasons why I cannot agree with the Council's assessment. Firstly, the only evidence from the Council is from Mr Guiver who simply asserts that he has spoken to the various owners and developers. It is strange then that he has applied the very same annual yield to all sites that have not yet commenced with two exceptions. These are based on asserted yield rates from similar sites, which may or may not be correct in relation to individual sites in question. It is surprising to me that the same rates have been applied irrespective of the size of the prospective development.
39. Secondly, Mr Guiver stated that the period of 12 months from the grant of outline planning permission to Reserved Matters (RM) was reasonable and that a period of 18 months from outline planning permission to delivery was realistic. Even if Mr Dodkins' evidence on delivery is discounted and Mr Guiver's is accepted, this would result in no delivery until year three because we are already half way through year one.
40. Thirdly, Mr Dodkins has industry experience and he told the Inquiry first-hand what steps had to be gone through. He also illustrated this with the AREBRAY letter and spreadsheet.¹³ This consultancy has direct experience working for a major PLC housebuilder. The tables are a typical example of delivery timescales for new sites in east Essex which cannot really be improved upon unless work commences without pre-commencement conditions being fully discharged i.e. significant risks are taken. Mr Dodkins has taken a realistic and pragmatic approach. He has serious concerns about 10 of the 11 sites. I am satisfied that his approach is consistent with national policy.
41. Fourthly, while it is not necessary for me to go through all of the sites in the tabulations or Mr Dodkins' spreadsheet,¹⁴ I shall examine the two sites put forward by the Appellant to illustrate the point on delivery timescales. The first is Thorpe Road, a large site of 250 units which Mr Guiver acknowledged has no

¹⁰ Paragraph Ref ID 3-031-20140306

¹¹ See CD7.10 and CD8.4

¹² Ibid

¹³ CD7.1

¹⁴ Ibid

RMs approval and only 2 conditions discharge applications (not decided), and no housebuilder, yet he asserts that it will deliver a full year's housing supply from April 2018, 8 months from now. Mr Guiver agreed it would take 12 months to draft, submit and secure RMs from now with no allowance for post RMs to delivery. It could take a further year or more from RMs to delivery.¹⁵ In my view, it would be very difficult if not impossible to get a full year of housing supply on this site from April 2018 as we are already 6 months into year 1, so 2 years takes delivery to the middle of year 3 as submitted by the Appellant. There will be no delivery on this site next year (2018/19) and at best only part delivery the year after 2019/20.

42. Mr Guiver argued that the process could be quicker if conditions are discharged at the same time as RMs but Mr Dodkins identified that some but not all conditions can be discharged this way. Some rely on approval of detailed designs before other details required by conditions can be discharged. On a larger scheme such as Thorpe Road (250 units) there would also be contingencies built in for unexpected matters arising during preliminary works e.g. ecology and archaeology.
43. The second site, Long Road/Clacton Road, Mistley, shows the risks that can occur from an over optimistic delivery assumption. Outline planning permission was granted in July 2016 and the developer has submitted a RMs application for the first phase of development. At the Inquiry I was informed that 'some adjustments might be required following Committee refusal of a s73 application to amend parameter plans'. Mr Dodkins showed that the first RM application had been thrown into doubt by the refusal of an amendment of the outline consent with the agents advising that an appeal was likely which plainly could delay matters by some time – possibly 18 months. In my view, with this new information the delivery on this site could slip by another year from that shown in the tabulations and spreadsheet.
44. Fifthly, it is noteworthy that many of the 11 sites are projected to deliver at the same rate (30 dpa) despite large differences in the size of the site which cannot be credible. As a consequence I consider that the Council has failed to adopt realism and proper caution, with Mr Guiver mentioning that delivery could happen as anticipated 'with a fair wind' at least once. Mr Dodkins' evidence is more substantial and realistic, and is based on his own experience with a major housing developer and dealing with every aspect of delivery – including RMs and conditions discharges.
45. Taking all of these matters into account Mr Dodkins' evidence is to be preferred. It follows that caution should be applied to the delivery assumptions made in relation to 10 of the 11 sites he has identified and a cautious approach means that his trajectories should be preferred.¹⁶ Applying Mr Dodkins' alternative delivery figures on the basis of a housing requirement (OAN) of 600 dpa gives a supply of 4.26 years and shortfall of 717 units. I conclude on the first issue, therefore that the Council cannot demonstrate a supply of deliverable housing sites in excess of 5 years.

¹⁵ See CD7.1 AREBRAY letter which says that 25 months from RM to delivery for large schemes so 12 months could be optimistic

¹⁶ The assumptions regarding Priory West Field, St Osyth are agreed. See CD7.10 and CD8.4.

46. Following the Supreme Court decision in *Hopkins Homes Limited v Secretary for Communities and Local Government* [2017] UKSC 3, it is clear that the primary purpose of paragraph 49 of the NPPF is to trigger the operation of the fourth bullet point of paragraph 14 of the NPPF whereby, if a local planning authority cannot demonstrate a five year supply, the second part of paragraph 14 is engaged. In circumstances – as here – where there are no *"specific policies in this Framework indicate development should be restricted"*, this means that the tilted balance will apply. That is, as a matter of national policy, permission should be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole"*. The tilted balance is therefore engaged here.
47. However, it is important to take into account a number of other principles relating to paragraph 49 and the tilted balance. Firstly, the tilted balance is part of national policy and, as such, is a material consideration. It does not, nor could not, displace or distort the statutory presumption in favour of the development plan established by s.38(6) of the PCPA 2004. Secondly, even where the tilted balance applies, the weight to be given to development plan policies is entirely a matter for the decision-maker. Thirdly, the weight which should be given to saved policies in a development plan is to be assessed by reference to their degree of consistency with paragraph 215 of the NPPF. Fourthly, other factors relevant to the weight to be given to policies in the development plan include the degree of shortfall in meeting the 5-year supply, as well as the prospect of development coming forward to make it up.

The weight that can be given to Policy EN2 of the adopted Local Plan and Policy PPL6 of the emerging Local Plan.

48. LP Policy EN2 is the only development plan policy cited in the defended reason for refusal. This policy and the definition of its boundary, dates from the 2007 LP. It is a policy of some age but was `saved` for the purposes of the current development plan by a direction from the SoS made on 2 September 2010. Whilst the policies in the LP are saved, the Council accepts that not all of them can carry full weight in the determination of planning applications. Paragraph 215 of the NPPF only allows decision makers to give due weight to relevant policies in existing plans according to their consistency with the NPPF.
49. The appeal site lies outside of the settlement development boundary as shown on the Proposals Map for Clacton and lies within the Local Green Gap. The LP states that the document covers the period up to 2011.¹⁷ Policy EN2 refers to `within the plan period`. It was recognised at the time and it is an issue that still pertains, that it would be necessary to release some land in green gaps in order to fulfil housing needs in the future. It was intended to be time limited and subject to review. It survived in its current form for this reason.
50. Policy EN2 relates to Local Green Gaps and seeks to keep the defined areas open, and essentially free from development. This precludes any development other than minor development which is identified in the policy. The object of this preclusion is to prevent the coalescence of settlements and to protect their rural settings. The Council says that the objective of Policy EN2 is consistent with the NPPF because it reflects the core planning principle, set out under paragraph 17, to take account of the different roles and character of different

¹⁷ Paragraphs 1.1 and 1.4 of CD2.1

areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. In the Council's view Policy EN2 should be afforded significant/substantial weight in the light of recent appeal decisions.

51. The supporting text identifies the specific purpose of the Local Green Gap as safeguarding the unspoilt countryside between settlements to maintain a clear separation and distinction between the different characters of each and to preserve the views from both areas over this attractive countryside. These are matters that could bear upon the impact but they should not be read into the policy. Policy EN2 is a spatial policy and not a landscape policy. It should not be interpreted as justifying the preservation of the countryside for its own sake.
52. I accept that the fact that a particular development plan policy may be chronologically old does not make it irrelevant or out-of-date.¹⁸ Plainly it needs to be considered in the context of its continuing consistency with the NPPF having regard to the presumption in favour of sustainable development in paragraph 14 of the NPPF and the issue of consistency as set out in paragraph 215. It also needs to be considered in the light of the Council's more flexible approach to the Local Green Gaps expressed in ELP Policy PPL6 having regard to the changed national policy context and the separate fact that the Green Gaps are being reviewed to meet development needs. It is irrelevant for this purpose that those needs are housing needs and it is not being suggested that Policy EN2 is a policy for the supply of housing. It is noteworthy that following the decision in *Hopkins Homes*¹⁹ the main parties are agreed that Policy EN2 is not a policy for the supply of housing. I have no reason to take a different view.
53. The Council cannot demonstrate a 5-year supply of deliverable housing land and the shortfall is significant not marginal. I have calculated that there would only be 4.26 years supply. The shortfall is 717 units which, unlike the *Rush Green Road* decision where there was a 4.8 years supply, is a significant shortfall and means that significant weight or full weight cannot be afforded to Policy EN2.²⁰
54. Paragraph 14 of the NPPF provides that sustainable development:-
- "For plan making means that local planning authorities should positively seek opportunities to meet the development needs of their area and that Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted"*
- Moreover, paragraph 15 of the NPPF provides that:-
- "Policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally".*
55. The current review of the Local Green Gaps and the changes that are proposed to the policy in terms of Policy PPL6 of the ELP indicate that its almost entirely

¹⁸ CD6.4 paragraph 40 (iii)

¹⁹ CD6.1

²⁰ CD5.7

preclusive nature is no longer appropriate for local circumstances and that in its current form, in this context, it is out-of-date. It is not enough, in my view, to assert that Policy EN2 is consistent with paragraph 17 of the NPPF insofar as it may be said to take into account the different roles and character of different areas. Its wholly preclusive nature imbues it with inflexibility and it inhibits development which would not materially offend its objectives and accords with the three dimensions of sustainability.

56. The Council considers that considerable weight should be afforded to Policy PPL6 due to the advanced stage of the ELP and by applying the applicable test in paragraph 216 of the NPPF. However, importantly, Mr Guiver conceded that, having regard to the different emphasis of Policy PPL6 in the ELP, Policy EN2 of the LP was inflexible and out of kilter with the flexible approach of the NPPF, and that it was drafted at a time when the context, language and approach of planning guidance was significantly different. Plainly Policy PPL6 is intended by the LPA to be more flexible in its drafting and effect. There is a permissive element to Policy PPL6 where there is a functional need for the development but it does not limit development to minor development.
57. With regard to the appeal decisions of previous Inspectors on this issue suffice it to say that these need to be treated with caution because each decision has been assessed on its own individual merits and I do not find a reference in any of them to the argument the Appellant is advancing in this case.
58. Drawing all of these threads together, as a matter of fact and degree, I conclude that the proposal is in conflict with Policy EN2 but it is out-of-date and should only carry moderate weight whilst recognising that its objectives remain relevant. Notwithstanding the more flexible emphasis in Policy PPL6, I conclude that it can only be afforded limited weight in this case. Although the ELP has progressed to Publication Draft stage, in the context of paragraph 216 of the NPPF, I understand there are unresolved objections to relevant policies and these will have to be scrutinised through the examination process.

The effect of the proposals on the character and appearance of the area and in particular, on the Local Green Gap between Clacton-on-Sea and Holland-on-Sea.

59. At the Inquiry the Council confirmed that the appeal site is not formally designated as Local Green Space in the LP, as provided for in paragraphs 76 to 78 of the NPPF.
60. For the Council it was argued that the proposed development would result in the loss of a significant area of open land (about 8.6 ha) within the designated Local Green Gap between Clacton-on-Sea (in particular Burrsville, Great Clacton) and Holland-on-Sea at its narrowest point where the threat of settlement coalescence is at its greatest. It is claimed that the proposed development would therefore undermine the fundamental purpose of the Local Green Gap policy as well as the specific objectives of the designation for this location as set out at paragraph 6.11 of the LP. In the Council's view the proposal would be contrary to Policy EN2 of the LP and paragraph 17 of the NPPF.²¹ I disagree with this view for a number of reasons.

²¹ Fifth core principle

61. Firstly, and importantly, the Appellant has carried out a Landscape and Visual Impact Assessment (LVIA) to assess whether or not the appeal site might be developed without significant detriment to the character or visual amenity of the surrounding area, or to the function of the Local Green Gap between Burrsville Park/Great Clacton and Holland-on-Sea. Mr Nourse accepted the LVIA evidence submitted by Mr Neesam. He did not carry out a similar assessment to justify his conclusions on the effect on the Local Green Gap. In my view, his conclusions are misplaced and it would appear, based on a misinterpretation of Policy EN2. It is not a policy for the protection of the countryside in its own right and it is not a landscape policy.
62. Secondly, the LVIA has demonstrated that, with the proposed planting in place, the appeal site could be developed in the manner proposed without significant residual effects on the character of the Local Green Gap and the setting of Burrsville Park and Holland-on-Sea and visual receptors in the surrounding landscape, including those travelling along Sladbury's Lane and the railway line, and those on the edge of adjacent settlements. At the Inquiry three viewpoints (G, H and I) were debated in detail. Viewpoints G and H are close to the site entrance whereas viewpoint I is about 500m north east of the appeal site near Smythie's Farm on Sladbury's Lane.
63. At viewpoint G, clear and close proximity views would be available of the new roundabout junction at the site entrance. Construction of this feature would require the removal of a section of hedge. From the rear windows of properties on the western side of Sladbury's Lane, many potential views would be blocked by garden vegetation. Only localised views would be available into the southern field and the proposed public open space. It is my view that there would be an effect on such views of Major-Moderate significance that would reduce to Moderate by year 10 as the proposed planting becomes established.
64. At viewpoint H, from Sladbury's Lane, there would be clear and close proximity views of the proposed roundabout junction together with the new residential area beyond, where not screened by the retained section of hedge bordering the northern side of Sladbury's Lane. From this viewpoint I consider that there would be an effect of Moderate significance from points on Sladbury's Lane looking west that would reduce to Minor by year 10 as the proposed planting along the eastern boundary becomes established.
65. Viewpoint I represents views from the western end of the public footpath that connects Holland-on-Sea to Sladbury's Lane. For most of the footpath, views of the proposed development would be screened by topography, but views would be available from the upper sections of the path, where it rises out of the valley. In the early years of the development, the new buildings would be visible in the middle distance. However, in future years, the proposed planting on the eastern boundary would increasingly filter and then eventually screen the development. I consider that there would be a residual effect of Major-Moderate significance which, by year 10 would reduce to Moderate adverse.
66. There is no viewpoint that would have a materially harmful impact on the setting of either settlement. Insofar as the development might be perceived, it would be perceived from Holland-on-Sea as part of Holland-on-Sea. The rural setting of Holland-on-Sea would still exist.
67. I consider that rail passengers travelling into and out of Clacton would experience a visual effect of Minor adverse significance that would continue to

reduce as the proposed planting around the perimeter of the site becomes established.

68. It is my view that changes to the landscape character would be limited and that they would be largely confined to the appeal site itself and its immediate environs, the character of which is already influenced by non-agricultural land uses including the neighbouring residential development and the Valley Farm Holiday Park, a line of pylons and the railway line. The visual envelope afforded by the site, a result of the local landform, its location adjacent to built development and the relative lack of potential visual receptors, means that changes at the site would have only limited influence on the perception of the wider landscape. Overall there would be no significant residual influence on the character of the appeal site and the surrounding area.
69. Thirdly, with regard to coalescence, it was agreed that the developed area of the appeal site (3.6 has) would represent about 2.71% of the total area of the Local Green Gap (133 has)²² and Mr Neesam confirmed there would be about a 153m distance including landscaping from the northern edge of the appeal site to the railway line. Moreover, it was agreed that there were no publically accessible points where the settlement edges of both Burrsville Park and Holland-on-Sea are visible together and where the appeal site forms a component of the view. It follows therefore that development of the appeal site in the manner proposed would not have an effect on the separation of the two settlements that Policy EN2 is seeking to protect in the vicinity of the appeal site. From the evidence that is before me, the proposal would not result in the coalescence of settlements with different character and would not result in an adverse impact on the intrinsic beauty of the countryside.
70. Fourthly, there was debate at the Inquiry as to the effects of the development in plan form. Mr Nourse argued that the proposal would result in an island of built development located in the centre of the gap between the two neighbourhoods. Mr Neesam considered the footprint would result in a rounding off of existing settlement edge and constitute a small infill between the Holiday Park and the residential area accessed from Sladbury's Lane. Plainly, the proposal would not bring housing into the very heart of the Local Green Gap. I accept that the appeal site is located at one of the narrower points of the Gap but I consider what matters is the influence exerted by the topography and the enclosing elements of the mature hedgerow structures. In reality, and confirmed by Mr Neesam's evidence, it is the wider, larger-scale tracts of arable land eastwards of the appeal site that serve the purpose of maintaining the separation of Burrsville Park and Holland-on-Sea and which display the least urban edge influences.
71. Fifthly, I note the findings of the Landscape Character Assessment (April 2009) which was prepared by AMEC to test the likely impact of housing development on different parcels of greenfield land including the role and function of Local Green Gaps. The study explored the effects that significantly larger development would have on the landscape of this particular Green Gap. It found that the Gap could accommodate such development:-

"Slight adverse landscape effects, based on development of most of the area, but with some open space in north eastern part and retention of existing vegetation" ²³

²² CD7.6

²³ CD3.5 Part 1 Appendix 4 Area 1/5

72. The AMEC report noted that some parts of Area 1/5 had more capacity than others to absorb residential development; the appeal site was one of these areas. Area 1/5's capacity to accommodate development was:-

"Medium to high for the southern part which has a strongly urban fringe character [i.e. the portion including the appeal site], medium for the remainder, which is more open and less affected by the existing urban edge". And. "The south eastern part is more enclosed, has a more pronounced urban fringe character and would not extend so far out into the gap between Clacton and Holland-on-Sea".²⁴

73. As I saw on my site visit the Holiday Park exerts an urbanising influence on the countryside and is perceived as a 'permanent' development, albeit it is not within the settlement boundary. The main parties agreed that the presence of this development was long term. The appeal site does not play a key role in the physical separation of the settlements of Burrsville Park and Holland-on-Sea or on the protection of their rural setting. Further I consider that the site could be developed in the manner proposed without comprising the open character of the wider portion of the Green Gap that does fulfil the separation functions. On this issue I conclude that the loss of the appeal site would not be unacceptably harmful to the character and appearance of the area or the Local Green Gap.

Planning Obligation

74. Policy QL12 of the LP requires development to be supported by the necessary infrastructure. Objectors have raised concern about the impact of additional homes on local infrastructure including local schools, healthcare provision, emergency services and transport.

75. Essex County Council (ECC) has concluded that the proposal would be acceptable from a highways viewpoint subject to conditions. These include upgrades to the nearest bus stops and the creation of footpaths, amongst other things, all of which I agree can suitably be controlled by planning conditions. No contributions are sought or can be justified in relation to these matters.

76. The Appellant has submitted a S106 Unilateral Planning Obligation (UU) which secures an education contribution, 30% of the dwellings to be affordable, on-site open space with a play area and a healthcare contribution. A Community Infrastructure Levy (CIL) Regulations 2011 Compliance Statement was also submitted by the Appellant.²⁵

77. In terms of education provision ECC advises that early years and childcare facilities and secondary schools in the catchment should be able to accommodate the number of children expected to be generated from the development. However, primary schools are operating at 100% capacity and a contribution is necessary to replace existing temporary accommodation with larger accommodation to cater for increased numbers at Holland Park Primary School. The contribution is based upon the formula set out in the ECC Education Developer Contribution SPD.

78. Policy HG4 of the LP requires large residential developments to provide 40% of new dwellings as affordable housing for people who cannot otherwise afford to buy or rent on the open market. However, the Council's 2015 SHMA update

²⁴ Ibid

²⁵ CIL Compliance Statement CD7.7

recommends on grounds of both viability and overall need that the Council should be seeking 30% affordable housing. In the light of this new evidence, the Council's ELP Policy LP5 seeks 30% affordable housing on sites of 11 dwellings or more. Based on the most up-to-date evidence of housing need and viability, the parties agree that 30% affordable housing is the appropriate level to be secured through the UU.²⁶

79. Policy COM6 in the LP requires large residential developments to provide at least 10% of land as public open space or otherwise make financial contributions towards off-site provision. The indicative plans in support of the proposals show the provision of extensive areas of on-site open space, strategic landscaping areas, children's play areas and a Sustainable Drainage System (SuDS). The provision of these areas is required in order to make the development acceptable in planning and landscape terms in accordance with Policy COM6 of the LP. The financial contribution/commuted sum would be calculated on the precise nature and quantum of on-site provision so that it directly relates to the proposed development in accordance with the guidance contained within the Council's Supplementary Document on Open Space.
80. For health, many residents are concerned that additional housing and the associated population increase would put unacceptable strain on already overstretched health facilities. A financial contribution towards health provision is sought by NHS England which would be spent on capital projects to improve by way of refurbishment, extension or relocation and/or increase the provision (or capacity) of the healthcare facilities at any or all of the following: Great Clacton Medical Practice, Frinton Road Medical Practice, Old Road Medical Centre and Epping Close Surgery. The contribution would address some of the objections raised about the impact of 132 dwellings on local services.
81. The Council has confirmed that none of the obligations would conflict with Regulation 123 requiring that no more than 5 contributions are pooled towards any one specific infrastructure scheme.
82. Paragraph 204 of the NPPF and CIL Regulation 122(2) set out the 3 tests for seeking planning obligations: that they must be "*necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development*". The PPG also makes it clear that "*Planning obligations must be fully justified and evidenced*" and that they "*should not be sought where they are clearly not necessary to make the development acceptable in planning terms*".²⁷
83. In my view, all of the obligations in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore they all meet the tests with CIL Regulations 122 and 123 and should be taken into account in the decision.

²⁶ SoCG INQ3 paragraph 6.8

²⁷ Paragraph :004 Reference ID: 23b -004-20150326

The planning balance: Whether the proposals comprise sustainable development as defined in the NPPF and whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits.

84. Paragraph 7 of the NPPF identifies that there are three dimensions to sustainable development: economic, social and environmental roles. Paragraph 8 says that these roles must not be undertaken in isolation because they are mutually dependent. Therefore, to achieve sustainable development, economic social and environmental gains should be sought jointly and simultaneously through the planning system.

The economic role

85. The proposals would provide up to 132 new dwellings in an area where the deliverable supply is well below the minimum requirement for 5 years. The site is available now and there is no practical reason to prevent its construction in a reasonable timescale. Future residents would be likely to support local shops and other businesses bringing a substantial boost to consumer spending in their area. The site is within walking distance of many local facilities, increasing their attraction for future residents. The development would provide short-term jobs during the construction phase and provide a source of employees for established businesses in the area. These are all important economic benefits and should be afforded significant weight in terms of paragraphs 18 and 19 of the NPPF.

The social role

86. Concerning the social role the scheme would be able to help to deliver a strong, healthy and vibrant community with a range of house types and a significant number (about 40) of affordable homes. This would assist in meeting the affordable housing shortfall (around 200 dwellings in the first 5 years). This would accord with paragraph 50 of the NPPF and help to create an inclusive and mixed community. The affordable homes would be especially beneficial, given the known need.

87. The site is within close proximity to schools, community and recreational facilities and the town centre. It is well served by bus services enabling quick and convenient access to neighbouring towns and villages from the bus stops located within close proximity to the site. It is within reasonable walking, cycling and public transport distance to the railway station. The site would also deliver significant open space benefits. Whilst these would principally meet the needs of the development itself, there would nonetheless be potential benefits to existing residents of Holland-on-Sea. These are modest benefits to be added into the overall balance.

The environmental role

88. Although the appeal site is greenfield land it is nonetheless well contained within the wider landscape by existing development. The settlement edge is apparent from within the site, with development at Sladbury's Lane, development within Holland-on-Sea and caravans at Valley Farm Holiday Park clearly visible. As such, the character of the site is partially influenced by its

proximity to the urban area. The site is well contained to the west by the Valley Farm Holiday Park and to the south by a narrow strip of land containing further caravans, grass tennis courts, a bowling green and residential development beyond. There is residential development on the southern part of the eastern boundary albeit the northern part is bounded by arable land. The site would not result in an unacceptable intrusion into open countryside.

89. Despite the presence of some best and most versatile agricultural land, the Council raises no objections in this regard. The LVIA has demonstrated the capacity of the landscape to accommodate the development without significant detriment to its character and without significant adverse change to surrounding visual receptors. Whilst the development plan and the NPPF acknowledges the need to protect and enhance the natural environment, the loss here, would be minimised by the proposed landscape strategy. Existing trees and hedgerow losses would be kept to a minimum. A native hedgerow and standard trees are proposed to the northern boundary and a 10m wide landscape buffer comprising native woodland planting would be established on the eastern boundary. The proposed scheme also includes an area of public open space within the southern field and new tree planting. The landscape strategy would be capable of providing effective definition and containment.

Other Considerations

90. The Sladbury's Lane Protest Group, the Holland-on-Sea Residents Association, Ward Councillors and others have raised objections to the proposals. The views of these local groups and individuals largely reflect the views of the District Council. The loss of part of the Local Green Gap is a key part of their concerns. I have dealt with this matter under issues 2 and 3 above.
91. Some of the objectors are concerned about the loss of agricultural land as a result of the proposed development and the effect that this could have on future food production. The Agricultural Land Classification Map shows the appeal site to be a mix of Grade 3a/3b and 4. At best the site is Grade 3a – 'Good Quality' which is at the lower end of what is considered to be 'best and most versatile' agricultural land which is what national and local plan policy seeks to protect. The need for agricultural land has to be weighed alongside the projected need for housing and it is inevitable that agricultural land will be lost to make way for housing in this District. For this reason it would not be justified to refuse the proposal on a point of principle simply because it would result in the loss of agricultural land.
92. Many objections have been raised about the potential increase in surface water flooding that might arise as a result of the proposed development. It has been highlighted that when there are high levels of rainfall, Sladbury's Lane and Keswick Avenue are regularly flooded and the drainage system struggles to take the water away with properties in the vicinity of Picker's Ditch being particularly affected. The potential risk of flooding does not form part of the reasons for refusal. Although the site is predominantly in Flood Zone 1 (low risk) where the development is proposed for the housing, parts of the site are in Flood Zone 2 and 3. The NPPF, Policy QL3 in the LP and Policy PLA1 in the ELP still require any development proposal on a site larger than 1 ha to be accompanied by a site specific Flood Risk Assessment (FRA).

93. A FRA was submitted with the application and considered by ECC as the authority for sustainable drainage. ECC considers that a surface water drainage scheme has been proposed which demonstrates that surface water management is achievable in principle, without causing flooding on site or elsewhere subject to conditions relating to the submission and subsequent approval of a detailed Surface Water Drainage Scheme before the development can take place including management of maintenance of the SuDS into the future. The Appellant has demonstrated through the FRA that the development is capable of accommodating and discharging its surface water drainage in an acceptable manner, that conditions to require future maintenance are enforceable and are ultimately the responsibility of the landowner. With the planning conditions suggested by ECC the proposal accords with the NPPF and aforementioned local plan policies.
94. Representations have also been submitted in relation to access and traffic. In particular, it is stated that Sladbury's Lane is too narrow and vehicles have to mount the pavements to access the area with lampposts and bollards being knocked down. Reference is made to a 7.5 tonne HGV weight limit on the bridge on Sladbury's Lane. However, the proposal is accompanied by a Transport Assessment (TA) undertaken by Ardent Consulting Engineers who have considered the existing and post development impact in highways and traffic terms. As a result of their investigations and liaison with ECC Highways, the proposal allows for a number of highway improvements and enhancements, including for pedestrian and vehicular users.
95. Access to the development is proposed by means of a new 3-arm compact roundabout on Sladbury's Lane which has been demonstrated to have ample capacity to accommodate predicted traffic flows. As requested by ECC, the Appellant has assessed the operation of both off-site junctions and the level crossing in a future assessment year of 2020, allowing for projected background traffic growth and found that the additional vehicle trips associated with the proposed scheme would have a minimal impact on their operation. The Appellant was asked for further comment on the 7.5 tonne weight restriction and a note was provided for the Inquiry.²⁸ The concerns about the weight limit on the bridge on Sladbury's Lane can be dealt with by means of a planning condition. Parking is illustrated for residential units, including visitor spaces and community uses on the basis of 2 or 3 spaces per dwelling. Overall the impacts in traffic and transport terms would be acceptable and in accord with relevant policy including ELP Policy QL2 and LP Policy TR1A and the NPPF.
96. Paragraph 118 of the NPPF requires LPAs, when determining planning applications, to aim to conserve and enhance biodiversity. Where significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for, then planning permission should be refused. The Appellant submitted a Phase 1 Ecological Report that concludes that there are features of the site which may provide foraging, breeding and roosting habitat for protected species. This includes the site's trees and hedges, some of which are considered suitable for roosting and foraging bats and a nesting habitat for breeding birds.
97. CSA Environmental undertook additional ecological survey work in relation to bats, badgers, other mammals, birds, reptiles, greater crested newts and

²⁸ See CD7.5

arable plants. The findings of the above are presented in the Ecological Addendum and identifies any significant effects. Mitigation measures are proposed for reptiles (slow worm and common lizard) and bats (in respect of lighting). Based on successful implementation of the mitigation and enhancement measures detailed in the report, no significant adverse effects are predicted. I consider that the proposed mitigation and enhancement measures can be secured via an appropriately worded planning condition.

98. The Appellant has prepared a tree survey and has demonstrated through the indicative layout how important trees would be retained within the scheme.
99. LP Policy Q11 requires new development to be compatible with its surrounding land uses and to minimise adverse environmental impacts. There is the potential for noise impacts from customers of the adjacent Holiday Park to cause nuisance to future occupants of the appeal site and there is also concern about rail and road noise. However, the Appellant's Noise report concluded that the scheme would be situated at an appropriate distance from the railway line and no further buffer distance is required within the site boundary. Similarly, there would be no adverse impacts arising from the proximity to the road and the potential noise from the Holiday Park on future occupants of the appeal site is likely to be low. In my view both of these matters could be appropriately considered at the reserved matters stage.

Conclusions on sustainability and the planning balance

100. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
101. The three roles of sustainable development are mutually dependent. The proposal would deliver significant economic and social benefits; and the site would be in a generally sustainable location. Its negative impacts on the Local Green Gap would be minimal and capable of being offset by the landscape strategy; the loss of best and most versatile agricultural land would be of negligible consequence. Whilst the views of local people are an important consideration, the limited adverse impacts arising from the development would not significantly and demonstrably outweigh the very clear benefits of the scheme when assessed against the policies in the NPPF taken as a whole. I conclude that the development would comprise sustainable development.
102. In terms of the development plan it is agreed that the proposal is in conflict with development plan policy and in particular LP Policy EN2. However, it is an 'in principle' harm to the policy and there is no unacceptable impact on its objectives. For the reasons given above this policy cannot reasonably be considered up-to-date and can only be afforded moderate weight in terms of paragraph 215 of the NPPF. Although the proposal would accord with other LP policies I conclude that the proposal is in overall conflict with the development plan when read as a whole.
103. However, the other material considerations in this case indicate otherwise i.e. that planning permission should be granted. There is no unacceptable harm to the policy objectives of Policy EN2. The 'in principle' harm to the policy is

notional and clearly outweighed by the benefits of the scheme which is in every other respect sustainable. In this regard the provision of market and affordable housing is afforded significant weight. I have found that the Council is unable to demonstrate a clear and robust 5-year supply of housing land. Whilst I recognise the positive steps the Council is taking towards addressing the shortfall, in the context of the lack of a 5-year supply, I find the shortfall to be significant and not marginal. There are no significant and demonstrable harms to outweigh the presumption in favour of sustainable development which applies here. The proposal provides positive advantages in accordance with the three dimensions of sustainability. In coming to this view I have given significant weight to the general public interest in having plan-led planning decisions even if particular policies in the development plan might be old.²⁹

Conclusion

104. Returning to the main issues identified at the beginning of this decision, the determining factors leading to my decision are:- the Council does not have a 5-year supply of deliverable housing land and the tilted balance set out in paragraph 14 of the NPPF is triggered; Policy EN2 of the LP is out of date and can only be given moderate weight in the assessment; the proposal would not be unacceptably harmful to the character and appearance of the area or the Local Green Gap; the proposal can be considered sustainable when assessed against the policies in the NPPF taken as a whole; and as the Council is unable to demonstrate a 5-year supply of deliverable housing land, there are no material considerations which would significantly and demonstrably outweigh the benefits of the scheme. I shall therefore allow the appeal.

Planning Conditions

105. I have considered the conditions suggested by the Council³⁰ in the light of the advice in paragraphs 203 and 206 of the NPPF, the model conditions retained at Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions.
106. As this is an outline application, Conditions 1-3 are necessary to comply with statutory timescales and to secure reserved matters. Condition 4, with the substituted plan numbers, is necessary to determine the scope of the application. The development is to be carried out in accordance with the indicative site layout plan and the proposed built development parameters plan. Condition 5 is necessary for the avoidance of doubt. I have amended the wording of this condition in the interests of clarity. The development is not to exceed 132 dwellings.
107. Condition 6 which relates to a Construction Method Statement is necessary given the size of the site, the proximity of nearby dwellings and the duration of construction works. I have amended the wording of the suggested condition in the light of discussion and the guidance in paragraph 206 of the NPPF. Conditions 7-8 are necessary in the interests of highway and pedestrian safety and to reflect the national policy aim of achieving the fullest possible use of public transport, walking and cycling.

²⁹ CD6.4

³⁰ INQ4

108. Conditions 9-12 are necessary to ensure satisfactory disposal of foul and surface water drainage, to reduce the risk of flooding arising from the development and to make sure that appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Conditions 13-18 are necessary in the interests of visual amenity, the character and appearance of the area and the Local Authority's policies in respect of open space provision.
109. Condition 19 is required to safeguard the biodiversity interest within the site. Condition 20 is required to ensure a satisfactory development in relation to external appearance. Condition 21 is necessary to ensure the development is able to be equipped with high speed broadband to enable opportunities for web-based communication and homeworking. Condition 22 is necessary to promote and encourage the recruitment of employees and other staff in the locality of the application site. I have deleted the phrase in the suggested condition which refers to "reasonable endeavours" in the light of guidance in paragraph 206 of the NPPF. Condition 23 is necessary to avoid damage to the weak bridge crossing Picker's Ditch, in the interests of highway and pedestrian safety and to minimise noise and disturbance to local residents.

Conclusion

110. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-23)

- 1) The approval of Reserved Matters must be submitted before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be begun before the expiration of 2 years from date of approval of the last of the Reserved Matters to be approved.
- 3) No development shall be commenced until plans and particulars of "the Reserved Matters" referred to in the following conditions relating to appearance, access, layout, scale and landscaping have been submitted to and agreed in writing by the Local Planning Authority. Landscaping details shall show those trees to be retained including (but not restricted to) those trees protected by a Tree Preservation Order. The development shall be carried out in accordance with the approved details.
- 4) The reserved matters shall be in general conformity with the indicative site layout plan Drawing No: 256.201.02 and the proposed built development parameters plan Drawing No: 256.213.02.
- 5) The development hereby approved shall be for no more than 132 dwellings.
- 6) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority; and the approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - (a) the hours of work;
 - (b) the parking of vehicles of site operatives and visitors;
 - (c) loading and unloading of plant and materials;
 - (d) storage of plant and materials used in constructing the development;
 - (e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (f) wheel washing facilities;
 - (g) measures to control the emission of dust and dirt during construction;
 - (h) a scheme for recycling/disposing of waste resulting from construction works;
 - (i) means of protection of trees and hedgerows during site preparation and construction;
 - (j) access arrangements for emergency vehicles during the construction phase; and
 - (k) an HGV routing plan.
- 7) No dwelling shall be occupied until the following have been provided or completed in complete accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority:
 - (a) a roundabout in Sladbury's Lane to provide access to the proposal site as shown in principle on the planning application drawings;
 - (b) upgrades to the two bus stops on the B1032 Holland Road to the west of its junction with Sladbury's Lane;

- (c) the widening (and provision of dropped kerbs/tactile paving crossing points) of the footway on both sides of Sladbury's Lane to a minimum of 2 metres where possible between the proposed site access roundabout and the B1032 Holland Road; and
 - (d) residential travel information packs
- 8) No dwelling shall be occupied until a spine road between the site access roundabout, the site's south west boundary and north west boundary of a minimum carriageway width of 6.75 metres with a minimum 2 metre wide footway on one side and a minimum 3 metre wide footway/cycleway on the other has been provided in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.
- 9) No development shall commence until details of a Foul Water Drainage Scheme has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the works have been carried out in accordance with the Foul Water Drainage Scheme so approved.
- 10) 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 subsequently be implemented prior to the occupation of any dwelling. In particular the scheme shall provide for the following mitigation measures outlined in the Flood Risk Assessment:
- (a) control all the surface water run-off generated within the development for all events up to and including the 1 in 100 year event plus 30% climate change;
 - (b) provide a detailed hydraulic model with the entire SuDS features, including the pond and the pipe network cascaded together showing the combined effect of the design in meeting both the water quantity and water quality criteria;
 - (c) the sizing of the SuDS features should be based on limiting the runoff from the development to the 1 in 1 greenfield rate, and should be based on the area contributing to SuDS, any open spaces not contributing to SuDS should be discounted in the runoff calculations;
 - (d) run-off management within the site must prioritise the use of SuDS both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement;
 - (e) provide evidence of water quality treatment from the development using the risk based approach as outlined in the CIRIA SuDS manual C753;
 - (f) provide a plan showing the final exceedance flow paths; these should be away from any building; and
 - (g) provide details of the adoption and routine maintenance of the SuDS features including the maintenance of the outfall to the ditch downstream of the pond.

The mitigation measures shall be fully implemented prior to the occupation of any dwelling and subsequently in accordance with the timing/phasing arrangements embodied within the Surface Water Drainage Scheme, or within

any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

- 11) No development shall commence until a Maintenance Plan has been submitted to and approved in writing by the Local Planning Authority. The Maintenance Plan shall detail the maintenance arrangements including who is responsible for different elements of the surface water drainage scheme and the maintenance activities/frequencies. The Maintenance Plan shall be implemented and carried out in accordance with the details as approved.
- 12) The Applicant must maintain yearly Maintenance Logs of maintenance which shall be carried out in accordance with the approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
- 13) No development shall commence until there has been submitted to and approved, in writing, by the Local Planning Authority a scheme of hard and soft landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction."
- 14) All changes in ground levels in relation to the soft landscaping, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
- 15) No development shall commence until a Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas, other than small, privately owned domestic gardens, has been submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall be carried out as approved in accordance with the details and the timescales in the plan.
- 16) No development shall commence until details of existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill for each phase, have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the agreed scheme.
- 17) No development shall commence until details of the public open space/sports field (including a timetable for their completion) and a Management Plan for the maintenance of the public open space/sports field (if not transferred to the Council) have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided in their entirety

and made available for use in accordance with the agreed timetable and thereafter retained for public use unless the Local Planning Authority agrees in writing to a variation.

- 18) No development shall commence, including any works of demolition, until a Tree/Root Protection Plan has been submitted to and approved in writing by the Local Planning Authority and shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction. The approved Tree/Root Protection Plan shall be adhered to throughout the construction and occupation period of the hereby permitted development.
- 19) All development shall be carried out in accordance with the recommendations set out in the Ecology Appraisal, dated December 2013, and the Ecology Addendum Reference CSA/2269/03 dated June 2016 prepared by CSA Environmental Planning.
- 20) No development shall commence until precise details of lighting, refuse storage/collection points; the manufacturer and types and colours of the external facing and roofing materials; and all areas of hard surfacing to be used in the construction have been submitted to and approved, in writing, by the Local Planning Authority. Such lighting, refuse points and materials so approved shall be those used in the development.
- 21) No dwelling shall be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted to and approved, in writing, by the Local Planning Authority. If the applicant is unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.
- 22) No development shall commence until a Local Recruitment Strategy has been submitted to and approved in writing by the Local Planning Authority. The Local Recruitment Strategy shall include details of how the applicant/ developer shall promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development. The Local Recruitment Strategy shall thereafter be implemented and carried out in accordance with the details as approved.
- 23) No vehicle weighing 7.5 tonnes or more related to the construction of the development shall access or leave the site via the southern section of Sladbury's Lane between the site and its junction with Frinton Road.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:	
Robert Williams (of Counsel)	Instructed by Linda Trembath, Senior Solicitor Tendring District Council
He called	
Neil McDonald BA	NM Strategic Solutions Ltd
Gary Guiver BSc (Hons) DipTP MRTPI MBA	Planning Manager with the Council
Graham Nourse BA (Hons) MRTPI	Planning Consultant acting on behalf of the Council
FOR THE APPELLANT:	
Paul Shadarevian QC	
He called	
Sam Hollingworth MA MRTPI	Associate Planner at Strutt and Parker
Simon Neesam BA (Hons) Dip LA CMLI	Director The Landscape Partnership
Trevor Dodkins BSc (Hons) DipTP MRTPI	Director Phase 2 Planning
INTERESTED PERSONS:	
Councillor Colin Winfield	Holland Residents Association
Councillor Joy Broderick	Haven Ward
David Emmerson	Holland Residents Association
Daphne Chaplin	Local resident

DOCUMENTS LIST

Inquiry Documents

	Inquiry Documents
INQ1	Notification letter
INQ2	Letters of representations
INQ3	Statement of Common Ground
INQ4	List of Suggested Planning Conditions
INQ5	Unilateral Undertaking

Core Documents

	National Planning Documents, National Guidance and Legislation
CD1.1	National Planning Policy Framework 2012
CD1.2	National Planning Practice Guidance
	Local Plan Documents
CD2.1	Tendring District Local Plan 2007 + Proposals Maps
CD2.2	Tendring District Local Plan 2013-2033 and Beyond – Publication Draft + Policies Map
	Local Plan Technical Documents
CD3.1	Objectively Assessed Housing Needs Study (November 2016)
CD3.2	Strategic Housing Market Assessment (Part 2) (2015)
CD3.3	Strategic Housing Land Availability Assessment (October 2014)
CD3.4	Landscape Character Assessment Parts 1 & 2 (2001)
CD3.5	Landscape Impact Assessment Parts 1 & 2 (2010)
CD3.6	Review of Green Wedge Policy (2003)
	Local Plan Committee Reports
CD3.8	Report to 3 rd November 2016 Local Plan Committee: Evidence Update
CD3.9	Report to 12 th June 2017 Local Plan Committee: A1 – Housing Supply and Housing Trajectory
	Planning Application Documents
	<u>Plans - application</u>
CD4.1	256_214_0.0_As Existing Site Location Plan_A1_e
CD4.2	256_213_Prop Parameters plan_0.0_A0_p (substituted by 256-213_02)
	<u>Plans – illustrative</u>
CD4.3	256_200_Prop Site Layout Plan_0.0_p (substituted by 256_201_02)
CD4.4	256_201_0.0_Prop House Type One_A3_p
CD4.5	256_202_0.0_Prop House Type Two_A3_p
CD4.6	256_203_0.0_Prop House Type Three_A3_p
CD4.7	256_204_0.0_Prop House Type Four_A3_p
CD4.8	256_205_0.0_Prop House Type Five_A3_p
CD4.9	256_206_0.0_Prop House Type Six_A3_p
CD4.10	256_207_0.0_Prop House Type Seven_A3_p
CD4.11	256_208_0.0_Prop House Type Eight_A3_p
CD4.12	256_209_0.0_Prop House Type Nine_A3_p
CD4.13	256_210_0.0_Prop House Type Ten_A3_p
CD4.14	256_211_0.0_Prop House Type Eleven_A3_p
CD4.15	256_212_Prop Street Scenes_0.0_p
	<u>Reports</u>
CD4.16	Tree Survey Report
CD4.17	Tree Survey Plan

CD4.18	Tree Survey Tree Protection Plan
CD4.19	Design and Access Statement
CD4.20	CSa Ecology Report
CD4.21	Ecology Addendum Report
CD4.22	Flood Risk Assessment R980-02 FRA Rev A April 2016 – report
CD4.23	Flood Risk Assessment R980-02 FRA Rev A April 2016 - Appendices A-D
CD4.24	Flood Risk Assessment R980-02 FRA Rev A April 2016 - Appendices E-G
CD4.25	Noise Impact Assessment – Final
CD4.26	Planning Statement
CD4.27	Supplemental Planning Statement - Green Gap Policy EN2 26-01-15
CD4.28	Transport Assessment Report
CD4.29	Transport Assessment Appendices A_B
CD4.30	Transport Assessment Appendix C
CD4.31	Transport Assessment Appendix D
CD4.32	Transport Assessment Appendices E_K
CD4.33	Utilities Statement
	<u>Decision</u>
CD4.34	Committee Report 09-08-16
CD4.35	Decision Notice 11-08-2016
	Appeal Decisions
CD5.1	APP/P1560/W/15/3124764 Harwich Road, Little Oakley
CD5.2	APP/P1560/W/15/3007993 Kirby Road, Great Holland
CD5.3	APP/P1560/W/16/3150967 Thorpe Road, Kirby Cross
CD5.4	APP/P1560/W/15/3140113 Halstead Road, Kirby Cross
CD5.5	APP/P1560/W/16/3156070 The Street, Little Clacton
CD5.6	APP/P1560/W/16/3164552 Elm Farm, Clacton
CD5.7	APP/P1560/W/16/3145531, APP/P1560/W/16/3156451, APP/P1560/W/15/3140113 Rush Green Road, Clacton
CD5.8	APP/P1560/W/16/3164169 Centenary Way Clacton (Not available).
CD5.9	SoS Decision APP/R060/W/15/3128707 Abbey Road, Sandbach, Cheshire
CD5.10	SoS Decision APP/N2535/W/16/3146208 Ryland Road, Dunholme, Lincoln
CD5.11	APP/P1560/W/17/3172332 The Street, Bradfield
CD5.12	APP/P1560/W/17/3173478 Chequers Road, Little Bromley
	Legal Judgements
CD6.1	2016 EWCA 168 Suffolk Coastal v Hopkins Homes & Richborough Estates v Cheshire East
CD6.2	Supreme Court Judgement following the above.
CD6.3	2014 EWHC 754 Bloor Homes v SoS v Hinckley and Bosworth Borough Council
CD6.4	2016 EWCA Civ 1146 Gladman v Daventry District Council v SoS

	Additional Documents Submitted to the Inquiry by the Appellant
CD7.1	Letter from Arebray Development Consultancy dated 7 th August 2017
CD7.2	Identifying Broad Locations for Potential Settlement Expansion
CD7.3	Extract from 2010 Core Strategy and Development Policies Document
CD7.4	Extract from ELP Preferred Options Consultation Document July 2016
CD7.5	File Note regarding 7.5 tonne weight restriction on the bridge in Sladbury's Lane
CD7.6	File Note on measurements and percentages in Local Green Gap
CD7.7	CIL Compliance Statement
CD7.8	Closing Submissions
CD7.9	Derivation of Tendring District Council's Housing Requirement
CD7.10	Note from Phase 2 on housing supply
	Additional Documents Submitted to the Inquiry by the Council
CD8.1	Opening Statement by the Local Planning Authority
CD8.2	Closing Submissions
CD8.3	Derivation of Tendring District Council's Housing Requirement
CD8.4	Note from Tendring District Council on housing supply