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# Appeal Decision

Inquiry Held on 5-8 & 12 September 2017

Site visits made on 4 & 12 September 2017

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 19 October 2017**

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**Appeal Ref: APP/Z1510/W/17/3172575**

**Land off Wethersfield Road, Finchingfield, Essex CM7 4NS**

- 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 Gladman Developments Ltd against the decision of Braintree District Council.
  - The application Ref 16/01735/OUT, dated 14 October 2016, was refused by notice dated 15 February 2017.
  - The development proposed is residential development of up to 80 dwellings, landscaping, open space and associated ancillary infrastructure.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposal is in outline with all matters reserved except access. Consequently the relevant plans are the Location Plan 7172-L-01 showing the site outlined in red and the plan showing the proposed access site arrangements 1493/08 A. However, the Illustrative Development Framework plan 7172-L-03\_B and the Indicative Layout plan 7172-L-05 were extensively referred to at the Inquiry by the appellant to illustrate how in its opinion the development could be satisfactorily accommodated on the site. So although the development's proposed layout as set out on these plans is purely indicative or illustrative I have used them, and the photomontages in the appellant's evidence that derive from them, to assess the proposal's likely effect on the character and appearance of the area.
3. A signed and dated S106 planning obligation by way of Unilateral Undertaking (UU) was submitted on the last day of the Inquiry. The Council provided a written justification of need for this and I consider that the UU fulfils the necessary requirements of the *Community Infrastructure Levy Regulations 2010*. The Council has confirmed that the UU overcomes its second refusal reason. However, since I am dismissing the appeal there is no need for me to consider it in any more detail.
4. The main parties agree that the five year housing land supply (5YHLS) should be considered against the most up-to-date objectively assessed need (OAN) for the District, which they agree consists of 716 dwellings per annum. Against this it is agreed that the Council only has a 4.32 years supply using the 'Liverpool' method of calculating the supply and a 3.44 years supply using the

'Sedgefield' method<sup>1</sup>. The Council favours the former and the appellant the latter method. It is unnecessary for me to come to a conclusion on which method should be used here for two reasons. First, and most importantly, because it is clear that the Council does not have a 5YHLS whichever method is used. Secondly, because this is a matter more properly to be considered by the Inspector who will examine the emerging Local Plan (eLP), who will be able to assess which method is best based on all the relevant information, much of which I have not had sight of.

5. Paragraph 49 of the National Planning Policy Framework (NPPF) specifies that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5YHLS.
6. NPPF paragraph 14 identifies the approach that should be taken in those circumstances. It specifies that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole, or specific NPPF policies indicate that development should be restricted.
7. Policies in the development plan might also be out of date when considered in the light of their consistency with the NPPF, and that will affect the weight that can be accorded to them. The starting point however is that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is an important material consideration, as it is national policy.
8. There is dispute between the appellant and the Council as to whether many of the relevant saved policies in the Braintree Local Plan Review (LPR) and in the Core Strategy (CS) are up-to-date and whether they are consistent with the NPPF. I address such dispute concerning specific policies below where relevant.
9. During the Inquiry an appeal by the same appellant was decided on a similar sized housing development on a similar sized site at the edge of Steeple Bumpstead, a village about six miles to the north also located within Braintree District<sup>2</sup>. The main issues in that appeal were similar to the ones here, with the exception that in this case the Council does not dispute that the site would provide generally adequate access to local services and facilities, including access to a reasonably regular bus service to nearby bigger towns and that Finchingfield is, in principle, a location acceptable for new residential development.
10. The Council arrived at that view despite both villages being identified as only 'other villages' within the existing CS settlement hierarchy and 'second tier' villages within the spatial strategy of the eLP. It does of course point out that the site lies outside the existing settlement boundary. But the appellant argues that very limited weight should be given to this, because the Council cannot demonstrate a 5YHLS and such boundaries were drawn up based on an out of date Essex Structure Plan housing requirement that expired in 2011, which does not reflect current OAN. In this context I consequently consider that LPR

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<sup>1</sup> The Sedgefield method involves the backlog of housing need from the base date of the SHMA being addressed within 5 years whereas the Liverpool approach allows it to be addressed more gradually using the whole of the emerging Local Plan period

<sup>2</sup> APP/Z1510/W/17/3173352 dismissed 6 September 2017

Policy RLP2 should be given no more than limited weight, in much the same way as the previous Inspector reached the same conclusion regarding CS Policy CS1<sup>3</sup>.

11. She also indicated<sup>4</sup> that limited weight should be accorded to the eLP in view of the limited stage it has reached in the adoption process. Since that Inquiry, the Regulation 19 consultation on the eLP has been concluded but it is unlikely that the new Plan will be submitted to the Secretary of State before December. Consequently, it remains the case that limited weight can be attached to it, as agreed between the main parties.

## **Main Issue**

12. The main issue is the effect of the proposed development on the character and appearance of the area, in particular on:
- relevant designated heritage assets, namely the settings of the Grade II Great Biggins Farmhouse and its separately listed Grade II barns and byre, the Grade 1 listed Church of St John the Baptist and the Finchingfield Conservation Area (CA); and
  - the landscape character of the area.

## **Reasons**

### Heritage Matters

13. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving a listed building (LB) or its setting or any features of special architectural or historic interest that it possesses.
14. Any impact on the settings of the above LBs or the CA would not necessarily detract from the significance of these designated heritage assets, because that depends on the extent to which their settings contribute to their significance. Their settings are not designations in themselves. As defined by the Framework, setting comprises the surroundings in which a heritage asset is experienced. In essence, if the development proposed could be seen from, or in conjunction with, any of the heritage assets close to the appeal site, then there would be an impact on their setting. An assessment is then required as to whether that impact would harm the heritage significance of the asset.
15. The Council's heritage witness was criticised at the Inquiry by the appellant for considering the attributes of the relevant heritage assets' settings together, rather than addressing them individually in carrying out the stepped approach in GPA3<sup>5</sup> to assessing their contribution to the significance of each of the assets. However, in my judgement this was a sensible and practical approach because the settings of the Church, the LBs at Great Biggins and the CA clearly overlap each other and can be seen together with the site from some viewpoints, as I explain below.

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<sup>3</sup> Ibid paragraph 13

<sup>4</sup> Ibid paragraph 14

<sup>5</sup> Historic England's The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning: 3, March 2015 (CD10.2)

16. The appeal site, which comprises two agricultural fields on the edge of the village, abuts the CA, which was extended in 2009 when the CA Appraisal<sup>6</sup> was written to include Great Biggins Farm. This is because Great Biggins was considered to be an important part of the original CA's setting, as were other added areas such as Great Wincey Farm on the western edge of the village. The CA encompasses the historic part of the village including the Grade I Church, its graveyard, the village green and pond and the open areas by the Finchingfield Brook as well as numerous other LBs in the village centre including the Guildhall.

*Effect on Great Biggins*

17. Great Biggins was clearly a wealthy farmstead of medieval and post medieval origin, which stood separate from the historic village surrounded by open agricultural land. The special interest of the Farmhouse and associated listed barns, byre and curtilage LBs derives from their historic and architectural group importance as well-preserved examples of vernacular architecture. Whilst the houses in Kempe Road have been built to the west of Great Biggins the buildings remain functionally and visually separate from the existing built-up form of the village. The group's setting within the rural landscape is also an important part of its heritage significance.
18. Great Biggins is a good example of a wealthy agricultural land holding, which would have been surrounded by fields under its ownership or control in medieval times. But this was clearly in the very distant past; the fact that the current owner may have farmed part of the appeal site in the 1960s on an agricultural tenancy does not constitute ownership in this sense. However, the cohesive Farm complex was rooted in the surrounding agricultural land. As such, I consider that the listed buildings are experienced in the wider agricultural landscape, which includes the appeal site.
19. The Farmhouse itself is contained on three sides by the historic moat and by mature trees. Views of the Great Biggins Farm complex are screened from Wethersfield Road and from the appeal site by dense clumps of mature trees adjacent to its northern and eastern boundaries. However, the two listed barns and the cart shed that links them are readily visible in views from that part of Footpath (FP) 11<sup>7</sup> to the south of the appeal site. This means that they would be seen from here in conjunction with the proposed housing estate, as clearly demonstrated in the appellant's photomontages which were extensively referred to at the Inquiry<sup>8</sup>.
20. Fig 14.1 of Mr Holliday's Appendix 6 (the existing view) shows that the listed barns and cart shed can be appreciated within their rural setting, together with some of the houses on Kempe Road and the Church which lie within the village. Figs 14.2 and 14.3 confirm that, following the construction of the proposed development, they would be seen within the visual context of a modern housing estate. In my opinion, this would not only change the view but would significantly harm the agricultural setting of the listed barns because they would cease to be appreciated as such, even though the immediate foreground in this view would remain part of an agricultural field. This is also notwithstanding the appellant's point that there would still be open land to the

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<sup>6</sup> CD10.4

<sup>7</sup> PROW 79 11#1 as shown on CD9.9 and in the appendices of Ms Bolger's & Mr Holliday's Proofs

<sup>8</sup> Mr Holliday's Appendix 6, Figures 14.1, 14.2 & 14.3

south of the barns, because that land is not commercially exploited farmland and is not visible from FP11 because of the thick high evergreen hedge on its southern boundary.

21. For these reasons I agree with the Council's evidence that the overall level of harm to the special interest of Great Biggins Farmhouse and its associated listed agricultural buildings would be minor to moderate, because of the degradation to their overall setting and consequent effect on their heritage significance as LBs. Such harm would be 'less than substantial' in terms of paragraph 134 of the NPPF. Less than substantial harm does not equate to a less than substantial planning objection. In coming to a view on the proposed development, I am mindful that a conclusion that a development proposal would fail to preserve the setting of a listed building, is a consideration that must carry considerable weight and importance in the overall planning balance.

*Effect on the Church of St John the Baptist*

22. The special interest of the Grade I Church of St John the Baptist lies in its historic and evidential value as a well-preserved example of a medieval church sitting at a relatively high point in the village; its tower and timber lantern can be seen from several prominent viewpoints both inside and on public thoroughfares on the edge of and outside the village<sup>9</sup>. This siting was deliberate and symbolises the importance of the church as an institution and the importance of religion in the life of the village at the time it was built and in succeeding centuries. The setting of the Church, being the surroundings in which it is experienced, is therefore extensive and includes the appeal site.
23. The Church's fabric and its immediate setting, including its graveyard, the Guildhall and near views of it from Church Hill and The Pightle, are obviously very important to its heritage significance. But so are these wider views because of the Church's wider significance to the historic life of the village and how it developed over time.
24. These wider views would be largely unaffected by the proposed development with one important exception, the view from that part of FP11 indicated above. This is an important view because it establishes the focal point of the Church both geographically within the heart of the village, symbolically as its spiritual centre and because it shows the prominence of the Church from open countryside on this side of the village. As indicated above, the appellant's photomontages show that the proposed development would intrude significantly into this view of the Church and visually compete with it. As a consequence, the development would not preserve but would cause material harm to the setting of the listed building, and thus would undermine its significance.
25. However, it is only views from FP11 that would be substantially harmed. On balance, I agree with the Council that, as a result, the overall harm to the significance of the Church would be minor, and certainly less than substantial in terms of NPPF paragraph 134. Nonetheless, and as noted above, such harm attracts considerable weight.

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<sup>9</sup> as evidenced in Figures 3,4 & 12 of Mr Gascoyne's Proof

### *Effect on the Finchingfield Conservation Area*

26. The special architectural and historic interest and significance of the Finchingfield CA arises from its long historic development as a small rural nucleated village clustered around the medieval Church, The Green and the Brook, with little intrusive modern development within its central core. There is a wealth of attractive medieval to twentieth century buildings many of which are listed. Their relationship with each other, the irregular street pattern, water bodies, open spaces and boundaries all contained within a topography of shallow valleys and bounded by open farmed countryside makes this CA an important one, irrespective of whether or not its claim to be “the most photographed village in the country” is true or indeed could ever be proven. In short, the CA is a gem.
27. Whilst the countryside setting of the CA is important, the CA Appraisal (CAA) says that the topography prevents long distance views into it<sup>10</sup>. Paragraph 2.3.4 of the CAA states that the large open field to the north of Valley View on Wethersfield Road and the adjacent houses on Church Hill provides an important setting to the CA. But the proposed development would not affect that field. The Council argues that the approach to the CA along Wethersfield Road provides an important approach to the historic core of the village that is recognised in the CAA. However, paragraph 2.1.7 of the CAA, although it describes the approach from the east along Wethersfield Road, does not attribute any specific important qualities to it.
28. The eastern boundary of the CA is the eastern boundary of Great Biggins, which comprises high mature trees and a dense hedgerow. Even in winter the trees and hedge will provide a clear physical boundary to the CA largely screening it from the countryside to the east, the two nearest fields comprising the appeal site. These fields are also at a higher level than Wethersfield Road. The proposed development would change the setting of this eastern edge of the CA but for these reasons would not materially harm it.
29. The CA’s significance is predominantly defined by the relationships of the vernacular buildings, street pattern, open spaces and water bodies and their relationship to each other within it. The key part of its original eastern setting – Great Biggins – was incorporated within its boundary when it was reviewed in 2009. For these reasons the proposed development would have little impact on the CA’s important features as described in the CAA and would not therefore harm its significance as a heritage asset, albeit it would harm the settings of LBs within it.

### *Heritage Policies*

30. The appellant maintains that relevant heritage policies - LPR Policies RLP95 and RLP100, and CS Policy CS9 – are out of date and inconsistent with the NPPF. The proposal would comply with RLP95, which requires the preservation or enhancement of CAs because it would not detract from the character, appearance and essential features of the CA including its setting as well as with the relevant parts of the NPPF which require the same.
31. The wording of RLP100 makes clear that it relates to works to LBs or structures although part (ii) does say, in this context, that the Council will seek to

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<sup>10</sup> CD 10.4, paragraph 2.1.10

preserve and enhance the settings of listed buildings by control over the development, design and use of surrounding land. I agree with the appellant that not only is RLP100 poorly worded in this respect but that it also fails to provide for the balancing of any harm against benefits required by NPPF paragraph 134. However, even though it suffers from these drawbacks it still follows the advice in NPPF paragraph 132 in as much as it seeks to protect the significance of designated heritage assets, including their settings, and so broadly complies with the NPPF.

32. Policy CS9 requires the protection and enhancement of the historic environment in order to respect and respond to the local context, especially in the District's historic villages, where development affects the setting of historic or important buildings and CAs. Again, whilst this Policy fails to provide for the balancing of harm against benefits, it broadly complies with the 'conserve and enhance' thrust of the NPPF.
33. So whilst I agree that Policies RLP100 and CS9 cannot be given full weight for the above reasons, they are nevertheless still highly relevant because they reflect the central tenet of national policy in the NPPF to preserve the significance of designated heritage assets. The proposed development would fail to comply with them.

#### *The NPPF Paragraph 134 Balance*

34. NPPF paragraph 134 requires the harm to the above LBs to be balanced against the public benefits of the proposal. The scheme would provide up to 80 new homes, 40% of which would be affordable, in a District that has no 5YHLS and has a pressing unmet need for affordable homes in part due to an under-supply over the last eight years. This would be a significant public social benefit to which I attach great weight.
35. It would also provide economic benefits in the form of construction jobs in the area during the building of the new dwellings and likely on-going multiplier effects on spending and attendance in/at village businesses and facilities. There would also be some ecological improvements made to the appeal site via new areas of planting and the areas of public open space would be available not only to occupiers of the development but also to other village residents and the wider public; these would comprise environmental benefits.
36. However, these benefits are no more than would be expected of almost any similar sized housing development and do not provide specific justification for the proposed development on this site. Whilst I acknowledge that the proposed affordable housing (AH) would provide a better balance of affordable and market housing in the village, there is no actual evidence that there is a specific need for this amount of AH in Finchingfield itself. There would be no control over who could occupy the market houses, albeit that the mix of house types and sizes would be determined as part of the Reserved Matters application.
37. The suggestion that the 63 FTE construction jobs estimated as being generated by the construction of the development could well be filled by village residents is no more than speculation. The biodiversity benefits and public access to the proposed play area and on-site open space would be welcome anywhere and must be balanced against the loss of greenfield land in the countryside.

38. More fundamentally, considerable importance and weight is to be given to any harm to designated heritage assets. I have concluded that the harm to the Grade II LBs at Great Biggins would be minor to moderate and that to the Grade I Church of St John the Baptist only minor, both being 'less than substantial harm' in terms of paragraph 134. But both LBs are important buildings in the village and the harm to their settings has not been clearly and convincingly justified as required by NPPF paragraph 132. Consequently I conclude that the harm to these designated heritage assets is not outweighed by the scheme's public benefits.

#### Landscape Character

39. The appeal site is located within *National Character Area 86 - South Suffolk and North Essex Clayland*, an undulating chalky boulder clay plateau dissected by small-scale undulating river valley topography. Views from the plateau are often extensive with a contrasting intimate sense of enclosure in the wider valleys. Distinctive historical features include medieval moated farmsteads – Great Biggins clearly being an example – and small medieval towns including specifically Finchingfield. The landscape is described as archetypal lowland English countryside.<sup>11</sup>
40. At the County level within the Essex Landscape Character Assessment the site falls within the B3 *Blackwater and Stour Farmlands* Landscape Character Area (LCA). The key characteristics are described as very gently undulating or flat landscape; large scale arable field pattern; infrequent small blocks of woodland with some mature hedgerow trees to field boundaries; wide views across farmland; small villages with a wealth of historic buildings; and a tranquil character. Finchingfield is noted as one of the few nucleated villages and the condition of the small settlements is noted to be good with limited out of character modern development.<sup>12</sup>
41. At the District level within the Braintree Landscape Character Assessment (BLCA) the site is located within the B9 *Stambourne Farmland Plateau* LCA. Finchingfield is specifically noted as having a focal point centred around the church and shops, a village common and duck pond which contribute to an overall strong sense of place within this LCA. It is also noted that there is an overall sense of tranquillity throughout the LCA. The church tower in the village is noted as a landmark within views towards the village and generally open views across arable fields framed in places by small patches of woodland and hedges with trees are key visual characteristics. The nucleated character of the village occupying a nodal position in the local road network is noted as a historic landscape feature in the LCA and that this is reflected in the 'spider-web' field pattern which radiates around the village.
42. Potential residential expansion of villages into surrounding arable land which would be conspicuous on the skyline is one of the key planning and management issues in this LCA. In the BLCA's Sensitivities to Change section several high areas of plateau are said to have an open skyline, which is visually sensitive to new development, which may interrupt views across, to and from the plateau. A strong sense of historic integrity is identified in the settlement pattern of villages, including in the historic core centred around the church in Finchingfield. Suggested Landscape Planning Guidelines include consideration

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<sup>11</sup> CD9.1, in particular pages 7,8 & 17

<sup>12</sup> CD9.5, in particular pages 57-60

of the visual impact of new residential development on the open arable landscape and ensuring that any new development is small-scale, responding to historic settlement pattern and landscape setting.

43. The appellant argues that there is nothing special about the appeal site: it simply comprises two agricultural fields on the edge of the village on land that has no landscape designation; it is not in open countryside because it would face the ribbon development of houses on the opposite side of Wethersfield Road, which are themselves part of Finchingfield; and the residential development of these fields would have little landscape impact once additional tree and shrub planting to the site's boundaries had matured.
44. The application submission included a Landscape and Visual Appraisal (LVA) and this, as is customary, addressed the landscape effects of the development and visual effects, the former being effects on the fabric and character of the landscape whilst the latter are effects on people's amenity.<sup>13</sup> The Council's landscape witness was criticised for not effectively doing her own LVA. However, I agree with the Council that it is not its responsibility to do this but the appellant's. She was also criticised for not making clear the methodology she used in making her own assessment. However, she does make clear<sup>14</sup> that the methodology set out in Appendix 1 of the LVA is generally appropriate, apart from the criteria adopted for the level of effect (in the final page of Appendix A) because they do not include any consideration of sensitivity. I address this point in more detail below.

#### *Landscape Effects*

45. It is clear to me that the proposed development would significantly harm the specific qualities of the local landscape, especially those identified in the BLCA for the following reasons. The development would not be small-scale since it would add about 20-25% onto the developed area of the existing village. It would not be seen as part of the village because it would sit on land between 75m and 85m AOD, considerably higher than the rest of the village which sits below 75m AOD. Some of the houses at the eastern end of Wethersfield Road opposite the site are located on land above 75m AOD but this row of ribbon development is separated and distinct from the rest of the village and detracts from its settlement pattern. It does not provide any justification for mirroring development on the south side of the road, which would further significantly exacerbate this harm to the village's historic layout and nucleated settlement pattern.
46. The proposed development would partly enclose Great Biggins, an isolated farmstead which was not historically and is still not today functionally or visually part of the village. It would block views from the open countryside to the south of the site of the plateau to the north of the village and be conspicuous on the skyline in views from the south. It would partly destroy the 'spider-web' field pattern on this eastern edge of the village, one of the main historic landscape features of the area; the preservation of the field boundary between the two fields of the appeal site would in no way compensate for the loss of their agricultural use – a housing estate is not a field<sup>15</sup>.

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<sup>13</sup> CD1.7

<sup>14</sup> Ms Bolger's Proof, paragraph 3.1.6

<sup>15</sup> As acknowledged by Mr Holliday in answer to my question during his evidence

47. The Council judges the overall sensitivity of the site to the proposed development (the combined judgements regarding value and susceptibility) to be *high*, the magnitude of change to be *medium/high* and the overall effect to be *major adverse*.
48. The appellant's landscape witness was criticised for aspects of his methodology. For instance, in the Landscape Effects Table of Appendix B to the appellant's LVA the Council questions how in terms of the effect on the *Stambourne Farmland Plateau* LCA in the BLCA the susceptibility to change is *medium-high*, landscape value is *high* and magnitude of change is *low* can result in an overall effect of *minor adverse*. The Council argues that it is unclear how the *medium-high* susceptibility has been factored into the final judgement. Although the appellant's witness explained that it had been factored in by reference to his evidence<sup>16</sup> the process by which the above judgements of susceptibility to change, landscape value and magnitude of change translate into an overall effect of the development being *minor adverse* on completion is unclear and opaque.
49. In any event, for the above reasons, I disagree with it and favour the Council's judgement. In reaching such a judgement I have taken into account the mitigating effects of the appellant's indicative layout and Design Code, which have reduced densities around the periphery of the site, set back development from Wethersfield Road and envisage reinforced planting to boundary hedgerows.

#### *Visual Effects*

50. The Council argues that the development would result in a limited number of major and moderate-major adverse effects on the visual amenity of people in the landscape surrounding the development. In particular it would result in a *moderate-major* adverse effect for people approaching Finchingfield along Wethersfield Road and a *major adverse* effect for people approaching the village from FP11.
51. The appellant's landscape witness amended some of the judgements in Appendix C of the original LVA at the Inquiry to state that the overall effect on residents of the properties on Wethersfield Road opposite the site would be *moderate* rather than *minor-moderate* on completion of the development and that the susceptibility of users of Wethersfield Road itself would be at the top end of *low* or possibly *medium* rather than simply *low*. This latter altered judgement, as above, again begs the question as to how this may affect his judgement of the overall effect on the users of Wethersfield Road.
52. The appellant argued that this part of Wethersfield Road is part of the village because it has a closely mown grass verge planted with ornamental Rowan trees that are viewed as distinctly separate from the hedge on top of the bank. I acknowledge that this is so although the argument about the Rowan trees has been overplayed because they are very much seen in conjunction with the field hedge as a backdrop when viewed from the other side of the road. But the proposed development would establish a paved footway on this side of the road and there would be a new access with new footways and radii as shown on the Access plan, likely street lighting and the new pedestrian refuges in the road,

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<sup>16</sup> Mr Holliday's Proof, paragraphs 5.23 & 5.24, which refers back to paragraph 2.23 & Appendix A of the LVA (CD1.7 *ibid*)

all of which would be a dominant visual presence and would suburbanise this entrance to the village.

53. There is also no doubt that the new development would be perceived visually as a housing estate for people walking and driving along Wethersfield Road not least because the lights of the houses nearest to the road would be noticeable at night despite the indicative layout showing the dwellings set back from the northern boundary.
54. I note the appellant's judgement that the size/scale of the visual effect on pedestrian users of FP11 at completion of the development would be *low-medium* and *low* at year 10 as also set out in Appendix C of the LVA. However, having studied carefully the appellant's photomontages of the views from FP11 and having walked the full length of this footpath in both directions I find it hard to understand how such a judgement can have been arrived at. The new housing estate would dominate the view for users of this footpath coming from the south east. As set out above, it would be prominent also in conjunction with views of the listed barns at Great Biggins and the Church tower from certain points on FP11. At present it is possible to see Fancy House and the farm buildings at Howe Hall on the ridge to the north of the village from many viewpoints along this footpath. This would no longer be possible if the development was constructed.
55. The views from FP11 to the south of the site are very important because at present they show that most of the nucleated village is hidden from this south-east approach to it across the open agricultural landscape. There are open views across the subsidiary valley of the brook to the north which runs westwards into the Finchingfield Brook within the village. This open view and rural tranquillity experienced by users of FP11, the only public footpath approaching the village from this direction, would be substantially harmed by the proposed housing estate.
56. For these reasons I again favour the Council's judgement in terms of the effects on the visual amenity of the above key groups of people.

#### *Overall Landscape Impact and Landscape Policies*

57. In summary I conclude that the proposed development would have significant adverse landscape and visual effects due to its separation from the village and its prominent location on rising land, which would cut off key views in the landscape and harm the tranquil nature of the surrounding countryside to the south and east. It would harm all the key landscape character elements set out above that are identified in the landscape character assessments, in particular those in the BLCA but also key characteristics in the National Character Area.
58. The appellant argues that CS Policy CS8 is at odds with the NPPF because it applies a blanket protection to the natural environment. I disagree because that part of the policy most relevant to the circumstances here is its second paragraph stating that development will need to enhance landscape in accordance with the Landscape Character Assessment. Full weight should be given to Policy CS8 accordingly. The proposal would not enhance the local landscape and so would therefore fail to comply with Policy CS8.

59. The appellant argues that very limited weight should be given to Policy CS5. This Policy states that development outside town and village development boundaries and envelopes will be strictly controlled to uses appropriate to the countryside in order to protect its landscape character, bio- and geodiversity and amenity. I agree it has less than full weight because it mentions village envelopes and restricts land for housing where there is no 5YHLS. But its wording also explains that this is to protect landscape character and hence it performs a specific landscape function. Consequently, like the Inspectors in the recent Steeple Bumpstead<sup>17</sup> and Coggleshall<sup>18</sup> decisions I attach more than moderate albeit not full weight to CS5, which for the above reasons the proposal would fail to comply with.
60. LPR Policies RLP80 and RLP90 together state, amongst other things, that proposed development should reflect local distinctiveness, conserve features of landscape importance and successfully integrate into the local landscape. I acknowledge that the site boundaries would be strengthened and the majority of the hedge boundary between the two fields of the site retained. But for the above reasons, the proposed scheme, albeit that it is only in outline, would not and could not comply with these development plan policies, to which indisputably full weight must be attached.

#### *Valued Landscape?*

61. The Council referred in evidence to the fact that the village and its surroundings including the site was formerly part of the Special Landscape Area (SLA) in the LPR. But this was superseded by the criteria based policy using the above landscape character assessments as set out in CS Policy CS8. The Council was also unable at the Inquiry to provide any evidence of the criteria for designating the SLA, which I note from the map in the Council's evidence appears to cover the majority of the area of the District.<sup>19</sup> Consequently I give it no weight.
62. The Council argues that the local landscape is a 'valued landscape' in terms of paragraph 109 of the NPPF, which states that such landscapes should be protected and enhanced. There is no definition of what is a 'valued landscape'. There have been many objections from local residents relating to the development's likely effect on the landscape so it is clear that local people value it, albeit that is insufficient in itself to make it 'valued'.
63. The Inspector in the recent Steeple Bumpstead appeal addressed this issue in some detail<sup>20</sup>. The appeal site is part of the historic spider-web field pattern surrounding Finchingfield. It makes an important contribution to the rural setting of the village and the views between the ridges of land to the south east and north east of it. It demonstrates many of the key landscape features set out in the landscape character assessments, in particular the BLCA. It forms an important part of the settings of the CA, Great Biggins and the Grade I listed Church.
64. The wider landscape within which the site is located is of high value as assessed using the GLVIA3<sup>21</sup> Box 5.1 criteria for the following reasons. In

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<sup>17</sup> Ibid, paragraphs 39 & 65

<sup>18</sup> CD11.11, paragraph 59

<sup>19</sup> Ms Bolger's Appendix 2

<sup>20</sup> Ibid, paragraphs 49-61

<sup>21</sup> CD9.4 Guidelines for Landscape and Visual Impact Assessment, third edition, 2013

terms of landscape quality there is a strong sense of historic identity and the field pattern on this eastern side of the village is largely unchanged; the fact that the western field of the site is planted with Christmas trees does not diminish its landscape quality, and I agree with the Council that the overall quality of the landscape is of a medium/high condition. In terms of scenic quality there is wrongly no recognition in the appellant's case of the current undeveloped nature of the site. There is no doubt that the local landscape is representative of the LCA B9 in the BLCA and that its immediate context in terms of the designated heritage assets makes its conservation interest high. Perceptually the tranquil nature of the landscape is obvious when walking FP11.

65. For these reasons I have no doubt in concluding that the site and its surrounding landscape is a 'valued landscape' in terms of paragraph 109 of the NPPF because its physical attributes demonstrably take it beyond mere countryside. That is, as Inspector Gregory states, the approach supported by the Secretary of State in the Leckhampton appeal decision<sup>22</sup>, and affirmed by the High Court when this decision was challenged<sup>23</sup>. Whilst this judgement is not binding because it did not go to a full hearing and is proceeding to the Court of Appeal, the appeal decision still stands at present and I see no reason to depart from it, as also concluded by Inspector Gregory<sup>24</sup>.
66. The argument advanced by the appellant that all the examples in Footnote 9 of the NPPF relate to a known 'designation' does not hold up because, for instance, areas of flood risk are not 'designations' as such and the appellant acknowledged under cross-examination that the Environment Agency's flood maps have to be read alongside any site specific evidence of flooding. The examples of policies that restrict development listed in Footnote 9 are simply that – examples – and do not preclude other policies within the NPPF. Another example would be paragraph 27, which states that where a proposal fails to satisfy the sequential test in terms of retail policy or is likely to have a significant adverse effect on the vitality and viability of town centres as set out in Section 2 of the NPPF it should be refused. There is no reason for concluding that the protection and enhancement of valued landscapes required by NPPF paragraph 109 is not a restrictive policy to which the second strand of the last bullet point of paragraph 14 applies, in other words a policy which indicates that development should be restricted. It would be difficult to adequately protect and enhance valued landscapes if the requirement to do so in paragraph 109 was not reasonably regarded as a policy that restricts development that would cause harm to such landscapes. I consider the implications of this below.
67. The existence of other recent appeal decisions which take a contrary view, such as the Coggleshall decision<sup>25</sup> is not determinative in this respect because I have come to this conclusion based on the specific circumstances in this case. The Leckhampton and Nanpantan Road<sup>26</sup> appeal decisions also support the case that paragraph 109 is such a restrictive policy in terms of Footnote 9.

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<sup>22</sup> CD 11.5, paragraph 32

<sup>23</sup> CD12.9, paragraph 6

<sup>24</sup> Ibid, paragraph 104

<sup>25</sup> CD11.11 *ibid*, especially paragraphs 42-45

<sup>26</sup> CD11.8, especially paragraph 45

## **Planning Balance and Conclusion**

68. NPPF paragraph 14 explains how the presumption in favour of sustainable development works. For decision-taking this means approving development that accords with the development plan. That is not the case here, although some of the relevant policies are out-of-date and do not therefore attract full weight as set out above. Where the development plan is absent, silent or relevant policies are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (the first limb of bullet point 14); or specific policies in it indicate development should be restricted (the second limb).
69. The 'tilted balance' in the first limb of the fourth bullet point of paragraph 14 does not apply here because policy in Section 12 of the NPPF indicates that development that harms heritage assets should be restricted subject to the heritage balance in paragraph 134 (the second strand). I have already applied this balance and concluded that public benefits do not outweigh the harm to the designated heritage assets. Harm to valued landscapes is also restricted by paragraph 109 as I explain above. These are policies to which Footnote 9 in the NPPF apply.
70. There is no paragraph in the NPPF the equivalent of paragraph 134 in relation to weighing landscape harm against any public benefits, but if there were (and for the avoidance of any doubt on this matter) the benefits would be the same as those set out above and would not outweigh the serious harm to the landscape. Even if I was to have concluded that NPPF paragraph 109 is not a Footnote 9 policy to which the second limb of the fourth bullet point of paragraph 14 applies, the harm to heritage assets would still ensure that the tilted balance is not engaged. Therefore, by definition, the proposal would not be sustainable development. There are no other material considerations that indicate the appeal should be determined otherwise than in accordance with the development plan and the NPPF.
71. For the reasons given above I conclude that the appeal should be dismissed.

*Nick Fagan*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY

Ashley Bowes of Counsel (Cornerstone Barristers, London), *instructed by* the Solicitor to the Council, called:

- Adrian Gascoyne, Head of Place Services, Essex County Council
- Michelle Bolger, Michelle Bolger Expert Landscape Consultancy
- Alison Hutchinson, Partner, Hutchinsons Planning & Development Consultants

### FOR THE APPELLANT

Martin Carter of Counsel (Kings Chambers, Manchester) *instructed by* John Mackenzie MRTPI, called:

- Gail Stoten, Heritage Director, Pegasus Planning Group
- Gary Holliday, Director, FPCR Environment & Design Ltd
- George Venning, Director, Bailey Venning Associates Ltd
- John Mackenzie, Planning Director, Gladman Developments Ltd

### INTERESTED PERSONS – LOCAL RESIDENTS & THE PRESS

Joseph Laws, Halstead Gazette

David Coverdale, Finchingfield Parish Councillor

Austin Davis, Finchingfield Parish Councillor

Allen Payne, Scout Leader, Finchingfield

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*End of Appearances*

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Updated Statement of Common Ground dated 1 September 2017
- 2 Original Conservation Area boundary map from Local Plan Review 2005
- 3 Email from owner of eastern field to appellant regarding ownership dated 6<sup>th</sup> September 2017
- 4 LPR Policy RLP79 Special Landscape Areas and accompanying text
- 5 Update of 5 Year Housing Land Supply Statement as at 30<sup>th</sup> June 2017 by LPA & accompanying trajectory spreadsheet detailing sites and figures
- 6 APP/X1545/W/15/3139154 Nipsells Farm Lodge, Mayland, Essex appeal decision referred to by appellant in evidence
- 7 APP/Z1510/W/17/3173352 Land off Finchingfield Road, Steeple Bumpstead appeal decision by Inspector Julia Gregory
- 8 List of provisionally agreed Conditions
- 9 Updated Statement of Compliance with CIL Regulations by LPA
- 10 S106 Unilateral Undertaking dated 12<sup>th</sup> September 2017 signed by owners of the land & the appellant
- 11 LPA's Opening Statement together with bundle of relevant legal judgements
- 12 Appellant's Opening Statement
- 13 LPA's Closing Statement with further bundle of relevant legal judgements
- 14 Appellant's Closing Statement

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*End of Documents*