The Planning Inspectorate

Appeal Decision

Inquiry Held on 26 June 2018

Unaccompanied site visit made on 25 June 2018

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 July 2018

Appeal Ref: APP/J3530/W/16/3160194
Land east of Bell Lane, Kesgrave

- 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 Persimmon Homes Limited and BTP Limited against the decision of Suffolk Coastal District Council.
- The application Ref DC/15/4672/OUT, dated 18 November 2015, was refused by notice dated 15 July 2016.
- The development proposed is described in the application as a "phased development of 300 dwellings, the provision of land for a primary school and associated landscaping and open space."
- This decision supersedes that issued on 30 October 2017. That decision on the appeal was quashed by order of the High Court.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. I made an unaccompanied site inspection the day before the inquiry opened, when I was in the vicinity from about 16:30 to 17:45. I saw the site from Bell Lane and walked to the Foxhall Road junction. I also followed the Long Strops bridleway (BR49) from Bell Lane to a point beyond the eastern boundary of the appeal site. I walked north from Long Strops to Cedarwood Primary School, past the eastern school boundary. I saw the connections from Hares Close and Ogden Grove to Long Strops and took the path through Fentons Wood from its south-western corner. I walked from Cedarwood School back to the appeal site frontage via Halls Drift, Potters Approach, Ogden Grove and the western section of Long Strops, which took about 10 minutes.

2. I saw a good part of the Grange Farm estate and noted the relationship between the appeal site and local shops, services and facilities. On this basis, all parties were content that an accompanied site visit was not necessary.

Preliminary matters

3. The proposal does not include a primary school, but rather makes land available for use as a school playing field. Accordingly, the parties agreed that it is better described as a phased development of 300 dwellings, the provision of land for use as a primary school playing field and associated landscaping and open space. The application was submitted in outline with all matters reserved except access.

4. Following the consent order quashing the previous appeal decision, the appeal is to be re-determined on the basis that the whole case is considered afresh. The quashed decision is treated as though it had not been made and is incapable of having any legal effect. The parties agree that consideration should be given to all of the original planning issues, not just those described in the consent order, namely the adequacy of the Inspector's reasoning in relation to housing land supply. I will also take account of any new evidence or material changes in policy or circumstances since the first inquiry.

5. Given the proximity of the site to the Deben Estuary SPA/R SSSI (the Deben Estuary site), there is some concern over the potential for "recreational pressure" on that site from prospective residents of the proposed development. However, at the time of the previous inquiry, the parties, Natural England and the Inspector concluded that, with the mitigation measures proposed, there would be no significant effect on the Deben Estuary Site. It was therefore considered that an "appropriate assessment" was not required by The Conservation of Species and Habitats Regulations 2017 (the Habitats Regs). Since then, the European Court of Justice ruled in *People over Wind, Peter Sweetman v Coillte Teorant* Case C-3/17 that this approach is wrong; if mitigation measures would be required to avoid significant effects, a full appropriate assessment must be made.

6. The parties agreed that an appropriate assessment would be required, if I were minded to grant permission[1] but, as at the date of the inquiry, I did not have the information necessary to make that assessment, including an up to date consultation response from Natural England. However, as the need for an appropriate assessment would only arise, if I were otherwise minded to grant planning permission, I continued with the inquiry to hear evidence and submissions on all other matters. All parties were content with that approach.

Main Issues

7. The main issues are:

   (a) whether the proposed development accords with the development plan as a whole;

   (b) whether occupiers of the proposed development would have adequate access, particularly pedestrian, cycle and bus access, to shops, services, facilities and employment and whether the development would be successfully integrated with Kesgrave;

   (c) whether, leaving aside any impact on the integrity of the Deben Estuary SPA/R SSSI, material considerations indicate that the appeal should be determined otherwise than in accordance with the development plan, having particular regard to whether the Council can demonstrate that it has a 5 year supply of deliverable housing sites against its requirements;

If I were minded to allow the appeal on the basis of the above considerations, I would then have to go on to consider, following an appropriate assessment under the Habitats Regs:

[1] Regulation 63(1) of the Habitats Regs.

(d) whether the proposed development would adversely affect the integrity of the Deben Estuary SPA/R SSSI, having regard to the conservation objectives of that site; and, if it would have an adverse effect:

(e) whether, there being no alternative solutions, the development must be carried out for imperative reasons of overriding public interest.[2]

Reasons

The development plan

8. As set out in the Statement of Common Ground (SOCG)[3], the development plan comprises: the Suffolk Coastal District Local Plan Core Strategy and Development Management Plan Document (CS), adopted July 2013; the Site Allocations Development Plan Document (SADPD), adopted January 2017; and the remnant saved policies from the Suffolk Coastal Local Plan (LP).

9. The CS policies relevant to this outline proposal are:
- SP1 – Sustainable Development
- SP1A – Presumption in Favour of Sustainable Development
- SP2 – Housing Numbers and Distribution
- SP3 – New Homes
- SP11 – Accessibility
- SP12 – Climate Change
- SP14 – Biodiversity and Geodiversity
- SP15 – Landscape and Townscape
- SP16 – Sport and Play
- SP17 – Green Space
- SP18 – Infrastructure
- SP19 – Settlement Policy
- SP20 – Eastern Ipswich Plan Area
- SP29 – The Countryside
- DM2 – Affordable Housing on Residential Sites
- DM3 – Housing in the Countryside
- DM20 – Travel Plans
- DM23 – Residential Amenity
- DM27 – Biodiversity and Geodiversity
- DM28 – Flood Risk
- DM32 – Sport and Play

10. The relevant SADP policies are:
- SSP1 – New Housing Delivery 2015 – 2027
- SSP2 – Physical Limits Boundaries
- SSP38 – Special Landscape Areas
- SSP39 – Areas to be Protected from Development

11. Saved LP Policy AP212, which concerns the "Ipswich Fringe: Open Character of Areas of Land Between Settlements" is also of relevance.

12. The evidence regarding development plan policies was given in the context of the parties' agreement that CS Policy SP2 is out of date.[4] It is important to note the reason for this.

[2] Regulation 64 of the Habitats Regs.
[3] Inquiry document (ID) 1.
[4] Ibid, paragraph 6.3.

13. Policy SP2 stated that the CS would make provision for at least 7,900 new homes across the district in the period 2010 – 2027, with land being distributed in accordance with the Settlement Hierarchy in SP19. By reference to Table 3.3 in the CS, Policy SP2 stated that 29% of the required new dwellings would be provided in the Eastern Ipswich Plan Area.

14. SP2 did not seek to provide for the full "objectively assessed needs" (OAN) of the district. The context for the CS housing provision had been set by the then revoked East of England Plan but, in 2010, the Council had commissioned Oxford Economics to provide updated forecasts of housing need. Using the East of England Forecasting Model (EEFM), they identified a need for 11,000 new dwellings during the plan period. On the evidence available to him from the Examination in Public (EIP) of the CS conducted in 2012, the Inspector said in his June 2013 report that this figure of 11,000 dwellings should be taken as the OAN between 2010 and 2027[5]. This was despite criticisms from some about assumptions made in the EEFM; the Inspector said it was "the best available estimate of need at (that) point."[6]

15. The EIP Inspector noted that SP2 would not meet the OAN for 11,000 dwellings. However, he accepted that, if he were to suspend the examination pending the Council's assessment of options and formulation of proposed changes, the plan would likely be withdrawn. He concluded that having the CS in place at an early stage would support the achievement of sustainable development and bring forward sites. In these circumstances, he concluded that an early review would be preferable to suspension of the EIP.[7] On this basis the CS was adopted with SP2 explicitly providing for an early review. This was to commence with the publication of an Issues and Options Report by 2015 at the latest, to identify the OAN and make proposals to meet this. That review was not commenced and therefore the Council now accepts that Policy SP2 is out of date.

16. By virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004 (the PCPA 2004), I must determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Section 38(6) therefore involves a two-stage process; namely consideration of whether the proposal is in accordance with the plan and then, whether there are relevant material considerations.

17. The appellants contend that SP2 being out of date infects the other policies on which the Council relies, such that they should all carry reduced weight. I shall come back to that but, in closing, Mr White QC said:

> *"4.16 The fact that these policies are out of date and have reduced weight is relevant to the section 38(6) exercise, in that any conflict with these policies must receive reduced weight within the section 38(6) exercise.*
> *Mr Woolnough said during XX that he did not reduce any weight to conflict with out of date policies within his s.38(6) exercise, which is entirely the wrong approach.*

[5] Core Document (CD) 5.18, paragraphs 33 – 35.
[6] Ibid, paragraph 48.
[7] Ibid, paragraphs 53 – 55.

> *4.17 …the only real conflict is with SP29 (which is then referred to in DM3 and SSP2), which is a policy which must be given reduced weight and importance.*
>
> *4.18 When weighted against the other numerous policies which the development complies with, which do receive material weight, the proposal does comply with the Development Plan as a whole."*[8]

18. This last paragraph 4.18 suggests that, when assessing compliance with the development plan as a whole, I should take account of the reduced weight of policies resulting from of their being out of date. However, no authority was cited for that proposition and it seems to me that the consequences of policies being out of date need to be factored in during the second stage of the section 38(6) process, not the first. A proposal which conflicts with key development plan policies will not conform to the development plan merely because some or all of those policies are out of date for any reason. However, a finding that some or all of those policies are out of date would be a material consideration, which might indicate that the appeal should not be determined in accordance with the development plan.

19. It is clear however, that in determining whether a proposal is in conformity with the development plan as a whole, some policies are inherently more important than others. In *R v Rochdale MBC ex parte Milne* [2000] EWHC 650 (Admin)[9], Sullivan J, as he then was, emphasised the need to make a judgement "bearing in mind such factors as the importance of the policies which are complied with or infringed and the extent of compliance or breach," and he acknowledged that there may be "minor policies." Mr White QC used the example of policies requiring the provision of public art or concerning sport and play as ones which might carry less weight.[10] Nevertheless, in determining whether the proposal would be in conformity with the development plan as a whole, I will take the individual policies at face value, without considering whether they are out of date for any reason.

20. The Council contends that the appeal proposal would breach Policies SP20, SP29, DM3 and SSP2.

21. Within the "Major Centres" section of the CS, Policy SP20 relates to the Eastern Ipswich Plan Area (EIPA). In closing, Mr White QC said that SP20 is not breached, because it directs development to a Major Centre, namely the EIPA, within which the site lies.[11] With due respect to him, Mr White's submission on this point went further than the evidence of his planning witness Mr May. He confirmed the thrust of his proof of evidence,[12] namely that the proposal would indeed breach Policy SP20, but only in as far as that policy refers to SP29. Indeed, the appellants' stance on this is confirmed in the SOCG.[13]

22. Nevertheless, the interpretation of Policy SP20 was the subject of some debate during the inquiry and there was a suggestion of ambiguity within the CS. In pressing the point that the site lies within the EIPA, and therefore within a Major Centre at the top of the Settlement Hierarchy established by SP19,

[8] ID35, paragraph 4.16.
[9] Referred to by Mr May at paragraph 5.17 of his proof.
[10] ID35, paragraph 4.8.
[11] Ibid, paragraph 4.11.
[12] At paragraphs 5.11.
[13] ID 1, paragraph 7.3.

Mr White QC drew attention to Map 1 at page 136 of the CS.[14] However, this shows the "Ipswich Policy Area (inc Westerfield)" which, the glossary tells us, is a *"spatial area reflecting the sub-regional role played by Ipswich as defined in the former RSS."* Though the EIPA falls within the area coloured orange on Map 1, that map does not specifically delineate the EIPA.

23. The CS glossary defines the EIPA as including "the town of Kesgrave". However, crucially, SP20 says the EIPA is divided into 3 sections: the area to be covered by the Martlesham, Newbourne & Waldringfield Area Action Plan; the main urban corridor of Kesgrave, Martlesham and Rushmere St Andrew; and the smaller settlements and countryside which surround these core areas.

24. The appeal site is clearly outside the area to be covered by the Martlesham, Newbourne & Waldringfield Area Action Plan, as shown on Map 4 on page 139 of the CS. With regard to the urban corridor of Kesgrave, Martlesham and Rushmere St Andrew, SP20 states that the strategy is:

> *"… for completion of existing long-standing housing allocations and other small scale development opportunities within the defined built up area."* (My emphasis).

The significance of built up areas in the EIPA is reflected in Table 4.2 on page 63 of the CS. This indicates that, within Major Centres, housing development in the form of estates (where consistent with local character), groups and infill will be allowed "within the defined physical limits."

25. The glossary states that "physical limits boundaries" will be defined on the Proposals Map, namely a separate Local Development Document. SADPD Policy SSP2 provides that physical limits boundaries have been drawn for all settlements listed as Major Centre, Town, Key and Local Service Centre. Paragraph 2.18 of the SADPD indicates that physical limits boundaries define "the main built area(s)" of a settlement. SSP2 states that, outside physical limits boundaries, new residential development will be strictly controlled in accordance with national planning policy guidance and the strategy for the countryside set out in CS Policy SP29.

26. SADPD Map 40 on page 179 shows the physical limits boundaries of Kesgrave (with parts of Rushmere & Martlesham). Whatever the extent of any perceived ambiguity concerning the EIPA, it is clear that the appeal site lies outside those physical limits boundaries. The SOCG confirms this and records the parties' agreement that the site is within "the remainder of the area", namely the remainder of the EIPA, which is countryside.[15]

27. As the appeal site is not within the defined built up area, this proposal does not accord with the strategy in SP20 for the EIPA, and in particular the urban corridor section of the EIPA. Given that the site lies within what SP20 describes as "the remainder of the area", Policy SP29 applies. This mirrors SADPD Policy SSP2.

28. The conflict with SP20 does not arise solely because it refers to SP29. SP20 is not just about protecting the countryside from unnecessary development; it embodies a positive strategy for sustainable development within the EIPA, to

[14] ID 35, paragraph 4.11.
[15] ID 1, paragraph 6.6.

actively manage patterns of growth as advised by the National Planning Policy Framework published in March 2012 (the Framework).

29. In his proof[16], Mr May referred to the "observation" in SP20 that communities "have the opportunity to settle and mature." When allowing for the completion of allocations and for small scale development within the defined built up area, SP20 says: *"In particular, it is recognised that due to the significant levels of growth which have occurred over the past 10 or so years, communities have the opportunity to settle and mature. Developments which offer the opportunity to support this broad approach will be supported..."* This is more than a mere observation; providing the opportunity for communities within the urban corridor to settle and mature is part of the Council's vision of sustainable development. SP20 only encourages developments which offer the opportunity to support that broad approach.

30. I acknowledge that the appeal site lies only 20m or so to the south of the physical limits boundaries of Kesgrave (with parts of Rushmere & Martlesham). Nevertheless, even within those physical limits boundaries, aside from allocations, SP20 only allows for *"small scale development opportunities"*. A scheme of 300 dwellings would not be small scale and would not be consistent with the broad approach outlined in SP20. As the site is outside the physical limits boundaries, the conclusion that the proposal conflicts with SP20 applies with greater force; it represents a significant conflict.

31. Turning to CS Policy SP29, this restricts new development in the countryside to that which needs to be located there and accords with other CS policies or the special circumstances outlined in paragraph 55 of the Framework. The appellants acknowledge that the site lies in the countryside, being beyond the relevant physical limits boundaries, and that the proposal would breach that policy.

32. In support of SP29, paragraph 4.98 of the CS notes that the countryside is *"an important economic asset"* and that *"the strategy and approach is very much one which seeks to secure a viable and prosperous rural economy as a key element in maintaining the quality of the built and natural environment of the district."* The fact that the appeal site is only 20m beyond the Kesgrave settlement boundary could be said to diminish the extent of the breach with SP29. However, it is a large site of some 15 ha and is located to the south of a strong boundary formed by the Long Strops bridleway and a mature hedge and fence. The proposal would not be a minor breach of SP29.

33. CS Policy DM3 specifically relates to new housing development in the countryside. It only supports such development if specified criteria are met. In short, these all envisage small developments and those satisfying paragraph 55 of the Framework. Paragraph 5.13 of the supporting text states that this overarching policy *"first and foremost stresses that such development will be strictly controlled…"*

34. None of the criteria in DM3 is met, but the appellants only accept that this policy is breached to the extent that it is cross referenced in SP29.[17] In his proof, Mr May says that there is "nothing else that is material to the appeal in Policy DM3 that adds to the conflict with Policy SP29." The policy itself says

[16] At paragraph 5.10.
[17] ID 1, paragraph 7.3.

that the criteria are applied in *"the interests of safeguarding the countryside as set out in Policy SP29 as well as meeting sustainable objectives…"* DM3 and SP29 overlap and reinforce each other but, if anything, DM3 is of greater relevance than SP29, as it specifically concerns housing. In any event, a development of 300 dwellings on a 15 ha site in the countryside would amount to a significant breach of DM3, notwithstanding the proximity to the physical limits boundary of Kesgrave.

35. SADPD Policy SSP2 also provides that new residential development outside physical limits boundaries will be strictly controlled in accordance with national policy and the strategy for the countryside in CS Policy SP29. Paragraph 2.17 states that these boundaries have operated as a policy guide to development over many years but *"have been updated to ensure they are fit for purpose for the plan period and beyond, and are logical and defendable."* The proposal would breach the strict control applied by SSP2.

36. Whilst the appeal scheme would represent a significant breach of Policies SP20, SP29, DM3 and SSP2, many other relevant policies are listed in the SOCG and the Council does not allege any conflict with these. None of the witnesses addressed these other policies one by one. When asked which were the most relevant other policies, Mr May referred to his proof, which drew attention to paragraph 4.07 of the CS. This described SP19, which defines the Settlement Hierarchy as *"one of the 3 key policies, the other two being Climate Change (Policy SP12) and Sustainable Development (Policy SP1) around which the remainder of the Core Strategy is built."* SP19, SP1 and SP12 are clearly important within the plan, but they embody broad strategic principles and it is necessary to look to other policies to ascertain how those principles should be applied in practice.

37. Whilst SP19 places the EIPA at the top of the Settlement Hierarchy as a Major Centre, SP20 sets tailored strategies for different parts of the EIPA. I have already concluded that the proposal would conflict with SP20 and, to use the words of Sullivan J in *R v Rochdale MBC ex parte Milne* [2000] EWHC 650 (Admin), it cannot be said that SP19 "pulls in a different direction." Similarly, as indicated in paragraph 3.18 of the CS, SP1 *"sets the framework which has guided the development strategy for the district."* Policies such as SP20, SP29 and DM3 sit within that overall framework and SP1 does not pull in a different direction. Similarly, in seeking to mitigate the impacts of development on climate change, there is nothing in SP12 which pulls in a different direction to the breached policies; the appeal site and the appeal scheme have no particular features which make SP12 especially relevant or important in this case.

38. Policy SP1A reflects the Framework's presumption in favour of sustainable development. It begs the question whether the development accords with the development plan, but does not assist is answering it. Policy SP3 was not specifically mentioned in Mr May's written or oral evidence, or closing submissions for the appellants. However, I recognise that, in seeking to increase the stock and range of housing, Policy SP3 provides some support for the proposal. This is in line with the thrust of the Framework but, despite the importance of this objective, SP3 does not support any amount of housing in any location; provision is to be made *"in accordance with the principles of sustainable development and sustainable communities."* Policies SP20, SP29, DM3 and SSP2 seek to provide for sustainable development and sustainable

communities and SP3 is less significant in the assessment of compliance with the development plan as a whole.

39. The process of determining whether the appeal scheme would comply with Policies SP14 and DM7 concerning Biodiversity and Geodiversity cannot be separated from the process of an appropriate assessment. For the reasons already given, I leave that question aside.

40. The Council alleges no conflict with the other relevant development plan policies listed in the SOCG, or at least acknowledges that compliance could be achieved through the imposition of conditions and/or through planning obligations. However, the appellants did not identify any way in which those policies pull in the opposite direction to the policies breached. The appellants accepted that some, such as SP16 (Sport and Play) should be given limited weight.

41. Just as the parties did not do so, I will not address each of the remaining relevant policies one by one. However, they generally guide how development should be undertaken, assuming it is acceptable in principle. Even DM2, which concerns the very important issue of affordable housing, simply indicates the proportion of dwellings which should be affordable. The provision of affordable housing is a material consideration in the final planning balance, but DM2 does not indicate that development should be allowed on this site just because it would provide affordable housing; this is not an "exception site" which would benefit from the direct and positive support of DM1.

Conclusion on the development plan

42. In terms of the section 38(6) exercise, the Council contends that SP20, SP29, DM3 and SSP2 are "the most directly relevant policies"[18]. Indeed, the SOCG records agreement that the first 3 are "the key policies for consideration of the appeal."[19] I accept that SP20, SP29, DM3 and SSP2 are the dominant policies in this case, as they relate to where development should be, rather than how it should be carried out, and they can be specifically applied to this site and this proposal. Given that the appeal scheme would give rise to significant conflict with those policies, I conclude that it would not accord with the development plan, notwithstanding that numerous less important policies would be complied with, or not breached.

Access to shops, services and facilities – integration with Kesgrave

43. The SOCG notes that the site is 20m from a sustainable settlement, which has a range of services and facilities. Furthermore, with the benefit of a section 106[20] contribution, Suffolk County Council has agreed to use its best endeavours to create a footpath link to Long Strops on the eastern boundary of the appeal site. This would be through a public right of way creation agreement or order under section 25 or section 26 of the Highways Act 1980. It is intended that this new footpath would also link Long Strops to the existing footpath FP44, which currently terminates in a wooded area, some distance to the east of the appeal site.

[18] ID 34, paragraph 4.
[19] ID 1, paragraph 6.6.
[20] ID 18.

44. Table ID4.2 in the SOCG shows the walking distances and times from the centre of the appeal site to the various facilities, assuming there is no new footpath link. Table ID4.3 shows what those distances and times would be, assuming the proposed new footpath is created.

45. Via a unilateral undertaking[21], the appellants would provide funding (£17,000) towards the creation of a further 2 public footpaths in the vicinity of the development. During the round table discussion, Mr Barber from the County Council said that there was a strong argument for the new connection at the eastern boundary of the appeal site. The County Council had not considered that contributions to 2 further connections would meet the tests for a planning obligation. However, Mr Barber said he could see Mr Woolnough's point in relation to wider connectivity and indicated that, if the County Council recognised a good case, they would seek to make those connections.

46. I shall come back to the detail of footpath connections, but note that a separate SOCG relating to highway matters was signed by the appellants and Suffolk County Council, as the highway authority, on 29 May 2018. Among other things, this confirmed those parties' agreement that the appeal site is accessible by all modes of transport and is within walking and cycling distances of a range of local facilities and employment opportunities. Having regard to proposed mitigation measures, the highway authority is satisfied that the appeal site is accessible by all modes of transport.

47. As well as the proposed new footpath link, some improvements to the local highway network and the production of a residential Travel Plan, the proposed mitigation measures include a financial contribution to an enhanced bus service. As agreed by the bus operator, First Group, the existing service on route 66 would divert from Bell Lane into the appeal site, around a turning circle and out again via the single vehicular site access point. A bus stop would be created within the site, so that a majority of the dwellings would be within a 400m walking distance of a stop, and an additional bus would be provided to maintain the frequency of the No 66 service.

48. I heard evidence from Sue Hall, as a local resident, but also the volunteer Public Transport Liaison Officer for Kesgrave Town Council[22]. She expressed concern that running a bus into a cul de sac and back out again is not a good use of time and resources and might not be popular with existing Route 66 passengers. She was supported in this by another local resident, Jane Cody, who also gave evidence. Miss Hall considered that this diversion would add perhaps 20 minutes or more to this route. Whilst acknowledging the offer of funding for an additional bus on this route and extending the service into the site[23], she doubted the viability of the route at the end of this subsidy. Miss Hall cited the example of a service that ran into the cul de sac formed by Glanville Place and Heathview, just to the north east of the appeal site. She explained that, when the County Council's subsidy for this service ended in 2012, it was cut, as the bus company said it was not viable without the subsidy.

[21] ID 19.
[22] ID 24.
[23] The section 106 Agreement, as varied (ID 18 & 20) provides for £120,000 per year for the bus service, index linked, but to a maximum of £600,000.

49. I value the experience and judgement of local people and accept that Miss Hall is very familiar with local public transport issues. However, for the appellants, Mr Dix explained that, assuming an average speed of 14 mph, the 1.2 km diversion into the site would add some 3 to 3 ½ minutes to the route, which now takes about 45 minutes. There is no compelling evidence that the assumed 14 mph average speed is unrealistically high. Indeed Mr Dix explained that it derives from the study of a wide variety of routes. It takes account of delays at stops and junctions and is agreed by the bus company. Whilst Miss Hall and Mrs Cody had particular concerns about the potential for traffic to back up along Bell Lane, account must be taken of the proposal to introduce traffic signals at the Bell Lane/Foxhall Road junction.[24] Mr Dix confirmed that, on a route as long as Route 66, an extra 3 ½ minutes or so would not deter users.

50. Mr Dix also explained that, whilst historically there has been a problem with bus services being discontinued when a subsidy ends, the development of residential travel plans has encouraged people to use services. This usually ensures the continuity of service provision. In any event, First Group has confirmed its view that the subsidy would enable the service to become established and remain viable after the subsidy period. It says this service would make the site accessible to and from Ipswich Town Centre, the Railway Station, the hospital and employment at Adastral Park with BT and other future employers.[25] The County Council also confirmed its support for this approach in its CIL Compliance Statement submitted in May 2018. In all the circumstances, I am satisfied on the balance of probability that the development would benefit from adequate bus access.

51. In terms of overall connectivity, the Council, namely the district Council, refers to the illustrative plans submitted with the application, including the Illustrative Masterplan 7473/050-Rev A04. This shows 5 pedestrian/cycle connections from the northern site boundary to Long Strops. For ease of reference, Mr Woolnough submitted an annotated copy of that plan, with the connections marked 1 – 5.[26] Where I refer to numbered connections points, the numbers are taken from that plan.

52. The connections shown on the annotated plan include one close to the eastern site boundary and marked (5). This would be especially important to ensure reasonable access from Cedarwood Primary School to the proposed playing field in the north-eastern corner of the appeal site. The Council considers that all 5 connections are important to ensure proper connectivity between the proposed development and Kesgrave and its integration with the existing community. However during the conditions/obligations round table session, Mr Woolnough acknowledged that connection (4) might not be essential, as connection (5) would enable access to the school via a gate near the south-eastern corner of the school site. I agree.

53. Mr Dix referred to DfT Guidance contained in Local Transport Note 1/04.[27] This suggests that the mean average utility journey length is approximately 1km for walking and 4km for cycling, though journeys of up to 3 times those lengths are not uncommon for regular commuters. He also refers to the Institution of

[24] ID 31, proposed condition 11.
[25] Mr Dix' proof appendix 15.
[26] ID 32.
[27] Ibid, appendix 6.

Highways and Transportation (IHT) document 'Providing for Journeys on Foot' (2000)[28] which indicates preferred walking distances (in metres) as follows:

	Commuting/school	Elsewhere
Desirable	500	400
Acceptable	1000	800
Preferred maximum	2000	1200

54. Assuming the creation of a new footpath link to Long Strops on the eastern boundary (connection (5)), Mr Dix says that the 2 local primary schools (Cedarwood and Heath Primary Schools) are within the acceptable walking distance of the appeal site and Kesgrave High School is within the preferred maximum distance. Of 22 other local facilities identified, he said that 7 are within the preferred maximum walking distance and 15 are beyond it. However, there is some force in his observation that, if children can be expected to walk 2000m to school, there is no reason why adults should only be expected to walk 1200m elsewhere. On that basis, all of the local facilities would be within the preferred maximum walking distance.

55. Without a new footpath link to Long Strops on the eastern boundary, it is apparent from Table ID4.3 in the SOCG that all but Suffolk Orthodontics and Kesgrave Pharmacy would be beyond even the IHT acceptable commuting/school distances and 2 facilities, including Kesgrave High School, would be beyond the preferred maximum. The creation of a new footpath link cannot be guaranteed. I cannot pre-empt the outcome of an order confirmation process under the Highways Act, assuming agreement cannot be reached with the landowner. However, having regard to the appellants' solicitors notes[29], Mr Barber's comments during the round table session on conditions and obligations and Mr White QC's closing submissions, there is a reasonable prospect of such a connection being achieved.

56. Nevertheless, even if access onto Bell Lane and to Long Strops via one link to the east (connection (5)) would enable acceptable walking and cycling distances with just those connections, the development would still seem like an enclave, separated from Kesgrave by a strong 720m long, 20m wide boundary, comprising a fence, hedge and the Long Strops bridleway. This is not what was envisaged in the Design and Access Statement (DAS)[30] submitted with the application. This noted that Long Strops is well used by pedestrians and cyclists and provides links to the Kesgrave town and the surrounding countryside. The Concept Strategy drawing on page 36 of the DAS actually indicates 5 pedestrian/cycle points to Long Strops, in addition to the proposed new footpath link on the eastern site boundary.

57. I also note Mr Woolnough's evidence that the Long Strops bridleway was incorporated into the masterplan of the Grange Farm estate extension to Kesgrave. He points out that the majority of the southernmost housing in that development faces onto and "directly accesses this important green

[28] Ibid, appendix 7.
[29] ID 11 and 30
[30] CD 2.13.

infrastructure asset and valuable pedestrian, cycle and recreation route."[31] Notwithstanding the proximity to the settlement boundary, I am satisfied that, without suitable links via Long Strops to the Grange Farm estate and Kesgrave, the new development would fail to address the connections between people and places or integration into the natural, built and historic environment. I am not persuaded that one new link at the eastern site boundary would provide an adequate level of connection and such an arrangement would be contrary to advice in paragraph 61 of the Framework.

58. To achieve proper integration with the existing Grange Farm estate, it would make sense for the proposed development to include links to Long Strops in the vicinity of the existing links from that established estate. There is some prospect that such additional connections could be achieved. Accordingly, it would be reasonable and necessary to impose a Grampian style condition to require the reserved matters details of the layout to include connections as shown on the annotated copy of the Illustrative Masterplan e.g. in the vicinity of: the southern extremity of Ogden Close (connection (1)); the path through Fentons Wood which connects with Long Strops at the south-western corner of Fentons Wood (connection (2)); the southern extremity of Hares Close (connection (3)); and the north-eastern corner of the site (connection (5)). The approved connections could be required to be completed for use prior to first occupation of any of the dwellings in the respective phase of the development.

59. In these circumstances, the lack of connectivity achieved by the appellants' current firm proposals need not result in dismissal of the appeal. I conclude on this issue that, subject to the imposition of an appropriate condition, occupiers of the proposed development would have adequate access, particularly pedestrian, cycle and bus access, to shops, services, facilities and employment and the development would be successfully integrated with Kesgrave.

Other material considerations

Out of date policies

60. When setting out the context for consideration of compliance with the development plan, I noted that the requirement in SP2 to make provision for 7,900 new homes in the period 2010 to 2027 is out of date. This is because, regardless of any other arguments, an early review of the CS did not commence by 2015, as required by SP2 itself. Given that SP2 also provided for the distribution of these new homes in accordance with the Settlement Hierarchy in SP19 there is, on the face of things, some logic in the appellants' contention that this would have a "seminal effect" on SP19, SP20, DM3 and SSP2.[32] Indeed, Mr Woolnough accepted during cross examination that SP19 should be accorded less weight, as SP2 is out of date, though he did not accept that in relation to SP20, SP29, DM3 or SSP2.

61. Specifically in relation to SSP2, paragraph 2.16 of the SADPD indicates that physical limits boundaries have been re-drafted to implement CS Policies SP19 and SP2. The Inspector who carried out the EIP stressed that the role of the SADPD was to implement the CS and therefore to meet the housing requirement in that plan.[33] She noted that the OAN and housing policies were

[31] Mr Woolnough's proof, paragraph 7.5.
[32] ID 35, paragraph 4.14.
[33] CD 5.19, paragraphs 26 – 29.

not reviewed in accordance with CS Policy SP2. Accordingly, SP2 was already out of date. Nevertheless, she said that the physical limits boundaries had allowed for space within settlements for minor infill development and also incorporated sites of 5 or more houses where the principle of housing had been accepted by the Council. She found that "a consistent approach had been taken to the drawing of the boundaries, taking public consultation responses into account." Whilst the EIP Inspector noted concerns that sustainable development might potentially be prevented outside those boundaries, she concluded that the physical limits boundaries were "justified, effective and positively prepared."[34]

62. When cross examined, Mr May said that SP29 was not out of date. Indeed, he acknowledged that, if the development plan and planning permissions are meeting the need for housing, there is no reason to reduce the weight of SP29, although he stressed this did not mean the appeal should be dismissed. By contrast, Mr May said that, as a result of SP2 being out of date, SSP2 carries reduced weight, even if the OAN for housing is still being met. In answer to my questions though, he accepted that "the key thing here is the lack of a 5 year housing land supply." Expanding on this, he said that, if the OAN is actually much more than the out of date policy requirement in SP2, the distribution policy, which includes provision for 29% of housing growth in the EIPA, may be inappropriate. Nevertheless, whilst not wanting to entirely "let go of" the relevance of the datedness of SP2, Mr May accepted that this factor did not really have practical consequences if the OAN could still be met; it was just a "policy principle."

63. If sufficient housing can still be provided within the constraints of the key breached policies, SP20, SP29, DM3, and SSP2, there need be no automatic reduction in the weight of these policies, simply because SP2 is out of date and the requirement for 7,900 new homes in the plan period is no longer appropriate. To put it another way, if SP20, SP29, DM3 and SSP2 remain conducive to meeting the district's OAN for housing, the datedness of SP2 would not of itself indicate that the appeal should be determined otherwise than in accordance with the development plan.

Five year housing land supply

64. Paragraph 47 of the Framework requires the Council to identify a supply of specific deliverable sites to provide for 5 years worth of housing against its requirements. However, notwithstanding paragraph 49, given footnote 9, paragraph 119 and the need for an appropriate assessment under the Habitats Regs, a failure to do this would not engage the so-called 'tilted balance' in paragraph 14 of the Framework. The lack of a 5 year housing land supply would be a material consideration, the weight of which would depend on the extent of the shortfall. It would simply be a question of whether this and any other material considerations indicate that the appeal should be determined otherwise than in accordance with the development plan.

65. The appellants contend that the OAN should be taken as 11,000 dwellings over the period 2010 to 2027 (equating to 647 per annum), as accepted in 2013 by the Inspector who conducted the EIP of the CS. This figure was identified by Oxford Economics in 2010 (the 2010 OAN). The Council argues that the appropriate OAN figure is 10,111 dwellings over the period 2014 to 2036,

[34] Ibid, paragraphs 53 – 56.

based on the May 2017 Strategic Housing Market Assessment (SHMA), (equating to 460 dwellings per annum).[35] On an annual basis, this is very similar to the policy requirement in SP2, namely 7,900 dwellings, but over the period 2010 to 2027 (equating to 464 per annum).

66. The appellants do not accept that the Council's housing land supply is as generous as that set out in the June 2018 Housing Land Supply Assessment (HLSA)[36]. Nevertheless, they acknowledge that, even using their own supply side figures, the Council will have a 7.42 year supply, if the 2017 SHMA figure of 460 dwellings per annum is used. This takes into account a 20% buffer, the need for which is agreed because of the Council's acknowledged record of persistent under delivery. Based on the Council's supply side figures, there will be a 9.3 year supply, if the SHMA figure is used.

67. By contrast, on the basis of the appellants' supply side figures and the 2010 OAN for 647 dwellings per annum recognised in the CS, the Council would only have a 2.85 year supply. Even using the Council's supply side figures, it could only demonstrate a 3.57 year supply.[37] Accordingly, as acknowledged by both parties in closing[38], the supply argument is largely academic. Based on the SHMA, the Council can demonstrate a healthy supply of between 7.42 and 9.3 years. Based on the 2010 OAN figure, a supply of between 2.85 and 3.57 years would represent a significant shortfall.

68. The Planning Practice Guidance (PPG) indicates that where evidence in Local Plans has become outdated and where, as here, emerging plans are not yet capable of carrying sufficient weight, information provided in "the latest full assessment of housing needs" should be considered. However, the weight given to these assessments should take account of the fact that they have not been tested or moderated against relevant constraints. Where there is no robust recent assessment, the PPG says household projections published by the Department of Communities and Local Government should be used though again, the weight attributed to these projections should take account of the fact that they have not been tested.[39] Mr May acknowledged during cross examination that, if household projections were used, the Council could show a 5 year housing land supply, but maintained that the 2010 OAN should be used.

69. There are some obvious problems with the 2010 OAN figure. Whilst it was accepted in the context of the CS EIP in 2013, the assessment is now 8 years old and indeed nearly half of the period to which it related has already elapsed. Furthermore, as noted at paragraph 3.30 of the CS, that 2010 assessment was based on old data, namely from the 2001 Census. The CS anticipated its early review in the context of "updated objectively assessed housing needs for the period to 2031", which would have been "re-assessed using information from the 2011 Census." The 2010 assessment was also made long before publication of the PPG and was not therefore undertaken in accordance with that guidance. Mr May accepted in cross examination that, despite having been considered at the CS EIP, the 2010 OAN has not been tested in accordance with the PPG.

70. Ms Howick identified an additional, if less obvious problem, namely that the 2010 OAN relied on EEFM demographic predictions for the district, which she

[35] ID 23, paragraphs 2.7 – 2.8.
[36] ID 4.
[37] ID 23, Table 4.
[38] ID 35, paragraph 5.5 and ID 34, paragraph 39.
[39] ID 25.

said are flawed because they do not take account of the district's "exceptionally elderly population profile."[40] As a result, she says the EEFM job-led housing need figure is "not a credible view of future housing need." Mr May did not contradict this and, though she also emphasised this point in her oral evidence, Ms Howick was not challenged on it in cross examination.

71. A number of appeal decisions concerning sites in this district have been drawn to my attention.[41] Those appeals determined before the Council's acceptance that the policy requirement in SP2 for 7,900 dwellings was out of date and/or without reference to the SHMA published in May 2017 are of little assistance.

72. However, a decision issued on 14 June 2017[42] concerning a site at Woodfield Road, Bredfield did take account of the SHMA. Nevertheless, the Inspector said:

> *"10. The appellant is sceptical of the OAN figure advanced in the new SHMA, especially the proposition that the OAN going forward would be notably lower than the OAN of 11,000 homes confirmed in the CSDMP. For this reason it is likely the 2017 SHMA will be the subject of detailed scrutiny. Moreover, the Council were unable to explain at the hearing what factors had resulted in the apparent fall in the OAN. The SHMA has not been tested at examination and therefore it cannot be afforded full weight. …I revert back to the 11,000 OAN figure confirmed in the CSDMP."*

73. The Council sought permission for a statutory review of that decision in the High Court, one of the grounds being that the Inspector rejected the Council's independent and up to date assessment of OAN in the SHMA. In refusing permission, HH Judge Waksman QC said[43]:

> *"The Inspector was well-entitled to reject the OAN implicit in the SHMA as not being of sufficient weight for the reasons he gave. He was not given a complete copy and the Planning Officer who represented the Claimant's case was unfamiliar with it and could not assist as to why the OAN had gone down significantly since 2013 and it had not been independently examined…"*

74. The judgement of the court in that case does not necessarily establish that the 2011 OAN figure is to be preferred over the OAN figure from the 2017 SHMA. The court merely ruled that, on the evidence before him, the Inspector in the Bredfield appeal was entitled to take the approach that he did. This does not mean it would not be open to me to take a different approach, especially given that I have been presented with the complete SHMA and more detailed evidence and explanation, in particular from Ms Howick, who directed the SHMA for the Council.

75. Of greatest significance, is the Secretary of State's decision concerning Candlet Road, Felixstowe[44], issued on 31 August 2017. However, the inquiry closed in September 2016 and the Inspector's report was issued January of that year, before publication of the 2017 SHMA. This was then forwarded to the Secretary of State, but given limited weight. The Secretary of State said:

[40] CD 12.1, paragraphs 2.4 and 3.31.
[41] CDs 8.1 – 8.6, 11.2, 11.3, 11.26, 13.3 and 13.4.
[42] CD 11.3.
[43] ID 26
[44] CD 13.3.

> *"17. Since the inquiry was held, relevant documents have been published. The Suffolk Coastal District Council Housing Land Supply Assessment 1st April 2017 – 31st March 2022 (HLSA) was published in June 2017. It draws on the conclusions of the Ipswich Policy Area Strategic Housing Market Assessment (SHMA), which was published in May 2017. An appeal decision relating to Woodbridge Road, Bredfield (APP/J3530/W/16/3165412) was issued on 14 June 2017. The Council has further provided material relating to discussion of the SHMA at the Bell Lane inquiry (APP/J3530/W/16/3160194).*
>
> *18. The Secretary of State has considered whether the figure of 11,000 should be amended in the light of this new information. The SHMA identifies an OAN figure of 460dpa, roughly in line with the CS figure. He has taken into account that the HLSA acknowledges that this figure has not been tested, and that this will happen as the Local Plan Reviews progress … The Secretary of State considers that testing of the SHMA figure is particularly important in this case. He notes that the SHMA highlights several uncertainties: e.g. the causes of UPC[45] cannot be satisfactorily explained, and hence excluding it from future projections could either underestimate or overestimate trend-driven demographic change; migration and household formation are difficult to measure for the past and even more difficult to predict for the future; and there are difficulties in identifying the appropriate housing market uplift. In the light of these uncertainties, the Secretary of State considers it is important that the SHMA is subject to consultation, scrutiny and independent objective testing. He further considers that it is not appropriate or necessary for him to attempt to resolve these uncertainties within this appeal process.*
>
> *19. He agrees with the Bredfield Inspector's reasoning in paragraph 11 of his decision letter that the fact that the recently adopted DPD was found sound based on a housing requirement of 7,900 homes does not alter the fact that the OAN is identified in the CS as 11,000 homes, and that the Framework states that the housing requirements of an area should be based upon this.*
>
> *20. For these reasons, he considers that the OAN set out in the SHMA carries limited weight, and considers that a figure of 11,000 for the OAN is appropriate in the current case..."*

76. The post inquiry representations to the Secretary of State[46] included Ms Howick's proof and rebuttal proof for the first inquiry into this appeal[47], in which she addressed some criticisms of the SHMA. However, the appellant's agent urged the Secretary of State to reach the same conclusion as the Bredfield Road appeal Inspector concerning the weight to be afforded to the SHMA and suggested that, if he were minded to take a different view, the inquiry should be reopened. The inquiry was not reopened and the Council did not challenge the Secretary of State's decision. Nevertheless, though he acknowledged receiving material relating to discussion of the SHMA at the first Bell Lane inquiry, with respect, the Secretary of State did not specifically address the points raised by Ms Howick in response to criticisms of the SHMA.

77. In his proof for this inquiry, Mr May relied on the Secretary of State's conclusion on OAN in the Felixstowe appeal and said there had been no change

[45] Unattributable Population Change (se CD 11.6 at appendix C)
[46] ID 26.
[47] CDs 12.1 and 12.2.

of circumstances which would invalidate that conclusion. To quote from his summary proof, he said the "five-year housing land supply position overall is settled for the purposes of this appeal" by that Felixstowe decision. I also note that, following a hearing, a decision on an appeal concerning a site at Grimston Lane, Trimley St Martin also took the Felixstowe line. The Inspector concluded that due to "the uncertainties implicit in the SHMA, and the lack of testing through plan examination" the OAN figure from the SHMA was not "sufficiently robust."[48]

78. In chief, Mr May said he did not have particularly strong views about the 3 examples of areas of uncertainty in the SHMA figure, identified in paragraph 18 of Secretary of State's decision in the Felixstowe appeal. He did not contradict Ms Howick's evidence[49] that those uncertainties are merely general comments about methodological issues; they are not specific to this SHMA or this district and not material in changing the OAN figure. He did not contradict Ms Howick's view that the Secretary of State's reference to identifying the appropriate housing market uplift are not substantiated by the SHMA; it concludes that a 15% market signals uplift is justified and identifies no factors which make setting the uplift problematic. Indeed, the appellants suggest no alternative uplift.

79. Furthermore, when cross examined on the point, Mr May confirmed that he had no criticisms of the SHMA, in terms of what it set out to do, its appropriateness in terms of the PPG, or the housing market area chosen. He agreed that no discounts had been applied to the full OAN and he had no objections to the credentials of Peter Brett Associates, who carried out the SHMA. In these terms, the appellants made no attack on the robustness of the SHMA.

80. In October 2017, Mr May's firm, Pegasus, did make criticisms of the 2017 SHMA firm in the context of the Local Plan Review.[50] Ms Howick confirmed that these were essentially the same points that had been made by Mr May at the first inquiry in this appeal.[51] They concerned: (a) the use of short term migration trends as the basis for deriving a baseline demographic projection of housing need; (b) the inadequacy of the assessment of past under-delivery of housing in order to establish the extent to which an uplift to the baseline demographic need should be applied; and (c) the use of un-justified and unrealistically high activity rates for the over-65 age group in order to balance jobs growth with the demographic baseline.

81. Ms Howick responded to these points in her rebuttal proof and technical note for the first inquiry[52]. In short, she said that: (a) it would be inappropriate to use the longer base period for in-migration advocated by Pegasus, because that would include a period of exceptionally high in-migration associated with enlargement of the EU - a one-off peak, which is unlikely to be repeated; (b) whilst there had been an undersupply, completions had broadly followed the national trend, so that a 15% uplift is sufficient to respond to that undersupply; and (c) the change in activity rates predicted by EEFM and relied on by Pegasus is almost exactly the same as that predicted by Experian and used in the SHMA. Ms Howick was not challenged on her responses to those points and

[48] CD13.4, paragraph 8.
[49] Ms Howick's proof, paragraphs 2.17 – 2.19.
[50] CD 12.9.
[51] Ms Howick's proof, paragraph 2.24.
[52] CD 12.2 and 12.3

Mr May did not seek to pursue them at this inquiry. He simply said that Ms Howick did not address the fundamental point that the SHMA had not been tested and said this could only be properly achieved through an EIP.

82. I will return to the question of testing. However, on the evidence before me, I am satisfied with Ms Howick's responses to the criticisms of the SHMA set out in the October 2017 Pegasus report. I am also satisfied by her responses to the examples of uncertainties stated in paragraph 18 of the Secretary of State's decision in the Felixstowe appeal.

83. In a supplemental note[53], Mr May did also say that the weight of the SHMA OAN is "further undermined" by the publication in May 2018 of the most recent 2016-based Sub-National Population Projections (SNPP) by the Office for National Statistics (ONS) and the revised Mid-year Population Estimates (MYE) issued 22 March 2018. At the time of the SHMA, the 2014-based SNPP were the most up to date projections. Over the period 2014 – 36, the 2016-based population projections show a 52% greater increase in population than is suggested by the 2014-based projections.

84. However, Mr May did not suggest that the 2014-based household projections have been rendered out of date, as it will be necessary to await publication by the ONS of the official household projections in September 2018. These will apply household representative rates to the 2016-based population projections. Mr May was not suggesting that those projections "can be used to derive a proxy figure for household growth and hence the demand for dwellings in Suffolk Coastal for the purposes of this appeal."[54]

85. Nevertheless, Mr May did contend that this most up to date evidence casts "further doubt" on the robustness of the SHMA OAN figure and reinforces the Secretary of State's decision that the 2010 OAN figure is the appropriate one to use. In her supplementary note in response[55], Ms Howick acknowledged that the SNPP and MYE are relevant evidence which should be taken into account in any future assessment of housing need, but they would have to be tested and possibly adjusted, before being translated into estimated need, just as the 2014-based figures were when the SHMA was produced. It is perhaps ironic that the appellants rely on recent data to cast doubt on an assessment carried out in 2017, but then urge me to prefer an assessment undertaken back in 2010 and informed by the 2001 Census.

86. There is of course some irony on both sides of the argument because, just as the latest SNPP and MYE have not been tested, the lack of testing of the SHMA is the appellant's principal objection to it, reflecting the Secretary of State's decision in the Felixstowe appeal. Ms Howick accepted, both in her proof for the first inquiry in this appeal and when cross examined during my inquiry, that the weight of the SHMA is reduced because it has not yet been tested through an EIP. The PPG[56] makes that clear in any event. However, the specific criticisms that have been levelled at the SHMA and the uncertainties identified by the Secretary of State in the Felixstowe appeal have not stood up to the scrutiny enabled by my inquiry, albeit that such scrutiny is limited compared to that provided by an EIP, to which many parties could contribute.

[53] ID 2.
[54] ID2, paragraph 1.15.
[55] ID 8.
[56] ID 25.

87. Although the SHMA has been subject to consultation, the responses had not been analysed at the time of my inquiry and the Council has not formally resolved to 'adopt' the SHMA OAN. I cannot assume that the SHMA would emerge unaltered from the rigorous testing process of an EIP. However, there is no evidence before me to indicate that any representations have so far been made which would undermine the SHMA. The lack of testing reduces its weight but, in terms of the PPG, it is still "the latest full assessment of housing needs."

88. In any event I am satisfied that the SHMA OAN figure carries considerably more weight than the 2010 OAN, which: was based on data from the 2001 Census; was not arrived at in the context of the PPG; and which the CS itself recognised would need to be updated in the course of an early review of the CS, using information from the 2011 Census. The 2010 OAN is old and by no means the latest full assessment of housing needs. Clearly, it is even more out of date than it was when the Felixstowe decision was made. There is also Ms Howick's unchallenged evidence that the 2010 OAN is derived from technically flawed EEFM predictions.

89. I accept that consistency in decision making is an important objective and I am very conscious that my conclusion is a departure from previous decisions, especially the Secretary of State and Inspector's decisions in the Felixstowe, Bredfield and Trimley St Martin appeals. I made it clear during the inquiry that I would need good reasons to depart from the approach to OAN taken in those decisions, but I am satisfied that good reasons have ben advanced.

90. I conclude on the evidence that, notwithstanding its reduced weight, the 2017 SHMA is to be preferred to the 2010 OAN in providing, in accordance with the PPG, the latest full assessment of housing needs for the purposes of this appeal. The importance of a recent SHMA, despite a lack of testing, was acknowledged in another appeal to which I have been referred concerning a site at Walton-on-Thames.[57] As in that case, my conclusion on OAN is without prejudice to any assessment of OAN or the housing requirement that may be made in the context of the emerging local plan.[58]

91. I note that the proposed standard method of assessing local housing need would change matters, but this will only come into effect when the revised Framework is published. Though this is likely to happen very soon, both parties agree that no weight can be given to the anticipated change. That said, the appellants accept that, if the standard methodology were in play, the Council would be able to demonstrate a 5 year housing land supply anyway.[59] The expected introduction of the standard method means the SHMA will not be tested at an EIP and the SHMA OAN figure will not make its way into the local plan. However, I do not accept Mr White QC's submission in closing[60] that this factor supports use of the 2010 OAN. Clearly the 2010 OAN will not make it into the local plan either and the SHMA figure still represents the latest full assessment.

92. On the basis of the 2017 SHMA OAN, and even if the appellant's supply-side evidence were accepted in full, the Council would have a healthy 7.42 year supply of housing land. Accordingly, whilst the Framework seeks to boost

[57] CD 12.6, paragraph 340 of the Inspector's report.
[58] Ibid, paragraph 373.
[59] Mr May's proof, paragraph 6.39
[60] ID 35, paragraph 5.3.3

significantly the supply of housing, the evidence indicates that the Council is in a position to achieve that. In this context, the fact that the proposal would provide a substantial quantity of new housing carries only limited weight in favour of the appeal, as indicated by Mr Woolnough[61]. This is in contrast to the Felixstowe appeal where the supply of housing was only 3 – 3.5 years. Though this is not relevant to the basis of the challenge in *St Modwen Developments Ltd V SSCLG, East Riding of Yorkshire Council and Anor* [2017] EWCA Civ 1643, to which Mrs Townsend drew my attention in closing, I note that the Inspector in that case said at paragraph 13.65 of her report: *"Since it has not been shown that there is any pressing need for additional sites to come forward to sustain the local supply of housing, I consider that the appeal proposals would not deliver additional benefits by virtue of their contribution to that supply."*

93. I turn now to the other material considerations advanced by the appellants.

The provision of affordable housing

94. As well as delivering 200 units of market housing, the proposal would provide 100 affordable units. Mr May said that, whilst the lack of affordable housing was a national problem, this consideration should carry significant weight. Mr Woolnough acknowledged that the provision of this quantity of affordable housing would be a benefit, even with a 5 year supply of housing land. However, he said that, with a healthy supply of 7 years or more and a large number of allocated and consented sites, including the 2,000 dwelling development at Brightwell Lakes (formerly Adastral Park), a considerable amount of affordable housing will come forward without this development. Furthermore, the appeal scheme's contribution to affordable housing would not be proportionally greater than that of other significant schemes.

95. In her evidence, Ms Howick said that, at 8.95, the 2017 "affordability ratio"[62] for this district is a little above the average of 7 or 8 for England and Wales, but it is not exceptionally high. I note by comparison that the ratios for Blaenau Gwent, Chelmsford and Kensington and Chelsea are 3.35, 11.38 and 40.69 respectively. In all the circumstances, I attach moderate weight to the contribution this scheme would make to the provision of affordable housing.

The economic benefits

96. As detailed in the SOCG, the building of this development would provide a significant number of jobs during the construction phase and it would support local business, increasing local spend, once the new dwellings are occupied. I accept the evidence of both Mr May and Mr Woolnough that this benefit carries moderate weight.

The social benefits

97. Similarly, I see no reason to depart from the view of Mr May and Mr Woolnough that the development would bring social benefits associated with the provision of a wide range of types and tenures of housing and that this factor should be given moderate weight.

[61] Mr Woolnough's proof, paragraphs 8.29 – 8.30.
[62] ID 17.

Footpath creation

98. Though not highlighted in closing, Mr May's proof referred to the proposed link between FP44 and Long Strops, as a component of the "social benefits." This would be achieved through a section 106 contribution and the imposition of a Grampian style condition. It would improve access to the countryside and I attach limited weight to this additional, specific benefit.

Provision of the school land

99. This development would generate a need for increased capacity at Cedarwood Primary School. The provision of land for a playing field would enable the school to expand on its existing site just to the north. This is largely mitigation, but Mr May said that a little more land would be provided than is actually needed. To the extent that this represents a benefit, I attach very little weight to it.

Development in a highly sustainable location

100. The appeal site is in close proximity to Kesgrave Town and its facilities and services, and it would have access to public transport. However, its development would not accord with the development plan strategy and, given the healthy supply of deliverable housing land, the sustainability of the location carries limited weight in favour of the development.

Wider improvements to highway safety

101. The provision of traffic lights at the junction of Foxhall Road and Bell Lane would mitigate the impact of traffic generated by this development. However, Mr Woolnough acknowledged under cross examination that these improvements would have some wider benefits identified in the Transport Assessment[63]. He agreed with Mr May that this consideration carries moderate weight and I see no reason to differ.

Biodiversity gains

102. As agreed in the SOCG, enhanced planting and biodiversity measures across the site would result in a net gain, when compared with a cropped agricultural field. Mr May and Mr Woolnough agreed that this factor also attracts moderate weight and again, there is no reason for me to take a different view.

Other matters

103. In his written closing submissions, Mr White QC referred to the costs decision following the first inquiry in this appeal[64], which was not challenged by the Council. The costs decision said there was "little or no substance to" the Council's refusal, but this was by reference back to the substantive decision, which has been quashed. When supplementing his closing submissions orally, Mr White QC confirmed that he did not in fact ask me to place any reliance on the terms of the costs decision. I have not done so.

Planning balance and conclusion

[63] CD 2.19.
[64] ID 5.

104. I have found that, subject to the imposition of an appropriate condition, occupiers of the development would have adequate access to shops, services and facilities and the development would be successfully integrated with Kesgrave. However, the appeal proposal does not accord with the development plan, as it would give rise to serious conflict with the key policies for consideration of the appeal, namely CS Policies SP20, SP29, DM3 and SADPD Policy SSP2. Having found that the Council has a healthy supply of housing land, the weight of the breached key policies is not reduced, merely because SP2 is out of date on its own terms and it has not been suggested that any of the key policies conflict with the Framework.

105. Mr Woolnough suggested that the cumulative weight of the other considerations in favour of the appeal is only moderate. My analysis of the other considerations advanced reveals 5 of moderate weight, 3 of limited weight and 1 of very little weight. Taken together, these must be given significant weight in favour of the proposal and, in this regard, I accept the submission of Mr White QC in closing.[65]

106. Nevertheless, paragraphs 12 and 150 of the Framework support the plan-led system enshrined in section 38(6) of the PCPA 2004 and make it clear that Local Plans are the key to delivering sustainable development. This principle has been reinforced by the courts and I note Mrs Townsend's reference in closing[66] to paragraph 40 of Sales LJ's judgement in *Gladman v Daventry DC* [2016] EWCA Civ 1146. Notwithstanding their significant cumulative weight, I conclude that the other material considerations identified are insufficient to indicate that the appeal should be determined otherwise than in accordance with the development plan. I am therefore satisfied that the appeal should be dismissed, whether or not the development would adversely affect the integrity of the Deben Estuary Site. It is not therefore necessary for me to undertake an appropriate assessment in accordance with the Habitats Regs.

Decision

Appeal Ref: APP/J3530/W/16/3160194

107. The appeal is dismissed.

J A Murray

INSPECTOR

[65] ID 35, paragraph 6.10.
[66] ID 34, paragraph 12.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Harriet Townsend of counsel, instructed by the Solicitor to Suffolk Coastal District Council

She called

Cristina Howick MA MSc	Partner, Peter Brett Associates LLP
Ben Woolnough BSc(Hons) MSc MRTPI	Major Projects Advisor, Suffolk Coastal District Council

Luke Barber BSc DipME DipCE, Senior Development Management Engineer, Suffolk County Council, also took part in the round table discussion of conditions and planning obligations.

FOR THE APPELLANT:

Sasha White QC and Anjoli White of counsel, instructed by Tim Johnson of Shoosmiths LLP

Mr White called

Ian Dix BSc(Hons) MSc MCIT MCIHT	Director, Vectors transport planning specialists
Christopher May BA(Hons) MRTPI	Executive Director, Pegasus Planning Group

Mark Hewett, Partner, Intelligent Land also took part in the round table discussion of housing land supply.

Tim Johnson of Shoosmiths LLP also took part in the round table discussion of conditions and planning obligations.

INTERESTED PERSONS:

Avtar Athwall, local resident and Member of Kesgrave Town Council

Sue Hall, local resident and volunteer Public Transport Liaison Officer for Kesgrave Town Council

Jane Cody, local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1 Statement of Common Ground dated 25 June 2018
2 Christopher May's Supplementary Note re Objectively Assessed Housing Need
3 Inspector's Pre Inquiry Note
4 Council's Housing Land Supply Assessment for 1 April 2018 – 31 March 2023, published June 2018
5 Costs decision of P W Clarke dated 16 October 2017 following the previous inquiry in this appeal
6 Erratum to Ben Woolnough's proof of evidence
7 Summary of Ben Woolnough's proof of evidence
8 Cristina Howick's Supplementary Note on Housing Need
9 Primary school roll forecasts summer term 2018
10 Mrs Townsend's submissions concerning previous appeal decisions
11 Note prepared by Tim Johnson solicitor concerning sections 25 and 26 of the Highways Act 1980
12 Opening submissions by Sasha White QC and Anjoli Foster for the appellants
13 Opening submissions by Harriet Townsend for the Council
14 Draft Supplemental Statement of Common Ground on Housing Land Supply (ultimately superseded by Inquiry Document 23)
15 Council's preferred version of table 4 in Inquiry Document 14 (ultimately superseded by Inquiry Document 23)
16 Copy of Core Document 12.4 (Planning for the right homes in the right places: consultation proposals: housing need consultation data table)
17 Copy of Core Document 12.5 (Ratio of median house price to medium gross annual (where available) workplace-based earnings by local authority district, England and wales, 1997 – 2017)
18 Section 106 Agreement dated 23 August 2017
19 Unilateral Undertaking dated 23 August 2017
20 Deed of variation dated 26 June 2018 (varying section 106 Agreement dated 23 August 2017)
21 Statement of Avtar Athwall, Kesgrave Town Councillor and local resident
22 Supplemental Note of Mark Hewett (submitted for the purposes of the housing land supply round table session)
23 Agreed Supplemental Statement of Common Ground concerning Housing Land Supply (to replace Inquiry Documents 14 and 15)
24 Statement of Miss Sue Hall, local resident and volunteer Public Transport Liaison Officer for Kesgrave Town Council
25 Extract from Planning Practice Guidance (Ref ID: 3-030-20140306) concerning the starting point for the 5-year housing supply
26 Post Inquiry representations to the Secretary of State re Candlet Road Felixstowe Ref APP/J3530/W/15/3138710 and the Order of HH Judge Waksman QC in *Suffolk Coastal DC v SSCLG and David Wood and Associates* CO3486/2017
27 Number not used
28 Mr Ian Dix's response to the evidence of Sue Hall
29 Ben Woolnough's email to the Planning Inspectorate dated 9 March 2017
30 Note prepared by Tim Johnson solicitor concerning the section 106 planning obligations, school land option and sections 25 and 26 of the Highways Act 1980

31 Revised schedule of suggested conditions
32 Copy of the Illustrative Master Plan No. 7473/050/Rev A04 annotated to show the Bell Lane footway access and 5 possible access from the site to the Long Strops bridleway
33 Option Agreement dated 23 August 2017 concerning land for use as a school playing field
34 Closing submissions by Harriet Townsend for the Council
35 Closing submissions by Sasha White QC and Anjoli Foster for the appellants