



Ministry of Housing,
Communities &
Local Government

Our ref: APP/Z1510/W/18/3197293

Your ref:

Mr Pravin Patel
PPML Consulting Ltd
The Kinetic Centre
Theobald Street
BOREHAMWOOD
Hertfordshire
WD6 4PJ

13 June 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
UP TO 1500 RESIDENTIAL DWELLINGS, A LOCAL CENTRE; A PRIMARY SCHOOL
SITE; EMPLOYMENT LAND; PUBLIC OPEN SPACE; AND ASSOCIATED HIGHWAY
WORKS WITH NEW ACCESSES VIA PODS BROOK ROAD AND RAYNE ROAD AND
DEMOLITION OF NOS 27 & 29 GILDA TERRACE, RAYNE ROAD MADE BY ACORN
BRAINTREE LTD
LAND AT NORTH AND SOUTH OF FLITCH WAY, PODS BROOK ROAD, BRAINTREE,
ESSEX, CM77 6RE
APPLICATION REF: 15/01538/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Richard Clegg BA(Hons) DMS MRTPI, who held a public local inquiry on 4, 5, 7, 11-14, 18, 19 & 21 September 2018 into your client's appeal against the decision of Braintree District Council to refuse your client's application for planning permission for up to 1600 residential dwellings, a local centre; a primary school site; employment land; public open space; and associated highway works with new accesses via Pods Brook Road and Rayne Road and demolition of Nos 27 & 29 Gilda Terrace, Rayne Road in accordance with application ref: 15/01538/OUT, dated 18 December 2017
2. On 21 March 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed, and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry. Having taken account of the Inspector's comments at IR6, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes that at the pre-inquiry meeting, the Appellant agreed that the site is more clearly referred to as land north and south of Flitch Way, Pods Brook Road, Braintree, and the site has been identified accordingly in the appeal details above. The Appellant also agreed that the description of development should refer to 1600 dwellings rather than 1600 residential dwellings. The Secretary of State also notes that at inquiry due to the relocation of the school, the Appellant advised that the proposal would provide up to 1500 dwellings. The Secretary of State has therefore considered the proposal on this basis. However, the Secretary of State does not consider that the issue that led to these changes raised any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

7. On 5th March the Secretary of State wrote to the main parties to afford them an opportunity to comment on the following documents that had been published since the Inquiry took place: The Written Ministerial Statement on housing and planning, issued on 19 February 2019, the publication, on 19 February 2019, of the 2018 Housing Delivery Test measurement by the local planning authority and a technical note on the process used in its calculation, the Government's response to the technical consultation, the revised National Planning Policy Framework published on 19 February 2019 and updates to the national planning policy and guidance, also published 19 February 2019, the updated guidance for councils on how to assess their housing needs published on 20 February 2019. On 15th March the Secretary of State also wrote to the main parties outlining that the January update figures provided by Braintree Council had been replaced with a new set of revised figures as of 5 March. A list of representations received in response to these letters is at Annex A. These representations were circulated to the main parties on 28 March 2019. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State has taken the representations into account in reaching his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case, the adopted development plan for the area comprises the Braintree District Council Local Development Framework Core Strategy (CS), the saved policies of the Braintree District Review Local Plan, the Essex Minerals Local Plan and the Braintree District Council Proposals Map. The Secretary of State considers that the development plan policies of most relevance to this case include those set out at IR 24 to IR 31.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019, unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.,
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

13. The emerging plan comprises the Braintree Local Plan outlined in the Inspectors Report at IR 32 to IR 35. The Secretary of State considers that the emerging policies of most relevance to this case include those set out in IR32 to IR35.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that on 8 June 2018, the Inspector for the emerging Local Plan wrote to the three local planning authority areas covered by the Part 1 Examination, setting out his views as to the further steps he considered necessary in order for the Section 1 Plan to be made sound and legally-compliant, and seeking views on options to pursue these matters. A joint response from the three authorities dated 19 October proposed suspending the Examination until February 2019, with a view to sitting again in June. In the light of these letters, and for the reasons given in IR32 to IR35 the Secretary of State agrees with the Inspector that only limited weight should be given to the BNLP.

Main issues

Heritage Assets

15. The Secretary of State notes that the Inspector found that development towards the western end of the appeal site would be within the setting of listed buildings and also Rayne conservation area. He agrees with the Inspector that the settings of Church of All Saints and the conservation area would not be adversely affected (IR 177 to IR 179). However, for the reasons given in IR 172 to IR 176 the Secretary of State concludes that the setting of the listed building, Naylinghurst, would be moderately adversely affected.

Having regard to paragraph 196 of the Framework, the Secretary of State agrees with the Inspector that this would represent less than substantial harm to its significance. The Secretary of State considers that the harm to the significance of Naylinghurst carries great weight as the ability to appreciate the listed building in its agricultural context would be diminished (IR 174).

Character, appearance and separation of Braintree and Rayne

16. For the reasons given in IR 182 to IR 197 the Secretary of State agrees with the Inspector that the proposal would cause harm to the character and appearance of the area, including a residual effect of major-moderate significance in the wider Landscape Character Area A12, and a substantial adverse effect arising from the loss of the appeal site itself. The Secretary of State further agrees with the Inspector that the loss of views and open outlook from the Flitch Way and the public footpaths crossing parcel B would both suffer a major adverse impact. Taken together, these harms attract considerable weight.
17. The Secretary of State notes that the appeal site lies within the open gap between Braintree and Rayne and contributes to the green wedge which has been outlined in the emerging Local Plan (IR 198), although the weight to be attached to this plan is limited. The Secretary of State agrees with the Inspector for the reasons given in IR 198 to IR 200 that the appeal proposal would appreciably diminish the sense of separation between the settlements of Braintree and Rayne, particularly as experienced from the Flitch Way, and that this harm attracts moderate weight.

Traffic movement and sustainable travel

18. The Secretary of State notes the Inspector found that Pods Brook Road provides a link between Braintree town centre and the A120 and is a well-used route with points of pressure with delays occurring at peak periods. (IR 201-2). The Secretary of State agrees with the Inspector that a full package of transport measures including highway works in addition to sustainable transport measures is necessary to ensure that the residual cumulative impact on the road network would not be severe (IR 205). The Secretary of State notes that a range of sustainable travel measures are included in the scheme, including works to the Flitch Way, footway and cycle way links, and a bus service. (IR220). The Secretary of State agrees with the Inspector that these measures would provide a benefit to the existing community, although their primary purpose is to ensure that appropriate opportunities for sustainable transport modes are available in connection with the proposed development. The Secretary of State considers the benefits to the wider community merit some limited weight.

Housing land supply

19. The Secretary of State notes the Inspectors comments regarding the five years supply of housing land in Braintree district (IR 217). However, on 11 April, the local authority published an Addendum to their Monitoring Report, and a 5 Year Supply Site Trajectory. This reflected new affordability ratios published by the Office for National Statistics on 28 March 2019, and additional information relating to supply of sites.
20. In summary, the Addendum set out a five years land supply position for the authority of 5.29 years. While the version of the monitoring statement on which the Secretary of State referred back to parties was published on 15 January, given the minor change in the authority's assessment from 5.42 years supply to 5.29 years, and given his

conclusions below, the Secretary of State did not consider it necessary to further refer back to parties on this issue.

21. The Secretary of State has reviewed the material published on 11 April and has also considered the representations of parties made on this issue in response to his letters of 5 and 15 March.
22. Planning Practice Guidance states that in principle an authority will need to be able to demonstrate a five years land supply at any point to deal with applications and appeals, unless it is choosing to confirm its five years land supply, in which case it need demonstrate it only once per year. *Paragraph: 038 Reference ID: 3-038-20180913*
23. In this case, the authority has not 'confirmed' its five years land supply. Paragraph 74 of the National Planning Policy Framework sets out that this can only be carried out through a recently adopted plan (defined in footnote 38 of the Framework) or subsequent annual position statement. In the circumstances, the Secretary of State has considered the latest evidence before him.
24. Having reviewed the housing trajectory published on 11 April, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission do not meet the requirement in the Framework Glossary definition of "deliverable" that there be clear evidence that housing completions will begin on site within five years. He has therefore removed ten sites from the housing trajectory.
25. The Secretary of State considers that, bearing this definition in mind, the authority is able to demonstrate 4.15 years supply. The Secretary of State considers that the delivery of housing and affordable housing on this site to contribute to the five years supply is an important contribution to which he attaches significant weight.

Travellers site

26. The Secretary of State agrees with the Inspector (IR 208) that the proposal would assist in the contribution to meeting the need for Traveller accommodation and would be consistent with the local plan policy representing a benefit of the proposal, the Secretary of State considers that this merits modest weight.

Primary school education contribution, open space and sports facilities

27. For the reasons given in IR 221 the Secretary of State agrees with the Inspector that the provision of a primary school within the site would be of limited benefit as the majority of the provision would be needed for the proposed development, and only a small number of school places would be available for the wider community. Therefore, the Secretary of State considers that the provision of a primary school on site attracts limited weight. The Secretary of State also notes the Inspectors findings (IR 222) that a minimum of 17.65ha of open space would be provided over the site. The Secretary of State considers that the open space would no doubt be used by existing residents, but its purpose is essentially to ensure a satisfactory standard of development, he therefore only gives this limited weight.

The local centre, employment land and economic considerations

28. For the reasons given in IR 224 the Secretary of State agrees with the Inspector's findings that the local centre would primarily serve the new residential development he

therefore considers this carries limited weight in support of the scheme. For the reasons given in IR 225 and IR 226 the Secretary of State agrees with the Inspector that the economic benefits of the proposal carry moderate weight as the benefits outlined are of a generic nature which would apply equally to any large housing scheme.

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR 230 to IR 232, the recommended conditions set out at the end of the Inspectors Report and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

30. Having had regard to the Inspector's analysis at IR228 and IR229, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR 229 that the obligation proposed, but not signed (Core Document 6.9 of the Inquiry documents), complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with CS1, CS4, CS5, CS7, CS8, CS9, RLP 53, RLP 80, RLP 84, RLP90, RLP95, RLP 100, RLP 140 and S8 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

32. The Secretary of State has concluded that Braintree are not able to demonstrate a five year housing land supply. Framework paragraph 11(d) of the Framework indicates that in these circumstances planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

33. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Naylinghurst is outweighed by the public benefits of the proposal, as required by paragraph 196 of the Framework. He has found that great weight should be attributed to this harm. Against this, the benefits of the scheme in the form of housing provision and affordable housing carry significant weight, economic benefits carry moderate weight and limited weight attaches to benefits in terms of sustainable travel measures, surplus school places, open space provision, and the local centre and employment land which form part of the scheme. In total and weighed against the harm to the significance of Naylinghurst, the Secretary of State finds that the public benefits do

outweigh the harm to the significance of Naylinghurst, and that the Framework paragraph 196 test is therefore favourable to the proposal.

34. Having carried out the balancing exercise in framework paragraph 196, the Secretary of State concludes that there are no policies under 11 d) i that provide a clear reason for refusing the development. He has gone on to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
35. In addition to the great weight to be attached to the harm to the significance of Naylinghurst, the Secretary of State has found that the effect of major-moderate significance in the wider Landscape Character Area A12 carries at least moderate weight, and the substantial adverse effect arising from the loss of the appeal site itself, carries considerable weight, as does the loss of views and open outlook from the Flitch Way and the public footpaths crossing parcel B. Moderate weight is also given to the effect the development will have on the separation of Braintree and Rayne, all weighing against the proposal.
36. In favour of the proposal are the benefits as set out in paragraph 33 of this letter.
37. Overall, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. He therefore concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Formal decision

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 1500 residential dwellings, a local centre; a primary school site; employment land; public open space; and associated highway works with new accesses via Pods Brook Road and Rayne Road and demolition of nos 27 & 29 Gilda Terrace, Rayne Road.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. A copy of this letter has been sent to Braintree District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

SCHEDULE OF REPRESENTATIONS**General representations**

Party	Date
No Brook Green Action Group	16/03/2019
PPML Consulting Ltd	22/03/2019
Braintree District Council	26/03/2019



Report to the Secretary of State for Housing, Communities and Local Government

by Richard Clegg BA(Hons) DMS MRTPI

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

Date: 11 January 2019

TOWN AND COUNTRY PLANNING ACT 1990

BRAINTREE DISTRICT COUNCIL

APPEAL BY

ACORN BRAINTREE LTD

Inquiry opened on 4 September 2018

Land north & south of Flitch Way, Pods Brook Road, Braintree, Essex, CM77 6RE

File Ref: APP/Z1510/W/18/3197293

File Ref: APP/Z1510/W/18/3197293

Land north & south of Flitch Way, Pods Brook Road, Braintree, Essex, CM77 6RE

- 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 Acorn Braintree Ltd against the decision of Braintree District Council.
- The application Ref 15/01538/OUT, dated 11 December 2015, was refused by notice dated 18 December 2017.
- The development proposed is described as 'up to 1600 residential dwellings (class C3) on 32.75ha of land; an 800m² local centre (use classes A1/A2/D1/D2 – no more than 200m² A1) on 0.29ha of land; a 2.2ha primary school site (class D1); 0.65ha employment land (class B1); 12.3ha of public open space; and associated highway works with new accesses via Pods Brook Road and Rayne Road and demolition of Nos 27 & 29 Gilda Terrace, Rayne Road'.
- The inquiry sat for 10 days: 4, 5, 7, 11-14, 18, 19 & 21 September 2018.
- Site visits took place on 3 & 20 September 2018.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The appeal was recovered for decision by the Secretary of State by a direction dated 21 March 2018, as it involves proposals for residential development of over 150 units or on sites of over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed, and inclusive communities.
2. No Brook Green Action Group (NBGAG) had served a statement of case in accordance with Rule 6(6) of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000, and it took a full part in the proceedings of the inquiry.
3. A pre-inquiry meeting was held in July 2018 to discuss procedural and administrative arrangements relating to the inquiry¹.
4. On the application form, the location of the site is given as Flitch Way, Rayne, Braintree. At the pre-inquiry meeting, the Appellant agreed that the site is more clearly referred to as land north and south of Flitch Way, Pods Brook Road, Braintree, and I have identified it accordingly in the appeal details above. The Appellant also agreed that the description of development should refer to 1600 dwellings rather than 1600 residential dwellings.
5. The planning application was submitted in outline form, with approval sought for access at this stage. A masterplan and a series of parameter plans were also submitted as part of the application. That masterplan (ref 3202E) shows the primary school located adjacent to the access from Pods Brook Road, on that part of the site to the south of the Flitch Way (parcel B). In response to the Local Education Authority's preference for a different location for the school, in July 2018 the Appellant submitted a revised masterplan showing the school to the north of the Flitch Way, together with a revised set of parameter plans (in Core Document 4.5 (CD4.5)).

¹ The note of the pre-inquiry meeting is at CD6.6.

6. An environmental statement (ES) accompanied the planning application. In response to requests from the District Council under Regulation 22 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, further information was submitted in February and October 2017 (in CD4.4). Notwithstanding the submission of this further information, the first reason for refusal referred to concern about the adequacy of the ES. Further information in response to the Council's concern was subsequently provided in an ES Addendum in July 2018 (CD4.5), which also addressed the implications of the relocation of the primary school. The Appellant notified interested parties of the ES Addendum (Document O4), and I have been able to take the representations received into account in considering the appeal proposal. In August 2018, the Secretary of State made a Regulation 22 request in respect of details concerning certain viewpoints in the landscape and visual impact assessment, the implications of acoustic fencing, and a revised non-technical summary covering those matters. The Appellant responded to this request on 31 August (CD4.8). The Addendum has been the subject of publicity, and the further information on points of detail supplied in response to the August 2018 Regulation 22 request was referred to at the inquiry. At the inquiry, the District Council did not pursue an objection to the adequacy of the ES, nor was this a matter advanced by any of the other parties who appeared. I do not consider that prejudice would be caused to any party by taking the ES Addendum and August 2018 information into account, and I have proceeded accordingly. I am satisfied that the ES, comprising the ES as amended by the February & October 2017 Regulation 22 responses, the ES Addendum and August 2018 information, meets the requirements of Schedule 4 of the Town & Country Planning (Environmental Impact Assessment) Regulations 2011.
7. In the light of my view on the ES, which includes the revised masterplan and parameter plans in the Addendum, I have taken those plans, which address the relocation of the primary school, into account in my consideration of the appeal proposal.
8. A planning agreement and a draft unilateral undertaking were submitted at the inquiry. The agreement (CD9.46), made between the District Council, the County Council, the owners and the Appellant, includes obligations concerning: on-site open space, affordable housing, a gypsy & traveller site, works to the Flitch Way, recycling facilities, highway works, a bus service, the school site, sustainable travel, mineral extraction, and contributions towards community facilities, healthcare purposes, improving pedestrian and cycling facilities, and education.
9. The draft unilateral undertaking (CD9.45), which would be given by the owners and the Appellant to the District Council, was prepared in response to a letter from Natural England² concerning an emerging strategic approach to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). As part of a package to mitigate the impact on coastal European designated sites, a financial contribution is sought in respect of larger scale residential developments (100 dwellings or more) to fund strategic off-site measures. At the date of the inquiry there was no information on the level of contribution sought, and the deed could not, therefore, be executed.

² Document L9, Appendix 10.

10. The Appellant and the District Council agreed the preparation of a set of core documents. These are listed separately in Document O1, with a supplementary list attached to this report. NBGAG submitted two DVDs, one of highway conditions on Pods Brook Road and Rayne Road and the other showing an aerial view of the appeal site (CD9.47 & CD9.48). Both these DVDs were viewed as part of the inquiry.
11. This report contains a description of the site and its surroundings, an explanation of the proposal, identification of relevant planning policies, details of agreed matters, and the gist of the submissions made at the inquiry and in writing, followed by my conclusions and recommendation. Lists of appearances and inquiry documents are appended. The written closing submissions on behalf of the Council, the Appellant and NBGAG are included as inquiry documents: in delivery they were subject to a number of detailed amendments.

The Site and Surroundings

12. The appeal site comprises an area of predominantly open land between Braintree and the smaller settlement of Rayne, which lie to the east and west respectively³. The eastern side of the site is about 1km from Braintree town centre, and the western side of the site is about 0.4km from built development in Rayne. The A120, which leads to Colchester and Harwich to the east and to Stansted Airport to the west runs past the southern boundary of the site, and the distance from the junction of Pods Brook Road and the A120 to the Aetheric Road/ Rayne Road junction at the edge of the town centre is about 1.6km. The appeal site is bisected by the footpath and cycleway known as the Flitch Way. This route runs for 24km between Braintree and Bishops Stortford, and is a country park. There is a network of public rights of way in the area, with several footpaths crossing parcel B⁴.
13. The northern part of the appeal site abuts the row of houses at Gilda Terrace on Rayne Road. Beyond Rayne Road open land in agricultural use extends to the north and north-west, and to the north-east housing is under construction close to the built-up area of Braintree. Farmland also lies to the west and south-west of the site. Closer to Rayne are a nature reserve and playing fields, with a paddock for horses to the south side of the Flitch Way. Rayne Conservation Area covers the eastern side of the settlement: the group of buildings at its northern end includes the Church of All Saints, which is a grade I listed building. A grade II listed building, Naylinghurst, is situated on the south-west side of the site. There are a number of other listed buildings in the locality, principally within Rayne Conservation Area⁵.
14. Pods Brook flows from the north of Rayne Road, past the north-east side of the site towards the Flitch Way. There is residential development between the site and the watercourse at Sun Lido Square Gardens and Springfields, and beyond Pods Brook is further housing within Braintree. The watercourse crosses the site from the Flitch Way to Pods Brook Road, beyond which it flows along the northern boundary of a finger of land forming part of the site. On the north side

³ The location of the appeal site is shown on Plan 1.

⁴ Public rights of way are shown on figure 5, Document A13.

⁵ The extent of Rayne Conservation Area is shown on the Brook Green extract of the ELP proposals map. The location of the listed buildings is shown on figure 13.1 of the ES. The list description for the Church of All Saints is at para 4.17 of Document A1, and that for Naylinghurst is included in Appendix A of Document L2.

of this land is a cemetery, whilst to the south housing is under construction (Meadow Rise). Between the A120 and the A131 are several modern business units, and on the south side of the latter road is the built-up area of Great Notley.

15. The appeal site amounts to 56.5ha, and comprises three parcels of land⁶. Parcel A lies on the north side of the Flitch Way: it includes two fields and the house at Nos 27-29 Gilda Terrace. The land rises to the south-west, away from Pods Brook. Parcel B is the area of land between the Flitch Way and the A120. Two large fields are separated by a line of willows, and there are smaller fields on the eastern side where the land rises relatively steeply in places away from Pods Brook and other watercourses. Tall hedgerows separate these smaller fields, and there is a copse on the southern side, close to a balancing pond operated by Anglia Water. There are several public footpaths across this part of the appeal site⁷. Parcels A and B are connected by a passage below a bridge on the Flitch Way. The fields in parcels A and B are in agricultural use, and 81% of this land is in grades 2 and 3a, meeting the definition of the best and most versatile agricultural land⁸. Parcel C is a narrow parcel of land, to the east of Pods Brook Road, which is unused with extensive vegetation cover around much of the boundary.

Planning History

16. A hybrid outline/ full planning application was submitted in 2018 for residential development on that part of parcel A between Gilda Terrace and the Flitch Way⁹. Full planning permission is sought for a new access and 43 dwellings to the rear of Nos 1-25 Gilda Terrace, and outline permission is sought for up to 77 dwellings on the remainder of the application site. At the date of the inquiry the application had not been determined.

The Proposal

17. As a consequence of the relocation of the school site, the Appellant advised that the proposal would provide up to 1500 dwellings. Whilst the description of development continues to refer to up to 1600 dwellings, at the inquiry the proposal was considered on the basis of the revised masterplan and parameter plans which take account of the reduction in housing numbers. A range of house types and tenures is envisaged¹⁰, and a planning obligation would provide for 30% of the dwellings to be provided as affordable housing¹¹.
18. The masterplan shows housing on the western part of parcel A, with the primary school on the eastern part. Parameter plan 3 shows housing up to two storeys in height around a central area where it would be up to three storeys. Areas of lower (up to 35 dwellings per hectare (dph)), medium (up to 60dph) and higher density (up to 110dph) housing are shown on parameter plan 4, with density increasing away from the edge of parcel A. The house at Nos 27-29 Gilda

⁶ The parcels are identified in the Planning Statement of Common Ground (CD6.7), paras 3.2-3.11.

⁷ Public rights of way on and in the vicinity of the site are shown on the plan at CD9,55.

⁸ CD4.4, Appendix 17.1.

⁹ Application ref 18/01065/OUT: see CD9.28.

¹⁰ Document A3, para 5.2.6 (iv).

¹¹ CD9.46, Schedule 3.

Terrace would be demolished to enable construction of a vehicular access from Rayne Road (Plan C).

19. It is intended that the local centre would be built on the eastern side of parcel B, close to the vehicular access from Pods Brook Road (Plan B). This access would involve the formation of a new roundabout junction. Employment units would also be on this side of the land, but close to the southern boundary with the A120 slip road. These units would provide office accommodation, with the potential for some workshops¹². Housing would be provided across much of the rest of parcel B. Higher density housing is envisaged in the vicinity and to the west of the local centre, and in part of this area parameter plan 3 shows building heights of up to four storeys. Elsewhere housing would be up to two and three storeys in height. Areas of open space and planting would be provided around the perimeter of the land, including playing fields at the western end close to Naylinghurst: an area of at least 17.65ha of open space would be secured by a planning obligation. Planting would be strengthened alongside the Flitch Way: at completion of the scheme it is intended that there would be a buffer of over 5m depth along 98.5% of the north and south edges of the Flitch Way, over 25m along 60% of the edges, and over 35m along 40% of the edges¹³. A bus gate below the Flitch Way would enable a bus service to be routed through the appeal site. Parcel C would be an area of public open space.
20. It is intended that the development would be carried out in six phases (parameter plan 2), with the first phase involving the housing and school on parcel A.
21. The scheme proposes alterations to three existing junctions: the roundabout junction of Rayne Road with Pods Brook Road and Springwood Drive (Plans D-F), the light controlled junction of Pods Brook Road with Aetheric Road and Pierrefitte Way (Plan G), and the A120 east bound off-slip road and roundabout junction with Pods Brook Road (Plan H). A cycleway on the east side of Pods Brook Road would provide a link between the Flitch Way and the Meadow Rise development. These works and those to form the site accesses are provided for by Schedule 8 of the planning agreement. Schedule 6 provides for a scheme of works to be undertaken to the Flitch Way itself.

Planning Policy and Guidance

The Development Plan

22. The Development Plan comprises the Braintree District Council Local Development Framework Core Strategy (CS – CD2.2), the saved policies of the Braintree District Review Local Plan (RLP – CD2.1), the Essex Minerals Local Plan (MLP – CD9.16) and the Braintree District Council Proposals Map.

The Core Strategy

23. The CS was adopted in 2011, and it covers the period up to 2026. The spatial policy statement sets out twin objectives to preserve and enhance the character of the rural heartland of the District including its countryside and villages, and to concentrate the majority of new development and services in the main towns,

¹² Document A3, para 4.3.4.

¹³ Document A14, para 2.2.30; Document A15, appendix R3.

- new growth locations at Braintree and Witham, and in the key service villages¹⁴. The most important main town is identified as Braintree, Bocking and Great Notley. Rayne is not a key service village, but is listed in the settlement hierarchy as one of the other villages¹⁵.
24. Policy CS1 provides for the delivery of a minimum of 4,637 dwellings between 2009 and 2026. These dwellings are to be located within the main towns, on specified mixed-use regeneration sites, at new mixed-use growth locations, and within key service and other villages. The growth location identified at Braintree is land off Panfield Lane to the north-west of the town (CS inset 1a), and it does not include the appeal site. Development outside town development boundaries, village envelopes and industrial development limits is to be strictly controlled to uses appropriate to the countryside (Policy CS5). The appeal site lies outside the development boundary for Braintree and the village envelope for Rayne¹⁶.
25. Policy CS4 is concerned with employment: it includes an aim to provide a minimum of 14,000 net additional jobs between 2001 and 2026. The main locations for employment development include existing employment sites within the development boundaries of Braintree, and the mixed-use and strategic sites specified in the CS. Policy CS2 sets out requirements for affordable housing: in the urban ward of Braintree & Bocking a target of 30% provision applies, with a threshold of 15 dwellings or 0.5ha. Accommodation for gypsies and travellers is the subject of Policy CS3, which seeks provision for an additional 40 pitches by 2021.
26. Policy CS7 promotes accessibility. Development should take place in accessible locations to reduce the need to travel, sustainable travel will be encouraged, and sustainable transport links are to be improved. One of the key transport projects listed in the accompanying table involves capacity improvements at the Pods Brook Road/ Rayne Road roundabout. Amongst other provisions, Policy CS8 seeks to protect the best and most versatile agricultural land, and requires proposals to have regard to the character of the landscape. Proposals should also respect the local context where development affects the setting of historic buildings and conservation areas (Policy CS9). New development should make appropriate provision for open space: the Appellant has calculated that Policy CS10 would require the provision of 15.85ha of public open space¹⁷. Policy CS11 explains that the Council will work with other parties to ensure the provision of infrastructure services and facilities.

The Local Plan Review

27. The LPR was adopted in 2005, and the plan period extended from 1996 to 2011. Policy RLP 2 seeks to restrict development to the areas within town development boundaries and village envelopes. Outside these areas countryside policies apply. Policy RLP 78 which covered development in the countryside has been replaced by CS Policy CS5. New residential development should seek to achieve mixed communities, involving different house types, tenures and uses where appropriate (RLP 7). Policy RLP 10 is concerned with residential density. Amongst other considerations, density and massing should be related to public

¹⁴ CD2.2, para 4.15.

¹⁵ CD2.2, appendix 3.

¹⁶ See inset 1 for Braintree and inset 46 for Rayne, CD2.1.

¹⁷ Document A3, para 6.5.2.

transport accessibility, shops and services, and the site's characteristics. Open space should be made available in new residential development. Development for employment uses is to be concentrated on suitable sites in towns and villages where housing, employment and facilities can be provided close together (RLP 27).

28. Policy RLP 80 requires that development proposals are not detrimental to distinctive landscape features and habitats: development which would not successfully integrate into the local landscape should not be permitted. There should not be an adverse effect on protected species (Policy RLP 84) and the retention and planting of native trees and hedgerows is encouraged (RLP 81).
29. Policy RLP 90 is concerned with the layout and design of development. The criteria against which proposals should be assessed under this policy include requirements to be sensitive to the need to conserve local features of historic and landscape importance, and to be in harmony with the character and appearance of the surrounding area. There is support for the preservation and enhancement of conservation areas and their settings in Policy RLP 95, and for the settings of listed buildings in Policy RLP 100.
30. Major proposals which are likely to generate significant levels of travel demand should only be permitted where public transport services exist or there is the potential for the development to be well served by public transport (Policy RLP 53). The LPR also includes policies which require pedestrian networks and cycle routes to be incorporated in the design and layout of development proposals (Policies RLP 49 & 50). The Flitch Way is a former railway line: Policy RLP 140 stipulates that development which would prejudice the use of disused railway lines for recreational purposes should not be permitted. Opportunities will be sought to provide links between linear parks and proposals for development on adjacent land.

The Minerals Local Plan

31. The MLP was adopted in 2014, and covers the period 2012-2029. The western part of the appeal site lies within a mineral safeguarding area for sand and gravel where Policy S8 applies. This policy seeks to avoid surface development sterilising or prejudicing the effective working of mineral resources. Where sand and gravel resources of economic importance exist on sites over 5ha, consideration should be given to extraction of the minerals prior to surface development taking place.

The Braintree Local Plan

32. The District Council is preparing the Braintree Local Plan (the emerging Local Plan – ELP (CD7.1)). The Publication Draft of the ELP was submitted for examination in October 2017, and comprises two sections. Section One has been prepared by Braintree DC, working in conjunction with Colchester BC and Tendring DC (the North Essex Authorities - NEAs), to address strategic issues in North Essex, whilst Section Two is concerned with Braintree alone. Hearings in respect of Section One took place during the first half of 2018. Following those hearings, the Local Plan Inspector wrote to the NEAs about the steps necessary for Section One of the Plan to be made sound and legally-compliant (CD7.3). Particular concern was expressed about the proposed garden communities: whilst the Inspector has not expressed the view that garden communities have no role to

play in meeting development needs, he considered that the proposals contained in the ELP are not adequately justified and have not been shown to have a reasonable prospect of being viably developed¹⁸.

33. Three options for progressing the ELP were put forward by the Inspector: option 1 would involve removal of the garden communities proposals from Section One and commitment to a partial revision; option 2 would involve further work on the evidence base and sustainability appraisal before the Section Two examination; and option three would be to withdraw Sections One and Two from examination, resubmitting them after further work on the evidence base and sustainability appraisal. Both Braintree and Tendring have resolved to pursue option two¹⁹. Colchester has also stated its intention to carry out the further necessary work, but refers to an alternative option, which would show any Colchester & Braintree Borders Garden Community planned for the later years of the housing trajectory, and proposals for that and a Colchester & Tendring Borders Garden Community being dependent on the commitment of necessary strategic infrastructure (CD9.38). The District Council acknowledges that option two would require suspension of the examination of Section One of the ELP, with examination of Section Two deferred until this had been completed. At the inquiry, the District Council's planning witness expressed the view that the ELP could be adopted by 2021, although he understood that there had as yet been no discussion on the timetable for the additional work involved as referred to in the Inspector's further letter of 2 August 2018²⁰.
34. Policy SP 2 sets out a spatial strategy for North Essex, in which existing settlements are to be the principal focus for additional growth. Three new garden communities are also intended to be developed: west of Braintree, Colchester/ Braintree Borders, and Tendring/ Colchester Borders²¹. The garden community west of Braintree is proposed for land to the north-west of Rayne, whereas the appeal site lies to the east of this settlement. Sufficient deliverable sites or broad locations are to be identified in Braintree to provide at least 14,320 dwellings during the plan period (Policy SP 3). Policy SP 7 expects that 2,500 of these dwellings would be provided within the garden community west of Braintree²².
35. Development boundaries are shown on the proposals map²³. The appeal site lies outside the boundaries of Braintree and Rayne. Policy LPP 1 specifies that outside boundaries development should be restricted to uses appropriate to the countryside. Green buffers are intended to be established under Policy LPP 72: four areas are listed, none of which includes the appeal site. However the greater part of the site falls within a green buffer between Braintree, Great Notley and Rayne on the proposals map (CD7.5). The District Council explained that the omission of this area from the text of the policy was an oversight²⁴, and that the green buffer was proposed as shown on the proposals map. Residential development (other than replacement dwellings), employment development,

¹⁸ CD7.3, para 130.

¹⁹ Document L6, para 4.47.

²⁰ CD7.11, para 40.

²¹ The locations of the proposed garden communities are shown on maps 10.1-10.3 & 10.5 in CD7.1 (Section One).

²² The total number of dwellings for this garden community would be 7-10,000, with provision extending beyond the plan period.

²³ Extracts from the proposals map are included in CD7.1 & 7.5.

²⁴ CD9.28, section 2.

schools and local centres are not included in the limited categories of uses considered appropriate in green buffers. Development which is necessary in these locations should have regard to the local landscape character, and minimise coalescence and consolidation between built areas. Policy LPP 17 explains that the 14,320 (minimum) new homes proposed are to be located primarily in the main towns, key service villages and eight strategic growth locations. Three strategic growth locations are proposed at Braintree: land east of Broad Road, the former Towerlands Park site, and Panfield Lane. These lie on the northern side of the town and are included within the development boundary. Policy LLP 36 provides for up to 30 traveller pitches²⁵ at strategic growth locations and garden communities, or through the application process.

Landscape character assessments

36. In the Essex Landscape Character Assessment, the appeal site lies within landscape character area (LCA) C6 – Blackwater/ Brain/ Lower Chelmer Valleys²⁶. The key characteristics of LCA C6 include shallow valleys, predominantly arable farmland with well-hedged medium to large fields, narrow valleys with undulating sides (the Brain and Upper Blackwater), and extensive linear poplar and willow plantations. At District level, in the Braintree, Brentwood, Chelmsford, Maldon & Uttlesford Landscape Character Assessments, virtually the whole of the site lies within LCA A12 – Pods Brook River Valley²⁷. Key characteristics are identified as a narrow shallow valley, a predominantly pastoral and heavily wooded landscape, and wet meadows. Towards the edge of Braintree woodland cover reduces and the valley is more open with large arable fields.

Other policies and guidance

37. Relevant supplementary planning documents and planning guidance are listed in the planning statement of common ground (CD6.7, para 1.16). In advance of the adoption of the Essex Coast RAMS, Natural England seeks the provision of suitable accessible natural greenspace (SANGs) in large-scale residential developments, and a financial contribution towards the funding of off-site strategic measures. I have also had regard to national planning policy and guidance, in particular that contained in the National Planning Policy Framework (NPPF), and the Planning Practice Guidance (PPG).

Agreed Matters

38. Two statements of common ground were submitted²⁸. The planning statement of common ground (CD6.7), agreed between the Appellant and the District Council, covers the following matters:

- Consultation responses to the planning application.
- Planning policies.
- The ES.

²⁵ The committee report says that the number of pitches is to be increased to 31 following an updated survey.

²⁶ CD8.5: a plan showing the LCA is on page 97.

²⁷ CD8.6: a plan showing the appeal site in relation to LCA A12 is at figure 3 of Document A13. A review of the district assessment for Braintree in 2015 (8.22) included no modifications concerning LCA A12.

²⁸ Paragraph 1.2 of CD6.7 refers to the intention to produce a statement of common ground relating to the ES. In the event, no such statement of common ground was produced.

- A description of the site and its surroundings.
 - There is not a five years' housing land supply in Braintree²⁹.
 - Having regard to paragraphs 195 & 196 of the NPPF, if the public benefits of development do not outweigh any harm to a designated heritage asset, the tilted balance of paragraph 11(d)(i) will not apply.
 - Apart from Rayne Conservation Area and Naylinghurst (about which there is dispute), the proposal would not harm the significance or setting of any other heritage asset.
 - If there would be any harm to Rayne Conservation Area and Naylinghurst, it would be less than substantial.
 - The policy compliant level of affordable housing is 30%.
 - The LPA has no outstanding objections concerning flooding, drainage, archaeology, noise levels, and mineral resources, subject to the imposition of appropriate conditions.
 - The LPA has no objection to the loss of agricultural land, and the provision of a local centre, and it is not advancing a case against the proposal on the ground of prematurity.
 - Matters in dispute between the Appellant and the LPA are³⁰: the approach to the planning balance, whether there would be any harm to Rayne Conservation Area or Naylinghurst, whether the proposal would adversely affect the character and appearance of the area, and whether the proposal would ensure a good standard of amenity and a high quality living environment.
 - The Appellant agrees to provide the infrastructure necessary for the long-term sustainability of the development.
39. The highways statement of common ground (CD6.8) was agreed between the Appellant, Essex County Council (the Highway Authority), and Highways England. It covers the following:
- The additional information provided by the Appellant's transport consultants.
 - The provision of a cycleway between the priority junction serving Broomhills Industrial Estate and Guernsey Way and the roundabout at the junction of Pods Brook Road/ Rayne Road/Springwood Drive.
 - Planning policy in the NPPF relating to transport.
 - Having regard to the Journey Time Analysis³¹ and the mitigation measures proposed, the Highway Authority confirms that: the development takes the opportunity from existing and proposed infrastructure, and from changing transport technology and usage, to provide high quality walking and cycle networks, and to facilitate access to high quality public transport; there would

²⁹ The figures relating to housing land supply given in paragraphs 5.1 & 5.4 of the statement of common ground have been superseded by the five year supply assessment at Appendix 3 of Document L9.

³⁰ Section 4 of the planning statement of common ground includes the ES, highways, the mix of uses, and provision of a planning obligation as matters in dispute. These matters were not pursued by the District Council at the inquiry.

³¹ Appendix 1 to CD6.8.

be no significant impact on highway safety; and the residual cumulative impacts on the road network should not be severe. The Highway Authority does not object to the proposal.

- Highways England recommends that conditions be attached to any planning permission granted³².

The Case for the Appellant

The material points are:

The approach

40. In order to allow the appeal, material considerations must indicate otherwise than determining it in accordance with the Development Plan. It is acknowledged that there is conflict with the Development Plan as a whole, most obviously with Policies RLP 2 (town and village development boundaries) and CS5 (countryside) which together establish development boundaries and strictly control development outside of them. In addition it is accepted that there is conflict with Policy CS1 in relation to landscape character, and elements of Policy CS8 in relation to the loss of the best and most versatile agricultural land. Material considerations indicate that permission should be granted despite this conflict, and the most important material consideration in this case is national policy in the revised NPPF.

Housing land supply

41. The Council's planning witness has explained that as at 30 June 2018 it can demonstrate only 3.91 years supply of deliverable housing sites, a shortfall of land for 1,330 homes. This is nearly double the shortfall identified at 31 March 2018, which was 737 homes³³. There has been an increase in housing need from 716dpy (the OAN underpinning the ELP) to 835dpy, following the introduction of the standard methodology. Taking into account paragraph 73 of the NPPF, since the development plan policies on the subject are more than five years old, and read together with the definition of local housing need in the glossary, this is the appropriate approach to use in this appeal. Moreover there has been significant under delivery of housing over the previous three years, which means that a 20% buffer is to be applied. The consequence of the failure to be able to demonstrate a five years supply of deliverable housing sites is that the policies which are most important for determining the proposal are out-of-date, and the terms of NPPF paragraph 11 (d) apply.

Most important policies

42. The most important policies are those that go to the principle of development (e.g. that the site is outside the development boundaries) rather than the detail (e.g. what is an appropriate density). They are: Policies RLP 2 (Town Development Boundaries and Village Envelopes), RLP 80 (Landscape Features and Habitats), RLP 95 (Preservation and Enhancement of Conservation Areas), RLP 100 (Alterations and Extension and Changes of Use to Listed Buildings, and their settings), CS5 (The Countryside), CS8 (Natural Environment and

³² The highways statement of common ground refers to Highways England's consultation response which includes suggested conditions (CD3.42).

³³ CD6.7, paras 5.1-5.4.

Biodiversity), CS9 (Built and Historic Environment), and CS1 (Spatial distribution). Policy RLP1 40 (linear parks and disused railway lines) might potentially be added to the list of most important policies. This policy presumes against development which would prejudice the use of disused railway lines such as the Flitch Way; the Appellant considers that prejudice is to be read as meaning in the sense of impinging upon the use of the Flitch Way in some physical manner. However if prejudice is taken to include harming the experience of users of the Flitch Way (e.g. by spoiling views from it by changing views of countryside to views of housing) then RLP 140 would be a most important policy in NPPF terms as it would preclude or inhibit housing development alongside this route.

Designated heritage assets

43. Under NPPF 11(d)(i) the question which arises next is whether the proposed development would cause harm to the significance of Naylinghurst, a grade II listed building, and/ or Rayne Conservation Area. The Council does not allege substantial harm to either heritage asset, and if there would be any harm it would fall to be assessed against paragraph 196 of the NPPF. The development would not erode the significance of either asset, because the affected areas do not make meaningful contributions to significance itself.

Naylinghurst

44. Naylinghurst is located beyond the western boundary of the appeal site. The nearest proposed housing would be about 200m from the building,³⁴ and there would be a line of new planting between the curtilage of the listed building and the new development. Land to the north-west, west, south-west, south and south-east of the listed building would remain open and to a large extent unaffected by the proposed development. Naylinghurst is a grade II listed building. The list entry makes no express mention of setting, and the Appellant's heritage witness was clear that the special interest of the house relates primarily to its original 17th century timber frame and floorplan. Insofar as Naylinghurst has wider historic significance, it is as a former homestead/modest farmhouse³⁵ which illustrates a former way of agricultural life³⁶. Although Naylinghurst is rooted in the farmland with which it was formerly associated in an abstract sense³⁷, the removal of old field boundaries and changes to its garden curtilage mean that its agricultural surroundings are no longer connected to it in the way they once were. The development of industrial farming has caused the removal of the historic field boundaries shown on the 1840 tithe map³⁸, and resulted in a form of agricultural use of a totally different scale, form and appearance from that enjoyed by the historic homestead.
45. From within the curtilage it is difficult to appreciate the significance of the building as a 17th century homestead. The considerable changes which have already occurred within that part of the setting, namely the additions of the Edwardian tightly rendered and tiled parts of the building, a modern conservatory, and flowerbeds, have obscured both its architectural and historical

³⁴ Document A1, para 5.5.

³⁵ Document L1, para 4.

³⁶ Document A1, para 4.7.

³⁷ Document A1, para 4.9.

³⁸ Document A2, Appendix 2.

significance. If it is not possible to visually appreciate the significance of the building so close, then it is unlikely that a viewer is able to discern that significance further away from places within the appeal site which lie within the setting of the listed building. There are no significant outbuildings capable of holding modern agricultural machinery, and any connection with the surrounding land is remote. Furthermore the historic farmholding, which the tithe maps show included some but not all of the appeal site³⁹, has been subdivided by the construction of the railway line (now the Flitch Way), and in the 20th century two major trunk roads, a major junction, and part of Great Notley have been built on what were once Naylinghurst's fields.

46. While the views out from Naylinghurst are relevant to an extent, and some views would change as a result of the proposed development, such changes would entirely relate to the eastern views, which are from the more modern (Edwardian) parts of the house rather than the 17th century core. The proposed development would involve change to land within part of the setting of Naylinghurst, but the contribution of that part of the setting to the significance of the listed building and/ or to the ability to appreciate that significance is neutral or negligible at best. If this is accepted, then it follows that to the extent that the proposed development would take place on part of the setting of the listed building this would not erode its significance. The house would remain seemingly an island in the fields, with open fields to the north-west, west, south-west, south and south-east, and capable of being observed and appreciated against an agricultural backdrop. The architectural and historical significance of its 17th century structure would be unaffected. The circumstances of Clapbridge Farmhouse⁴⁰, a grade II listed building to the north of the Flitch Way which is now surrounded by housing, shows that a heritage asset can sustain change to its setting without detracting from what is significant about the building.

Rayne Conservation Area

47. Rayne Conservation Area forms part of a linear settlement along the line of an old Roman Road (now Rayne Road) and contains several listed buildings. The conservation area is adjoined to its west and south by the rest of the village which comprises relatively modern and some quite recent development, and its heritage significance does not depend upon it being separate and distinct from more modern housing. Nor do the fields that comprise the appeal site, the boundary of which is some 375m at its closest to the boundary of the conservation area, contribute to the significance of the conservation area. The nearest homes in the appeal scheme would be some 500m away from the boundary of the conservation area⁴¹. The heritage significance of the conservation area would be exactly the same with the appeal scheme in place as it is now.

The Church of All Saints

48. The church is a prominent historical building in Rayne: it is an essentially Tudor structure which acts as a focal point for the community, and is a place of considerable importance. The setting of the Church of All Saints is extensive,

³⁹ See figure 1 in Document A1 and map 4 in Document L2.

⁴⁰ The location of Clapbridge Farmhouse is shown on map 1, Document L2.

⁴¹ Document A1, para 5.14.

including agricultural land to the south, east and north⁴². The closest houses would be about 450m from the church, and the proposal would be a small change within its setting, which would not affect important views. There would be no change to the significance of this listed building as a consequence of the proposed development.

Conclusion on heritage assets

49. There would be no harm to the significance of the listed buildings and the conservation area from the appeal proposal. If the Secretary of State disagrees, the degree of harm (according to the Council) would be moderate less than substantial harm to the significance of Naylinghurst and less than substantial harm at the lower end of the scale to the significance of Rayne Conservation Area⁴³. Mr Patel's evidence is that the outcome of weighing these limited degrees of heritage harm against the many public benefits of the proposal is that the benefits readily outweigh any such harm. It is the Appellant's case that applying paragraph 196 of the NPPF does not provide a clear reason for dismissing the appeal under paragraph 11(d)(i).

Claimed harm

50. What should be put into the tilted balance are real and tangible adverse impacts, such as harm to landscape, harm to visual amenity, harm to the countryside. It is the impacts themselves when considered in the context of the policies in the NPPF that are weighed in the tilted balance rather than breaches of the associated development plan policies.

Landscape

51. It is argued by the Council and NBGAG that the appeal site is a valued landscape. The Appellant disagrees, but even if it were a valued landscape, paragraph 170 of the NPPF is not a restrictive policy for the purposes of paragraph 11(d)(i) since it is not referred to in the exclusive list of footnote 6.
52. Paragraph 170(a) of the NPPF provides that a valued landscape is to be protected in a manner commensurate to either its statutory status or its identified quality in the development plan. However this site has no statutory status and is not identified as having any particular quality in the development plan. The correct approach for such areas of undesignated landscape must be to give weight to the impact which the development would have on the character and beauty of the countryside, but this is a lower order of weight given that the policy requires only recognition of such matters, not protection and enhancement.
53. The Council says that because the Government did not discuss this issue in the consultation process it cannot have meant to change policy⁴⁴, but the qualification in paragraph 170(a) is an addition to the NPPF and must have been inserted for a reason. If this interpretation is not accepted, and the body of case-law and good practice developed under the previous NPPF falls to be applied, even then this site should not be regarded as a valued landscape. There is not sufficient cause to characterise the site and its surroundings as a landscape

⁴² Document A1, para 4.22.

⁴³ Document L1, paras 6.13 & 6.18.

⁴⁴ Document L8, para 4.5.

which is out of the ordinary, which is the key consideration. Neither the popularity of the site, nor the level of objections to its development, should stand as evidence of value. The Flitch Way is a good example of the point, it is most certainly highly valued by local residents but this does not make it a valued landscape. Whatever harm is found would be caused to the landscape should not be given any additional weight on the grounds that the harm would be caused to a valued landscape.

54. There would be a substantial impact on the landscape of the appeal site itself, which has been assessed as being of medium-high sensitivity⁴⁵. Although particular landscape features such as hedgerows and tree cover would be retained and strengthened, the loss of the open fields cannot be mitigated in any meaningful sense. An impact such as this is the unavoidable consequence of building houses on fields. That this is doing something to help address the housing land shortfall, is a point which should temper the weight to be given to this impact.
55. The Council's landscape witness assessed the susceptibility of the Pod's Brook River Valley Landscape Character Area (LCA) A12, which contains virtually the whole of the appeal site, as high, whereas the Appellant's landscape witness took the view that it should be medium⁴⁶. Mr Neesam (the Council's witness) accepted in cross-examination that if the Secretary of State agreed with the Appellant just on this point, this would reduce the significance of the effect (at year 15), such that it would no longer be significant when utilising his scale of effects.
56. The correct approach to susceptibility under the Guidelines for Landscape and Visual Impact Assessment (GLVIA – CD8.1)⁴⁷ is to look at the ability of the landscape receptor (here LCA A12) to accommodate the proposed development without undue consequences for the maintenance of the baseline: that is whatever has led it to be identified as a character area in the first place. As GLVIA explains⁴⁸ this involves consideration not of some generic type of development but rather of the proposed scheme itself, which must include the proposed site. The features which are identified in the Council's evidence as leading to a high susceptibility (generally open views, upstream from Braintree there is an overall sense of tranquillity⁴⁹) are features which relate to the area to the north of Rayne Road, which has a markedly different character than the area to the south in terms of both open views and tranquillity. The more enclosed area to the south of Rayne Road, which includes the appeal site, cannot have the same susceptibility to the change that would be brought about by this development as the area to the north (were the appeal site north of Rayne Road).
57. There are differences in the assessment of the magnitude of effect on the LCA. The Appellant's landscape witness assessed this as medium at year 15, whereas the Council's witness saw it as high. As with susceptibility, the input on magnitude has the potential to drive a considerably different conclusion as to the significance of the landscape effects. The greatest difference on this point

⁴⁵ Document A15, Appendix R1.

⁴⁶ Document A15, Appendix R1.

⁴⁷ CD8.1, para 5.40.

⁴⁸ CD8.1, paras 5.40 - 5.42.

⁴⁹ Document L3, paras 5.4.8 & 5.4.9.

related to the geographical extent of the area over which the landscape effects would be felt. The Council argued that the landscape effects would be perceived up to 1km from the site, whereas it is the view of the Appellant's witness that they would be considerably more limited in extent.

Visual effects

58. The site is visually contained, and there is relatively limited visibility from points beyond the site boundary⁵⁰. This means that in the main the impacts would be experienced by people walking on public rights of way through the site or on the Flitch Way which bisects it. The overall effect on people using the Flitch Way would not be significantly harmful at 15 years after completion (i.e. giving planting a reasonable opportunity to mature and be effective). The overall experience is kinetic by nature as people walk or cycle along the Way. Even if it is concluded that the points at which one can enjoy clear views across open fields are more striking than the enclosed sections, the availability of such open views along the route is a relatively small proportion of the whole⁵¹, and the predominant characteristic of the experience is where the Way is more enclosed. If the predominant characteristic of the experience of using this part of the Flitch Way is of a more enclosed nature, then the likelihood that the proposed development would have extensive depths of planting to either side of the Way⁵² means that although the overall experience would change it would not do so in an uncharacteristic manner. Whilst there would be adverse visual impacts to be placed in the tilted balance, the issue is the degree and thus the weight of such impacts.

Separation

59. The Appellant does not accept that the development would lead to Braintree and Rayne coalescing in either actual or perceived terms. By far the largest proportion of people travelling between the two settlements would do so along Rayne Road. Here there would be a reduction of about 45m between the urban edges⁵³, and neither actual coalescence nor any real difference in the ability to distinguish between Rayne from Braintree. There would be some adverse impact on the perception from the Flitch Way of Rayne being a distinct village standing apart from the town of Braintree, but accepting that people would not be able to read Braintree and Rayne as distinct places would mean that open land outside the built-up area boundary of the village should not be considered to be part of the area which helps to separate Rayne from Braintree. This is land classified as countryside by the Development Plan. The Council refers to fringe uses on this land, but in the Green Belt, which is land which prevents neighbouring towns from merging, paragraph 141 of the NPPF encourages land to be put to such uses. Moreover the analysis required by paragraph 11(d)(ii) of the NPPF involves considering the impact against the policies in the Framework taken as a whole. There are no policies in the NPPF apart from Green Belt which make the avoidance of coalescence part of national planning policy, and the appeal site is not in the Green Belt.

⁵⁰ Document L5, para 2.7.2.

⁵¹ CD9.1, figure 20.

⁵² Document A15, Appendix R3, and Figure 7 in Document A13.

⁵³ Measurements of the width of the gap between Braintree and Rayne are given on figure 8, Document A13.

The Flitch Way

60. In addition to harm in terms of visual amenity, harm is alleged to the character of the Flitch Way itself arising from the works recommended by Sustrans⁵⁴. The planning obligation which relates to the package of works recommended by Sustrans⁵⁵ has come about because the Appellant has sought to maximise the opportunities which the appeal scheme offers to deliver sustainable transport modes. This is entirely consistent with national policy in paragraphs 102, 108 & 110 of the NPPF, which refer to the importance of utilising existing infrastructure, and of promoting sustainable transport modes, in particular walking and cycling.
61. The chance to make best use of the Flitch Way is a clear benefit of the proposed development, which would seize the opportunity to use and improve what Essex County Council (who also are the landowners) have identified as a valuable key spine route and a potential flagship route⁵⁶. In order to meet those objectives⁵⁷, as well as to protect the Flitch Way from the increase in use and to encourage a further shift to active transport modes, both among the new residents of the development and the wider community, the Appellant has committed to fund a significant package of works to improve the route. The package would be finalised following consultation with Rayne Parish Council and the Friends of the Flitch Way before being submitted to Essex County Council and the District Council for approval. The Appellant would pay £1.25million for such of the recommended works (including resurfacing a 2.6km section) as are most directly related to the appeal scheme.
62. The key elements of the proposal are:
- i) An upgrade of the Flitch Way surfacing⁵⁸, to enable all weather use.
 - ii) Upgrades to accesses from the Flitch Way into neighbouring residential areas to make these all weather and more convenient⁵⁹.
 - iii) A dedicated route from the Flitch Way, along the edge of Pods Brook Road, up to Rayne Road which would connect through to Springwood Industrial Estate.
63. Resurfacing would not urbanise the Flitch Way: a surfacing material could be used which would strike the optimum balance between retention of a rural character and achieving a higher level of ease of use and accessibility⁶⁰. However, should the Secretary of State conclude that the resurfacing of the Flitch Way, or some other aspect of the proposed works, is not necessary then the planning obligation would fall away in this respect.

⁵⁴ See CD8.10.

⁵⁵ In CD9.46.

⁵⁶ CD9.11, para 8.3.

⁵⁷ CDA9, section 6.

⁵⁸ Although the Sustrans' report refers to taking this new surface to the A120, Mr Axon explained in answers to the Inspector that he considered it was only necessary from the perspective of the proposed development to lay a new surface to Rayne itself.

⁵⁹ Document A9, Figure MA9.

⁶⁰ Alternative surface treatments for cycle paths are discussed in CD9.3.

Pods Brook Road urbanisation

64. The vehicular access to parcel B would be constructed from Pods Brook Road and between this point and the A120 roundabout junction to the south, the road would be widened, with localised removal of the existing bund and associated planting⁶¹. However most of the planting would be retained, and the road is already urbanised. It is likely that further planting would take place beyond the extent of the highway works, and after 15 years the effect would be negligible to slight adverse.

Design

65. The Council criticises the higher density elements of the proposals and the proposed maximum four storey height. Underpinning the criticisms are concerns that these would be out of kilter with prevailing densities and heights in Braintree, and that the Appellant had not demonstrated how satisfactory amenity for residents of the development could be achieved with these densities and height. The maximum densities and height shown on the parameter plans would only need to be achieved over limited areas within the zones shown on those plans in order to achieve up to 1500 homes. They could be achieved alongside satisfactory residential amenity and comply with national policy. In particular, paragraph 123 of the NPPF provides that, where there is a housing land shortage, developments should make optimal use of the potential of each site. Insofar as height is concerned, paragraph 127 seeks to strike a balance between being sympathetic to local character while not preventing or discouraging appropriate change.
66. If it is concluded that the density and height parameters would lead to an unsatisfactory development, alternative parameter plans⁶² have been submitted which would have the effect of reducing the maximum density to 50dph and height to three storeys. The Council accepts that these would resolve their concerns. Draft conditions have been agreed⁶³ which would limit the number of dwellings to 1460 if height alone were reduced, and to 1203 if density were reduced (irrespective of whether or not height were restricted).

Highways

67. It is not the purpose of planning policy to prioritise the convenience of the car user. It is no part of the NPPF that new homes should not be built because there would be additional delays for car drivers in the peak hours. Chapter 9 of the NPPF aims to prioritise other modes of transport and the promotion of sustainable transport options. Paragraph 109 of the NPPF does deal with residual cumulative impacts on the highway network, but sets a high bar for the prevention of development on those grounds: impacts must be severe. There are certain local limitations on peak period travel: on Rayne Road eastbound there are queues of about 180m in the morning peak and about 480m in the afternoon peak, on Aetheric Road there is a queue of about 80m on the approach to the junction with Rayne Road in the afternoon peak, and queues of about 400m and 120m are

⁶¹ Document A12, paras 4.2.8-4.2.11.

⁶² See Mr Vernon-Smith's Rebuttal Proof.

⁶³ CD9.44, draft conditions 8b, 8c & 8d.

present on Pods Brook Road northbound in the morning and afternoon peaks respectively⁶⁴.

68. Nevertheless, the evidence of the Appellant's highways witness is that the proposed development would have a positive residual cumulative impact on mobility and sustainable modes of transport and would have minimal residual impacts on the road network, given the sustainability package and the evidence that people act to minimise inconvenience⁶⁵. However he has also shown that even if the sustainability package had no effect at all and people did not act to avoid the effect of the unfettered demand from the proposed development, additional delays in the peak hours would be minimal. Even on this worst case there would not be a severe residual impact.
69. The sustainability package proposed by the Appellant takes full opportunity to maximise the excellent location of the site and to promote sustainable mobility and social inclusion. Amongst the measures which would be secured by the planning obligation are the appointment of a community concierge who would work to promote and support sustainable living and transport, and a high quality 15 minute bus service. Arriva has drawn up draft proposals for the delivery of the bus service, and anticipates that it would be viable during year 2 of the proposed development, although funding under the planning obligation would be provided for a period of 10 years. Works to facilitate greater use of the Flitch Way are referred to above (paras 61-63). Whilst various highway works are included in the overall mitigation package, it is the view of the Appellant's transport consultant that those to the Springfield Drive and Aetheric Road junctions are not necessary. He expressed a similar view in respect of the scheme to provide slip roads between the A120 and Millennium Way to the south-east of the town⁶⁶.
70. The Appellant's traffic analysis is robust and is set out in the 2017 Transport Assessment and the subsequent Mobility Case and Journey Time Analysis⁶⁷. It does not factor in unrealistic assumptions as to the effect of sustainable modes of movement. The approach to traffic generation⁶⁸ is based on the data obtainable through the TRICS survey database. It does not build in reductions as a result of mitigation and the sustainable modes package, but uses information from the National Transport Survey data to understand the purpose of journeys, and census data to understand the mode split, thereby producing more detailed projections of traffic movements arising from different trip purposes⁶⁹. The trip rates, which take account of internal trips, including for primary school pupils⁷⁰, are not too low, as suggested by NBGAG. The number of trips derived by the Appellant's highways witness is 687 in the morning peak and 819 in the afternoon peak⁷¹. Whilst these are 14% lower in the morning peak, they are 21% higher in the afternoon peak⁷² than those in the October 2015 Transport Assessment for which NBGAG expressed support. Although the trip rates are

⁶⁴ CD6.8, Appendix 1, para 5.

⁶⁵ Document A9, Section 3.

⁶⁶ In response to the Inspector's questions.

⁶⁷ CD3.38, CD4.5, Part B, Appendix M.

⁶⁸ CD4.5, Part B, Appendix M, para 68.

⁶⁹ CD4.5, Part B, Appendix M, paras 71-105.

⁷⁰ CD4.5, Part B, Appendix M, Mobility Case para 93.

⁷¹ CD4.5, Part B, Appendix M, Mobility Case table 29.

⁷² CD4.5, Part B, Appendix M, Table 29.

lower than the generic rates used for the Local Plan evidence base in the 2017 Assessment, and give lower numbers of trips, that work is a very different exercise which does not allow for detailed analysis of particular sites and development proposals. In allocating trips to the network, the distribution work previously undertaken by Journey TP in their September 2017 Transport Assessment has been used. No further details were requested and there is no reason to think that this work is not robust.

71. For the existing performance of the network, the Appellant relies on an analysis of the journey times along the most congested routes affected by the development in AM and PM peak hours. This suggests that congestion does exist in peak hours, with journey times from the Pods Brook Road/ A120 junction to the Rayne Road/ Aetheric Road Junction varying in the AM peak between 1min 54s and 8min 34s (mean 4min 22s), and varying in the PM peak between 1min 45s and 10min 16s (mean 5min 49s). The representativeness of the data is corroborated by the ATC surveys (conducted on five days)⁷³ and it was also confirmed by Mr Bradley from the Highways Authority. For future performance, the principal assessment of Rayne Road/Aetheric junction is set out in the Journey Time Analysis, with sensitivity tests in appendices A and B to that document. These indicate increases in journey times of 42-45 and 21-94 seconds on the Rayne Road (west) and Aetheric Road approaches to that junction. Together all of this evidence confirms that there would be no severe impact in the terms of paragraph 109 of the NPPF.
72. Any harm by way of additional delay for car journeys in the peak periods would be extremely limited. If there is any adverse impact to be placed into the tilted balance, at worst it could only be of little weight. The improvements to sustainable modes of travel are benefits of the proposals and should be placed on the positive side of the tilted balance.

Benefits

73. The appeal scheme would make a worthwhile contribution to addressing the shortfall of housing land. It is anticipated that some 200–270 homes would be completed on the appeal site within the five years' period with many more in the ensuing years⁷⁴. Kier Living, the proposed developer of the site, has indicated that it would anticipate the first homes being delivered within 18 months of permission being granted (six months earlier than the Appellant's planning witness) and a build out rate of 100-150 dwellings per year, which would give a range of 275-412 dwellings⁷⁵. Although the Council had suggested that the delivery of the Millennium Slips highway scheme might cause delay to the delivery of housing, Highways England has agreed that 550 dwellings could be occupied before the slips scheme is completed⁷⁶, and that scheme is programmed and funded. By the time a decision is made, the relevant five years' period would probably have advanced by another six months so that, should the appeal be allowed, even more homes would be delivered within what would then be the newly re-set five years' period.

⁷³ Document A10, Appendices at page 102, Graphs 17, 18.

⁷⁴ Document A16, 6.3.13.

⁷⁵ Letter dated 29 August 2018 in Document O5. 75-112 dwellings between 09/20-06/21 added to 100-150 for each of the 2021/22 and 2022/23 years.

⁷⁶ CD9.39, Email dated 13 September 2018 (15.35) from Highways England to Vectos.

74. The contribution of the proposed development to housing need is a substantial benefit to which significant weight should be given. This weight should not be reduced due to considerations relating to the ELP and recent efforts to improve the supply position. Although adoption of the ELP had been anticipated for autumn 2018, that programme is no longer achievable as a result of the Local Plan Inspector's letter of 8 June 2018 (CD7.3)⁷⁷. The Council has subsequently resolved to pursue Option 2 suggested by the Inspector, with a view to bringing Section 1 of the Plan to examination as soon as possible while Section 2 is held back. However, as the Inspector warned, while one or more garden communities might be justified in the end, this will be subject to testing and he advised that simultaneously bringing forward three garden communities on the scale proposed in the ELP is likely to be difficult to justify⁷⁸. This suggests that it must be at least likely that the spatial strategy of the ELP would have to be modified by the removal of at least one garden community before it can meet the tests of soundness. It is open as to whether any plan found sound in the future will include garden communities, or whether a different spatial strategy will be assessed to better meet the principles of sustainable development. It is uncertain when the ELP might be adopted, and it should not reduce the weight given to the provision of housing by the appeal proposal.
75. The Council has referred to past performance (in the narrow period of 2017/18 and first quarter of 2018/19) as improving supply, but there is nothing to connect this with future delivery, and the information in the five years housing land supply statement and the Council's acceptance that there has been significant under-delivery in the past three years all point the other way. As the work sheet produced by the Appellant's planning witness shows⁷⁹, the level of housing which could be anticipated from the strategic growth locations (above, para 35) would not be capable of remedying the housing land shortfall.
76. Over the last five years there is an accumulated shortfall of some 536 affordable homes to which should be added an annual need from 2018-19 of some 212dpv. In overall terms, the appeal scheme would deliver up to 450 affordable homes over time⁸⁰. Significant weight should be afforded to this provision.
77. Turning to the other public benefits of the proposed development, the weight to be given to a number of the benefits of the proposed development should not be significantly reduced because they are required by policy. Paragraph 94 of the NPPF places importance on sufficient school places being made available and instructs planning authorities to give great weight to the need to create, expand or alter schools. Making provision for education is therefore necessary to meet the local needs arising from the development, but the building of houses does not create these children. If the proposed development does not go forward then those school places would not be provided and the total number of school places available would be lower unless someone else steps in to pay for them. National policy supports the provision of school places, which here is being achieved by the provision of a new primary school, as well as the financial contributions which

⁷⁷ The views of the Local Plan Inspector are referred to above at paras 32 & 33.

⁷⁸ CD7.3, para 132.

⁷⁹ CD9.37.

⁸⁰ If the Secretary of State decides to reduce heights and/or densities and thereby overall housing numbers, the number of affordable units would drop to 438 or 371 respectively.

accompany it. This should be given significant weight when assessed against the policies in the NPPF.

78. Economic benefits include the provision of 151 full time equivalent directly generated jobs over the 10 year construction period, as well as an additional 123 jobs in the Braintree area⁸¹, and the payment of the New Homes Bonus. These should be given considerable weight when assessed against paragraph 80 of the NPPF, which says that planning decisions should place significant weight on the need to support economic growth and productivity.
79. The proposed development would deliver a package of mobility measures which would meet the requirements of national policy (above, paras 62 & 69). These should be given at least moderate weight pursuant to Chapter 9 of the NPPF.
80. The proposal would provide public open space and playing fields, whereas the site is currently inaccessible except for the public rights of way. The development would open it up and would provide at least 17.65ha of public open space. It would also contribute up to £1,414,255 to off-site sports facilities in the area⁸² as well as £27,000 for improved cricket facilities at Rayne Village Hall. These should be given substantial weight when assessed against paragraph 96 of the NPPF.
81. The scheme includes the provision of an 800m² local centre and 0.65ha of Class B1 employment land. The shell of the local centre would be built out prior to the occupation of 500 dwellings and no difficulty is anticipated in finding a suitable tenant. In relation to the employment land, the Appellant is not willing to build out the employment buildings speculatively. A condition would secure a marketing strategy which would have to be approved by the Council and there is no reason to think that the employment provision would not be taken-up. These benefits should be given due weight when assessed against paragraphs 80 & 92 of the NPPF.
82. A gypsy and traveller site of at least 0.55ha would be provided within the site. This would assist in meeting need assessed in accordance with national policy and is a benefit of moderate weight.

Other points

Environmental information

83. The Appellant has provided an ES. Subsequent Regulation 22 requests have been responded to and various parts of the ES have been updated. It is only necessary to have regard to the current versions of the documents comprising the ES. All of the documents comprising the ES have been subject to consultation. The ES is compliant with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as is now accepted by the Council. NBGAG raised an issue about whether it needed to include an assessment of the broad package of measures for Flitch Way which the Appellant has committed to fund under a planning obligation. It did not; the form of those measures has yet to be finally established and will be subject to consultation and discussion, and if necessary environmental assessment, before they are finalised

⁸¹ CD4.4, ES Chapter 1, para 8.203.

⁸² The Appellant's closing submissions refer to a sum of £1,441,255, but this is the total community facilities contribution in Schedule 2 of the planning agreement, including the £27,000 for cricket facilities.

and relevant consents are sought. In any event, on the basis of the available information, the view of the Appellant's ecology witness was that the measures described in the SUSTRANS report would not give rise to likely significant effects in terms of ecology and biodiversity, which was one of the main concerns raised by local objectors⁸³. The significance of this is that the question is not whether it would have been better to include such an assessment in the ES, but rather whether the ES enables the Secretary of State to understand the likely significant impacts of the appeal scheme. It fulfils that purpose.

84. The Secretary of State is required to take account of the environmental information before him including the ES and Regulation 22 responses. However, he is also required to consider the other evidence before the inquiry, and, where differing assessments are reached (as is the case when one compares the judgements in the ES landscape and visual impact assessment (LVIA) with that of the Appellant's landscape witness), the Secretary of State will have to decide what weight to give to which assessment.

Essex Coast RAMS

85. A letter from Natural England concerns the emerging strategic approach for the Essex Coast RAMS (above, para 9). A condition and a draft planning obligation have been put forward in response⁸⁴.

The overall planning balance

86. Decisions on appeals are to be made in accordance with the development plan unless material considerations indicate otherwise. If it is concluded that the outcome of applying the titled balance weighs in favour of the proposals, then it would follow that national policy indicates that the appeal should be allowed. This would be a material consideration of the highest importance.
87. The weight to be given to the Development Plan policies which are deemed to be out of date by paragraph 11(d) of the NPPF must be tempered, regardless of their consistency with policies therein. In relation to the residual (density and height) policies (RLP 9, 10, 90 and part of CS 9) within the Development Plan, which are not amongst the most important policies for determining the appeal and so are not deemed to be out of date, these should be given weight depending upon their degree of consistency with the NPPF. However, they are each inconsistent to some degree with the approach now favoured in the NPPF, and their weight should be reduced as a consequence.
88. Policies RLP 9, RLP 10, and CS 9 require residential density to relate, amongst other things, to local character. The supporting text to RLP 10 suggests that developments between 30-50dph will be encouraged, and that greater densities may be acceptable at locations with good public transport close to town and local centres. This is not consistent with paragraph 123 of the NPPF which refers to making optimal use of the potential of each site where there is an existing shortage of land for meeting housing needs and provides a clear encouragement to look to higher than prevailing densities. As such the weight to be given to the policy should be reduced pursuant to paragraph 213 of the NPPF. RLP 90 connects height to local character and distinctiveness. Paragraph 217(c) of the

⁸³ In response to the Inspector's questions.

⁸⁴ CD9.44, suggested condition 27; CD9.45.

NPPF does refer to being sympathetic to local character, but balances this with a need to avoid preventing or discouraging appropriate innovation or change. RLP 90 does not contain this balance and is, to that extent, inconsistent with the NPPF and should be given reduced weight.

89. Much has been made by NBGAG and local residents of the quantity of objections and the absence of letters of support for the proposals. However the voices which are not heard from are those of the people who would live here if only there were homes for them.
90. In order to begin to make inroads into addressing Braintree's housing land problem, planning permissions will have to be granted under the terms of the tilted balance in the NPPF. It is submitted that the case for approving the proposed development is a strong one and that the appeal should be allowed.

The Case for the Local Planning Authority

The material points are:

Changes to the housing need position

91. The latest national household growth projections were released towards the end of the inquiry. These are the starting point for calculating local housing need under the standard method. PPG was updated on 13 September 2018, and paragraph 2a-017 explains that the affordability adjustment is applied to take account of past under-delivery, and that it is not a requirement to specifically address under-delivery separately. The Council's current calculation of housing land supply, based on the standard method but published before the amended PPG, does factor past-under delivery into the calculation. Furthermore, the Government has said that it intends to consider adjusting the standard method and to consult on proposed changes. It is clear that the Council's housing land supply position is in a state of flux, and it has not yet been possible to calculate the correct position with any confidence. It is therefore assumed that the parties will need to provide submissions on their updated positions before a decision is taken on this appeal (and if there is significant disagreement, it may be necessary to re-open the inquiry to address the issues). The Council's case at present in respect of housing land supply refers to the position set out at the inquiry⁸⁵.

Presumption that planning permission should be refused

92. It is common ground that the appeal proposal does not accord with the Development Plan. It would be contrary to Policy CS1, which states that new housing will be located within the main towns, including Braintree, on various identified sites and locations, or on previously developed land and infill sites in Key Service Villages and other villages. The proposal would also be contrary to Policies RLP 2 and CS5, which taken together seek to confine development within the settlement boundaries, and to restrict development outside those boundaries to uses which are appropriate to the countryside. It is also common ground that the appeal proposal would conflict with Policy CS8, which seeks to ensure that development protects the best and most versatile agricultural land and has regard to the character of the landscape and its sensitivity to change.

⁸⁵ Document L9, Appendix 3.

Consequently it also conflicts with Policy RLP 80, which provides that development that would not successfully integrate into the local landscape will not be permitted. The appeal proposal is also in conflict with a variety of other adopted local plan policies, including those relating to heritage assets and building heights and densities.

93. The conflict with the Development Plan means that the starting point for the determination of this appeal is that planning permission should be refused. In order to rebut that presumption the Appellant must show that there are other material considerations which tell in favour of the proposal, and which are of sufficient weight to overcome the conflict with the Development Plan.

The need for more housing

94. The revised NPPF introduced the standard methodology for calculating housing need, and redefined the circumstances in which a 20% buffer needs to be applied. The result of these policy changes is that the LPA has 3.91 years' supply, as demonstrated in the 30 June 2018 position statement⁸⁶. The NPPF now more straightforwardly confirms that the absence of a five years' housing land supply triggers the presumption in favour of sustainable development in paragraph 11(d)(ii), subject to any policies referred to in 11(d)(i). That is a policy presumption within the NPPF, but it does not mean that Development Plan policies can be put to one side.

The most important policies for determining the proposal

95. The Appellant suggested that the weight to be given to those policies which are most important for determining the appeal would inevitably have to be tempered, in order to avoid a situation where policies which have created a shortfall in housing land supply are nevertheless given full weight. However it is not necessarily the case that the most important policies for determining the application are the ones which have caused the situation in the first place. The landscape and heritage policies of the Development Plan have not been responsible for the current housing land supply position. The current housing land supply position is primarily due to substantial increases in assessed housing needs over the last two years rather than the application of restrictive policies such as RLP 2 and CS5.
96. It does not matter whether particular policies are labelled as the most important or not, or whether it is those particular policies which have caused the lack of a five years' housing land supply. The real issue is whether the various material considerations outweigh the conflict with the Development Plan so as to indicate that planning permission should be granted. In carrying out that exercise it is not the case that any Development Plan policy must be given any particular amount of weight. The weight to be given to any ingredient in the planning balance is always a matter for the decision maker's judgement. Consideration of the weight to be given to out-of-date Development Plan policies is essential in order to decide whether, in the overall balance, the adverse impacts of the proposal will significantly and demonstrably outweigh the benefits. Out-of-date policies can still be given full or very substantial weight in appropriate

⁸⁶ Document L9, Appendix 3.

circumstances. The degree of consistency with the NPPF will be an important consideration.

97. In setting out the weight which should be accorded to policies in the Development Plan, the Council has drawn on the conclusions reached by Inspectors in the Coggeshall, Steeple Bumpstead and Finchingfield appeal decisions⁸⁷. The aim of Policy CS5 to protect and enhance the landscape character and the amenity of the countryside has been found to be consistent with the original version of the NPPF, and the policy has been accorded more than moderate weight⁸⁸. The NPPF, at paragraph 170(b), still contains the requirement for planning decisions to recognise the intrinsic character and beauty of the countryside. There is no material change to national policy which should lead to a departure from the judgements reached in the previous decisions.
98. Policies CS8 and RLP 80 seek to avoid landscape harm and ensure that development respects character and sensitivity and integrates into the local landscape. Those aims are consistent with the NPPF. Policy CS8 was given full weight in the Finchingfield decision⁸⁹ and significant weight in the Coggeshall decision⁹⁰. Policies RLP 9, 10 and 90 relate to various aspects of design, including the height and density of new development. They seek to ensure that new development respects and relates to the character of the surrounding area and reflects or enhances local distinctiveness, and remain broadly consistent with the NPPF. Policies RLP 95 & 100 seek to preserve listed buildings and conservation areas and their settings. Policy CS9 requires development to respect and respond to the local context, especially where development affects the setting of historic or important buildings or conservation areas. They have been given considerable weight due to the fact that they reflect important statutory duties. These policies of the Development Plan all deserve to be accorded significant weight, and a failure to comply with any of them should also carry significant weight in the overall balance.

Harm to the significance of heritage assets

99. The issue between the Council and the Appellant is whether the introduction of a large scale housing development in the settings of Naylinghurst and Rayne Conservation Area would cause harm to their significance. If there is such harm, it is common ground that it would be less than substantial and would therefore fall to be considered under paragraph 196 of the NPPF.

Naylinghurst

100. Naylinghurst is a 17th century timber-framed farmhouse, which was significantly extended in the Edwardian period. Its immediate surroundings consist of its domestic curtilage. Beyond this, the farmhouse is and always has been surrounded by agricultural land. With the advent of modern farming practices, field boundaries have been removed. That is not unusual. But there has been no substantial change to its setting. Whilst the field parcels may have been smaller in earlier times, Naylinghurst has remained surrounded by the land which was once farmed from the farmhouse. The existence of that land in continued

⁸⁷ Document L7, Appendices 3-5.

⁸⁸ Document L7, Appendix 3 paras 59 & 101 and Appendix 5 para 59.

⁸⁹ Document L7, Appendix 5 para 58.

⁹⁰ Document L7, Appendix 3 para 60.

agricultural use contributes to the experience of the heritage asset, and to the ability to appreciate the purpose for which the building was constructed and the functional and economic associations it had with the surrounding land.

101. Historic England's Good Practice Advice in Planning Note 3 (GPA3 – CD8.8) explains that the potential for appreciation of the significance of a heritage asset may increase once it is interpreted or mediated in some way⁹¹. The area of land owned by Naylinghurst was never something that could be seen on the ground. However the parish map and subsequent tithe map show the area of land originally farmed from Naylinghurst, which covers a large part of the appeal site. There is also an historical link provided by the public right-of-way (PROW) which passes to the north of the farmhouse. This route can be clearly seen on the first edition of the OS map⁹², and roughly the same route can be walked today. A person walking on the PROW now can see Naylinghurst in the agricultural landscape it was built to serve: that is an experience which has not fundamentally changed since the track was first formed. The house is also clearly visible in views from the public footpath along the south-east side of the southern large field⁹³.
102. Converting the agricultural land to the north and east, which contributes to the setting of the listed building, into a housing development with associated playing fields and open space would impair the ability to appreciate the historical association Naylinghurst has with its surroundings and damage its character as an island in the fields. The associated noise, activity and lighting would also negatively affect the experience of the heritage asset from its surroundings. Mitigation planting would screen the intrusive change, but would obscure the present open views across the agricultural landscape. Although the setting of Naylinghurst to the south and west would remain unchanged it does not mean that development to the north and east would not cause harm.

Rayne Conservation Area

103. The agricultural land to the east of Rayne forms part of the surroundings of the conservation area, and there is a degree of intervisibility between the conservation area and that land. The historic map evidence shows that the existence of that open agrarian landscape, and its relationship to Rayne, is longstanding. Its existence contributes to the character of Rayne Conservation Area as a distinct historical settlement. The Flitch Way is one of the key ways to access the conservation area on foot from Braintree. On that route, it is currently possible to look out across the longstanding agricultural landscape between the settlements. The experience of moving through the agricultural landscape allows a better appreciation of the character of the conservation area as a distinct and well-preserved linear settlement, which developed independently of Braintree. The change in land use from agriculture to an extensive housing development along the Flitch Way, or the closing off of views arising from mitigation planting, would detract from the contribution which the dynamic views make to the significance of the conservation area. It is recognised that this harm is at the lower end of the scale of less than substantial harm. Nevertheless, it must still be given considerable importance and weight.

⁹¹ CD8.8 pages 4-5.

⁹² Document L2, map 5.

⁹³ See the photograph in viewpoint 1, Document L2.

Valued landscape and countryside

Valued landscape - policy

104. Paragraph 170 of the NPPF now refers to the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan). The landscape in the vicinity of the appeal site is neither statutorily protected nor identified in the Development Plan, and the Appellant argues that it derives no protection from paragraph 170(a). However it is the manner of protecting valued landscapes that depends on their statutory status or identified quality in the development plan, not the fact of their protection. Thus a landscape with statutory status such as an area of outstanding natural beauty should be accorded more protection than a landscape without such status. But it does not follow that undesignated landscapes should receive no protection at all.
105. Any substantive change would have been expected to be mentioned in the consultation documents, but there was nothing in the proposals or the Government response to suggest a change of the nature suggested by the Appellant. Paragraph 170(a) relates to policy making as well as decision taking, but the Appellant's suggested interpretation is unworkable in the plan-making context. If planning policies can only protect and enhance undesignated valued landscapes if they have an identified quality in the development plan, this would prevent any new undesignated valued landscapes from being protected by planning policies. Valued landscapes have only existed as a planning consideration since the first version of the NPPF in 2012. The majority of local planning authorities do not have an adopted post-2012 development plan which might be expected to identify valued landscapes and their quality. Restricting valued landscapes to either statutorily designated landscapes or those identified in development plans would in practice very substantially reduce protection.
106. The better interpretation of paragraph 170(a) is that the question as to whether a landscape is valued or not still falls to be considered on a case by case basis. Where the landscape has a statutory status or is identified in the development plan, it must be given a level of protection which is commensurate with that status. Where the landscape is not designated or identified in a local plan, then if it is found to be valued within the meaning given by the case-law that had built up prior to the revised NPPF, it still deserves protection.

Valued landscape – assessment

107. The key factor in the Council's assessment is the recreational value of the landscape, combined with its proximity to the urban area of Braintree. The landscape in the vicinity of the site provides a means of quickly and easily accessing and appreciating the countryside, which is out of the ordinary compared with other landscape areas around Braintree. The Flitch Way is an important part of this and is itself highly valued. But that is not the extent of the value of this landscape. Once residents have travelled along the Flitch Way to the west side of Pod's Brook Road, they are able to take advantage of the network of public footpaths crossing the appeal site, which offer different experiences to the Flitch Way. Local people have spoken not only of the recreational value of the landscape, but also of the importance of being able to see the open countryside, and enjoy a sense of wellbeing and tranquillity away

from the built up area. The landscape either side of the Flitch Way is integral to that experience.

108. Popularity alone is not sufficient for a landscape to be considered valued, but popularity is not an irrelevant consideration. It is clear from the many objections to this proposal that the Flitch Way and the landscape either side of it, comprising the appeal site, is very popular. The reason it is so popular is because it is so close to Braintree and so accessible. The popularity of the landscape thus reinforces its distinctive qualities. Although valued landscapes no longer have an elevated status in the NPPF, in that they are not regarded as footnote 6 policies which prevent the application of the tilted balance, a failure to protect a valued landscape is still a conclusion to which significant weight should be accorded in the planning balance.

Intrinsic character and beauty of the countryside

109. The policy imperative to recognise the intrinsic character and beauty of the countryside is now found in paragraph 170(b) of the NPPF. The High Court has confirmed (in *Cawrey Ltd v SSCLG*⁹⁴) that this policy objective applies to ordinary countryside. If the appeal site is part of a valued landscape it will receive a greater level of protection under the NPPF, but the site is part of the countryside and as such it still attracts a level of protection.

Impacts on landscape character and visual amenity

The expert evidence

110. The Council's landscape witness, Mr Neesam, has been involved with the appeal site and the Appellant's proposals since May 2016. Prior to that, he was also responsible for the Braintree District Settlement Fringes work in 2015 (CD8.7). He has visited the site on numerous occasions, throughout different times of the year. On the other hand the Appellant's landscape witness, Mr Williams, had no involvement with the appeal site until July 2018. All of the previous LVIA's had been conducted by ACD. Mr Williams had only been able to visit the site on two occasions in order to inform his assessment. He does not present a full LVIA, but has sought to provide an analysis and summary of the high level landscape and visual effects⁹⁵.
111. GLVIA makes the point that it is important that the basis of the professional judgements reached in an LVIA is transparent and understandable, so that the underlying assumptions and reasoning can be understood by others⁹⁶. It is difficult to understand the criteria against which Mr Williams has assessed the factors which combine to produce judgements on the sensitivity and magnitude of effects. Judgements are expressed using word scales with four categories ranging from negligible to high, but the descriptions provided for those different scales in the main lack detail. Mr Neesam has followed the requirements of GLVIA by providing, in his LVIA methodology, descriptions to accompany the word scales which are used to communicate his judgements on the different elements of the assessment.

⁹⁴ [2016] EWHC 1198, paras 49 & 50.

⁹⁵ Document A12, para 4.1.1.

⁹⁶ CD8.1, para 3.23.

Landscape character

112. It is common ground that, at site level, there will be significant adverse effects on landscape character⁹⁷. It may well be the case that a large urban extension on countryside adjoining an existing settlement is generally likely to have an adverse effect on local landscape character. However, the fact that this is not uncommon does not mean that it is not harmful.
113. Differences concerning methodology centre around the approaches to assessing susceptibility and magnitude. As to susceptibility, Mr Neesam had assessed an outline proposal for around 1,600 houses, with some commercial uses and associated roads and infrastructure. That is the description of development. The Appellant also considered that Mr Neesam had assessed susceptibility by reference to qualities of the LCA which are not found in the vicinity of the appeal site, but which instead relate to the part of the LCA to the north of Rayne Road. However that part of the LCA to the south of Rayne Road does generally display the qualities of the wider LCA: although the part of the LCA to the north may have slightly higher susceptibility, it does not to the extent that it would alter the judgement on susceptibility from high to medium.
114. Although the appeal proposal only occupies a small proportion of the wider LCA, at a landscape scale it still covers a sizeable area. It is appropriate to give judgements about size and scale of change the most weight in the overall assessment of magnitude.
115. At county level, the site is within LCA C6⁹⁸: the site generally accords with the key characteristics of this character area. Specifically it displays the shallow valley associated with the watercourse; the valley is narrow with undulating valley sides; and the site it is predominantly arable farmland with well hedged medium to large fields. LCA C6 was assessed as having a high sensitivity to urban extensions over 5ha,⁹⁹ which are unlikely to be capable of being absorbed. It is considered that there would be a major/ moderate effect at year 15.
116. At district level, the site is within LCA A12¹⁰⁰. The landscape of the appeal site comprises part of a narrow shallow valley which cuts into an area of farmland plateau. The valley sides are covered by irregularly shaped fields which slope down to the valley floor. The landscape of the appeal site accords with the description of the LCA, which, overall, is assessed as having a relatively high sensitivity to change. The appeal proposal would have adverse effects on key features of the LCA as well as appreciation of those features from points in the surrounding landscape. It would have a major/moderate effect at year 15.
117. In the Braintree Settlement Fringes Evaluation of Landscape Capacity Analysis, the greater part of the appeal site has been assessed as having a low capacity for development¹⁰¹. The landscape of the site is of high sensitivity¹⁰², and it is the kind of site that the LPA has sought to avoid in identifying areas for growth,

⁹⁷ Documents L4 (Appendix 1, page 50) & A12 para 4.2.2.

⁹⁸ CD8.5, page 96.

⁹⁹ CD8.5, page 100.

¹⁰⁰ CD8.6, page 54.

¹⁰¹ CD8.7, figures B-08 & B-09. The Appellant's landscape witness suggested in his proof that parcel 20a had been incorrectly shown as having a low capacity as it is referred to in the text as being of medium-low capacity. However the capacity analysis form (Document L4, Appendix 3) clearly gives this part of the site a low overall capacity.

¹⁰² Document L3, para 3.3.1.

preferring to encourage development on sites with greater capacity such as Panfield Lane (medium capacity), Broad Road (range from low-medium to medium-high capacity) and Towerlands (medium capacity) (above, para 35).

Visual amenity

118. Mr Neesam has carried out his visual impact assessment in line with GLVIA, and his assessment is that after 15 years and in summer there would be visual effects of major significance on receptors represented by 6 viewpoints, and effects of major/moderate significance on receptors represented by a further 8 viewpoints. For the Appellant, Mr Williams adopted a different approach of grouping together the LVIA viewpoints, and then carrying out an assessment of the impact on the group as a whole. It is considered that this grouping approach could appear to mitigate against the effect of worst case viewpoints in the LVIA. This way of assessing visual impacts also has the shortcoming that the magnitude of change is often expressed as a range e.g. negligible-medium for Group 1 (Flitch Way) at completion.

The Flitch Way

119. A clear point of dispute concerns the extent to which open views of the surrounding countryside are an important aspect of the Flitch Way's character. This has direct implications for the assessments of landscape and visual impact. Mr Williams's evidence for the Appellant is that the overriding impression and character of the Flitch Way is that of a strongly linear route, where open views are not a dominant feature. Mr Neesam, for the Council, considers that the countryside beyond the Flitch Way is very apparent, and more than merely glimpsed between the Pod's Brook Road bridge and the cutting towards Rayne. A mixture of open, filtered and heavily filtered views is shown on his Flitch Way view analysis figure¹⁰³.

120. The availability of views over a rural and pastoral landscape is an important aspect of the route and part of the reason why it is a well-used recreational resource¹⁰⁴. The ability to sense the open countryside beyond the vegetation is also key in maintaining a rural setting to the settlements of Braintree and Rayne and reinforcing the sense of two settlements separated by countryside. Although mitigation planting to either side of the Flitch Way would help to screen the proposed development, it would also obscure views of the countryside and would, therefore, fundamentally change the character of the route. In Mr Neesam's assessment, the impact on the character of public access features of the site (including the Flitch Way) would be major/moderate after 15 years¹⁰⁵, and there would also be major/moderate visual effects on representative Flitch Way viewpoints C and J. The proposed works, including widening and resurfacing, would change the character and appearance of the Flitch Way and render it less attractive. Balancing the benefits of improving the movement function of the Flitch Way against the harm to its current character as a rural leisure route in the vicinity of the appeal site, overall the proposed works would be, at best, neutral in the planning balance¹⁰⁶.

¹⁰³ CD9.34

¹⁰⁴ Document L4, Appendix 1, para 8.2.1.

¹⁰⁵ Document L4, Appendix 1 page 52.

¹⁰⁶ Document L6, para 6.35.

121. This is the kind of balancing exercise contemplated by Policy RLP 140, which seeks to protect and improve disused railway lines like the Flitch Way. It encourages improvements to these features and links to them, but at the same time makes clear that development that would prejudice their use for recreational purposes will not be permitted. The concept of prejudice goes further than physical prevention or obstruction, to encompass wider concepts of harm, injury or detriment. The conclusion that the impact on the Flitch Way is contrary to the Development Plan can also be reached under Policy RLP 80, which seeks to ensure that development is not detrimental to distinctive landscape features.

Pods Brook Road

122. Pods Brook Road is heavily planted to both sides and provides an attractive and gentle green gateway into Braintree. The appeal proposal would reduce vegetation and green space to both sides of the road. A gap would be opened up to create the site access, and the views that would be obtained through this gap would be of the tallest and most dense part of the development. In addition to this, the western carriageway would be widened to accommodate an extra lane to the south of the new roundabout, and a 3m wide footway would be added on the eastern side. There would be an urbanising effect on Pods Brook Road, which would be an adverse impact of the development.

Separation of Braintree and Rayne

123. The land between Braintree and Rayne in the vicinity of the appeal site has long been recognised as performing an important role. This is reflected in its historic designation as part of a green wedge. The performance of this area of land in meeting the objectives of the green wedges was assessed in 2003, and it was concluded that it met many of the criteria and was therefore appropriately identified¹⁰⁷. The role played by the site in separating the settlements of Braintree and Rayne was also an important factor in its categorisation as an area with low landscape capacity in the Settlement Fringes Landscape Capacity Study¹⁰⁸. In the ELP, the West of Braintree Garden Community is proposed on land to the north-west of Rayne (above, para 34)¹⁰⁹. This proposal makes it all the more important to preserve the gap that currently exists to the east of Rayne.
124. The separation between Braintree and Rayne is most strongly experienced along the Flitch Way, and it is the impact of the development on the perception of separation along this route which is key. Users of the Flitch Way currently have a clear sense of separation between the two settlements. This is not just due to the physical distance between the settlements but also due to the change in setting experienced. The countryside surrounding the Flitch Way represents a vital aspect of the identity of the village of Rayne, and of the user's sense of leaving one developed settlement and arriving into another. The areas identified as urban fringe¹¹⁰, including playing fields, a nature reserve and a paddock on the east side of Rayne, do not provide that same contrast and do not currently contribute to the perception of separation between the settlements, because they feel like part of the settlement with which they are associated. There would be a

¹⁰⁷ CD9.14, page 48.

¹⁰⁸ CD8.7, para 4.86.

¹⁰⁹ CD9.1, figure 19 shows the location of the garden community and part of the gap to the east of Rayne.

¹¹⁰ Document L4, figure SJN 02.

significant reduction in the size of the gap between Braintree and Rayne. The development would harm the sense of leaving Braintree because the user would lose many of the signals of being outside of an urban area and would see only a very narrow strip of agricultural land in contrast to the countryside views that can be seen at present.

Height and density

125. The key issues concern building heights (specifically, buildings up to four storeys) and density (specifically, areas of up to 110 dph). The message from the character analysis in the design and access statement (CD3.28 – DAS) is that residential development in those areas is mainly two storey, with three storey buildings very much in the minority, and no precedent for four storeys. Further studies appeared with Mr Vernon-Smith's proof of evidence¹¹¹, only one of which (Maylon Close) included any 4 storey development. Maylon Close is located immediately north of the hospital site and just east of a large industrial site, within a built-up area. There is also some four storey development in the town centre and near the rail station. The context for these buildings is fundamentally different to that of the appeal site, which lies in an essentially rural setting. The evidence does not support the inclusion of four storey development. This aspect of the proposal does not accord with the aims set out in the DAS. It conflicts with Policies CS9 and RLP90, and it does not find support in the NPPF.
126. The highest densities recorded by the Appellant across nine character areas were 71 and 80dph respectively, at Maylon Close and St Michaels Hospital¹¹². The densities of the other areas did not rise above 47dph, even in the centre of Braintree. The Appellant's design witness described the densities of 71 and 80dph as being appropriate for the central areas of the new development¹¹³. However those character study areas are still 30-40dph less dense than the upper limits shown on the parameter plans. Whilst sensitivity to the local area does not simply mean copying what is there, the high density areas proposed on this site are out of step with the area.
127. Moreover there is insufficient evidence that areas of the development with high density could be provided with adequate living conditions for residents. There are concerns about the level of parking provision, amenity space and separation distances. An illustrative block includes high density development¹¹⁴, but this has an average density of 88dph, rather than the 110dph which is at the upper limit of the parameter plan, and it fails to demonstrate that the maximum form of development sought would provide appropriate living conditions. The maximum density of 110dph conflicts with Policies CS9, RLP10 and RLP90. It is out of character with the surrounding area and concerns about the ability to achieve satisfactory living conditions at the highest densities have not been answered.

Housing land supply

128. At 3.91 years (above, para 94), the LPA's current supply of housing land falls just over a year short of providing the five years requirement. In the Coggeshall appeal decision, issued in July 2017, the Inspector concluded that there was 3.12

¹¹¹ Document A4, Appendix 4.

¹¹² Document A4, Appendix 4.

¹¹³ Document A4, Appendix 4, para 1.10.4.

¹¹⁴ Document A4, Appendix 6, plan ref 5010.

years' worth of housing land¹¹⁵. In her view the weight to be given to the undersupply was tempered by the fact that it resulted, in part, from a recent reassessment of OAN up to 716dpy (whereas the LPA had good levels of delivery against the Core Strategy target of 385dpy in recent years), and that the LPA was in the process of progressing a new local plan. The LPA has now experienced a further increase in the target to 835dpy. Despite this, and the application of a 20% buffer as a result of revised national policy, the housing supply position has improved since the date of the Coggeshall decision. The reasoning for tempering the weight to be given to undersupply applies equally, if not with even more force, now.

129. In 2017/18 the LPA granted permission for 2,312 dwellings, against an annual target of 716dpy. That is over three times the target. In the first quarter of 2018/19, permission was granted for 667 dwellings, only 50 short of the annual target which was then in place. Whilst it is acknowledged that over the past three years there has been significant under-delivery, the most recent performance is encouraging and demonstrates that the LPA is being proactive in approving applications where appropriate. The LPA is also working with the promoters and site owners of the strategic growth sites identified in the ELP to bring that land forward as quickly as possible. It is not suggested that bringing forward these sites will eradicate the shortfall, but the LPA is taking what steps it can to meet local needs and reduce the shortfall. That is relevant to the weight which should be accorded to the housing land supply position.
130. The appeal site is a large area of land which would take a long time to build out. In his written evidence, the Appellant's planning witness anticipated delivery of between 200-270 dwellings within the 5 year period¹¹⁶. However the Appellant also drew attention to a letter from Kier which contained higher figures. The letter from Kier does not contain any explanation for the assumptions made, and weight should be attached to it. On the basis that up to 270 houses could be delivered within the five years period, around 18%¹¹⁷ of the scheme would contribute to the five years housing land supply position. The majority of the dwellings proposed would be delivered outside that period. and would be addressing longer term housing needs. It is likely that an adopted plan will be in place by the end of the current five years' period. When that happens, it will be able to demonstrate a five years supply of housing land. The requirement for a five years' supply does not represent a ceiling on housing delivery, and housing which contributes to longer term needs is still beneficial. But the question of whether or not housing is needed to achieve the nationally-set housing target is an important factor in the planning balance.
131. It is clear that there are significant challenges facing the LPA as far as the emerging plan is concerned. However, it remains at examination and all three NEAs have confirmed their commitment to the principle of the Garden Communities and to producing the necessary evidence and sustainability appraisal (above, para 33). The appropriate way to plan for the longer term housing needs, which 95% of the housing on this site would be meeting, is through the local plan process. Paragraph 72 of the NPPF states that strategic-policy making authorities should identify suitable locations for larger scale

¹¹⁵ Document L7, Appendix. 3.

¹¹⁶ Document A16, paras 6.3.13-14.

¹¹⁷ The LPA's closing submissions referred to 5%, but 270 is about 18% of 1500.

development such as significant extensions to existing towns, which should be well located and designed. This exercise has been undertaken by the LPA, with specific reference to the landscape capacity of sites which were put forward. Although new housing would be beneficial, particularly where there is a shortfall of land supply, the weight to be given to that benefit in this particular case should not be regarded as significant.

Affordable housing

132. There is a clear need for more affordable housing in the LPA's area, and there is an accrued shortfall. The appeal proposal complies with development plan policy regarding the level of affordable housing policy. However it does not go beyond this, and all of the sites which have been granted permission recently have similarly included a commitment to delivering 30% affordable housing. Having regard to the anticipated build-out (above, para 130), only a small proportion of the overall amount would be delivered within the five years' period. In the longer term affordable housing would be a significant benefit, but it would be somewhat less significant in the relevant five years period.

Employment land, the local centre and sustainability

133. Both the employment land provision and the local centre are less than what could be reasonably expected on a site of this size. The level of proposed provision is relevant in the planning balance, because it goes to the issue of sustainability. Paragraph 103 of the NPPF is clear that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel. Whether all opportunities have been taken to limit the need to travel is an important consideration.
134. The ELP includes provision of employment land within some of the strategic sites in Policy LPP2. The appeal site is strategic in scale, even though it has not been preferred for allocation, and it is therefore appropriate to compare the proposed employment provision with the expectation of emerging policy for other strategic sites. Policy LPP2 specifies that 3ha of employment land will be provided at land East of Great Notley and at Broad Rd, and that 4ha of employment land will be provided at the site in Feering. The provision of 0.65ha of employment land at the appeal site is low in comparison.
135. The 2018 Retail Study Update explains that, as a rule of thumb, a development of 2,000 houses could support 1,500m² of convenience and comparison shopping and food/beverage floorspace.¹¹⁸ Therefore a development of 1,500 houses could be expected to support around 1,125m². The local centre proposed by the Appellant would be no more than 800m², with a maximum 200m² of A1 retail use. This is substantially below what the development could support, in terms of meeting day to day needs. It would not result in the need for travel being limited.
136. The Flitch Way is important for the Appellant's sustainability arguments, but the lack of lighting would be likely to affect use of the route in the hours of darkness. The LPA would not on balance support lighting due to the status of the Flitch Way as a local wildlife site and home to a badger sett, and also because it

¹¹⁸ CD 2.17 para 7.15

would further exacerbate the impacts on character and appearance. However, the lack of lighting would reduce the attractiveness of the route at certain times, and this would increase the need to travel by other means including the private car, contrary to the thrust of paragraph 103 of the NPPF.

Other benefits

137. The proposed development would generate construction jobs and would benefit the local economy through increased spending and creating demand for shops and services. However, these are benefits which would arise from any housing development. They would also arise from development on sites in more suitable locations. Only limited weight should be given to them.
138. The education land proposed for the appeal site would provide 420 primary school places, set against a demand for 399 places which would be generated by the development¹¹⁹. This leaves 21 spaces which would be available for the wider community. Turning to early years provision, there would be an under-provision. The school would provide 56 of the 120 places required to meet the demand generated by the development¹²⁰. This more than cancels out the slight over-provision at primary level. The development is required to make provision for the education need which it would generate, in order to avoid unacceptable impacts on local education infrastructure. This is necessary to make the development acceptable in planning terms. It should not be treated as a benefit of the scheme, or if it is, it is one to which only very limited weight should be attached in the planning balance.
139. The policy requirement for open space for this development is 15.85ha, and a planning obligation would commit the Appellant to providing 17.65ha. The open space would, however, also be likely to have to function as SANG to ensure that the appeal scheme does not have an adverse effect on the integrity of the various European Sites for which it is in the zone of influence. Some of the open space is unlikely to be publicly accessible due to the need to provide mitigation for protected species. The public open space is needed to make the development acceptable and avoid harm: it is effectively mitigation for the housing development and results in a neutral situation rather than being a positive benefit. Any overprovision is minimal, and the weight given to it should be limited.
140. The masterplan indicates that the playing fields would be located at the western end of the development site. That is furthest away from the main built-up area of Braintree. It is not considered likely that, in practice, the proposed playing fields would attract much if any use from outside the development itself. There is a policy requirement to make adequate provision for outdoor sports to meet the needs of the proposal, and no evidence of any oversupply. For similar reasons to those relating to public open space (above, para 139), the provision of playing fields should be accorded limited weight.
141. The Highway Authority considers that the sustainable transport measures proposed are necessary to ensure that there would not be residual severe impacts on the road network. They are required to ensure that the development

¹¹⁹ Document L6, para 5.82.

¹²⁰ Document L6, para 5.82 and see s. 106 agreement.

is acceptable, and, with the exception of the proposed bus service, the majority of these measures are aimed at future residents and not the wider community. Any benefits should be regarded as limited.

Other matters

142. Although there is conflict with Policy CS8 due to the loss of best and most versatile agricultural land, no issue is taken in this respect since the majority of the District is similarly classified and it would not be possible to meet the housing target without using such land¹²¹. In the ELP, Policy LLP 26 seeks the provision of traveller pitches at the strategic growth locations and garden communities. As the appeal proposal concerns a large site on the edge of a main urban area, it would be appropriate for the development to include traveller accommodation.

Conclusions

143. The starting point is that the appeal should be dismissed due to the conflicts with the Development Plan. The key material consideration is the NPPF. This first requires the heritage balance in paragraph 196 to be conducted. It is the LPA's case that the harm to heritage assets is sufficient to dispose of the appeal, given the great weight which must be given to that in the balance. If that is not accepted, then it is necessary to consider whether the adverse impacts of the appeal proposal are significantly and demonstrably outweighed by the benefits. The adverse impacts will be those which have led to findings of conflict with the Development Plan together with any other material considerations pointing in the same direction. When that exercise is done, this is a case where the presumption in favour of sustainable development is rebutted. The adverse impacts do significantly and demonstrably outweigh the benefits of the proposal. There are no other material considerations of sufficient weight to displace the statutory presumption in favour of the Development Plan. Accordingly, the appeal should be dismissed.

The case for NBGAG

The material points are:

Introduction

144. The Action Group knows that it represents the views of the community, as the proposal has been on-going for nearly three years and public awareness of it is good. NBGAG has worked hard in that regard and with the local press to ensure people have their opinion heard. Hundreds of individual letters of objection have been sent by individuals and a large number signed a petition against this development. Objectors are from Braintree, Rayne and other areas. In contrast there has been limited support for the proposal.

145. The tilted balance applies here because there is not a five years' supply of housing land, and NBGAG is aware that housing is needed. But the tilted balance cannot be a licence to build anywhere irrespective of what the community would lose, what community assets would be significantly harmed, the loss of identity of towns and villages, and other adverse effects including on highways. This proposal has been assessed both as a site in the ELP and also as a planning

¹²¹ Document 5.1, page 53.

application by those who know what is best for their communities and who have been elected to represent those communities, assisted by the strong views expressed by Rayne Parish Council. The LPA has rejected this site as suitable for its area, notwithstanding the deficit in housing. Those decisions speak volumes and should be respected.

146. This development would cause adverse impacts which would significantly and demonstrably outweigh the benefits. Benefits should be distinct from mitigation, such as the provision of a school. Housing, and importantly affordable housing, would be created, but only at the minimum level required and which any housing scheme would deliver. It is not a benefit of this scheme in particular. Furthermore, the amount of housing that could contribute to the five years supply has been predicted at only 200-270 dwellings. Yet granting permission for this large building project would be contrary to the plan-led system.
147. The employment land here is small in comparison to the number of new residents and is a little benefit. Most residents will need to go off site to employment. The primary school would meet the need the development creates, and the early years provision would not be fully met. The local centre would accommodate two small shops or one medium sized shop, but would only meet the needs of the new residents. The bus route, works to the Flitch Way and highways works amount to at the most small benefits.

Coalescence

148. Braintree and Rayne are distinct. Despite being geographically close they have very different identities. The proposed development, outside of the settlement boundary, would not be a natural urban extension. It juts out of Braintree and fills almost the entire gap between it and Rayne. It is of significance that the land has previously been deemed green wedge and has been identified in the ELP as a green buffer. However separation is more than the physical gap. Rayne feels like a rural village despite its proximity to Braintree, and there is a real sense of travelling from one to the other. Leaving Braintree on Rayne Road, the view near Nayling Road of fields rising up a slope to the tree-line of the Flitch Way informs the senses as one travels further along and that view diminishes.
149. Separation is also experienced along the Flitch Way. The sense of leaving Rayne does not occur until one is at the end of the playing fields. If the proposal were to go ahead, then within a short distance one would experience the start of the development on the south side with its recreation area and related infrastructure in the foreground. There would be no real sense of leaving one settlement and reaching another. In reverse, there is a real sense of leaving Braintree over Pods Brook Road and travelling through open countryside. Even where there are banks, light still pours in to the Flitch Way, one can see some distance over the banks and there is tranquillity. Coalescence is a significant harm to be weighed in the planning balance.

Heritage

150. The harm which would be caused to Naylinghurst, including its setting, is not outweighed or justified by any benefits of this appeal. The development would not be far enough away to avoid being a significant intrusion and detrimentally changing the setting of Naylinghurst. NBGAG refers to adverse impacts on other listed buildings, and it supports the objection made by the LPA when it refused

planning permission, that the proposal would cause less than substantial harm to the significance of the grade I listed Church of All Saints¹²².

The Flitch Way and surrounding countryside

151. The Flitch Way is a unique place. It is used as a walking path, a running track, a travel route from Rayne and beyond to Braintree, a cycle path, and a place to get away from away from a town or village in safe surroundings. It is not merely a travel route. Although it may be a route of choice for some, that is because of its setting and views. It is unique in that there is safe and easy access to all from Braintree. The impact of the appeal scheme on this valuable and sensitive public amenity is of major concern. The hundreds of letters of objection and the evidence of those who spoke at the inquiry have made plain that the Flitch Way is highly valued. Replacement of the open countryside with 1500 dwellings and other buildings, would result in the loss of the essence of what it is. A path through a housing estate would be the Flitch Way in name alone.
152. Government policy says that there should be protection of open countryside for the benefit of all, and that there should be recognition of the intrinsic character and beauty of the countryside so that it may be enjoyed by all. This appeal scheme offends that policy. It also offends Policy RLP 140 which states that development which would prejudice the use of disused railway lines for recreational use will not be permitted. Prejudice means harm or injury that results or may result from some action. The harm that would result from the building of 1500 dwellings is the loss of the open countryside and the views of the same from the disused railway, which would make the Flitch Way far less appealing to use. The public rights of way which cross the site would become part of the urban environment, and this change would also be detrimental.
153. It is considered that the appeal site is a valued landscape, notwithstanding the change in the NPPF. It cannot be right that valued landscapes are not entitled to protection simply because they are not designated statutory sites or protected in the development plan. Many councils do not yet have a local plan in force nor a five years housing land supply, and that should not allow inappropriately located development to take place.
154. The most significant change proposed in the Sustrans report (CD8.10) is the resurfacing of the Flitch Way with tarmac or some other sealed surface. The benefits of that, such as faster cycling, would be greatly outweighed by the harm caused. The widening to 3m would necessarily remove vegetation, walkers including families, would be at increased risk, and there would be an adverse effect on the rural character of the Flitch Way. The Appellant states that the proposals for the Flitch Way are not fixed, and would be subject to consultation, yet a planning obligation requires improvements in accordance with the Sustrans report.

Highways

155. If the Sustrans report is not to be implemented, or not as suggested, then where does that leave the highways statement of common ground and the

¹²² In its statement of case, the LPA withdrew its objection in respect of the Church of All Saints; CD6.4, para 3.2.4.

agreement that there would not be a severe residual effect on highways (above, para 39)?

156. The highway information presented by Mr Axon on behalf of the Appellant differs from that previously submitted by other consultants. It is not clear why Mr Axon's methodology is considered to be more accurate, and given the different conclusions, how can there be certainty that there would not be a severe residual effect on the highway network?
157. The bus service would only be a minor benefit to the wider community, since it would predominantly serve the new estate. Where is the evidence that a 15 minute frequency of service would be achievable and maintained in perpetuity so that this development would mitigate its transport effects? It is understood that nowhere in Braintree offers a service with a frequency greater than 30 minutes. The Appellant anticipates every household having at least one car, as an electric charging point would be installed in every home.
158. There is evidence of highway problems. Google Traffic shows slow-moving and queuing traffic on Rayne Road (between the Springwood Drive and Aetheric Road junctions) and Pods Brook Road, with queuing at its worst in the afternoon peak period¹²³. Photographic and video evidence illustrates the extent of queuing, which extends back from Aetheric Road through the Springwood Drive junction and onto Pods Brook Road. There is frequent queuing on Pods Brook Road past the proposed site entrance. Two videos taken during the afternoon peak record journey times of 8 and 13 minutes between the A120 and the town centre¹²⁴ (a distance of about 1.6km). The mitigation proposed at the Rayne Road/ Aetheric Road/ Pierrefitte Way and Rayne Road/ Springwood Drive/Pods Brook Road junctions relates in part to other schemes. Physical constraints limit what can be achieved at Aetheric Road, and traffic problems at Springwood Drive are a consequence of build-up from that former junction. It is considered that there would be insufficient sustainability measures, and this and the number of external trips mean that there is no certainty that there would not be a severe effect on the highways network.

Conclusion

159. NBGAG comprises residents who know their town and village, and how and why places are used. There is a housing need which should be met, but this should not be at any price. This development would be in the wrong place, a valuable place that is worthy of protection. The appeal should be dismissed because the benefits are significantly and demonstrably outweighed by the detriments it would cause.

The Cases for Interested Parties

The material points are:

i) Essex County Council, as Highway Authority

160. Highways England was consulted on the planning application, and, following the submission of additional information, they stated that there was no objection,

¹²³ The Google Traffic research is reported in Document N9, Appendix C.

¹²⁴ CD9.47.

subject to certain conditions (CD3.42). In its consultation response, the Highway Authority advised that insufficient information had been provided to demonstrate that the impact on the local highway network caused by the proposal would be acceptable in terms of highway safety, capacity and accessibility¹²⁵. The highway network is busy at peak periods, leading to delays. The Aetheric Road/Rayne Road junction can be the source of problems which flow back through the system¹²⁶. There had been particular concerns about the modelling of impacts at the Aetheric Road/ Rayne Road junction and the importance of assessing the potential effect on the network in the event that the Panfield Lane spine road did not come forward in advance of this development.

161. Subsequently the journey time analysis prepared on behalf of the Appellant had been reviewed. It was considered that the exercise was valid and accurate. Additional information on mitigation measures was also submitted in 2018¹²⁷. In the light of the additional information, the residual cumulative impact on the road network should not be severe. All of the proposed mitigation measures are considered to be necessary.

ii) Rayne Parish Council

162. Traffic and road safety have been a major concern to the residents of Rayne for many years¹²⁸. The area around the appeal site is subject to lengthy, regular delays. Three junctions would be affected significantly by the development: the A120/ Pods Brook Road north roundabout, Springwood Drive and Aetheric Road. Large queues already occur at these junctions. In consequence more traffic has been using Queenborough Lane and The Street in Rayne with detrimental effects. Other developments in this area will also add traffic to the road network. Although the Highway Authority and the Appellant have signed a statement of common ground on highway matters, it is considered that the impacts on the local road network have not been satisfactorily addressed. It is likely that many parents would drive their children to school, and the proposed primary school would place increased demand on the Springwood Drive roundabout. It is hard to understand how the use of different modelling by different consultants could resolve the traffic situation. The Parish Council is not confident that the mitigation measures would work, and is concerned that congestion would increase.
163. Coalescence would occur between Braintree and Rayne, contrary to the ELP. The development would be within a green buffer. The Flitch Way is a country park. Therefore the surrounding countryside should be preserved, having regard to the NPPF and the ELP. The site is a valued landscape, with high recreational value due to its PROWs. The development would harm the distinctive rural character and landscape of the area. There would be an unacceptable alteration to the setting of Naylinghurst. The proposal would also adversely affect the setting of Rayne Conservation Area and the Church of All Saints. Even if the tilted balance is applied, the adverse effects of the granting of planning permission would significantly and demonstrably outweigh the benefits.

¹²⁵ Letter from Essex CC dated 15 April 2016, in CD6.3. A statement from the LHA is at CD9.26.

¹²⁶ In response to questions from NBGAG.

¹²⁷ The journey time analysis and package of transport mitigation measures are in Appendix 1 to CD6.8.

¹²⁸ The Parish Council's statement is at Document O8.

iii) Friends of the Flitch Way & Associated Woodlands

164. There is concern about the loss of habitat and wildlife on the Flitch Way should the development proceed¹²⁹. The development would also have a detrimental effect on the countryside surrounding the Flitch Way. If the appeal is allowed, it is important that any works to the Flitch Way are undertaken in consultation with stakeholders. The Sustrans report was well-intentioned, but there are reservations about its recommendations, particularly concerning a tarmac surface. Sustrans guidelines indicate that gritted path surfaces are best for multi-user paths which include horse traffic, and to the west of the former station at Rayne¹³⁰, the path is a bridleway.

iv) The Braintree Society

165. It is considered that the capacity of potential housing sites exceeds the number of dwellings required up to 2033¹³¹. The countryside between Braintree and Rayne is extremely attractive. The development could not be successfully integrated into the local landscape as it would cause the two settlements to appear as a single entity. Loss of the fields would result in a loss of wildlife, and it would adversely affect features of the landscape such as the Flitch Way, which would become a footpath through a housing estate.

166. There is concern about the effect of the development on education and medical facilities, and that it could lead to an increase in flooding on Rayne Road. Severe congestion occurs on Rayne Road and in Braintree town centre. The development would exacerbate traffic problems, and is expected to add to the number of people travelling out of the area to work.

v) Local residents

167. Ten local residents spoke against the proposal at the inquiry, and raised the following matters¹³². The proposal would cause harm to the environment. The green space occupied by the appeal site is important in maintaining Rayne's character as a countryside village, and it has been proposed as a green buffer. Coalescence would occur as a result of the development. Traffic levels would increase due to other developments in the area: the addition of further vehicles from the appeal proposal would lead to extended journey times and more congestion, and concern has also been expressed about pollution. The development would also put more strain on health services. A tarmac surface would damage the character of the Flitch Way. It would become a footpath and cycleway through a housing estate. The Flitch Way provides tranquillity and a sense of space, with views of the countryside, and is a valued and well-used facility. There would be a loss of biodiversity, with wildlife and plants being adversely affected. Three and four storey buildings would be out of character with this rural area. If any development goes ahead, the number of dwellings should be reduced, and a buffer zone established on each side of the Flitch Way. It is acknowledged that more houses are needed in Braintree, but they should be

¹²⁹ A letter and statement from the representatives of the Friends of the Flitch Way who spoke at the inquiry are in Document O3 and at CD9.20.

¹³⁰ Although beyond the appeal site, this part of the Flitch Way up to the A10 is covered by the Sustrans report.

¹³¹ The Braintree Society's assessment is on page 2 of CD9.24.

¹³² Statements and a letter from local residents who spoke at the inquiry are at CDs 9.17-19, 9.21-23, 9.36, 9.50 & 9.51.

built in appropriate places. There is concern the hard surfacing would increase the risk of flooding on Rayne Road.

vi) Written Representations

168. Local residents who did not appear at the inquiry submitted about 27 objections in response to notification of the appeal (Document O3) and about 75 objections in response to the ES Addendum (Document O5). A further letter of objection was received at the inquiry (CD9.32). Similar concerns were raised to those put forward by the residents who appeared at the inquiry. Other reasons for objection are: pressure on infrastructure, housing should be built on brownfield land, erosion of the identity of Rayne and Braintree, implications for the natural environment of the effect of a gravel pit on the water table, the development would detract from Rayne Conservation Area and the listed building of Naylinghurst, noise, the loss of agricultural land, the cumulative impact with other development, conflict with national and local policies. Sport England advised that if planning permission is granted, sports infrastructure should be provided: financial contributions or conditions are suggested¹³³. Two letters of support have been received at appeal stage (in Document O5). Home Group and Kier Living are prospective development partners for the site, and respectively refer to the contribution the proposal would make to the provision of affordable housing and to meeting the shortfall in the five years housing land supply.
169. Previously over 350 objections were received to the planning application, and there were three petitions with about 1,060 signatures. The concerns raised are similar to those put forward at appeal stage¹³⁴.

Conditions

170. The Appellant and the Council submitted a schedule of possible conditions which had been discussed at the inquiry (CD9.44). These cover the following matters: phasing, specification of the approved plans, provision of the local centre and employment land, parameter plans and the maximum number of dwellings, submission of level details, noise limits, trees, a limit on the number of dwellings pending completion of the Millennium Way slip roads scheme, charging facilities for battery powered vehicles, a species and habitat management plan, a construction environmental management plan, bat roost and bird nesting opportunities, drainage, contamination, a statement of construction practice, archaeological evaluation, and measures in relation to RAMS.

¹³³ In Documents O3 & O5.

¹³⁴ The representations at application stage are set out in detail in the LPA's report, CD5.1.

Conclusions

References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus [8].

Main considerations

171. Having regard to the representations and statements of common ground, I have identified the following main considerations in this case:
- (i) The effect of the proposed development on heritage assets.
 - (ii) The effect of the proposed development on the character and appearance of the area.
 - (iii) The effect of the proposed development on the separation of Braintree and Rayne.
 - (iv) The effect of the proposed development on traffic movement.
 - (v) Whether the proposal would be consistent with policies in the Development Plan.
 - (vi) The effect of other considerations, including housing land supply, on the overall planning balance.

Heritage assets

Naylinghurst

172. The grade II listed building known as Naylinghurst is situated close to the appeal site, on its south-west side [13]. The main parties agree that the proposal would include development within the setting of the listed building [45, 99, 150], and I have no reason to take a different view. Naylinghurst was originally a farmhouse, dating from the 17th century [44]. Whilst the building was subsequently enlarged, I observed that the older part can be distinguished externally, most clearly from within the curtilage. The significance of the listed building does not derive solely from its original timber frame and floor plan. It is an example of a historic former farmhouse and it remains surrounded by farmland [46, 100].
173. Evidence from 19th century maps shows that the land farmed from Naylinghurst did not coincide with the appeal site [45]. Part of the former holding has been developed, although a large part of parcel B was part of the farm. The Appellant drew attention to the removal of field boundaries which have occurred since 1840 [44], and it is true that there have been certain changes in the appearance of the area around Naylinghurst. Notwithstanding these factors, Naylinghurst is a historical former farmhouse situated in an agricultural landscape. This landscape not only contained a functional link with the farmhouse, but also serves as a reminder of the purpose for which it was built in this location. In this way the setting of Naylinghurst makes an important contribution to the significance of the heritage asset.
174. The concept masterplan indicates that playing fields would be laid out on the westernmost part of the appeal site, which is closest to Naylinghurst [19]. The listed building would, therefore, continue to be surrounded by open land.

However, whereas the larger fields of today still provide a clear agricultural association with the listed building, the playing fields, which would be likely to have a more formal and uniform layout, would have no such link. Fields would remain to the west and south, but the house would no longer be immersed in farmland, an aspect of its setting which I regard as being of great importance. Moreover I consider that the setting of Naylinghurst extends further into the appeal site than the position of the proposed playing fields. The house appears as a distinct feature across the farmland from the east [101], and it is also seen in filtered views through a line of trees from the east-west footpath across parcel B. These views of Naylinghurst in its wider agricultural context would be greatly restricted by the built development spreading eastwards across the site from the playing fields. In consequence the ability to appreciate the listed building in its agricultural context would be diminished.

175. To the north of the Flitch Way and to the east of parcel A, the grade II listed building of Clapbridge Farmhouse is now within a residential development [46]. Whilst in such a situation the physical attributes of the building itself are not affected that does not necessarily mean that its significance has not been impaired. In any event, each circumstance must be judged on its own merits.
176. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering proposals which affect a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting. For the reasons given above, I consider that the proposal would detract from the setting of Naylinghurst. Since farmland would remain to the south and west, there would be a moderate adverse effect overall on its setting. Having regard to paragraph 196 of the NPPF, this would represent less than substantial harm to the significance of the listed building.

Rayne Conservation Area

177. Rayne Conservation Area lies on the eastern side of the settlement, where it extends to the north-east, the south and the west from the crossroads junction at Rayne Road/ Shalford Road/ The Street/ Gore Road. The Street follows the line of a Roman road (Stane Street) and contains several listed buildings [47], notably the group at the northern edge of the settlement including the Church of All Saints and Rayne Hall. Between the conservation area and the western edge of the appeal site are playing fields adjacent to the village hall, a nature reserve and paddock and farmland [13]. Intervening tree cover, particularly on the eastern side of the nature reserve restricts intervisibility between the appeal site and the conservation area.
178. The conservation area is significant as the historical settlement of Rayne on the line of a Roman road. It abuts contemporary built development to the west [47], but that relationship does not lessen the importance of the open landscape to the north and east. Overall this open land contributes to an appreciation of the origins of the conservation area as a distinct rural settlement and hence to its significance. There are views from the Flitch Way on approaching and leaving Rayne of agricultural land on which development is proposed [103], but these views are beyond the strong tree cover to the east of the nature reserve and paddock. Residential development at this western end of the appeal site would occur within the setting of the conservation area; however given their

relationship I do not consider that the proposal would materially alter the contribution which setting makes to the significance of this heritage asset.

The Church of All Saints

179. This grade I listed building is situated at the northern end of the conservation area [13]. As a grade I listed building it is a heritage asset of the highest significance (NPPF, para 194(b)). The church abuts the open landscape which extends to the north and east, and there is intervisibility between the listed building and existing buildings close to parcel A. The important relationship of the church to the nearby open land would be unaffected by the proposed development which would occur some distance away on land to the south of Rayne Road [48]. Although NBGGA maintained an objection in respect of the effect of the development on the significance of the Church of All Saints [150], it offered no specific evidence in support of this stance. I am satisfied that the appeal proposal would not detract from the contribution which setting makes to the significance of this important heritage asset.

Other heritage assets

180. There are several other listed buildings in the locality [13]. The nearest of these to the appeal site is Clapbridge Farmhouse, which is within a modern housing development between parcel A and Pods Brook Road [46]. NBGAG expresses a general concern about the effect of the appeal proposal on other listed buildings than Naylinghurst, but no specific evidence has been submitted. There is nothing before me to indicate that harm would be created in this regard.

Conclusions in respect of heritage assets

181. Development towards the western end of the appeal site would be within the settings of the listed buildings of Naylinghurst and the Church of All Saints and also of Rayne Conservation Area. It would not adversely affect the setting of either the grade I listed church or the conservation area. I have reached a different view in respect of Naylinghurst. Here I conclude that there would be a moderate adverse effect overall on the setting of the listed building, which would represent less than substantial harm to its significance. Accordingly the proposal would conflict with Policy CS9 of the Core Strategy, and with Policies RLP 90 and RLP 100 of the Local Plan Review.

Character and appearance

Landscape character

182. The appeal site lies in the Blackwater/ Brain/ Lower Chelmer Valleys and Pods Brook River Valley LCAs of the county and district landscape character assessments respectively [36]. Both assessments refer to shallow valleys and large fields, features which are evident at the appeal site, although the district level assessment is of greater relevance to the particular proposal before me. Key differences between the Appellant and the LPA concern the susceptibility of the Pods Brook River Valley LCA (A12) to accommodate the proposed development [55] and the magnitude of its effect on the LCA [57].

183. The greater part of LCA A12 extends to the north of Rayne Road where I saw that there are extensive views across the landscape. To the south of the road is built development at Gilda Terrace and tree cover along the Flitch Way and Pods

Brook Road. That road runs through the LCA and the A120 is immediately to the south. These features do not materially lessen the experience of open views in the southern part of the LCA, other than around parcel C where no built development is proposed. There are views from the north over Rayne Road towards parcel A, and to the south of Flitch Way there are extensive views to the east and west across parcel B. It is true that this southern part of the LCA is closer to Braintree and the main road network, but these do not contain this area and are not unduly dominant influences. I do not find that these considerations render the southern part of the LCA less susceptible to development of the form proposed, and I agree with the LPA that its susceptibility to the development proposed is high.

184. Insofar as magnitude of effect is concerned, the LPA suggests that the development would be perceived over a greater distance than does the Appellant [57]. The masterplan envisages substantial planting around the site [19], and the Flitch Way would help to break up the mass of the new built form. However, given the extensive areas of building within the landscape cordons shown on the landscape parameter plan in both parcels A and B, I consider that it would be difficult to effectively assimilate the new housing and other elements of the scheme into their surroundings, even by year 15. The variations in topography [15] would increase the prominence of parts of the development, and this reinforces my concern about the magnitude of effect. Although the development would be a relatively small part of the overall area of LCA A12, it would not only be substantial in absolute size, but would effectively diminish the extent of the LCA south of Rayne Road. I am in no doubt that the magnitude of effect after 15 years is properly described as medium. It follows that I prefer the analysis of the LPA's landscape witness, and I agree that there would be a residual effect of major-moderate significance on the wider LCA. This harm merits an equivalent degree of weight.
185. I turn now to consider the effect on the site itself. Both the LPA and NBBGAG argue that it is a valued landscape [107, 108, 153]. It is clear from the written representations and those made at the inquiry that this area of countryside is appreciated by the local community [163, 165, 167]. A more objective consideration has always been required, and the revised NPPF has clarified the position. Paragraph 170(a) explains that valued landscapes should be protected in a manner commensurate with their statutory status or identified quality in a development plan. The LPA suggested that it is the manner not the fact of protection which is subject to the above qualification. A straightforward reading of paragraph 170(a) does not lead to the view that there are other categories of valued landscape (which are not statutorily designated or identified in a development plan). As the appeal site does not meet the requirements of paragraph 170(a) [104], I find that it is not a valued landscape.
186. It does not follow from my finding on valued landscape that the effect of the proposal on the character of the appeal site (as opposed to the wider LCA) would be unimportant. Indeed, as built development of the scale proposed would have a harmful effect on LCA A12, it would inevitably be damaging to the character of the landscape of the appeal site, which has been assessed respectively by the Appellant and the LPA as of medium-high and high sensitivity [54, 117]. It is intended that hedgerows forming field boundaries would be retained where possible and areas of greenspace would be provided by watercourses. Nevertheless the greater part of the open fields would be lost to built

development, resulting in a substantial adverse effect as acknowledged by the Appellant [54]. Moreover the Evaluation of Landscape Capacity report prepared for the LPA assessed the greater part of the appeal site as land with a low capacity to accommodate development [117]. The harm caused by the loss of the appeal site carries considerable weight in my considerations.

Visual effects

187. The proposed development would be readily apparent from the Flitch Way which runs between parcels A and B. There is tree cover along the route, and part of the path to the east of Rayne, is in a cutting. Tree cover does not, however, prevent views of the surrounding countryside. I walked along the Flitch Way between Pods Brook Road and Rayne in both directions. Where vegetation is more dense views are filtered, but elsewhere lightly filtered views exist and there are several breaks in cover affording open aspects across parcel B [119]. Even in the cutting, where there is no direct outward view, a sense of openness is apparent. The Flitch Way is well-used, and representations from the local community refer to the opportunity it provides to appreciate the surrounding countryside [151, 167]. Substantial additional tree planting would be provided alongside the north and south sides of the Flitch Way [19]. As this cover matured, it would screen and soften the impact of the buildings on the appeal site. However, whilst in this respect the planting buffers would provide mitigation, that would not compensate for the loss of views, albeit filtered in places, across the open fields of the appeal site. This is a harm to which I accord considerable weight.
188. A number of public footpaths cross parcel B [12]. The masterplan shows that these would be retained or slightly realigned, and that they would run through green corridors or areas of open space. The paths would, though, be incorporated into urban development, and users would experience a major adverse change with the loss of the open outlook over the fields of parcel B, and its replacement with housing, employment units, and a local centre. Considerable weight attaches to this major harm.
189. From beyond the Flitch Way and the appeal site the effect on visual amenity would be less pronounced. There are views towards parcel A from footpaths in the vicinity of the Church of All Saints, to the north of Rayne Road. Whilst it is likely that the upper part of buildings on the higher land behind Gilda Terrace, some of which would be three storeys in height [18], would be discerned, the development would not be prominent from this direction due to the distance from the site, and the existing buildings and vegetation along Rayne Road. The effect would be similar in views further along the path to the east, and to the north where the land falls to Pods Brook the topography would prevent views of development on parcel A. There are a number of elevated vantage points on footpaths between Rayne Road and Springwood Drive. They are for the most part set further away from the site, and the viewer would be aware of closer built development including housing under construction on the north side of Rayne Road. In this context any limited view of housing on the appeal site would not have a material effect.

The height and density of development

190. The LPA raised concerns about the height and density of the new development [125]. Specifically it objects to four storey buildings (parameter plan 3 shows

development up to four storeys high in parcel B at the local centre and adjacent to the south and west [19]), and to density of up to 110dph (parameter plan 4 shows this highest density range on the western part of parcel A and in a central position in parcel B, including the local centre [18, 19]).

191. It is common ground between the Appellant and the LPA that there is not a five years' housing land supply in Braintree [38]. Where such a shortage exists, paragraph 123 of the NPPF refers to the importance of making the optimal use of the potential of each site, and paragraph 127(c) makes it clear that, whilst developments should be sympathetic to local character and history, this should not prevent appropriate innovation or change, such as higher densities.
192. Several local character assessments have been undertaken on behalf of the Appellant, including parts of Braintree, Rayne and Great Notley [125]. Buildings in these areas are predominantly two storeys in height, and Malyon Close is the only character area where four storey development is identified, although at the inquiry the LPA noted that there is also some four storey development in the town centre and near the rail station [125]. There are commercial premises near to Malyon Close, and the context of these areas is different from that of the appeal site on the edge of the built-up area. More strikingly, no densities comparable to the upper range sought on the appeal site have been identified, the highest being 71 and 80dph at Malyon Close and St Michael's Hospital [126].
193. I am clear that the inclusion of four storey buildings as part of the development would fail to be in harmony with the character and appearance of the surrounding area, contrary to Policy RLP 90 of the LPR. Although there is little detail about the form of the proposed dwellings, given the extent of the difference between the upper level of proposed densities and those in the surrounding area, I have reached the same view on this aspect of the proposal. The introduction of a form of development which is atypical in Braintree would not be an appropriate change envisaged by paragraph 127(c) of the NPPF. Revised parameter plans have been submitted which omit four storey development and reduce the upper density level to up to 50dph [66]. Implementation of the proposal in accordance with these plans would have the consequence of limiting the maximum number of dwellings to 1203. With the safeguard of a condition requiring the submission of reserved matters in accordance with the revised parameter plans and specifying the maximum number of dwellings, I am satisfied that the height and density of the development would not cause harm to the character and appearance of the area.

Pods Brook Road

194. Pods Brook Road is a busy road which provides a link between the A120 and Braintree. Although there is substantial tree cover along much of its length, the sweeping alignment of the road, the highway bunds and the bridge carrying the Flitch Way all point to a highly engineered feature, and the traffic levels emphasise the existing urban influence. The development would involve the widening of the southern end of the road with the consequential loss of some tree cover along the edge of the appeal site [64]. In addition a cycleway link would be formed along the eastern side of the road [21]. A well-vegetated highway border would remain following these works, and there is scope for additional planting to take place if considered necessary. The residual effect on the character of this part of the road would be negligible, and the green approach to

Braintree would not be diluted. There would be a significant change at the site access where formation of a roundabout junction would reveal views of the new development, with the local centre and other denser parts of the scheme set back behind open space [122]. Given that these would not be prolonged views, I consider that only slight harm would be caused by this aspect of the scheme.

The Flitch Way

195. I have already considered the effect of the proposed development on views from the Flitch Way (above, para 187). There are also proposals to undertake works to the Flitch Way itself as part of efforts to promote the use of sustainable transport modes in connection with the appeal proposal [61]. A series of measures are put forward in a report by Sustrans, commissioned on behalf of the Appellant, and the proposal to lay a 3m wide tarmac surface to the west of the bridge over Pods Brook Road has provoked considerable local opposition [154, 164, 167]. There is a tarmac surface from Braintree station through the town to Pods Brook Road, but beyond this point the surface is unsealed. NBGAG, the Friends of the Flitch Way and local residents are concerned that extending the tarmac surface would be out of keeping with this countryside location.
196. Although the Sustrans report refers to tarmac, alternative forms of treatment are available, including surfaces for use where sealing of the ground is undesirable or to address environmental concerns [63]. Provision for the Flitch Way works is included in the planning agreement [8]. The works are to be generally in accordance with the improvements specified in the Sustrans report, allowing for a scheme to be prepared which would involve a surface treatment other than tarmac and avoiding a uniform width. Moreover the scheme is required to be subject to consultation with Rayne Parish Council and the Friends of the Flitch Way. I share the view of the local community that laying a 3m wide tarmac surface would fundamentally and adversely change the character of the Flitch Way west of Pods Brook Road, resulting in an overt urban influence. However, this form of treatment is not prescribed, and the requirement for consultation represents a safeguard for the community. In these circumstances, I do not find that the proposals for the Flitch Way would cause harm to the character and appearance of the area, and there would be no conflict with Policy RLP 140 of the LPR.

Conclusions in respect of character and appearance

197. The proposal would cause harm to the character and appearance of the area. I conclude that the adverse effect on the LCA carries at least moderate weight, but that considerable weight attaches to the harm to the landscape of the site and visual amenity from the Flitch Way and footpaths within parcel B. In addition the visual impact from the access on Pods Brook Road carries some limited additional weight. Accordingly the proposal would conflict with Policies CS5 & CS8 of the Core Strategy and Policies RLP 80 & 90 of the LPR.

Separation of Braintree and Rayne

198. The appeal site lies within the open gap between Braintree and Rayne [12]. The importance of the gap was recognised locally when a review of the LPA's green wedge policy found that the majority of the landscape qualities of the gap between Braintree and Rayne contributed to the green wedge criteria. Although the policy was not included in the current Local Plan, green buffers, including

between Rayne and Braintree are put forward in the ELP [35]. Given the further work to be undertaken on the evidence base and sustainability appraisal before completion of the Section One examination of the ELP [33], the weight which can be given to policies included in the LP is limited. Nevertheless Policy LLP 72 on green buffers highlights the role of the land between Braintree and Rayne in maintaining separation between the settlements.

199. The existing gap between the settlements includes not only farmland (much of which is within the appeal site), but also playing fields, a nature reserve and paddock on the edge of Rayne [13]. I note that the LPA views this land as urban fringe since the activities are there because of proximity to the settlement and that they do not have a countryside character [124]. It is, though, all part of the existing tract of open land between Braintree and Rayne. Taking the whole of this open land into account, the appeal site forms a large part of the gap to the south of Rayne Road.
200. The Appellant has calculated that on Rayne Road, there would be a reduction of only about 45m between the urban edges of the two settlements [59]. The housing of Gilda Terrace already projects out from Braintree along Rayne Road with the western part of parcel A behind it. Although the built form would not extend much further towards Rayne as a result of the proposal, the construction of housing on the rising land behind Gilda Terrace would nonetheless consolidate the depth of development at the edge of Braintree, as observed in the approach from the west. Persons travelling along the Flitch Way would be aware of a gap between the western limit of building on the appeal site and the eastern edge of Rayne, but the sense of separation would be markedly less than that available at present to which open and filtered views over the appeal site contribute. I find that the appeal proposal would appreciably diminish the sense of separation between the settlements of Braintree and Rayne, particularly as experienced from the Flitch Way. Overall I accord moderate weight to this harm.

Traffic movement and sustainable travel options

201. Pods Brook Road provides a link between Braintree town centre and the A120, and is a well-trafficked route. The vehicular access to the larger part of the proposed development, on parcel B, would be taken from this road, and that to parcel A would be taken from Rayne Road, which joins Pods Brook Road at a roundabout junction to the north-east of the site. There is general consensus that there are points of pressure on this part of the local highway network.
202. NBGAG refers to extensive queuing along the route between the junction of Pods Brook Road with the A120 and that of Rayne Road with Aetheric Road, with traffic levels leading to journey times of up to 13 minutes over this relatively short distance [158]. Anecdotal evidence from local residents and Rayne PC supports the views expressed by NBGAG [162, 167]. For his part, in his journey time analysis, the Appellant's transport consultant acknowledges that the highway network does not flow freely at certain times of the day, with queues of between 120m and 480m on the Pods Brook Road/ Rayne Road route during peak periods [67]. In response to questions from NBGAG, the Highway Authority acknowledged that delays occur at peak periods, and that the Aetheric Road/Rayne Road junction is a particular cause of problems [160].
203. During the course of the planning application and appeal, the Appellant has submitted a considerable amount of highways documentation. The 2015

Transport Assessment has been superseded, as has part of the subsequent 2017 Assessment. The 2017 Transport Assessment should be read in conjunction with the more recent Mobility Case and Journey Time Analysis [70]. A lower level of traffic generation is given in the Mobility Case than in the 2017 Transport Assessment. That Assessment used Local Plan trip rates for the residential element of the scheme, whereas the Mobility Case uses a more detailed approach drawing on the TRICS database, the National Travel Survey and census data. I consider that that approach is appropriate for assessing the traffic implications of a specific proposal, and I note that the Highway Authority has raised no objection to the methodology used. That said, I consider that a note of caution should be applied to the assumption that there would be no external student trips to the primary school. Although many pupils would no doubt walk or cycle, it is likely some children would be taken by car. The greater part of the proposed housing would be on parcel B, whereas the school would be built on parcel A, and there would be no access between these parts of the site for cars. Consequently any school trips made by car to and from parcel B would place traffic on the external network.

204. The proposal is expected to generate 687 car trips in the morning peak and 819 car trips in the afternoon peak, a significant reduction from the number predicted in the 2017 Transport Assessment [70]. It is the position of the Appellant, accepted by the Highway Authority, that drivers would act to minimise inconvenience, that queuing and journey times would continue to fluctuate, and that traffic from the new development would displace existing traffic on the network [68]. Sensitivity tests undertaken to assess the effect of additional (as opposed to replacement) trips indicate that the additional journey times at the Aetheric Road junction would increase by between 21 and 94 seconds [71].
205. On the basis of the approach set out in the Mobility Case and Journey Time Analysis, the Appellant's transport consultant does not consider that all of the highways works included in the mitigation package, and the Millennium Way slips scheme, are necessary in connection with the appeal proposal [69]. It seems to me that this is an overly optimistic view. I have already noted that it is likely that there would be some traffic on the external road network making trips to and from the primary school (above para 203). Whilst the scheme would offer good opportunities to make journeys on foot and by cycling, use of these modes may be less during periods of inclement weather. Moreover the Flitch Way, which is a key component of the sustainable travel credentials of the site, is unlit. This circumstance is likely to discourage use during the hours of darkness, which in the winter months would cover times when people would be making journeys for various purposes including work and shopping. It follows that I consider that the level of traffic on the local highway network following implementation of the development would be greater than that anticipated by the Appellant. Bearing in mind the acknowledged problems of traffic movement which exist in the area, I consider that the full package of transport measures put forward by the Appellant [19, 21], including highway works in addition to sustainable transport measures, together with the provision of the Millennium slips scheme, is necessary to ensure that the residual cumulative impact on the road network would not be severe, contrary to paragraph 109 of the NPPF. These measures are able to be secured by planning obligations and conditions.

The Development Plan

The Core Strategy

206. Policy CS1 sets out the locations for new residential development, which include existing settlements, growth locations and regeneration sites [24]. Although adjacent to Braintree, the appeal site is located outside the town, and it does not form part of the growth location to the north-west. The appeal site is outside the built-up area, and in this location Policy CS5 seeks to restrict development to uses appropriate to the countryside. Given the proximity of the site to the built-up area, the presence of the Flitch Way which provides a direct link for pedestrians and cyclists into the town, and the opportunity to provide direct access to the greater part of the site from a key route close to the A120, this is an accessible location for new development as sought by Policy CS7. Moreover the scheme would include a package of measures to encourage the use of sustainable modes of transport. The accessibility of the site's location does not, however, alter the inherent conflict with Policies CS1 and CS5. Policy CS4 explains that land for employment purposes will mainly be located in existing employment sites, and the mixed use and strategic sites specified in the CS. That does not preclude some employment development coming forward elsewhere, and the proposal for 0.65ha of the site to accommodate B1 uses does not involve a conflict with this policy in addition to that with Policy CS5.
207. I have found that the proposed development would detract from the setting of the grade II listed building, Naylinghurst, contrary to Policy CS9. Because of adverse effects on the character and appearance of the area, there would also be conflict with CS5 and CS8. Policy CS8 is also concerned with the protection of the best and most versatile agricultural land, which makes up much of the appeal site [15]. Whilst the LPA takes no issue with the loss of such land, given that much of the District is similarly classified [38, 142], there is nevertheless an additional conflict with Policy CS8 in this respect.
208. Policies CS2, CS3, CS10 & CS11 are also of relevance. Although the site is currently countryside, the proposal would represent an urban extension to Braintree. Policy CS2 seeks 30% affordable housing in the urban ward of Braintree & Bocking, and a planning obligation would secure this level of provision [17]. In its seventh reason for refusal, the LPA referred to traveller accommodation. There is a need for additional pitches in Braintree: Policy CS3 sets out the level of requirement and criteria for the assessment of possible sites. It does not require the inclusion of traveller accommodation in urban extensions, although the LPA seeks provision for travellers in any development on the site, reflecting the approach on strategic sites in the ELP [142]. A planning obligation would provide for at least five pitches to be laid out as part of the overall development. This contribution to meeting the need for traveller accommodation would be consistent with Policy CS3 and would represent a benefit of the proposal, which merits modest weight. The proposal would provide sufficient open space to comply with the requirements of Policy CS10, and planning obligations would require the provision of infrastructure, or the payment of contributions towards provision, in line with Policy CS11.

The Local Plan Review

209. Just as the proposal would conflict with Policy CS5 by virtue of its location outside the development boundary for Braintree, so it would be contrary to Policy

RPL 2 which, in similar vein, refers to the application of countryside policies. The proposal, however, has the potential to be well served by a new bus route, and pedestrian networks and cycle ways would be incorporated into the layout. Accordingly there is compliance with Policies RPL 53, 49 & 50. The proposal is in outline form, but it is intended that a variety of accommodation would be provided [17], including up to five traveller pitches. It would be a mixed community, as sought by Policy RPL 7. Policy RPL 10 is concerned with density. The LPA is concerned that the higher range of densities within the development would lead to unsatisfactory living conditions, referring to concerns about parking provision, private amenity space and separation distances to safeguard privacy [127]. An illustrative site plan of a development block shows how a density of 88dph could be achieved, although this is below the maximum level of up to 110dph. I have already found that the maximum density would be out of keeping with the character of the wider area, but that this matter could be resolved by the imposition of a condition referring to a revised parameter plan with an upper density level up to 50dph (above, para 193), and limiting the maximum number of dwellings to 1203. With the safeguard of such a condition, I am satisfied that satisfactory living conditions could be achieved at reserved matters stage, and there is, therefore, no conflict with Policy RPL 10.

210. Policies RPL 90, 95 & 100 include protection for heritage assets. Since there would be no material effect on Rayne Conservation Area, the proposal would be consistent with Policy RPL 95. However, due to the adverse effect on the setting of Naylinghurst it would conflict with Policy RPL 100 and criterion (iv) of Policy RPL 90. There would also be conflict with criterion (v) as the mass of built form on the appeal site would not in harmony with the character and appearance of the area, having regard to the adverse effects on visual amenity, and the landscape of the site and LCA A12. For this reason the proposal would not be consistent with Policy RPL 80 which makes it clear that proposals which would not successfully integrate into the local landscape should not be permitted. Policy RPL 140 which seeks to safeguard the use of disused railway lines for recreational purposes is also relevant. There was some debate at the inquiry about the meaning of the word *prejudice* in this policy [42, 121]. It does not seem to me that prejudicing the use of disused railway lines need only refer to circumstances which would prevent their use. However it does indicate that those circumstances would have to materially reduce the prospect of such use. Whilst I consider that the appeal proposal would harm visual amenity from the Flitch Way, I do not consider that it would materially reduce the prospect of its use, having regard to its continuation through the countryside to the west of Rayne, and its availability to residents of the new housing on the appeal site. Measures are put forward to improve the Flitch Way, and, subject to satisfactory proposals for surfacing, the scheme would be in accord with this policy of the LPR.

The Minerals Local Plan

211. To avoid sterilising sand and gravel resources at the western end of the appeal site, a planning obligation would defer development on this part of the site until a mineral application had been determined, and, if granted, all consented material had been extracted. With this provision in place there is no conflict with Policy S8 of the Minerals Local Plan.

Conclusions on the Development Plan

212. The proposal would involve development taking place in an accessible location where sustainable modes of transport would be available. It would comply with policies in the CS and LPR in this regard, and subject to conditions and obligations, with policies concerning the mix of accommodation and density. Insofar as the Flitch Way is concerned, the use of this route would not be prejudiced by the construction of housing in parcels A and B, and works to improve the route are envisaged: the proposal would, therefore, comply with Policy RLP 140.
213. Notwithstanding compliance with a range of policies in the CS, the LPR, and with Policy S8 of the Minerals Local Plan, the appeal proposal would conflict with certain policies concerning the location of development, the countryside and heritage assets, namely Policies CS1, CS5, RLP2, RLP 80, CS8, CS9 and RLP 100. Together with Policies CS7 which encourages development to take place in accessible locations and RLP 95 concerning conservation areas (with which I have found no conflict), these are the most important for determining the appeal since they relate to the appropriateness of the principle of the development. Footnote 7 of the NPPF explains that, for housing proposals, where there is not a five year supply of deliverable housing sites, as is the case in Braintree, the most important policies are out-of-date. That does not mean that the weight to be accorded those policies is necessarily greatly reduced. Paragraph 213 of the NPPF is relevant which explains that due weight should be given to existing policies according to their degree of consistency with the NPPF.
214. The level of housing included in Policy CS1 derives from the withdrawn East of England Regional Strategy and no longer applies. Its weight is limited, although the references to sustainable and mixed-use growth locations are consistent with paragraph 72 of the NPPF which explains that the supply of large numbers of new homes can be achieved through significant extensions to towns and that their size and location should support a sustainable community. As Policy RLP 2 has the effect of restricting land for housing by establishing town development boundaries and village envelopes, its weight is also reduced. I take a different view in respect of Policy CS5, which not only seeks to restrict development but also to protect and enhance landscape character, consistent with paragraph 170(b) of the NPPF. For this reason I agree with Inspectors who determined a series of housing appeals in 2017 that it merits more than moderate weight [97]. The most relevant part of Policy CS8 requires development to have regard to the character of the landscape: both this provision and that of Policy RLP 80 to avoid detriment to distinctive landscape features also resonate with paragraph 170(b) of the NPPF and merit similar weight to Policy CS5. I note that Policies CS9 and RLP 100 do not provide for a balance of harm against benefits, but they reflect the protection for the setting of listed buildings in the NPPF and the statutory requirement in Section 66 of the Act.
215. Given the location of the appeal site in the countryside, and its implications for the significance of Naylinghurts and the character and appearance of the area, I find that the proposal would conflict with the Development Plan considered as a whole.

Other considerations

Housing land supply

216. Housing land supply was discussed at the inquiry on the basis of the LPA's five years assessment at 30 June 2018. In accordance with paragraph 60 of the NPPF, the level of housing need was calculated using the standard method. On 20 September 2018 (shortly before the inquiry closed) the 2016 based household projections were published. It was not possible for the five years assessment to be recalculated at this stage of the inquiry, and this may be a matter on which the Secretary of State wishes to receive further representations [91].
217. The current assessment shows a supply of 3.91 years' housing land [128]. The shortfall of just over a year is equivalent to 1,330 dwellings. These figures were not disputed by the Appellant. The LPA pointed to an improving position in respect of supply, with planning permission granted for 2,312 dwellings in 2017/18, a figure well in excess of the then target of 716dpy, and permission for a further 667 was granted in the first quarter of 2018/19 [129]. This, though, is a short period of time. Moreover, it is acknowledged that the likely development on strategic growth sites would not eradicate the shortfall [129], and there is in any event uncertainty about the rate of progress of the ELP, and consequently the provision of a five years' supply by that route [33].
218. The Appellant has calculated that 200-270 dwellings would be completed within the five years' period [73]. A subsequent letter from Kier Living (a proposed development partner) refers to annual delivery of 100-150 dwellings, producing a range of 275-412 dwellings in the five years' period [73]. There is no clear reason for this uplift in delivery, and it merits limited weight. Taking the upper point of the Appellant's range, about 18% of the dwellings on the site could be expected to contribute to the five years' supply, with the remainder coming forward in the longer term. That is an important contribution to which I attach significant weight.

Affordable housing

219. The scheme would provide a policy compliant level of affordable housing [17, 25]; that would amount to 450 dwellings in total and 60-81 in the five years period. There is a clear need for affordable accommodation to be provided in Braintree, with an annual requirement for 212 units. The LPA has not disputed the Appellant's evidence that over the last five years there has been a shortfall in provision of 536 affordable homes. The appeal proposal would not bring forward any more affordable accommodation than is required by the Development Plan, but it would nevertheless make an important contribution to meeting the need for such dwellings which carries significant weight.

Sustainable travel

220. A range of sustainable travel measures are included in the scheme, including works to the Flitch Way, footway and cycle way links, and a bus service. These measures would provide a benefit to the existing community, although their primary purpose is to ensure that appropriate opportunities for sustainable transport modes are available in connection with the proposed development, and I have reached the view that conditions and obligations are necessary for this purpose. The benefits to the wider community merit some limited weight.

The primary school and education contributions

221. The Appellant draws attention to paragraph 94 of the NPPF which refers to the importance of a sufficient choice of school places being available to meet the needs of existing and new communities. As places would be needed for the number of children concerned, irrespective of whether the development proceeds, it is suggested that the site for a primary school and the education contributions, which would be secured by planning obligations [8], constitute a public benefit [77]. However the availability of housing may well have an influence on household formation and the numbers of children. Even if this is not the case, the need for a primary school on the site and for the specified contributions towards its provision and for early years and childcare purposes and secondary education purposes in the Braintree area arises from the proposal for a major residential development of the size proposed in this location. Only a small number of school places would be available for the wider community [138]. In the chapter of the NPPF on plan-making, paragraph 34 refers to the type of contributions expected from development. Education is included in the list of infrastructure which could attract a contribution. I find that the provision of a primary school site within parcel A and the commitment to education contributions are necessary mitigation for the appeal proposal, with some limited weight attaching to the surplus school places.

Open space and sports facilities

222. The development would include a minimum of 17.65ha of open space, somewhat more than the requirement of 15.85ha derived from Policy CS10 [19, 26]. However some of the open space may not be publicly accessible due to the need to provide mitigation for protected species [139], and the masterplan shows the playing fields at the western end of the site close to Rayne, rather than the larger settlement of Braintree. The open space would no doubt be used to some extent by existing residents, but its purpose is essentially to ensure a satisfactory standard of development. I give only limited weight to the availability of open space for the existing community.

223. Financial contributions of £27,000 towards improving cricket facilities at Rayne and up to £1,414,255 towards sport and recreational facilities in the Panfield Lane growth location [80] would address the increased pressure from the additional population. They represent mitigation, and are not benefits of the proposed development.

The local centre and employment land

224. The proposal includes a local centre and employment land [19]. That is consistent with the promotion of mixed-use growth locations in Policy CS1. Although I have found that the weight of that policy is limited, that relates to its housing provision, and the references to sustainable and mixed-use growth locations are consistent with paragraph 72 of the NPPF (above, para 214). The development of a mixed use site has enabled the Appellant to take account of the internalisation of a proportion of vehicle trips in assessing the effect of traffic generation on the local highway network [70]. I note, moreover, that the LPA takes the view that the level of employment land and the size of the local centre are less than what might be expected, referring to strategic sites proposed in the ELP and the 2018 Retail Update Study [134, 135]. I am mindful that the inclusion of these elements in the scheme is consistent with paragraphs 80 & 92

of the NPPF. However the local centre would primarily serve the new residential development, and there is nothing before me to indicate that the provision of a relatively modest area for B1 uses is of significance to the supply of employment land. Accordingly I have reached the view that the inclusion of employment land and a local centre carries no more than limited weight in support of the scheme.

Economic considerations

225. The Appellant refers to employment including the provision of 151 full-time equivalent construction jobs and 123 additional jobs in the local impact area during the construction period [78]. I anticipate that a smaller number of permanent jobs would be created in the B1 units and the local centre. Other jobs would be created in the supply chain and there would be increased spending in locally in shops and on services. Paragraph 80 of the NPPF says that significant weight should be placed on the need to support economic growth and productivity, but these are generic benefits which would apply equally to any large housing scheme.
226. Insofar as tax receipts and the payment of the new homes bonus is concerned, I am mindful that paragraph 21b-011 of PPG advises that it would not be appropriate to make a decision based on the potential for the development to make money for a local authority. Overall, I consider that the economic benefits of the proposal carry moderate weight.

Essex Coast RAMS

227. The appeal site is within the zone of influence of European sites covered by the Essex Coast RAMS. The provision of SANGs as part of the development [37] could be secured by a condition. A financial contribution is also sought, but at the date of the inquiry no information was available on the level of contribution required [9]. Consequently, although the principle of providing a contribution towards the provision of off-site strategic measures is appropriate to assist in safeguarding the European sites, matters could not progress beyond the preparation of a draft planning obligation [85]. In the absence of an obligation, the Appellant and the LPA suggested that a scheme concerning the funding of off-site measures could be secured by means of a condition.

Planning obligations

228. I have already referred to obligations concerning sports and recreation facilities (the community facilities contribution), traveller accommodation, the Flitch Way, highway works, the provision of a bus service and other measures relating to sustainable travel, education contributions, provision of the primary school site, and mineral extraction. Open space would be required as part of the new development and a planning obligation also makes provision for the necessary management arrangements. Given the size of the development, it is important that facilities for recycling are provided on-site in accordance with Policy RLP 74 of the LPR. The additional population would increase pressure on health facilities, and I am satisfied that a healthcare contribution should be provided as advised by NHS England. One of the benefits of the development would be a contribution to the supply of affordable housing, and an obligation is put forward which would ensure a level of provision compliant with Policy CS2 of the CS.

229. Insofar as the provisions of the planning obligations in the executed planning agreement are concerned, I am satisfied that the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations are met, and these provisions are material considerations in the appeal decision.

Conditions

230. I have considered the suggested conditions (CD9.44) in the light of the advice in PPG and the discussion on conditions at the inquiry. I have already referred to conditions concerning restrictions on the height of buildings, the density of housing, the number of dwellings, highway works, SANGs and a scheme for off-site measures in connection with the Essex Coast RAMS. If the appeal is allowed and planning permission granted, it would also be appropriate for conditions on the following matters to be imposed. For the avoidance of doubt and in the interests of proper planning, it is important that the development is carried out in accordance with the specified plans. Given the size of the development it is appropriate that it proceeds in a phased manner, and reserved matters should be prepared in accordance with the parameter plans. Reserved matters should also include details of floor levels. To ensure that the sustainability credentials of the development are achieved, conditions are required concerning the construction of the local centre and the marketing of the employment land.
231. The site is close to the A120 and Pods Brook Road, both of which are busy routes. Reserved matters for housing should, therefore, be accompanied by a noise report demonstrating that that specified noise levels would be achieved. An arboricultural method statement, including a tree protection plan, is needed to safeguard existing trees which are intended to be retained. To encourage sustainable travel, charging facilities for battery powered vehicles should be provided. A species and habitat management plan is important in the interest of nature conservation, and for the same reason, a scheme of bat roosting and bird nesting opportunities and a construction environmental management plan would be required. Details of foul and surface water drainage should be submitted to ensure that the site is satisfactorily drained, and, to minimise flood risk, ground levels within the flood plain of the River Brain (flood zones 2 & 3) should not be raised.
232. To ensure a satisfactory standard of development, conditions are required to address the risk of contamination. A construction method statement would assist in safeguarding the living conditions of neighbours, and to provide an opportunity for archaeological investigation a programme of evaluation should be approved.

Overall conclusions

233. Notwithstanding the reduced weight that applies to several policies, I have found that the proposed development would be contrary to the Development Plan considered as a whole. the appeal should, therefore, be dismissed, unless material considerations indicate otherwise.
234. The first balancing exercise to be undertaken is that required by paragraph 196 of the NPPF, which requires that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, as is the case here in respect of the setting of Naylinghurst, then that harm should be weighed against the public benefits of the proposal. The provision of additional housing land and affordable housing are both public benefits which carry significant

weight. The economic benefits arising from development on the site merit moderate weight. In addition I attach limited weight to the benefits to existing residents from sustainable travel measures, some surplus school places and the provision of open space, and also from the inclusion of a local centre and employment land in the scheme. The harm to the significance of Naylinghurst, due to the adverse effect on the setting of this listed building, carries great weight. Nevertheless, having regard in particular to the need for additional housing in Braintree, I consider that the public benefits outweigh the harm to the significance of the listed building.

235. The NPPF is an important material consideration. As Braintree does not have a five years' housing land supply, the policies which are the most important for determining this appeal are out-of-date, and paragraph 11(d)(ii) requires that permission be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed the policies in the NPPF taken as a whole. There are no additional benefits to the public benefits which I have identified above. In addition to the harm to the significance of the listed building, I give considerable weight to the harm to the landscape of the site and visual amenity from the Flitch Way and footpaths within parcel B. There would also be an adverse effect on the LCA and the visual impact from the access on Pods Brook Road carries some limited additional weight. Recognition of the intrinsic character and beauty of the countryside and conservation of heritage assets are acknowledged as important in the NPPF. These adverse impacts would significantly and demonstrably outweigh the benefits of the proposal which I have identified. Accordingly the outcome of the tilted balance in paragraph 14 of the NPPF does not indicate that a decision should be taken other than in accordance with the Development Plan.
236. Although it does not relate to a provision of the NPPF, the appeal proposal would appreciably diminish the sense of separation between the settlements of Braintree and Rayne, and this further harm reinforces my view that the proposal would be unacceptable.

Recommendation

237. For the reasons given above, and having regard to all matters raised, I recommend that the appeal be dismissed and planning permission refused. Should the Secretary of State reach a different conclusion on the merits of the appeal, I recommend that the conditions in the Annex to this report should be imposed on a grant of planning permission.

Richard Clegg

INSPECTOR

ANNEX - SCHEDULE OF SUGGESTED CONDITIONS

- 1) No development shall take place within any phase of the development until full details of the access to and within that phase, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out as approved.
- 2) Prior to the submission of the first application for Reserved Matters approval, a phasing strategy which accords with the order of phases shown on drawing 3502 Version D 'Parameter Plan 2 – Phasing' shall be submitted to and approved by the Local Planning authority, save that the area identified as 'Phase 6' on that drawing shall be provided as public open space prior to occupation of the 350th dwelling. The phasing strategy shall include:
 - (a) for each phase, details of the indicative number of dwellings to be provided, the indicative housing mix (including tenure), the indicative open space to be provided, pedestrian and cycle connections;
 - (b) the approximate locations of the travellers site and recycling facilities; and
 - (c) an updated phasing plan which reflects the fact that Phase 6 will need to be delivered prior to occupation of the 350th dwelling.

The development hereby approved shall be carried out in general accordance with the approved phasing strategy.

- 3) Application for approval of the reserved matters within the first phase shall be made to the local planning authority not later than two years from the date of this permission. All subsequent reserved matters applications shall be submitted to the local planning authority not later than 10 years from the date of permission.
- 4) The development hereby permitted shall begin no later than two years from the date of approval of the last reserved matters to be approved for any phase.
- 5) The development hereby permitted shall be carried out in accordance with the general arrangement shown on the following approved plans:
 - (a) Site Location Red - ref 1001 revision J (Plan A).
 - (b) Pods Brook Road access roundabout and carriageway widening – ref DR15 (Plan B).
 - (c) Rayne Road Site Access – Ref DR12 revision A (Plan C).
- 6) Before the submission of the reserved matters applications for the phase that includes the local centre within the development hereby permitted, a scheme identifying the facilities to be provided within the local centre shall be submitted to and approved in writing by the local planning authority. The local centre scheme shall include details of the size, extent, and content of those facilities, and details of a marketing strategy to secure tenants and/or occupiers of those facilities. The facilities shall include provision for a convenience food retail store (A1 use) of up to 200m², car parking associated with the local centre, and refuse storage. The

marketing strategy hereby approved shall be carried out in accordance with the approved scheme.

No more than 500 dwellings within the development hereby permitted shall be occupied until the facilities described above have been completed (excluding internal fitting out) in accordance with the approved scheme.

- 7) Before the submission of the Reserved Matters applications which include the employment land within the development hereby permitted a scheme identifying the facilities to be provided on the employment land shall have been submitted to and approved by the local planning authority. For the purposes of this condition the scheme shall include proposals to secure the following:

- (a) The range of employment uses.
- (b) The marketing strategy to secure occupiers and/ or tenants.
- (c) Car parking associated with the employment land.

The marketing of the employment land hereby permitted shall be carried out in accordance with the approved marketing strategy.

- 8) The details of the Reserved Matters submitted pursuant to this permission shall be in accordance with the following parameter plans:

- (a) Parameter Plan 1, Land Use - Ref 3501 Version D.
- (b) Parameter Plan 2, Phasing - Ref 3502 Version D.
- (c) Parameter Plan 3, Building heights – Ref 3503 Version F.
- (d) Parameter Plan 4, Density – Ref 3504 Version F.
- (e) Parameter Plan 5, Vehicle movement – Ref 350 Version D.
- (f) Parameter Plan 6, Leisure access – Ref 3506 Version D.
- (g) Parameter Plan 7, Landscape – Ref. 3507 Version D.
- (h) Parameter Plan 8, Drainage – Ref 3501 Version D.

Building heights shall not exceed the upper limit shown on Parameter Plan 3, Building heights – Ref 3503 Version F, and densities shall not exceed the upper limit shown on Parameter Plan 4, Density – Ref 3504 Version F. no more than 1203 dwellings shall be constructed in the development hereby permitted.

- 9) Any reserved matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.

The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

- 10) Any reserved matters application relating to scale or layout shall be accompanied by a noise report demonstrating that the indoor ambient noise levels for the proposed dwellings will comply with the requirements of table 4 of BS 8233 Guidance on Sound Insulation and Noise Reduction for

Buildings (2014) and that the upper guideline noise level of 55dB(a) will be achieved for all outside amenity space such as gardens and patios which serve dwellings. The development shall be carried out in accordance with the approved noise report.

- 11) As part of the submission of the first reserved matters application as detailed within Condition No 1, an arboricultural method statement (AMS) shall be submitted and approved in writing by the local planning authority. The AMS should be produced in accordance with BS 5837:2012 Trees in relation to design, demolition and construction.

The AMS shall include a detailed tree protection plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a qualified project arboricultural consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how monitoring will be undertaken (including frequency of visits and key works which will need to be monitored) and recorded. The development will be carried out in accordance with the approved AMS and DTPP. Following each site inspection during the construction period the project arboricultural consultant shall submit a report to the local planning authority.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities within each phase of the development, and shall remain in place until the completion of the development. The local planning authority shall be notified in writing at least five working days prior to the commencement of development on site.

- 12) No more than 550 dwellings shall be occupied until the Millennium Way Slip Roads scheme (between the A120 and Millennium Way) has been completed and opened to traffic.
- 13) Each reserved matters application for layout shall include details for the provision of charging facilities for battery powered vehicles to serve every dwelling within that phase of the development. The development shall be carried out in accordance with the approved details, and prior to the occupation of each dwelling the approved charging point(s) shall be provided and shall be retained in the approved form thereafter.
- 14) No development or any site clearance shall take place on any phase until a species and habitat management plan has been submitted to, and approved in writing by, the local planning authority. The species and habitat management plan shall include updated protected species surveys for that phase (as agreed in writing with the local planning authority prior to the commissioning of the surveys). The updated survey reports shall be used to develop the species and habitats management plan which will include a mitigation strategy for the listed species. The development shall be carried out in accordance with the approved species and habitat management plan.

To demonstrate compliance with the species and habitat management plan a monitoring report shall be submitted to the local planning authority every three years, with the first such report being produced no later than three years after the first dwelling is occupied on the development.

- 15) No development shall take place on any phase until a construction environmental management plan (CEMP) for that phase has been submitted to, and approved in writing by, the local planning authority. The CEMP shall include:
- (a) A risk assessment of potentially damaging construction activities and measures to avoid or reduce impact during construction.
 - (b) Identification of biodiversity protection zones.
 - (c) The location and timing of sensitive works, to avoid harm to biodiversity feature, including nesting birds.
 - (d) The times during construction when specialist ecologists need to oversee works on site.
 - (e) The role of an ecological clerk of works, and lines of communication; and
 - (f) The use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to throughout the construction period.

- 16) No development shall take place on any phase until a scheme of bat roosting and bird nesting opportunities within buildings on that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall include the number, specification and location of bat roosting and bird nesting features, and a commitment to installation under the guidance of an appropriately qualified bat consultant. All features shall be installed prior to the first occupation of the building concerned, and they shall be retained thereafter.
- 17) No works shall take place on any phase until a detailed surface water drainage scheme for that phase based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. Each scheme shall subsequently be implemented prior to occupation of the phase to which that scheme relates. In particular each scheme shall provide for the following mitigation measures:
- (a) A detailed drainage strategy for the whole site following the outline details within the approved Flood Risk Assessment (FRA).
 - (b) A detailed drainage strategy following the overall site drainage strategy. Any sustainable drainage system (SuDS) features shared between different phases must be clearly shown, including regional SuDS features which have to be in place ahead of each phase of the development.
 - (c) Each phase of the development shall be based on the drainage strategy within the approved FRA.
 - (d) The drainage strategies for each phase of the development must be accompanied by hydraulic modelling calculations showing the

performance of the drainage system for all events up to and including the 1 in 100 year plus climate change.

- (e) Sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- (f) Run-off management within the entire site and each phase of the development must prioritise the use of SuDS both as a means of water conveyance and to provide source control, water quality treatment and bio-diversity enhancement. Above ground SuDS features should be used as far as possible.
- (g) A 10% allowance for urban creep should be allowed for in designing the detailed design of all the phases of the development. A clear phasing plan should be submitted together with the detailed design of the entire site.
- (h) Any regional SuDS features must be implemented ahead of any phases of the development. Full details of these must be included within the detailed design strategy for the full site.
- (i) Details of the adoption and maintenance of the SuDS for each phase of the development. Particular attention must be given to the treatment of run-off from highway roads (main access roads within the development) and early engagement with Essex County Council (ECC) Highways must be made if it is proposed to have the SUDS adopted by ECC Highways.

The above measures shall be fully implemented prior to occupation in accordance with the timing / phasing arrangements embodied within the scheme. The development shall be carried out in accordance with the approved detailed surface water drainage scheme.

- 18) No development shall commence in any phase until a maintenance plan detailing the maintenance arrangements for the SuDS within that phase of the development, including who is responsible for different elements of the SuDS and the maintenance activities / frequencies, has been submitted to and approved in writing by the local planning authority. The SuDS shall be maintained in perpetuity in accordance with the approved maintenance plan.

Yearly logs must be kept of maintenance of the SuDS, which should be carried out in accordance with the approved maintenance plan for each phase of the development. The logs must be available for inspection upon a request by the local planning authority.

- 19) Ground conditions within the flood plain of the River Brain (identified as Flood Zone 2 and Flood Zone 3 on the Environment Agency Flood Maps) shall not be raised as part of the development. Raising would include, but not be limited to, any landscaping or levelling of ground to facilitate the construction of buildings.
- 20) No development shall take place on any phase until a scheme of foul water drainage for that phase, including arrangements for its future maintenance, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the

approved scheme before that phase of the development is brought into use or as set out in the approved phasing details.

- 21) Should contamination be found on the site, that contamination shall be made safe and reported immediately to the local planning authority and the site shall be re-assessed and a remediation scheme shall be submitted to and agreed in writing with the local planning authority. Such agreed measures shall be implemented and completed prior to the first occupation of that phase of the development.
- 22) The dwellings hereby permitted shall be constructed in accordance with the details specified in paragraphs 18.32-18.35 of Chapter 18 of the Environmental Statement (Ground Conditions) submitted to the Council on 23 February 2017.
- 23) No development or preliminary groundworks shall commence until a soil management plan has been submitted to, and approved in writing by, the local planning authority. The approved soil management plan shall be adhered to throughout the construction period of the development.
- 24) No development shall commence, including any groundworks, until a statement of construction practice (SCP) has been submitted to, and approved in writing by the local planning authority. The SCP shall provide for:
 - (a) Details of the construction traffic routes to be used to and from the site including details of the links to the local and strategic highway network.
 - (b) Safe access to and from the site, including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development.
 - (c) The parking of vehicles of site operatives and visitors.
 - (d) The location of the site compound and plant and equipment storage.
 - (e) The loading and unloading of plant and materials.
 - (f) The storage of plant and materials used in constructing the development.
 - (g) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
 - (h) Wheel washing facilities.
 - (i) Measures to control the emission of dust and dirt during construction.
 - (j) A scheme for recycling and disposing of waste resulting from demolition and construction works.
 - (k) A scheme to control noise and vibration during the construction phase.
 - (l) Details of any proposed piling, including details of resultant noise and vibration levels.

- (m) Provision of a dedicated telephone number for members of the public to raise concerns and complaints, and a strategy for pre-warning residents of noisy activities and sensitive working hours.
 - (n) A scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works.
 - (o) Details of how the SCP will be made publicly available.
- 25) No development or preliminary groundworks shall commence on each phase of development until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority. A mitigation strategy detailing the excavation and preservation strategy shall be submitted to the local planning authority following the completion of this evaluation.

No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the completion of fieldwork, as detailed in the mitigation strategy, and which has been approved by the local planning authority through its historic environment advisors. Within six months of the completion of fieldwork, a post-excavation assessment will be submitted to the local planning authority. This will involve the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report. The development shall be carried out in accordance with the approved written scheme of investigation and mitigation strategy.

- 26) Prior to the submission of the first application for approval of reserved matters, a strategy for the provision of Sustainable Alternative Natural Greenspace shall be submitted and approved by the local planning authority. The strategy shall demonstrate that the development hereby approved will provide:
- (a) High quality, informal, semi-natural areas.
 - (b) Circular dog walking routes of 2.7km within the site and/or with links to surrounding public rights of way.
 - (c) Dedicated 'dogs-off-lead' areas.
 - (d) Signage and information leaflets to householders to promote the areas in (a) – (c) for recreation.
 - (e) Dog waste bins.
 - (f) Details of the timing of provision of the above measures prior to the first occupation of any dwelling hereby permitted.
 - (g) Arrangements for the long-term management and future maintenance of the provisions in (a) – (e).

The development hereby permitted shall be carried out in accordance with the approved strategy.

- 27) Prior to the submission of the first application for approval of reserved matters in any phase of the development hereby permitted, a scheme for the relevant phase of the development related to the funding of strategic off site measures in and around identified European sites shall be submitted to the local planning authority. The scheme shall include a payment

schedule and a legally enforceable delivery mechanism for such payment. The financial contributions set out in the payment schedule shall be utilised to fund strategic off site measures in and around designated European sites, for which the development hereby permitted is in the recreational zone of influence as defined by Natural England. The off-site measures shall, so far as possible, be in line with the aspirations of the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

Development shall not commence in any phase until the scheme for that phase has been approved by the local planning authority, and the requirements of the legally enforceable delivery mechanism for that phase have been met.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms E Dring & Mr A Williams of Counsel	Instructed by the Solicitor to Braintree DC
They called:	
Mr T Murphy IHBC MCifA	Historic Environment Manager, Essex CC
Mr S J Neesam CMLI	Technical Director, The Landscape Partnership
Mr N Jones MSc	Principal Planner, Braintree DC
Mrs J Lilliot	Principal Solicitor, Holmes & Hills

FOR THE APPELLANT:

Mr C Katkowski QC & Mr M Dale-Harris of Counsel	Instructed by Mr N Baker
They called:	
Dr J Edis BA MA PhD MCifA IHBC	Managing Director, Heritage Collective UK Ltd
Mr J Vernon-Smith BSc(Hons) DipArch RIBA RPUD	Director, Urban Design Box Ltd
Mr D Wood MIEEM	Director & Principal Ecologist, ACD Environmental Ltd
Mr M Axon FCIHT	Founding Director, Vectos
Mr A Williams BA(Hons) DipLA DipUD CMLI	Founding Director, Define
Mr P Patel BA MRTPI MRICS	Director, PPML Consulting Ltd
Mr N Baker	Head of Planning & Environment, Clarke Willmott

FOR NO BROOK GREEN ACTION GROUP:

Mrs L Glancey	Local resident & member of NBGAG
Mrs E Wood	Local resident & member of NBGAG
Mr J Kruger	Owner & occupier of Naylinghurst, and member of NBGAG
Mr A Goldsmith	Local resident & member of NBGAG
Mr J Maas	Local resident & member of NBGAG

INTERESTED PERSONS:

Mr M Bradley	Strategic Development Manager (North), Transportation & Smarter Travel, Essex CC
Councillor A Hooks	Vice-chair, Rayne Parish Council
Mr A G Adair	Friends of the Flitch Way and Associated Woodlands
Mrs S Reynolds	Secretary, Friends of the Flitch Way and Associated Woodlands
Mr F Moll	Chairman, The Braintree Society

Mrs K Bowden	Local resident
Miss L Boxall	Local resident
Mrs K Dunnett	Local resident
Mrs K Fraser	Local resident
Ms E Gauntlet	Local resident
Mr J Jemison	Local resident
Mrs N Leivers	Local resident
Miss T Maas	Local resident
Mrs W Moss	Local resident
Mr S Trippett	Local resident

CORE DOCUMENTS – SUPPLEMENTARY LIST¹³⁵

CD4 ES documents

CD4.8 Letter dated 11 July 2018 from Mr Baker to Mr Jones concerning relocation of the primary school site and ES Addendum; School land plan.

CD6 Appeal documentation

CD6.7 Planning statement of common ground.
 CD6.8 Highways statement of common ground.
 CD6.9 Statement of Compliance with CIL Regulations, Braintree DC.
 CD6.10 Erratum sheet in respect of CD6.7.

CD9 Documents submitted at the inquiry

CD9.1 Supplementary landscape plans. Submitted by Mr Williams for the Appellant.
 CD9.3 Sustrans Technical Information Note No 8 – Cycle Path Surface Options. Submitted by the Appellant.
 CD9.5 Extracts from the 2012 NPPF and the 2018 consultation draft NPPF. Submitted by the LPA.
 CD9.6 Extracts from Braintree District Settlement Fringes – Evaluation of Landscape Capacity Analysis for Braintree and environs. Submitted by the LPA.
 CD9.7 Mr Katkowski's & Mr Dale-Harris's opening statement for the Appellant.
 CD9.8 Ms Dring's & Mr Williams's opening statement for the LPA.
 CD9.9 Mrs Glancey's opening statement for NBGAG.
 CD9.10 Plan of Rayne Conservation Area and public rights of way in the vicinity of the appeal site. Submitted by the LPA.
 CD9.11 Braintree District Cycling Action Plan, Essex Highways, 2018. Submitted by the Appellant.
 CD9.13 North Essex Garden Communities – West of Braintree – Concept Framework, AECOM, 2017. Submitted by the LPA.
 CD9.14 Review of Braintree District Local Plan – Green Wedge Policy – Final Report, Chris Blandford Associates, 2003. Submitted by the LPA.
 CD9.16 Extracts from Essex Minerals Local Plan.
 CD9.17 Letter dated 2 September 2018 from Mr Jemison.
 CD9.18 Miss Boxall's statement.
 CD9.19 Miss Maas's statement.

¹³⁵ Items which form part of other documents are not listed separately.

- CD9.20 Mrs Reynolds's statement.
- CD9.21 Mrs Dunnett's statement.
- CD9.22 Mrs Moss's statement.
- CD9.23 Mrs Fraser's statement.
- CD9.24 Mr Moll's statement on behalf of The Braintree Society.
- CD9.25 Bundle of documents concerning highway matters. Submitted by NBGAG.
- CD9.26 Mr Bradley's statement on behalf of Essex CC.
- CD9.27 Email dated 12 September 2018 from Mr Kruger to Mrs Wood concerning Naylinghurst.
- CD9.28 Mr Jones's note on a current planning application, the emerging Local Plan and housing land.
- CD9.29 Development Management Policies, Essex CC, 2011.
- CD9.30 Email dated 13 September 2018 from Strutt & Parker concerning Naylinghurst.
- CD9.32 Letter dated 9 September 2018 from Mrs A M Bright.
- CD9.33 Mr Neesam's revision to table 10.1 of the LVIA (included in Document L4, appendix 1).
- CD9.34 Mr Neesam's Flitch Way view analysis.
- CD9.35 Mr Axon's summary note on transport.
- CD9.36 Mrs Leivers's statement.
- CD9.37 Mr Patel's calculation of five year housing land contribution from strategic growth locations.
- CD9.38 Mr Jones's note concerning Colchester BC's position on the emerging Local Plan.
- CD9.39 Email correspondence between Vectos and Highways England concerning the Millennium Way slip roads. Submitted by the Appellant.
- CD9.40 Schedule of measurements of the width of the Flitch Way. Submitted by the Appellant.
- CD9.42 Bundle of representations to application ref 18/01065/OUT which refer to the appeal proposal.
- CD9.43 Rayne Village Hall & Playing Field Committee, List of projects for funding from planning obligation monies, together with cost estimates in email dated 21 September 2018 from Mrs Wood.
- CD9.44 Schedule of draft conditions prepared by the Appellant and the LPA.
- CD9.45 Draft unilateral undertaking relating to the appeal proposal. Submitted by the Appellant.
- CD9.46 Planning agreement relating to the appeal proposal.
- CD9.47 DVD and photographs of highway conditions on Pods Brook Road & Rayne Road. Submitted by NBGAG.
- CD9.48 DVD showing aerial view of the appeal site from a drone. Submitted by NBGAG.
- CD9.49 Plans for inquiry site visits.
- CD9.50 Mrs Bowden's statement.
- CD9.51 Mr Trippett's statement.
- CD9.52 Extracts from transport assessments for Sainsbury's store and mixed-use development, Braintree. Submitted by the Appellant.
- CD9.53 Mrs Wood's closing submissions on behalf of NBGAG.

- CD9.54 Ms Dring's & Mr Williams's closing submissions on behalf of the LPA.
- CD9.55 Plan of public rights of way in the vicinity of the appeal site.
- CD9.56 Mr Katkowski's & Mr Dale-Harris's closing submissions on behalf of the Appellant.

THE LPA'S DOCUMENTS

- L1 Mr Murphy's proof of evidence
- L2 Appendices to Document L1
- L3 Mr Neesam's proof of evidence
- L4 Appendices to Document L3
- L5 Mr Neesam's rebuttal proof of evidence
- L6 Mr Jones's proof of evidence
- L7 Appendices to Document L6
- L8 Mr Jones's rebuttal proof of evidence
- L9 Appendices to Document L8

THE APPELLANT'S DOCUMENTS

- A1 Dr Edis's proof of evidence
- A2 Appendices to Document A2
- A3 Mr Vernon-Smith's proof of evidence
- A4 Appendices to Document A3
- A5 Mr Vernon-Smith's rebuttal statement
- A6 Appendices to Document A5
- A7 Mr Wood's proof of evidence
- A8 Appendices to Document A7
- A9 Mr Axon's proof of evidence
- A10 Appendices to Document A9
- A11 Mr Axon's rebuttal statement
- A12 Mr Williams's proof of evidence
- A13 Appendices to Document A12
- A14 Mr Williams's rebuttal statement
- A15 Appendices to Document A14
- A16 Mr Patel's proof of evidence
- A17 Appendices to Document A16
- A18 Mr Patel's rebuttal statement
- A19 Appendix to Document A18

NBGAG'S DOCUMENTS

- N1 Mrs Wood's proof of evidence
- N2 Mrs Wood's rebuttal proof of evidence
- N3 Appendices to Document N2
- N4 Mr Kruger's proof of evidence
- N5 Mr Goldsmith's proof of evidence
- N6 Appendices to Document N5
- N7 Mr Maas's proof of evidence on coalescence
- N8 Mr Maas's proof of evidence on highways
- N9 Appendices to Document N8

OTHER DOCUMENTS

- O1 List of core documents.¹³⁶
- O2 Notification of appeal.
- O3 Correspondence received in response to Document O2.
- O4 Notification of ES Addendum.
- O5 Correspondence received in response to Document O4.
- O6 Notification of the inquiry.
- O7 Review of CD8.10 by FOFW.
- O8 Councillor Hooks's statement on behalf of Rayne Parish Council.

PLANS

- A Site Location Plan ref 1001 revision J.
- B Pods Brook Road access roundabout and carriageway widening – ref DR15.
- C Rayne Road Site Access – Ref DR12 revision A.
- D Springwood Drive roundabout works – ref DR13 revision A.
- E Springwood Drive roundabout works – ref DR18.
- F Springwood Drive roundabout works – ref DR18 revision A.
- G Pierrefitte Way/ Aetheric Road/ Rayne Road junction works – ref 0049/1607/101.
- H A120 north roundabout works – ref DR14 revision C.
- I A120/ Millennium Way slip roads – ref 2301.

¹³⁶ Document O1 is the list of core documents submitted on the last day of the inquiry. It should be read with the supplementary list above.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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