



Appeal Decision

Inquiry opened on 11 June 2019

Site visits made on 11 & 18 June 2019

by D M Young BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 30th July 2019

Appeal Ref: APP/W3520/W/18/3209219

Land north of Church Road, Bacton, Stowmarket, Suffolk.

- 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 Endurance Estates Strategic Land Ltd against the decision of Mid Suffolk District Council.
 - The application Ref DC/17/05423, dated 26 October 2017, was refused by notice dated 15 February 2018.
 - The development proposed is an outline planning application (all matters reserved except access) for development of up to 81 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application (all matters reserved except access) for development of up to 81 dwellings at land north of Church Road, Bacton, Stowmarket, Suffolk in accordance with the terms of the application, Ref DC/17/05423, dated 26 October 2017, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The Inquiry sat for 5 days on 11, 12, 13, 14 and 18 June 2019. As the full extent of the appeal site can be readily viewed from the public domain in Church and Wyverstone Roads and with the agreement of the main parties, an accompanied site visit was not deemed necessary. I carried out two unaccompanied visits to the locality of the appeal site during the course of the Inquiry.
3. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by illustrative master and parameter plans and a raft of supporting technical documentation in relation to highways, flood risk, contaminated land and ecology. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation.
4. Statements of Common Ground (SOCG) relating to highways, education, archaeology, flood risk and planning matters were submitted prior to the start of the Inquiry, I have had regard to these in reaching my decision.
5. A signed and dated agreement and Unilateral Undertaking (UU) under s106 of the Town and Country Planning Act were submitted on the final day of the Inquiry. Amongst other things these contain provisions for affordable housing,

- primary education and the approval by the Council of details of open spaces and play areas and their subsequent management. All the proposed contributions would need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I will return to later in my report.
6. Various appeal decisions were referred to in the evidence and at the Inquiry. However, there was no suggestion that the facts of any one case were so aligned with the facts here that the previous decision indicated that this appeal should be either allowed or dismissed. I have therefore had regard to the various decisions insofar as they are relevant to my consideration of this appeal.
 7. The proposal was considered by the Council's Planning Committee in February 2018 when Members resolved to refuse planning permission, against the Case Officer's recommendation. This was at a time when the Council considered it did not have a 5-year housing land supply (HLS) as detailed in the *National Planning Policy Framework* ("the Framework"). Since that time the Council published its latest Housing Land Supply Position Statement in March 2019 which confirms that the Council can now demonstrate a 5-year HLS¹. Other than pointing to the fragility of the situation, the appellant accepts the Council's position.
 8. I have been invited to consider an amended scheme (scheme B) for up to 66 dwellings which was submitted with the appeal. The salient changes to the original scheme are an increased provision of public open space, a greater distance and degree of separation with Bacton Manor (the Manor), the removal of the community car park and an amended access point from Wyverstone Road. The submission of Scheme B is without prejudice to Scheme A which remains the appellant's preferred option. Scheme B has been subject to a full public consultation exercise in October 2018.
 9. The appeal process should not be used to evolve a scheme and it is important that the facts before me are essentially the ones considered by the Council and other interested parties. However, in this instance I am satisfied that local people as well as the Council have had sufficient time to comment on the amended schemes. On that basis, I am satisfied that no one would be prejudiced if I were to take scheme B into account. Scheme C is simply a hybrid of scheme A and scheme B i.e. 81 dwellings served from Wyverstone Road. Given that matters pertaining to the revised access have been covered in relation to scheme B, there would again be no injustice if I were to consider that scheme also.

Main Issues

10. Although there was broad agreement on a range of matters at the Inquiry, the main parties hold differing views regarding the degree of heritage and landscape harm, the weight to be attributed to the various benefits of the scheme, the consistency of the relevant development plan policies with the Framework and the resulting planning balance. Against this background, and in view of the evidence submitted in writing and presented orally at the Inquiry, I consider the main issues can best be expressed as:

- (i) The weight which should be given to the most important policies;

¹ 5.06 years revised up to 5.24 years following an adjustment to reflect the release of the latest ONS affordability ratios.

- (ii) The effect on the character and appearance of the area;
- (iii) The effect on the setting of nearby heritage assets, and
- (iv) Whether the appeal proposals should benefit from the presumption in favour of sustainable development as defined in the Framework.

Reasons

Planning policy context

11. Section 38(6) of the Planning and Compulsory Purchase Act (the Act) 2004 requires that these applications be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the Framework, which can override development plan policy if it is not consistent with the Framework's provisions. I therefore summarise the national planning policy context first, before turning to look at relevant development plan policies.
12. Paragraph 11 of the Framework explains that there is a presumption in favour of sustainable development which comprises economic, social and environmental objectives. It goes on to indicate that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.
13. The development plan for the area comprises a combination of the "*Mid Suffolk Core Strategy Development Plan Document 2008*" (the CS), the "*Mid-Suffolk Core Strategy Focused Review 2012*" (the CSFR), 'saved' policies of the "*Mid-Suffolk Local Plan 1998*" (the LP). Although the appeal site lies within what is generally understood to be the village of Bacton, it is just outside the existing settlement boundary. However, as with other consented schemes in the vicinity², the Council does not oppose the scheme on the basis of its being outside the settlement boundary. The suitability of the appeal site for residential development was considered by the Council as part of the 2016 and 2017 Strategic Housing Land Availability Assessments (SHLAA's). The summary to those assessments concluded that the site was potentially suitable for development subject to further investigation of heritage and highway issues.
14. The main parties agreed that those policies that are most important for determining the application are cited in the Reason for Refusal. LP Policy GP1 sets out a range of criteria which relate to the layout of development. LP Policy HB1 is a heritage policy that generally reiterates the statutory duty in relation to heritage assets. LP Policy H16 is concerned with the protection of residential amenity and states that the Council will resist the loss of open spaces which contribute to the character or appearance of an area and which are important for recreation or amenity purposes. CS Policy CS5 provides that all development will maintain and enhance the environment and retain local distinctiveness.

² LPA refs: DC/17/03799 (50 dwellings) & 3270/16 (64 dwellings)

Weight to be given to the most important policies

15. In view of advice in paragraph 11 d) of the Framework, it is necessary to consider how consistent the aforementioned policies are with the Framework, to assess what weight should be attached to them. Paragraph 213 explains that due weight should be given to relevant policies according to their degree of consistency with the Framework, the closer the policies in the plan to those in the Framework, the greater the weight that may be given. For the purposes of this exercise, the Wavendon judgement³ confirms that *"an overall judgment must be formed as to whether or not taken as a whole these policies are to be regarded as out-of-date for the purpose of the decision"*.
16. The first point to make is that the LP is now of some vintage with Policies GP1, HB1 and H16 pre-dating the Framework by some considerable margin. However, as paragraph 213 makes clear, policies should not be considered out of date simply because they were adopted prior to the publication of the Framework.
17. Policy GP1 is consistent with the aims of the Framework to foster good design. However, despite its inclusion in the refusal reasoning, the Council's opposition to the scheme does not rely on any specific allegation of poor design. This is logical given that the matters to which GP1 pertains would fall to be considered at the reserved matters stage. I do not therefore consider that GP1 passes the 'most important' test.
18. LP Policy H16 is concerned with protecting existing residential amenity and character of *'primarily residential areas'*. The second limb to the policy states that the *'loss of open spaces which contribute to the character or appearance of an area and which are important for recreation or amenity purposes'* (my emphasis) will be resisted. From reading the supporting text I do not consider this policy was ever intended to be used in the context of a visually contained, arable field that has no public access to it. Even if I am wrong about that, I do not consider the appeal site is 'important' for amenity purposes given its ordinary everyday meaning. The Framework does also not contain such a blanket policy in relation to amenity. Subsequently the policy fails both the 'most important' and consistency test.
19. Whilst the general thrust of LP Policy HB1 and CSFR Policy FC.1.1 might well be consistent with the Framework, that is not enough in my view. These policies do not allow for the weighing of public benefits against any heritage harm, something which has been established practice for a number of years now. Whilst the CSFR post-dates the original Framework, as a matter of simple judgment, Policy FC1.1 cannot be seen as being in conformity with it for the above reason.
20. As I myself and other colleagues have found in the Stowupland, Woolpit and Claydons decisions⁴, CS Policy CS5 in requiring development actually to maintain and enhance the historic environment goes beyond the statutory duty and paragraph 185 of the Framework, the latter of which requires decision makers to *"take account of the desirability of sustaining and enhancing the*

³ Wavendon Properties v Secretary of State for Housing Communities Local Government and Milton Keynes Council [2019] EWHC 1524 (Admin).

⁴ PINS Refs: APP/W3520/W/17/3184908, APP/W3520/W/18/3194926 & APP/W3520/W/18/3200941

significance of heritage assets". Blanket protection for the natural or historic environment cannot therefore be seen as being consistent with the Framework.

21. Because of these inconsistencies and irrespective of the Council's HLS position, I consider that the policies most important for determining the application are out-of-date. The fact that the Council itself recently came to the same view in relation to Policies GP1, H16, CS5 and FC1.1 adds further weight to my findings above⁵. As a result, the weight which can be attributed to these policies has to be commensurately reduced and the default position identified in paragraph 11 d) of the Framework is engaged.

Character and appearance

22. In summary, the site covers a flat, arable field some 4.69 ha in area between the Manor to the east, Church Road to the south and Wyverstone Road to the west. The northern and north-eastern boundary is defined by an established hedgerow and belt of trees beyond which lies open countryside. The eastern boundary is defined by a post and wire fence between the site and the Manor. The southern and south-western boundaries facing Church Road and the pond area are defined by a managed hedgerow. The western boundary is formed of existing hedgerows between the site and low-density housing dotted along Wyverstone Road. In view of the above and even allowing for seasonal fluctuations in the height of the boundary hedges, the site has a degree of visual containment.
23. Bacton is a dual-focal, rural village that developed around Tailors Green and Shop Green. It contains clusters of historic buildings around both, the latter being located close to the appeal site. The bulk of the village is located further east in the form of post-war housing. The area between these two distinct areas has a semi-rural character and includes parcels of open land that extend up to Church Road. There is no dispute that the appeal site is the last remaining area of open land, in a ribbon of development that extends along the northern side of Church Road between the two greens. In my view, it contributes to a pleasant open, rural setting to the north of Church Road albeit substantially enclosed behind mature hedgerows at the time of my visit.
24. At the national level, the site is located within National Character Area (NCA) 83: South Norfolk and High Suffolk Clayland where defining characteristics include, amongst other things, an undulating agricultural landscape with irregular field patterns situated on a clay plateau dissected by various river valleys. The NCA does identify villages with multiple nuclei as one of the characteristics that *'helps to define the area.'* At the local level, the site is within *Plateau Claylands* landscape type where one of the stated aims is to *'retain, enhance and restore the distinctive landscape and settlement character'*⁶.
25. The Place Services document⁷ which was the focus of much discussion at the Inquiry identifies that the open land within Bacton is important in understanding *"the polyfocal character of the historic settlement pattern. The retention of this undeveloped land is therefore highly important and it is recommended that development in the intervening area should be resisted"*.

⁵ LPA ref: DC/19/00338

⁶ Babergh and Mid Suffolk District Council Landscape Guidance 2015

⁷ Full title: Heritage and Settlement Sensitivity Assessment for Babergh and Mid Suffolk District Councils March 2018.

26. When assessing the weight to be attached to this document, it is important to consider its purpose and status. It is not a detailed landscape study rather a broad-brush heritage assessment forming part of the evidence base for the emerging local plan. Its purpose is therefore to highlight heritage issues rather than to determine what response should be made to those issues. I do not believe it was ever intended to be treated as a determining factor in development management decisions without a further, detailed landscape assessment, which the appellant has undertaken. Moreover, the document insofar as it deals with Bacton does contain a number of inaccuracies one of which is the suggestion that the Manor was '*deliberately*' sited between the two greens. The document also advises against infilling on either side of the Manor, failing to acknowledge that the area to the east has already been infilled.
27. The Council accept that 20th Century development has diluted the historic settlement pattern of Bacton. It is pertinent that two other housing sites have recently been approved nearby, one of which would partially bound the proposed development to the north. This demonstrates to me that hitherto the Council has not viewed the settlement pattern of Bacton as inviolable. In short Bacton will continue to evolve as it has done so, on and off, for millennia.
28. Drawing on, amongst others the Place Services document, the Council was keen to make much mileage at the Inquiry about the potential disruption to the clustered or poly-focal settlement pattern. Allied to that, is the argument advanced at appeal that the site constitutes a '*valued landscape*' within the terms of paragraph 170 of the Framework. In my view the appellant is quite entitled to point out that these matters were not discussed at the Committee meeting nor do they feature in the reason for refusal. The minutes provided by the Council support the appellant's concerns in that regard. Consequently, there has been a significant widening of the Council's case at the appeal stage. It is also germane that landscape matters were not raised in either the 2016 or 2017 SHLAAs. Whilst the Council is clearly not bound by the results of high-level assessments such as these, given the Council's focus on landscape matters as part of its evidence, there is a reasonable expectation that these issues might have been picked up in the SHLAA's.
29. Whilst it might be possible that some well-informed, local people might take pleasure from understanding the site's role in sustaining Bacton's '*loosely clustered settlement pattern with multiple nuclei*', I consider this point is over-played. For the vast majority of lay-people the value the site is as an area of currently open land within the framework of the village. It does not benefit from a Green Gap, Special Landscape Area or Visually Important Open Space allocation in the LP nor is it subject to any formal landscape designation. Whilst the absence of the aforementioned does not preclude the site from being a valued landscape, with cognisance of the Stroud judgement⁸, I consider there needs to be some "*demonstrable physical attribute rather than just popularity*" for it to be considered in those terms. I have noted the differing views of the two expert witnesses on this matter who have both provided detailed assessments of the site guided by the GLVIA 3⁹ criteria. On the basis of all the available evidence, including two site visits of my own, the latter with the

⁸ Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) Case No CO/4082/2014

⁹ Guidelines for Landscape and Visual Impact Assessment 2013

benefit of having heard the evidence of the relevant expert witnesses, I consider the appeal site to be an ordinary attractive landscape lacking the requisite aesthetic qualities or physical attribute necessary to justify the valued landscape accolade. Accordingly, I do not consider it as deserving of protection under paragraph 170 of the Framework.

30. Whilst there would inevitably be a change in the character of the land and further dilution of the original settlement pattern, the Indicative Masterplan shows that development would incorporate a large swathe of open land in the southern third of the site with the houses being set back approximately 72 metres from the road side along a similar building line to the Manor. I consider that with careful treatment this area could take on the appearance and function of a traditional village green, another characteristic of the area, thus maintaining and contributing to the existing area of openness along Church Road. There would be other areas of public open space totalling some 38% of the appeal site which would largely encircle the housing which could be confined to the northern and central portion of the site. Combined with those existing open areas on the southern side of Church Road, I am satisfied that the indicative layout, subject to the relocation of the site access to Wyverstone Road, would respect the settlement pattern such that the two historic sections of the village would remain distinguishable from one another. Returning to the Place Services document, there would not be any 'infilling' in the usual sense of the word and Bacton's dual-focal character would not be unacceptably harmed.
31. The extent to which the proposed dwellings would be visible beyond the site would depend on details which have been reserved for future determination. Nonetheless, there can be no doubt that the scheme whatever its final form would result in a marked and permanent change to an open arable landscape which would have a significant visual effect within the site boundaries. However, as that would be the case with any greenfield site, it is not a reason to dismiss the scheme out of hand.
32. In terms of wider visual effects, the visualisations demonstrate that the dwellings are likely to be visible from a number local receptor points along Church Road, Shop Green, the southern section of Wyverstone Road around the bus shelter. The visualisations also demonstrate that the recessive siting of the houses together with a suitable landscaping scheme including careful management of the boundary hedging would help to mitigate the visual effects of the development such that it would not be unduly prominent. In longer distance views, the development would be seldom seen. The exception might be local public footpaths but even from here the houses would simply be seen against the general townscape of Bacton.
33. Overall, there would be some localised visual effects arising from the loss of the appeal site's open and undeveloped character. There would also be some erosion of the amenity value derived from views across the appeal site as well as limited harm to the settlement pattern of Bacton. However, to a greater or lesser extent these effects would be common to any greenfield site. The illustrative layout demonstrates that the development could be brought forward in a way that would mitigate the visual and landscape harm by leaving a large swathe of open space at the southern end of the site and relocating the access away from Church Road. Whilst this would not eliminate all the negative effects, I consider that the residual level of harm to the character and appearance of the area would be limited. The proposal would nonetheless

result in some limited conflict with LP Policies GP1 and H16 as well as CSFR Policy FC1.1 insofar as they seek to maintain and enhance the natural environment.

Heritage assets

34. The duty under Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. This section is clearly engaged insofar as the Manor (Grade II*), The Bull Inn, Ivy Cottage and Tudor House (Grade II) are concerned.
35. There is no disagreement that the appeal site forms part of the wider setting of all four listed buildings. The setting of a heritage asset is defined in the Framework as *"the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral"*.
36. The heritage witnesses differed in their assessments of the appeal site's contribution towards the significance of the Manor. Predicated partly on a belief that there is a designed or intended relationship between the two, the Council argued that the appeal site makes a *'strong contribution'* to the visual and perceptual appreciations of the Manor. A corollary of that is the conclusion that the development would cause *'moderate to high'* less than substantial harm.
37. The Manor is without doubt a striking building that acts as a local focal point, best viewed from Church Road. There can be no doubt that the principle components of its significance are derived from its fabric and aesthetic qualities especially the façade and frontage area which are of the highest order and rightly reflected in the Manor's position in the top 5% of all listed buildings nationally. However, the appeal scheme does not involve any change to the building itself, its immediate setting or the way in which it is appreciated from Church Road.
38. Much has been made of the significance of the building's location between Shop and Tailor's Green. However, it is important to note that the Manor replaced an earlier medieval building on the site which pre-dated the formation of Bacton's two village greens. Consequently, I do not subscribe to the view that the Manor was deliberately positioned between the two greens to emphasize its status. Even if that were true, the area to the east has now been largely infilled and therefore the significance of any intended siting in this regard has already been compromised.
39. It is true that the appeal site was until relatively recently owned by the Manor and formed part of a much wider land holding. This historical association contributes to an understanding of the agricultural nature of the estate, but as a parcel of incidental farmland, I am not persuaded the site contributes much more than that. I am sceptical about whether too much can be inferred from the 1741 painting which is known to contain fictitious elements. Beyond demonstrating the accepted ownership link and agricultural use, the historic maps add little to what is generally understood about the Manor and its

surroundings and certainly are not conclusive as to any intended or designed relationship.

40. The Manor itself does not appear to have been orientated to obtain views over the appeal site. Its western elevation is largely devoid of architectural detailing and as I saw from my site visit, landscaping severely restricts longer distance views from the west. These factors do not indicate to me that the visual link between the Manor and the appeal site is of particular importance either historically or in more recent times. I acknowledge that depending on the height of the hedgerows and the time of year, the appeal site does allow for some filtered glimpses of the building's western elevation and roofscape from Shop Green. Nonetheless other than appearing as a large building looming in the distance, I do not consider these views are critical to one's appreciation of the asset. Taking all these matters in the round, I consider the appeal site makes a limited contribution to the setting of the Manor.
41. The effects of the development on all the assets would be mostly visual. The construction of a housing estate on the appeal site would inevitably erode the rural setting of all four buildings. There is a consensus between the heritage experts that the harm to The Bull Inn, Ivy Cottage and Tudor House, all located opposite the site on the southern side of Church Road, would be very limited and I see no reason to take a contrary view.
42. In terms of the Manor, the illustrative layout plan and visualisations show that it would be possible to bring the development forward in a way that maintains a large area of public open space in the southern third of the site which along with the management of the existing hedgerows would safeguard and in all likelihood enhance the visual exposure of the building from Shop Green and other vantage points to the west. I recognise that the comings and goings of vehicles along the access from Church Road could detract from views of the Manor across the open space. To that end, it could be argued there would be some infringement on its manorial status and semi-rural setting. Although, any such harm in this regard would be limited, I consider that any approval should be conditional on access being taken from Wyverstone Road as presented in Scheme C. Subject to the above and bearing in mind that the same scheme shows how the houses could be set-back along a similar building line to the Manor, I am satisfied that the development would not unduly challenge its dominance or standing.
43. Overall, the enjoyment and the significance of the heritage assts for most people stems from a visual appreciation of the buildings as well-preserved and attractive examples of 16th-18th Century architecture. These principle components would not be harmed by the development. There would be some harm resulting from the encroachment of modern development into the gap between the Manor and Shop Green and the loss of an historically associated, open agricultural landscape on the building's western flank. However, the illustrative layout would appreciably reduce the potential impact upon the setting of all four buildings by safeguarding those important public views from Shop Green and Church Road whilst providing new areas of public open space offering enhanced views of the assets. In these circumstances I consider that the impact would be lessened dramatically and would lie towards the bottom end of the 'less than substantial' range.

44. In coming to that view, I am mindful of the comments of Historic England and the Council's Conservation Officer both of whom concluded that the development would cause 'less than substantial' harm to the setting of the Manor. I do not disagree. Given my findings above, Paragraph 196 of the Framework states that I should weigh the harm against the public benefits of the proposal, an exercise I undertake below.

Whether the presumption in favour of sustainable development applies

45. In accordance with guidance contained in the Framework, there are 2 separate balancing exercises which need to be undertaken in this case, both of which have to take account of benefits which would arise from the appeal proposal. The first is the balance relating to paragraph 196 of the Framework, which requires any 'less than substantial' harm to the significance of a designated asset to be weighed against the public benefits of the proposal.
46. I undertake this balance in the context of the guidance in paragraph 193 of the Framework, which makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I have already concluded, that the harm to the significance of the Manor and three other listed buildings would be towards the lower end of the range. With cognisance of the Barnwell Manor and Mordue judgements¹⁰ that harm must be given "*considerable importance and weight*".
47. To be set against this harm, would be the public benefits arising from the contribution towards the Council's housing stock in terms of both market and affordable provision. The latter being particularly welcome given the bleak affordability data for the district. These benefits would be consistent with the social dimension of sustainable development and the Framework's aim to boost significantly the supply of housing. I concur with both planning witnesses that significant weight should be attached to these benefits.
48. The development would provide new publicly accessible areas of open space which are way in exceedance of policy requirements. Given the shortage of such areas in this ever-expanding part of Bacton, this must weigh heavily in the balance given that the Framework views healthy communities as a key part of sustainable development. I again attach significant weight to this benefit.
49. There is no dispute that the appeal site is located in an accessible and sustainable location within the confines of a Key Service Centre, with good access to local services and facilities, and with sustainable transport choices providing access to higher order services in Stowmarket. This would be consistent with the aim of the Framework to locate development where the need to travel is minimised and residents have a genuine choice of transport modes.
50. The economic benefits that are set out in Appendix 2 of Mr Hodgson's proof were not challenged in any meaningful way at the Inquiry. These include the creation of 90 jobs and £11.2m for the local economy during the construction period, between £1.9-£2.3m of additional household expenditure pa plus additional revenue from Council Tax and the New Homes Bonus. Although I acknowledge that some of these benefits would not be unique to this proposal;

¹⁰ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137 & Jones v Mordue, SSCLG & South Northamptonshire Council [2015] EWCA Civ 1243.

nevertheless, they would be tangible and would satisfy the economic role of sustainable development. Accordingly, I attach moderate to significant weight to these benefits.

51. Other potential benefits include pedestrian improvements through new connections and off-site highway works, biodiversity gains and an upgrade to the bus stop on Wyerstone Road. Collectively I attached limited weight to these benefits. Overall, the collective public benefits attract substantial weight sufficient to outweigh the harm I have identified to heritage assets. Consequently, the proposal passes the "paragraph 196" test.
52. I now turn to the second balancing exercise which needs to be undertaken. In view of my earlier conclusions that development plan policies referred to in the reason for refusal are out-of-date and should carry less than full weight because of inconsistencies with Framework policies, this is the tilted balance set out in paragraph 11 d). The first limb of this paragraph relates to the situation where specific policies in the Framework indicate development should be restricted, such as where designated heritage assets are concerned. I have already addressed this matter above. The second limb states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
53. From the conclusions I have already reached on the main issues I consider that the proposed development would result in some adverse landscape and heritage impacts, but that these would be limited in their extent. Nonetheless collectively these harms carry significant weight. There are no other matters which weigh against this development, which could not satisfactorily be addressed by conditions, planning obligation or at reserved matters stage.
54. Turning then to the benefits of this proposal, I have already detailed, above, that there would be significant social and economic benefits arising from the provision of up to 81 new dwellings including 28 affordable homes. Although the Council can demonstrate a narrow 5-year HLS, that does not place a ceiling on further sustainable development. In addition, there would be an array of social, economic, ecological and public access improvements. Collectively all the identified benefits carry substantial weight. Based on the foregoing, the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from this development. I am thus satisfied that the appeal scheme would constitute sustainable development.

Other Matters

55. Local residents have expressed a wide range of concerns including but not limited to the following: loss of protected species, effect on heritage assets, land stability, inadequate drainage, highway safety/congestion and the effect of the living conditions of neighbouring occupiers. However, it is evident from the Committee Report that these matters were carefully considered by the Council at the application stage. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council and specialist consultees on these matters.

Planning Obligations

56. The Framework sets out policy tests for planning obligations; obligations must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in the Regulation 122 of the CIL regulations. In this case two agreements have been submitted; a s106 agreement dealing with obligations to Mid Suffolk District Council and a UU in respect of a primary education contribution to Suffolk County Council (SCC).
57. Both documents provide that if my decision letter concludes that any provision is incompatible with any one of the tests then the relevant obligation shall cease to have effect. The disputed education obligation comprises a contribution of £3,853.58 per dwelling to SCC to provide a new primary school on the former Bacton middle school site. It is agreed that owing to constraints at the existing site and the level of growth planned for Bacton, this is the most appropriate solution. The relocation project has been included in SCC's 2019-2022 capital programme. However, it is how that project should be funded that is the issue given that the Council is a CIL charging authority. Under the Council's CIL Regulation 123 list includes, amongst other things, the '*provision of primary school places at existing schools*'. It is clear from the supporting documentation that, save for a small number of strategic sites, the Council's intention was that primary education would be funded through CIL. Of the various items on the Reg 123 list, primary education is shown as being a top priority.
58. The main area of dispute is whether a relocated school would be '*new*' or whether it would be simply re-provided in an expanded form on another site as suggested by the appellant. Having heard from the expert witnesses, it struck me that there was merit in both arguments. For example, the appellant's position that rebuilding an existing school on the same site over a period of years would not be considered a new school is persuasive and in practical terms similar to that proposed here. On the other hand, I understand the view of SCC who contend that as the school would be provided on a new site, in new buildings, it must be considered new.
59. This ambiguity could have been clarified had the Council published the Supplementary Planning Document (SPD) which in the words of the Examining Inspector should have been produced "*without delay*" following adoption of the CIL charging schedule. When pressed on the matter, the Council were not able to explain why that document has still not been produced some 3.5 years later. In the absence of an SPD, I have used my own personal judgement as to what constitutes a new/existing school guided by the definitions provided by Mr McManus¹¹.
60. In my view a school that relocates to a new location a short distance from its existing site cannot be considered new. It would retain the same name, the same pupils, teachers and governors as well as desks, chairs, books and computers. In short, it would still be Bacton Primary School, an '*existing*' school. If a second school were to be provided in Bacton then that would be an entirely different proposition. Consequently, I am satisfied that the provision of a replacement school can be funded through the CIL. In those circumstances,

¹¹ Paragraph 81 of Mr McManus's Statement.

a separate s106 contribution would amount to “double dipping” something which the CIL Regulation 123 warns against by preventing the collection of s106 contributions for items which are already identified on the Council’s 123 list. Accordingly, the primary education contribution does not meet the statutory tests.

61. I recognise the importance of consistency in such matters and I have had regard to those appeal decisions that have been brought to my attention by Mr McManus¹². However, I have only limited information before me of those cases and as such I cannot be sure they are comparable to the particular circumstances in this case. Moreover, based on the passages provided, it does not appear that the education contribution in those cases was contested and therefore the Inspectors are unlikely to have had the benefit of hearing opposing submissions. I understand that SCC claims to have received legal advice to the effect that CIL money could not be used to fund the new school project. However, since that advice has not been provided, I can ascribe very little weight to it.
62. I am satisfied that the obligations contained in the S106 agreement covering affordable housing, open space and a landscape and ecological management plan (LEMP) meet the statutory tests. I am however less satisfied with the requirement to provide a community car park. The evidence underpinning this requirement is scant and none of the main parties were able to advance a compelling argument for its inclusion at the Inquiry. That being the case, I do not believe it is necessary to make the development acceptable. The obligation does not therefore meet the relevant tests.

Conditions

63. The Council has suggested a number of planning conditions which I have considered against the advice in the “*Planning Practice Guidance*” (PPG). In some instances I have amended the conditions provided by the Council in the interests of brevity and to ensure compliance with the PPG.
64. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. Condition 4 is imposed for the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details. For reasons given in paragraphs 30 and 42 of this decision, I have specified that the scheme should be brought forward in general accordance with Scheme C.
65. Conditions regarding visibility spays, internal estate roads and footpaths are necessary in the interests of highway safety ^[5 & 6]. Electric charging points, bus stop improvements, a pedestrian link to Wyverstone Road and travel packs are all necessary to assist in the move to a low carbon future and to promote sustainable forms of transport ^[7, 8, 9 & 10]. A construction method statement is necessary to protect the amenity of nearby residents and businesses ^[11]. A condition regarding the provision of a satisfactory surface water drainage system is necessary to ensure satisfactory drainage of the site in the interests of flood prevention ^[12]. Water and energy efficiency measures are necessary to comply with the Council’s sustainability objectives ^[13].

¹² APP/W3520/W/18/3200941, APP/H3510/W/16/3149242, APP/W3520/W/17/3172098 & APP/W3520/W/18/3194926.

66. A condition is necessary to ensure that reasonable steps are taken to ensure the development has access to high-quality telecommunications in accordance with paragraph 112 of the Framework ^[14]. I have imposed a condition relating to tree protection measures to ensure trees are not damaged during the construction period ^[15]. An archaeology condition is necessary to protect any archaeological assets that may be present ^[17]. A materials condition is necessary to ensure the appearance of the development is acceptable ^[18]. Finally, details of the housing mix are necessary to ensure the development can best meet local housing needs ^[19].
67. I am not persuaded that details pertaining to bin storage could not be resolved at the reserved matters stage. The suggested condition is therefore unnecessary. As landscaping is a reserved matter, a separate condition is also unnecessary. I have however imposed a condition to secure the timing of the relevant landscaping works ^[16]. The appellant's Ecological Report which found no evidence of rare or notable plant or animal species on the appeal site, has not been challenged by cogent evidence. Accordingly, and bearing in mind that a LEMP is covered by the S106 agreement, separate ecology conditions are deemed unnecessary. Fire hydrants are a matter which would be dealt with by the Highway Authority as part of the road adoption process. I have omitted the suggested condition accordingly.
68. Conditions 6, 11, 12, 15 and 17 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were included in the SOCG and address matters that are of an importance or effect and need to be resolved before construction begins.

Overall conclusion

69. I am required to determine this proposal in accordance with the development plan, unless material considerations (which include the Framework), indicate otherwise. Although I have identified some limited conflict with the development plan in respect of heritage and landscape, I have found that the development would be sustainable in the terms of the Framework and therefore benefits from the presumption in favour of sustainable development. I consider this to be a significant material consideration sufficient to outweigh the development plan conflict.
70. I therefore conclude that the proposal should be allowed, for the scheme for up to 81 dwellings, and subject to the imposition of a number of conditions, as discussed at the Inquiry and set out in the schedule below.

D. M. Young

Inspector

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in general accordance with the details shown on the submitted plan numbers: P17-0236_11, Rev C, U511/210 and P17-0236_16.
- 5) Before the access is brought into use visibility splays shall be provided as shown on Drawing No. U511/210 and thereafter retained.
- 6) The development shall not commence until details of the access, estate roads, footpaths and footways, (including layout, levels, gradients and surfacing) including as timetable for their implementation have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details and thereafter retained.
- 7) Prior to first occupation, the dwellings hereby approved shall be provided with an electric vehicle charging point. Once provided the charging points shall be retained thereafter.
- 8) Within one month of the first occupation of any dwelling, the occupiers of each of the dwellings shall be provided with a Travel Information Pack (TIP) as identified in the Transport Statement (dated August 2017). Not less than 3 months prior to the first occupation of any dwelling, the contents of the TIP shall be submitted to and approved in writing by the Local Planning Authority.
- 9) Prior to the occupation of the first dwelling a scheme to deliver a new northbound bus stop (including raised bus stop kerbs and flag), on Wyverstone Road in the vicinity of the site shall be completed and available for use by the public. The scheme shall be implemented in accordance with details that have previously been agreed by the Local Planning Authority.
- 10) Prior to the occupation of the 70th dwelling a scheme to deliver a new footway link from the site to Wyverstone Road as generally shown on approved indicative masterplan shall be completed and available for use by the public. The scheme shall be implemented in accordance with details that have previously been agreed in writing by the Local Planning Authority. Once provided the link shall be retained.
- 11) The development shall not commence until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall include details of:

- i) The proposed hours and days of working;
- ii) Routing of construction traffic;
- iii) Waste management measures;
- iv) On site provision for construction worker and contractor vehicle parking
- v) Details of site compounds, offices and areas to be used for the storage of materials;
- vi) Methods and details of the suppression of dust and noise during construction; and
- vii) Details of a wheel washing facility and its management.

The development shall be carried out in accordance with the statement so approved.

- 12) The development shall not commence until a scheme for the proposed method of surface water drainage, in general accordance with approved Flood Risk Assessment CCE/U511/FRA-02, has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage facilities shall be constructed in accordance with the approved details before the development is first occupied and shall be retained and maintained thereafter in accordance with the scheme as approved.
- 13) No development above slab level shall commence until a scheme for the provision and implementation of sustainability, water, energy and resource efficiency measures has been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the occupancy of the development. The scheme shall be constructed, and the measures provided and made available for use in accordance with such timetable as may be agreed. Once provided the measures shall be retained thereafter.
- 14) No development above slab level shall take place until details of the means by which the dwellings hereby approved can be connected to super-fast broadband have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.
- 15) The tree protection measures detailed on drawing no. BHA_182_02, Appendix 5 of the Arboricultural Survey, Impact Assessment and Protection Plan ref E.2116 and detailed in the Landscape and Ecological Management Plan Ref: P16-1407_02A shall be adhered to throughout the period of construction.
- 16) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved, in writing, by the Local Planning Authority up to the first occupation of the development. Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years

from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

- 17) The development shall not commence until a scheme of archaeological investigation / resource management; that includes post excavation analysis and publication has been submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall only be implemented in full accordance with the approved scheme.
- 18) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning. Development shall be carried out in accordance with the approved details.
- 19) Concurrent with the reserved matters application, details of the mix of type and size of the market dwellings to be provided shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT

Rupert Warren QC

He called:

Mr Andrew Hodgson BA (Hons) BTP MRTPI

Mr Jamie Roberts MPlan MRTPI

Ms Gail Stoten BA MCIFA FSA

Mr Andy Cook BA(Hons) MLD CMLI MIEMA CENV

Mr Michael Carr BA(Hons) DipLA MA/PG DipUD

Mr Jan Kinsman CENG MICE BSc(ENG) ACGI

Pegasus Group (Planning)

Pegasus Group (Housing Land Supply)

Pegasus Group (Heritage)

Pegasus Group (Landscape)

Pegasus Group (Design)

Education Witness

FOR THE LOCAL PLANNING AUTHORITY

Mr Asitha Ranatunga of Counsel

He called:

Mr Graham Robinson BSc MA MRPTI

Mr Laurie Handcock MA MSc

Ms Michelle Bolger CMLI DipLA BA PGCE BA

Mr Alex Roberts BSc (Joint Hons) AssocRTPI

Mr Neil McManus

Instructed by the Council

DLP Planning Ltd

Iceni Projects Ltd (Heritage)

Expert Landscape Consultancy

Strategic Planning & Research Unit

Suffolk County Council

INTERESTED PERSONS

Mr David Chambers

Ms June Spreckley

Owner of Bacton Manor

Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appeal Notification Letter dated 5.9.18
- 2 Council's Opening Statement
- 3 Education Statement of Common Ground including Appendix 1
- 4 West Berkshire CIL List
- 5 Mid Suffolk CIL List
- 6 Draft CIL Regulations 2019
- 7 Cawrey Ltd v SSCLG, Hinckley & Bosworth BC [2016] EWHC 1198 (Admin)
- 8 SSCLG v Hopkins Homes Ltd [2016] EWCA Civ 168
- 9 Wavendon Properties Ltd v SSCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)
- 10 Email from Historic England dated 5.6.19
- 11 Consultation response from Place Services 30.11.2017
- 12 Appellant's Opening Statement
- 13 Mr Michael Carr & Mr Andrew Hodgson Errata List
- 14 Signed Statement of Common Ground
- 15 Securing developer contributions for education 2019 DoE.
- 16 Appellant's Witness List
- 17 Draft Settlement Plan for Bacton
- 18 Enlargements of 1741 painting of Bacton Manor
- 19 List of Recommended Conditions
- 20 S106 Agreement dated 18 June 2019
- 21 Signed Unilateral Undertaking dated 18 June 2019
- 22 Council's Closing Statement
- 23 Appellant's Closing Statement