



Appeal Decision

Inquiry Held between 13 and 19 August 2019

Site visits made on 13 and 19 August 2019

by Mark Dakeyne BA (Hons) MRTPI

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

Decision date: 23 September 2019

Appeal Ref: APP/C1570/W/19/3226302

Land off Station Road, Flitch Green, Essex CM6 3HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited and Messrs Hawkes against the decision of Uttlesford District Council.
 - The application Ref UTT/18/3424/OP, dated 10 December 2018, was refused by notice dated 21 March 2019.
 - The development proposed is outline planning application for the erection of up to 240 dwellings with public open space, landscaping, and sustainable drainage system (SuDS) and vehicular access point from Station Road. All matters reserved except for means of access.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. At the inquiry applications for costs were made by Uttlesford District Council against Gladman Developments Limited and Messrs Hawkes and by Gladman Developments Limited and Messrs Hawkes against Uttlesford District Council. These applications will be the subject of separate decisions.

Preliminary Matters and Main Issues

3. The application is in outline with all matters except for means of access reserved for subsequent approval. Other than the location plan, the only drawing which formed part of the original application was the access arrangements contained within the Transport Assessment (Drawing No 1626/01 Rev B). This shows that the main site access would be off Station Road, via a priority-controlled junction. I have treated the Development Framework Plan within the Design and Access Statement as an indication of how the site could be developed.
4. The application was refused for five reasons. However, by the time the inquiry opened, agreement had been reached between the main parties that two of the reasons for refusal were no longer likely to be matters in dispute. Firstly, amendments to the access arrangements (Drawing No 1626/01 Rev E), off-site highway works and obligations within the Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 would overcome the third reason for refusal relating to insufficient evidence about highway and

transport impacts. Secondly, a completed UU would secure the affordable housing, infrastructure and contributions referred to in the fifth reason for refusal. The position of the main parties in these respects is set out in the Statements of Common Ground (SOCG) on (1) Planning and (2) Highways Matters. The UU was completed by the end of the inquiry so the third and fifth reasons for refusal are not matters in contention.

5. The additional information and changes to the access referred to above do not change the substance of the proposal and were discussed at the inquiry. No party would be prejudiced by my decision to accept the information and plans.
6. The Planning SOCG also records that the Council is unable to demonstrate a five-year supply of deliverable housing sites taken against the relevant Local Housing Need requirement. This triggers consideration of the appeal against paragraph 11 d) of the National Planning Policy Framework (the Framework) which I will return to in the Planning Balance and Conclusions section of this decision.
7. An appeal decision for a housing development at Newport within Uttlesford District was brought to my attention in mid-September¹. The main parties have had the opportunity to comment on the Inspector's findings. I have taken into account the decision and those comments in reaching my own decision.
8. Having regard to the above and the evidence before me, the main issues are:
 - (1) the effect on the character and appearance of the area;
 - (2) whether the proposal would harm the setting of nearby heritage assets;
 - (3) the effect on protected species; and,
 - (4) whether the policies of the Framework provide a clear reason for refusing the development proposed, or whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Reasons

Character and Appearance

9. The appeal site lies outside the settlement boundary of Flitch Green and therefore is defined as countryside by Policy S7 of the Uttlesford Local Plan (ULP). It is a roughly rectangular shaped arable field of some 10 hectares, on the northern slopes of the valley containing Stebbing Brook, a tributary of the River Chelmer. There are hedges and tree lines forming, or just beyond, the boundaries of the site.
10. The site has public footpaths close to its south-eastern and north-eastern boundaries. The Flitch Way, a managed recreational route formed from a disused railway line, runs along part of the site's northern boundary. A further footpath extends from the valley bottom towards the village of Felsted which lies on a plateau to the south-east and there is another right of way to the south linking Station Road with Felsted. The site is visible from these surrounding rights of way and can also be seen between gaps in the vegetation from Station Road. However, it is not visible from areas away from the site to the north or west because of topography, intervening development and the Flitch Way, as shown in the Zone of Visual Influence within the Landscape and Visual Appraisal (LVA) submitted with the application.

¹ See AD2

11. The appeal site lies within the Upper Chelmer Valley Landscape Character Area (UCV) as defined by the District Landscape Character Assessment (LCA). The appeal site shares some of the key characteristics of the UCV, comprising an arable valley side with a fairly open character above a narrow valley floor. The LCA suggests that views to the valley sides from adjacent Landscape Character Areas are sensitive; that, overall, the UCV has a relatively high sensitivity to change; and recommends that any new development on valley sides is small-scale.
12. However, the LCA indicates that the majority of the District's countryside is covered by landscape types which are shown to be highly sensitive to change. The emerging Uttlesford Local Plan (eULP) proposes allocations in areas of high sensitivity. LCA assessments are by their nature broad brush. They provide a useful starting point to assessing landscape impacts but need to be considered alongside site specific assessments. Moreover, the appeal site and its surroundings have not been identified as a valued landscape in the context of paragraph 170 of the Framework.
13. The LVA undertakes the specific assessment considering landscape and visual impacts. The LVA concludes that the development would not result in any unacceptable long-term landscape and visual effects. Landscape and visual effects are assessed as being within the range of moderate to minor adverse when the development reaches maturity. The site itself does not contain any landscape features of note other than the trees and hedges to some of its boundaries.
14. However, in my view, the LVA downplays the landscape and visual effects. The landscape of the tributary valley to the east of Station Road is shielded to a large extent from the modern settlement of Flitch Green by the extensive vegetation along the road. Station Road forms a very well-defined settlement edge. It reflects the easternmost limits of the brownfield land occupied by the former sugar beet factory which has been developed as Flitch Green since about 2000. Despite some traffic and aircraft noise, the appeal site forms part of a fairly tranquil area of countryside with little urban influence. Although like Flitch Green, the development would be on the mid to lower slopes of the tributary valley, a housing estate on the appeal site would not result in a natural extension of Flitch Green but an incursion into an essentially rural landscape. The proposal would not be responsive to the sensitivities to change and the suggested landscape planning guidelines set out in the LCA.
15. The development would not encroach onto the skyline which is recognised as being particularly sensitive in the LCA and LVA. However, the LCA also emphasises the sensitivity of valley sides. The landscape effects from the development would be between moderate and major adverse.
16. In terms of visual effects, there would be direct and full views of the development from many points on the nearby footpaths. Although there is a shallow cutting where the Flitch Way borders the site, the height of the embankment and amount of greenery varies so in places the development would be a dominant feature in the middle-ground. In addition, there is evidence, such as informal tracks and a new bench, that users access the embankment to look out over the valley. Moreover, there are gaps in the vegetation as the route emerges from the cutting and further to the east which would allow additional clear views of the development. A further bench at the

junction of the Way and the footpath that skirts the north-eastern boundary of the appeal site allows people to rest awhile and take in their rural surroundings. The housing would also be visible from parts of Station Road on the approach to Flitch Green from the south.

17. The degree of change, replacing an open field within a rural landscape with a housing estate, would be significant and, in my view, would have a major adverse effect on the enjoyment that recreational users, as sensitive visual receptors, obtain from the footpaths and the Flitch Way. The open outlook and cross valley views in both directions would be seriously diminished as footpath users moved along the routes or paused to take in their surroundings. The Flitch Way, as it heads east of Station Road, is of particular importance for residents of Flitch Green and elsewhere as a place where they can enjoy walking, cycling, running and horse-riding in a traffic free rural setting which is of benefit to their health and well-being. That experience and rural feel would be significantly altered, notwithstanding the changes that are likely to occur along part of it at Priory Lodge following permission for eight houses within the grounds.
18. Those travelling along Station Road between Felsted and Flitch Green would be less sensitive to the change but would still perceive the development, through breaks in the greenery, as a major incursion into the unspoilt tributary valley to the east of the road resulting in moderate visual effects.
19. I acknowledge that users of Station Road, where it runs alongside Flitch Green, and the limited number of residents on the edge of Flitch Green who would obtain oblique views of the development, would also be less sensitive to the landscape change and visual effects. They are in an environment which, because of the characteristics of the highway and housing development, is already semi-suburban. This is despite the strong belt of planting which separates the housing in Flitch Green from Station Road. Moreover, many of the users of Station Road, as motorists or bus passengers, would just obtain glimpsed views of the development through the access points and breaks in the vegetation as they passed by the site. Therefore, the visual effects for those in the immediate environs of Flitch Green would be minor adverse.
20. Visual effects for other residents with views towards the site would also only be minor adverse. Bouchiers to the north-east is separated by the vegetation along the Flitch Way and views would be heavily filtered. The small number of properties on the edge of Felsted with views towards the site would be well-separated by intervening fields and would see the development alongside parts of Flitch Green and with equestrian or other settlement fringe development in the foreground.
21. The proposal has been accompanied by a Development Framework Plan which shows that the housing would be encircled by a significant area of Green Infrastructure, that would in time reinforce the existing landscape features close to the site boundaries and soften views into the development. However, the Framework Plan is indicative only. Moreover, the landscaping structure that evolved would not disguise the fact that a standalone housing estate would be developed in an essentially open rural landscape, seen as a prominent incursion from the many viewpoints obtained from the surrounding countryside.

22. Overall the proposal would have a significant adverse effect on the character and appearance of the area. There would be conflict with Policy S7 of the ULP because of its requirement to strictly control new building in the countryside and as the development would not protect or enhance the particular character of the part of the countryside within which it is set. The proposal would also be contrary to eULP Policies SP2 and SP10 as the site is shown as remaining as unallocated land in the countryside outside the development limits of Flitch Green in this emerging document.

Heritage Assets

23. There are several designated heritage assets within the vicinity of the appeal site. These are the Grade II listed Bouchiers, the Grade I listed Church of the Holy Cross in Felsted, the Grade II listed Felsted School and the Felsted Conservation Area. Priory Lodge, adjacent to the appeal site, has been identified as a non-designated heritage asset. The development has the potential to affect the significance of these assets by a change to their settings.

Bouchiers

24. The significance of Bouchiers, a 17th century timber framed house, is derived primarily from its physical fabric. In terms of its setting, the main contributors are the immediate curtilage and the surrounding agricultural land. Some of the surrounding land, including the north-eastern part of the appeal site, once formed part of Bouchiers' landholding. The agricultural setting was disrupted by the construction of the railway line in the 19th century immediately to the south of Bouchiers. Otherwise the setting has remained largely free from development so that the farmhouse is still relatively isolated in an agrarian landscape, like other inter-dispersed farmsteads hereabouts. Moreover, the railway closed in the 1960's and the former line is now used as a quiet recreational route lined by a canopy of trees and understorey vegetation from where filtered views of Bouchiers and the surrounding agricultural landscape can be obtained.
25. The appeal site is part of the wider agricultural setting of Bouchiers. The proposal would bring significant urban development close to listed building and encroach into the agrarian landscape around it. Whilst the linear route itself and vegetation along the former line provide something of a visual and physical barrier, upper parts of the building can be seen in some public views from the south with the appeal site as a foreground. In addition, users of the footpath network, including the Flitch Way, would experience Bouchiers' rural setting being eroded on its southern side.
26. I conclude that there would be some harm to the significance of Bouchiers from the development of the appeal site which forms part of its wider setting.

Church of the Holy Cross

27. The significance of the Church of the Holy Cross, a building with 12th century origins, is also derived principally from its physical fabric. In terms of its setting, the main contributors are the surrounding churchyard and the historic core of Felsted from where the church, particularly its tower, can be appreciated.
28. The tower can also be seen from the fringes of the village and in longer distance views from the surrounding agrarian landscape. Insofar as the

environs of the appeal site are concerned the tower is visible from sections of the Flitch Way, in cross valley views from footpaths by the brook and which head south-east towards Felsted and from within the appeal site itself. These views of the tower and, indeed other parts of Felsted, are not impinged upon by the modern development at Flitch Green.

29. The appeal site is not visible from the area immediately around the church, including the graveyard, but can be seen from the top of the church tower.
30. The fact that the tower can be seen from the surrounding area does not automatically mean that this wider agricultural landscape has significance as part of the church's setting. Seeing a church tower or spire within the landscape is a relatively common feature in the English countryside, as are networks of footpaths leading from a rural hinterland to a village with a church as its centre. Similarly, views out from the top of the church tower over the landscape, which can only be obtained by prior appointment, does not give those surrounds significance just because of the visual connection. The views towards the church and out from the tower would largely remain, albeit affected to a limited extent by development on the appeal site.
31. However, there is a longstanding connection between the surrounding countryside and the church. Those living and working on the land, including those residing at Bouchiers, would have followed the historic footpath routes towards their place of worship when the bells rang out as a call to prayer. The position of the boundary marking the Parishes of Felsted and Little Dunmow would not have had much influence on those movements. The appeal site or indeed Bouchiers does not have a visual connection with Little Dunmow Parish Church. The historical connections would be somewhat eroded by the large-scale development on the appeal site which would alter peoples kinetic experience as they move through the agrarian landscape towards the focal point of the church.
32. Therefore, I conclude that the proposal would cause some harm to the significance of the Church of the Holy Cross through development within its wider setting.

Felsted School

33. The significance of Felsted School, a large 3-storey building built around the middle of the 19th century, is also derived principally from its physical fabric. There are also a number of buildings within the school grounds, such as the chapel, which also contribute to the significance through their group value. In combination with the open spaces between, these buildings also have significance as part of the setting. The school also has value as a prominent longstanding component and a communal landmark within the settlement, so the village forms the school's wider setting.
34. There are no clear ground-level views of the appeal site from within the school complex. The top of the chapel tower is visible from the appeal site and its surroundings, but that visual connection does not make it part of the setting. Unlike the Church of the Holy Cross there is little historical connection between the agricultural land surrounding the village and the public school, including its chapel.
35. The appeal proposal would not harm the significance of Felsted School.

Felsted Conservation Area

36. The Conservation Area encompasses the historic core of the village, the school and most of its grounds and some of the agricultural buildings on the fringes of the settlement, such as those at Bury Farm. The significance of the Conservation Area is mainly derived from its concentration of 50 or so listed buildings of architectural and historic interest and the spaces in between, such as the school grounds and churchyard.
37. The setting of the Conservation Area comprises a combination of the 20th century expansion of the village and the equestrian and agricultural land surrounding the settlement. In terms of the significance of the setting on the village's north-western side, I place most value on the wider agricultural landscape, including the appeal site. This is because the land immediately beyond the Conservation Area around Bury Farm has been spoiled by a plethora of fenced horse paddocks, floodlighting and a ménage. In contrast the wider landscape up to Station Road, comprising arable fields bounded by hedges and trees, is relatively untouched by recent development. With this in mind it is noteworthy that the name Felsted probably derived from 'feld' and 'stede' – 'site in the open country'.
38. The components such as the church and school towers and the buildings at Bury Farm can be seen on the plateau in views from the north-west with the agricultural landscape as a foreground. The ecclesiastical, agricultural and scholastic functions of the village are therefore evident together in this panorama. As with the church there is a historical connection between the agrarian landscape and the village as a whole. This is appreciated in views and the kinetic experience from the footpaths that look, and head, towards the village in the vicinity of the appeal site. These views and experiences would be eroded to a degree by development on the appeal site. Insofar as views out of the Conservation Area towards the appeal site are concerned, the only one identified is that by Bury Farm but that has the horsiculture components as its foreground. The appeal site does not materially contribute to the significance of the Conservation Area when seen from this direction.
39. The Felsted Conservation Area Appraisal does not identify the appeal site as contributing to the significance of the heritage asset as part of its setting. That said the Appraisal focuses on the Conservation Area itself rather than the setting. Moreover, although published shortly after the 2012 Framework, the Appraisal appears to merely reference that new Government policy existed at the time rather than applying the policy.
40. Therefore, I conclude that the proposal would cause some harm to the significance of the Felsted Conservation Area through development within its wider setting.

Priory Lodge

41. Priory Lodge should be considered as a non-designated heritage asset because of its mid-19th century origins which are reflected in its modest architectural attributes. Some limited significance is obtained from the setting provided by its triangular garden plot and the surrounding agricultural land. However, taking into account the permission granted for eight houses within the garden, the development proposed for the appeal site would not cause any further indirect harm to the significance of the non-designated heritage asset.

Conclusions on Heritage Assets

42. The appeal proposal would cause some harm to the significance of the designated heritage assets of Bouchiers, the Church of the Holy Cross and the Felsted Conservation Area through development within their settings. In arriving at these conclusions, I have also taken into account that the three designated assets can be experienced with a 360° turn of the head from some spots in the agricultural landscape.
43. In terms of paragraphs 195 and 196 of the Framework, the proposals would lead to less than substantial harm to their significance because the physical fabric of the listed buildings and Conservation Area would not be affected and the most important components of the setting of the church would not be altered. For the same reasons I would grade the affects as sitting towards the lower end of the spectrum of harm covered by 'less than substantial', with the harm to Bouchiers being greater than the effects on the church and Conservation Area. Because the development would adversely affect the setting of listed buildings, the proposal would conflict with Policy ENV2 of the ULP.

Protected Species

44. Circular 06/2005² indicates that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Planning conditions to cover the need for ecological surveys should only be used in exceptional circumstances. Those exceptional circumstances do not exist in this case, so it was necessary to establish whether protected species were present in advance of this decision.
45. The appellants conducted an Ecological Appraisal at application stage. The appraisal recommended that further surveys should be conducted for bats and hazel dormice.
46. Bat surveys were carried out until August 2019 with the final month's results being provided at the inquiry. The surveys show that bats forage and commute across the site but only one tree on the northern boundary has potential for bat roosts. That tree would be retained as part of the green infrastructure. The Council accepted at the inquiry that there was sufficient evidence about the presence of bats and that, subject to conditions requiring mitigation, measures would be in place to protect them³.
47. In terms of dormice, Natural England's standing advice recommends that in most cases surveys need to be conducted through to at least September to achieve sufficient evidence about their presence or otherwise based on an index of probability. Survey evidence was provided for the period May to August 2019 by the time of the inquiry. Survey results for September were provided after the inquiry sat. The surveys recorded that no dormice were present on the site. The Council now accepts that there is sufficient evidence to establish that dormice are not likely to be present.

² Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system

³ See ID14

48. There was some discussion about skylarks at the inquiry. But it was ultimately agreed that a Grampian style condition could be imposed to identify whether the site provided a suitable nesting habitat and the mitigation that would be required if it did.
49. Taking into account the above, there is now sufficient information about the presence or otherwise of protected species and the extent that they would be affected by the development. The effect on protected species would be acceptable and there would be compliance with Policy GEN 7 of the ULP in this regard.

Other Considerations

50. There is a significant shortfall in the supply of new housing in the District demonstrated by the fact that there is only 3.29 years' supply. In order to try and plug the gap planning applications and appeals have been permitted on land outside settlement limits in recent years. These have contributed to significant improvements in delivery in the last three years shown by figures in the March 2019 Five Year Housing Land Supply update. However, notwithstanding these steps, there remains a severe shortage of new housing.
51. The Council has submitted the eULP for examination. One of the objectives of the eULP will be to ensure that there is a five-year supply of housing sites upon adoption.
52. However, there is a significant level of objection to many of the policies and proposals in the emerging plan, including fundamental aspects of the strategy. The eULP is unlikely to be adopted until late 2020 at the earliest. Even that may be optimistic given the connection between the eULP and the North Essex Authorities (NEA) Local Plan. Both propose Garden Communities, one of which at West of Braintree straddles the boundary between Braintree, a NEA, and Uttlesford. The NEA have had to undertake further work on the evidence base to support the Garden Communities in response to the concerns of the Examining Inspector for the NEA Local Plan. Consultation on the additional evidence base is currently being undertaken. Further hearing sessions will follow.
53. The Council has suggested Modifications to the eULP to allow an early review should the West of Braintree Garden Community not be delivered. However, it is unclear at this stage whether the Examining Inspectors for the eULP are likely to find that approach sound.
54. Adoption of the eULP may also be affected by the change in political control that followed the May 2019 local elections. The Council has confirmed that the examination of the eULP should continue. 'Residents for Uttlesford', the new controlling group, have indicated that withdrawing the eULP from examination 'would be disastrous'. That said the political position does cast some doubt on whether the Council will ultimately adopt the eULP following the examination.
55. All in all, the eULP cannot be relied upon to plug the housing supply gap in the short-term and, along with its policies such as SP2 and SP10, should only be given limited weight.
56. House prices are well above both Essex and national averages meaning many households cannot afford market housing. This is reflected in the affordability ratio in Uttlesford which is in excess of 13 i.e. average house prices are over 13

- times workplace-based average annual earnings. The proposal includes 40% affordable housing in accordance with Policy H9 of the ULP. This would equate to up to 96 affordable homes. Increasing the supply of market housing and providing a significant number of affordable homes would allow more households, including younger families, to get onto the housing ladder.
57. There are no guarantees that the development would contribute to the five-year supply. Indeed, on the grant of outline planning permission it would be unlikely to meet the definition of deliverable in the Framework. That said the appellants have a track record of bringing sites onto the market and achieving completions within five years of permission. Allowing the appeal would boost the supply of homes.
58. The provision of new housing would bring construction and supply chain jobs, increased local spend, labour force benefits, Council Tax and New Homes Bonus payments and greater choice in the local market. The significant number of new affordable dwellings would provide homes for real people in real need. The new housing would have significant economic benefits and substantial social benefits.
59. The appeal site is next to a settlement that provides a primary school, convenience store, community hall and sports and recreational facilities. Further services are available in Felsted, including a doctors' surgery. Both Flitch Green and Felsted are within walking and cycling distance. The UU would secure contributions to allow local schools and health facilities to be expanded to meet the needs of the new residents.
60. A bus service runs along Station Road with stops providing shelters and real-time displays adjacent to the site. The service is reasonably frequent throughout the week and links the site with employment centres and a greater range of facilities at Great Dunmow, Braintree and Stansted Airport.
61. Flitch Green is classed as a Type A Village in the eULP, characterised as a local service centre. The development would have reasonable access to services, facilities and public transport and be in a relatively sustainable location taking into account its rural position.
62. The highway and access arrangements would be acceptable. The UU would secure contributions to support improvements to offsite footpath and cycle routes, including the Flitch Way, which would be of benefit to existing residents and other recreational users, as well as the residents of the development.

Planning Balance and Conclusions

63. There would be a significant adverse effect on the character and appearance of the area. The proposal would also cause harm to the significance of three designated heritage assets. I attach substantial weight to each of these harms, taking into account that special regard should be had to the desirability of preserving listed buildings and their settings and great weight should be attributed to the conservation of all designated heritage assets.
64. In terms of benefits, taken together substantial weight should be given to the economic and social benefits of the new homes. Limited weight should be given to the benefits for sustainable travel from the improvements to offsite routes.

65. The other contributions, infrastructure works, and mitigation, including that related to ecology, would be necessary to make the development acceptable and are neutral considerations. Similarly, the fact that the development would be in a relatively sustainable location should be a given for a large-scale development of this kind and is also a neutral factor. The other issues addressed by the application documents, the evidence and in representations are also neutral matters in the planning balance.
66. As the appeal site lies outside the development limits of Flitch Green (referred to as Oakwood Park in Policy S2 of the ULP), the proposal would be contrary to Policy S7 of the ULP. There would also be conflict with Policy ENV2 because of the adverse effects on the setting of listed buildings. Policies S7 and ENV2 are the most important policies for determining the appeal. The proposal conflicts with the development plan overall.
67. Policy S7, which predates the Framework by some seven years, seeks the protection of the countryside for its own sake. The Framework seeks protection for valued landscapes, not 'ordinary' countryside, recognising the intrinsic character and beauty of the latter. That said, the Framework has a general objective of protecting the natural environment and recognition of the attributes of the countryside implies a level of protection, albeit lower than that provided to valued landscapes. Policy S7 is the main policy mechanism for achieving this at a local level.
68. Policy S7 is predicated on settlement boundaries that are out-of-date. The boundaries were based on accommodating a housing requirement that was derived from household projections in 1992/93 and only took us up to 2011. Based on up-to-date needs and the Government's objective of significantly boosting the supply of homes to meet those needs, the Council is well short of providing enough housing land. It is inevitable and is accepted by the Council that settlement boundaries will need to be breached to provide sufficient housing land until the eULP is adopted with redrawn boundaries. That said, the boundaries referred to in Policy S7 provide a starting point in distinguishing between settlement and countryside until such time as the eULP is adopted. Whether the breach is acceptable in each individual case will depend on the level of harm and whether those adverse impacts would significantly and demonstrably outweigh the particular benefits, as similarly expressed by the Inspector in the Takeley appeal⁴.
69. The Secretary of State, Inspectors and the Council have considered the weight to be afforded to Policy S7 in a run of decisions between 2015 and 2019. The decision in the recovered appeal at Great Dunmow⁵ gave significant weight to the policy, but that was when the Council had a five-year supply of housing land and before the Telford and Wrekin High Court Judgement⁶. In subsequent appeal decisions, including that referred to in paragraph 7, the policy has been ascribed a range of weights from limited to significant.
70. Taking into account the evidence before me, the findings in these appeal decisions and my analysis of the various components of Policy S7, including its role as a counterpart policy to Policy S2, I find that it is partly consistent with the Framework and should be afforded moderate weight.

⁴ Appeal decision ref: APP/C1570/W/18/3213251 dated 8 August 2019 (paragraph 73)

⁵ Appeal decision ref: APP/C1570/A/14/2213025 dated 25 August 2016

⁶ Borough of Telford and Wrekin v SOSCLG & Gladman Development Limited [2016] EWHC 3073 (Admin)

71. Policy ENV2 also predates the Framework and includes a blanket restriction on development that adversely affects listed buildings and their settings. In contrast the Framework requires the decision maker, in cases where there is less than substantial harm to designated heritage assets, to weigh that harm against the public benefits of the proposal. However, Policy ENV2 is not materially at odds with the statutory duty of having special regard to the desirability of preserving a listed building or its setting. The duty is reflected in the Framework at paragraph 193 and 194. Policy ENV2 is partly consistent with the Framework and should be given moderate weight.
72. However, notwithstanding the weight that I give these policies, the most important policies for determining the application are deemed to be out-of-date because the Council cannot demonstrate a five-year supply of deliverable housing sites. In considering the first leg of paragraph 11 d) of the Framework, the policies that provide a clear reason for refusing permission include those that relate to designated heritage assets. However, the less than substantial harm to the heritage assets in this case would be outweighed by the substantial weight that I give to the social and economic public benefits derived from up to 240 homes. Therefore, the policies of the Framework in respect of heritage assets would not provide a clear reason for refusing permission.
73. Moving onto the second leg of paragraph 11 d), the adverse impacts of the proposed development and the conflict with the development plan that arises from these adverse impacts would significantly and demonstrably outweigh the benefits. Material considerations, including the reduced weight that I give to the most important policies for deciding the appeal, do not indicate that the proposal should be determined other than in accordance with the development plan. Although the development of countryside beyond existing settlement boundaries in Uttlesford is inevitable to meet housing needs in both the short-term and longer-term, the harm in this case would be unacceptable.
74. For the above reasons the proposal would not constitute sustainable development and the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Estelle Dehon of Counsel

Instructed by the Council's Solicitor

She called

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*For the round table
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He called

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INTERESTED PERSONS:

Emma Nicholls

Flitch Green Parish Councillor and Trustee of
Flitch Green Charitable Trust

Christian Criscione

District Councillor, Trustee of Flitch Green
Charitable Trust and Board Member for the Flitch
Green Academy

Sandra Reynolds

Volunteer with Friends of Flitch Way

PLANS AND DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 List of conditions agreed by the appellants and Council
- ID2 Signed Unilateral Undertaking submitted by the appellants
- ID3 Plans of Study Junctions 6, 8 and 11 submitted by the appellants
- ID4 Aerial Photograph of Takeley Appeal Site submitted by the appellants
- ID5 Bundle of documents including Local Development Schemes submitted by the appellants
- ID6 Appellants' opening statement
- ID7 Council's opening statement

- ID8 Statement from Emma Nicholls
- ID9 Statement from Christian Criscione
- ID10 Statement from Sandra Reynolds including leaflet about Flitch Way and details of applications and appeals adjacent to Flitch Way
- ID11 Response to Council from West Essex Clinical Commissioning Group on planning application dated 23 July 2019
- ID12 Summary of August survey results for bats and dormice submitted by the appellants
- ID13 Interim findings of Examining Inspector for NEA Section 1 Plan submitted by the appellants
- ID14 Ecology SOCG dated August 2019
- ID15 Minutes of Braintree District Council Local Plans Sub-Committee dated 18 July 2019 submitted by the Council
- ID16 Press release from Residents for Uttlesford dated 28 June 2019 submitted by the Council
- ID17 Addendum of Focussed Changes to Regulation 19 Local Plan dated October 2018 submitted by the Council
- ID18 Extract from Inspector's Report for Great Dunmow appeals dated 18 May 2015 submitted by the Council
- ID19 Extract from Mr Lee's Proof of Evidence to Takeley appeal submitted by the Council
- ID20 Regulation 19 Local Plan Examination Documents to be subject to targeted consultation submitted by the appellants
- ID21 Gladman Developments Limited v Daventry District Council and SSCLG [2016] EWCA Civ 1146 submitted by the Council
- ID22 Cheshire East Council v SSCLG and Rowlands Homes [2014] EWHC 3536 (Admin) submitted by the Council
- ID23 Bagshaw and Carroll v Wyre Borough Council [2014] EWHC 508 (Admin) submitted by the Council
- ID24 Gladman Developments Limited v SSCLG and Central Bedfordshire Council [2019] EWHC 127 (Admin) submitted by the appellants
- ID25 Council's Closing Submissions
- ID26 Appellants' Closing Submissions
- ID27 Council's application for a partial award of costs
- ID28 Council's response to appellants' application for a partial award of costs
- ID29 Appellants' response to Council's application for a partial award of costs and application for a partial award of costs

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- AD1 Ecological Appraisal Rev E dated September 2019 submitted by the appellants
- AD2 Appeal decision ref: APP/C1570/W/18/3209655 dated 30 August 2019 submitted by the Council
- AD3 Appellants' comments on AD2 dated September 2019