

Appeal Decision

Inquiry held 23–26 and 30 July 2019

Accompanied site visit made on 31 July 2019

by Helen Heward BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2019

Appeal Reference: APP/P1560/W/18/3201067

Land off Grange Road, Lawford, CO11 2JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Gladman (Gladman Developments Ltd and the Trustees of the Pattle Will Trust) against the decision of Tendring District Council.
 - The application Ref: 17/01950/OUT dated 9 November 2017 was refused by notice dated 9 April 2018.
 - The development proposed is described as “outline planning application *for the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SuDs) and vehicular access point from Grange Road.*”
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Decision

1. The appeal is dismissed.

Costs

2. The Appellant made an application for costs and the Council responded. The Appellant’s reply was submitted in writing and the Inquiry closed on 27 August 2019. The costs application is the subject of a separate.

Preliminary and Procedural Matters

3. During the Inquiry the Government issued changes to the Planning Practice Guidance (PPG) resource. The main parties had seen the changes, they did not consider that they materially affected their cases and advised that they could address them during proceedings. I agreed and the Inquiry continued.
4. The application is in outline with all matters reserved except means of access. The plans are Location Plan 7936-L-01 Rev A and Access Arrangement Drawing 17-T092 01.2 Rev A/0.1.2. The application is accompanied by Development Framework and Illustrative Masterplan drawings.+
5. The decision notice (DN) includes two reasons for refusal (RfR). RfR 2 concerns requirements for affordable housing, education, healthcare, and open space that would be necessary for the development. The Appellant provided a signed and executed legal agreement dated 30 July 2019, (s106). The Council confirmed that provisions in the s106 would satisfactorily address RfR 2.

Main Issues

6. Paragraph 73 of the National Planning Policy Framework (Framework) 2019 advises that where the strategic policies are more than five years old their housing requirement should be measured against their local housing need calculated using the Standard Method (SM) set out in the PPG. In a Housing

Land Supply Statement of Common Ground May 2019, the Council and Appellant agree that the method for establishing the housing requirement should be the SM and that the Council cannot demonstrate a five-year Housing Land Supply (HLS) when measured in this way. An update, July 2019, indicates revised HLS figures. At Inquiry the main parties remained in agreement that the Council could not demonstrate a five-year HLS but disagreed about the extent of the shortfall.

7. Having regard to paragraph 11 and footnote 7 of the Framework, the Council agree that the policies most important for the determination of the appeal should be considered out-of-date and that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. (Often referred to as "the tilted balance").
8. Footnote 6 explains: "*The policies referred to include those relating to habitats sites (and those sites listed in paragraph 176) and designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63)*". In this case there is a Scheduled Ancient Monument (SAM) on the site and the site is within 2Km of sites of European importance, including the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar sites.
9. Paragraph 177 explains that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment (AA) has concluded that the plan or project will not adversely affect the integrity of the habitats site.
10. The main issues are:
 - i. The effect of the proposal upon the integrity of European sites
 - ii. The effect of the proposal upon on-site biodiversity interests
 - iii. The effect of the proposal upon the SAM
 - iv. Whether or not the proposal would result in any adverse impacts upon:-
 - a) The spatial strategy for the location of development in the development Plan, and/or
 - b) The character and appearance of the site and locality with particular regard to the setting of the settlement, distinctive features and landscape character and the provisions of Saved Policy EN1 of the Tendring District Local Plan, 2007, (TDLP).
 - v. The extent and significance of the HLS shortfall.

Reasons

European Sites

11. Circular 06/2005¹ advises that the onus is on the decision maker to consider the likely and reasonably foreseeable effects and to ascertain that the proposal will not adversely affect the integrity of the site before permission is granted.

¹ <https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>

12. The Stour and Orwell Estuaries SPA and Ramsar site are within approximately 1.8km of the site. The estuaries comprise mud-flats, low cliffs and saltmarsh and small areas of vegetated shingle on the lower reaches. There is also an area of low-lying grazing marsh on the south side of the Orwell.
13. The SPA supports Avocet (breeding) and qualifies under Article 4.1 Annex 1 of the Birds Directive. It further qualifies under Article 4.2 for supporting important over wintering populations of Dark-bellied Brent Goose, Northern Pintail, Grey Plover, Red Knot, Dunlin, Black-tailed Godwit and Common Redshank and supports a waterfowl assemblage regularly in excess of 20,000.
14. Ramsar qualifying features are nationally scarce plants (criterion 2) and criteria 5 and 6 waterfowl assemblage, with a five-year mean peak of 63,017, Dark-bellied Brent Goose, Pintail, Grey Plover, Knot, Dunlin and Black-tailed Godwit.
15. The condition of the SPA/Ramsar habitats are assessed in a number of Sites of Special Scientific Interest (SSSI) units. Most are recorded as favourable, that is adequately conserved and meeting the conservation objectives. But one of the two units of the Cattawade Marshes SSSI, within the SPA and in closest proximity to the site is assessed as "*unfavourable and recovering*". Similarly one of the nine units of the Stour Estuary SSSI, within the SPA and closest to the appeal site is assessed as "*unfavourable and declining condition*".
16. The Conservation Objectives for the SPA are to ensure the integrity of the site is maintained or restored as appropriate. And that the site contributes to achieving the aims of the Wild Birds Directive. By maintaining or restoring the extent and distribution and structure and function of the habitats of the qualifying features supporting processes upon which the habitats rely and the population and distribution of the qualifying features within the site.
17. The proposed development is not directly connected or necessary to site management for nature conservation. Located on the urban fringe with disturbance the site is not considered suitable habitat to support notified bird species associated with the Stour Estuary. But the site is within a 'Zone of Influence' for recreational impacts on the Stour Estuary identified through Habitats Regulation Assessment (HRA) work for the emerging Tendring District Local Plan 2013-2033 (eLP).
18. An Ecology Solutions Document, 2017 providing information to support a HRA (CD1.10) notes that a detailed assessment of visitor pressure and bird disturbance at the SPA/Ramsar site² concluded that activity rates were relatively low on the Stour and the wide mudflats and absence of boat traffic on the channel reduced the effects further at low tide. The behaviours of birds suggest that they may be impacted little by disturbance but went on to state "*any increase in shore activities on the Stour will increase disturbance of important roosts that serve both the Stour and birds displaced from the Orwell*". Ecology Solutions Plan ECO2 identifies that within a driving distance of up to 13.5Km from the appeal site there are six public car parks providing access to the SPA/Ramsar site. The closest is within 3.5Km of the appeal site.
19. I agree with the conclusion of Natural England (NE) that the proposal is likely to have a significant effect on the SPA and Ramsar site either alone or in combination with other plans and projects through increased recreational

² Ravenscroft, Parker, Vonk, Wright – Disturbance to water birds wintering in the Stour-Orwell Estuaries SP, published by Wildside Ecology, 2007

- pressure to the Stour Estuary as a result of increased use by residents of new development within walking or driving distance.
20. To mitigate recreational disturbance effects NE advised that a strategy of both on-site informal open space and off-site visitor access management measures would be required. NE provided advice to assist designing Suitable Natural Green Space (SANGS) and clarified that typically on-site provision should include high quality, informal, semi-natural areas, circular dog walking routes of 2.7Km within the site/and or with links to surrounding public rights of way, and dedicated dogs-off-lead areas. The Appellant advises that the SANGS guidance indicates that an open space of 1.94Ha would be required for the proposed development.
 21. On-site green infrastructure (GI) provision of 2.94Ha is proposed. This could include an on-site circular walk of approximately 650m and a dedicated fenced dogs-off-lead area, together with landscape buffers, informal semi-natural habitat, shrub/tree planting and managed meadow grassland. Existing public footpaths across the site connect to footpaths through the surrounding countryside offering circular routes up to 3Km in length.
 22. The s106 would secure provision and long-term management and maintenance of the on-site Open Space comprising informal open space landscaping and a play area for use by the general public and would require the submission of an Open Space Works Specification and Management Plan prior to the commencement of development. A planning condition is proposed to require a detailed strategy for the on-site mitigation measures to be submitted to the Local Planning Authority (LPA) prior to the first application for approval of reserved matters (RM). It would also require development to be carried out in accordance with the approved strategy.
 23. The Stour Estuary has a unique draw. The on-site recreation facilities and connecting circular routes through predominately open farmland would be significantly different in type and experience. Therefore I agree with NE that the SANG strategy alone would be unlikely to fully mitigate effects. There would also be a need for off-site mitigation measures.
 24. Essex planning authorities are preparing an Essex Coast Recreation Avoidance and Mitigation Strategy (RAMS), to provide a strategic approach to deal with recreational disturbance impacts from residential development on coastal European sites. When the Inquiry sat it had not been finalised. The s106 proposes strategic off-site measures that would provide for either the appropriate RAMS contribution required at the time of commencement of development, or, if the RAMS remained unadopted then a payment of £45,000 would be made. The submitted evidence explains the derivation of this figure that would be sufficient to pay for a ranger at the SPA as a specific visitor management measure for two years.
 25. The Council did not raise a reason for refusal in relation to effects on European sites. An email from NE 10 October 2018, confirms that NE would be satisfied with an approach of a combination of on and off-site measures. Provided that these measures are secured in full NE would agree that the proposal is unlikely to lead to an adverse effect on the integrity of the European sites when considered both alone or in combination with other plans and projects. A further email from NE, 21 June 2019, confirms that NE has seen the Illustrative SANG strategy and that NE is satisfied that the proposed package of mitigation

measures allows a conclusion of no adverse effect on the integrity, for all European designated sites including the Stour and Orwell Estuaries SPA and Ramsar site. I attach substantial weight to the advice of NE as the national body responsible for advising in relation to such issues.

26. However, NE's advice is caveated by the requirement to secure the measures in full and NE did not have the s106 before them. The on-site SANG strategy would be largely implemented within the area of the Open Space. The provisions of the s106 would allow up to 75% of the dwellings to be occupied before the Open Space is provided and constructed in complete accordance with an approved Open Space Works Specification.
27. Even if the SANG strategy were approved prior to the RM's, or if I were to seek to impose other requirements and time frames by planning condition, including for example, requiring the SANG strategy to be implemented prior to occupation of the first unit, such requirements could potentially be in conflict with the provisions of the s106 for the Open Space, and that is a legal deed which I cannot vary. I find that this potential shortcoming means that there is a lack of sufficient precision and clarity about implementation to meet the high bar required for AA.
28. Therefore, I can but conclude that the proposed on-site mitigation measures to help contain the majority of recreation to within and around the appeal site would not be fully secured and effective. The likely adverse effects on the integrity of the SPA, by reason of disturbance from increased recreational visits, cannot be screened out on the basis of the proposed avoidance or reduction measures. An alternative would be to have a more rigorous planning obligation in respect of the Open Space. There are no imperative reasons of overriding public interest to justify the grant of permission despite a potentially negative effect on site integrity.
29. Having regard to the Framework, the potential for significant harm to biodiversity remains. Planning permission should be refused and the presumption in favour of sustainable development does not apply.

On-site biodiversity

30. A wintering bird survey 2017-2018 recorded a small number of Skylark flyovers, likely commuting to nearby foraging habitat. Skylark is listed under s41 Natural Environment and Rural Communities Act 2006 (NERC) and a 'red listed' bird of high conservation concern. The Appellant's breeding bird survey 2019 recorded a Skylark as a possible breeder observed in suitable nesting habitat over the western edge of the site. On-site grassland is heavily disturbed by cattle and dog walkers. There is preferable breeding habitat off-site but development could result in displacement to adjacent farmland.
31. Bats were recorded foraging along a line of trees on a north-east boundary and an oak outside of the northwest boundary has the potential for a roost. There are no ponds present within 250m of the site. Great Crested Newts are not a statutory constraint to development. There have been occasional sightings of grass snakes, protected under the Wildlife and Countryside Act 1981 (WCA) and a NERC s41 species. Surveys were repeatedly thwarted by removal/damage to survey mats. Although the site does not provide suitable resting places or foraging grounds to support a significant population of common reptiles they are likely to be commuting through the site.

32. The Appellant's extended Phase I Habitat Survey in 2017 records that information from the Essex Field Club and Essex Wildlife Trust (EWT) provide 256 records of 142 invertebrate species all of which were located beyond the site boundary. Initially EWT did not object subject to the creation of a high-quality wildlife habitat within green space provision to ensure a net gain in biodiversity. But subsequently, 2 November 2018, EWT objected on the basis of a review of the submissions of the Lawford Tye Action Group (LTAG) in relation to moth surveys and the evidence of local resident John Hall.
33. In 2018 John Hall carried out surveying on 24 nights and at least twice monthly between April and October when 204 moths and 27 species were caught. Six of the species are listed as notable species of principal importance under s41 of NERC. The Lunar Yellow Underwing Moth (LYU) is both nationally scarce and a species of principal importance requiring conservation and recorded under the UK Biodiversity Action Plan (BAP) as requiring Priority Actions. The apparatus for the 2018 survey was located in an adjacent garden, not on the appeal site, and moths may have come from elsewhere. But Reginald Arthur Fry's site records from 2016 also record 17 of the 27 BAP species that Mr Hall recorded.
34. The Appellant undertook more survey work. The Appellant's entomologist and Butterfly Conservation advised that April was the right time to pick up well-grown larvae. But surveying in April was limited to a one-day walk over survey. Government standing advice³ for assessing the impacts of development on invertebrates indicates that field surveys should be undertaken at the correct time of year, generally between May to early September. The Appellant undertook two sampling periods on 18-20 May and 29-30 May 2019 including spot searching with a butterfly net, sweep netting, tall vegetation beating, sieving dung and moth larvae night searches. Nine key species were recorded and 1 x s41 species; Small Heath Butterfly. The Appellant's surveys found no evidence of the larvae of LYU in their 2019 nocturnal larval searches.
35. The LYU is usually found in high quality unimproved dry grassland and heathland habitats. From the autumn the larvae overwinter in grass tussocks and complete development by the following spring. They feed at night. The Appellant found that the uniformity of the grassland was not considered suitable to a notable invertebrate assemblage. Habitats at the site's margins were the most important but these habitats were poorly developed along many of the boundaries. Grassland on the site to the north of the public footpath would remain undeveloped and was found to have more fine leaved grasses and herbs and to be of greater value, with more acid grassland flora and host to a more diverse invertebrate fauna.
36. The proposed housing would be at the southern end of the field. It is generally short cut/grazed and used annually for car parking for the Tendring Show. It is species poor improved grassland of lower ecological status with common and widespread species and low floral diversity.
37. John Hall's evidence to the Inquiry on behalf of LTAG was that LYU foodplants include a range of grasses and plants and that the site was 'tussocky' through autumn to spring with both fine and broad-leaved grasses. He opined that the life cycle was such that by the time the Appellant's nocturnal surveys took place most caterpillars would be fully fed and in a dormant prepupal stage. It was unlikely that there would be visible signs of the larvae in the upper parts of

³ <https://www.gov.uk/guidance/protected-invertebrates-protection-surveys-and-licences>

the plants. His February 2019 torchlight survey for the caterpillars showed the moth to be breeding on the south of the site and within the area of the proposed housing. He had also recorded the eggs and caterpillars for the Small Heath Butterfly.

38. Dr Chris Gibson, a professional naturalist and ecologist, recently retired from NE, and with expertise in a wide range of fauna and flora, visited the site in July 2019. He agreed that the grassland was poorly structured with little evidence of tussocks but noted that it was just after the Tendring show and had been cut and used as a carpark. His opinion was that the data set from LTAG's limited number of moth trapping sessions indicated that there was a rich community of moths, with several of Notable value including NERC s41 species.
39. Dr Gibson argued that moth traps attract moths from a distance of up to 100m and it was highly likely that a good proportion of the moths trapped had come from the appeal site. Food plants of most of the most important species are found on the site and on a precautionary basis it would be good practice to assume the moths that feed upon those plants are too. Dr Gibson suggested that moths are more dependent upon food plants rather than habitat structure and that this might explain why the moth community is relatively more diverse than other groups despite a relative lack of structural diversity. He opined that LTAG's evidence that the LYU was breeding on the site was unequivocal.
40. The Appellant's surveys provide a more objective grassland survey of a wider range of insect groups. The Appellant accepts that the site supports an assemblage of notable species of principal importance under s41 of NERC. They advocate that the ubiquitous nature of habitats required to support the invertebrates recorded can be accommodated in proposed green infrastructure (GI), and that habitat more suitable for LYU is present on the northern part of the site, which is to be enhanced and managed as species rich acid grassland.
41. Structural GI could increase native tree cover and provide new hedgerows with beneficial impacts for the recorded bird populations. Species rich hedgerows, linear grasslands with ruderal habitats and plants for structural diversity could have beneficial impacts for the site's invertebrate interests. The provision of a wet/dry-balancing pond could provide a benefit for reptiles and amphibians. Boundary landscaping could separate the oak from housing, trees along the north-eastern boundary could be retained and potential bat roost sites increased. Conditions could control lighting. The GI could improve habitat diversity on-site and connectivity to the wider environment.
42. Essex County Council's (ECC) position regarding a second application made to the LPA⁴ is that the measures proposed in the Ecological Appraisal (FPCR January 2019) are not sufficient to enable the LPA to demonstrate its compliance with its statutory duties including under s40 of NERC. Additional mitigation and compensation measures are needed to minimise impacts of development on priority species, particularly Skylarks, reptiles and moths, as they are likely to be present and affected. However, ECC consider that appropriate and reasonable measures could be secured at RM stage to provide certainty of impacts from the final design for the development, and effective mitigation measures to avoid net loss of priority species habitat in a long-term landscape and ecological management plan.

⁴ Document 20 submitted at the Inquiry

43. The Council concluded that there are no overriding ecological constraints to the proposed development. They proposed a planning condition to require a Biodiversity Management Plan (BMP) be submitted to and approved in writing by the LPA prior to the commencement of development, including aims and objectives of management, on-going monitoring and remedial measures, and details of the management of grassland habitats for LYU.
44. However, a principal purpose of the open space would be to mitigate detrimental impacts on the SPA and the purpose of the SANG strategy would be to increase human recreational use on-site including exercising dogs. Paragraph 2.56 of the illustrative SANG strategy⁵ advises that it would be possible to exercise dogs off-lead in the larger block of open space of at least 2.5Ha. At the Inquiry the Appellant advised that a dogs-off-lead area would be fenced but there is little other evidence about the size, specification or management of that area. Information boards would promote the facilities. It could attract people from the surrounding area. Notwithstanding the specification of the GI, activity, trampling and disturbance would increase.
45. Herein lies an uneasy tension. It is the Appellant's evidence that trampling and regular disturbance from existing informal recreation including dog walking has resulted in the existing grassland on the appeal site becoming heavily disturbed and reduced the likelihood of the site providing a significant resource for local breeding bird populations, particularly ground nesting birds. They also find that current management of short grazed/ mown grassland is limiting the structural and botanical diversity of the site's existing grassland, making it unlikely to offer optimal habitat to support a significant assemblage of invertebrates. There is insufficient evidence to demonstrate how all of the SANG and BAP aims could be satisfactorily achieved.
46. An assessment of the biodiversity impact indicates a net biodiversity gain of +7.13. However, the existing condition of 5.51Ha of the site is assessed as poor and 1.02Ha as moderate. At the Inquiry the Appellant's witness agreed that the condition of the site improved from south to north and that this was a relatively crude tool. It is not clear where or how the dogs-off-lead area and activities fall within this assessment. I attach little weight to this evidence.
47. Surveying and evidence need to be proportionate. The Appellant followed advice and their surveys were undertaken by a professional entomologist specialising in invertebrate ecology and conservation and who regularly advises NE. John Hall also has experience in biodiversity, holds a BA in Zoology, was Chief Executive of EWT for 28 years and received an MBE for Services to the Environment. Reginald Arthur Fry is a fellow of the Royal Entomological Society with specialist interest in insects and Lepidoptera and has studied Lepidoptera on the site and in the locality for 20 years and Dr Chris Gibson's expertise is stated. Together they have a great deal of entomological experience. I found the oral evidence of Dr Gibson and John Hall to the Inquiry to be credible and persuasive.
48. Paragraph 99 of Circular 6/2005 advises 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. A precautionary approach must be adopted.

⁵ CD11.07

49. The evidence is not sufficient to demonstrate that on-site biodiversity interests including species protected by s41 of NERC and the WCA could be satisfactorily conserved or adequately mitigated or compensated by imposition of conditions.

Scheduled Ancient Monument

50. The SAM comprises a sub-circular arrangement of ditches with two causeways. An outer lip of ditches defines the perimeter measuring circa 30m across. Ditches up to 2m in depth and ranging in width surround an interior roughly 21m in diameter. Although later, construction resembles forms of Neolithic monuments known as '*causewayed enclosures*'. It has also been referred to as a '*ring ditch*'. The Historic England (HE) Schedule describes it as '*Settlement Site NNE of Lawford House*' and this reflects the ambiguity.
51. From all that I heard at the Inquiry and the evidence before me I find the evidence regarding surrounding barrows and an inner timber circle of significance for astronomical observation somewhat equivocal. Nonetheless, the Appellant agrees that the SAM is a unique monument and the very high significance of the below ground archaeological remains are reflected in its designation as a SAM and a heritage asset of the highest significance. The proposals would not physically impact upon the SAM. The issue is the level of harm that any impact upon setting would have upon its significance.
52. Topography is important to the setting and significance. In particular the SAM's position on a plateau and relative high point above the shallow valley of the Wignall Brook which flows north east from the plateau into the River Stour. This location in relation to the watercourse could have provided a diverse resource base, sense of location and identity. The principal area of the wider setting of the SAM would be in a broad arc to the north. But two breaks in the ditches of the SAM provide an inference that the immediate and close setting of the SAM would not have been confined solely to the north and was probably more all-round.
53. The setting has been reduced and impacted by other development and planting, and detractors such as overhead power lines crossing the site. Neither the SAM nor its setting are manifestly apparent. Built-form, trees and other vegetation prevent intervisibility, although topography and vegetation provide a general indication of the course of the Wignall Brook.
54. Neither ECC's Historic Environment Officer nor HE's Inspector of Ancient Monuments advised that the application should be refused. But that is not to say that they found the application unconditionally acceptable. At the application stage HE advised that the proposal would result in a reduction to the open character of the landscape which formed the landscape setting of such prehistoric ceremonial sites and a change to the setting of the Neolithic enclosure in which views to and from the site of the SAM would be truncated by new planting to the east and western boundaries and the northern edge of the new housing to the south. HE advised this would result in a modest degree of harm to its significance. The Planning Officer reported that "*the indicative layout is unacceptable, and the northern edge of the proposed housing should not extend beyond the southern boundary of the existing recreational areas in order to retain the open landscape setting of the SAM*".
55. At the Inquiry the Council suggested that this had not formed a reason for refusal because the Planning Officer had felt that it could be dealt with by way

of an informative advising that the layout RM application should only include residential development *"to the south of the southern boundary line of the existing neighbouring recreational land (i.e. excluding the 11 dwellings shown on the indicative masterplan"*. An 'informative' in my decision could not fetter a future decision maker. I do not have sufficient information to be satisfied that the development applied for could be satisfactorily achieved within any lesser area than that shown to apply a condition to that effect.

56. In response to a consultation on a more recent planning application by the Appellant for the same development, 11 February 2019⁶, HE noted that no changes had been made to reduce and offset the impact on the current setting of the SAM and the proposals would be harmful to its significance.
57. HE stated that it was imperative that landscaping and boundary treatments of the open space are reconsidered so that the open setting of the SAM is maintained and enhanced, that the SAM would not be embedded in a landscape buffer, and that longer views from the monument to the west and north-west would not be obscured. HE advised that the erosion of the open setting of the SAM could be reduced if the northern extent of the proposed housing was moved south so as to be in line with the playing field.
58. HE stated: *"Had the above matters regarding the limit of built development, landscaping and archaeological evaluation been revised in line with our advice we previously concluded that the harm which would be caused to the significance of the SAM could be reduced to one of slight harm. This would be less than substantial and as such the decision maker should weigh this harm against any public benefits"*.
59. These changes have not been incorporated in the proposals before me. The proposed housing would extend north of the southern boundary of the playing field and come within roughly 130m of the SAM. Views and the perceptual experience of the close setting of the SAM would be adversely impacted.
60. Effects of planting could be partially mitigated by careful landscape design to maintain some open or filtered views but there is a tension between seeking to mitigate views of new built form and maintain an open aspect to the SAM and its setting. There is little evidence about a pumping station indicated in the open space close to the SAM and little about the specification of the dogs-off-lead area. The potential for additional detractors adds to my concerns.
61. The SAM and its setting are not open to experience today. The archaeology is below ground, and the understanding preserved by way of record. The SAM would be within a retained open space and the northern extent of built form would not be within the principal area of the wider setting of the SAM to the north and west. Information boards about the SAM would be provided. The long-term management of the site would be secured and interested parties acknowledge that the SAM has seen steady erosion in the last 40 years.
62. However, damage to a SAM is a criminal offence. Although the site has been in agricultural use the evidence indicates it has been grazed for quite some time and evidence regarding risks, including ploughing rights, is limited. Heritage assets are irreplaceable.

⁶ Document 13 submitted at the Inquiry

63. The combination of effects could result in minor/moderate irreparable harm to the setting and significance of the SAM and the public benefits are limited. Although the harm would be less than substantial it attracts moderate weight against the proposal. I am not persuaded that conditions could overcome the harms.
64. The Council did not raise a reason for refusal, therefore I find no conflict with the precise wording of TDLP Policy EN29 and the application of policies in the Framework that protect heritage assets do not provide a clear reason for refusing the development. I weigh the harm against the scheme benefits later.

The Spatial Strategy

65. The TDLP strategy for the location of new development seeks to create sustainable communities and apply a sequential approach to the location of new development to make best use of land and stimulate regeneration within existing urban areas.
66. The spatial strategy set out in Policy QL1 (QL1) defines (in general terms) the main focus for new sustainable patterns of development, concentrating development at existing larger towns and promoting sustainable economic growth and improved transport links in key locations. It provides for limited development consistent with local community needs within the smaller towns and villages. Lawford/Manningtree and Mistley is identified as such.
67. It is a strategy that was adopted for the needs for the plan period to 2011. The Framework provides a less prescriptive approach to countryside protection than QL1 seeks to apply outside of settlement boundaries. Nonetheless, the general plan led approach to the spatial strategy and protection of the intrinsic character of the countryside are consistent with broad aims in the Framework.
68. QL1 also defines Settlement Development Boundaries (SDB) and development should take place within them. The site is outside of the SDB for Lawford and the Appellant agrees that the proposal runs contrary to QL1. Policies SPL1 and SPL2 of the eLP adopt a similar approach and the appeal site is outside of the proposed settlement boundary for Lawford in the eLP boundary.
69. The settlement boundary for Lawford in the eLP⁷ would encompass much larger areas than does the defined settlement boundary in the TDLP. The fact that QL1 relates to development needs for a plan period long since passed, and the general extent of the proposed boundary changes for the eLP, indicate that the SDB for Lawford Manningtree and Mistley in the TDLP are no longer suitable as a development management tool and much out of date.
70. The proposal is contrary to the spatial strategy for the location of development and the provisions of QL1 but, for the reasons given, the weight I attach to this conflict is limited. The Examining Inspector (EI) has found the spatial strategy for the eLP unsound and indicated that significant changes by way of new evidence, alterations or withdrawal would be required and the authorities are undertaking further work. The weight I attach to conflict with eLP Policies SPL1 and SPL2 is very limited.

⁷ Document 25 submitted at the Inquiry

Character and appearance

71. The first reason for refusal advises that the proposal would be contrary to TDLP Policy EN1 (EN1). This seeks to protect and, where possible, enhance the quality of the district's landscape and its distinctive local character. Any development, which would significantly harm landscape character or quality, will not be permitted. Characteristics that it seeks to conserve include prominent views, including those of ridge tops and plateau edges, the settings and character of settlements, and the traditional character of protected lanes, other rural lanes, bridleways and footpaths.
72. Paragraph 6.7 explains that a policy approach based on landscape character assessment enables informed judgements to be made on what is and what is not appropriate development within a particular local landscape. Policy EN1 is particularly concerned with the role of settlement and built development in the landscape. It focuses upon maintaining and enhancing landscape quality and local distinctiveness. EN1 primarily applies to development proposals in the countryside and on the edge of settlements, but any development that could visually detract from key settlement characteristics of its surroundings would be considered contrary to EN1.
73. Paragraph 127 of the Framework also seeks to ensure the creation of well-designed places that add to the overall quality of an area, and are sympathetic to local character, including landscape setting. However, the Framework does not indicate such a highly restrictive approach across all landscapes, and this reduces the weight I attach to EN1.
74. The landscape witnesses used Guidelines for Landscape and Visual Impact Assessments, third edition (GLVIA) in the preparation of their evidence but there were differences in the scales they each used to assess the comparative overall effects. The Statement of Common Ground in relation to Landscape and Visual Matters, July 2019⁸ sets out the two rating systems which I have had regard to. Paragraph 1.20 of GLVIA advises that guidance concentrates on principles and is not intended to be prescriptive. Ultimately, the conclusions in all LVIA's are based upon a series of judgements and I have made my own, having regard to all of the evidence and my observations on my site visits.
75. At the Inquiry the landscape witnesses submitted an agreed updated Zone of Theoretical Visibility (ZTV) based on Enplan Figure PRV1⁹. The ZTV produced is more than a 'bare earth' model but does not fully record the effects of all limiting elements. In particular the witnesses disagreed about the extent of an area not within the ZTV around Grange Road southwest of the site. But the purple cross-hatched area is an agreed useful guide.
76. The site is within National Landscape Character Area (NLCA) No 111 Northern Thames Basin. In the Essex County Landscape Character Assessment 2002 the site is within the London Clay Landscapes Character Type and within the Tendring Plain Landscape Character Area. The landscape condition is moderate and sensitivity for small urban extensions is (<5Ha) low. In the Tendring District Landscape Character Assessment 2001 (TDLCA) the northern tip of the site is within a southern branch of the Stour Valley System LCA but

⁸ Document 15 submitted at the Inquiry

⁹ Document 14 submitted at the Inquiry

development would not extend into this area and a lack of intervisibility prevents any significant interrelationship with this LCA as a whole.

77. The majority of the site lies within the TDLCA Heathland Plateaux Landscape Type and the Bromley Heaths LCA, which is of moderate value. Characteristics include large-scale agricultural arable fields, low 'gappy' hedgerows, low-density rural settlement pattern of scattered farms, halls hamlets villages and small market towns, a network of small lanes and dramatic dominating skylscapes. The site is broadly representative of this LCA.
78. The condition of the Bromley Heaths LCA is assessed as in decline. The plateau landscape is assessed as visually sensitive as a result of the open and rural character and long views. The strategy is to conserve the rural character and enhance woodland cover, hedgerow condition and heathland character. Aims include seeking to maintain historic lanes and resist road improvements that would threaten rural character. Guidance for built development includes that the large open landscape means that particular care must be taken in the siting and design of any development; areas of new residential development should generally be closely related to existing settlements.
79. The appeal site is adjacent to a small enclave of predominantly residential development, to the southwest of the main built up area. A relatively straight section of Grange Road provides the southern boundary. A recreation area is tucked behind gardens on Grange Road, School Lane and the A137 and acts as a buffer between built form and open farmland to the west.
80. The site comprises a field to the west and south of the recreation area. It has a number of short boundaries that adjoin development. But by far the longest boundaries adjoin open countryside to the west and the recreation area to the east. The overall impression I formed is that the site is clinging to the settlement at its edges and more detached from, than attached to, built form.
81. The Development Framework and Illustrative Masterplan indicate that the proposed 'up to 110' dwellings could be accommodated at the southern end of the site, leaving roughly half of the site open for proposed green infrastructure. The area of intended housing would only attach to the built form of Lawford along short sections of School Lane and Grange Road.
82. There is little evidence about redundant agricultural buildings southwest of the site. But the site is overgrown, and they make little impression in the landscape. A pair of semi-detached dwellings, 30 and 32 Grange Road, and other buildings further south and west are consistent with the LCA characteristics of a scattered settlement pattern of hamlets, farms and farm buildings within the open rural landscape.
83. North of the redundant buildings, vegetation on the appeal site is limited, hedgerows are of moderate/low quality and there are few trees. The long open western boundary gives the northern part of the site a strong association with the farmed landscape extending out to the west, which I found to have a large-scale open plateau feel and dominating skyline.
84. From FP's 170/15 and 170/11 to the west, the site is seen in short and medium range views across a large open field. The northern section of the site is exposed with little screening vegetation. Beyond the appeal site, strong hedgerow and tree lines on the edge of the recreation ground and vegetation in

residential gardens significantly screen buildings. The existing settlement edge appears soft and low lying and does not detract from the dominating skyline. There are similar views from FP 170/51 and 170/21 but at a longer range.

85. The extent of the northern end of the appeal site is indicated on the Development Framework drawing. The Illustrative Masterplan indicates that this area would be required to achieve up to 110 dwellings at the density of 30 dwellings/Ha suggested in the application. The extent of the northern limit in particular appears very arbitrary, unrelated to existing features in the landscape.
86. The western and northern edge of development would be very exposed in some views from these footpaths, and in some places two sides of the development would be seen together. Development could include an element of 2.5 storey housing. With open space to the north and the well wooded site to the south, the most northerly and western part of the built form would be conspicuous, appearing arbitrarily located, forward of, and unrelated to, the settlement. It would detract from the farmland landscape with dominating skyline.
87. Dense vegetation associated with 30 and 32 Grange Road and the redundant agricultural buildings site limit views from Grange Road and the southern section of FP170/15. GI could provide a landscape buffer of over 15m in width along the western boundary, including native species trees. In time it would afford some screening, but the Appellant agrees that a solid screen would not be appropriate for the LCA or the setting of the SAM.
88. Where Grange Road turns south, the footpath ends, the road narrows and becomes bound on both sides by rough grass verges. The character changes and there is a distinct impression of leaving the settlement behind and entering countryside. By the second bend at the south-east corner of the appeal site, views become more rural in character.
89. To achieve a safe access and satisfactory visibility, a new 'T' junction would be installed at the first bend. At Inquiry the Appellant advised that visibility splays required for the road layout would mean that trees and plants along the site boundaries in this locality would need to be removed. Whilst landscaping would be a RM, access is for determination at this stage. There is little evidence to demonstrate how the proposals could be achieved without adversely affecting the rural lane character and appearance of Grange Road.
90. The southern part of the site is seen from sections of FP 170/17 where it crosses the field to the south of Grange Road. Some similar views are had from FP 170/22 further south at a longer range. The views are predominantly rural in nature dominated by fields and sky with only a few small-scale buildings. The scattered low-density settlement amongst the agricultural landscape appears quite typical of the landscape character area.
91. The ability to perceive the existing settlement edge of Lawford in these views is very limited. Vegetation associated with 30 and 32 Grange Road and the redundant agricultural buildings limit views of the site and would also limit views of the proposed development. Nonetheless, in the available views from FP 170/17 the southern limit of the proposed development would appear conspicuous, protruding into the countryside. With vegetation to the east and west it would appear quite unrelated to settlement; at odds with the agricultural landscape and the rural character of Grange Road.

92. Overall landscape impacts would be constrained within a relatively small ZTV, where the landscape value is moderate, and the susceptibility of the landscape of the locality to the change arising from the development is medium. The lack of integration with the settlement form and pattern, the protrusion of uncharacteristic residential development into the farmland landscape and the loss of the rural character of Grange Road in the vicinity of the site would result in a high magnitude of change. I conclude that the overall effect on landscape character would be moderate/major adverse.
93. The site does not contribute to any surrounding designated landscapes and is not a valued landscape in relation to advice in the Framework. Impacts upon the LCA as a whole would be low and negligible upon the NLCA. Development upon open countryside inevitably has high impacts upon the site. Other LCA's and LCT's, and other parts of this plateau landscape might be of higher value and more sensitive. But I am assessing the ability of this site and locality to accommodate this development, not making comparative assessments.
94. For users of FP's 170/15, 170/11, and FP170/17 I assess the sensitivity of these recreational users to be both highly sensitive receptors and highly susceptible to the change arising from the development and the impacts would be moderate/major adverse. For users of FP's 170/51, 170/21 and 170/22 effects would be less adverse on account of increased distance.
95. The experience along a short section of FP 170/14 would change dramatically where it passes through the site and the recreation ground, but whether or not these experiences would be perceived as adverse would depend upon the detailed landscape design. Most users of the recreation ground, playing fields and football club would be focussed on recreation activities. Impacts upon these users need not be materially adverse. There are no designated or promoted viewpoints. Grange Road is not a protected lane and there are few views from Grange Road to the southwest.
96. All of the new GI would be managed and maintained. The open space would include new meadows and planting. Landscaping would offer some mitigation over time, but I am not persuaded that an appropriate landscape strategy for the LCA and to protect the open setting of the SAM could satisfactorily mitigate the adverse impacts of the northern extent of the proposed development upon landscape character and in views from the north and west. In views from Grange Road, directly by the site and FP 170/17, there is little evidence to support the Appellant's advice to the Inquiry that planting could be undertaken further back within the site, behind the visibility splays. And I do not know what implications this might have for the amount and density of development proposed. I am unable to conclude that landscaping could satisfactorily mitigate effects over time.
97. At page 17 the Planning Officer reports '*the recommended change to the indicative layout to reduce the impact on the SAM (to remove the northern most area containing 11 dwellings) would also ensure that built development on the site does not extend further north than the southern boundary line of the neighbouring recreational ground. The housing would then be less prominent in views from the south and west while any proposed landscaping matures*'. This provides a clear inference that the harm that would arise to the landscape and visual amenity of the area from the scheme as proposed was unacceptable.

98. When the Planning Officer's report is read as a whole, I find that their conclusion that "*the landscape harm from the proposed development would not be so significant as to justify refusing planning permission on these grounds alone*" cannot be divorced from the Planning Officer's statement that an informative attached to a permission would achieve the recommended change to the indicative layout to make the scheme acceptable. It is plain that without this change the Planning Officer found unacceptable harm to landscape. In any event I have made my own judgements and reached my conclusions based on all of the evidence before me and from my site visit observations.
99. I conclude that the proposal would detract from key characteristics of settlement pattern and form, the rural character and appearance of the setting of the settlement and the rural character of Grange Road in the vicinity of the site. It would fail to maintain and enhance landscape quality and local distinctiveness and the harms would be substantial and run contrary to aims of the TDLCA for the Bromley Heaths LCA.
100. The proposal would be contrary to advice at paragraph 127 of the Framework for the creation of well-designed places that add to the overall quality of an area, and are sympathetic to local character, including landscape setting. These harms attract very substantial weight against the proposal. Although also contrary to aims of EN1 and eLP PPL3 for protecting the rural landscape the weight I attach to these conflicts is limited.

The extent of the HLS shortfall

101. Using the SM the annual requirement is 863 dwellings. The Housing Delivery Test indicates a 20% buffer should be applied for delivery below 85% in the past three years. The parties agree that this results in a five-year requirement of 5178 dwellings for 2019-2024. I find no reason to disagree.
102. The parties used the Council's SHLAA April 2019 as the evidence base to assess the five-year HLS. From this the Appellant submits that the supply is 3463 dwellings, or a 3.34-year HLS. The Council argue it is 4145 dwellings or 4-year HLS. 16 sites account for a difference of 682 dwellings.
103. The definition of deliverable in the Glossary to the Framework states that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
104. On-line Government advice on '*Housing supply and delivery*'¹⁰ explains that as well as sites which are considered to be deliverable in principle, the definition also sets out the sites which would require further evidence, this

¹⁰ <https://www.gov.uk/guidance/housing-supply-and-delivery>

includes sites with outline planning permission for major development and sites allocated in a development plan. It provides a list of examples of evidence to demonstrate deliverability, including how much progress has been made towards approving RM's, or whether these link to a planning performance agreement that sets out the timescale for approval of RM's applications and discharge of conditions and firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates.

105. Two cleared sites at Jaywick have full permission. The sites are within one of the most deprived areas in the country. A flood risk assessment identifies a risk of over topping. The Council is working in partnership with the community and property owners as part of a wider regeneration scheme. The Council is currently building 10 new starter homes on another site and may acquire other sites. In the 'Ardleigh' appeal decision¹¹ the Inspector concluded the sites were deliverable. There hasn't have been much progress in the interim, but the permissions still have two years to run and s106 contributions have been offset to assist viability. I am not persuaded that there is clear evidence that the homes will not be delivered within five years.
106. Outline permission was granted for 51 dwellings at Beaumont Road Great Oakley. At Ardleigh the Inspector found that the bespoke nature made it unwise to include more than the first phase. RM for 23 units was approved in December 2018. An email, June 2019, confirms that a start has been made on site, forward funding from the Homes and Communities Agency secured, and indicates that submission of details for the second part of development will be forthcoming. It confirms that pre-sale inquiries have been very strong and that they are confident they can deliver all 51 units within five years. It is a bespoke scheme for PassivHaus dwellings constructed using a modular system with fast manufacturing and short construction times. Dwellings would be built to demand and may require several purchasers to be secured. However, there is sufficient clear evidence and firm progress that there is a realistic prospect that 37 housing completions will begin on site within five years.
107. At Oakwood Park, Clacton, RM's were approved for 250 dwellings in July 2019 and strategic infrastructure is in place. A trajectory from the national housebuilder is only a forecast and assumed RM approval in April. But the minor delay and some market scepticism does not amount to evidence of a longer-term phasing plan or that homes will not be delivered within five years.
108. Land at Dovercourt has outline consent for 300 dwellings. The Council initiated emails and a trajectory. North East Essex Builders (NEEB) is not a national housebuilder. Approval and discharge of conditions is assumed within one year. But responses from NEEB in February and July 2019 provide clear evidence of delivery intentions sufficient to conclude that there is a realistic prospect that completions for 130 units will begin within five years.
109. Turpins Farm, Kirby Le Soken has outline consent for 210 dwellings. Evidence to support 100 dwellings refers to the sale of the land to a housebuilder being '*back on*' and '*appears to be progressing well*'. The inference is a degree of some uncertainty, insufficiently robust to clearly confirm delivery intentions and anticipated start and build-out rates.

¹¹ APP/P1560/W/17/3185776

110. Land at Kirby Cross Frinton on Sea has outline consent for 110 dwellings. Progress has been made with a RM application. A national housebuilder is interested in purchase but would want to pursue their own RM layout and there is little to say what their delivery intentions would be. Adopting a precautionary approach, it would be unwise to include this site in the supply. Whilst there is evidence of enthusiastic outlook for delivery of 10 units on the former Martello Caravan Park at Walton on the Naze there is scant evidence of firm progress and it would be unwise to include this site in the supply either.
111. Land to the rear of New Road Mistley has outline consent for 67 dwellings and is in the control of a housebuilder. A RM application to vary the layout was refused in April 2019. Nonetheless, an email from the housebuilder's agent in July 2019 confirms the developer's proposed build-out rates within five years. The Council presented adequate clear and strong evidence of delivery intentions sufficient to conclude there is a realistic prospect that housing completions for 67 units will begin on site within five years.
112. A site at Great Bentley with outline consent is in the control of a national housebuilder. Some conditions have been discharged and a RM application submitted. An email from the agent, July 2019, provides anticipated build out rates that the housebuilder would be comfortable with. It indicates delivery of 150 units within five years. The Council presented sufficiently clear and strong evidence of delivery intentions to conclude there is a realistic prospect that housing completions for 150 units will begin within five years.
113. Outline consent was granted at Wellwick Field St Osyth as part of a package of enabling development. A first phase of 71 dwellings at West Field is under construction. A RM application for 190 dwellings at Wellwick Field has been subject to delays. An email from the agent, 25 July 2019, indicates that Wellwick Field will follow West Field, provides an estimated start date of early 2022, with delivery of the first unit for sale 18 months later, and three per month thereafter. The evidence is not sufficiently robust in this case to demonstrate that housing completions will begin on site within five years. Two sites at Thorpe Le Soken have outline consent for 49 and 10 dwellings. The evidence of housebuilder involvement or progress on applications for RM's is too weak to conclude that completions will begin within five years.
114. Land at Rouses Farm Clacton is proposed for residential and mixed-use development in the eLP. A resolution to grant outline consent for 950 dwellings was made in May 2018. The Council advised the Inquiry that the s106 had been completed. An email from the national housebuilder, June 2019, confirms the Council's delivery assumptions of 90 dwellings and advises that they want to *'move the site forward as soon as we can'*. Land North of Cockaynes Lane Alresford has outline consent for 60 dwellings. A subsequent full planning application for 84 dwellings has a resolution to approve subject to a s106. The written and oral evidence of the Council's witness was sufficiently knowledgeable to demonstrate that the Council had considered evidence about progress being made, such as finalising a s106 agreement, and was not working on mere assertion.
115. At the baseline these sites did not have an issued consent nor were they allocated in an adopted development plan. Land at Kirby Road, Great Holland also only had a resolution to grant full planning permission for 41 dwellings in October 2018 and planning permission was not issued until June 2019. Be that

- as it may, the Council subsequently provided additional evidence to support its May 2019 SHLAA assumptions and it was not unreasonable to consider the most up to date evidence available. These sites were in the SHLAA for the agreed five-year supply period and with the number of dwellings that the Council argues are deliverable. I am not persuaded that there would be a corollary requirement to discount completions here.
116. There is sufficient clear evidence that there is a realistic prospect that housing completions will begin on site within five years for 90 dwellings at Rouses Farm and 84 dwellings at Alresford. Progress made on the application and the granting of full permission provides clear evidence of a realistic prospect that delivery of 41 dwellings will begin on site at Kirby Road within five years.
117. In light of the above the Council's predicted HLS needs to be reduced by 323 dwellings giving a supply of 3822 units. This gives a 3.7-year supply measured against the SM requirement of 5178, including a 20% buffer.
118. I do not know the details that led to the 'Woolpit'¹² Inspector finding that it was wholly inadequate to have a land supply based upon assertion and to seek to justify it at a later date, or that the evidence presented by the Council did not meet the definition of deliverable in the Glossary and advice in the PPG.
119. Emerging allocations and resolution to grant scenarios are not referenced in the "a)" and "b)" lists in the Glossary. The Inspector in the 'Woolmer Green' appeal¹³ considered these to be 'closed lists'. Undoubtedly the definition of deliverable especially applies to a site falling within a) or b). But from all that I heard at the Inquiry and from the evidence before me, I am not persuaded that they provide a 'closed list' that excludes considering some of the scenarios before me. In any event as the Appellant's case is that there is a 3.34 year HLS the consequences for this appeal are not significant.
120. However, there are other material considerations that do need to be addressed before determining the weight to be attached to the shortfall. Specifically, the Examination in Public (EIP) into the eLP heard evidence in relation to strategic housing targets and strategic allocations. In a letter to the North Essex Authorities, 27th June 2018 in relation to housing need the EI addresses an inaccuracy in the Office of National Statistics (ONS) household projections, a discrepancy between population change between 2001 and 2011 as measured by the Censuses for those years, and population change over the same period as calculated in Mid-Year Estimates.
121. The EI found that UPC in Tendring was a positive figure of around 10,500 and one of the biggest of any LPA. He noted advice from ONS indicates that some 47%-57% of the UPC figure for Tendring is attributable to inaccuracies in migration trend rates. He found that factors that give rise to UPC continue to have a substantial distorting effect on the migration trend rates used in the official population and household projections for Tendring.
122. The EI concluded that the scale of the difference and robustness of evidence justified a departure from the official projections and that 480 dwellings per annum (dpa) should be taken as the starting-point for assessing Tendring's housing need plus a 15% market adjustment. The EI found a figure of 550 dpa

¹² APP/W3520/W/18/3194926

¹³ APP/C1950/W/17/3190821

for the objectively assessed housing need (OAHN) for Tendring was soundly based. The EI's letter was written before the SM was adopted.

123. In a separate letter the EI found that evidence to support proposed garden communities and certainty about strategic highway proposals was lacking. The EIP was adjourned and the EI reserved the right to modify his views in the light of any further evidence that may come forward. In order to make the plan sound the EI indicated that significant changes by way of new evidence, alterations or withdrawal would be required and the authorities are undertaking further work. The housing requirement and spatial strategy may yet change.
124. Paragraph 73 of the Framework is plain that the SM is to be used in the assessment of the housing requirement in this appeal. The SM was introduced as part of the Government's '*Planning for the right homes in the right places*' consultation. The Government is committed to the SM as a key part of their ambition to support a market that delivers 300,000 homes. In February 2019 the Government decided¹⁴ that the 2014 ONS projections are the most appropriate demographic baseline for the SM for providing stability and certainty to the planning system in the short-term, rather than later projections which project that the population is growing more slowly and led to a significant reduction in the overall numbers of homes generated by the SM.
125. The Government considers that later projections should not be used as a reason to justify lower housing need. Reasons set out in the consultation¹⁵ included that household projections are constrained by housing supply, there has been a historic under supply and a more responsive supply of more homes where needed will help address increasing demand and declining affordability. However, the Government was not addressing the UPC issue.
126. The Appellant does not dispute that UPC flaws are a factor in the base line data for the housing requirement for this appeal. The evidence presented by the Council indicates that flaws in the base line data are related to migration, a fact accepted by the EI at the EIP. This indicates that the annualised SM requirement of 863 dwellings would be an overestimate and undermines confidence that it would be delivering the right number of homes in the right places. This does not in any way mean that the SM should not be used to calculate the requirement. But it is a material consideration for the weight to be attached to the extent of the shortfall. This is the approach taken by the Inspector in the 'Edenside'¹⁶ appeal.
127. In the recent 'Lifhouse Spa' appeal¹⁷ the Inspector adopted the SM and agreed a five-year requirement of 5178 dwellings including a 20% buffer for the same time period that I am considering. She also considered the UPC issue but found that to take account of the 'exceptional circumstances' would not be in accordance with Government policy to significantly boost the supply of homes. Consistency in decision-making is important. But I note that to support the Government's objective to significantly boost the supply of homes the Framework advises that it is important that a sufficient amount and variety of land can come forward where (my emphasis) it is needed. I also attach little

¹⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779792/LHN_Gov_response.pdf

¹⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751810/LHN_Consultation.pdf

¹⁶ APP/P1560/W/18/3196412

¹⁷ APP/P1560/W/18/3194826

weight to decisions that predate the Framework 2019 and Government advice that I have referred to.

128. However, a five-year HLS requirement is a minimum and the shortfall is considerable. Therefore, even having attached some weight to the UPC issue, I conclude that the weight to be attached to the Council's five-year HLS shortfall should still be significant.

Other Matters

129. Roads surrounding the site are quite narrow but there was little evidence before the Inquiry to suggest that the use of Grange Road west of the site would be materially increased, that the proposed site access would be unsafe, or that problems would arise from additional traffic on School Lane and other local roads. There are concerns about the sustainability of the location and impacts upon bus and train services but there was little evidence from relevant transport providers and ECC did not raise objections.
130. The Appellant submitted evidence to the Inquiry about the methodology of modelling junction capacity and traffic queuing. The Appellant's Highway witness had observed the operation of the railway crossing and underpass and accepted that there is a long queue that 'crawls'. The s106 makes provision for a possible pedestrian crossing at one of the locations where local residents are concerned about pedestrian safety. But the ECC Highway Authority response¹⁸ to this proposal is equivocal. The Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe and that is not the case here.
131. Local residents raised concerns about a number of sustainability and social infrastructure impacts. However the Council advised that the s106 overcame the second reason for refusal regarding affordable housing, education, and healthcare and submitted a CIL Regulation Compliance Statement and extracts from relevant documents addressing the necessity, relevance and proportionality and planning policy basis.

Benefits

132. The proposal would deliver 30% (33no) affordable dwellings. The Council's delivery has been poor. The Appellant submits the cumulative shortfall since 2013/14 amounts to 675 dwellings. At 'Edenside' the Inspector found that the Council had delivered a net loss of 1 affordable home over the last 5 years and attached very significant weight to the delivery of 25 new affordable homes.
133. The provision of up to 110 dwellings would make an important contribution to meeting the shortfall of housing. In order to ensure that the site would be brought forward quickly the Appellant would accept conditions requiring applications for approval of RM's to be made within two years, and for development to take place within one year from the date of approval of the last of the RM's are suggested as being appropriate.
134. However the scheme is in outline. The Appellant is not the developer. The site would be sold on. The evidence of developer interest is limited and a house builder expression of interest¹⁹ is prefaced with the statement that "*the site is a little off the main infrastructure routes that we would prefer.*"

¹⁸ set out in a Statement of Common Ground, Icen Projects and ECC, July 2019, Inquiry document 16

¹⁹ CD11.02

Therefore, the weight I attach to the scheme's contribution to the social objective of bringing forward land for new homes, including affordable housing, is moderated. The needs of the emerging strategy in the eLP are matters for the Local Plan Examination.

135. Economic benefits outlined in a socio-economic report (CD1.05) include investment in construction of almost £12m, creation of more than 100 construction jobs and a similar number of indirect jobs in associated industries. The value of the household expenditure of future occupants is estimated at £3.5m, New Homes Bonus payment at @£900,000 and Council Tax of £1.7million over 10 years. New residents would increase demand for and use of local services and businesses, and increased spending would help to protect, maintain and enhance the services available. But similar benefits would apply to any residential development of this scale.
136. Whilst the scheme would deliver 2.94HA of open space I have established that 1.94HA on-site and improved connectivity to existing Public Rights of Way and public access to land previously not available are all required as mitigation for effects upon the SPA. These and the provision of other GI including structural planting are all requirements to make the development acceptable and not benefits and I am not persuaded that the scheme would deliver a net biodiversity gain. Similarly the scheme of highways works would be neutral.
137. The proposal would allow for the preservation in situ of the SAM within open space and provision of interpretation boards. The long-term management of the site would be secured, and the SAM has seen steady erosion in the last 40 years. However damage to a SAM is a criminal offence. Although the site has been in agricultural use the evidence indicates it has been grazed for quite some time and evidence regarding risks, including ploughing rights, is limited. Heritage assets are irreplaceable, and the public benefits are limited.

Overall Balance

138. Likely adverse effects on the integrity of the SPA by reason of disturbance from increased recreational visits cannot be screened out on the basis of the proposed avoidance or reduction measures. There are no imperative reasons of overriding public interest to justify permission despite a potentially negative effect on site integrity. The potential for significant harm to European sites attracts great weight against the proposal. The presumption in favour of sustainable development does not apply and permission should be refused.
139. However, I identified that a more rigorous planning obligation would be an alternative. Had satisfactory provisions been made then it is probable that the AA would have concluded that the likely adverse effects on the integrity of the SPA would be screened out on the basis of avoidance or reduction measures. In that scenario, the presumption in favour of sustainable development would apply. I now set out the effect that would have had in the planning balance.
140. I found the HLS to be roughly 3.7-years. Notwithstanding the effect of the UPC in Tendring, the Council's inability to demonstrate a five-year HLS is significant. The proposed 'up to 110' dwellings, including 33 affordable units would contribute toward the delivery of housing. But even if I had accepted the Appellant's evidence that the HLS is only 3.34 years, for reasons given, the weight I attach to the scheme's contribution to the social objective of delivering new homes is great, but not substantial. Socio-economic benefits attract moderate weight in favour.

141. The proposal would fail to maintain and enhance landscape quality and local distinctiveness and would visually detract from key characteristics of settlement pattern and form, the rural character and appearance of the setting of the settlement and the rural character of Grange Road in the vicinity of the site. The proposal would conflict with advice at paragraph 127 of the Framework for the creation of well-designed places that add to the overall quality of an area and are sympathetic to local character, including landscape setting. These harms attract substantial weight against the proposal. However, for reasons given, conflict with TDLP Policies EN1 and QL1 attract only limited weight and conflict with the eLP Policies PPL3, SPL1 and SPL2 very limited weight.
142. The evidence is not sufficient to demonstrate that on-site biodiversity interests including species protected by s41 of NERC and the WCA would be satisfactorily conserved or adequately mitigated or compensated by imposition of conditions. These potential harms also attract moderate weight against. However, the application of policies that protect areas or assets of particular importance did not provide a clear reason for refusing the development.
143. The effects of open space, GI and highway works would be neutral. I attach limited weight in favour of the preservation in situ of the SAM and provision of interpretation boards. A combination of potential effects could result in minor-moderate irreparable harm to the setting and significance of the SAM but I found no conflict with TDLP Policy EN29 or eLP Policy PPL7 and the harm would be less than substantial. Nonetheless, potential harm to an irreplaceable heritage asset attracts moderate weight against the proposal. All of the benefits of the scheme do not outweigh the harm to the setting of the SAM.
144. Applying the tilted balance, the adverse impacts of granting permission, when assessed against the policies in the Framework as a whole, would significantly and demonstrably outweigh the benefits.

Conclusion

145. Having regard to all other matters raised, including by LTAG and other interested parties, I conclude that the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR

PARTICIPANTS AT THE INQUIRY

FOR THE APPELLANT

Thea Osmund-Smith QC and instructed by Christien Lee BSc (Hons) MCD MRTPI, Planning Manager, Gladman Developments Limited. She called:

Clive Burbridge BSc (Hons) MSc MRTPI MCIT MCILT, Equity Director and a Director of Transportation, Icen Projects Ltd (Highway impacts)

Christopher Morley BA (Hons) MPhil MCIfA, Associate Archaeology and Built Heritage Consultant, Pegasus Group (Archaeology and the Scheduled Ancient Monument)

Timothy Jackson BA (hons) Dip LA CMLI, Director, FPCR Environment & Design Ltd (Landscape, Character and Appearance)

Dr Suzanne Mansfield MCIEEM, CMLI, Senior Ecology Director, FPCR Environment & Design Ltd (On-site biodiversity)

Simon Taber BSc (Hons) MSc MCIEEM, Director, Ecology Solutions (European Habitat Sites)

Christopher Dodds BA (Hons) MA MRTPI, Associate Director, Planning Prospects (Housing Land Supply and Deliverability)

Christien Lee BSc (Hons) MCD MRTPI, Planning Manager, Gladman Developments Limited (Planning, Spatial Strategy and Planning Balance)

FOR THE COUNCIL

Tom Crosgrove QC and instructed by Lisa Hastings, head of Legal Services, Tendring District Council. He called:

Philip Russell-Vick Dip LA CMLI, Director of EnPlan (Landscape)

Cristina Howick MA MSc, Director at Peter Brett Associates (Housing requirement)

Gary Guiver, BSc Hons PG Dip TP MRTPI MBA, Planning Manager, Tendring District Council, (Housing supply)

Martin Carpenter BA (Hons) MRTPI, Director of EnPlan (Planning)

INTERESTED PERSONS

Dr Chris Gibson

Councillor Alan Coley

For the Lawford Tye Action Group (LTAG):

John Hall MBE and Robert Lewis in relation to Highway Impacts

Eleanor Storey in relation to Infrastructure Impacts

Andy Baker in relation to Housing Land Supply

Dr Chris Gibson in relation to on-site Biodiversity

John Hall and Dr Chris Gibson in relation to on-site Biodiversity

Caroline Hall presented the concluding statement from LTAG

Philip Cunningham, Chair of Manningtree Museum and Local History Group in relation to Archaeology.

Documents received at the Inquiry

1. Appellant's opening statement
2. LPA opening statement
3. HRA Inquiry Statement (Simon Taber)
4. Land west of New Road Clifton Appeal Decision (APP/P0240/W/18/3206495)
5. Unilateral Undertaking
6. John Hall (LTAG) representation on Highways
7. Robert Lewis (LTAG) representation on Highways
8. Patrick Taylor (LTAG) representation July 2019 on Archaeology + copy of Timber Circles in the East (book) by Patrick Taylor
9. Introduction to representation 8 – Philip Cunningham (LTAG)
10. ECC Archaeology consultee response – 30th January 2019 (2nd application)
11. Representation of Andy Baker (LTAG)
12. LTAG Speed Survey Plan showing points 1 + 2
13. Historic England consultee response – 11th February 2019 (2nd application)
14. Updated landscape Zone of Theoretical Visibility Plan – FPCR
15. Landscape SoCG July 2019
16. Highways SoCG
17. LTAG additional Highways note
18. Email from Alison Newland (TDC) to Christien Lee (Gladman) re: Historic England on 2nd application – 12th Feb – 11th March 2019
19. Essex Wildlife Trust response (2nd application) – 19th Feb 2019
20. Essex County Council Place Services consultee response (2nd application)
21. Standing advice for local planning authorities who need to assess the impacts of development on invertebrates (extracts from GOV.UK guidance)
22. LTAG speaking note – on-site biodiversity (John Hall) – July 2019
23. LTAG speaking note – on-site biodiversity (Mr Fry) – July 2019
24. 3 photos in relation to on-site biodiversity (LTAG)
25. SHLAA extracts + LPA SHLAA sites plan Lawford/Manningtree/Mistley area
26. Emerging Local Plan Map extracts + TDC Adopted plan
27. Statement of Dr Chris Gibson (24th July 2019) – On-site biodiversity
28. Updated PPG Natural Environment extracts
29. Essex County Council Developer's Guide to Infrastructure Contributions – Revised 2016 Extracts re: Education
30. Draft/Working list of suggested conditions
31. Email from Andrew Black to Gary Guiver 03/07/2019 re: 15 + 16
32. Email from Chris Dodds to Gary Guiver 26/07/2019 re: 17
33. Gov.uk print re: Housing Supply and Deliverability 22/07/2019
34. Gov.uk Response to Tech Cons on updates to National Planning Policy Guidance Feb 2019
35. Icen Transport note 25/07/2019 LTAG response
36. LTAG concluding statement
37. Arial Photo
38. FPCR site plan with local services and proposed zebra crossing
39. CIL submitted pre + proposed settlement boundary
40. CD11.07 colour images A3 and copy EnPlan ZTV + figs 2–7 A3 colour
41. Copy of A3 colour print of FPCR Figures 1 – 16 + table of effects
42. Dr. Mansfield Note
43. Site Visit Route