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## Appeal Decision

Inquiry Held on 6-8 August and 29-30 October 2019

Site visit made on 8 August 2019

**by A J Mageean BA (Hons) BPI PhD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 December 2019**

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**Appeal Ref: APP/P1506/W/19/3220201**

**Land to the South of Long Road, Mistley**

- 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 Tendring Farms Ltd against the decision of Tendring District Council.
  - The application Ref 17/01181/OUT, dated 17 July 2017, was refused by notice dated 29 November 2018.
  - The development proposed is an outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 485 dwellings, up to 2 hectares of employment land (A2/A3/B1/B2; B8; D1 uses), with associated public open space and infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved, other than strategic access points onto the public highway, for the erection of up to 485 dwellings, up to 2 hectares of employment land (A2/A3/B1/B2; B8; D1 uses), with associated public open space and infrastructure at land to the south of Long Road Mistley, in accordance with the terms of application ref 17/01181/OUT dated 17 July 2017, subject to the conditions set out in the schedule attached to this decision.

### Preliminary Matters

2. The application is in outline with all matters except for means of access reserved for subsequent approval. In addition to the red line plan, I have considered the application on the basis of the plans indicating the Long Road Preliminary Access Arrangement (162173/A/02), Clacton Road Access Arrangement (JTP/04814/DR2a) and Employment Area Access and Pedler's Corner Improvements (JTP/04814 DR4).
3. The application also sought approval for parameter plans which would control the extent of a Reserved Matters application. These include a Density Parameter Plan (OPA/17006-06a), a Landscape Parameter Plan (OPA/17006-04b) and a Storey Heights Parameter Plan (OPA/17006-07b). Additional plans including an Outline Landscape Masterplan, a 3D Model View V2, a Proving Plan V2 and an Illustrative Masterplan are provided for illustrative purposes only. I have considered the appeal on this basis.
4. The application was described as being for up to 500 dwellings. However, I understand that, with the agreement of the Council, the description was changed

to up to 485 dwellings prior to the determination of the application. I have considered the appeal on this basis.

5. At the time of the Inquiry, the draft Tendring District Council Development Plan (2013-2033) (eLP) had been submitted for examination. Section 1 of the eLP, prepared jointly for the North Essex Authorities (Braintree, Tendring and Colchester), is being examined, with Section 2 of the eLP containing policies specific to Tendring, including the allocation of sites. Paragraph 48 of the National Planning Policy Framework (the Framework) sets out that weight may be given to the relevant policies in emerging plans. In this case, given the stage the eLP has reached, its provisions carry modest weight.
6. Evidence relating to character and appearance and housing supply was presented to the inquiry in August. It was agreed that the inquiry would be adjourned to provide the main parties the opportunity to clarify and minimise areas of dispute concerning affordable housing and viability. As a result, an updated Statement of Common Ground and additional evidence on these matters was produced. The inquiry resumed for an additional two days at the end of October 2019.
7. Additional evidence was also requested from both parties regarding provisions to ensure that the scheme would not have an adverse effect on the integrity of protected habitat sites. The inquiry was closed in writing on 21 November 2019.
8. Before the inquiry commenced, the Council agreed that the provision of appropriate planning obligations relating to financial contributions towards education and healthcare provision, the management of on-site public open space, off site traffic calming measures and the provision and monitoring of a Residential Travel Plan would overcome part of the second main reason for refusal. A completed signed and dated planning obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (UU) was submitted by the appellant at the inquiry.

### **Main Issues**

9. Taking into account the above, and the evidence before me, the main issues are:
  - The effect of the proposed development on the character and appearance of the area;
  - Whether or not the proposal would make sufficient provision for affordable housing; and,
  - Whether any harm in relation to issues (1) and (2) above, and any conflict with the development plan, would significantly and demonstrably outweigh the benefits when assessed against the policies in the National Planning Policy Framework taken as a whole.

### **Reasons**

#### ***Character and appearance***

10. Outline planning permission for up to 300 dwellings and 2ha of employment land was granted in July 2016<sup>1</sup>. This was subsequently varied by an application reducing the amount of open space and increasing the developed area<sup>2</sup>. An

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<sup>1</sup> 15/00761/OUT

<sup>2</sup> 17/01537/OUT

approved reserved matters application sets out the first phase of development for up to 96 dwellings on the northern portion of the site<sup>3</sup>. I have had regard to the permitted scheme, as varied, (referred to henceforth as 'the permitted scheme') when considering landscape and visual impacts.

11. The site is currently located outside the settlement boundary for Manningtree, Lawford and Mistley. However, the eLP proposes that this area be incorporated within the shared settlement boundary, and includes the allocation of 2ha at the south eastern corner of the appeal site for employment development. The land directly to the west is also proposed to be within the settlement boundary, with the development known as 'Lawford Green' already underway on this site. This area is therefore undergoing substantial change.

#### *Landscape and visual character*

12. The site lies within the Bromley Heaths Landscape Character Area (LCA) as defined within the Tendring District Landscape Character Assessment 2001. Within this large scale flat agricultural plateau, some elements of the characteristic qualities of the Bromley Heath LCA are relevant to the appeal site in its undeveloped state. Specifically, 'large scale productive arable fields divided by low, gappy hedges where hedgerow oaks stand out as silhouettes against the skyline'. More generally, the LCA has a low density pattern of scattered farms and settlements connected by a network of narrow lanes.
13. Looking at the landscape qualities of the appeal site and its immediate context in a little more detail, this open and largely flat field is bound by a mixture of low hedgerow, occasional shrub and tree planting, with one significant tree, a mature oak, on the eastern boundary. The northern part of the site has an edge of settlement character, as it adjoins Long Road, a busy route with pavement and street lighting, and with built form clearly visible to the north east and north west. Directly to the north of Long Road, an open landscape area is identified as a 'Local Green Gap' (LGG) in the Tendring District Local Plan 2007 (LP) and proposed as a 'Strategic Green Gap' in the eLP. The area to the south has an open rural character and little screening, with Dead Lane a narrow rural lane. To the west, the parkland landscape, which is within the Manningtree and Mistley Conservation Area (CA), also contributes to these rural qualities. To the east, the Lawford Green scheme is being built on former fields and will ultimately adjoin the western boundary of the appeal site.
14. Overall the 2001 LCA assesses the landscape character of this area as being 'moderate' though remaining 'visually sensitive as a result of its open and rural character and long views'. Similarly, the Tendring Landscape Impact Assessment produced in 2009 (LIA) concluded that this area, including the Lawford Green site, was of low to medium visual sensitivity. My view is that these assessments remain relevant in that the site retains sensitivity due to its visibility and openness, though this is moderated by its changing context.
15. In terms of its visual qualities, the site has a tight visual envelope as, with the exception of those along Clacton Road and the public right of way (PROW) to the east, most viewpoints are within its immediate vicinity. This reflects the generally flat topography, meaning that there are no elevated positions from which to view the site, and also the fact that there are no distinctive landscape elements associated with the area to draw the eye. Longer distance views from the south

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<sup>3</sup> 17/00535/DETAIL

tend to be interrupted by hedgerow trees or areas of woodland, and northern views are contained by the edge of settlement. Whilst the Council suggests that the visual envelope of the site extends considerably further south, from these distant viewpoints the visibility of the site is limited.

16. The comparative analysis of the permitted and appeal schemes set out below is undertaken in two sections: firstly, looking at the landscape and visual impact of the scheme within the local area, and secondly, evaluating the differences in the character and qualities of the schemes internally, in terms of the density and pattern of built form.

#### *Landscape and visual impact assessment*

17. Assessing the differences between the permitted and proposed schemes is not straightforward as both are in outline. The Landscape and Visual Appraisal Addendum 2017 (LVAA) submitted with the appeal scheme is described as providing 'an assessment of any additional effects arising from the difference in layout and design of the revised scheme'. However, it has subsequently been clarified that the LVAA assesses the appeal scheme against an undeveloped baseline, and does not therefore provide a comparative assessment. The conclusions of this study, that the 'development would not give rise to any substantial additional effects when compared to the 2015 application', may have been misleading to the Council. Indeed, the assessment of landscape/visual impact in the Officer Report is somewhat confused, appearing to refer to the site in both its developed and undeveloped state.
18. My view is that it is inevitable that the significant increase in the number of dwellings proposed, the changes in the dwelling mix and the addition of further access points from Dead Lane will have landscape and visual consequences. The magnitude of that change can be assessed from the range of material presented.
19. The original Landscape and Visual Impact Assessment (Liz Lake Associates 2015) (LVIA) assessed the landscape effects of the permitted, though unvaried, scheme as significant, changing from countryside to urban use with a moderate/substantial adverse effect on landscape character. This would be mitigated with generous public open space running through and around the site which, when established, would reduce the effect on landscape character to moderate/slight adverse. In basic terms this assessment is consistent with the Council's 2009 LIA.
20. However, the Council suggests that the LVIA over-estimates the adverse effects through the use of a three-point scale (slight, moderate or substantial effects), and given the relatively low key, low density nature of the development. My view is that whilst the permitted scheme is low density, it includes significant housing and employment development. It can therefore be characterised as transformative, in that it will change the character of the site from being open and rural to being associated with the expanding settlement envelope. I therefore agree with the LVIA assessment.
21. Additional change to landscape character would result from the appeal scheme by virtue of its higher density, including some built form at a higher level, the greater extent of developed area and the addition of two new access points from Dead Lane. As a result of the approved scheme, the degree of sensitivity of the landscape to the additional change proposed is low. Furthermore, much of the perimeter belt of landscaped space would remain, noting particularly the retention of the open area at the northern extent of the site, affording similar opportunities

for mitigation planting to the permitted scheme. Whilst there would be a reduction in the amount of on-site open space from around 27% of the gross area to around 20.5%, and some sense of denser urban form is inevitable, any additional harm would reduce to negligible as planting matures. The widening of Dead Lane to accommodate the new access points would be a noticeable change, and locally of some harm to landscape character. However, overall my view is that any additional harm would not take the landscape effect of the appeal scheme significantly beyond the moderate/substantial adverse, in time reducing to moderate/slight adverse effect, as identified previously.

22. Turning to visual effects, the Council's reason for refusal refers to the prominence of the development from the south. In general terms the permitted scheme will result in the loss of views across this open and undeveloped site. Whilst its low-density form may suggest a porous nature, in reality views into the site would focus on the landscape and built form in the immediate foreground, with some visibility of variation across the skyline beyond. The parameter plans associated with the appeal scheme indicate a 'feathering' of density, with the lowest density on the periphery. As such, in those areas where the width of perimeter open space would remain the same, my view is that no additional harm would be discernible.
23. I have considered the specific viewpoints and visual receptors identified by the Council as differentiating the two schemes. From Long Road, the visibility of the development from the care home and properties adjacent to the north eastern corner of the site would increase as the proposed developed area would extend considerably closer to the shared boundary with these properties. The care home has three storeys, though is contained by lower level buildings around its periphery, such that views across into the appeal site are for the most part limited to the dormer windows on the southern and western elevations. Whilst reduced in extent, the proposed open space and landscape would to some degree mitigate the presence of built form in relatively close proximity. It could also be argued that these vantage points are at a higher level than most of the built form proposed, and that some views to the landscape beyond would be retained. However, there is no doubt that the sense of urban containment would increase, and that denser urban form would be particularly apparent from these windows.
24. The primary first floor rear views of the other properties in the north eastern corner are to the south south east. This would encompass the easternmost properties and the band of open space and landscaping. The presence of built form at a higher density than previously proposed, including in the illustrative scheme a terraced row located immediately behind the detached dwellings, would be clearly apparent. Overall the reduction in openness for the occupiers of the care home and dwellings to the north east would be moderately harmful.
25. On the north western corner of the site the extent of open space would increase by a moderate degree. There would be low density housing adjacent to this corner, and an area of higher density immediately behind. This would contrast with the looser low density layout of the approved scheme. In oblique views into the appeal site from properties on the south side of Long Road it is possible, though by no means certain, that the difference between the permitted and proposed schemes would be apparent in terms of some reduction in porosity. However, it is more likely that both schemes would result in an awareness of the buildings in the foreground and some sense of built form beyond. That said, at this distance any

sense of increased density would be mitigated by the additional open space and opportunity for landscaping in this area.

26. Reference is also made to visibility from properties on Waldegrave Way, whose rear elevations back onto the LGG. However, given the presence of the LGG, which in both schemes extends into the northern section of the appeal site, my view is that any sense of additional density would not be clearly apparent.
27. In views from Clacton Road to the east, mostly by motorists and cyclists as the pavement ends north of the entrance to Acorn Village, the reduction in open space to the north east would be apparent. Also, some sense of a denser, more urban form of development along this boundary may be visible. However, the presence of the open area with drainage attenuation and landscaping, though modestly reduced from the permitted scheme, would to a large degree mitigate any apparent difference, particularly when vegetation is established.
28. Clacton Road marks the boundary with the CA. Whilst there would be some distant and filtered views from the landscape of the CA, which includes PROW, the increase in the quantum of development and density would not be apparent. As such there would be no harm to the setting of the CA.
29. Dead Lane would be altered, including more than a doubling of its width at Pedler's Corner, and the probable addition of other elements such as signage and kerbs. For users of this route the sense of it being part of the network of narrow lanes running through the area would visibly change. However, this will be seen in the context of the changing character of this area, with the presence of the employment buildings in a broadly similar position, and therefore a clearly visible presence from Dead Lane, in both schemes.
30. The provision of employment development in this position would also be consistent with Policy SAE2 of the eLP, which refers to consideration being given to access via Long Road, Dead Lane and/or Clacton Road. In my view the change in character of Dead Lane would not be unreasonable in the context of the acceptance of the expansion of the settlement to the south. Furthermore, the slight reduction in perimeter open space adjacent to the south eastern corner would not significantly undermine the ability to mitigate the change through landscaping.
31. I reach this view being mindful of the additional 'opening up' of the southern boundary of the site to accommodate the two access points to the employment area. Whilst not illustrated in the Viewpoints provided by the appellant, it is clear that these would be more visually apparent and intrusive than the access points for pedestrians and cyclists which are present in the permitted scheme. This would create a further degree of visual intrusion for the users of PROW 172\_1. However, again, in the context of the transformative change underway in this area, including the fact that the employment buildings would be clearly visible whichever scheme is implemented (as demonstrated in Viewpoint 10), this would not cause significant additional harm.
32. Views of the appeal site from the west along the PROW running through the Lawford Green site will in the near future be closed down as this scheme is built out. In time there will be views of the appeal development from the upper floors of the Lawford Green site properties located close to the shared boundary of the lower two thirds of the site. There would be some reduction in open space adjacent to this shared boundary of a little over half the width of this area at the widest point. However, the fact that there is a 'Green Corridor' along this

boundary on the Lawford Green side, and that the Density Parameter Plan indicates that this part of the site would contain low density housing, means that any additional visibility of the appeal scheme would not be significant and is capable of being mitigated with landscaping.

33. I have considered the extended viewpoints identified by the Council, including those from the gently rising ground to the south east, in as far as is possible with this outline application. In general terms it would not be possible to distinguish between the permitted and proposed developments, even in the winter months when deciduous trees are without leaf.
34. The reduction in the overall level of open space would impact on the visibility of the scheme and the effectiveness of mitigation, as noted in the analysis above. However, with the exception of the north eastern corner, I have not found this to be significantly harmful. Furthermore, whilst it is important to carefully consider the integration of the scheme in the surrounding area, the level of open space proposed at 20.5% is more than double the minimum of 10% of gross area required by LP Policy COM9. As such this cannot be regarded as a tokenistic level of provision. My view is that the open space to the perimeter of the site would remain at a level sufficient to accommodate informal recreation opportunities and a significant degree of landscaping, including more substantial trees, which in the medium to longer term would make a positive contribution to the quality of the local environment.

#### *Density and pattern of built form*

35. The permitted scheme has been promoted as a low-density development, to the extent that a variation to increase the developable area was proposed as this was required to achieve 300 dwellings at a reasonable density. Further, the LVIA refers to the 'relatively low-density parcels of development with public open space running throughout the site helping to integrate the proposals into the landscape'. The emphasis is on detached and semi-detached properties set in reasonably spacious plots, particularly in the northern portion.
36. The quantum of built form on site would substantially increase with the appeal scheme. Indeed, a standalone development of 185 units would be significant in its own right. However, the nature of the accommodation provided would change, with the indicative dwelling mix suggesting that there would be more apartments (increased from 4.3% to 10.9%) and two bedroomed houses (increased from 17.7% to 33.9%), and fewer 4 bedroomed houses (decreased from 34% to 13.2%). There would be an increase in building height, with the appeal scheme having no dwellings below 2 storeys (compared to 1.7% below 2 storeys in the permitted scheme), and an increase in buildings at 2.5 storeys from 4.3% to 12%.
37. The parameter and illustrative plans provide some sense of how this could be achieved. In order to accommodate the additional dwellings, the appeal scheme would have a more formal layout and appearance in comparison with the looser grain of the permitted scheme, and would also have a more varied streetscape to accommodate the private space requirements of different dwelling types. The 'feathering' of densities would be clearly observable. This would vary from up to around 45 dwellings per hectare (dph) in the centre, to 15-25 dph in peripheral areas, with an average of 29.61 dph (net) overall.
38. LP saved Policy HG7 sets out that new housing development will normally be expected to achieve a minimum density of 30 dph (net). It also requires that in

towns and villages, densities generally should fall within the range of 30-50 dph. Whilst somewhat dated, these provisions are consistent with current Government policy. Indeed, the Framework refers to the requirement for plans and decisions to optimise the use of land in their area.

39. Saved Policy HG7 sets out that lower densities than 30 dph will need special justification in terms of the character of the local environment. The supporting text gives examples of special justification, such as the need to conserve landscape features, a Listed Building in its setting, other on-site features of interest, or to avoid development of an infill site appearing out of character with its surroundings, particularly in rural areas. In the present case the landscape of the area is not protected, other than the LGG to the north, which itself would be reinforced by the open space in the northern portion of the site. The density sampling illustrates that to the north of Long Road existing densities vary from 24 to 40 dph (though noting that these are areas without open spaces), and so saved Policy HG7 densities are not out of place. I have also found that the appeal scheme would not have a harmful effect on the adjacent CA. As such there is no reason to conclude that the Policy HG7 densities would not be appropriate.
40. Density per se is a crude measure of the quality of environment. Of greater importance is the creation of pedestrian scale places through the effective enclosure of space, whether through landscaping or built form, or a combination of the two. This principle is set out in the Essex Design Guide 2005 which has been adopted by the Council as SPG. This refers to the increase in visual density from uninhabited landscape to urbanity as a spectrum. Within this spectrum very low densities can create the illusion of a residential environment in a rural area, with landscaping used to structure space. Further along the spectrum, at densities above 20 dph, the enclosure of space is more or less achieved by continuous building frontages: 'these are the type of groupings characteristic of historic towns and villages in Essex', including the historic cores of Manningtree and Mistley.
41. There is no reason why the appeal scheme could not produce a high quality living environment. The site is of sufficient scale to establish a series of 'character areas', as described in the Design and Access Statement 2017 (DAS). This illustrates that from the low density rural edge, the structure could become progressively tighter and more formal, culminating in a 'village square', which would have a more concentrated urban character. This approach is supported by the LCA advice which analyses the traditional settlement structure for the Bromley Heaths area. It advises that areas of new residential development should generally be closely related to existing settlements, and that there may be opportunities to re-create village greens as a focus for development.
42. The mixture of dwelling types proposed, with some height variation, would support the creation of variety and interest in the streetscene. The quantity of dwellings at 2.5 storeys would increase compared to the permitted scheme (from 13 to 57), and I am aware that there will not be any dwellings above 2 storeys on the Lawford Green site. However, these taller buildings would be positioned centrally in accordance with the Storey Heights Parameter Plan, with limited visibility in the wider area. Furthermore, my view is that if effectively deployed, the moderate number of higher buildings could add structure and legibility to the layout. Whilst some corner buildings appear as three storeys in the 3D model view, and indeed reference is made in the DAS to 3 storey buildings, this plan is for illustrative purposes only and, should the appeal be allowed, would not be binding on future reserved matters applications.

43. From within the developed area the appeal proposal would have a different, more urban character, and would be busier and noisier in comparison with both the permitted development and Lawford Green. However, this would be a spin-off of seeking to make the most efficient and effective use of a greenfield site. Given that it would be unreasonable to regard the whole site area as edge of settlement, there is nothing before me to indicate that this would be fundamentally unreasonable or harmful. This must be seen in the context of the SPG which demonstrates that higher densities can be accommodated whilst creating attractive pedestrian scale environments with a strong sense of place. Furthermore, the fact that policy supports higher density development cannot be ignored.

*Conclusion on character and appearance*

44. I have found that the introduction of the proposed 185 additional dwellings must be seen in the context of the character and appearance of this area undergoing significant change as part of the proposed extension of the settlement. This includes the introduction of employment development to the south, in what is currently an open and highly visible location. I conclude that, when the gross effects of the appeal scheme in comparison with the permitted scheme are considered, there would be no significant increase in landscape harm arising from its development over that already permitted. The open space and planting would enable effective mitigation of the development and enhancement of the landscape setting. In this regard there would be no conflict with saved Policy QL9, whose provisions are also contained in eLP Policy SPL3, which requires new development to make a positive contribution to the quality of the environment and protect or enhance local character. Nor would there be conflict with saved Policy EN1 which requires that the Districts landscape and distinctive character be protected and where possible enhanced.

45. I have also found that in visual terms there would be no significant increase in visual intrusion, save for some upper level views for the occupiers of the care home and properties in the north eastern corner of the site. On balance, this minor harm would not be sufficient to undermine the acceptability of the scheme in landscape and visual terms. The proposal would therefore not be in conflict with other relevant aspects of saved Policy QL9, including that development should respect or enhance views, skylines, landmarks, open spaces and other locally important features. The changes to Dead Lane would be in conflict with that part of saved Policy EN1 which seeks to protect the traditional character of rural lanes. However, this change must be seen in the context of the proposed eLP extension of the settlement boundary, and eLP Policy SAE2. On balance it is acceptable.

46. Insofar as it is possible to assess this outline proposal, I am satisfied that a high quality scheme that responds to its context could be achieved. I have recognised that in parts the appeal scheme would be of considerably higher density than those accepted in recent developments nearby, and indeed the permitted scheme. However, the policy imperative to use land efficiently has been highlighted.

47. Furthermore, appropriate densities could be achieved by following the tried and tested design principles found in towns and villages throughout Essex. In this sense the scheme would accord with the requirement of saved Policy QL9 that development should relate well to its site and surroundings. It would also clearly accord with paragraph 127 of the Framework, which sets out that planning decisions should ensure that developments 'are sympathetic to local character and history, including the surrounding built environment and landscape setting, while

not preventing or discouraging appropriate innovation or change (such as increased densities)'.

48. I conclude that, on balance, the appeal proposal would not have an unacceptably harmful effect on the character and appearance of the area, when assessed against the most important policies for determining this matter.

### ***Affordable Housing***

49. The need for affordable housing in both the District and the more immediate area of Mistley has increased in recent times, and is acute. As of 1 October 2019, there were 330 households on the Housing Register, increasing from the 102 households noted on the decision notice issued in January 2018. Across the District there are 2,033 households on the Register. Around 75% of these require 1 or 2 bedroomed units. Of the 1000 or so units approved in the Manningtree, Lawford and Mistley area over the past 5 years around 6-7% are affordable units. The provision of affordable housing from new development has therefore been limited.

#### *Policy provisions*

50. Saved Policy HG4 requires up to 40% of new dwellings on new residential schemes of 5 or more units to be provided as affordable housing. However, it is common ground that this requirement is out of date. As the provisions of saved Policy HG4 do not reflect the Framework and National Planning Practice Guidance (NPPG) requirement for development plan policies relating to such contributions to be up to date, with provision for viability assessment where justified by the appellant, I do not disagree. Emerging Policy LP5 of the eLP is referred to in the reason for refusal. This sets out that for developments involving the creation of 11 or more (net) homes the Council will expect 30% of new dwellings to be made available as affordable or council housing, subject to viability testing.
51. The Framework supports the provision of affordable housing in areas where need is identified. It requires that plans set out the contributions expected from development, with the NPPG advising that this should be informed by a proportionate assessment of viability, including collaborative work with stakeholders.<sup>4</sup> Emerging Policy LP5 has been informed by the Economic Viability Study (EVS), authored in part by the Council's viability witness, which has been prepared in line with the guidance. However, Section 2 of the eLP has not yet been subject to the scrutiny required in order to conclude on soundness. There is no evidence before me on the extent of unresolved objections.
52. The extant approval provides for 18 dwellings to be 'gifted' to the Council. The appellant initially provided for the appeal scheme to retain the 18 gifted units and for 30% of the additional 185 units to be affordable, that is 55 units (73 units in total). This has subsequently been amended, with the UU providing for 73 affordable units in line with the Council's current preference for affordable units. This would provide for 15% affordable housing overall.
53. The term 'net' in eLP Policy LP5 is not defined. A reasonable approach to take would be to assume that a 'gross' figure would include existing dwellings on a site, which may or may not be demolished, to identify the net figure. In this case, whilst there is an extant approval on this site which the parties agree is the fallback position, this remains unimplemented. Whilst it is highly likely that this scheme will proceed if the current appeal fails, there is no guarantee that it will.

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<sup>4</sup> NPPG: Paragraph: 002 Reference ID: 10-002-20190509

As the appeal scheme is substantially different from the extant approval, it was necessary for a discrete and separate application for 485 dwellings to be submitted. It is therefore appropriate that the scheme be considered afresh, including its policy consistency.

54. The views on this point expressed by the housing officer, and repeated by the planning officer in the Officer Report, appear to support the appellant's view that a reasonable approach would be to apply the 30% requirement to the net additional dwellings above the permitted 300. I do not agree with this approach. I am also aware that the Council has referred to the 'additional' dwellings when considering the effect on character and appearance. However, this was purely to differentiate the permitted and proposed schemes.
55. In summary, whilst saved Policy HG4 is out of date, emerging Policy LP5 has not progressed very far. Therefore, the Council is without an up to date affordable housing policy. Nonetheless the main parties have undertaken assessments of the viability of the scheme against the eLP Policy LP5 requirement for 30% affordable housing. The Framework paragraph 122 allows for decisions to take into account local market conditions and viability. Paragraph 57 further clarifies that the weight to be given to viability assessments is a matter for the decision-maker, having regard to the circumstances of the case, including whether the plan is up to date. In these circumstances the site-specific viability assessments submitted by the parties assume a greater significance.

#### *Viability testing*

56. The NPPG sets out that viability evidence should assess whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return. For the viability assessment of a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used. The assessment of costs should be based on evidence which is reflective of local market conditions.<sup>5</sup>
57. Starting with the benchmark land value (BLV), the NPPG states that this should be established on the basis of the existing use value (EUV) plus a premium for the landowner<sup>6</sup>. EUV should be informed by market evidence of current uses, costs and values. The premium to the landowner should provide a reasonable incentive to bring forward the land, while allowing a sufficient contribution to fully comply with policy requirements. Additionally, an alternative use value (AUV) can be used in establishing the benchmark land value, providing that this fully complies with up to date development plan policies. This valuation includes the premium to the landowner.<sup>7</sup>
58. Initially, the parties set out in the original viability SoCG that the residual value generated by the permitted scheme was the accepted minimum BLV for assessing the viability of the appeal scheme. This fits with the criteria for AUV. It appears a reasonable position to take given it relates specifically to the appeal site, and a fully costed, consented and presumably viable scheme. This gives a BLV of

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<sup>5</sup> NPPG: Paragraph: 012 Reference ID: 10-012-20180724

<sup>6</sup> NPPG: Paragraph: 013 Reference ID: 10-013-20190509

<sup>7</sup> Ibid: Paragraph: 017

£10,471,000 using the Council's median build costs and £5,502,624 using the appellant's mean build costs.

59. The appellant's more recent suggestion is that the more generalised BLV data for Manningtree and Rural North taken from the as yet untested EVS should be used as an alternative starting point. This provides an estimate of the lowest values that landowners may accept, and gives a BLV of £0.44m per gross ha for large strategic sites over 20ha. On this basis the lowest BLV for the site would be £10,322,400. However, the EVS is not intended to be used for individual scheme appraisals. Overall, the AUV is preferred as it is based on actual market evidence rather than the average figures presented in the EVS.
60. Turning to the disputed appraisal inputs, the two main points of disagreement relate to build costs and affordable housing values. Starting with build, or construction costs, (BC), the NPPG refers to these being based on appropriate data, for example that of the Building Cost Information Service (BCIS). Both parties have used BCIS data, though from the four indices available (lower quartile, upper quartile, median and mean), the Council has preferred the BCIS median cost for estate housing generally, whilst the appellant uses the BCIS mean costs for estate housing generally and estate housing detached. The updated SoCG Table 5.1.1 indicates figures of £1,261m<sup>2</sup> and £1,404m<sup>2</sup> respectively for BCs. However, within their viability evidence the witnesses refer to having used higher figures in their most recent viability testing (the Council £1,465m<sup>2</sup>, 'excluding external works'; and the appellant £1,750.76m<sup>2</sup>, apparently including 'externals'). Such inconsistencies have made it difficult to draw anything but the most general of conclusions.
61. Median BC were used by the Council's witness when producing the EVS. However, the Council also argues that for a site of this size BC could be lower, and closer to the lower quartile, because of the economies of scale that larger developers can achieve. The Council's evidence to support the view that for a site of this size the mean rate is too high relates to an independent analysis of the costs associated with a 4,000 dwelling urban extension at Cranbrook, Devon, dated 2018. However, due to differences in infrastructure costs, it is difficult to undertake a like for like comparison with the appeal scheme, nor can this study be assumed to reflect local market conditions.
62. The Council also refers to evidence of BC from the projects analysed for BCIS report for the Three Dragons<sup>8</sup>. As a starting point, as this report relates largely to social housing, its relevance is not clear. Whilst there is limited evidence before me on this point, it is reasonable to assume that BC associated with social housing in general would be lower than market housing, as the emphasis is on building for durability rather than marketability. Looking at the 15 year sample from 2003, at table 810.1, sampling 'estate houses generally', the BC are considerably lower than the median average of £1,206m<sup>2</sup>, once schemes are over 10 dwellings. However, in table 810, sampling 'mixed developments (houses and flats)', which better reflects the nature of the development proposed here, the median and mean BC actually increase for schemes of above 101 units in comparison with smaller schemes (of 51-100 units).
63. The reasons for these fluctuations in BC's are not clear from this evidence. However, it does not demonstrate that larger sites have lower BC. Overall the Council's evidence on BC is not convincing.

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<sup>8</sup> 'Housing Development: Effect of number of dwellings on construction costs' 12 March 2018

64. The parties agree that, whilst at outline stage, the quality of design and materials envisaged for the appeal scheme, as set out in the DAS, would be above average quality when compared with the standard designs typically used by volume housebuilders. As such the appellant has favoured the use of the somewhat higher mean BC. Evidence in support of this assumption is correspondence with the builder of the adjacent Lawford Green site, which refers to an 'all up' BC, presumably including external works, in excess of £1,755m<sup>2</sup>. This email evidence is informal in nature and unsubstantiated, unlike the verified cost consultants report produced for the Cranbrook development. However, taken at face value, it is reasonable to assume that it is reflective of local market conditions, and up to date. The appellant also illustrates how in terms of quality the appeal scheme is comparable to Lawford Green. This evidence therefore carries at least modest weight, and the appellant's case for the use of mean build costs is the more compelling.
65. Turning to affordable housing values (AHV), the parties have referred to the RICS Guidance on this matter.<sup>9</sup> This advises the use of either a cashflow valuation, using a series of inputs to calculate what a registered provider (RP) could afford to pay for the affordable housing on offer, or actual transactional data as evidence of what an RP is prepared to pay within the specific area. The latter method is preferred as it should be most reflective of local market conditions, and this is the basis of the viability evidence set out in the updated SoCG. As such, I appreciate that the debate around net rent capitalisation is of little substance.
66. The Council's evidence on AHV was based initially on consultation with RP's across the Tendring area, and subsequent consultation specifically with two RP's working in the Colchester Broad Rental Market Area (BRMA). In response to requests for comments on the assumptions made about AHV in the Tendring area, the RP's provided figures equating to £2,033m<sup>2</sup> and £2,223m<sup>2</sup>. These appear to be based on recent offers, or possible offers within the BRMA. Therefore, whilst not actual transactional data and lacking in detail about basic assumptions around timing and delivery, it is reasonable to assume that this is generally reflective of local market conditions. On this basis the Council suggest an AHV of £2,111m<sup>2</sup>.
67. The appellants evidence on AHV was based initially on a cashflow valuation figure. Updated evidence is based on two recent transactions from within the BRMA which equate to £1,891.67m<sup>2</sup> and £1,658.88m<sup>2</sup>. Additionally, a recent offer from a RP for the purchase of the affordable housing in the appeal scheme suggests a value of £1,850.24m<sup>2</sup>. Details of the basis of this offer are not provided, and the parties disagree about whether such an introductory offer would be likely to go up or down with subsequent negotiations. Nonetheless, my view is that the actual transactional data provided by the appellant, whilst limited, is nonetheless credible. The appellant has suggested an AHV of £1,850m<sup>2</sup> which, based on the evidence before me, appears to be the most soundly based figure and therefore one which I prefer for use in the appraisals.
68. The remaining disputed inputs are profit on affordable housing and sales legal fees. They have considerably less significant impact on appraisal results. With regards profit on affordable housing, the NPPG refers to developer returns on GDV of 15-20% on market housing, though suggests that a lower figure may be more appropriate for affordable housing because of the lower risks associated with its delivery, without indicating what this percentage might be.<sup>10</sup> There is no

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<sup>9</sup> RICS Guidance Note 'Valuation of land for affordable housing' April 2016

<sup>10</sup> NPPG: Paragraph: 018 Reference ID: 10-018-20190509

suggestion that this figure should relate to costs rather than GDV. I therefore prefer the appellants approach.

69. With regards to sales legal fees, the parties disagree on whether or not this cost is wrapped up in sales fees, though the evidence on this point is limited and it has less financial consequence overall. It was also suggested by the Council that the agreed SoCG infrastructure cost figure of £17,000 is actually 'on the high side'. However, as the evidence on this point is not clear, my view is that there should be no further adjustments.
70. Whilst overall I have found the evidence presented by both parties to have limitations, the appellant's BC and AHV values appear to be the most soundly based and reasonable. The appraisal results set out in Section 7 of the updated SoCG indicate that if the appeal scheme were to proceed on this basis, and the 'Proving Plan 2' mix submitted with the application, only the option providing 73 (15%) affordable units would be close to the residual land value, accepted by the parties as the minimum BLV. Based on this mix the appeal scheme could not viably support 30% affordable housing.
71. An alternative 'Mix 3' is suggested by the Council, based on the two reserved matters applications submitted for the permitted scheme. This seeks to demonstrate that, even when the appellants inputs are used, the scheme could viably deliver 30% affordable housing. However, as I have noted, the permitted scheme contains markedly more larger dwellings and commensurately fewer small units. As a result Mix 3 would require a further increase in the quantum of built coverage of the site. Such modifications could generate a scheme which, based on the appellants inputs, would viably support 30% affordable housing. However, the suggested change to mix would require alterations to design parameters which would go much further than 'tweaking' the scheme. There is no evidence before me to demonstrate that, in design terms, such a scheme could be satisfactorily accommodated on site.
72. Furthermore, the Proving Plan 2 mix has some correlation with the housing requirement set out in the SHMA. For owner occupation, this is set out in the supporting text for eLP Policy LP1 as 10.3% one bed, 31.5% two bed, 33.3% three bed and 24.8% four or more beds. Mix 3, with no one bed roomed units, 18% two bed roomed units, 41% three bed roomed units and 35% four bed roomed units does not reflect the SHMA profile. The fact that other permitted schemes have differed from the SHMA does not support this case. Furthermore, whilst achieving 30% affordable provision may be a higher priority for the Council than a SHMA compliant mix, in the present case there is no basis for seeking to impose an affordable housing requirement in relation to a housing mix that has not been proposed, and which clearly goes beyond suggested design parameters.
73. To conclude, I have agreed that the requirements of saved Policy HG4 are out of date. However, this remains the statutory development policy against which such proposals should be determined. The implications of the non-compliance of the scheme with these provisions are considered in the planning balance section below.
74. As eLP Policy LP 5 has not been tested at examination it is afforded modest weight. However, the Framework and NPPG allow for viability testing. Based on my assessment of the viability evidence I conclude that the scheme would not be able to viably support any more than 15% affordable housing overall, and therefore that sufficient provision for affordable housing would be made.

## **Other Matters**

### *Housing supply*

75. The adopted LP does not make allowance for meeting housing need beyond 2011 and in this respect is out of date. The parties have agreed that the Council cannot demonstrate a five year supply of housing land when this is assessed using the standard method (SM). The SM gives a requirement of 863 dwellings per annum (dpa) and, with the required 20% buffer, a five year requirement of 5,178 dwellings. On this basis the Council calculates that it has a 4 year supply. The Inspector in the recent Lawford decision<sup>11</sup> found the supply to be 3.7 years. Detailed evidence on this point is not before me. However, with either figure, the shortfall is significant.
76. The Council presented detailed evidence on what are considered to be errors in the 2014 based official population projections, specifically relating to 'unattributable population change' (UPC). An OAN of 550 dpa is being considered as part of the eLP examination. This suggests a current supply of 5.4 years. The interim findings of the eLP examining Inspector indicate that the ultimate housing requirement figure may be less than that generated by the SM. The Framework paragraph 60 does allow for strategic policies to be informed by 'exceptional circumstances' during the examination process. However, the examination has not concluded, and the eLP is some way off adoption.
77. The Framework paragraph 73 sets out that where strategic policies are more than five years old, local housing need should be calculated using the SM. Therefore, whilst I agree that the evidence relating to UPC may be compelling, for the purposes of this appeal the primary consideration is the housing requirement established by the SM.
78. Inspectors have approached the situation in Tendring, and other areas where UPC has been raised as an issue, in different ways. A number of the decisions referred to by the Council pre-date the changes made to the Framework and NPPG clarifying the circumstances for deviating from the SM. I therefore attach limited weight to them.
79. More recently, some Inspectors have supported the Council's position in the present case that, whilst the SM should be used to assess housing land supply, thereby engaging paragraph 11d) of the Framework, the facts around the OAN are a material consideration for the weight to be attached to the extent of the housing shortfall. However, this could temper the emphasis given to the Government priority of significantly boosting the supply of housing, which I do not believe would be the correct approach to take. I will return to this matter in the planning balance section.

### *Traffic congestion*

80. Whilst not a reason for refusing this scheme, strongly felt local submissions were made about the effect of the scheme on congestion on Clacton Road and Long Road, particularly given current traffic volumes en route to Mistley railway station at rush hour. This was in the context of the pressure on Mistley station as it effectively serves three settlements, the limited bus services and the volume of

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<sup>11</sup> APP/P1560/W/18/3201067

additional housing approved in the area recently. The concern is there is likely to be an increasing reliance on private transport, bringing additional congestion.

81. The appellants transport study<sup>12</sup> has assessed the implications for the local road network. It concludes that, with mitigation, there would not be a significant impact on the operation of this network. This includes consideration of key junctions such as the Long Road/New Road/Trinity Road/Clacton Road junction. It does acknowledge that with the development there could be a rise in queuing and delays, particularly at the Cox's Hill mini-roundabout. This is summarised in Table 7.1 which refers to the situation forecast for 2022, including committed development. However, improvements to this junction are also proposed as part of the appeal scheme, with carriageway widening on both the Cox's Hill and Long Road approaches. On this basis the further modelling set out in Table 7.2 indicates that there could be an improvement in the queuing and delay situation. Other effects, including on the rail bridge underpass and level crossing on the A137, were not found to be significant.
82. I understand that works are underway to increase parking capacity at the station, and that there will be an increase in the number of rail services to accommodate the increase in demand.
83. I have noted the change in the character of Dead Lane, and recognise that this route is presently used by cyclists. However, there is no evidence before me that this will lead to safety issues.
84. More generally, the site is within reasonable cycling and walking distance of some local facilities such as schools and the station. The use of sustainable transport means could be encouraged by ensuring that on site provision is well integrated with such local facilities. Overall, I find no reason to reject the professional assessment and conclude that on the balance of evidence the increased post-development traffic would not have an unacceptable impact on highway safety.

#### *Local services*

85. Recognising that significant new development has already been permitted and is underway in the local area, there is concern about the capacity of local services to accommodate further development on this scale. Limited information is before me on the cumulative effects of development in the locality. However, the area is proposed as a 'Smaller Urban Settlement' in the eLP, characterised as having a range of infrastructure and facilities in which it is possible to deliver sustainable housing growth on a large scale. More specifically the UU would provide funding to mitigate the effects of development on the capacity of early years, primary and secondary school provision. Similarly, additional funding would be provided for healthcare provision. Subject to this mitigation, there would not be an unacceptable impact on local infrastructure and services.

#### *European sites*

86. The appeal site is located around 0.8km away from the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site, around 11.5km from the Essex Estuaries Special Area of Conservation (SAC) and around 11.5km from the Colne Estuary SPA and Ramsar site. These European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The

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<sup>12</sup> Journey Transport Planning, July 2017

Regulations require that the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. This requires consideration of whether the proposal would have an effect on the qualifying features of the site, either alone or in combination with other plans and projects. Where the potential for likely significant effects cannot be excluded, an appropriate assessment of whether the plan would affect the integrity of a European site must be undertaken.

87. In this case the appellant's Habitat Regulations Assessment Report<sup>13</sup> (HRA) identifies the habitat types and species for which the European sites are protected. The qualifying features of the Stour and Orwell Estuaries SPA are under the Birds Directive for internationally important populations of birds, internationally important numbers of migratory species and significant waterfowl assemblage. The Ramsar sites qualifying features are invertebrate fauna and nationally scarce plants, overwintering bird assemblages of international importance and bird species/populations of international importance. The SAC includes a number of important habitats: for example, estuaries with unusual marine communities, mudflats and sandflats. The Colne Estuary SPA supports internationally important breeding and overwintering bird populations and assemblages. The Colne Estuary Ramsar site is also important due to the extent and diversity of saltmarsh present.
88. The conservation objectives for the two SPA's are to ensure that the integrity of the site's are maintained and restored as appropriate, and to ensure that the sites contribute to the aims of the Birds Directive. This is achieved by maintaining and restoring the extent and distribution of habitats, including their structure and function, supporting processes on which the habitats rely, as well as the populations of each of the qualifying features. The environmental conditions required to support these objectives include low levels of disturbance for both breeding and over-wintering birds, unpolluted intertidal habitats for bird feeding and the maintenance of the current hydrological system.
89. Given that the Stour and Orwell SPA and Ramsar are the closest to the site, the HRA has assumed that the effect of the development on these sites will also cover any likely adverse effects on the other protected sites. I agree that this is a reasonable approach to take. The proposal would not directly result in the loss of habitats associated with the designated sites. However, given the proximity of the appeal site to the SPA and Ramsar, the risk or possibility of significant effects in terms of hydrological systems and recreation disturbance cannot be ruled out. I am therefore required to undertake an appropriate assessment.
90. A development of this scale could lead to the disturbance of hydrological systems through waste water and flooding, both during construction and subsequently. The surface water drainage system would discharge into a nearby off-site watercourse. This could affect water quality and therefore habitats further downstream, giving the potential for significant adverse effects on hydrological systems.
91. Measures to ensure the quality of drainage water would be unlikely to affect habitats further downstream would need to be included, including trapped road gullies and a catch pit upstream for debris. Whilst the proposal has been assessed as having low flood risk, the connection of the foul drainage system to the public network could increase flood risk. Off-site storage is therefore proposed in two

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<sup>13</sup> D F Clark Bionomique Ltd, 22 March 2018

locations to the west and north of the site. On this basis the drainage design is unlikely to have a significant adverse effect on hydrological systems.

92. The Essex Coastal Recreational Disturbance Avoidance and Mitigation Strategy 2018 (RAMS) identifies that housing and population growth is likely to increase the number of visitors in sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of birds and their habitats, unless adequately managed. The appeal site is located within the likely 'zone of influence' for recreational disturbance within the Habitats Regulations Assessment work undertaken for the eLP. The HRA refers to visitor surveys in 2012 which identified an increase in visitor numbers to the Stour Estuaries, with the key reasons for visiting being walking and dog walking. Restricted access to much of this area means that disturbance is largely limited to the foreshore.
93. Given the potential for further recreational disturbance from the future occupants of what would be a significantly sized development, I cannot conclude that there would be no adverse effects on the integrity of the European sites. Mitigation measures to address the potential for recreational disturbance are proposed. The scheme would include 4.4ha of public open space, approximately 20.5% of the site area. This would comprise public footpaths, cycleways and various green spaces. A suggested condition is that a more detailed on-site Recreational Disturbance Avoidance and Mitigation Strategy would be submitted to and approved by the Council, with details of how each phase of development would deliver this in advance of the first occupation of each phase. This would ensure the provision of alternative on site recreation facilities prior to the occupation of the site. It is distinct from the provision in Schedule 3 of the UU which would secure the transfer of the freehold interest of the open space to the Council, along with future maintenance arrangements.
94. The UU includes provision for £122.30 per net additional dwelling as a contribution towards the RAMS. This is required for the overall 'in combination' mitigation package identified. Offsite mitigation measures will focus on management activities and behavioural change to help to control visitors to protected sites, and in doing so will help to reduce the adverse effects associated with recreational disturbance. The Essex Coastal RAMS Supplementary Planning Document (SPD) will provide a formal county-wide mechanism for securing developer contributions to fund the measures identified in the RAMS. Whilst the SPD has not yet been adopted by the Council, Tendring and other Essex authorities have begun to collect these contributions.
95. Natural England (NE) was consulted at the application stage. Their conclusion was that based on the information provided in support of the application, and with the inclusion of conditions, the proposal would be unlikely to have a significant effect on the Stour and Orwell Estuaries SPA and Ramsar site, the Essex Estuaries SAC or the Colne Estuary SPA and Ramsar site. On this basis NE have no objections. This is based on consideration of on-site mitigation measures, and with a contribution towards the RAMS as the mechanism for mitigating 'in combination' impacts. Based on my assessment set out above, I agree with NE's conclusions.
96. Overall, having considered the suggested mitigation measures and the advice of NE, I am satisfied that these measures could be secured and that they would be effective in addressing the level of harm likely to be caused by the development. On this basis the proposal would be unlikely to have significant effects on designated sites, either alone or in combination with other plans or projects.

### *Planning obligation*

97. The Council has provided a CIL Regulation Compliance Statement which sets out the policy basis for each of the UU covenants, and their compliance with Regulations 122 and 123 of the CIL Regulations. The affordable housing provision would not meet the rate of 30% sought by eLP Policy LP 5, which is now seen as the likely maximum viable level and justifies departure from LP saved Policy HG4. Nonetheless this is subject to viability testing, following which I have found that the requirements of eLP Policy LP 5 would be met.
98. The contribution towards healthcare would allow local services to respond to the demand arising from the development, in accordance with LP Policy QL12 and eLP Policy HP1. Contributions towards early years learning, childcare, primary and secondary education provision are justified by reference to LP Policy COM 26 and eLP Policy PP12. A contribution towards highway improvements is justified by reference to LP Policy TR1 and eLP Policy CP2. The provision of open space and the need to secure its future management is in accordance with LP Policy COM6 and eLP Policy HP5. The financial contribution towards mitigating the effects of the development on nearby SPA/Ramsar/SAC sites is as required by the Regulations.
99. I am satisfied that each of the covenants would be fully supported by policy and would meet the tests for obligations set by Regulation 122(2) and echoed by the Framework, in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind. I am also satisfied with the form and drafting of the Section 106 UU and can therefore take the obligations into account as material planning considerations.

### **Planning Balance**

100. I have found that the proposal would not have an unacceptably harmful effect on the character and appearance of the area. It therefore accords with the most important development plan policies in this regard. I have also found that, having considered the viability evidence, the proposal would make adequate provision for affordable housing. However, this provision would not meet the higher test of saved Policy HG4, which the parties agree is out of date, nor the requirements of eLP Policy LP5 to which I attach modest weight. Nonetheless the scheme falls to be determined in accordance with the development plan, unless material considerations indicate otherwise.
101. As the Council cannot demonstrate a five year supply of housing land the Framework paragraph 11d) requires that, in the circumstances of this case, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this case a social benefit would be the provision of 485 new dwellings, 185 more than the permitted scheme. Even if I were to accept that the facts around OAN should temper the weight attached to the provision of new housing, in the light of Government policy to boost housing supply this would remain a significant benefit. There would also be 73 affordable units, which in the context of continuing unmet need would be a very significant benefit. There would be economic benefits through the 2ha of employment land, and the site would provide a significant level of employment during the construction period. In the longer term, future residents could be expected to be

economically active and to contribute to the support of local businesses and services.

102. The potential ecological enhancement measures proposed, the provision of greater than minimum areas of open space and green infrastructure, and pedestrian facilities, would represent moderate environmental benefits. Given the findings on the main issues in this case, there are no adverse effects that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Therefore, the Framework balance provides an important material consideration that indicates support for a decision other than in accordance with the adopted development plan.

### **Conditions**

103. The suggested schedule of conditions was discussed at the inquiry and a number of amendments made. I am satisfied that the conditions now set out in the schedule annexed to this decision are necessary to make the development acceptable and meet the tests set out in the Framework.

104. The conditions relating to the submission of reserved matters and commencement of development are standard. The identification of the approved plans is necessary to confirm the extent of the development and the location and form of the approved access points. A condition requiring the submission of a Phasing Plan is required to enable the development to be delivered in phases. This is required before development commences to ensure clarity about the extent and quantum of development in each phase.

105. A Construction Method Statement is required to protect the living conditions of the occupiers of nearby residential properties and the surrounding area, and in the interests of highway safety and environmental protection. The Statement is required prior to the commencement of development to ensure that measures are in place to safeguard the amenity of the area prior to any works starting on site.

106. A programme of archaeological work is justified to enable the proper investigation and recording of the site, which is potentially of archaeological and historic interest. The implementation of the agreed programme of works is required prior to the commencement of development to ensure that any archaeological interest is recorded before construction works start.

107. The approval and implementation of a surface water drainage scheme, and the approval and implementation of ongoing maintenance arrangements, are necessary to ensure the satisfactory drainage of the site and to prevent flooding, including onto the highway, which otherwise could lead to highway safety issues. A scheme to minimise the risk of off-site flooding during construction works is required for similar reasons. A foul water strategy is also required to prevent environmental and amenity problems. Failure to provide the information required by these conditions before commencement of development could result in the installation of a system that is not properly maintained and could increase flood risk and pollution from the site.

108. A condition relating to the creation of access points, highway improvements, the provision/improvement of bus stops and a footway/cycleway along Long Road is required to protect highway safety and allow the efficient movement of pedestrians, cyclists, public transport and other vehicles in and around the site. A

condition relating to the provision of a Residential Travel Information Pack is also required to support sustainable travel principles.

109. Whilst landscaping is a reserved matter, conditions are necessary to ensure the earliest practicable implementation of new planting in the interests of mitigating the impact of the development on the character and appearance of the local area.

110. A condition relating to the provision of high speed broadband is necessary to enable opportunities for web-based communication and home working. However, I have adopted the more flexible wording suggested by the appellant in recognition of the fact that technological advances may mean that below ground infrastructure may not be required to support this.

111. A condition requiring an on-site Recreational Disturbance Avoidance and Mitigation Strategy is necessary to meet HRA requirements. In addition, I have included a condition relating to electric vehicle charging points to enhance the sustainability of the development.

112. I have not included the suggested conditions relating to the size and provision of two car parking spaces per dwelling, or the size of garages, as such detailed considerations should be part of the reserved matters application. I have not included a condition relating to the provision and implementation of a Local Recruitment Strategy as I do not consider this to be sufficiently precise or necessary to make the development acceptable in planning terms.

## **Conclusion**

113. For the reasons set out above, and having regard to the submitted UU, I conclude that the appeal should be allowed and outline planning permission granted, subject to conditions.

*AJ Mageean*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Tom Cosgrove QC

Instructed by the Council's Solicitor

He called:

Alison Hutchinson MRTPI  
Richard Pestell MPhil MRTPI  
Jon Etchells MA BPhil CMLI  
Laura Easton MSc CIHCM  
Martin Carpenter BA  
(Hons) MRTPI

Director, Hutchinsons  
Director, Peter Brett Associates LLP  
Director, Jon Etchells Consulting Ltd  
Associate, Three Dragons  
Director, Enplan

### FOR THE APPELLANT:

James Strachan QC

Instructed by Strutt and Parker

He called:

Clare Brockhurst BSc  
(Hons), Dip LA, FLI  
Michael Lowndes  
Anthony Lee BSc (Hons) MSc  
(Econ) MA (TP) PhD MRTPI MRICS  
Andrew Butcher Dip TP  
MRTPI

Founding Partner, Tyler Grange LLP  
Senior Director, Turley  
Senior Director, BNP Paribas Real Estate  
Senior Associate Director, Strutt and Parker

### INTERESTED PERSONS:

Cllr Jamie Cambridge  
Mr Martin Rayner  
Cllr Alan Coley  
Mr John Hall  
Cllr Valery Guglielmi

Mistley Parish Council  
Local resident  
Tendring District Council  
Local resident  
Tendring District Council, Lawford Parish Council

## DOCUMENTS

- 1 Technical consultation on updates to national planning policy and guidance. MHCLG, October 2018.
- 2 Government response to the technical consultation on updates to national planning policy and guidance. MHCLG, February 2019.
- 3 Appellant's opening statement.
- 4 Opening statement on behalf of the local planning authority.
- 5 Comments on Highway Impacts. Written statement of Mr John Hall.
- 6 Statement of affordable housing on approved sites in Manningtree, Lawford and Mistley (updated in appellant's email evidence 1 October 2019)
- 7 Updated Statement of Common Ground relating to Viability.
- 8 Joint Statement on housing density
- 9 Agreed Plans relating to housing density
- 10 Additional Proof of Evidence on Viability on behalf of the Council.
- 11 Letter to PINS from Council including affordable housing information.
- 12 Updated CIL Compliance Statement: Council
- 13 Additional Proof of Evidence on Viability on behalf of the Appellant.
- 14 Appellant updated list of suggested planning conditions
- 15 Dated and signed Planning Obligation by way of Unilateral Undertaking
- 16 Appeal Decision APP/P1560/W/18/3201067
- 17 Appeal Decision APP/A1530/W/18/3207626
- 18 Letter from Examining Inspector for North Essex Authorities Strategic (Section 1) Plan, dated 21 October 2019
- 19 Suggested amendments to Proposed Planning Conditions No 5 and No.20.
- 20 Note to Inquiry from Journey Transport Planning relating to transport matters
- 21 Closing Submissions on behalf of the Council
- 22 Closing Submissions on behalf of the Appellant
- 23 Email response from Council regarding Habitat Regulations and amended/additional conditions
- 24 Council Committee Report relating to Essex Coastal Recreational Avoidance and Mitigation Strategy, 16 July 2019
- 25 Essex Coastal RAMS Strategy 2018-38
- 26 Further suggested amendments to Conditions No 5 and 20, additional suggested conditions relating to Electric Vehicle Charging points and affordable housing.
- 27 Appellants response to HRA matters
- 28 Essex Coast RAMS Draft SPD 2019
- 29 Appeal Decision and draft Planning Conditions for Grange Road, Lawford
- 30 Surface Property (November 2019) Statement on HRA Matters
- 31 Extract from TDC eLP – Policy PPL4 – Biodiversity and Geodiversity

## Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
2. The application for approval of the reserved matters for the development, or any first phase of development approved in relation to Condition 6 (Phasing Plan), shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby approved shall be carried out in accordance with the following approved plans:
  - a) 162173/A/02 dated 16<sup>th</sup> May 2016 – Long Road Preliminary Access Arrangement
  - b) JTP/04814 DR2a dated 17<sup>th</sup> November 2016 – Clacton Road Access Arrangement
  - c) JTP/04814 DR4 dated 7<sup>th</sup> February 2017 – Employment Area Access and Pedler’s Corner Improvements.
4. No development shall be commenced on any phase of development as approved under Condition 6 (Phasing Plan) of this permission until plans and particulars of "the reserved matters" relating to the appearance, landscaping, layout and scale for that phase of development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
5. The reserved matters shall be in general conformity with the following parameter plans:
  - a) OPA/17006-04b – Landscape Parameter Plan
  - b) OPA/17006-06a – Density Parameter Plan
  - c) OPA/17006-07b – Storey Heights Parameter Plan
6. No development shall commence until a Phasing Plan for the application site has been submitted to and approved in writing by the Local Planning Authority. The Plan shall identify the proposed physical extent of each phase of development and approximate quantum of development.
7. No development shall commence on each phase until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority for that particular phase. The statement shall include:
  - a) The proposed hours and days of working;
  - b) Proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic; and
  - c) Details of a wheel washing facility.The development shall be carried out in accordance with the Statement so approved.
8. a) No development or preliminary ground-works for each phase shall commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the Local Planning Authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further

archaeological excavation and/or preservation in situ, if necessary, through re-design of the development, shall be submitted to the Local Planning Authority.

b) No development or preliminary groundwork shall commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy, which has been signed off by the Local Planning Authority.

c) Following completion of the archaeological fieldwork for any phase of development, the applicant will submit to the Local Planning Authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the Local Planning Authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

9. a) No development shall commence on each phase of the development until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall identify, among other matters, how the discharge of any surface water onto the highway will be avoided. The scheme shall be implemented in accordance with the approved details.

b) No development shall commence on each phase of the development until a plan detailing maintenance arrangements, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to, and approved in writing by the Local Planning Authority. The scheme shall be implemented and maintained in accordance with the approved details and the adopting body responsible for maintenance of the surface water drainage system must record yearly logs of maintenance which must be available for inspection by the Local Planning Authority on request.

10. No development shall commence on any phase of the development until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

11. No development shall commence on any phase of development until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

12. No occupation of the development, or specific phase of development, shall take place until the following have been completed, as necessary for each phase, in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority:

a) A priority junction with right turn lane (with two pedestrian refuge islands) in Long Road to provide access to the proposal site, in accordance with drawing 162173/A/02 - Long Road Preliminary Access Arrangement. The priority junction shall have minimum 10.5 metre kerbed radii with dropped kerbs/tactile paving crossing points, a minimum 6.75 metre access road carriageway with two 3

- metre footway/cycleways, pedestrian/cycle refuge island and a minimum 120 x 2.4 x 120 metre clear to ground visibility splay.
- b) A priority junction from Clacton Road to provide access to the site, in accordance with Plan No. JTP/04814 DR2a. The priority junction shall have minimum 10.5 metre kerbed radii with dropped kerbs/tactile paving crossing points, a minimum 6.75 metre access road carriageway with one 2 metre footway and a minimum 120 x 2.4 x 120 metre clear to ground visibility splay.
  - c) Prior to occupation of the employment land and any access derived from Dead Lane, an improved junction shall be provided at Pedler's Corner and improvements to Dead Lane in accordance with Plan No. JTP/04814 DR4.
  - d) Improvements at the A137 Coxs Hill/Long Road/Wignall Street mini roundabout as shown in principle on planning application drawing number JTP/04814 DR3a;
  - e) To current Essex County Council specification, the provision of two new bus stops in Long Road or upgrade of the stops which would best serve the proposal site, details of which shall have been agreed in writing by the Local Planning Authority prior to commencement of the development; and
  - f) A minimum 3 metre-wide footway/cycleway along the proposal site's Long Road frontage.
13. Prior to occupation of any phase of development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport approved by Essex County Council for all new residential dwellings.
14. All planting, seeding or turfing shown on the landscaping details required to be submitted and approved under Condition 4 shall be carried out during the first planting and seeding season (October - March inclusive) following the occupation of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority.
15. Any trees or shrubs which, within a period of 5 years of being planted, die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
16. Prior to the occupation of any dwelling, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy.
17. As part of the Reserved Matters to be submitted in accordance with Condition 4, an on-site Recreational disturbance Avoidance and Mitigation Strategy as outlined in the Habitat Regulations Assessment by DF Clark (dated 22 March 2018) shall be submitted to, and agreed in writing by, the Local Planning Authority. The Strategy shall include:

- a) Details of the measures set out below and as necessary to provide suitable on site mitigation to reduce the frequency of visits to sensitive sites, these being:
  - a. High quality informal semi-natural areas
  - b. Measures to provide suitable routes for joggers, cyclists, walkers and dog walkers
  - c. Dedicated dog-off lead areas
  - d. Signage and leaflets to households to promote these areas for recreation
  - e. Dog waste bins
  - f. Dedicated areas within which children can play.
- b) Details of how each phase or phases of the development will deliver the Recreational disturbance Avoidance and Mitigation Strategy to mitigate the impact of the development in advance of first occupation of each Phase or Phases.

Such measures as approved by the Local Planning Authority shall be carried out in accordance with the Recreational disturbance Avoidance and Mitigation Strategy.

18. Each dwelling that includes a dedicated parking space shall be provided with a vehicle charging point, in accordance with Building Regulations. The charging point shall be provided prior to the occupation of each such dwelling.