



Appeal Decision

Inquiry Held 28 January 2020 to 30 January 2020 and closed in writing
28 February 2020

Unaccompanied site visits made on 27 & 30 January 2020

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2020

Appeal Ref: APP/P1560/W/19/3238064

Land South of Harwich 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 Hopkins Homes Ltd, Jackie Dorrington-Ward, Karen Rose and Peter Rose against the decision of Tendring District Council.
 - The application ref 18/01994/OUT, dated 27 November 2018, was refused by notice dated 23 July 2019.
 - The development proposed is outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links. All matters other than access reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for outline planning application for the erection of up to 100 dwellings with associated vehicular access, landscaping, open space, car parking and pedestrian links. All matters other than access reserved at Land South of Harwich Road, Mistley in accordance with the terms of the application ref 18/01994/OUT, dated 27 November 2018, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The application was submitted in outline with approval being sought for detailed matters relating to the access only. I have dealt with the appeal on that basis, treating the plans as illustrative only except where they relate to the access.
3. Prior to the Inquiry it became apparent that the planning application had not been correctly advertised as affecting designated heritage assets. It was therefore correctly advertised on 30 January 2020 allowing 21 days for any representations to be made. Subsequently, the Inquiry was therefore closed in writing on 28 February 2020 and I am satisfied that no party has been prejudiced by my approach.
4. A duly executed legal agreement under S106 of the Town and Country Planning Act 1990, was submitted during the Inquiry. This provides for 30% of the proposed housing as affordable housing, education contributions, health services contributions, on-site open space, off-site play spaces contribution, Essex Coastal Recreational disturbance and Avoidance and Mitigations Strategy

(RAMS) contribution. The Council is satisfied these obligations are lawful and therefore withdrew its reasons for refusal which related to all such matters. I will return to the planning obligation later in my decision.

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 currently being examined. Section 2 of the ELP containing policies specific to Tendring, including the allocation of sites is planned to proceed following Section 1 being found sound by the examining Inspector. Having regard to paragraph 48 of the National Planning Policy Framework (the Framework) I deal with the weight to be attached to the relevant ELP policies in my reasoning below.

Main Issues

6. The main issues are:

- the effect of the proposal on plan-led provision of new housing in Tendring District;
- the effect of the proposal on the character and appearance of the area including the landscape, the Suffolk Coast Heaths Area of Outstanding Natural Beauty and bearing in mind it would be within the settings of the St Mary's Church scheduled monument and the grade II listed ruins of the Church of St Mary;
- whether any harm and any conflict with the development plan would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Reasons

Plan-led provision of new housing

7. Saved Policy QL1 of the Tendring District Local Plan (2007) (LP) categorises Lawford, Manningtree and Mistley together as a smaller town or village where limited development consistent with local community needs will be permitted. It states this will be concentrated within settlement development boundaries and makes clear that outside of those boundaries only development which is consistent with countryside policies of the LP will be permitted.
8. The appeal site is outside but adjoins the settlement development boundary of Mistley. The proposal is clearly not consistent with countryside policies as referred to in saved Policy QL1 of the LP and is therefore in conflict with it. Furthermore, the appeal site is not proposed for allocation in the ELP, would be outside of the revised settlement boundary and would not accord with similar countryside protection policies proposed in the ELP. Thus, the proposal would also conflict with ELP Policies SPL1 and SPL2.
9. It is common ground the Council can only demonstrate between 3.5 to 4.04 years deliverable housing land supply when using the standard method to calculate local housing need. This leaves a minimum shortfall of some 0.96 years. The method of calculating the five-year supply using the standard method is not disputed nor are the resulting figures.

10. However, the Council has produced evidence in this appeal and numerous others to suggest that unattributable population change (UPC) in the population figures underpinning the standard method calculation lead to an overestimate of housing required in Tendring. Indeed, the interim findings of the ELP Examining Inspector suggest the ELP housing requirement figure to be incorporated into the ELP may well be lower than that generated using the standard method. However, whilst the Council may have made significant progress towards bringing forward a new local plan the ELP examination is some way from concluding and therefore any new strategic policies which could set out a local housing need informed by exceptional circumstances are some way from adoption.
11. Nevertheless, consistent with the Inspector in December 2019¹ who took account of the numerous other appeal decisions², I find the evidence on UPC to be substantive. It indicates potential for housing need in Tendring to be over-estimated when applying the standard method. The Council suggest it may mean that they do not have a shortfall in their five-year supply if an alternative housing requirement figure was used.
12. However, these matters were not put before me in detail, it is the standard method that must inform the calculation of the five-year supply in this appeal and the shortfall of 0.96 years is common ground. Even so, in my view, the effect of UPC cannot be ignored and it is a material consideration which carries moderate weight against the scheme in the overall planning balance.
13. Paragraph 59 of the Framework states that sufficient land should come forward where it is needed and refers to land being brought forward in plans and I have considered the relevant judgement³ on this matter. However, there is no substantive evidence to suggest that allowing the appeal would lead to too many homes in Tendring overall.
14. Furthermore, even if a five-year supply could be demonstrated based on an alternative calculation to that informed by the standard method, this would not mean there would be no need for more houses and it is not clear when new allocations will be brought forward through the ELP. Moreover, even though there have been a significant number of developments recently approved in and around Lawford, Manningtree and Mistley there is no substantive evidence to suggest those homes are not needed there.
15. I have also fully considered the concerns of local residents with regard to infrastructure capacity and traffic and I do not doubt the challenges faced particularly in peak periods. However, the ELP proposes to designate Lawford, Manningtree and Mistley as a smaller urban settlement which it says has a range of infrastructure and facilities. The Council have not raised any concerns with regard to infrastructure capacity or traffic subject to the proposed planning obligations being secured. There is no substantive evidence before me to suggest the additional demands generated by the proposal together with the proposed planning obligations would generate harm with regard to infrastructure capacity or traffic.

¹ Appeal Reference APP/P1560/W/19/3220201

² Appeal References APP/P1560/W/18/3201067, APP/P1560/W/18/3194826, APP/P1560/W/18/3196412, APP/P1560/W/17/3185776, APP/P1560/W/16/3164169 & APP/P1560/W/17/3183678

³ Gladman Development Ltd v Daventry DC [2016] EWCA Civ 1146

16. Overall, it has not been demonstrated that the scheme is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development or that the ELP is at a sufficiently advanced stage for it to be undermined.
17. Thus, overall, I find up to 100 additional new homes in this location would not undermine the plan-led delivery of housing in Tendring. However, for the reasons given there would still be development plan conflicts with saved Policy QL1 of the LP and ELP Policies SPL1 and SP2.
18. Saved Policy QL1 of the LP establishes a settlement hierarchy and directs development towards the built-up parts of larger settlements which have the least constraints and the best access to services and employment whilst protecting the countryside from development that is not in specific accordance with countryside policies. It is therefore broadly consistent with the overarching objectives necessary for achieving sustainable development set out in paragraphs 7-10 of the Framework, although paragraphs 77-79 of the Framework are more permissive of rural housing.
19. Thus, even though the LP period has expired saved Policy QL1 of the LP still carries weight, but that weight is reduced because the LP development requirements, settlement boundaries and allocations are somewhat out of date. Consequently, I attach moderate weight to the conflict with saved Policy QL1 of the LP. Furthermore, due to delays in examining Section 2 of the ELP and unresolved objections to sections 1 and 2 of the ELP, I afford only limited weight to the conflict with ELP Policies SPL1 and SPL2. I will return to these conflicts in my overall planning balance.

Character and appearance

20. The appeal site is a flat, open arable field bound by hedgerows to the south and east adjoining a development of some 135 homes currently under construction⁴ (River Reach) through which the proposal would be accessed. Part of the Essex Way public footpath runs just inside and parallel with the southern site boundary hedging. Another public footpath runs through the site roughly centrally, north to south connecting the Essex Way to River Reach.
21. To the east is the St Mary's Church scheduled monument, the grade II listed ruins of the Church of St Mary and dwellings extending along the Heath Road frontage facing the appeal site and forming part of Mistley Heath to the south and south east. The current boundary of the Suffolk Coast Heaths Area of Outstanding Natural Beauty (AONB) is some distance away. However, Natural England have approved an Order for the variation of the boundary to include land immediately to the east of the appeal site on the opposite side of Heath Road.
22. The relationship with the footpath network and heritage assets give the appeal site a medium to high landscape value. Furthermore, although contained by tall hedgerows to the south and east and woodland to the west, views into the appeal site from dwellings on Rigby Avenue, River Reach (when complete) and Heath Road even with the proposed landscaping on River Reach would change

⁴ Council References 15/01520/OUT & 17/00943/DETAIL

- from an open field to residential development, thus it has a medium to high sensitivity to change.
23. Nevertheless, a significant residential development would extend the built-up area of Mistley towards the Essex Way with the illustrative details showing the proposed dwellings within 20 metres of the footpath at the closest point. Although, this would be sufficient for those dwellings not to dominate this part of the Essex Way, their presence and proximity would domesticate its character and give the feeling of passing through a settlement rather than the surrounding countryside. This would be harmful and any proposed hard surfacing of this part of the Essex Way within the appeal site would only exacerbate this harm.
24. I note River Reach will, once complete, incorporate its own landscape buffering on its southern edge as well as allotments adjacent to Heath Road. Therefore, when completed River Reach will provide a soft edge to the settlement. I do not therefore accept that the appeal scheme would offer any mitigating benefit in this regard.
25. Instead, the appeal proposal would significantly reduce the gap between the built-up part of Mistley and Mistley Heath. This would be particularly noticeable when traveling between them on Heath Road. It would also be apparent from the dwellings on Heath Road opposite the eastern boundary of the appeal site. Even though the proposed substantial land buffering would be enough to prevent coalescence, with the proposed development in place Mistley and Mistley Heath would appear noticeably much closer together, reducing the countryside break between them and having a harmful urbanising effect on the settings of both settlements.
26. The proposed development would be within the Bromley Heaths Landscape Character Area (LCA)⁵ with relevant characteristic qualities including exposed and windswept plateau, large scale productive arable fields divided by low, gappy hedges where hedgerow oaks stand out as silhouettes against the skyline within a scattered pattern of farms and settlements.
27. However, the LCA covers a vast area consequently any effects arising from the proposal on the LCA as a whole would be negligible given the relationship of the appeal site with the existing built-up area of Mistley. Nonetheless, the loss of the field, gappy hedgerow infilled by development and the reduced gap between Mistley and Mistley Heath would all be noticeable in the immediate vicinity of the appeal site and would consequently erode the relevant characteristic qualities of the LCA causing harm to the LCA overall.
28. Turning my attention to the settings of the St Mary's Church scheduled monument and the grade II listed ruins of the Church of St Mary. In my view the significance of the scheduled monument and listed building ruins are derived from their history as the remains of a medieval church and church yard in a countryside setting. Whilst built form would be brought much closer to the heritage assets, the illustrative details show the proposed dwellings set back from Heath Road behind a substantial area of landscaping. Furthermore, River Reach will once complete be part of their settings and the tall hedging already along the appeal site boundary provides significant screening.

⁵ As defined by the Tendring District Landscape Character Assessment (2001).

29. Even so, by virtue of the encroachment of built form I find the settings and significance of the scheduled monument and listed building would be harmed. The harm to both heritage assets would be less than substantial and towards the lower end of the spectrum. This harm must be weighed against any public benefits. I will return to this in my overall planning balance.
30. With regard to the effect on the AONB. Based on the current boundary the effect of the proposed development would not be noticeable when viewed alongside the existing built-up area of Mistley and River Reach. Even if I were to apply the proposed extended AONB boundary, the proposed development would still be viewed alongside the existing built form and River Reach with any immediate effect softened and partly screened by tall and thick boundary hedging to be retained as well as the proposed landscape buffering. Thus, taking into account both short and long distance views in and out of the current AONB or that proposed, the proposal would not harm the AONB or its setting.
31. In conclusion on this main issue, the proposal would harm the character and appearance of the area and the landscape through domesticating the public footpath network, urbanising the settings of Mistley and Mistley Heath and eroding the characteristic qualities of the LCA. Furthermore, it would also harm the settings and significance of the St Mary's Church scheduled monument and the grade II listed ruins of the Church of St Mary. It would not harm the AONB either in its current or extended form.
32. Saved Policy EN1 of the LP states the quality of the District's landscape and its distinctive local character will be protected and where possible enhanced. Furthermore, it states any development which would significantly harm landscape character or quality will not be permitted. For the reasons given, I find the combined harm to the landscape character and quality I have identified would be significant and the scheme would therefore conflict with saved Policy EN1 of the LP.
33. Furthermore, for the same reasons the proposal would conflict with ELP Policy SPL3 which requires all new development to make a positive contribution to the quality of the local environment and protect or enhance local character. It would also conflict with ELP Policy PPL3 which states the Council will protect the rural landscape and refuse planning permission for any proposed development which would cause overriding harm to its character or appearance.
34. Paragraph 170 of the Framework says planning decisions should contribute to and enhance the natural and local environment by among other things recognising the intrinsic beauty and character of the countryside. Recognition inevitably involves an assessment of qualities and it is those qualities which must be protected if intrinsic beauty and character is to be recognised. This is what saved Policy EN1 of the LP requires and as such it is broadly consistent with the Framework.
35. However, saved Policy EN1 of LP is applied against the background of an outdated development strategy and housing requirement and therefore I only afford moderate weight to the conflict with it. Furthermore, given unresolved objections and uncertainty about the progress with the ELP, I only afford limited weight to the conflict with ELP Policies SPL3 and PPL3.

Sustainable development, development plan conflict and planning balance

36. It is common ground that the tilted balance is engaged due to the absence of a 5-year supply. The developer is currently building out the adjacent site and I am satisfied there would be a reasonable likelihood that the proposed dwellings would be swiftly delivered, significantly boosting the supply of housing in the area in line with paragraph 59 of the Framework. These homes would significantly contribute to addressing the agreed shortfall and would therefore be a significant social benefit.
37. Although not a matter in dispute 30% affordable housing provision would be less than the 40% required by saved Policy HG4 of the LP. However, ELP Policy LP5 requires 30% and is informed by a relatively up to date detailed economic viability assessment⁶. Furthermore, in December 2019⁷ another Inspector noted the need for affordable housing in the District and Mistley had increased in recent times, was acute and that only around 6-7% of housing approved in Lawford, Manningtree and Mistley over the past five years were affordable units.
38. Moreover, the Council's housing strategy⁸ says that the number of affordable homes delivered in the District between 2014 and 2019 has been exceedingly low at a total of 84 rented affordable units over that period. Whilst I note that over the same period the Council has accepted a number of gifted units, this does not negate the local implications of the low levels of affordable housing recently secured. Based on the evidence before me, I find the delivery of 30% of the proposed housing as affordable units would be a significant social benefit.
39. There would be economic benefits associated with construction as well as new customers and employees for local services and businesses. There would also be environmental benefits associated with ecological enhancements and the provision of open space over and above the minimum requirements.
40. However, meeting the minimum infrastructure requirements, the fact that the site is in a sustainable location and the proposed dwellings would be well designed are expectations of the planning system and I find these matters, in this case, carry neutral weight in the planning balance.
41. Turning my attention to the harm. I have found the evidence on UPC indicates an overestimate of housing need in Tendring when applying the standard method for assessing housing land supply, this carries moderate weight against the proposal. Furthermore, I have found harm to the character and appearance of the area and the landscape which when combined is significant. Moreover, I have also found harm to the settings and significance of the St Mary's Church scheduled monument and the grade II listed ruins of the Church of St Mary which in both cases must carry great weight.
42. Therefore, in conclusion when assessed against the Framework taken as a whole, there would be a significant social benefit of housing, a significant social benefit associated with affordable housing, economic benefits associated with construction and expenditure and environmental benefits associated with open

⁶ Tendring Economic Viability Study, Three Dragons and Troy Planning + Design, June 2017

⁷ Appeal Decision APP/P1560/W/19/3220201

⁸ Tendring District Council Draft Housing Strategy 2019-2024 at Appendix 11 to the Proof of Evidence of G Armstrong

space provision in excess of the minimum requirements and biodiversity enhancements. Overall and on balance I find these benefits, all of which are public are substantial and are not significantly and demonstrably outweighed by the great weight attached to the harm to the settings of the heritage assets, the significant environmental harm to the character and appearance of the area and the landscape and the moderate weight attached to the implications of the UPC evidence.

43. The proposal would therefore amount to sustainable development when considered against the Framework taken as a whole. In this case, this is a material consideration which outweighs the moderate weight attached to the conflicts with saved Policies QL1 and EN1 of the LP and the limited weight afforded to the conflicts with ELP Policies SPL1, SPL2, SPL3 and PPL3. Planning permission should therefore be granted.

Other Matters

European designated sites

44. The appeal site is some 0.7 kilometres from the Stour and Orwell Estuaries Special Protection Area (SPA) and the Stour and Orwell Estuaries Ramsar site which supports spring and overwintering birds, saltmarsh vegetation and invertebrates. It is also some 12.3 kilometres from the Essex Estuaries Special Area of Conservation (SAC) which supports seven types of estuarine/coastal habitat and the Colne Estuary (Mid-Essex Coast Phase 2) SPA which supports overwintering birds and little terns as a breeding species and the Colne Estuary (Mid-Essex Coast Phase 2) Ramsar site which supports spring and overwintering birds, saltmarsh vegetation and invertebrates.
45. The proposal would not result in the loss of any habitats associated with the European designated sites. However, given their proximity and characteristics, recreational impacts arising from the proposal cannot be ruled out at the screening stage. I am therefore required to undertake an appropriate assessment.
46. The habitats regulation assessment undertaken for the ELP shows the appeal site is within the zones of influence for the identified European designated sites. The Essex RAMS identifies population and housing growth is likely to increase visitors to the relevant European designated sites increasing disturbance associated with walking and dog walking. With the provision of up to 100 new homes within the zone of influence for the European designated sites I cannot conclude there would be no significant effect on their integrity.
47. However, it is proposed to provide on-site public open space of some 2.8 hectares, a circular walking route and connections to existing off-site public footpaths all subject to a long-term management plan. The planning obligation also includes a contribution of £122.30 per dwelling to the Essex RAMS which will fund a package of mainly behavioural management and change measures to deal with in combination effects.
48. Natural England are satisfied the proposed mitigation package should rule out any adverse effect on the relevant European designated sites. I agree and therefore find, with the proposed mitigation the proposal would be unlikely to have significant effects on the integrity of European designated sites either

alone or in combination with other plans or projects. The presumption in favour of sustainable development can therefore be applied.

Planning obligations

49. I am satisfied that the provision of 30% of the proposed development as affordable housing, education contributions, health services contributions, on-site open space, off-site play spaces contribution, Essex RAMS contributions are directly, fairly and reasonably related and that they are necessary to make the proposed development acceptable in planning terms. As such they accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). I have therefore had regard to these planning obligations in my determination of the appeal.

Other considerations

50. In addition, concern has also been expressed with regard to the effect of the proposal on wildlife and biodiversity and archaeology. However, conditions have been imposed which require an ecology mitigation and enhancement plan, and a programme of archaeological works to be agreed. Subject to the imposition of such conditions I am satisfied there would be no harm with regard to these matters.

Conditions

51. A draft list of recommended conditions was provided before the Inquiry and revised following discussion at the Inquiry having regard to the tests set out in the Framework and the guidance contained in the Planning Practice Guidance. Even though the application is in outline, the appellant has agreed to the pre-commencement conditions and their wording.
52. In addition to the standard timescale conditions and the requirement for reserved matters to be agreed, conditions specifying the relevant drawings and that the maximum number of dwellings is 100 are necessary to provide certainty. For the same reasons and to safeguard nearby residents living conditions and the character and appearance of the area a condition requiring that the reserved matters include details of levels, lighting, boundary treatments, cycle parking and refuse and recycling facilities is also necessary.
53. A condition requiring a Landscape and Open Space Management Plan to be agreed and implemented is necessary in order to safeguard the character and appearance of the area and as part of the mitigation package for the European designated sites. Due to the relationship with residential areas a pre-commencement condition is necessary and justified to ensure the proposal is constructed in accordance with a construction management plan to avoid unreasonable noise and disturbance.
54. Given the reasonable likelihood of archaeological remains, I also agree a pre-commencement condition is necessary to ensure a programme of archaeological investigation and subsequent work is agreed to ensure it is appropriately investigated and appropriate action is taken to safeguard archaeological remains if any such remains are found.
55. Furthermore, pre-commencement conditions requiring the detailed design and a strategy for the ongoing maintenance of the surface water drainage management systems for the construction period and operation of the

development to be agreed and implemented are necessary in the interests of proper site drainage and flood avoidance. These are necessarily pre-commencement as any site clearance work will affect the surface water drainage. For the same reasons a pre-commencement condition is necessary and justified which requires a foul water management strategy to be agreed and adhered to.

56. A condition requiring details to be agreed and implemented relating to the public footpath crossing the site and connections to public footpaths outside the site and a condition requiring planting and seeding to take place during the planting season and any lost planting to be replaced are necessary to safeguard the character and appearance of the area.
57. Conditions requiring the habitat regulations assessment mitigation measures to be implemented and retained and an ecological mitigation and enhancement scheme to be agreed and implemented are necessary in the interests of safeguarding ecology. The ecological enhancement scheme is affected by site clearance therefore a pre-commencement condition is justified.
58. In the interests of highway safety and sustainable transport conditions requiring garaging to be capable of being used for parking, the provision of sustainable travel information packs and the provision of electric vehicle charging points are also necessary.
59. Finally, a condition which requires fibre optic broadband connections or an equivalent superfast wireless service to be agreed and implemented is necessary to ensure occupants have access to a good standard of communications infrastructure.

Conclusion

60. For the reasons given, on balance, having had regard to all other matters raised I conclude that the appeal should be allowed.

L Fleming

INSPECTOR

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) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.
- 3) No development shall be commenced until plans and particulars of "the reserved matters" referred to in the above conditions relating to the appearance, landscaping, layout and scale 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.
- 4) The reserved matters shall be in general conformity with the following indicative drawings:
 - i. Indicative Layout – November 2018
 - ii. 001 - Development Framework Plan
 - iii. 002 – Constraints Plan
 - iv. 001 – Site Location Plan
 - v. 6556/ASP3 rev I – Landscape Strategy Plan
 - vi. V411 Figure 4 of Transport Assessment – Site Access (1 of 3)
 - vii. V411 Figure 5 of Transport Assessment – Site Access (2 of 3)
 - viii. V411 Figure 6 of Transport Assessment – Site Access (3 of 3).
- 5) The maximum number of dwellings to be contained in the development shall be 100.
- 6) Prior to occupation a Landscape and Open Space Management Plan including a lighting strategy, management responsibilities and maintenance schedules for all landscaped areas, shall be submitted to and approved in writing by the Local Planning Authority. The Landscape and Open Space Management Plan so approved shall be carried out in accordance with the details and timescales to be contained in that document.
- 7) No development shall commence 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:

- i. the parking of vehicles of site operatives and visitors;
- ii. the loading and unloading of plant and materials;
- iii. storage of plant and materials used in constructing the development;
- iv. wheel and under-body washing facilities; and
- v. hours of construction.

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

- 8) No development shall take place on the site until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- i. the programme, including phasing, and methodology of site investigation and recording;
 - ii. the programme for post investigation assessment;
 - iii. the provision to be made for analysis of the site investigation and recording;
 - iv. the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v. the provision to be made for archive deposition of the analysis and records of site investigation; and
 - vi. the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 9) No development shall commence until a detailed surface water drainage scheme for the site, including construction works, 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 scheme shall be implemented in accordance with the approved details.
- 10) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works associated with that dwelling have been carried out in accordance with the foul water strategy so approved.
- 11) No development shall commence 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. If the adopting body responsible for maintenance of the surface water drainage system is a private management company (i.e. not Anglian Water), it must record yearly logs of maintenance which must be available for inspection by the Local Planning Authority on request.

12) Prior to occupation of any dwellings the following details shall be submitted to and approved in writing by the Local Planning Authority:

- i. improvements to the Public Right of Way crossing the site for the connection to the Essex Way to the south of the site and the residential development to the north and to the Essex Way; and
- ii. an implementation programme for the submitted details.

The development shall be carried out in accordance with the approved details and implementation programme.

13) All planting, seeding or turfing shown on the landscaping details required to be submitted and approved as a reserved matter under conditions 2 and 3 above for any dwelling shall be carried out during the planting and seeding season (October - March inclusive) either immediately before or following the occupation of that dwelling to which it relates. 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.

14) Prior to commencement of the development, a scheme for the enhancement of the site for biodiversity purposes, in accordance with paragraphs 7.12 – 7.14 of the submitted Phase 2 Ecology Assessment dated 27 November 2018, to include timescales for implementation and future management and the mitigation measures detailed in Paragraphs 7.10 -7.11 of the submitted Phase 2 Ecology Assessment dated 27 November 2018, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and retained at all times.

15) Prior to the occupation of any dwellings hereby approved the proposed habitat mitigation measures set down within the shadow Habitats Regulations Assessment (HRA) produced by Hopkins Ecology dated 27 November 2018, shall be fully implemented as part of the

on-site landscape works.

- 16) The reserved matters details submitted pursuant to conditions 2 and 3 above shall, where relevant, include the following:
- i. ground levels and floor levels;
 - ii. external lighting including streetlights which direct lighting downwards;
 - iii. means of enclosure;
 - iv. parking for bicycles for each dwelling; and
 - v. storage facilities for refuse and recycling containers including collection arrangements.
- 17) Any single garages shall have a minimum internal measurement of 7m x 3m. Any double garages shall have a minimum internal measurement of 7m x 6m and any tandem garages shall have minimum internal measurements of 12m x 3m.
- 18) Prior to occupation of the proposed 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, to include six one-day travel vouchers for each dwelling for use with the relevant local public transport operator.
- 19) The hereby permitted development shall not be occupied until a fibre optic broadband connection has been installed at the site, in accordance with details that shall be submitted and approved, in writing, by the Local Planning Authority. If the applicant is unable to achieve this standard of connection and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.
- 20) Each dwelling with on-plot garage parking shall be provided with an electric vehicle charging point. The charging point shall be provided prior to occupation of each such dwelling.

END OF SCHEDULE

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

J Cannon Barrister instructed by the Solicitor to Tendring District Council

Who Called:

J Etchells (Jon Etchells Consulting Limited)

M Carpenter (Enplan)

FOR THE APPELLANT

R Ground QC instructed by G Armstrong

Who Called:

B Wright (Aspect Landscape Planning Ltd)

G Armstrong (Armstrong Rigg Planning)

INTERESTED PERSONS:

A Coley (District Councillor)

J Cambridge (Mistley Parish Council)

M Rayner (Resident)

K Wynn (Bradfield Parish Council)

DOCUMENTS RECEIVED AT THE INQUIRY

1. Gladman Development Ltd v Daventry DC [2016] EWCA Civ 1146
2. Strategic Housing Land Availability Assessment, Tendring District Council, July 2017
3. Guidelines for Landscape and Visual Impact Assessment Third (GLVIA) Landscape Institute and Institute of Environmental Management and Assessment [Extract Pages 92-93, Paragraph 5.56]
4. Opening Statement on Behalf of the Local Planning Authority, Josef Canon of Counsel
5. Marked up indicative layout showing location of stakes placed on site showing extent of built form
6. Storey Height Planning Layout (Drawing NO 003 Rev E)
7. Itinerary for unaccompanied site visit
8. Closing Statement (Council)
9. Closing Statement (Appellant)
10. Final agreed list of suggested planning conditions
11. Tendring Economic Viability Study, Three Dragons and Troy Planning + Design, June 2017