



Appeal Decision

Hearing Held on 3 October 2019

Site visit made on 3 October 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/P1560/W/19/3231554

Land to the south of Weeley Road and to the east of Birch Avenue and Pine Close, Great Bentley, Essex

- 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 G & M Lord and Son against the decision of Tendring District Council.
 - The application Ref 17/01881/OUT, dated 31 October 2017, was refused by notice dated 21 December 2018.
 - The development proposed is an outline planning application for up to 136 dwellings, informal recreation space, a local area of play and associated development.
-

Decision

1. The appeal is allowed and outline planning permission is granted, with all matters reserved for future consideration, for up to 136 dwellings, informal recreation space, a local area of play and associated development at Land to the south of Weeley Road and to the east of Birch Avenue and Pine Close, Great Bentley, Essex in accordance with the terms of the application, Ref 17/01881/OUT, dated 31 October 2017, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The proposal is in outline, with all matters (access, appearance, landscaping, layout and scale) reserved for future considerations.
3. Within the first Reason for Refusal (RfR1), specified in the Council's Decision Notice (DN), reference is made to a development of '*up to 110 dwellings*'. It is common ground between the appellant and Council that this is an error and there is no dispute between the main parties that the proposal seeks outline planning permission for up to 136 dwellings, as set out in the title bar description above.
4. The planning application form specified the site address as "*Land to the south of Weeley Road and to the east of Birch Avenue and Pine Close.*" However, the DN and the appeal form give the site address as "*Land south of Weeley Road, Great Bentley, Essex.*" In the interests of accuracy, I will combine the site addresses use to read "*Land to the south of Weeley Road and to the east of Birch Avenue and Pine Close, Great Bentley, Essex.*"

5. An undated Planning Obligation¹ (S106) was submitted and discussed at the Hearing. The S106 remains substantively as discussed during the Hearing and a final signed and executed agreement was submitted after the Hearing. I have taken this document into account.
6. Prior to the Hearing, the appellant sought to submit a revised land use parameter plan (Drawing Number: 9600 Rev A), an updated site location plan (Drawing Number: 9000 Rev A) and an indicative sketch layout (Drawing Number: SK-01) showing a cycleway/footpath access between the site and Birch Avenue. Two of these plans, the updated site location plan and the revised land use parameter plan, were submitted with a view to replacing those previously submitted with the planning application (i.e. location plan (Drawing Number 17018_01 Rev C) and the indicative layout plan (Drawing Number 17018_03 Rev B)).
7. The revised land use parameter plan (Drawing Number: 9600 Rev A) identifies the areas proposed for housing, open space, pedestrian and cycle and vehicular access and is not dissimilar to the indicative layout plan (Drawing Number 17018_03 Rev B). The revised land use parameters plan provides more certainty with regard to the access arrangements and location of the proposed housing and open space elements of the proposal.
8. The revisions to the site location plan (Drawing Number: 9000 Rev A), rectifies a discrepancy on the site location plan originally submitted and establishes a site area of 7.65 hectares (ha), as opposed to the 7.7 ha originally indicated in the planning submission.
9. The indicative sketch layout (Drawing Number SK-01) is illustrative only, but it shows how the proposed pedestrian /cycle link between the development site and Birch Avenue could be delivered in an appropriate way.
10. The appellant and the Council have discussed the submission of these plans and this is clear in the submitted Statement of Common Ground (SoCG), where the appellant and Council agreed to ask that the appeal be considered against Drawing Numbers: 9000 Rev A (revised site location plan); and 9600 Rev A (revised land use parameter plan), with Drawing Number SK.01 being included as an indicative plan showing the cycleway/footpath access between the site and Birch Avenue.
11. The appellant consulted on these plans on 20 September 2019, explaining the revisions to the site location plan and their intention behind introducing the revised land use parameter plan. The consultation also provided copies of the plans, advising that should the recipients have any issues they should contact the appellant's planning agent, the Council or the Planning Inspectorate. There was a period of 2 weeks between the appellant's consultation and the start of the Hearing for recipients of that letter to comment/make further representations.
12. The revision to the site location plan brings clarity to the site area, whilst the provision of the revised land use parameters plan provides certainty with regard to the access arrangements and location of the proposed housing and open space elements of the proposal. Additionally, the indicative sketch layout, whilst not a formal plan under consideration, illustrates how the proposed

¹ Legal Agreements submitted pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

pedestrian/cycle link between the development site and Birch Avenue could be delivered. In the light of the above, and applying the Wheatcroft Principles², the Revised Plans do not alter the nature of this outline application. Furthermore, as adequate consultation has taken place with suitable time provided for representations to be made, the interests of interested parties have not been prejudiced. As such I accepted the revised plans and this decision is based on them.

13. The appellant's Preliminary Ecological Appraisal (October 2017) (PEA) states it was valid for a 12 month period from the date of the PEA. This was raised with the appellant during the Hearing. Written confirmation has been provided from the company that undertook the PEA, via the appellant's agent and copied to the Council, which confirms *"...given the continued use of the site in question as arable farmland and the lack of obvious changes to boundary habitats, it would be appropriate to extend the period during which the findings of our Preliminary Ecological Appraisal report can be relied upon. Therefore, our report may be considered valid until October 2020..."*
14. Whilst this results in the period in which the PEA remains valid being extended, the content and recommendations of the PEA remain unchanged. No objections or concerns have been raised by the Council with regard to this matter and I do not consider the interests of any interested parties have been prejudiced as a result of this. The circumstances of the site remain predominantly the same as when the PEA was first undertaken and the content and recommendations within the PEA remain unchanged. Therefore, I have taken the PEA into consideration of this appeal.

Main Issues

15. The Council's second Reason for Refusal (RfR2) relates to the fact that a S106, which secured a range of matters specified in their RfR2, had not been provided with the planning application. As set out above, a signed and dated S106 has been provided and the Council verbally confirmed withdrawal of RfR2 during the Hearing. As such RfR2 has fallen away.
16. Bearing the above in mind, the main issues are:
 - Whether the site represents a suitable location for the proposed development, having particular regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; and
 - Whether the Council can identify a 5-year housing land supply (5YHLS), bearing in mind the policies in the existing and emerging Local Plan and whether the proposal would prejudice the outcome of the plan-making process.

Reasons

Site and Context

17. The site lies within the open countryside, as defined by the Tendering District Local Plan 2007 (TDLP) and consists of some 7.65 ha of agricultural land, which at the time of my accompanied site visit was laid to crop. The site is bounded

² Wheatcroft v SSE & Harborough DC [1982] JPL 37.

on the northern side, in part, by the Weeley Road with the remainder of this boundary being formed by the rear boundaries of the residential curtilages of the dwellings that front the Weeley Road on its southern side. The western boundary is formed by residential properties in Pine Close and Birch Avenue and this boundary forms the settlement boundary of Great Bentley as defined by the TDLP, whilst to the south the site is bounded by a railway line, beyond which is agricultural land and the open countryside. Agricultural land and open countryside also bound the site to the east.

18. The prevailing pattern of the properties that front the Weeley Road is one of a linear form of development that is rural in nature, albeit the rear of the properties in Pine Close and Birch Avenue have a more urban and built up feel, being quite prominent in their visibility from the appeal site and countryside beyond. Despite this, the nature and the predominant character of the area is rural in its nature.

Policy Context

19. The Framework outlines a presumption in favour of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. The overarching objectives are economic, social and environmental.
20. Applications for housing should be considered in the context of the presumption in favour of sustainable development, as set out in Paragraph 11 of the Framework. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
21. The current Development Plan, for the purpose of this appeal, consists of the saved policies of the TDLP. The TDLP planned for the period up to 2011, but its saved policies are still material considerations. Paragraph 213 of the Framework advises that existing policies should not be considered out of date simply because they were adopted prior to the revised Framework. Due weight should be given to them, according to their degree of consistency with the Framework. The most relevant TDLP policies for this appeal are Policies HG1 (Housing Provision), HG4 (Affordable Housing in New Developments), HG7 (Residential Density), QL1 (Spatial Strategy) and EN1 (Landscape Character).
22. Policy HG1 of the TDLP sets out the net dwelling stock increase for the period 1 April 1996 to 31 March 2011. It is time expired and based on out-of-date housing supply data. As such, it is out of date in the terms of the Framework. Policy HG4 of the TDLP seeks affordable housing provision in new development, whilst Policy HG7 relates to residential densities and, whilst there are some exceptions, normally seeks a minimum density of 30 dwellings per ha. Whilst beyond the planned period of the TDLP, Policies HG4 and HG7 are still relevant to this appeal and are considered to be broadly consistent with the Framework in terms of affordable housing provision and density of development. Consequently, they are consistent with the Government's objective of significantly boosting the supply of homes.
23. Policy QL1 sets out a hierarchy of development locations, with new development to be concentrated on the larger urban areas where accessibility

to employment, shops, means of transport and other facilities is maximised. In the smaller towns and villages, it indicates limited development consistent with local community needs will be permitted. The settlement boundaries have been drawn tightly around villages, including Great Bentley, to protect their countryside setting. However, settlement boundaries defined by this Policy are based, at least in part, on out-of-date housing requirements.

24. Policy EN1 of the TDLP seeks to protect the quality of the District's landscape and its distinctive local character, including the setting and character of settlements. However, the Framework does not indicate support for the highly restrictive nature of this Policy, which directs that "*...development which would significantly harm landscape character or quality will not be permitted*". Overall the Framework has a more subtle approach to the protection of the countryside, but generally reflects the principle requiring recognition of its character and natural beauty.
25. Reference has been made to Policy RA4 (Housing development within defined villages) of the TDLP. As the development proposed is not within the settlement boundary of Great Bentley this policy is not directly relevant to the proposal before me, although it provides useful insight to the status of Great Bentley as a '*Principal Defined Village*' which the pre-amble to the Policy indicates consists of several hundred houses, with a range of facilities/services including: a primary school; good journey to work public/community transport to a town; convenience goods shop; community leisure and social facilities; and a variety of employment opportunities.
26. RfR1 refers to the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (eLP) and specifically Policies SPL1 (Managing Growth), SPL2 (Settlement Development Boundaries) and PPL3 (The Rural Landscape). The examination of the eLP in regard to its Section 1 is currently ongoing, whilst the examination of its Section 2, which contains Policies SPL1, SPL2 and PPL3 is yet to commence. There is no conclusion as to the soundness of Section 1 of the eLP and with Section 2 remaining outstanding it is clear that it has not reached an advanced stage.

Suitability of location

27. The site lies directly adjacent to the settlement boundary, as defined in the Council's TDLP and the eLP. The TDLP defines Great Bentley as a '*Principal Defined Village*', with a range of facilities and services, as outlined above.
28. In terms of connectivity, the submitted Land Use Parameter Plan (Drawing Number: 9600 Rev A) shows a pedestrian/cycleway link (The Link) that leads from the site through to Birch Avenue. The Link lies within the red line of the site plan (Drawing Number: 9000 Rev A) and indicative plan, Drawing Number SK.01, provides an illustration as to how it could be provided. Therefore, The Link would be likely to improve the connectivity of the site with the wider village, bringing many of the facilities and services within a reasonable walking distance.
29. As such I consider The Link would reduce the reliance of occupiers of the site on motor vehicles and provide them with a realistic alternative, being walking or cycling, into the village to access its facilities and services. On this basis, the development site would have an acceptable level of accessibility to Great Bentley, which provides a number of day-to-day services including access to

- reasonable connections to the public transport network and would be sustainably located in this regard.
30. I have noted the concerns of interested parties with regard to the distance to the village's amenities and in regard to transport links, including the claim that there is no convenient regular bus route. However, with the provision of The Link referred to above, the site would be within a reasonable walking distance of the facilities and services within the village. In identifying the village as a '*Principal Defined Village*', the Council acknowledges it has good public/community transport provision. Furthermore, within the SoCG, the Council and appellant agree that Great Bentley has regular bus services, connecting the village with other settlements, and a rail station that provides hourly connections to Clacton-on-Sea and Colchester, and London Liverpool Street via Colchester. I also note that the Council is seeking to redefine Great Bentley in the eLP as a Rural Service Centre.
31. In the light of the above, I am not persuaded by the evidence before me that the village has poor public transportation links.
32. Nonetheless, TDLP Policy QL1 sets out the Council's Borough-wide Spatial Strategy. The Policy establishes a clear expectation that most new residential development will be within the larger urban areas of Clacton and Harwich, with limited development consistent with local community needs being permitted in smaller towns and villages. This Policy lists a number of villages, including Great Bentley, stating development will be concentrated within the settlement development boundaries of those villages. It also states that outside the locations detailed in the Policy, and other specific land allocations in the TDLP, only development which is consistent with countryside policies will be permitted.
33. The appeal site is located adjacent to the edge of the defined settlement boundary of Great Bentley. As such it is not within the Urban Area or any defined settlement in the terms of Policy QL1, nor is it located within any site identified for development in the TDLP. Consequently, while I acknowledge that other policies of the TDLP make provision for some development, including residential, beyond these settlement boundaries in certain circumstances, the appeal development would be at odds with the Council's Borough-wide Spatial Strategy in conflict with TDLP Policy QL1.

Housing land supply and the plan-making process

34. Despite the Council's original position in their RfR1, the Council and appellant agree, in the SoCG, a 5YHLS cannot currently be demonstrated. The current Housing Land Supply (HLS) position, as agreed between the Council and appellant, is that the Council can only demonstrate a 4 years HLS of deliverable sites, as demonstrated in their Strategic Housing Land Availability Assessment, dated July 2019. A HLS of 4 years represents a significant shortfall and deficiency in the 5YHLS figure and I attach significant weight to the present shortfall in HLS.
35. In terms of whether the proposal would prejudice the outcome of the plan-making process, Paragraph 15 of the Framework indicates that the planning system should be genuinely plan-led and advises "*Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and*

environmental priorities; and a platform for local people to shape their surroundings.” In addition to this, Paragraph 48 of the Framework advises Local Planning Authorities may give weight to relevant policies in emerging plans according to their stage of preparation and the extent to which there are unresolved objections to relevant policies. However, no conclusion as to the soundness of Section 1 of the eLP has been reached and the examination into Section 2 of the eLP, which contains the eLP policies most relevant to this appeal, has not yet commenced.

36. As such, the development, whilst being a major development in planning terms, is not so substantial, nor would its cumulative effect be so significant, that the development would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.
37. Whilst the appeal development would be at odds with the Council's Borough-wide Spatial Strategy in conflict with TDLP Policy QL1, I afford this Policy only limited weight. Additionally, for the reasons outlined above, TDLP Policy HG1 is also afforded limited weight, whilst Policy EN1 is afforded moderate weight and Policies HG4 and HG7 are afforded significant weight.

Other Matters

Heritage

38. The majority of the Great Bentley Conservation Area (CA) encompasses the immense village green and the built form that surrounds this village asset. Only a small portion, on the north western corner of the appeal site adjoins the CA and no listed buildings are located within the immediate vicinity of the site, with the closest listed buildings, being: Eden Farmhouse (Grade II listed) laying some distance to the east; St Mary's Farmhouse (Grade II listed) laying some distance to the south; and Goodwyns Monsey (Grade II listed) laying some distance to the west.
39. There would be no visual relationship between the development and the above mentioned listed buildings. Whilst the CA adjoins the north western corner of the appeal site, any impact is localised and negligible. The Council's delegated report stated *"...given the size of the site the development could be developed in such a way that would not have any adverse impact on the setting of the Conservation Area."* Bearing the above in mind, I consider that any impact arising from the development on these heritage assets would be neutral, thus preserving them and their settings.
40. I note the concerns of interested parties in regard to heritage impacts, including concerns in regard to the absence of an archaeological assessment/historic impact assessment. However, neither the County Council nor Council has identified the site as within an area of archaeological interest or importance or raised concerns in regard to the lack of such assessments. Indeed, the Council has not raised either matter as a ground of refusal. From the evidence before me, I have no reason to disagree with the Council's position in this regard.

Best and Most Versatile Agricultural Land

41. Concern has been raised by interested parties in regard to the loss of Best and Most Versatile agricultural Land (BMVL), despite, the Council and appellant

agreeing in the SoCG "...that the loss of agricultural land is not an issue in the light of the scale of the proposal."

42. Policy EN4 of the TDLP states "*Development will not be permitted on the best and most versatile land (namely land classified as grades 1, 2 or 3a as defined by the ALC) [Agricultural Land Classification] unless special justification can be shown*" and indicates where such development is "...unavoidable, areas of poorer quality agricultural land should be used in preference to that of higher quality agricultural land..." Indeed, the pre-ambble to policy PPL3 in the eLP states "*In order to promote sustainable development, in considering where to select sites for new development in this Local Plan, the Council has taken particular care to assess the value of the landscape and, where practical, allocate sites with the lowest sensitivity, thereby helping to protect valued landscapes and the best and most versatile agricultural land.*" I consider the objectives of Policy EN4 of the TDLP and the preamble to Policy PPL3 in the eLP to be broadly consistent with paragraph 170 of the Framework.
43. The SoCG (Appendix 5) contains a desk based Agricultural Land Classification (ALC) report. This identifies the site as Grade 3a BMVL. No evidence to the contrary has been drawn to my attention. The ALC report notes that, with the exception of the site, land in the immediate vicinity of Great Bentley is entirely dominated Grade 2 BMVL. As such limited opportunity exists within the vicinity of Great Bentley for development. A significant amount of the new housing is to be provided in the future and it seems likely to me that this would involve the loss of some BMVL. The loss of Grade 3a BMVL would be preferable to the loss of better quality, more highly-graded agricultural land. As such, I consider that the loss of BMVL at this site would not be significant or unacceptable, especially bearing in mind the modest scale of the loss at some 7.65ha and the fact that the land in question is at the lower end of the quality range for BMVL.
44. Whilst the loss of BMVL would be contrary to the objectives of Policy EN4 of the TDLP, I consider that the scale of loss would be insufficient to adversely affect the development and diversification of agricultural and other land based rural businesses. Accordingly, in this regard I consider that there would be no significant conflict with the Framework's policies for supporting a prosperous rural economy, most particularly paragraph 170b). I therefore consider very modest weight should be attached to the loss of BMVL in this instance.

Habitats

45. There is no dispute between the parties in relation to this matter. However, I must consider this appeal under Part 6 of the Conservation of Habitats and Species Regulations 2017.
46. The appeal scheme proposes up to 136 dwellings on a site within an identified Zone of Influence (ZoI) of a number of European / internationally designated sites. These relate to the Essex Coast Natura 2000 Designations and include Hamford Water Special Area of Conservation (SAC)/Special Protection Area (SPA)/Ramsar site, the Colne Estuary SPA/Ramsar, Stour and Orwell estuaries SPA/Ramsar, Blackwater Estuary SPA/Ramsar, Dengie SPA/Ramsar and the Essex Estuaries SAC.
47. The Colne Estuary Ramsar includes an intertidal zone of mudflat communities and is of international importance for wintering Brent Geese and Black-tailed Godwit, as well as being of national importance for breeding little terns and five

- other species of wintering waders and wildfowl. Its habitats are various and include mudflats, saltmarsh, grazing marsh, reedbeds, sand and shingle spits, and unused gravel pits. This Ramsar site supports an outstanding assemblage of invertebrates and plants, several of which are nationally scarce.
48. The Dengie Estuary Ramsar is a remote area of tidal mudflats and saltmarsh between the Blackwater and Crouch Estuaries. The saltmarsh is the largest continuous example of its type in Essex and includes cockleshell spits and beaches. The saltmarsh also supports an outstanding assemblage of rare coastal flora. The site supports internationally and nationally important populations of wintering wildfowl and waders and in the summer the range of breeding coastal birds includes rare species.
49. The Hamford Water Ramsar is an estuarine basin with an extensive network of tidal creeks, scattered islands, substantial intertidal sandflats, mudflats supporting seagrass beds and associated saltmarsh. Several rare or notable plants and a well-developed flora characteristic of the lime-rich sand are supported on the dune-topped shingle spits. The site is important for nationally and internationally important numbers of wintering and nesting waterbirds, and serves as a winter refuge for migratory waterbirds displaced by severe weather.
50. The Stour and Orwell Estuary Ramsar is an estuary comprising extensive mudflats, low cliffs, saltmarsh, and areas of vegetated shingle on the lower river reaches. The site supports internationally and nationally important numbers of numerous species of wintering wildfowl and waders. Several nationally scarce plants and invertebrates occur.
51. The qualifying feature of Hamford Water SAC is Fisher's Estuarine Moth. The Essex Estuaries SAC is important for its subtidal sandbanks, estuaries, Mediterranean and thermoAtlantic halophilous scrubs, intertidal mudflats and sandflats, Atlantic salt meadows, cord grass swards, glasswort and other annuals colonising mud and sand and Mediterranean saltmarsh scrub.
52. The SPAs listed above are designated due to the fact that they support: Nationally important breeding populations of birds; Overwintering populations of birds; and Nationally important migratory species. It is recognised as wetland of international importance that regularly supports waterfowl and waders, especially migratory waterfowl in the winter; and supports numerous other nationally important winter populations of birds.
53. Up to 136 dwellings is likely to result in approximately 327 new people based on an average of 2.4 people per household. The Council advise that the shortest distance from the application site to the coast would be approximately 4km. Visitors would need to access the sites to have an effect and given the amount of public amenity space within Great Bentley, an area of some 17.18ha, as defined by the Council's Formal Open Space Audit (March 2008), it is unlikely that new residents would visit the sites in significant numbers on a regular basis. This audit indicates that Great Bentley has a surplus of adequacy of formal open space of some 11.76ha. Bearing these factors in mind, it is therefore unlikely that habitats would be damaged or degraded by the new residents. Furthermore, the key habitats for the qualifying species include estuarine habitats, which are generally inaccessible for walkers.

54. On this basis, the development would not be likely to have a significant effect on the protected sites. However, taking a precautionary stance, in the absence of avoidance or mitigation measures, there is some potential for the development proposals to contribute towards a significant effect on the above mentioned Estuary SPA/Ramsar sites, via potential disturbance effects, and Essex Estuaries SAC, via physical damage and degradation, when considered in combination with other plans and projects, and therefore an appropriate assessment is required.
55. The proposed development would deliver informal recreational opportunities for new residents in the form of some public amenity space provision on site. Future residents would also be able to access a significant amount of open/public amenity space within Great Bentley itself, which is a short walk from the development site and provides ample space for recreation and dog walking.
56. Access to the informal recreation opportunities, mentioned above, would also be improved as a result of The Link proposed between the site and Birch Avenue. The Link would enhance access to the open/public amenity space within Great Bentley, as well as improving connectivity with Public Right of Way (PRoW) 165_12, which is located on the southern side of the site and accessed via Pine Close and a pedestrian rail crossing point. This PRoW leads into other PRoW and the open countryside. In addition to the above, the development also proposes to provide a pedestrian/cycle link through the site and over land east of the site, which is within the control of the appellant, to a point which lines up with PRoW number 165_11, which is located on the north side of Wheeley Road, further east of the site.
57. As such, there would be open/public amenity space provided on site and within close proximity to it within Great Bentley. Improved pedestrian links to PRoW 165_12, located south of the site and accessed via Pine Close, and other PRoW and the open countryside beyond, would result. Improved links to PRoW 165_11 east of the site would also assist in increase connectivity with the wider countryside in the immediate vicinity of the site. These provide appropriate alternatives to visiting the SPAs, Ramsars, and SAC, as referred to above, and provide ample alternative options within the immediate vicinity of the site for residents of both the development and Great Bentley.
58. Natural England were consulted by the Council and, whilst advising they had no comment to make on the proposed development, they indicated that "*...the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes.*" Natural England were also specifically consulted in regard to this appeal. In their response, dated 31 March 2020, they drew attention to their letter to the Council of 16 August 2018 related to developments that fall within the ZoI for the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy, which related to on and off site mitigation measures, including the provision of 'off-site' financial contribution towards measures along the coast, to mitigate residual impacts.
59. The draft Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2019 (RAMS SPD) sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. They include a range of habitat-based measures such as wardens, access management, monitoring and communication.

60. Natural England confirmed that provided relevant applications, which fall within this ZoI, are considered against the emerging strategic solution and mitigation package they would be satisfied provided appropriate mitigation has been secured.
61. A signed S106 has been submitted and it secures the payment of the RAMS SPD contribution. The contribution is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, and accords with Section 56 of the Town and Country Planning Act 1990 (as amended) and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
62. I note the comments in interested party representations that Great Bentley does not need more open space. However, it is a requirement of saved policy COM6 of the TDLP that residential development on a site of 1.5 ha and above provide at least 10% of the gross site area as public open space. The proposed open space meets this requirement and is secured by the S106 submitted.
63. In the light of Natural England's advice, the above mentioned comments and the fact that 'off-site' financial contribution towards measures along the coast, to mitigate residual impacts of the development, have been secured, which is consistent with the strategic approach adopted towards residential development proposals to date, I am satisfied that the proposed development would not adversely affect the protected sites. As such the presumption in favour of sustainable development remains.

On-site biodiversity

64. The PEA, as extended in validity until October 2020, found no habitats of significant ecological value either on or near the site and did not consider that there would be any significant impacts upon such habitats. It considered the proposed development had no potential to impact on notable habitats or sites beyond the sites boundaries. Furthermore, the PEA found the site would not support or be considered to be suitable for protected species, such as dormice, water vole or great crested newt.
65. In addition, it is common ground that Essex Wildlife Trust raised no objections to the proposal, subject to the implementation of avoidance and mitigation measures, as detailed in the PEA.
66. Having reviewed all the evidence regarding the on-site effects, the development of the housing on this site would be compatible with habitat protection, subject to the imposition of appropriately worded conditions securing the mitigation measures as identified within the PEA. The reserved matters and approved detailed schemes would be essential to ensuring local biodiversity is protected and enhanced. These conclusions must be read alongside the all-important conclusion on the European nature conservation designated sites.
67. Overall in terms of ecological mitigation, the mitigation measures set out in the PEA are minimal and the S106 secures the contribution required by virtue of the RAMS SPD towards mitigating the impact of the development on the Essex Coast Natura 2000 designations. These mitigation measures amount to the

minimum necessary and are only required to make the development acceptable in this regard. As such I afford them limited weight.

Other considerations

68. A signed and dated S106 was submitted following the close of the Hearing. In the event that planning permission were to be granted and implemented the S106 would secure the provision of on-site affordable housing at a rate of 30%, public open space that includes a locally equipped area of play and provisions related to the future management and maintenance of the open space, education and healthcare provisions and ecological mitigation. The Council, has also set out the relevant planning policy support/justification related to these obligations within the S106 secured.
69. I have considered the S106 in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended), Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the Policies set out in the S106 submissions. Overall, I am satisfied that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.
70. Further concerns expressed include the development's effect on highway safety, vehicle movements and congestion; pressures caused by other development permitted in the recent past (despite Great Bentley not being allocated for such significant growth); pressure from developers seeking new development sites in the locality; pressure on local infrastructure and services, including health and education; a loss of social cohesion; impact on health; noise and disturbance; and loss of outlook, privacy and amenity, including loss of amenity through headlight glare when motor vehicles access and egress from the site.
71. These matters are largely identified and considered within the Council officer's report on the development and when it submitted its Hearing Statement of Case. The Council did not conclude that they would amount to reasons to justify withholding planning permission. Subject to the identified obligations of the S106 and the imposition of planning conditions, nothing I read, saw or heard during the appeal process prompts me to disagree with the Council's conclusions in these respects.
72. My attention has been drawn to a number of other appeal decisions. However, the circumstances and planning considerations related to those appeals differ to varying degrees from the development currently before me. Three of the appeals referenced relate to a point in time when it was accepted that the Council could demonstrate a 5YHLS, whilst another of the appeals referenced found significant harm to the green gap between built edges of villages. A further appeal was dismissed on a number of grounds, which are either not relevant to the appeal before me or have been addressed within the appeal submission itself. I do not consider the appeals drawn to my attention to be directly comparable with the appeal currently before me and irrespective of this I am required to consider the development before me on its own individual merits and therefore reach my own conclusions.

Planning Balance

73. In undertaking the planning balance, I have considered the weight to be given to the relevant development plan policies and made an assessment of whether the appeal proposal would amount to sustainable development in the terms of the Framework. In doing so I have had regard to, among other things, the absence of a Framework compliant supply of housing land and the contents of the Framework as a whole.
74. Policy HG1 of the TDLP identifies the area's housing requirement, whilst Policy QL1 is the Council's Borough-wide spatial strategy, including in respect to residential development. The TDLP planned for the period up to 2011 and both policies are based on out-of-date housing supply data. As such, they are afforded limited weight.
75. In terms of the eLP, Policies SPL1 and SPL2 sets out the Council's spatial strategy. However, as stated above, the examination of this document in regard to Section 1 is currently ongoing, whilst the examination into Section 2, which contains these Policies, is yet to commence. With no conclusion as to the soundness of Section 1 and Section 2 of the eLP remaining outstanding it is clear that the eLP has not reached an advanced stage and as such, I afford the eLP policies listed above limited weight.
76. Policy EN1 of the TDLP, seeks to protect the quality of the District's landscape and its distinctive local character, including the setting and character of settlements. However, it is highly restrictive in nature and whilst Policy EN1 is reflective of the broad objectives of the Framework, by recognising the intrinsic character and beauty of the countryside, it does not accord with it overall. As such, I afford it moderate weight.
77. Policy PPL3 of the eLP is similar to Policy EN1 of the TDLP, in that it relates to the protection of the rural landscape. However, due to the stage the eLP has reached, as set out above, I afford this Policy limited weight. Irrespective of the status of Policy EN1 of the TDLP and PPL3 of the eLP, little evidence has been presented to me that describes how the Council consider the development would adversely impact the landscape character of the surrounding area, other than the development being located outside of the settlement boundary. As such, I am not persuaded that the development amounts to development that would adversely impact the landscape character of the area contrary to policy EN1 of the TDLP or PPL3 of the eLP.
78. In terms of Policies HG4 and HG7 of the TDLP, these Policies are broadly consistent with the Framework in regard to affordable housing provision and density of development. Consequently, they are consistent with the Government's objective of significantly boosting the supply of homes and as such they are afforded substantial weight.
79. In terms of the economic and social dimensions of sustainable development, I have no good reason to believe that the appeal proposal would not be deliverable and increase the supply and choice of housing, in an area where there is not a Framework compliant supply of housing land. This includes a provision of up to 136 additional dwellings in a location, which is sustainably located to services and facilities and would provide new residents with a choice of modes of travel. The dwellings would go some way to meeting the Council's current under supply of housing land. Furthermore, the development would

- provide 30% affordable homes, as agreed between the Council and appellant as a matter not in dispute in the SoCG and incorporated within the completed S106. The provision of 136 additional dwellings, which includes 30% affordable homes, would be a substantial benefit arising from the development.
80. The development would also contribute towards economic growth during the construction phase in terms of employment and an increase in local spending, albeit the benefits arising from the construction related employment and increase in local spending would be modest and short lived and thus a matter of limited weight. In the longer term, the additional population would increase the potential for spending, for instance in local shops, and help support the sustainability of the local services and is thus a matter of moderate weight. Social benefits would also arise from the provision of informal public open space within the development for local residents, which would be available for the residents of the development, as well as the wider community as a side effect of its provision.
81. In terms of environmental benefits, the PEA made various recommendations regarding the provision of bat roosts, additional survey work and restrictions in terms of when tree and scrub clearance work should take place. The appellant, through the completed S106 confirmed it would make 'off-site' financial contribution towards measures along the coast, to mitigate residual impacts of the development, in accordance with the strategic approach set out in the RAMS SPD. Notwithstanding these recommendations, development should in any event contribute to and enhance, the natural environment in order to accord with the Framework (paragraph 170). Whilst recommendations would provide some ecological enhancements, these are limited and they are a requirement for development to be considered acceptable and there is nothing before me to suggest that biodiversity gain would occur to any significant degree and as such I give these matters limited weight.
82. The development conflicts with the Council's spatial strategy regarding the location of new housing. However, the shortfall in the 5YHLS is significant. When considered in terms of the size of the development, providing up to 136 market and affordable homes, relative to the modest harm (bearing in mind that the development strategy is out of date), the collective harm, including the loss of BMVL, does not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
83. In summary, the appeal scheme would conflict with the Council's Spatial Strategy and be contrary to Policy QL1 of the TDLP. However, in the current circumstances these important considerations, along with the other factors identified that weigh against the appeal scheme, do not significantly and demonstrably outweigh the matters that are in favour of the proposals, particularly the delivery of housing. The appeal accords with Policies HG4 and HG7 of the TDLP and represent sustainable development in the terms of the Framework.

Conditions

84. I have considered the conditions put forward by the Council against the requirements of the PPG and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve their preciseness, clarity, enforceability and ensure consistency with the Framework and PPG.

85. I have attached the standard reserved matters and time limit conditions, and a plans condition as this provides certainty. I have also added a condition specifying details to be submitted pursuant to Condition 1 in terms of access in the interests of highway and pedestrian safety. This condition also requires the details of appearance to address incorporating bat roost features into the fabric of the dwellings, in accordance with the recommendations set out in Paragraph 6.8 of the appellant's PEA, as it is reasonable and in the interests of ecology to do so.
86. Additionally, conditions ensuring materials for surface treatment to vehicular accesses within 6 metres of the highway boundary and the size of individual parking spaces would be appropriate in the interests of highway safety. In the interests of sustainability and highways safety a condition ensuring new driveways, parking areas and hard surfaced areas drain within the curtilage of the dwelling to which they relate would also be appropriate. Additionally, in the interests of ensuring adequate and well managed parking provision, together with promoting sustainable forms of travel, a condition requiring details of a travel information pack for future occupiers is also appropriate.
87. For reasons of sustainability, improved connectivity and ensuring access to the wider public open space there is a need to secure The Link between the site and Birch Avenue, along the lines detailed on the indicative sketch layout (Drawing Number SK-01). As such I shall impose a condition requiring the details of The Link to be submitted to, and approved in writing by the Council prior to the commencement of development on site. Due to the importance of this improved connectivity between the site and the village, this condition will also require The Link to be provided prior to any of the dwellings on site being occupied. Similarly, full details of the pedestrian/cycle link between the development site and PRow 165_11, as shown in principle on Drawing Number 9600 Rev A are also required to improve connectivity to the wider open countryside and in the interests of protecting biodiversity. I consider it reasonable to impose such conditions in this instance.
88. A condition requiring an assessment to be carried out to identify any risks posed by potential land contamination affecting the site and, if required, adequate remediation would be necessary to safeguard the health and well-being of future occupiers. Conditions to secure foul and surface water drainage and the management and maintenance of the drainage system would be necessary in the interests of flood prevention, to provide appropriate/adequate facilities and to protect the environment.
89. A condition that will help to ensure that the process of the construction of this scheme will have minimal impact on the site and its surrounding area has also been imposed in the interests of amenity. Additionally, due to the location of the site to the adjoining railway line, I have included a condition requiring a noise survey to be undertaken, identifying any appropriate mitigation, in the interests of the amenities of occupiers of the development adjacent to the railway line.
90. Conditions regarding on-site ecology are required. These will ensure that further bat surveys are undertaken, in accordance with the recommendations set out within the applicant's PEA, and that no clearance of trees, scrub or shrubs takes place during the bird nesting season (between March and

August), unless a survey has been first undertaken that demonstrates there are no nesting birds on the area within the site to be cleared.

91. Finally, the Council has sought a condition regarding landscaping, but landscaping is a reserved matter and as such it is not appropriate to deal with it at this outline stage in the planning process. The imposition of such a condition is not necessary or reasonable and would fail at least two of the test set out in the PPG.

Conclusion

92. The policies which are most important for determining the appeal are out-of-date in terms of the Framework. The adverse impacts of allowing the appeal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. The appeal is therefore allowed subject to the conditions in the attached schedule.

Christopher Butler

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Stitch	Barton Willmore
James Bonner	Barton Willmore
Johnathan Tomlinson	Heyford Developments Ltd
Roger Lord	On behalf of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Gary Guiver	Planning Manager
Ray Deans	Principle Planner

INTERESTED PERSONS:

Linda McWilliams	Ward Councillor
Colin Styant	Local Resident
David Evans	Local Resident
Richard Everett	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1) Updated draft of proposed planning conditions, sent by the appellant's agent to the Council on 02 October 2019; and
- 2) An undated Planning Obligation document, submitted pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1) A completed Planning Obligation document, dated 3 October 2019, submitted pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended);
- 2) Revised list of Proposed Planning Conditions that reflect amendments and additional conditions discussed during the conditions section of the Hearing, together with confirmation from the appellant that they agree to the use of pre-commencement conditions;
- 3) Copy of Option agreements for the purchase of 74 Birch Avenue to demonstrate the deliverability of the proposed pedestrian/cycle link; and
- 4) Confirmation from Essex Ecology Services Limited that their Preliminary Ecological Appraisal can be relied upon until October 2020.

Annex 1 – Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and the development to which this permission relates must be begun no later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The proposed development shall be carried out in accordance with the following approved plans: 9000 Rev A (Site Location Plan) and 9600 Rev A (Parameter Plan - Land Use) but only in respect of those matters not reserved for later approval.
- 4) Details of the reserved matters, submitted pursuant to Condition 1 above, shall include:

Full details of access including the following measures:

- a) The provision of a right turn in Weeley Road;
- b) The provision of a 2 metre wide footway along the Weeley Road frontage of the site between the proposed access road and the western boundary of the site;
- c) The provision of a 2 metre wide walkable grass verge to be dedicated as highway land along the Weeley Road frontage of the site between the proposed access road and the eastern boundary of the site;
- d) Improvements to the junction of Heckfords Road and the A133, to include appropriate lining and signage, two number traffic islands and high level beacons;
- e) The provision of a 0.5 metre wide overhang strip adjacent to the carriageway.

Full details of appearance, including the following measures:

- i) The bat roost features to be incorporated into the fabric of the dwellings, hereby permitted, in accordance with the recommendation made at Paragraph 6.8 of the applicant’s Preliminary Ecological Assessment (October 2017).
- 5) No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - a) The parking of vehicles of site operatives and visitors;
 - b) Loading and unloading of plant and materials;
 - c) Storage of plant and materials used in constructing the development; and

- d) Wheel and under body washing facilities.
- 6) No development shall commence 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 approved pursuant to this condition. The foul water strategy shall thereafter be maintained in accordance with the approved details.
- 7) No works shall take place 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 scheme shall include but not be limited to:
- a) Limiting discharge rates to the 1 in 1 greenfield rate calculated from the area draining to the surface water drainage network for all events up and including the 1 in 100 year rate plus 40% allowance for climate change. The run-off rate should be no higher than 1l/s;
 - b) Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event. Any surface water drainage system should have a suitable half drain time;
 - c) Final modelling and calculations for all areas of the drainage system;
 - d) Further details in regard to the outfall from the site showing how surface water will be conveyed to the ditch proposed to discharge into;
 - e) The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
 - f) Detailed engineering drawings of each component of the drainage scheme;
 - g) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features; and
 - h) A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented in accordance with the approved details and programme for delivery and thereafter retained.

- 8) No works shall take place until a scheme to minimise the risk of off-site flooding and the prevention of pollution, caused by surface water run-off and groundwater during construction works, have been submitted to, and approved in writing by, the Local Planning Authority. The scheme approved pursuant to this condition shall be implemented in accordance with the approved details prior to works commencing on site and shall be maintained throughout the construction works.
- 9) No works shall take place until a Maintenance 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. Should any part be maintainable by a maintenance company, details of long term

funding arrangements should be provided. The applicant or any successor in title shall maintain yearly logs of maintenance which shall be carried out in accordance with the approved Maintenance Plan. These yearly logs of maintenance shall be made available for inspection upon request by the Local Planning Authority.

10) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the Local Planning Authority (LPA). If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the LPA. The site shall be remediated in accordance with the measures and timescale approved and a verification report confirming the site has been remediated in accordance with the approved details shall be submitted to and approved in writing by the LPA. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the LPA. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the LPA within 21 days of the report being completed and shall be approved in writing by the LPA.

11) No development shall commence until a noise survey (undertaken by a competent person) for the proposed residential properties that are adjacent to the railway has been submitted to, and approved in writing by, the Local Planning Authority. The noise survey shall meet the requirements of BS 8233:2014, include periods for daytime 0700-2300 hours and night-time 2300-0700 hours, and propose appropriate mitigation measures should such measures be required. The development shall be carried out in accordance with the approved noise survey and any agreed mitigation measures shall be installed prior to first occupation and thereafter retained in perpetuity.

12) No development shall commence until details of the:

- a) Proposed pedestrian/cycle link between the site and Birch Avenue; and
- b) A suitable pedestrian/cycle connection between the site and the existing Public Footpath Number 11 to the north east

have be submitted to and agreed in writing by the Local Planning Authority. The proposed pedestrian/cycle link between the site and Birch Avenue shall be within the curtilage of 74 Birch Avenue and shall be 3 metres in width. The approved details of a) and b), as set out above, shall be completed in accordance with the approved details prior to occupation of any dwelling hereby permitted. Thereafter the pedestrian/cycle link between the site and Birch Avenue and the pedestrian/cycle connection between the site and the existing Public Footpath Number 11 to the north east shall be retained as such in perpetuity.

- 13) No development shall commence until updated surveys for bats, which shall be undertaken in accordance with the recommendations set out in the Preliminary Ecological Appraisal (October 2017), have been submitted to and approved in writing by the Local Planning Authority. The updated surveys, submitted pursuant to this condition shall include any mitigation measures required and a programme for their implementation. The development shall then be carried out in accordance with the approved updated surveys for bats and the mitigation measures shall thereafter be retained in perpetuity.
- 14) No dwelling shall be occupied until details of the Travel Information Pack, which accords with Section 6 of the submitted Transport Assessment dated October 2017, has been submitted to and approved in writing by the Local Planning Authority. The approved details of the Travel Information Pack shall then be implemented in accordance with the approved details and provided to each dwelling on the site prior to its first occupation.
- 15) All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.
- 16) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 17) Any vehicular hardstanding shall have minimum dimensions of 2.9 metres x 5.5 metres for each individual parking space, retained in perpetuity.
- 18) No clearance of trees and scrub or shrubs shall be carried out during the bird nesting season (i.e. March to August inclusive), unless supported by a survey, undertaken by a suitably qualified ecologist, who has examined the site within a 7 day period prior to commencement of works on the site. If any nesting birds are found on site and/or are recorded either by the ecologist during their inspection or subsequently discovered all works must cease in that area until all the young have fledged and the recommencement of tree, scrub and shrub clearance have been previously approved by the above mentioned ecologist.