
Appeal Decision

Inquiry Held on 12-15 and 17 and 18 June 2018 and 9-10 May 2019

Site visits made on 19 and 20 June 2018

by Zoë H R Hill BA(Hons) DipBldgCons(RICS) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th August 2020

Appeal Ref: APP/Z1510/W/17/3187374

Land off Church Street, Bocking, Braintree

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Developments Limited against Braintree District Council.
 - The application Ref: 17/01304/OUT, is dated 14 July 2017.
 - The development proposed is described as 'outline planning permission for up to 300 residential dwellings (including up to 30% affordable housing), planting, landscaping, informal public open space, children's play area and sustainable drainage system (SUDS). All matters reserved with the exception of access'.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 265 residential dwellings (including up to 30% affordable housing), planting, landscaping, informal public open space, children's play area and sustainable drainage system (SUDS), with all matters reserved with the exception of access, at Land off Church Street, Bocking, Braintree in accordance with the terms of the application, Ref: 17/01304/OUT, dated 14 July 2017, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application as submitted sought residential development, in outline, for up to 300 dwellings. The documentation and details accompanying the planning application were made on that basis. As part of the application an illustrative scheme for the layout of the site was submitted. This scheme raised several concerns about the development of the site and particularly the inter-relationship between Bocking and High Garrett. Therefore, an alternative illustrative scheme was put forward omitting development on the land at the road junction corner between Church Street and High Garrett (A131) and proposing that the housing numbers be reduced from up to 300 to up to 265 dwellings. This is essentially the same scheme but with development specifically removed from one area and therefore seeks permission for a lesser number of dwellings. Being mindful of caselaw in *Wheatcroft*¹ I am satisfied that no-one would be prejudiced by my

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consideration of both proposals. I also note that the appellant considers both schemes to be acceptable.

3. After the initial period of sitting, the Inquiry was held open because it was anticipated that the ongoing Local Plan Examination could result in a material change in circumstances for the appeal. At the time of the re-opened Inquiry, however, it had been agreed that the three North Essex Authorities would undertake further work and the Local Plan Examination remain paused. Limited weight should be given to emerging plan policies in these circumstances.
4. Following that, changes were made to the National Planning Policy Framework (the Framework²) in July 2018 in relation to, amongst other things, housing land supply matters, policy weight and valued landscapes, which resulted in a further delay. The Inquiry was then closed on 1 October 2018 following the opportunity for comments. Submission of new housing figures from the Council resulted in the need to re-open the Inquiry. The resumed Inquiry date was such that further revisions to the National Planning Policy Framework in February 2019 were taken into account at the re-opened event.
5. Further correspondence relating to housing figures was submitted in late February 2019. The main parties (appellant, Council and Rule 6(6) Party (Bocking and High Garrett Residents' Action Group (BAHGRAG)) were given an opportunity to comment upon those figures.
6. The appeal was made because of the failure of the Local Planning Authority to determine the planning application. Therefore, the reasons for refusal, four in total, were drawn up on a putative basis. Before the initial opening of the Inquiry the second putative reason for refusal relating to highways had been resolved between the appellant and the Council, subject to mitigation works, as set out in the Statement of Common Ground with regard to Highway and Transportation Matters³ however, the Rule 6(6) Party maintained an objection in this regard.
7. The third putative reason for refusal related to flood risk matters but, before the Inquiry opening, Essex County Council, as Lead Local Flood Authority was satisfied that a suitable drainage strategy could be developed and so the Council withdrew from defending this reason. However, some local residents remain concerned about some flood risk matters.
8. The fourth putative reason for refusal related to affordable housing. As a section 106 planning obligation (s.106) had been discussed between the Council and appellant to provide 30% affordable housing, it was agreed that this matter would be resolved and, therefore, would not be an issue for the Inquiry other than clarifying the detail of that s.106.
9. The remaining putative reason for refusal related to character and appearance, visual impacts, in particular relating to coalescence of Bocking with High Garrett, and the consideration of the effect of the proposed development on the setting of a nearby listed building, Harriets Farmhouse⁴. These form the main issues as set out below. For the avoidance of doubt, following a site visit I agree with the main parties that the proposed

² When referring to the Framework in this Decision I am referring to the latest version unless specified

³ ID4

⁴ This building name is as taken from the list description

development would not harm the setting of Bocking Windmill, a grade I listed building and scheduled ancient monument, or Bocking Conservation Area, given the extent of separation and intervening development and so I do not consider those heritage assets further.

10. Since the initial opening of the Inquiry the situation relating to housing land supply has changed. This is, in part, because of the changes to the Framework. At the initial Inquiry sitting it had been agreed that the Local Planning Authority could not demonstrate that a 5 year housing land supply existed. At the re-opened event the Local Planning Authority took the view that this position had changed. However, this changed again with the Council being unable to demonstrate a 5 year supply of housing land, culminating in a revised Statement of Common Ground (SoCG) being submitted dated 13 May 2020. This document is agreed between the Council and Appellant, and it is also signed on behalf of the Rule 6(6) Party. This SoCG is material in determining the main issues which are set out below.
11. In addition, during the adjournment the parties became aware of a change in circumstances relating to ecological matters and particularly sites with European protection for which the Zone of Influence has been extended. To address this matter a second s.106 Obligation has been submitted. This is a matter which will be considered later in this Decision.

Main Issues

12. An agreed position has been reached between the main parties, from which the Rule 6(6) does not demur, that for the purposes of this appeal only the Council has a housing land supply of 4.49 years (a shortfall of some 536 dwellings). As a consequence, in accordance with paragraph 14d) of the Framework, the tilted planning balance in favour of the proposed development is engaged. In light of this the main issues in this case now are:
 - (a) whether or not the proposed development would preserve Harriets Farmhouse, a grade II listed building, or its setting or any features of special architectural or historic interest which it possesses;
 - (b) the effect of the proposed development on European sites and on ecology;
 - (c) the effect on the character and appearance of the surrounding area; and,
 - (d) the weight to be attached to other matters in the planning balance having particular regard to accessibility, flood risk/drainage, best and most versatile agricultural land and benefits arising from the proposed development.

Reasons

Listed Building

13. Harriets Farmhouse is a grade II listed building. It is an early to mid C19th farmhouse built in an ornate Tudor style. The house is of three bays and two storeys, with the upper storey jettied. There is a central gable porch with an oriel bay to either side. Features of the largely white painted building, under a clay tiled roof, include stucco hoodmolds, pierced shaped bargeboards and ornate chimneys. It is an attractive building of aesthetic interest. The age, historic fabric and architectural detailing of this building are the primary elements of this asset's significance.

14. The principal elevation of the Farmhouse faces towards the road (Church Street), although it is set back from it by a verdant domestic garden. There are residential dwellings to either side of the listed farmhouse, including in-depth development and significant boundary/garden planting. As a consequence, Harriets Farmhouse is both functionally and physically separated from nearby agricultural land, including that of the appeal site. Therefore, whilst the proposed development would result in loss of agricultural land it would have an almost negligible effect on the significance of this grade II listed building by virtue of development in the wider setting, including by virtue of any vestiges of physical association between the Farmhouse and what might formerly have been its associated land. Harm by virtue of glimpsed visibility of housing on land which had been open agricultural land would only be a marginal change and so would not be fundamental to the significance of the listed building which now lies in its architectural detail and historic fabric.
15. Thus, harm would be, in the terms of the Framework, less than substantial. On the basis of harm being a continuum, the extent of harm would be at the lowest end of the scale and particularly so in the smaller proposed development scheme which allows for a greater amount of undeveloped space in proximity to this listed building and would result in it remaining towards the rural edge of the settlement as it would be perceived from Church Street. Nonetheless, even the very limited harm is a matter against which the benefits of the scheme need to be weighed. In this case, the benefit of providing housing where a 5 year supply cannot be demonstrated, which includes for the provision of affordable housing, is such that I have no doubt that there are public benefits which outweigh the very limited harm to the setting and negligible effect on the significance of Harriets Farmhouse as a grade II listed building.
16. In this I have had in mind the statutory duty⁵ which requires that I pay special regard to the desirability of preserving Harriets Farmhouse and its setting and any features of special architectural or historic interest which it possesses, and, despite the considerable importance and weight to be afforded to any harm, I have found that harm is outweighed. The approach accords with the requirements of paragraph 196 of the Framework. Furthermore I find no conflict with Policy CS 9 of The Braintree District Council Local Development Framework Core Strategy (the LDF CS) adopted in 2011 which, amongst other things seeks to protect and enhance the historic environment in order to respect and respond to the local context which I am satisfied would occur here.
17. Therefore, the effect of the proposed development on this heritage asset is only a marginal issue that will have little weight in the final balance.

European Sites and Ecology

18. At a local level concerns were raised regarding the impacts of the proposed development on wildlife, including protected species. During my site visit I observed local areas of wildlife habitat including close to the site boundaries. It was apparent that wildlife corridors exist within domestic properties close to the boundary of the site. However, it was also apparent that wildlife is able to use these corridors of land. Moreover, the scheme would provide for areas of green space and there would be remaining linkages to the agricultural landscape beyond the appeal site. The reserved matters stage would enable greater consideration of precise design details that can support wildlife routes.

⁵ S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

With this in mind, on the evidence before me, I am satisfied that the scheme would have limited effect on local ecology other than that to be anticipated with green field development.

19. As part of the resumed Inquiry process it became apparent that in the summer of 2018 Natural England extended Zones of Influence (ZoI) for several European sites. This included the Blackwater Estuary Special Protection Area (SPA) and Ramsar site which has the overlapping Essex Estuaries Special Area of Conservation (SAC). As a consequence, the site at some 20.5km from these areas falls within the 22km ZoI.
20. Because of the potential to cause a likely significant effect on these European sites, a Shadow Habitats Regulation Assessment (SHRA) was submitted for the resumed appeal sitting dates. The parties agree through this process that there would be no likely significant effects from this site alone. Having assessed the evidence and driven the route to the SPA I concur with that view and find that there would not be an adverse effect on the integrity of the site from the scheme alone.
21. However, and importantly, it is possible that a likely significant effect might arise from the appeal scheme when taken in combination with other plans or projects.
22. I concur with the parties that the appeal scheme provides a substantial area of informal open space above the policy requirement. This space, and linkages to the wider public right of way network would provide good dog walking / recreational routes with potential for lengthy circular walks such as those undertaken during my site visits. Whilst this does not prove beyond reasonable scientific doubt that there would be no in-combination effects, I find it highly unlikely that this would be the case.
23. Even if this were the case, I am satisfied that any adverse effects would be mitigated either through the Draft Essex Coast Recreation Avoidance and Mitigation Scheme (RAMS) or a planning obligation. If the draft RAMS scheme is not formally adopted or approved the s.106 provides for an alternative sum, the 'Natura 2000 Mitigation Contribution' (established in the s.106 as £122.30 per dwelling for additional management measures, including warden resources, at the Blackwater Estuary SPA and RAMSAR site and Essex Estuaries Special Conservation Area), to be paid instead. In either case the payment would be made prior to first occupation of any dwelling within the scheme. The intention is that this would be part of a multi-faceted approach designed to increase the resilience of, and to help safeguard, the sensitive coastal sites.
24. Taking a proportionate approach and looking at the mitigation as a whole, along with the disincentive to visit the Blackwater Estuary as a consequence of the somewhat tortuous route to get there, I am satisfied that in this case there would be no adverse effect upon the integrity of the European sites cited.
25. I am satisfied that the supplementary unilateral s.106 would secure the Natura 2000 Mitigation Contribution (established in the s.106 as £122.30 per dwelling for additional management measures, including warden resources, at the Blackwater Estuary SPA and RAMSAR site and Essex Estuaries Special Conservation Area) or the RAMS Contribution as appropriate at the time.

26. Measures relating to securing open space and dog walking routes would also be secured through a combination of s.106 provisions (the main undertaking), planning conditions and control retained through reserved matters requirements.
27. In view of the above I am satisfied that the proposal would not adversely impact upon ecology of local, national or international significance that has been identified in the consideration of this appeal. Moreover, I do not consider it would conflict with LDF CS Policy CS 8 insofar as it relates to this matter and which seeks, amongst other things, that account is taken of the natural environment and biodiversity.

Landscape and Townscape Character and Appearance

28. In policy terms the appeal site falls within the open countryside, where LDF policy CS 5 seeks to strictly control development in order to protect and enhance landscape character, amongst other things. Similarly, there is no dispute that the proposal would run counter to Policy RLP2 of the Braintree Local Plan Review (BLPR) 2005. It is also contrary to Braintree's emerging Local Plan (as set out in its Publication Draft for Consultation June 2017) Policies LPP 1 (development boundaries) and LPP 72 (green buffers). In respect of this site Policy LPP 72 refers part of the site fronting Church Street and High Garrett (A131). The emerging Local Plan document can be afforded little weight given the point it has reached of requiring significantly more work⁶. However, because of the housing land supply situation, Policies CS 5 and RLP2 are out of date as development boundaries inevitably constrain development. It is therefore in this context that I should consider the effect of the proposed development of both the surrounding landscape and, in terms of the concerns regarding the perceived merging of Bocking with High Garrett, the Townscape implications.
29. The appeal site is not covered by any specific landscape designation. It is, therefore, essentially a piece of ordinary landscape in policy terms, although I appreciate local residents will value it for aesthetic and other reasons. In terms of the Joint Character Areas the site is located within the South Suffolk and North Essex Claylands, and more locally within the River Valley Landscape Type.

The 265 Dwelling Scheme

30. At the site visit I saw that the main body of the appeal site, which is common to both proposals, can be characterised as being part of a rolling agricultural landscape of large fields, with hedgerows mixed with some areas of woodland and a sloping topography (as can be seen in the Landscape and Visual Impact Assessment (LVIA)⁷ photographs). The boundary between the appeal site and edge of settlement housing of Bocking includes in part, a watercourse with associated tree cover, providing a more intimate sense of enclosure where the site adjoins the long rear gardens of Ashpole Road (properties in Bocking). It has a different appearance when seen from the Grove Field/Grove Orchard properties (in High Garrett) where views extend over the site.
31. The agricultural land is pleasant, however, there is nothing exceptional about it in terms of rarity of landscape type. Nor does it link visually to other areas of

⁶ Stage 1 of the Local Plan resulted in significant concerns around legal compliance and soundness in June 2018

⁷ CD 1.06

land which are exceptional such that it does not function as a particular backdrop or foil to wider landscape features. Situated predominantly within Landscape Setting Area B13 as identified in the Braintree District Settlement Fringe Landscape Capacity Analysis, this study makes it clear that the capacity for change is low for the appeal site, with a medium to high visual sensitivity and a medium to high landscape value. Although this presents a position of development being likely to be highly intrusive, this study assesses the capacity of all of the land surrounding Braintree as being either low or low to medium in terms of its capacity for change. Moreover, it does not indicate that there should be no development within this area explaining that there may be locations suitable for development, albeit looking at limited minor settlement extensions. Furthermore, this is a dated document from 2007.

32. The more recent Braintree District Settlement Fringes study (September 2015) identifies the landscape of the B13 area to be of moderately strong character and a good condition with a medium to low capacity. Within B13 sub-area 13b acknowledges that local undulations would protect some views (principally on south facing slopes which does not apply here), but also notes concerns about connectivity. The Evaluation of Landscape Analysis Study of Braintree and environs (June 2015) provides further commentary, acknowledging the medium-low capacity for 13b. However, I am also mindful that given the size of the B13 area, it will inevitably be more sensitive in some areas and particularly at the points furthest from the urban fringe where the land appears surrounded by countryside as opposed to in the areas adjoining existing housing.
33. In looking at the site specifically, I concur with the LVIA that the site would be well contained and contiguous with the urban edge. In some views its development would have a limited visual impact ('slight adverse' is identified other than for the impacts on occupiers of adjoining properties and in the public views around the Church Street/High Garrett (A131) junction) but that is now lessened from the LVIA by the potential community orchard in the 265 dwelling proposal, and which occupies part of the Green Buffer of LPP 72⁸. Moreover, new landscaping, following the existing landscape form and boundaries would assist its integration. However, there is no getting away from the change of the site from open countryside to residential development.
34. I have no doubt that the landscape of the appeal site is highly regarded by those who live nearby, and particularly those abutting its boundaries, as well as those who would enjoy walking along the existing public right of way (PROW 68_96) along the north-western site boundary. That said, existing views are filtered, particularly so in summer months, and landscape design would provide for an attractive walking route. In addition, the scheme could enhance links to the wider countryside improving scope for circular walks.
35. As the site is contiguous with existing development, the scheme would not appear as an isolated or uncharacteristic form of development, rather it would sit alongside an existing area of modern housing expansion. Existing green infrastructure would be retained and new planting, including of trees, a naturalistic area, including for the provision of drainage, and an area of play space would all contribute to retaining the pleasant country feel of the public rights of way as well as maintaining wildlife corridors (as discussed above).

⁸ See Plan B

36. In terms of the matter of separation between High Garrett and Bocking, I acknowledge there are settlement boundaries drawn around each indicating that open countryside would have been expected to remain between the two whether or not High Garrett is now perceived as a settlement in its own right. I have no doubt that, in the past, High Garrett was a separate settlement, as indicated on the 1777 map⁹, and that it had a number of its own services and facilities. Other than that, any seeking of separation would be a visual impact matter given the lack of any clear adopted Policy basis for the prevention of coalescence between these two areas. I note here that the Policy LPP 72 Green Buffer of the emerging Local Plan attracts negligible weight given its progress.
37. The position of the land is such that there would be a connecting of Bocking with High Garrett, separation being limited to narrow boundary strips between existing and proposed development. However, in visual terms, the proposed mitigation would limit the effect of this in views from the north on the public rights of way network, which in any event are at a relatively long distance. I therefore do not consider that this would cause serious harm to landscape character or indeed visual impact. The use of the existing parcel of land at the junction of Church Street and High Garrett (A131) to create a community orchard would result in a continuing sense of space and separation at this point, such that I do not consider that there would be a significant impact on the character and appearance of the locality in public views from this area. I will deal with the 300 dwelling scheme next in terms of public views from the south and east.
38. In terms of impacts upon local residents, whilst there is no right to a private view, I accept there would be change. However, for those on Ashpole Road, this would be softened by existing vegetation along the water course which would be protected. For those on Grove Field/Grove Orchard the impact would be greater. However, those properties have sizeable gardens containing a number of significant trees which already provide screening. The proposed landscaping would add a planting buffer to further soften the impact of development. I am satisfied, that a high quality outlook would remain for the occupiers of the existing properties which could be enhanced through sensitive design at the reserved matters stage. There is no suggestion that living conditions would be unacceptable in terms of privacy, outlook or disturbance.
39. Therefore, whilst there would undoubtedly be change and harm to the immediate landscape area, this would be of a slight adverse impact and so is not of itself immediately determinative, rather it is something which needs weighing in the planning balance. Notably, the proposed landscaping would be able to reinforce and reflect existing landscape and so provide integration and mitigation of the proposed development. On this matter I do not find conflict with the Framework taken as a whole.

The 300 Dwelling Scheme

40. The preceding assessment relates to the main element common to both schemes. That is predominantly land behind existing development. The larger scheme includes development of an area of land currently used for pony paddocks in the High Garrett/Bocking junction area. This land falls within B14 identified as having a moderate character strength and condition and medium capacity. The Evaluation of Landscape Analysis Study of Braintree and

⁹ Chapman and Andre

environs (June 2015) is more circumspect about B14, and specifically notes that 14a is significant in maintaining separation between Bocking Church Street and High Garrett.

41. The development scheme, which would include the area identified for a community orchard in the lesser scheme, would physically link the dwellings in Bocking and High Garrett, but this would take place at an in depth point away from the main roads which are the main public vantage points. In townscape terms the pony paddocks are typical urban fringe development of lower landscape quality than the in-depth agricultural land. Indeed, this location has other typical urban fringe activities which are a character of this area, with a garden centre and sports facilities located on the opposite side of Church Street to the appeal site. However, this area of pony paddocks has a clear function in retaining a sense of separation between Bocking and High Garrett, the proposed community orchard (required by the s.106 should I expressly limit the number of units to 265) would similarly support the retention of green space at this point. Whether or not there is a policy ambition to do this, it is part of the existing character of the locality.
42. I fully accept that there is an existing area of vegetation, of Tree Preservation Order protected trees, to the south of Grove Orchard with frontage on High Garrett (A131) which would prevent actual joining of settlements at this point on the roadside. Nonetheless, developing at this junction area would consolidate the roadside development on Church Street and High Garrett and so create a strong visual link. I consider that this would have a deleterious effect upon the separate identity of these areas of development and that the visual closing of this gap would result in an undesirable, unrelieved, continuous development that would appear visually harmful. Therefore, I find that the visual effect of the larger scheme is materially different and needs to be weighed differently in the final planning balance.
43. In terms of landscape matters for both schemes, I conclude that the proposal would fail to accord with Policy CS 5, but that is a policy to which I attach limited weight. However, the smaller scheme would cause modest landscape harm and in visual terms could be successfully integrated. This would similarly apply to that part of the larger scheme which encompasses the smaller scheme. In terms of the rest of the larger scheme, the effect of the proposed development on the character and appearance of the local townscape is significantly greater and this should be considered in the planning balance. The harm identified for each proposal needs to be weighed in the planning balance.

Other Planning Matters

44. Accessibility: The appeal site is located towards the edge of Bocking. However, there are facilities within walking distance on Church Street. Whilst the pedestrian footpath has some limitations due to width and topography, I saw that these need not preclude access on foot for many of the likely future residents. Furthermore, there is a bus service into Braintree where the main facilities and services are situated. Given these circumstances, I am satisfied that there are opportunities for those living within the proposed development not to be reliant upon private means of transport and so I do not find reason on accessibility grounds that would justify withholding planning permission. A Travel Plan and taking opportunities within the site to enhance walking opportunities would be a positive step to reinforce the making of more

sustainable transport choices. I am therefore satisfied that there would be compliance with Policy CS 7 in this regard. The scheme would broadly accord with Policy RLP53 even if ideal distances cannot be achieved.

45. Highways: BAHRAAG are concerned that modelling suggests a queue length of up to 29 vehicles in the am peak, which might result in dangerous driving. However, an additional feeder lane is proposed as part of the highway works (Church Street/ A131) which would lessen any impact¹⁰. Further, the modelling is based on the 300 dwelling scheme not that for 265 which would proportionately reduce number the of traffic movements. I am also mindful that the accident information indicates that the existing junction operates safely with few recorded personal injury accidents (3 in five years). Moreover, the Council and appellant agree that the highways access to the site would be safe and within capacity so that the free flow of traffic would not be a concern.
46. It is also the case that there would be some encroachment of large vehicles, such as refuse vehicles, onto the opposite side of Church Street during manoeuvres. However, this is not unusual and Manual for Streets accepts large service vehicles may not always be fully accommodated. On the evidence before me I consider that the scheme would be acceptable in highway terms.
47. Flood Risk and Drainage: Local residents express concern that the proposed development would increase flood risk, particularly given the watercourse along the site boundary. However, there is no dispute between the main parties that the detailed planning scheme could provide suitable drainage works that would enable water management and mitigate against flood risk. Therefore, subject to suitable conditions this is not a matter which counts against the scheme.
48. Best and Most Versatile Agricultural Land: The appeal site is agricultural land and interested parties point to the need to retain land to provide for the needs of the populous (as also referred to in Policy CS 8 which seeks to protect such land). Whilst the scheme would result in the loss of some 4ha of best and most versatile land, there is much such land within the District. In addition to providing for food, it is also necessary to provide homes for people in the places where housing is required. Thus, the loss of agricultural land whilst not desirable, is not a determinative matter in this case.

Benefits of the Proposed Development

49. The main benefit of the proposal is the provision of housing, including affordable housing, where there is a need evidenced by the Council being unable to demonstrate a five year housing land supply.
50. There would be some benefits derived from the economic activity of future residents, including their likely use of local shops and services. Local residents would also benefit from the upgrading of two bus stops in association with the scheme. There would also be a net biodiversity gain as a consequence of on-site habitat management.

Planning Balance and Conclusion

51. There is no dispute that the proposed development would conflict with policies of the development plan which seek to protect the countryside by limiting development to that within development boundaries. However, the Framework

¹⁰ See Plan C

provides a significant material consideration, expressing, as it does, national planning policy. Because the Council cannot identify a five year housing land supply, paragraph 11 (d) is engaged. As such, policies which constrain development as identified are out of date. This means for decision taking that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

52. Taking the scheme for up to 265 dwellings first, I find that the limited landscape harms and the negligible harm to Harriets Farmhouse would not significantly and demonstrably outweigh the benefits of housing development, including the ancillary economic benefits, in this location. I therefore conclude that this scheme should be approved.
53. Turning to the larger scheme a similar balance applies, in that the starting point favours the scheme. However, I consider that, given the relatively modest difference in house units between the schemes and the significant benefits of retaining visual separation between the Bocking and High Garrett in townscape terms when viewed from Church Street / High Garrett, the balance reaches a different tipping point. In fact, the difference here is sufficient to resist the scheme for up to 300 dwellings. I shall therefore limit the approved scheme to the slightly smaller number thereby engaging that part of the s.106 which requires the provision of the community orchard.

Conditions and S.106 Obligations

Conditions

54. A comprehensive set of conditions was provided at the Inquiry with limited additions and alterations arising following discussions and as a result of the need to address the extended Zones of Influence (ZoI) for the European sites as explained above. I have considered the conditions that are required having regard to the tests set out in the Framework at paragraph 55 and the Planning Practice Guidance. I have revised some of the wording, as discussed at the Inquiry, and, where necessary, in the interests of clarity and enforceability.
55. A condition is necessary to specify the approved plans, the number of dwellings approved, to set out the requirement for reserved matters which require approval and the time limits for the submission and subsequent commencement in accordance with the requirements of the Act. (Conditions 1, 2, 3, 4 and 5). To accompany the reserved matters a condition is necessary to establish finished floor levels (Condition 8) in the interests of the final appearance of the site.
56. A pre-commencement condition is also required to produce site wide design guidance in the interests of achieving a cohesive well designed development that integrates with its surroundings given the relatively sensitive location (Condition 6). Also to protect the character of the area it is necessary to limit building heights to 2.5 storeys (Condition 7).
57. A land contamination survey and details of a remediation scheme, should it be necessary, and final reporting to clarify the safe remediation of the site are required in the interests of public health in relation to the site. (Conditions 9, 10 and 11).

58. A condition is necessary in respect of archaeology given the location of the site in proximity to historic development (Condition 12).
59. Conditions 13, 14, 15, 16, 17, 18 and 26 relate to landscaping and ecology (including control over lighting). These are necessary in the interests of protecting wildlife, providing for biodiversity and for visual amenity. I am conscious of local residents' concerns, but it is not necessary to specify compliance with wildlife legislation. I have assessed the proposal in terms of the tests in the 2017 Conservation of Habitats and Species Regulations which the conditions would help to meet. The developer will be under a statutory duty to comply with relevant wildlife legislation.
60. A noise scheme, including a restriction on piling (unless agreed in writing with the Local Planning Authority), and a Construction Method Statement are necessary as are restrictions on working hours in the interests of the amenity of existing residents during the construction period.(Conditions 19, 20, 21 and 22).
61. It is necessary that safe highway access is achieved including for pedestrians (Condition 23), that a drainage scheme is approved, implemented managed and maintained so as to ensure adequate drainage of the site and reduce flood risk (Conditions 24 ad 25)

S.106 Obligations

62. The first s.106 unilateral undertaking (20 June 2018) provides for a Healthcare contribution of £378.50 per dwelling towards creating capacity at the Church Lane GP Surgery which is identified as required. It also provides for an outdoor sports contribution which uses a calculation based on the bedroom space size of dwellings. These sums relate to the needs of the development and are CIL compliant. It also provides for an Open Space Works Specification and implementation of the same, including provisions for transfer of maintenance to a management company.
63. This initial s.106 also provides for an Affordable Housing Scheme, which requires 25% of the affordable housing to be provided when 25% of the open market housing is completed and matching again at 50% with no more than 80% of the open market housing to be occupied until such a time as all of the affordable housing is provided. There is provision for transfer of the affordable housing to an affordable housing approved body.
64. The s.106 provides that should I state that the scheme be limited to up to 265 dwellings, as I do, a community orchard will be provided (the siting of which at the junction of Church Street and High Garrett (A131) is shown on an accompanying plan) prior to the occupation of more than 75% of the dwellings in accordance with an approved specification and to be transferred to a management company before the occupation of more than 95% of the dwellings.
65. It also provides for phasing and a mix of dwelling types to come forward. Linked to this is an Education Contribution (Early Years and Childcare to provide for early years and Special Educational Need provision) which is based on a carefully calculated requirement and multiplier to calculate the needs of the scheme and so is linked to education needs arising from the dwellings to be developed on the site. Finally, it requires a Travel Information Pack and Travel

Plan to be provided and a Travel Plan co-ordinator to be employed until one year after the first occupation of the final dwelling on site. This is directly related to the proposed dwellings and the need to encourage more sustainable patterns of transport.

66. I am satisfied that all sums are necessary and relevant to the development having in mind the CIL Compliance Statement and accompany documents.¹¹
67. The second s.106 planning obligation relates to the ecological matters as set out at paragraphs 25 and 26 above so I shall not repeat the details here.

Zoë HR Hill

Inspector

¹¹ ID 25

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Josef Cannon of Counsel

He called:
Gill Wynne-Williams BA DipLA CMLI
Alison Hutchinson BA RTI
Kathryn Carpenter BA(Hons) DipEP

FOR THE APPELLANT: Jonathan Easton of Counsel

He called:
Silke Gruner BA(Hons), CMLI, CSA
Gail Stoten BA(Hons), MCIfA, FSA
Phil Wooliscroft Msc, HNC, MCITL
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Aidan Marsh BSc PhD CEnv CEcol MCIEEM
Peter Dutton BA(Hons), MCD, MRTPI,

RULE 6 PARTY (BAGRHAG):

Terry Sutton

INTERESTED PERSONS:

Bernard Meech
Cllr A Everard
Mrs Meech
Mrs Schmidt

PLANS

- A The application drawings
- B Extract of the Braintree North Publication Draft Local Plan and Key
- C Marks Farm Roundabout Drawing No: B355304A-01-008
- D Site Visit Plan
- E Development Framework Plan 300 dwellings
- F Development Framework Plan 265 dwellings

PLANS Submitted at Re-opened Inquiry

- G Plans (2) Showing Estuary Sites

INQUIRY DOCUMENTS

ID1	Draft s.106 Planning Obligation
ID2	Appearances for the Local Planning Authority
ID3	Appearances for the Appellant
ID4	Statement of Common Ground with regard to Highways
ID5	Letter from the Appellant to the Planning Inspectorate on 5 March 2018
ID6	Appellant's Opening Points
ID7	Local Planning Authority's Opening Statement
ID8	Opening Statement by Mr Surrey on behalf of BAHGRAG
ID9	High Court Application for Permission to Review Notification of the Judge's Decision Ref: CO/4648/2017
ID10	High Court Application for Permission to Review Notification of the Judge's Decision Ref: CO/3029/2016 (Leckhampton)
ID11	Appeal SoS Decision APP/B1605/W/14/3001717 Leckhampton
ID12	High Court Claim No: C)/661/2018 Aylesbury Vale Consent Order
ID13	Rule 6 Documents
ID14	Statement of Bernard Meach
ID15	Statement by Cllr A Everard
ID16	Statement of Mrs Schmidt
ID17	Local Development Framework Sub-Committee Report 27 September 2012 regarding site allocations
ID18	Development Management Sheet 15/00901/FUL
ID19	Appeal Decision APP/E2734/W/16/3160792 Cornwall Road, Harrogate
ID20	North East Essex Authorities Strategic Section 1 Plan Inspector's Letter
ID21	S.106 Payments Calculations
ID22	NHS Letter, dated 19 April 2018
ID23	Open Spaces Action Plan 2018
ID24	Amended Draft Conditions
ID25	CIL Compliance Document
ID26	'Closings' for BAHGRAG ¹²
ID27	'Closings' for the Local Planning Authority
ID28	'Closings' for the Appellant

Re-opened Inquiry Documents

ID29	Opening Statement - Terry Surrey – May 2019
ID30	Supplementary Statement of Common Ground on Housing Land Supply
ID31	Supplementary S.106 Planning Obligation – Natura 2000 Mitigation Contribution
ID32	Start to Finish – Nathaniel Lichfield & Partners
ID33	Schedule of Sites
ID34	Essex Coast – Temporary Mitigation Condition
ID35	5 YHLS Statement of Common Ground
ID36	NHBC Completions List
ID37	Approved Judgement: Gladman Development Limited and SoS HCLG and Sedgemoor DC Case No: CO/2948/2018

¹² ID26, ID27, ID28 – It was agreed to keep the Inquiry open given anticipated changes thus the Closings were made on that basis

ID38	Essex Coast – Temporary Mitigation Condition (Updated)
ID39	Schedule of Sites (amended)
ID40	Analysis of Completions 18/19 on Land off Hatfield Road Witham (Lodge Farm)
ID41	Closing Statement – BAHGRAG - May 2019
ID42	Revised Closing Submissions on behalf of the Local Planning Authority
ID43	Appellant's Updated Closing Submissions

Schedule of Conditions

1. Details of the 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 takes place 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 not later than 2 years from the date of this permission.
3. The development hereby permitted shall take place not later than 1 year from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:-
Location Plan CSA/3321/104
Access Plan 17-T047_06
5. The submission of reserved matters applications pursuant to this outline planning permission shall together provide for no more than 265 dwellings, public open space, landscaping, surface water attenuation and associated infrastructure.
6. Prior to the submission of the first reserved matters a site-wide design guide for all areas of housing development, public realm and character areas, shall be submitted to and approved in writing by the local planning authority. All reserved matters submissions shall accord with the approved site wide design guidance, unless otherwise agreed in writing by the local planning authority. The agreed strategy for each area shall be implemented within 12 months of occupation of the dwellings in each respective phase to which it relates.
7. No building erected on the site shall exceed 2.5 storeys in height.
8. Any reserved matters application relating to the scale and layout of the development shall be supported by a plan or plans that provide full details of the finished floor levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing site levels. The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved plans.
9. Prior to the commencement of development a comprehensive survey shall be undertaken to assess the nature and extent of any contamination on the site. A copy of the survey findings together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development. The agreed measures shall be implemented and completed prior to the commencement of development hereby approved.
10. Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme agreed in writing with the Local Planning Authority, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in

accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing by the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

11. The developer shall give one-month's advanced notice in writing to the Local Planning Authority of the impending completion of the remediation works. Within four weeks of completion of the remediation works a validation report and the agreed remediation measures shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site until the Local Planning Authority has approved the validation report in writing. Furthermore, prior to occupation of any property hereby permitted, the developer shall submit to the Local Planning Authority a signed and dated certificate to confirm that the remediation works have been completed in strict accordance with the documents and plans comprising the remediation scheme agreed in writing with the Local Planning Authority.
12. No development or preliminary groundworks can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation which has first been submitted to and approved by the Local Planning Authority.

A mitigation strategy detailing any excavation/preservation strategy that is required shall be submitted to and agreed in writing by the Local Planning Authority following the completion of this work.

No development or preliminary groundworks can commence on those areas containing archaeological deposits until the fieldwork has been carried out in accordance with the approved mitigation strategy.

A post-excavation assessment shall be submitted to the Local Planning Authority within six months of the completion of fieldwork, unless otherwise agreed in advance in writing with the Local Planning Authority. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

13. No development shall take place, including any ground works or site clearance, until details of the means of protecting trees, shrubs and hedges within and adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The details shall be generally in accordance with recommendations of the tree mitigation strategy set out in the Arboricultural Assessment submitted by FPCR (dated November 2017) and providing for a community Orchard as shown on drawing no 7754-A-03 and shall include the protection of roots from injury or damage prior to or during the development works. The Local Planning Authority shall be notified in writing at least 5 working days prior to the commencement of development on site. The approved means of protection shall be installed prior to the commencement of any building or engineering works or other activities on the site and shall be adhered to throughout the construction period.
14. No development shall take place, including any ground works or site clearance, until details of the means of protecting retained habitats on site have been submitted to and approved in writing by the Local Planning Authority. The details

shall be generally in accordance with the recommendations of the FPCR Ecology Appraisal (dated November 2017). The approved means of protection shall be installed prior to the commencement of any building or engineering works or other activities on the site and shall be adhered to throughout the construction period.

15. No clearance of trees and shrubs in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the Local Planning Authority. If such a survey reveals the presence of any nesting birds, then no development shall take place within those areas identified as being used for nesting during the period specified above.
16. Prior to occupation of any dwelling, details of the proposed lighting for public areas will be submitted to and approved in writing by the Local Planning Authority. The details shall include a lighting strategy for bats and shall:
 - i. Identify areas/features on the site that are sensitive for all bat species on site, and in particular barbastelles, including breeding sites, resting places and important territory routes used to access key areas of their territory, for example foraging; and,
 - ii. Show how and where the external lighting will be installed so that it can be clearly demonstrated that areas lit will not disturb or prevent bats using their territory or having access to their breeding sites or resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. No additional external lighting outside the curtilage of dwellings shall be installed without prior written consent from the Local Planning Authority.

17. No development shall commence or site clearance or on site investigation works take place until a Biodiversity Management Plan for the site which shall set out the site wide strategy for protecting and enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed, is submitted to and approved in writing by the Local Planning Authority in line with the recommendations contained in the submitted Ecological Appraisal. Development shall be implemented in accordance with the approved Management Plan and thereafter maintained.
18. Any reserved matters application for landscaping as required by Condition 1 of this permission shall incorporate a detailed specification of all soft and hard landscaping works for this development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting, fences and walls.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the Local Planning Authority. All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be agreed as part of that scheme by the Local Planning Authority. Prior to the occupation of each dwelling, the

hardstanding and refuse storage associated with that dwelling shall be fully laid out and provided.

Any trees and plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

19. Prior to the commencement of development a full acoustic survey and noise mitigation scheme produced by a competent person shall be submitted to and approved in writing by the Local Planning Authority. This should adequately consider all aspects of noise and vibration previously considered in the November 2017 Wardell Armstrong noise and vibration assessment and take account of the proposed site layout submitted with any full planning application. This should therefore give consideration to:

- Noise generated from traffic movements on Church Street and the A131 and its potential effect on residents of the proposed properties.

The mitigation scheme provided should provide clear details of what mitigation is required to address the issues assessed in the acoustic survey.

Such agreed mitigation measures shall be implemented as necessary during the construction phase (for measures designed to protect existing residents) and prior to the occupation of any dwelling requiring such mitigation measures. Within 4 weeks of the completion of all mitigation measures the developer shall submit to the Local Planning Authority a signed and dated certificate to confirm that the mitigation measures have been completed in strict accordance with the documents and plans comprising the noise mitigation scheme agreed in writing with the Local Planning Authority.

20. No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following hours:

Monday to Friday - 08:00-18:00 hours

Saturday - 08:00-13:00 hours

Sunday - No work

Bank Holidays - No work

21. No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be adhered to throughout the construction process.

22. No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:

- a) Safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;
- b) The parking of vehicles of site operatives and visitors;

- c) The loading and unloading of plant and materials;
- d) The storage of plant and materials used in constructing the development;
- e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) Wheel washing facilities;
- f) Measures to control the emission of dust and dirt during construction;
- g) Measures to ensure that no burning of refuse, waste materials or vegetation is undertaken on the site;
- h) A scheme for recycling/disposing of waste resulting from demolition and construction works;
- i) A scheme to control noise and vibration during the construction phase;
- j) Measures to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction;
- k) Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

23.No dwelling shall be occupied until the following have been provided:

- a) A priority junction and section of footway (with dropped kerbs/tactile paving both sides of the existing carriageway) off Church Street to provide access to the site as shown in principle on the planning application drawings, and constructed to at least base course level;
- b) Widening of Church Street and a pedestrian central refuge island with associated dropped kerbs/tactile paving at its junction with the A131 High Garrett as shown in principle on the planning application drawings;
- c) Improvements at the A131 High Garrett/B1053 Broad Road/Braintree Bypass roundabout as shown in principle on the planning application drawings or similar as shall be agreed with the Local Planning Authority prior to commencement of the development;
- d) Upgrade to current Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development).

24.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 should include but not be limited to:

- Limiting discharge rates to 1 in 1 year greenfield for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
- 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;
- Final modelling and calculations for all areas of the drainage system;
- The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
- Detailed engineering drawings of each component of the drainage scheme;
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to first occupation.

25. No works shall take place until a Maintenance Plan detailing the 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 agreed 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 as part of the Maintenance Plan.

The approved Maintenance Plan should be in place prior to the occupation of the first dwelling of each agreed phase of development that the Maintenance Plan relates to and any maintenance shall be undertaken in accordance with the approved Maintenance Plan.

26. Prior to the commencement of development, a scheme for diverting recreational pressure arising from the development away from the Essex Coast network of Natura 2000 designations during the construction phase of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be limited to:-

(a) A 'home owner information pack' highlighting the potential effects of increased dog walking and recreational pressure on the Essex Coastal sites and a map of local off-site walking routes and Public Rights of Way which new home owners will be encouraged to use rather than travel to the designated sites,

(b) Approved signage to direct residents to existing off-site public rights of way and other recreational routes,

(c) A temporary safe walking route through the site to provide residents with access to Public Right of Way 68_96. The temporary route shall connect to Public Right of Way 68_96 at a point within the approved site boundary (Location Plan CSA/3321/104).

An approved 'home owner information pack' shall be provided to the occupiers of each dwelling prior to the first day of its occupation. The approved signage shall be installed and the temporary safe walking route shall be made available prior to the occupation of any dwelling.