

Appeal Decision

Inquiry held 4-6 and 11-13 February 2020

Accompanied site visit made on 7 February 2020

by Helen Heward BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Reference: APP/P1560/W/19/3239002

Land at Foots Farm, Thorpe Road, Clacton on Sea, Essex

- 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 Manningtree Farms Ltd against Tendring District Council.
 - The application Ref:18/01499/OUT is dated 13 September 2018.
 - The development proposed comprises "*Outline planning permission for the erection of up to 245 dwellings, provision of public open space and supporting site infrastructure with some matters reserved to form access off Thorpe Road and pedestrian access off Centenary Way*".
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Decision

1. The appeal is dismissed and planning permission for the erection of up to 245 dwellings, provision of public open space and supporting site infrastructure with some matters reserved to form access off Thorpe Road and pedestrian access off Centenary Way is refused.

Preliminary and Procedural Matters

2. The application is in outline with all matters reserved except for site access. A proposed vehicular access off Centenary Way has been deleted and all internal details are reserved. At the Inquiry the parties agreed that the description of development should be amended to that set out above.
3. The plans include Location Plan (CC010-LP-001 Rev 00), Feasibility for new access off existing roundabout Thorpe Road (183903_GA_03 Rev B), Junction Option 2 (83903_PHL_101) and Uncontrolled pedestrian/cycle crossing on Centenary Way (183903_GA_04 Rev B). The parties agree that should the appeal succeed it would be appropriate to condition that reserved matters should be in general conformity with Parameters Plan (CC010- PL-003 Rev E) and Storey Heights Plan (CC010-PL-005 Rev E). I have had regard to these drawings as part of the illustrative materials.
4. There are two alternative proposals. One is that 74 of the 245 dwellings would be affordable. The alternative is a contribution towards restoration of St Osyth's Priory and that all 245 dwellings would be unrestricted market dwellings.
5. A Pre-Inquiry Meeting (PIM) held in December 2019 was followed by on-going resolution of final evidence and common ground positions up to, and during, the Inquiry. Both parties shared progress updates and information, including with third parties present at the Inquiry. Appended to this Decision is a list, prepared by the Appellant and agreed by the Council as an accurate record of all the documents submitted. The parties agreed that the information,

including an updated legal agreement, was helpful to the Inquiry and that no party has been prejudiced by their late submission. I agree.

6. In 2018 the Examining Inspector (EI) for the North Essex Authorities Shared Strategic Plan found the spatial strategy in the submitted Section 1 Plan unsound. He outlined significant further work that needed to be undertaken and set out three options for taking the Examination forward. The Councils pursued Option 2 and produced additional evidence. The EI held further hearing sessions in January 2020 focussing on the additional evidence and responses to it. In a letter in May 2020 the EI advised of his latest findings. I have taken comments on his findings relevant to this appeal into consideration.

Main Issues

7. Where strategic policies are more than five years old paragraph 73 of the National Planning Policy Framework (the Framework) and associated footnote, require that local planning authorities identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their Local Housing Need (LHN) calculated using the Standard Method (SM) set out in the Planning Practice Guidance (PPG).
8. Prior to the Inquiry, it was common ground that, informed by the SM, the LHN for Tendring was 863 dwellings calculated using 2014 based Sub-National Household Projections (SNHPs) over 10 consecutive years. At the Inquiry, using 2020 as the starting point¹, the parties agreed that the annual LHN had risen to 881 dwellings, that applying an affordability uplift of 31.9% yields a five-year housing requirement of 5286 dwellings, and that the Council has a Housing Land Supply (HLS) of 3.62 years. They further agreed that the policies most important for determination of the appeal should be considered as out-of-date and that the so called 'tilted balance' as set out at paragraph 11 of the Framework, is engaged and I agree.
9. Therefore the main issues are:-
 - 1) Whether the policies of the Framework provide a clear reason for refusing the development proposed, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, with particular regard to the effect of the proposal upon:
 - a. The spatial strategy for the location of development and the weight to be attached to any conflict with the provisions of saved Policy QL1 Tendring District Local Plan 2007 (TDLP) and Policy SPL2 of the Emerging Tendring District Local Plan 2013-2033 and beyond (eLP);
 - b. Character and appearance, including landscape character, settlement pattern, setting and separation, with particular regard to the provisions of saved Policies EN1 and EN2 of the TDLP and eLP Policies PPL3 and PPL6.
 - 2) Whether or not factors, including Unattributable Population Change, affect the weight to be attached to the extent of the HLS in the planning balance.

¹ As advised at Paragraph: 004 Reference ID: 2a-004-20190220 Revision date: 20 02 2019

Reasons

Spatial Strategy

10. The TDLP strategy seeks to create sustainable communities and applies a sequential approach to the location of new development to make best use of land and stimulate regeneration within existing urban areas. Policy QL1 Spatial Strategy (QL1) defines the main focus for new sustainable patterns of development, concentrating development at the larger towns of Clacton and Harwich, where accessibility to employment, shops, and other facilities and services is maximised, and there is a choice of means of transport. The Council does not disagree that in these ways the site is sustainably located, and there is little evidence to the contrary.
11. QL1 seeks to concentrate development within Settlement Development Boundaries (SDB's) defined on proposals maps. SDB's were drawn to allow for planned peripheral growth to the urban area of Clacton and to provide for additional development which could not be accommodated within the existing urban area. Outside SDB's, and other specific allocations, only development consistent with countryside policies will be permitted. Since the appeal site is adjacent to, but outside of, the SDB for Clacton, the development proposed would be contrary to QL1.
12. The general plan-led approach to the spatial strategy, namely, to manage patterns of growth and to protect the intrinsic character of the countryside, is consistent with broad aims of the Framework. However, the Council accepts that the Framework provides a less prescriptive approach to countryside protection than QL1 seeks to apply.
13. Whilst the TDLP strategy was adopted for the needs of a plan period long past, Clacton remains a main centre of growth in the eLP, with the Council proposing to extend the SDB in the locality of the appeal site. Even so, the site would remain outside of the proposed boundary, but directly adjoin more of it than it does in the TDLP. The eLP has yet to be approved but the proposed changes highlight that QL1 and TDLP SDB's no longer reflect current development needs, with the Council recognising that it may be both necessary and appropriate to allocate land on the northern edge of Clacton in the locality of the appeal site. On that basis, I attach limited weight to the conflict with QL1.
14. eLP policies SPL1 (Managing Growth) and SPL2 (Settlement Development Boundaries) adopt a similar approach. In the letter to the North Essex Authorities, May 2020, the EI recommended the deletion of two of three proposed garden communities, although not the one partially in Tendring. Modifications will need to be prepared and more hearing sessions may be required, before the EI can produce his final report and recommendations. The weight I attach to conflict with SPL1 and SPL2 is very limited.

Character and appearance

15. TDLP Policy EN1 (EN1) seeks to protect and where possible enhance the quality of the District's landscape and its distinctive local character. It primarily applies to development proposals in the countryside and on the edge of settlements, as is the case here. Any development which would significantly harm landscape character or quality is resisted and it seeks to conserve certain natural and manmade features which contribute to local distinctiveness. Amongst other things, these include the settings and character of settlements. The need to recognise, protect and enhance distinctive landscape character is

- broadly consistent with advice in the Framework, but the Council accepts that EN1 is not fully reflective of the more selective approach to landscape protection in the Framework. The weight I attach to EN1 is limited.
16. To prevent the coalescence of settlements, and to protect their rural settings, Policy EN2 (EN2) seeks to keep Local Green Gaps (Gaps) open and essentially free of development. The appeal site is located at the eastern end of a quite distinct and roughly rectangular block of open land within the Gap between Clacton and Little Clacton. This block of land is roughly bounded on three sides by Centenary Way (south), Thorpe Road (east), and Holland Road (north). The main function of this Gap is to safeguard the separate identity, character and openness of the setting of Little Clacton, particularly by protecting the undeveloped land either side of Centenary Way.
 17. The Gap was defined at the time of the preparation of the TDLP and in light of the development needs at that time. The Policy starts with the phrase "*During the plan period*" which is long past. In order to meet future needs it may be necessary to release land. EN2 is more preclusive of development outside of settlement boundaries and within Gaps than advice in the Framework indicates. Other Inspectors have found EN2 to be inflexible and to inhibit development. Cases have been determined within different HLS contexts and/or under different national planning policy guidance. Consistency is important but I do not know all the details of all the cases drawn to my attention and it is not always clear what weight has been attached and for what reason.
 18. eLP Policy PPL6 (PPL6) proposes Strategic Green Gaps (SGGs), including one between Clacton and Little Clacton. It would be much smaller than the Gap in the TDLP. However, it would maintain a SGG in the locality of, and including, the appeal site. Although the eLP is at an early stage, the intention to maintain a SGG strengthens my conclusion that EN2 has a continuing effect in this area. Paragraph 213 of the extant Framework advises that due weight should be given to policies adopted or made prior to the publication of this Framework according to their degree of consistency with this Framework. EN2 reflects the objectives of a plan-led spatial strategy and the creation of well-designed places, which are fundamental planning principles supported by the Framework. The weight I attach to EN2 is moderate.
 19. In the Essex Landscape Character Assessment 2003 the site is within the E3 Tendring Plain Landscape Character Area (LCA). The sensitivity for urban extensions of 5ha+ is assessed as moderate, with possible opportunities for change with new landscape frameworks noted. At a local level, the Tendring District Landscape Character Assessment 2001 (TDLCA) the site is within the Clacton and the Sokens Clay Plateau LCA (8B) described as a relatively densely settled rural agricultural plateau landscape. With the loss of hedgerows and ancient woodland, the condition has been declining over many years. The TDCLA was also prepared roughly two decades ago. There have been changes both in the urban fringe and at the settlement edges, but the main parties agree that the findings are still relevant.
 20. Within the urban fringe around Clacton, development has fragmented parcels of agricultural land that have remained unmanaged/neglected or converted to amenity uses/horse paddocks. Opportunities exist to absorb change and overcome adverse impacts through appropriate siting, design and other

- mitigation measures. The TDLCA notes that industrial estates have a strong influence on the urban fringe character and appearance of this LCA.
21. The appeal site, and adjacent open land in this block, appear relatively intact and comprise mostly of moderately attractive farmed countryside. The presence of Clacton is felt but cannot be readily seen across the site and this block of land. There is a staggered edge at Little Clacton and some detractors including a ribbon of residential development, the back of other development, caravan parks and paddocks.
 22. A Landscape and Visual Appraisal (TGLVA)² for the application noted that the southern part of the site has some urban fringe characteristics. There is a fallow field adjacent to a roundabout at the junction of Thorpe Road and Centenary Way and commercial estates and other development to the south and east. I found that, save for a farmhouse, the appeal site and nearby land within this roughly rectangular block of land at the eastern side of the Gap appears largely free of dwellings and buildings. It affords a break between built form on the edge of the settlements of Clacton and Little Clacton and contributes positively to their rural settings in this area.
 23. Perceptions of the separateness of places and their settings can be appreciated by travelling going 'to and fro'. Although roads typically form a backbone of development here Centenary Way, Thorpe Road and Holland Road surround the appeal site and the rectangular block of open land on three sides. The TGLVA noted that an established hedgerow spans the length of the boundary with Thorpe Road providing a visual barrier to the countryside to the west. But one is aware of an absence of development and of open countryside beyond.
 24. On the east side of Thorpe Road the Council has accepted and encouraged development over a number of years. As well as a proposed large allocation in the eLP the Council has approved a number of schemes³. The design of individual schemes and the extent of landscaping varies. This collage of closed, rundown uses, and new/under construction residential development is on the east side, away from the Gap. Aside from the fallow field fronting the roundabout I saw little evidence of noticeable detracting elements on the Gap side. The experience of travelling along Thorpe Road is generally one of passing along the edge of a settlement, not within the urban fringe.
 25. The appeal proposal would result in development to both sides of the road. A linear landscape feature running alongside it would separate, not unify, urban form. Enclosing this stretch of road with development to the west would not materially change the character and appearance of existing and consented development on the east side or how people value experiences of these areas. Illustrative drawings, including the Parameters Plan and Landscape Strategy Plan, indicate that travelling north on Thorpe Road that after the fallow field there would be residential development interspersed with open spaces all the way until past Reedlands Farmhouse on the Gap side.
 26. The quality of built form might be high, with different character areas, and a main open area in the style of a village green. Development would be edged by a 10m buffer on one side and woodland belt to the other. But from Thorpe Road and Holland Road, appreciation would largely be confined to a sequence

² Tyler Grange, August 2018. CD5.4

³ E.g. 12/01262/OUT 250 dwellings; 16/00421/FUL 81 bungalows and 16/02107/FUL 47 bungalows & 2 houses

- of development cells. The open areas between could function as connections to the countryside and Gap but they would be largely surrounded by development and would not appear as countryside or breaks between settlements.
27. The clear break between Clacton and Little Clacton would be reduced to a small section west of Reedlands Farmhouse, on Holland Road. A reduction in the width of the Gap from roughly 500m to 300m. Settlements would not physically coalesce, but there would be a perception of the settlements becoming almost joined. The open rural setting of Clacton and Little Clacton and the separate identity of Little Clacton would be eroded. The experience of Little Clacton being set apart and in open countryside would be all but lost. This physical proximity would harm the distinct and separate identities of Clacton and Little Clacton. New woodland buffers and a small open space adjacent to the Farmhouse would not fully mitigate the effects.
28. The Appellant's Figure 3 Composite Zone of Theoretical Visibility (ZTV) illustrates the likely extent of possible views of the proposed development. A ZTV was also produced for consented schemes on land east of Thorpe Road (Dwg No 12857/P11b). The area with potential for views is limited. The main views would be from two footpaths north of the site (Viewpoints 15 and 16) and two paths to the immediate southwest (Viewpoints 17 and 18). Visual impact was not a putative reason for refusal. Rather these viewpoints offer opportunities to consider landscape effects and effects on the Gap.
29. From Viewpoint 16 on the edge of Little Clacton there would be a distant view looking toward Clacton. The southernmost part of the site is briefly visible in the long-range view. The view is mainly of open countryside. It is visually quite open with a sense of a moderately large-scale landscape. Built form on the edge of the settlement beyond is not intrusive in the open farmland that forms the Gap. The Appellant's Landscape Architect agreed that views of consented development would be limited.
30. From the same viewpoint, and from studying all of the evidence, including "*Accurate Visual Representations (Type 3, Level 1)*" submitted at the Inquiry, I found that housing on the southernmost part of the appeal site would appear to stretch out across the Gap, appearing briefly to almost line up with the eastern limit of development at Little Clacton. The slim, but almost continuous line of built form would intrude into open countryside to the detriment of the character and appearance of the countryside and the function of the Gap.
31. Even when mature, a 15m wide planted buffer would not fully mitigate those effects. The presence of housing on the edge of Clacton and Little Clacton influences the view, and the proposed development would be a small part of the panorama. Changes in the views would not significantly change the amenity of the public paths. Nonetheless, the landscape impacts would be adverse.
32. A number of photographs illustrate views from Holland Road in the vicinity of Viewpoints 9 and 10. Mature planting around the Farmhouse can be seen, with views of existing development limited to partial glimpses of roofs close to the roundabout, over layers of vegetation and beyond the Gap. Sections of the western and north facing boundaries of the appeal site are visible. There are no photomontages to illustrate this view and what could be seen from the site visit, including the location of particular trees, was not certain. From my observations it would seem that the already consented development would be

- largely screened by existing vegetation, as would residential development on the northern and central parts of the appeal site. However, proposed development on the more southerly parts would be visible. It would introduce built form, adversely affect the character and appearance of the countryside, reduce the size of the Gap and erode the separation and setting of settlements.
33. Existing trees and hedgerows could be retained, and a substantial woodland buffer planted following field boundaries on the Gap side. With appropriate planting and a footpath running through, it could be an attractive feature, enhancing vegetation and biodiversity, and creating a new attractive edge of settlement walk. These aspects would strengthen some landscape characteristics and comply with a requirement of EN1 to include suitable measures for landscape conservation and enhancement.
34. But much of the proposed woodland belt would appear to be on the east side of existing boundary trees and hedgerows at the Farmhouse. This already provides substantial screening of existing development and would screen much of the appeal site from the west. I did not find the two southernmost fields to be particularly well contained. There would be a break in the proposed tree belt adjacent to the access linking the two which would weaken the linear woodland effect in the area closest to the edge of Clacton. Overall, the woodland belt would not offer any substantial additional screening benefit for existing, consented or proposed development on the edge of Clacton, and would make only a limited contribution to the setting of Little Clacton.
35. To the north Centenary Way is largely flanked by hedgerows, occasional trees and small thickets. On the accompanied site visit, a thin strip of development to the north east beyond the appeal site was pointed out. Others drew attention to glimpses of buildings such as Reedlands Farmhouse and parts of dwellings on Thorpe Road, but long-range views across the Gap are limited, filtered by intervening layers of vegetation. There are no significant views. The general perception is of open countryside north of Centenary Way.
36. Viewpoint 18 is largely looking out from the edge of the settlement across open countryside in the Gap. Built form across the Gap and beyond the appeal site is quite difficult to discern in the existing view. A comparative photomontage illustrates that the consented schemes would generally appear to be below the height of the intervening layers of vegetation. The Appellant's Landscape Architect agreed that views of consented development in the area would be limited. I find that it would have little effect on the Gap in this view.
37. In contrast, the photomontage of a residential scheme on the appeal site (based on the illustrative materials submitted) shows that it would occupy a noticeable amount of the view. The perceived scale of the open countryside in the Gap would be reduced. The balance and composition of elements would be changed significantly and the present clarity and distinct separateness of urban and rural would be lost. Development would appear isolated from other urban form and quite out of place. Even with mature landscape buffers up to 15m wide there would be an awareness of housing.
38. Whilst the southernmost part of the site might reflect former historic field boundaries it has, as one of the Appellant's witnesses put it, been cut off by Centenary Way. The inclusion might enable landscaping from Holland Road to Centenary Way but that does not make development appropriate. Residential development here would fragment the landscape and detract from the clear

separation of countryside and settlement edge. There would be an illogical intrusion of built elements into an otherwise open and well-defined block of open countryside.

39. There would be a reduction in the width of the Gap along Centenary Way from roughly 1.4km to 1km. A landscape buffer would not fully mitigate effects. The fallow field adjacent to the roundabout is outside of the Appellant's control. The severance of this field from other undeveloped land in the Gap would exacerbate the fragmented settlement edge.
40. The layout and design concept could change from that illustrated but it is an irregular shaped site with the southernmost section attached only by a very narrow link. The potential limitations for landscaping of the narrow link between the two main parts of the site only became clear at the Inquiry. Adjacent fields in the Gap could become more, not less, vulnerable to development pressure in this area. I am not persuaded that the proposal offers an improved, stronger urban edge, or a more defined defensible western boundary to Clacton and eastern boundary of the Gap. Nor am I persuaded that a distinct 'Clacton character' within the development would have any significant impact upon the perception of the separation of settlements.
41. The Gap is extensive. The proposal would reduce the area by approximately 4%. The area lost would not be substantial by comparison with the much smaller SGG proposed under eLP PPL6. A greater separation between Clacton and Little Clacton would be retained along both Holland Road and Centenary Way than has been retained on the southern edge of Little Clacton between consented and proposed development. Even so, the scheme would erode the separate identity of settlements by virtue of closer proximity and would compromise the function of the Gap.
42. On the site visit the Appellant's witnesses drew attention to other areas where rows of dwellings could be seen extending out into countryside, and a 'ribbon' of recently allowed dwellings on the eastern edge of Little Clacton. I do not know the full details, but the appeal scheme is for in-depth development and quite different. Recent development south of Holland Road appeared small in scale and well connected to the settlement.
43. Development has been allowed in the Gap area south of Little Clacton. The character and appearance of the area south of Little Clacton is quite different. The TDLCA identified roughly two decades ago that development along the B1441 had almost joined the settlements of Great Clacton, Little Clacton and Weeley and has a negative influence on landscape character.
44. In another Gap at Sladbury Lane⁴ the Inspector found that development would not have an effect on the separation of the two settlements, would not result in the coalescence of settlements with different character and would not result in an adverse impact on the intrinsic beauty of the countryside. The Inspector also found that wider, larger scale tracts of arable land eastwards of the appeal site to be more important for the purpose of maintaining the separation of Burrsville Park and Holland-on-Sea. In the case I am determining the appeal site is part of a relatively intact block of farmed countryside which affords a clear break between Clacton and Little Clacton.

⁴ APP/P1560/W/17/3169220

45. Other appeal decisions are drawn to my attention, but this main issue turns on the characteristics of the appeal site and the character and appearance of the locality. I have considered the proposal on its own merits.
46. The explanatory text to EN2 explains that a main function of this Gap is protecting the separate identity, character and appearance of Little Clacton *"particularly by protecting the undeveloped land either side of Centenary Way"*. The appeal proposal would not impact land either side of Centenary Way in the area to the south of Little Clacton. Nonetheless, Policy EN2 states that *"land within Local Green Gaps will be kept open and essentially free of development"*.
47. Clacton is adjacent to the sea which limits directions for potential growth. For the eLP the Council has proposed that some Gaps should be changed, but not in the locality of the appeal site. In this area, the proposed gap under Policy PPL6 would be much smaller. But it would cover the area between Little Clacton and Thorpe Road, including the appeal site. The Appellant informed the Inquiry that objections have been lodged to PPL6 and the EIP has yet to consider and conclude on these matters.
48. There is insufficient evidence that the need for new housing amounts to a functional need for development to be in this specific location and cannot be accommodated outside of a SGG. The Appellant drew my attention to a number of other matters concerning PPL6 including that the Council proposes a housing allocation between Little Clacton and Centenary Way at the narrowest point of the Gap. But it is just that, a proposal, and comparative assessments of sites, and about where Gaps/SGGs might need to be amended/proposed to accommodate strategic development belong to the local plan process.
49. The site is not a valued landscape in relation to advice in the Framework. Other LCA's might have stronger character, be of higher value and more sensitive. There were criticisms of the Council's Landscape and Visual Assessment. Guidelines for Landscape and Visual Impact Assessments, third edition (GLVIA) are just that, and non-prescriptive.
50. The Council's Landscape Architect found the landscape to be of local value. He agreed that the presence of Clacton has the potential to limit the extent of effects but assessed the landscape context to be susceptible to a development of the type, scale and location proposed which would have only limited compatibility with key characteristics. There was some consensus with the Council's assessment that overall the site is of moderate sensitivity to residential development⁵. The Council concluded that harm to landscape character would be moderately significant.
51. The Appellant's Landscape Architect for the appeal found that overall there would be an adverse effect on landscape character but considered it would not be significant or materially harmful, there would be benefits and residual effects would be beneficial. The TGLVA noted that development would inevitably impact on the Gap and that after mitigation the impact upon arable land and countryside to the west of the site would be medium adverse. It concluded that development in its entirety doesn't protect the character of the separate and distinct settlements of Clacton on Sea and Little Clacton and that impacts upon the relationship with both would be medium adverse. The

⁵ TGLVA CD 5.4

- proposal is not EIA development and the TGLVA did not fully and systematically and transparently assess the significance of the effects identified.
52. Ultimately, the conclusions in all of the landscape evidence before me are based upon a series of judgements. I have made my own, having regard to all of the evidence and my observations on my site visits.
53. Development of a greenfield site results in change. Change does not necessarily cause harm. New woodland planting, hedgerows and open spaces would strengthen aspects of landscape character. The scheme could provide new public rights of way and green infrastructure. These are benefits. The preamble to EN2 states that within Gaps the Council will encourage the enhancement and improvement of public rights of way and existing leisure and recreational facilities, where this does not prejudice the wider purpose and function of Gaps. Proposals for long-term protection of open spaces and green infrastructure add to the gains.
54. Notwithstanding the benefits, I conclude, for reasons given, that overall the proposal would harm settlement pattern, the separation, setting and individual identity of settlements, and the character and appearance of the countryside between Clacton and Little Clacton. These harms attract very substantial weight against the proposal.
55. I found little to say that the development would not conserve features listed in criteria a, b, d, e or f of EN1. The overall effect on landscape character would be moderate adverse. However the distinctive open countryside character of the appeal site and the block of land to the east, and the setting of Clacton and Little Clacton would not be conserved. In these ways the proposal would not comply with EN1. Aspects of the scheme would accord with aims to encourage the enhancement and improvement of public rights of way and existing leisure and recreational facilities. But overall the scheme would be contrary to key aims of EN2 to prevent the coalescence of settlements and to protect their rural settings by keeping the Gap open and essentially free of development. For reasons given, the weight I attach to conflict with EN1 is limited and moderate for EN2.
56. The scheme would reinforce some aspects of landscape character, but the harms would override the benefits and conflict with eLP PPL3. The proposal would be contrary to aims of eLP PPL6 that development will not be permitted which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their closer proximity. Due to the status of the eLP, I attach limited weight to conflict with these policies.
57. The proposal would be contrary to advice at paragraph 127 of the Framework for the creation of well-designed places that add to the overall quality of an area, and are sympathetic to local character, including landscape setting. These harms attract very substantial weight against the proposal.

Unattributable Population Change (UPC)

58. UPC is the unexplained difference between the Office of National Statistics (ONS) projection of the population increase from 2001 to 2011 and the recorded population change measured by the Censuses for those years. The SM is based on the ONS 2014 population projections. If they roll forward exaggerated population growth estimates, then the annual LHN of 881 dwellings predicted by the SM would be flawed.

59. In 2018 the EIP EI addressed the issue of UPC and the accuracy of the ONS household projections. The EI found that UPC in Tendring was a figure of over +10,000, one of the biggest of any LPA, and that factors that gave rise to UPC continued to have a substantial distorting effect on the migration trend rates used in the official population and household projections for Tendring. The EI concluded that the scale of the difference and robustness of evidence justified a departure from the official projections and that a figure of 550 dwellings per annum for the objectively assessed housing need (OAHN) was soundly based.
60. The EI reserved the right to modify his views in the light of any further evidence that may come forward. Separately he found that evidence to support aspects of proposed garden communities and strategic highway proposals was lacking. The EI held further hearing sessions in January 2020 focussing on the additional evidence and responses to it. At the Inquiry for this appeal, the Appellant accepted that UPC remained an issue but there was much debate about the issues behind UPC and the robustness of evidence, including births and deaths, students, internal and international migration flows; population and household projections, and completions data. The EIP is the forum to scrutinise evidence and resolution of all of the issues relating to UPC.
61. In May 2020 the EI advised of his latest findings based on the new evidence. He states that he has seen no evidence that since June 2018 the ONS has addressed the specific errors in migration trend rates that gave rise to a substantial part of the exceptional UPC for Tendring. He sums up that neither the population and household projections and employment forecasts published since June 2018 nor recent evidence from market signals indicate that there has been a meaningful change in the housing situation that he considered [previously]. Consequently the EI concluded that the Plan's housing requirement remains soundly based and the EI recommended no change to the housing requirement; that is 550dpa.
62. The EI's latest letter adds weight to a view that the annualised SM requirement of 881 dwellings would likely be an overestimate. This does not mean that the SM should not be used to calculate the requirement. But it is a material consideration in determining the weight to be attached to the extent of the shortfall. This would be broadly consistent with the approach taken in the 'Edenside' and Lawford ⁶ appeal decisions. The Appellant continues to take issue with the EI's findings. But this and whether or not the EI's conclusions on the Garden Communities have implications for Tendring's strategic housing requirements are for the EIP.
63. The Council was keen to stress that it is taking steps to increase supply. However, the Council's housing witness conceded that using their preferred requirement of 550 dwellings per annum, the Council would have a 4.98-year HLS. The decimal point could be rounded up, but even so the Council would just scrape a five-year HLS. The Framework is clear that local authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement.
64. The SM was introduced as part of the Government's '*Planning for the right homes in the right places*' consultation. The Government's aim being to significantly boost the supply of housing. The SM is a mechanism to ensure sufficient land is available to meet the number of homes needed in each area.

⁶ APP/P1560/W/18/3196412 and APP/P1560/W/18/3201067

To deliver 881 dwellings each year could, over time, lead to an excess of houses in the wrong administrative area on account of methodological errors. But given that the Council's preferred figure of 550 dwellings would only yield a 4.98-year HLS presently, I am not persuaded that allowing the appeal proposal would make this a likely scenario.

65. Appeal decisions relating to the SM and UPC were presented. Inspectors have approached the matters differently and consistency is important. However, the evidence presented to this Inquiry on the HLS situation leads me to conclude that the weight to be attached to the Council's five-year HLS shortfall should be substantial, even after considering the EI's latest conclusions.

Other Matters

Affordable Housing

66. TDLP Policy HG4 seeks 40% of affordable dwellings on sites of 15 or more dwellings or residential sites of 9.5ha or more. Following the preparation of evidence for the eLP and draft Policy LP5, the parties agree that a requirement of a minimum of 30% affordable housing is evidence based and should be afforded weight. I find no reason to disagree.
67. The Council exercised a quite flexible approach to provision of affordable housing. Over the past six years only 87 affordable dwellings were delivered. For the year 2018/19 the figure was just 16. The Council agrees that there is a very substantial unmet need for affordable housing in the District and that short-term supply is very limited. Just under half (784 of 1,766) households on the housing register are seeking accommodation in Clacton as their preferred area. Anticipated future delivery of affordable housing from consented and allocated sites in Clacton/Little Clacton is less than 600 units.
68. The Council accept that supply and delivery in the Clacton area in the foreseeable future are limited and that allocations in the eLP would not provide all of the affordable housing required. The affordable housing scheme would provide 74 (30%) affordable homes on site in a mix of dwelling types. 42 units would be delivered within the next five years and a further 32 thereafter. This would represent a significant contribution in relation to previous delivery rates, anticipated supply and estimated need.
69. In order to ensure that the site would be brought forward quickly the Appellant would accept a condition requiring development to be begun before the expiration of two years from the date of approval of the last of the reserved matters. The witnesses at the Inquiry were all in agreement, the situation is dire and the provision of 74 on-site affordable dwellings would comply with the Council's Policy requirements. I agree and find that 74 on-site affordable dwellings is a benefit that attracts significant weight.

Heritage Regeneration

70. The heritage alternative would be a financial contribution towards restoration of St Osyth's Priory in lieu of provision of affordable housing. The TDLP recognises that St Osyth's Priory is of national heritage importance and is the most notable heritage site within the District. It contains an exceptional Grade I, Grade II* and Grade II group of listed buildings, a scheduled ancient monument and registered park and garden. Policy EN27a confirms that the Council is committed to the conservation, preservation and restoration of St Osyth's Priory and to that end, will work in conjunction with the landowner

and English Heritage. Any application for enabling development will be judged against the criteria set out in EN27. Notwithstanding a large amount of evidence submitted regarding the Business Plan for St Osyth's, there is insufficient evidence to demonstrate that the amount of enabling development proposed is the minimum necessary to secure the future of the heritage asset.

71. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) requires that a benefit has to be necessary to make the development acceptable and fairly and reasonably related in scale and kind. The parties agree that it would be necessary to compensate for the lack of provision of affordable housing and that the financial contribution that would be made towards heritage restoration would be the sum of 74 affordable housing plot values. The Appellant additionally argues that, although initially of equivalent value, the longer-term benefits of the heritage offer would "trump" the affordable housing offer. However, there is limited evidence of what the long-term wider benefits of the affordable housing would be.
72. The Council rejected a Business Strategy for St Osyth's that the Appellant was required to submit under other obligations and the parties were in dispute, one concern of the Council being the deliverability of the Business Strategy and its dependence on unidentified enabling development. The overall Priory project requires substantial funding from multiple sources and there were unresolved issues. There is some uncertainty as to when the heritage benefits from this appeal scheme would be delivered. In any event, the contribution from the appeal scheme would fund relatively small discreet elements. Thus, whilst parts of the Priory project might be progressed, the contribution would not enable the delivery of main elements for which funding has yet to be secured and upon which the assessment of long-term regeneration and financial benefits are made, such as renovation of the Tithe Barn.
73. From all of the evidence, including that of witnesses at the Inquiry, regarding the woeful affordable housing situation in Tendring and the Clacton area specifically, I could not prefer or weigh more heavily, the contribution towards the heritage project than the provision of 74 affordable homes for households in dire housing need. Even if I were satisfied that the proposal met ENV27 and CIL requirements, the alternative offer would not be determinative, even considering the harm from continuing risk to the heritage assets.

Setting of designated heritage assets

74. TDLP Policy EN23 (EN23) provides that proposals that would adversely affect the setting of a Listed Building (LB) will not be permitted. This reflects the considerable importance and weight to be given to the preservation of the significance of LB's under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the approach does not reflect the structured approach and balancing of public benefits in the Framework.
75. The parties agree that the proposal would lie within the setting of two Grade II listed farm dwellings, namely Reedlands Farmhouse adjacent to the site on the south side of Holland Road and Oak Farm on the east side of Thorpe Road. Reedlands Farmhouse was part of a farm complex which formed part of the historic farmed landscape within which it is set. It is now separated from the farm buildings and occupied as a dwelling and has been surrounded by tall, strong and mature hedgerow and tree lined boundaries on three sides. Nevertheless, it does still appear as an isolated farmhouse in a rural setting

and the appeal site continues to contribute to an appreciation of its significance in this regard. Residential development in the historic agrarian landscape setting of the Farmhouse, albeit largely screened and set back, would further diminish the contribution that setting makes to the heritage significance of the listed Farmhouse. Given that the relationship is already diminished, the harm that would be a consequence of the appeal scheme would be at the low end of less than substantial.

76. Oak Farm is another isolated farm dwelling which once had a direct relationship with the surrounding agricultural landscape. In its present form it has principal windows with views across the appeal site. However, it is functionally and physically separated from the appeal site and development constructed and consented on the east side of Thorpe Road has already compromised its setting. The appeal scheme would retain an open space in the area opposite. Thorpe Road, a landscape buffer and a possible sustainable drainage area could all be within the views from Oak Farm. But I am not persuaded that it would satisfactorily reflect and preserve the open farmed landscape setting of the LB. Nonetheless, the impact upon the significance of Oak Farm would be at the lower end of less than substantial.
77. Inasmuch as there would be some harm, the scheme would conflict with EN23, but the policy does not reflect the approach in the Framework. The weight that I attach to the conflict is very limited. Policy PPL9 of the eLP refers to listed buildings and better reflects the requirements in the Framework. Even so, given the status of the eLP, the weight I attach to the conflict with PPL9 is also very limited. The Framework advises that less than substantial harm must be weighed against the public benefits of the scheme.

European Sites and biodiversity

78. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') transpose the Habitats Directive and the Birds Directive into English and Welsh law. The aim of the Directives is to conserve key habitats and species across the EU by creating and maintaining a network of sites. Natural England advised that the appeal proposal was likely to have significant effects on important features of sites of European importance, either alone or in combination with other plans and projects, through increased recreational pressure as a result of increased use by residents of new development within walking or driving distance. They advised that a strategy of both on-site informal open space and off-site visitor access management measures would be required to mitigate the effects.
79. Information has been submitted to the Inquiry to demonstrate that the proposals would address Natural England's on-site requirements for Suitable Natural Green Space with informal, semi-natural areas, circular dog walking routes and dedicated dogs-off-lead areas. Contributions towards the Essex Coast Recreation Avoidance and Mitigation Strategy would mitigate off-site effects. Natural England concluded that with these mitigation measures the proposal would not adversely affect the integrity of habitats sites and confirmed they had no objection. The submitted legal agreement and proposed planning conditions would secure the measures. On-site facilities would be accessible to residents of the wider area.
80. Some of the areas provided are required for more than one reason, for example neutral grassland areas that would act as attenuation basins. Without

the provision of some of the elements the scheme would fail to satisfy other policy requirements. Even so, the extent of open space required on site to meet all of the various requirements would also mean that there would be a substantial net biodiversity gain of 27.69 habitat units (78.7%), greatly in excess of policy objectives. Framework paragraph 170 promotes net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Transportation, Sustainability and access to services

81. Third parties raised a number of concerns. However the Council confirmed that the s106 overcame concerns in these regards and submitted a CIL Regulation Compliance Statement and extracts from relevant documents addressing the necessity, relevance, proportionality and planning policy basis. There was little other technical evidence to substantiate the concerns.

Benefits and Planning Balance

82. Policies most important for the determination of the appeal are out-of-date and the 'tilted balance' applies. The proposal is outside of the SDB for Clacton in the TDLP and eLP. Conflict with TDLP QL1 attracts limited weight and conflict with eLP SPL1 and SPL2 attracts very limited weight against.
83. The proposal would exacerbate negative aspects of the urban fringe such as framing a fallow field, creating fragmented isolated development and increasing the perception of travelling through the built-up area between Clacton and Little Clacton. It would erode the setting and separate identities of Clacton and Little Clacton and undermine the character and quality of the landscape. There would be harm to settlement pattern and form, the separation, setting and individual identity of settlements, and the character and appearance of the countryside. These harms attract very substantial weight against the proposal.
84. The quality of the distinctive open countryside character of the appeal site and the block of land to the east would be harmed, and the setting of Clacton and Little Clacton would not be conserved. The proposal would not comply with EN1. This attracts limited weight. The proposal would adversely affect the Gap between Clacton and Little Clacton contrary to aims of EN2 to prevent the coalescence of settlements and to protect their rural settings by keeping Gaps open and essentially free of development. Conflict with EN2 attracts moderate weight. Conflicts with eLP PPL3 and PPL6 attract limited weight.
85. Less than substantial, but irreparable harm to the heritage significance of the two grade II LB's adds some further, but limited, weight against and does not provide a clear reason for refusing the development. Conflict with EN23 and eLP PPL9 attract very limited weight.
86. Using the Council's preferred method the HLS would be 4.98 years, but Framework paragraph 73 indicates that the SM is to be used in this case. The HLS using the SM is 3.62 years. UPC is an issue but the weight to be attached to the Council's five-year HLS shortfall is substantial, even after considering the latest evidence on HLS and the EI's conclusions on the housing requirement.
87. The 245 dwellings, on the edge of Clacton, in a mix of types and sizes to reflect requirements would contribute to the HLS and assist the Government's aim to significantly boost the supply of housing. The provision of housing attracts very substantial weight in favour. Provision of 74 affordable dwellings at Clacton where there is substantial unmet need attracts significant weight.

88. Socio-economic benefits flowing from the delivery of all of the housing, including construction employment and direct and indirect economic activity, and the subsequent Council tax, spending and economic activity of occupants would be broadly similar from any scheme contributing to the housing requirement. However, a willingness to bring the site forward expediently adds confidence and attracts some weight.
89. Contributions towards education and healthcare are necessary to make the development acceptable and are therefore neutral in effect. Contributions towards a scheme of restoration for St Osyth's Priory would not attract any more weight than on-site affordable housing, even taking account of potential harm through non-delivery of even some restoration works at this stage.
90. Whilst not persuaded by some of the claimed aims and ambitions of parts of the urban design and landscape strategies, the scheme would deliver beneficial new green infrastructure, net biodiversity gains and the potential for increased public access. The proposal was likely to have a significant effect (either alone or in combination with other plans or projects), but that with specified mitigation the proposal will not adversely affect the integrity of the habitats' sites. Measures to address European Sites, Biodiversity and Green Infrastructure include elements of necessity to make the development acceptable, but it is evident that the total provision would be generous and benefit the wider public and area. These benefits attract moderate weight.
91. There is ambivalence; important aspects of the scheme pulling in opposite directions. Delivery of 245 dwellings weighs very heavily in favour, 74 affordable dwellings adds significant weight. The total benefits are many and tip the scales further. The weight attached to conflict with the development plan is reduced as the Policies are rendered out of date.
92. Nonetheless, the development proposed would conflict with the development plan as a whole and the harms that would arise would undermine long held principles of the planning system that seek to manage the pattern and location of development and to protect the countryside. These harms attract very substantial weight against the proposal and run contrary to the Framework's objective of achieving sustainable development by fostering well designed environments and contributing to protecting and enhancing our natural and built and historic environment and seeking the creation of high-quality places.
93. In the overall planning balance, I conclude that the adverse impacts of the development proposed would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Therefore the proposal does not benefit from the presumption in favour of sustainable development and material considerations do not outweigh the conflicts with the development plan. As I am dismissing the appeal it is not necessary for me to undertake Habitats Regulation Assessment.

Conclusion

94. Having regard to all other matters raised, including by interested parties, I conclude on balance that the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR

PARTICIPANTS AT THE INQUIRY

FOR THE APPELLANT

James Strachan QC.

He called:

Clare Brockhurst FLI, BSc (Hons),
Dip LA Director Leyton Place Ltd, (Landscape)

Michael Lowndes, BA(Hons) DipTP, MSC DipCons(AA) MRTPI,
Independent planning and urban design consultant, (Urban Design)

Colin James Robinson BA(Hons) MTP(Dist) MRTPI MIED,
Planning Director, Nathaniel Lichfield and Partners Ltd, (Housing)

Steven Butterworth BSc (Hons) MRTPI (Planning) Senior Director, Lichfield

Nick Bridgland MA (Hons), MA, FSA Scot, IHBC, Heritage Director, Nathaniel
Lichfield and Partners Ltd, (Heritage round table)

FOR THE COUNCIL

Simon Bird QC.

He called:

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

Cristina Howick MA MSc, Director at Stantec UK Ltd (formerly known as Peter
Brett Associates) (Housing)

Tim Murphy IHBC MCIfA,
Essex County Council (heritage round table)

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

INTERESTED PERSONS

Councillor John Cutting, of Little Clacton Parish Council but attending as a resident
of Little Clacton

Andrew Hanmore, resident of Little Clacton.

Documents received at the Inquiry

- IQ.1** Joint HRA Statement, January 2020,
and emails to/from Natural England dated 28-31 January 2020
- IQ.2** Council appeal notification letter dated 3rd January 2020
and list of consultees notified
- IQ.3** Rebuttal Proof of Mrs Brockhurst Vol 3
& Appendix R1 & R2, 20 January 2020
- IQ.4** Rebuttal Proof of C. Robinson 27 January 2020
- IQ.5** Rebuttal Proof P. Russell-Vick, January 2020
- IQ.6** Rebuttal Proof of Ms C. Howick, January 2020
- IQ.7** Appellant's Note for Heritage Round Table Session 30 January 2020
- IQ.8** Signed Heritage Statement of Common Ground 8th Final,
03 February 2020
- IQ.9** Updated draft legal agreement
and covering letter to Lloyds Bank 31 January 2020
- IQ.10** Opening Statement Mr James Strachan QC
- IQ.11** Opening Statement Mr Simon Bird QC
- IQ.12** List of Inquiry Plans Updated 13 February 2020
- IQ.13** Accurate Visual Representations (Type 2 Level 1) by Troopers Hill
- IQ.14** Dwg. No. 12857/P11b GIS Zone of Theoretical Visibility Consented
Schemes (LiDAR)
- IQ.15** Dwg. No. CC-0175-PSP01 Rev E St Oysth Priory Structures and
Listings Plan
- IQ.16** Dwg. No. CMP Figure 20 Indicative Master Plan of St Oysth Priory
Estate Including Enabling Development
- IQ.17** Delegated TDC Officer Report of the Business Plan dated 13 Jun 2019
- IQ.18** McBains Cooper Cost Plan for Restoration Report Updated 3 Mar 12
- IQ.19** ZTV lidar Mapping Replacement R1 Plan
- IQ.20** A3 replacement R2 Appendix
- IQ.21** Email dated 5 Feb 20 from N. McDonald to C. Howick
- IQ.22** Additional Graphs by Stantec on behalf of the Council; Total Net
Migration Tendring 2001/02 – 2016/17; Number of households,
(i) Tendring & (ii) England
- IQ.23** Agreed Position Statement Regarding Mrs Brockhurst Rebuttal
Appendices R1 and R2

- IQ.24** Council Note on Public Access to St Osyth
- IQ.25** Copy of Planning Permission and former Chicken Farm (Ref.No 16/00421/FUL) plans
- i. Proposed boundary treatments plan - 5075/PA100
 - ii. Soft landscape plan - DFCC_1157_L02
 - iii. Soft landscape masterplan - DFCC_1157_L01
 - iv. Tree protection plan - DFCP 3135 TPP
 - v. Tree survey plan - DFCP 3135 TSP
- IQ.26** Extract from previous PPG "How should market signals be taken into account" Paragraph: 020 Reference ID: 2a-020-20140306
- IQ.27** Supplementary Planning Statement of Common Ground on Affordable Housing, 12 Feb 2020
- IQ.28** Appellant's Note on Doctors' Surgery Capacity in Clacton by Lichfields 12 February 2020
- IQ.29** Appellant Open Space Calculations Note, 12 February 20, alongside Dwg. No CC010-PL-006 Rev F Areas Plan (with area breakdown)
- IQ.30** Updated Highway Plans, 12 February 2020
- i. 183903_Ga_05 Rev A North / South Transport Link Priority Narrowing (General Arrangement)
 - ii. 183903_Ga_06 Rev A Swept Path Analysis Refuse Vehicle And Fire Tender
 - iii. 183903_Ga_07 North / South Transport Link Priority Narrowing (Forward Visibility)
 - iv. 183903_Ga_04 B Uncontrolled Pedestrian /Cycle Crossing On Centenary Way
 - v. North/South Transport Link Sketch for Landscape Treatment 10 Feb 20 C. Brockhurst
- IQ.31** Foots's Farm Access Note by Vectos 12 February 2020
- IQ.32** TDC Note In Response to Heritage Round Table Statement
- IQ.33** Appellant Response to TDC Comments
- IQ.34** Updated List of Agreed Conditions 13 February 2020
- IQ.35** Signed Unilateral Undertaking dated 13 February 2020
- IQ.36** Letter from St Osyth Priory and Parish Trust 13 February 2020
- IQ.37** Closing Submissions Simon Bird QC
- IQ.38** Closing Submissions James Strachan QC