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## Appeal Decision

Hearing date 9 September 2020

Site visit made on 3 September 2020

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 October 2020**

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**Appeal Ref: APP/A1530/W/20/3245754**

**Land adjacent to 67 Braiswick Road, Braiswick, Colchester, Essex CO4 5BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Steven Lewis, Rydon Homes against the decision of Colchester Borough Council.
  - The application Ref 191522, dated 7 June 2019, was refused by notice dated 19 December 2019.
  - The development proposed is an outline application for residential development of up to 27 dwellings and associated development with site access to be considered and all other matters reserved for future consideration.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 27 dwellings and associated development with site access to be considered and all other matters reserved for future consideration at land adjacent to 67 Braiswick Road, Braiswick, Colchester, Essex CO4 5BQ in accordance with the terms of the application, Ref 191522, dated 7 June 2019, and the plans submitted with it, subject to the schedule of conditions included in this letter.

### Application for costs

2. An application seeking a full award of costs against the Council has been submitted by the appellant. This application is the subject of a separate letter.

### Preliminary Matters

3. The application was originally submitted for 34 dwellings but was amended in advance of its determination by the Council. During the Hearing main parties agreed the following description of the proposal as 'an outline application for residential development of up to 27 dwellings and associated development with site access to be considered and all other matters reserved for future consideration'. I have determined the appeal on this basis.
4. Due to the Covid-19 pandemic the Hearing was postponed and I conducted a virtual hearing on the 9 September 2020 attended by the main parties and an interested party.
5. The application was made in outline form with all matters reserved except for access. Details of appearance, landscaping, layout and scale are therefore not considered in this decision. The application was submitted with an Illustrative

Master Plan, plan no 619-OA-13, showing the proposed areas for housing, flood attenuation and landscaping in a schematic form. Given that 'layout' is a reserved matter I have treated the drawing as purely illustrative.

6. During the Hearing a completed planning agreement made under Section 106 of the Town and Country Planning Act 1990, as amended was presented. The Council consider that this addresses its second and third reasons for refusal which were subsequently withdrawn in advance of the Hearing. However, as a decision maker I have to consider this agreement against the advice in the National Planning Policy Framework (the Framework). Furthermore, a Unilateral Agreement dealing solely with access through the site was presented in advance of the Hearing. I deal with both the agreement and undertaking later in this decision letter.
7. Included in the Council's first reason for refusal was a reference to viability. This matter was withdrawn before the Hearing by the Council on receipt of evidence from the appellant. However it remains an objection from land owners with interests in part of the emerging housing allocation included in draft policy NC3 and for this reason I have addressed this matter below.
8. The Council through evidence indicated that it was not pursuing an objection to the appeal scheme based on 'prematurity'.

### **Main Issues**

9. The main issues arising from this proposal are:
  - Whether the Council can demonstrate a 5 year housing land supply (5YHLS),
  - Whether the appeal scheme would be appropriately located having regard to both national and local policies regarding housing development,
  - Whether the proposal would prejudice the comprehensive development of the housing allocation proposed under emerging Policy NC3 of the emerging local plan having regard, in particular to matters of viability, deliverability and connectivity, and
  - Whether the proposed development can achieve an appropriate standard of design quality.

### **Reasons**

#### ***Housing Land Supply***

10. The Glossary included in Annex 2 of the Framework includes a definition of 'deliverable' which is supported by further definition in the Planning Practice Guidance (PPG). This identifies that for sites to be considered deliverable they should be available now with a realistic prospect of delivery within 5 years. Two closed lists are set out in the definition.
11. The first identifies sites which do not involve major development and have planning permission and all sites with detailed planning permission. These should be considered deliverable until permission expires unless there is clear evidence that not all homes will be delivered within 5 years. The second covers sites with outline planning permission for major development which have been

allocated in a development plan, have a grant of permission in principle or are identified in a brownfield register. These sites should only be considered deliverable where there is evidence that housing completions will begin on site within 5 years.

12. The PPG goes into more detail on the requirements for sites to be considered deliverable and highlights evidence of delivery as including progress actually made to achieving reserved matters, links to a Planning Performance Agreement (PPA) which identifies the steps to achieving reserved matters, details which confirm the developer's delivery intentions with anticipated start and delivery dates, site assessment works and relevant information about issues such as viability, ownership and /or funding bids for infrastructure. This is not meant to be a definitive list but provides pointers to the prospects for housing delivery and recognises the dynamic of the housing market.
13. Whilst both parties referenced recent decisions of my Inspector colleagues on this topic, which in many instances identified the same sites which are under consideration in this appeal, I am not bound by their conclusions. Several sites which may form either wholly or in part emerging sites in the emerging Local Plan (eLP) now have planning permission. For this reason, they can be distinguished from the site identified by the Inspector in an earlier appeal decision in Braiswick<sup>1</sup>. Several of the disputed sites identified below either had resolutions to grant planning permission or were the subject of PPAs<sup>2</sup> in advance of the cut off date for the APS<sup>3</sup>; this distinguishes them from the concerns expressed over the inclusion of sites referred in the Woolpit decision.<sup>4</sup>
14. Furthermore, the recent Court Order<sup>5</sup> establishes that the categories a) and b) included in the Annex 2 to the Framework are not the only types of site covered by the definition and that providing that there is clear evidence about deliverability and a realistic prospect that completions will occur within 5 years there is no reason to exclude sites from categories a) and b) included in Annex 2. This confirms the extent of sites which can be delivered.

15. The disputed sites are as follows:

*Land north of Magdalen Street*

16. The site benefits from a resolution to grant planning permission and whilst the decision has not been issued the draft heads of terms have been agreed. Whilst there was some slippage in the date for the submission of the planning application as originally anticipated, the Council's programme reflects a build out commencing in 2023-24. I consider that this would allow sufficient time to complete the draft agreement and preliminary works enabling completion within the 5 years. Accordingly, there is a realistic prospect of housing delivery in line with the Council's suggested programme.

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<sup>1</sup> APP/A1530/W/17/3178656

<sup>2</sup> Planning Performance Agreement

<sup>3</sup> Annual Position Statement

<sup>4</sup> APP/W5320/W/18/319926

<sup>5</sup> East Northamptonshire Council v Secretary of State for Housing, Communities and Local Government Case No. CO/917/2020

### *East Hawkins Road*

17. An outline application which includes full details apart from landscape which is a reserved matter has yet to be determined by the Council. Recent decisions of my Inspector colleagues have been at odds on the future potential of this site. The Council accept that its designation as an employment site is now out of date and have been negotiating on a new scheme for student accommodation. However, I consider that despite the good intentions of the negotiating parties involved with the application there is a question mark over the extent to which this site would contribute to supply within 5 years as it does not currently fall in either of the closed lists. Whilst there may be a reasonable prospect of it contributing to supply at some point for the time being there is insufficient evidence to support the case that it will yield any units within the 5 years in question. For this reasons I am deducting its anticipated contribution of 113 units from supply.

### *Former Essex Hospital Site*

18. The application is the subject of a resolution to grant permission and the draft section 106 agreement has been circulated for comment within the Council. Preparatory work in advance of pre commencement conditions regarding land contamination and archaeological works is currently underway. Whilst there are other pre-commencement conditions I consider that approval may slip from the Councils trajectory. Although it is doubtful whether the site could be delivered within the next 2 years as the Council suggests I am satisfied that the site could be developed out within 5 years.

### *Mill Road/Colchester Rugby Club*

19. The site forms part of a growth area and is included as an 'allocation' within the eLP and benefits from form £5.5m for Housing Infrastructure Funding (HIF). Permission has been granted for infrastructure which is currently being constructed to meet the HIF grant requirements. The site comprises 2 distinct schemes for 300 older persons homes and a 75 bed care home which in total accounts for 350 homes in accordance with the PPG.
20. 'Holding' objections have been received from both Highways England and Sport England seeking further information and scheme revision with a further objection from the Community Council. Although the Council's trajectory allows for delivery commencing in 2022-23, this is slightly generous given the nature of some of the objections and the anticipated supply of 160 units each year over 3 years. However, I acknowledge that grant funding provides an imperative for delivery and given the status of the application I consider that a figure of 80 units would be more realistic for the first year of delivery instead of 160 included. Accordingly, I am deleting 80 units from the Council's anticipated supply.

### *Gosbecks 2*

21. I am satisfied with the Council's evidence that despite this site being only an 'emerging' allocation in the APS the application had by March 2020 the benefit of a committee resolution broadly in line with a PPA. A decision was subsequently issued in July 2020. Applications are with the Council for the

approval of outstanding conditions. For these reasons the site has a reasonable prospect of being delivered in line with the Council's anticipated programme.

*Brierley Paddocks*

22. Although the site did not benefit from planning permission by the base date of the APS it did have a PPA and now has planning permission and reserved matters have been approved together with approval granted for several planning conditions. This is sufficient evidence that the site has a reasonable prospect of being fully completed within the 5 years.

*Berechurch Hill Road*

23. The site is part of an emerging allocation in the eLP and the Council has resolved to grant permission subject to a section 106 agreement. Evidence was presented that the developers intend to start works in January 2021. The scheme includes road access which is enabling development and is not dependent on access from another part of the site which has yet to receive permission. For these reasons the site should remain as part of the 5 year supply.

*Odeon site*

24. Although there is already an extant permission and listed building consent for these works viability issues with the scheme have necessitated revisions resulting in the submission of new applications. Although the principle of residential development at this site has been accepted the site's listing and the applicant's requirements for additional units require resolution. For the time being there is insufficient evidence to support the case that it will yield any units during the 5 years in question. Accordingly, I delete 54 units from the Council's supply.

*Halstead Road/Eight Ash Green*

25. The Council provided the key dates included in a PPA which indicate that an application would be submitted in mid October 2020. As no application has been submitted at the time of writing I do not consider that this site falls within either of the closed lists included in the Annex to the Framework. I am disregarding this proposed allocation based on the evidence submitted by the Council. This results in the deletion of 150 units.

*Windfall allowance*

26. With regard to windfall sites I was referred to the decision of the Secretary of State in the 'Darnhall' case<sup>6</sup> where amongst other matters concerns were expressed over the possibility of double counting the contribution from small sites together with the allowance for windfalls. The Council's approach to the calculation of supply does not fall into this trap and the figure used is based on a modest average when compared with the contribution from this source in recent years. The year 1 figures have the benefit of permission and on the basis of delivery in previous years there is a good prospect of their delivery.

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<sup>6</sup> APP/A0665/W/14/2212671

### *COVID-19*

27. Both parties addressed the effect of the pandemic on housing delivery given the hiatus of several weeks in construction activity required by Government. It is almost impossible to predict the impacts of how the pandemic may affect housing supply over the next few years. The appellants citing the Wokingham<sup>7</sup> decision, issued towards the start of the lockdown suggest a deduction of between 74-148 dwellings should be made equating to between 3-6 months supply. Since that decision was issued the response of the built environment sector has become clearer and the Council highlighted measures which have been put in place which have acted as a spur to house building to compensate for the loss in supply. On the balance of evidence before me I consider that there would be no significant impacts on supply from the pandemic.

### *Conclusion on Housing Land Supply*

28. The Council states that it has a supply equating to around 5.4 years based on 6,108 units<sup>8</sup> identified within its APS. Both parties in advance of the Hearing agreed a contribution of 300 units from the Fiveways Fruit Farm; this is a reduction of 50 units originally included in the Council's trajectory. Furthermore, based on my analysis, I have deleted a further 397 units resulting in a 5YHLS of 5,661, sufficient to maintain a 5YHLS.

29. Accordingly, in line with paragraph 11 d) of the Framework the 'tilted balance'<sup>9</sup> is not engaged. My assessment of the planning merits of this scheme will proceed against the policies of the development plan.

### **Location and Policy Framework**

#### *Development Plan*

30. The statutory development plan includes the adopted and saved policies of the Colchester Borough Council Core Strategy 2008 (CS), the Site Allocations DPD 2010 (SADPD), the Development Plan policies 2010 (DPP), the Proposals Map and the Myland and Braiswick Neighbourhood Plan (NBHP). Some policies included in the CS were the subject to a focussed review and were adopted in 2014. The NBHP does not include housing allocations.

31. There is no dispute between the parties on the most important policies for determining this appeal. Policy SD1 is a strategic policy designed to direct growth consistent with housing targets dating from 2008 to a hierarchy of settlements across the Borough. It was reviewed as part of the CSFR in 2014 to reflect the Framework 2012. Although SD1 was predicated on the 2012 adopted Framework, it is a broad policy reflecting a presumption in favour of sustainable development and remains consistent with the Framework 2019 despite its reference to an out of date housing target.

32. Consistent with SD1, Policy ENV1 aims to protect the Borough's natural and historic environment, countryside and coastline. This is an environmental policy directed at both the protection of the natural environment and to direct

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<sup>7</sup> APP/X0360/W/19/3238048

<sup>8</sup> SoCG HLS 14.08.20

<sup>9</sup> Defined by paragraph 11 of the Framework 2019

development to sites within settlement boundaries. Although the Framework is more nuanced and does not seek to protect the countryside for its own sake it does, at Paragraph 170b, recognise the intrinsic character and beauty of the countryside. During the Hearing the Council made clear that the site does not form part of a 'valued landscape'.

33. Policy H1 is specific to housing allocations seeking to ensure that 80% of new housing is provided on previously developed land distributed in line with the settlement hierarchy. Although identified as an important policy by the Council it informs the delivery of Policies SD1 and ENV1.
34. The main parties also identify Development Plan Policies DP1, DP3 and DP21 as most important. Policy DP1 requires development to respect the character and context of sites in terms of architectural form, density massing and proportions. The Council identify in its case, although not identified as 'most important', Policy UR2 which requires new development to contribute to the creation of places with distinctive character. I regard this Policy as identifying with Section 12 of the Framework. Policy DP3 addresses planning obligations and is broadly consistent with paragraphs 54-56 of the Framework. Finally, DP21 addresses nature conservation and protected sites and is broadly consistent with the Framework.
35. For these reasons, whilst some of my Inspector colleagues have differed in their assessment of these policies, the Council can demonstrate that it has a 5YHLS and this together with its current HDT<sup>10</sup> score, demonstrates that it has development plan that is working to support the government's objective to significantly boost the supply of homes. I am satisfied that on balance the policies are not out of date.

#### *The Neighbourhood Plan*

36. The NBHP includes reference to housing in the context of the housing allocations included in the adopted Local Plan and does not seek housing development beyond this. Policies H1 and H2 seek to ensure a high standard of development across the area which provides for choice and that historic assets should be respected in any new development. These Policies explicitly identify with Policy H3 of the Local Plan.

#### *The emerging Local Plan (eLP)*

37. Set against the adopted policies are those emerging in the new joint local plan being prepared by the Council with the neighbouring district councils of Tendring and Braintree. There is no dispute between the parties on which they consider are the most important policies. Following the Examination in Public, Modifications to Part 1 are the subject of consultation whilst policies included in Part 2 are still under consideration by the respective Councils and will be examined at a later date. The extent of proposed housing growth for the Borough has been confirmed in the 'modifications' which are now the subject of public consultation.
38. Both parties agree that the most important policies included in Part 2 of the eLP. These includes policies SG1, SG2, NC3, DM8, DM9 and DM15. Policies SG1 and SG2 confirm the spatial strategy, the settlement hierarchy and the

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<sup>10</sup> Housing Delivery Test

distribution of growth across the Borough. Policy NC3 includes a housing allocation for 70 homes on a site which includes the appeal site. Policies DM8, DM9 and DM15 address affordable housing, density and seek high standards of design ensuring that new development respects its context. Initially the Council ascribed only limited weight<sup>11</sup> to the policies of the eLP but it is understood due to the progress made on the Modifications for Part 1 of the plan in its Closings<sup>12</sup> this altered for policies NC3, SG1, SG3 and ENV1 significant weight in common with the appellants.

39. In line with Paragraph 48 of the Framework I ascribe only 'limited weight' to these emerging Part 2 policies including NC3. This is despite the Council's statement<sup>13</sup> that none of the objections to the policy are significant and of major concern. However, it has to be tested through the EiP and many of the objections from interested parties to this appeal scheme reflect concerns over the principle of development on the wider site and not just with the detail of this scheme.

#### *Emerging Policy NC3*

40. The Council's objections to the appeal scheme are underpinned by the potential difficulties involved in securing housing delivery in line with the emerging policy because of multiple land ownerships. This requires a comprehensive approach to the development of all land included in NC3. The Council refers to the concerns of these landowners regarding deliverability, viability and connectivity to their land parcels as the proposed single access point to the site allocation lies within the appeal site.
41. I recognise the importance to which the Council attaches to the requirement for a comprehensive masterplan involving all landowners to give effect to the delivery of the emerging site. However, in itself this would not necessarily guarantee that the whole site could come forward. Underpinning any development agreement between those parties with an interest in the land would be a desire to maximise financial interests. The decision of the appellants to leave the masterplan negotiations resulting in the submission of the application arose from their concerns over land equalisation which they opposed. This is likely to be a consideration with or without a masterplan.
42. The inclusion of the Unilateral Undertaking as part of the appeal scheme is a legitimate device which has the potential to enable connectivity from the appeal site to the rest of the site allocation within NC3. The considerations included in the Undertaking which address the premium required for the ransom strip are the type of considerations that would underpin future negotiations between landowners across the whole site allocation irrespective of the outcome of this proposal. For this reason, I do not consider that the appeal proposals would necessarily frustrate the delivery of the allocation included in NC3 as the Council consider.
43. Finally, many of the requirements of the policy could either wholly or in part be delivered by the appeal scheme. These include a new site access, affordable housing and contributions to landscape and biodiversity.

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<sup>11</sup> Officers report to Committee

<sup>12</sup> Closing statement

<sup>13</sup> Statement of Case



### *Design Quality*

44. The appeal site is open countryside which slopes steeply down from Braiswick Road. It is surrounded on 3 sides by thick tree belts with its eastern side open to the gardens serving Nos 67-85 Braiswick Road, part of which forms land within site allocation NC3. Housing in the local area comprises large detached properties although Nos 67-85 Braiswick Road comprise 2No. part 2 and 3 storey block of flats.
45. Whilst Policy ENV1 seeks to protect the countryside, the Council does not have an objection to the proposed scheme on landscape grounds in line with the policy. Despite the Council's requirement for a landscape led approach to deliver an 'Arcadian' style of development, in line with the Essex Design Guide with densities of around 8 dwellings per hectare (dph) it has suggested that a density of between 10-15dph would be appropriate for this site resulting in up to 20 dwellings<sup>14</sup>. It is my understanding that an Arcadian design would be predicated on the dispersal of dwellings through natural features. However, this site does not immediately lend itself to this form of development as the central part of the site is open with tree coverage confined to its 3 boundaries.
46. I heard contrasting evidence on density calculations based on the site's constraints and its net developable area. However, when all matters on this issue are taken into account the difference between the parties is around 7 dwellings. I do not think that this difference is excessive given the site area and its location. I acknowledge, however, that making the most effective use of land in line with paragraph 123 of the Framework is not just about increasing densities but also seeking an appropriate form of design which reflects local context. However, even with the site's constraints the proposed scheme could be provided to an acceptable design and would not appear out of place subject to careful consideration of outstanding of reserved matters.
47. The appeal scheme would not conflict with Policy UR2 as it is proposed for 'up to 27 dwellings' which would allow further changes during reserved matters. Furthermore, whilst Policy DP1 identifies a range of criteria to guide new development, I consider that the detail required by this policy is for consideration for full applications or approval of outstanding reserved matters in contrast to the issue of principle being sought by the appellants through this outline scheme. From what I have seen and heard during the appeal process I have found no reason to believe that a scheme that meets those criteria could not be reasonably achieved at the Reserved Matters stage.
48. Many of the other issues raised by the Council arising from the proposed number of units, such as overlooking, separation distances and drainage could be resolved through the submission of details required by reserved matters and conditions.
49. Although the proposals would conflict with the NBHP Policies H2 and H3 could inform its design at reserved matters stage. I conclude that for these reasons and in the absence of evidence directly in support of ENV1, that the proposed scheme would not be in conflict with Policies UR2 and DP1.

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<sup>14</sup> Paragraph 6.5.12 SoC

## **Other Matters**

### *Infrastructure Provision*

50. Refusal reasons 2 and 3 include reference to the absence of planning obligations in respect of affordable housing and payments towards open space, sport and recreation, community facilities and archaeology and the Essex Coast Recreational Avoidance and Mitigation Strategy. Immediately after the Hearing I was presented with a completed legal agreement made under Section 106 of the Town and Country Planning Act 1990, as amended, and I am therefore required as a decision maker to consider this.
51. The agreement, dated 9 September 2020, is signed by the landowners and the Borough Council. This makes provision for 30% of the proposed housing to be affordable, and for payments to deliver open space, sport and recreation, community facilities and archaeology and the Essex Coast Recreational Avoidance and Mitigation Strategy.
52. A Community Infrastructure Compliance (CIL) Schedule submitted by the Council identifies the policy basis for each of these items included in the agreement. Overall, the obligations included in the agreement are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraphs 56-57 of the Framework.

### *Viability*

53. Viability formed part of the Council's first reason for refusal but was subsequently withdrawn on receipt of a viability report from the appellants. This provides evidence that in the event of the appeal site being granted permission development of the land within the remainder of the site allocation NC3 (outside the appeal site) would still be viable.
54. This matter still forms part of the case against the scheme by both Scott Properties and Colchester Golf Club which both have an interest in the other land in the NC3 site allocation. A viability report submitted by the Golf Club concludes that the appeal site's development would be unviable. Questions of viability for a development site primarily remain the concern of the applicant as long as the approach respects the methodology of the PPG. In this regard I have no issue with the evidence presented by the appellants on this matter.
55. Given this context, the balance of evidence points in favour of the appellants' conclusions that development of the appeal site would be viable.

### *Habitats*

56. As a decision maker I am required to consider proposals under Part 6 of the Conservation of Habitats and Species Regulations 2017.
57. The appeal scheme proposes up to 27 dwellings on a site within an identified zone of influence of a number of European and Internationally designated sites. These include the Essex Coast Natura 2000 and includes several SPAs<sup>15</sup> which

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<sup>15</sup> Special Protection Areas

include the Colne, Blackwater, Stour and Orwell estuaries. The latter of these is a designated Ramsar site. There is a further Denge SPA and Ramsar and the Essex estuaries Special Area of Conservation.

58. The Colne estuary SPA and Ramsar includes an intertidal zone of mudflat communities and is of both national and international importance for wintering Brent Geese, Blacktailed Godwit and Little Terns and other species of wintering fowl. Its habitats include salt and grazing marsh, reedbeds sand and shingle pits. The Ramsar site includes an outstanding assemblage of invertebrates and plants.
59. Blackwater estuary SPA is similar to the Colne estuary in the quality of its habitats but can be distinguished by its qualifying features which include Hen Harrier and Dunlin.
60. The Stour and Orwell estuary Ramsar is an area of tidal mudflats and saltmarsh located around the Blackwater and Crouch estuaries. Comprising mudflats, cliffs and saltmarshes, this varied habitat supports internationally and nationally important numbers of species of wintering bird fowl and waders. Scarce plant varieties are found throughout the area.
61. The Denge estuary Ramsar is characterised by extensive saltmarshes and spits and beaches supporting rare flora and fauna. It is home to wintering fowl and in the summer migrant birds can include rare species.
62. The development of up to 27 dwellings would result in an additional 65 people based on an average of 2.4 people per household. The appeal site lies within the Zone of Influence and within 6 miles of the Colne estuary. However, the number of residents would be reasonably low and there are large areas of open space including Highwoods Country Park and Castle Park in Colchester which would be attractive for recreation. Bearing this in mind it is unlikely that residents would travel to the coast in significant numbers, resulting in potential damage to habitats and species from walkers.
63. In correspondence NE have confirmed that appropriate avoidance and mitigation measures should be sought in line with the adopted Essex Coast Recreational disturbance Avoidance and Mitigation measures supplementary planning document (RAMS SPD). These could include securing payments towards mitigation in line with within the coastal designated sites. In respect of this appeal the completed Section 106 agreement includes a contribution to the RAMS in line with the SPD. The contribution is necessary to make the development acceptable in planning terms and fairly and reasonably related in scale and kind to the development and accords with section 106 of the Town and Country Planning Act 1990 as amended and Regulation 2 of the Community Infrastructure Levy Regulations 2010 as amended. On this basis I am satisfied that the proposed development would not adversely affect protected sites.

*Interested parties*

64. A large number of objections were received to the appeal proposals and I address these below.
65. *The principle of development on this site* - whilst I acknowledge that the proposals do not comply with adopted policy as they lie beyond the settlement

boundary this alone is not sufficient for a dismissal to be justified. For the scheme to be resisted there has to be evidence of harm in line with the policy objection. To this extent I am not persuaded by the Council's evidence that there is an objection on landscape grounds consistent with policy ENV1. Instead its case rests on support for the emerging allocation included in NC3. Balanced against these considerations are other material considerations including the supply of additional housing which is policy compliant in terms of the amount of affordable housing.

66. The location of the site would not to my mind result in a 'coalescence' with neighbouring settlements given its location close to the A12 road which separates the site from West Bergholt. There are areas of open space lying between the appeal site and West Chesterwell which would not be affected by these proposals and would not be eroded significantly by this proposal.
67. *Too much development in Colchester* – several parties have referred to the large number of developments which are occurring around the city. This development pressure is being experienced across large areas of the country and reflect the Government's priority to boost housing supply. Colchester Borough is no exception to this. Through both the Local Plan process and the negotiation of planning obligations sufficient infrastructure should be in train to support this level of growth. The lack of proposed infrastructure required for this development formed the second reason for refusal. However, on receipt of the planning agreement completed under Section 106 of the Town and Country Planning Act 1990 contributions towards infrastructure the Council withdrew this reason for refusal. I have presented my views on this agreement below.
68. *Movement and Highway safety* - Although the site lies outside the settlement boundary it lies within 250m of the Bakers Lane bus stop which would enable choice in the selection of transport modes as it affords access to bus services to surrounding settlements including Colchester where there is a full range of services. The appellants are required by condition to require new bus stops. These would further maintain the attractiveness of the site for modal choice.
69. The transport assessment included with the application was completed on the assumption of a development of up to 70 dwellings which would generate around 31 and 38 vehicles during the morning and evening peaks respectively. If one allows for a commensurate reduction for the appeal scheme, comprising 27 dwellings, the amount of traffic generated would be not be excessive.
70. The proposals include details of sight lines for the proposed access which are predicated on maximising the safety of highway users given that the evidence shows that a proportion of vehicles travelling along Braiswick Road exceed speed limits. This measure should ensure that the creation of the new road access would not impact adversely on road safety. Although concerns have been raised over the number of accidents along Braiswick Road, the Transport Assessment submitted with the application identifies that just 3 accidents have occurred during the last five years. The proposed junction design satisfactorily addresses highway safety.
71. *Habitats* - the application was accompanied by a Phase 1 habitat survey and Protected Species report. Whilst there are a number of protected species on the site it is suggested that a Biodiversity Enhancement strategy could improve habitats to the benefit of these species; this would be controlled through

condition. Furthermore, I have conducted an Appropriate Assessment on the impact of the proposals on the international and national habitats which are found along the river estuaries of the Essex Coastline. A series of conditions are included in this letter designed to protect the site's biodiversity.

72. *Flood Risk and Drainage* - the site lies outside land designated as flood zone 3 and the risks of flooding on the appeal site are low. The drainage strategy which accompanies the application identifies how the proposed ponds within the site could form part of sustainable drainage system which would enable a natural way to accommodate excessive surface water.
73. *Landscape* - although the Landscape Character Assessment acknowledges that the magnitude of change on the occupiers of the neighbouring residential property would be high this is determined by the site's proximity to these properties. Landscaping is a reserved matter and this would allow the negotiation of a landscape scheme which could reduce the impacts of the proposals.
74. *Noise* - several objections refer to the high levels of noise generated by the A12 which would be compounded by the proposed scheme as traffic would run along the site boundary with neighbouring residential properties. However, in consideration of reserved matters scheme design could require conditions to ensure adequate insulation for the new dwellings. On a related point given the low levels of traffic generated by the proposal traffic noise would likely to be within acceptable levels.
75. A range of other objections regarding land ownership and the loss of private amenity space currently enjoyed by residents of the neighbouring flats have been made. As the site does not include the loss of private garden space I can only conclude that these comments are referring to the emerging site allocation included in Policy NC3.

### **Planning balance and conclusions**

76. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
77. The policy context of this appeal is framed around both the adopted plan and the emerging plan, in particular emerging policy NC3. Whilst the appeal site lies beyond the settlement boundaries and in open countryside contrary to policies SD1 and ENV1, the balance of evidence presented by the Council in respect of the fourth main issue accepts some form of development on this site as long as it is at an appropriate density and can be comprehensively planned. The weight of the Council's evidence rather than being framed around the protection of landscape, reflects matters of urban design; this places considerable weight on the delivery of NC3 but undermines the Council's reliance on the conflict with Policies SD1 and ENV1. This undermines the policies which underpin the NBHP.
78. The description of the proposed development submitted as an outline application of *up to* 27 dwellings allows scope for negotiation when reserved matters are submitted. The difference between the parties in respect of the appeal scheme comes down to about 7 dwellings. To conclude on this point as

set out above, subject to careful control at the reserved matters stage the proposed development would be acceptable in landscape and design terms.

79. The other 'harm' which the Council identifies is the potential effect of the proposal on the delivery of emerging Policy NC3. I acknowledge the importance of masterplanning which engages landowners to bring sites forward as a tenet of good planning. Nonetheless, it has to be balanced against what the appeal scheme can actually deliver in securing new housing and a policy compliant quantum of affordable housing. The Borough just meets the requirement for a 5YHLS and in these circumstances the contribution of 27 new dwellings would help sustain the levels of progress it has made in contributing local housing delivery consistent with the Governments priority for 300,000 new homes each year.
80. I am not persuaded by the Council's argument, advanced during the Hearing, that the development of 9 affordable homes on the appeal site, whilst welcome, could prejudice the delivery of a further 14 on the wider site. The Unilateral Undertaking is a device which could enable the development of the whole allocation.
81. Even though the Council applies 'significant weight' to Policy NC3, its primary objection to the proposals is based on how the deliverability of the Policy would be hampered because the appeal scheme may not allow comprehensive development of the proposed NC3 allocation. Having withdrawn its objection on viability, its concerns relate to the extent of control that the appellants would have over the access required to serve the whole site. The arguments promoted by the other site owners on viability were unclear and questioned the basis for the development of the whole site allocation. Many of the stated requirements included in emerging Policy NC3 would be addressed in part by the appeal scheme including the access from Braiswick Road, the retention of tree belts, noise mitigation and that no part of the scheme would lie within flood Zone 3.
82. Whilst I recognise the significant weight which the Government places on neighbourhood planning, the NBHP supports the housing allocations of the adopted plan but does not explicitly prohibit development on this site and its housing policies seek to ensure the provision of dwellings of sufficient mix and of good design. As this is an outline application with all matters reserved apart from 'Access', the opportunity exists to enable these policy aims to be secured.
83. I conclude that whilst the scheme would be contrary to adopted policies other material considerations prevail. These matters include new housing with a policy compliant amount of affordable housing; this would go some way to address the emerging 'affordability gap'. I regard the matters included in the Section 106 agreement as not carrying significant weight as they are required to mitigate for the effects of the proposed development.
84. Although I give only limited weight to the eLP the proposals would not necessarily frustrate the delivery of the site allocation at some future point; the Unilateral Undertaking provides a mechanism to deliver this. The proposed scheme would lead to the generation, in the short term, of construction jobs which could support employment opportunities and once the units are completed would support local services through increased local spending power

by new residents. Conditions attached to this decision would serve both to protect and enhance the site's biodiversity.

85. For the above reasons I allow this appeal subject to planning conditions.

### **Conditions**

86. The main parties included in their Statement of Common Ground a list of draft conditions. I have reviewed these and made amendments where I consider necessary.

87. A condition would be necessary to ensure that the development is carried out in accordance with the plans and documents submitted with the application to ensure adherence to the principle of the proposed development hereby approved. As the amended scheme does not include a description of the proposed mix of units it would be necessary to secure control of these details at this stage and a condition is included for that purpose.

88. In order to provide certainty, conditions specifying the approved access drawings and the maximum number of dwellings permitted would be necessary.

89. Whilst the PPG does not readily advocate the use of pre-commencement conditions I consider that these are required in this instance for details of archaeological investigations, contamination, its remediation and certification, a construction method statement and times of building activities, full details of internal roads and surface water drainage and flooding scheme and vehicle turning within the site and biodiversity in line with the outline mitigation strategies for protected species. These conditions are necessary as pre-commencement conditions to ensure that the construction of this development can proceed in a way which protects the living conditions of neighbouring occupiers and those of future occupiers in the interests of highway safety and the protection of the site's biodiversity.

90. Given that the completed Section 106 agreement includes provisions for the maintenance of open space within the site a condition requiring the details of the management company which will oversee this would be necessary. Given the proximity of the A12, a condition would be necessary to mitigate any effects of noise to protect living conditions of future occupiers.

91. Conditions to control the proposed access arrangements, car parking, turning areas, visibility splays, pedestrian footways, and vehicle access to each property including gradients and materials would be necessary in the interests of highway safety.

92. Conditions requiring details of cycle parking and vehicle electric charging points are also required before occupation of the accommodation to ensure the scheme complies with adopted policy for sustainable modes of travel. Proposed bus stops would be required for the same reason.

93. Given the proximity of watercourses to the site a condition requiring details of culverting and bridging including arrangements for their management is required in the interests of both highway safety and flood management.

*Stephen Wilkinson*

INSPECTOR



### **Schedule of Conditions**

- 1) Details of, 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 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun not later than 2 years 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 619-OA-01 and Access plan 619-OA-03.
- 5) The development shall comprise of no more than 27 residential units.
- 6) Any reserved matters application seeking approval of scale and layout shall include a detailed schedule of the proposed housing mix, to be approved by the local planning authority through the approval of the reserved matters application. No development shall commence until the housing mix schedule has been approved as part of the reserved matters and the development shall be carried out in accordance with the details approved. The detailed schedule should include the following:
  - plot number,
  - the type of dwelling,
  - the number of storeys,
  - the number of bedrooms and bed spaces,
  - the size of the outdoor private amenity space
  - the number and sizes of parking and garage spaces provided.
- 7) No works shall take place until the implementation of a programme of archaeological work has been approved, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the local planning authority. The scheme shall include an assessment of significance and research questions, and;
  - a) the programme on methodology of site investigation and recording
  - b) the programme for post investigation assessment
  - c) provision to be made for analysis of the site investigation and recording
  - d) provision to be made for publication and dissemination of the analysis and records of the site investigation
  - e) provision to be made for archive deposition of the analysis and records of site investigation

f) nomination of a competent person or persons/organisation to undertake the works

The site investigation shall thereafter be completed prior to development or in such other phased arrangement, as approved, in writing, by the local planning authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Statement of Investigation and approved and the provision made for analysis, publication and dissemination of results and archive deposition.

- 8) No work shall take place until an investigation and risk assessment provided with the planning application has been completed in accordance with the scheme to assess the nature and extent of any contamination on the site whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority and the report of the findings must include:
- i) a survey of the extent, scale and nature of contamination including contamination by soil gas and asbestos;
  - ii) an assessment of the potential risks to
    - human health
    - property (existing or proposed) including buildings crops livestock pets Woodland and service lines and pipes
    - adjoining land
    - groundwaters and surface waters
    - ecological systems
    - archaeological sites on ancient monuments
  - iii) an appraisal of remedial options and proposal of the preferred options
- This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11 and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: technical guidance for applicants and developers'.
- 9) No works shall take place until the detailed remediation scheme to bring this site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and their natural and historical environment has been prepared and then submitted to, and approved in writing, by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection act 1990 in relation to the intended use of the land after remediation.
- 10) No work shall take place other than that required to carry out remediation. The approved remediation scheme must be carried out in

accordance with the details approved. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation risk assessment must be undertaken in accordance with the requirements of condition 7 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 8, which is subject to approval in writing from the local planning authority. Following completion of measures identified in the approved remediation scheme the verification reports must be prepared which is a subject of approval in writing of the local planning authority in accordance with condition 9.
- 12) Prior to the first occupation/use of the development, the developer shall submit to the local planning authority a signed certificate 2 confirm that the remediation works have been completed in accordance with the documents and plans detailed in condition 9.
- 13) No works shall take place including any demolition, until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for details for:
  - the parking of vehicles of both side operatives and visitors
  - hours of delivery and of work
  - loading and unloading plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate
  - wheel washing facilities
  - measures to control noise
  - measures to control the emission of dust during construction, and
  - a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 14) Prior to the first occupation of the development hereby permitted, details of the management company responsible for the maintenance of communal storage areas and for the maintenance of such areas shall be submitted to and approved in writing by the local planning authority. Such details as have been approved, shall thereafter continue unless otherwise subsequently approved, in writing by the local planning authority.
- 15) No demolition or construction works shall take place outside of the following times:
  - Weekdays 08:00 – 18:00 hours
  - Saturday's 0800- 13:30 hours

- Sundays and Bank Holidays - no working

- 16) A scheme that shows how the design and layout avoids exposure of habitable rooms to noise levels that exceed the following criteria:

60dB LAeq 16 hours (daytime, 07:00-23:00, outside)

55dB LAeq 8 hours (night, 23:00-07:00, outside)

In addition, the scheme shall demonstrate how the noise levels in external amenity spaces will not exceed 55dB LAeq 16 hours (daytime) shall be submitted to and approved in writing by the local planning authority.

The development shall thereafter be carried out in accordance with any details approved and shall be retained in accordance with these details thereafter.

- 17) Prior to the first occupation of the development, the proposed estate road, at its bell mouth junction with Colchester Rd, Braiswick shall be provided, in accordance with RPS Access Arrangements Drawing JNY9281-01-A, with 10m radius kerbs return to an access road carriage way width of 5.5m and flanking foot ways 2m in width returned around the radius kerbs extending 25m westwards and eastwards. The new road junction shall be constructed at least to binder course prior to the commencement of any other developments including the delivery of materials.
- 18) Prior to the proposed access being brought into use, vehicular visibility splays of 215m westwards by 2.4m by 70m easterly as measured along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be retained and maintained free from obstruction clear to ground thereafter.
- 19) Prior to the commencement of development details of the estate roads and footways (including layout, levels, gradients, surfacing, sealing and means of surface water drainage) shall be submitted to and approved in writing by the local planning authority and the development to be constructed in accordance with the approved details.
- 20) Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants of the development, of a design shall be submitted to and approved in writing with the local planning authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the development hereby permitted within the site any shall be maintained free from obstruction and retained thereafter.
- 21) Prior to the first occupation of each dwelling on the proposed development, the proposed vehicle access for each dwelling shall be constructed at right angles to the carriageway or highway boundary, to a width of 3.7m and each shared vehicular access shall be constructed at right angles to the highway boundary to a width of 5.5m and provided with an appropriate drop kerb vehicle crossing of the footway/highway verge the specifications of the Highway Authority. These details require approval of the local planning authority and the scheme implemented in accordance with them and retained thereafter.

- 22) The gradient of the proposed vehicle access/garage/drive hardstanding shall be no steeper than 8% (1:25).
- 23) No unbound materials shall be used in the surface treatment of the proposed vehicular access within six metres of the highway boundary.
- 24) Each internal estate road junction shall be provided with a clear to ground level visibility splay with dimensions of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained and maintained free from obstruction clear to ground thereafter.
- 25) Prior to commencement of the proposed development, a vehicle turning facility for service and delivery vehicles of at least size 3 dimensions and of a design approved in writing by local planning authority, shall be provided within the site which shall be retained and maintained free from obstruction thereafter.
- 26) Prior to first uses proposed access, details of the construction of the future maintenance of the necessary bridging or piping in the drainage ditch/water course shall be submitted to and approved in writing by the local planning authority.
- 27) Prior to the commencement of the proposed development two bus stops, on either side of Braiswick Road including pram crossings to connect to each other, shall be fully implemented in accordance with details to be approved in writing by the local planning authority. The approved details shall include:
  - A new bus stop in the vicinity of the vehicle access to the site eastbound including 1No. new shelter raised kerbs, timetables post and flag, and
  - A new bus stop west bound opposite an adjacent vehicular access including level entry kerbing, new post flag and timetable and pedestrian waiting or standing.
- 28) No work shall take place until the 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 certified as technically acceptable in writing by the SUDS approval body or other suitably qualified person. The certificate shall thereafter be submitted by the developer to the local planning authority as part of the developer's application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to:
  - limiting discharge rates to 6.5l/s for all storm events up to and including the 1:100 year rate plus 40% allowance for climate change
  - demonstrate that features are able to half drain within 24 hours of a one in 30 year event plus climate change. If this is not possible the drain down in 24 hours should provide room for a subsequent morning 10 year event.

- final modelling and calculations for all areas of the drainage system
- 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 sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor change to the approved strategy.

The scheme shall subsequently be implemented prior to occupation

- 29) No works shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to and approved in writing by the local planning authority. The scheme shall be subsequently implemented as approved.
- 30) No works shall take place until a Maintenance Plan detailing the arrangements including who is responsible for the different elements of the surface water drainage systems and the maintenance activities/frequencies, has been submitted to and approved, in writing by the local planning authority. Should any part be maintainable by a management company, details of long term funding arrangements should be provided.
- 31) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the local planning authority.
- 32) Prior to commencement of the development precise details for the enhancement and mitigation of biodiversity on and around the site in the form of appropriate features on and around the buildings, hereby approved shall be submitted to and approved in writing by the local planning authority. The details should broadly accord with the Outline Mitigation strategies for Bats, Reptiles and Amphibians as set out in paragraphs 2.3, 14, 3.3.3 and 4.3.9 of the Protected Species Survey but should not be limited to these species.

The approved features shall be installed and the mitigation strategies commenced prior to first occupation of dwellings and shall thereafter be retained and implemented as such.

**APPEARANCES**

<b>For the Appellant</b>	
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<b>Interested party</b>	
Mr David Mehigan	Committee Member Myland and Braiswick Residents Association