



Appeal Decision

Inquiry Held on 17 to 20 and 24 November 2020

Site visit made on 23 November 2020

by G D Jones BSc(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2020

Appeal Ref: APP/Z1510/W/20/3253661

Land between Braintree Road and Long Green, Cressing, Braintree

- 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 Begin Braintree Ltd against the decision of Braintree District Council.
 - The application Ref 18/00549/OUT, dated 20 April 2018, was refused by notice dated 5 December 2019.
 - The development proposed is described as outline application for residential development of up to 250 dwellings with access considered.
-

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 250 dwellings with access at Land between Braintree Road and Long Green, Cressing, Braintree in accordance with the terms of the application, Ref 18/00549/OUT, dated 20 April 2018, subject to the conditions contained within the Schedule at the end of this decision.

Preliminary Matters

2. The proposal is for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the submitted details relating to these reserved matters as a guide as to how the site might be developed.
3. As outlined in the Addendum Statement of Common Ground, I have been asked to consider and determine the appeal on the basis of a proposed access drawing, reference 17126-012-A, that was not formally before the Council when it determined the appeal planning application. Nonetheless, its contents reflect what is shown in the indicative site layout plans that were the subject of the public consultation and before the Council at that time. Moreover, this revised proposed access plan has also been the subject of a separate, subsequent consultation exercise. Accordingly, I can see no reason why any party might be unreasonably deprived of the opportunity to be consulted on the changes or prejudiced as a result of accepting it. I have, therefore, assessed and determined the appeal on the basis of this revised drawing.
4. As a consequence of these revisions to the proposed access arrangements, at the Inquiry, the Council did not defend its fourth reason for refusal, concerning highways matters. During the Inquiry the Council also confirmed that, subject

to the completion of a legal agreement, which while agreed between the main parties, had yet to be completed at the time the Inquiry closed, it would not defend its fifth refusal reason concerning infrastructure, affordable housing and other mitigation. A legal agreement made under S106 of the Town and Country Planning Act 1990 (the S106 Agreement) has now been completed.

5. The reasons for refusal refer to the Publication Draft Braintree Local Plan (the emerging Local Plan). Nonetheless, as it is not yet part of the development plan and may be subject to change, including in respect to the policies cited in the refusal reasons, it carries limited weight only at this stage.

Main Issues

6. In light of the foregoing, the main issues are:
 - Whether the location of the proposed development outside of the settlement boundaries is acceptable in principle, having regard to the relevant development plan policies, including those of the Cressing Neighbourhood Plan;
 - The effect of the proposed development on the living conditions of future residents, with particular regard to noise and odour;
 - Its effect on the character and appearance of the countryside between Braintree and Tye Green / Cressing; and
 - Whether any development plan conflict and harm arising, would be outweighed by any other considerations, including that the Council cannot currently demonstrate a Framework compliant supply of housing land.

Reasons

Location

7. I deal with the first main issue identified above broadly in two parts. Firstly, here under this subheading, largely in respect to how the proposed development sits, as a matter of principle, with the adopted strategy for the location of new housing in Braintree District. And secondly, drawing on my conclusions in respect to all three other main issues, as part of the fourth main issue concerning the planning balance, which is where I come to an overall conclusion on whether the site is a suitable location for housing.
8. The strategy for the location of new development in the District, including housing, is set out in the development plan, notably for the purposes of this appeal in Policy RLP 2 of the Braintree District Local Plan Review 2005 (the Local Plan), Policy CS 5 of the Braintree Core Strategy 2011 (the Core Strategy) and, within the Parish of Cressing, Policy 7 of the Cressing Parish Neighbourhood Plan 2017-2033 (the CNP).
9. The appeal site is located beyond the boundaries of the nearest settlements, Braintree to the north and the village of Tye Green roughly to the south, as identified in the development plan. The defined settlement boundary of Braintree closest to the site runs to the north of the A120, a heavily trafficked dual carriageway, while the closest point of Tye Green's defined boundary is on the western side of the B1018 Braintree Road.
10. Local Plan Policy RLP 2 states that, with some exceptions, new development will be confined to within such settlement boundaries. Similarly, Core Strategy

Policy CS 5 states that development outside the designated settlement boundaries will be strictly controlled to uses appropriate to the countryside. Additionally, CNP Policy 7C states that new housing outside settlement boundaries should be an exception and comprise small-scale self-build or custom-build schemes. There is nothing to suggest that any of the exception criteria of these Policies would be met in this case.

11. Consequently, the appeal proposals conflict with Policies RLP 2 of the Local Plan, CS 5 of the Core Strategy and 7C of the CNP in this regard, such that the development would be at odds with the area's strategy for the location of new housing.

Living Conditions

12. A large proportion of the site's northern boundary abuts and, to an extent, wraps around an area of established commercial development, which has a waste transfer station (the WTS) located on its southernmost edge, immediately adjacent to the appeal site. Due to this relationship, chiefly in terms of the respective uses and their proximity, the existing commercial uses would have the potential to affect the living conditions of residents of the proposed development, particularly due to noise and odour.
13. The respective witnesses of the main parties have each undertaken their own assessments in respect to noise and to odour. Of these various assessments I favour those of the appellant's witnesses in respect to both noise and odour. There are a number of reasons for this, most notably because they appear to make reasonable assumptions, based on sufficiently comprehensive evidence, including reasonably extensive site surveys, applying appropriate methodology to the site's context and the development proposed.
14. In contrast, the Council's witness's evidence is based, at least in part, on very much less extensive survey information. Moreover, while the approaches advocated by the Council on these matters would be likely to result in a better residential environment for occupants of the appeal development, for instance due to their application of LA_{max} for calculating noise impact, they do not appear to be necessary in order to secure sufficiently good living conditions having regard to the wider evidence.
15. In making this assessment I have taken into account that it might be necessary for some residents of the development to close windows of their homes to maintain satisfactory living conditions. Nonetheless, if this were to happen, it seems likely that it would only be occasionally.
16. I am also mindful of a number of other considerations which support the appellant's evidence in this regard. For instance, while the appeal site is undeveloped, there are existing residential uses in the vicinity of this neighbouring commercial area, the closest of which is a gypsy and traveller site, which also abuts the appeal site. Nonetheless, there is no clear history of noise or odour complaints resulting from the commercial uses, including the WTS.
17. Additionally, past assessments of the potential effects of the WTS on the living conditions of neighbours have not concluded that there would be a significant effect on residents' living conditions. Indeed, planning permission for

development at the WTS, concerning its hours of operation, appears to have been granted on this basis as recently as December 2019.

18. On the evidence before me, therefore, there is no good reason to conclude that, subject to controls that could be secured by planning conditions and to the careful consideration of reserved matters, the appeal development would not provide its residents with acceptable living conditions, including in terms of noise and odour, nor that use and enjoyment of the proposed open space would be significantly affected by neighbouring uses. On this basis it would accord with para 180 of the National Planning Policy Framework (the Framework) and Policy LPP 73 (Minimising Pollution and Safeguarding from Hazards) of the emerging Local Plan.

Character and Appearance

19. The appeal site lies in the countryside. Although it does not adjoin any defined settlement boundary, a substantial part of its zig-zagging northern boundary directly abuts part of the developed southern fringe of Braintree that lies to the south of the A120. In broad terms, the site is contained to the west by the B1018 Braintree Road, which leads to Tye Green, and to the east by Long Green Road. There are open fields to the south beyond which lies Tye Green. A public footpath crosses the central part of the site, running roughly north-south, and which continues within the site along part of its boundary with the commercial area to the north.
20. The site itself covers some 12ha, comprising three large arable fields / improved grassland and an area of semi-natural scrub woodland adjoining Braintree Road. Existing field boundaries within and around the edges of the site are, in the main, well defined by hedgerows. Overhead electricity lines cross the southern part of the site, while an associated pylon stands within it.
21. Although 'siting' would be reserved for future consideration, an indicative proposed layout has been provided by the appellant. Having regard to the living conditions evidence, the current version of the indicative layout makes provision for a 'buffer' area that sweeps around the WTS, within which there are no proposed dwellings shown. Rather, the buffer area is shown mainly to be used as open space, planting and landscaping, and as part of the route of the proposed access link road.
22. Notwithstanding any such likely separation between the built form of the developed site and that of the adjoining commercial area and its location to the south of the A120, subject to careful consideration of the layout and wider reserved matters, the proposed development need not appear as or have the feel of anything other than a part of Braintree as a settlement.
23. This is principally because of the site's very close proximity to the adjoining uses and buildings to the north and to the extent of the shared boundary between the site and the existing built up area. It is not unusual for new housing areas within a settlement not to abut an existing or proposed residential area. The fact that most of these nearby existing uses are commercial in nature rather than residential is of limited significance as the developed site would read as a continuation of the built form of the greater settlement due to its proximity. Furthermore, given its modest size, location and evident functional relationship with the homes that it would primarily

- serve, the proposed open space and associated planting would be seen as an integral part of the residential development rather than a feature that would segregate the developed site from Braintree.
24. There would also be a functional link given that residents of the development would be likely to use at least some of those very nearby uses, such as the pub and garden centre, and do so using the range of travel options that would be available to them, including pedestrian, cycle and vehicular. Although a little more distant and separated by major roads, including in most instances by the A120, residents of the development would also be likely to use the range of facilities at Galley's Corner and those a little to the north of the A120 at Braintree Freeport and further north within and near to the town centre. This would further establish the development's functional relationship with Braintree.
 25. There are also other factors that would add to the sense that the appeal scheme would look and feel a part of Braintree. For instance, the housing proposed to the Long Green frontage could be designed to sit comfortably within an existing, undeveloped gap between the gypsy and traveller site and a pair of bungalows to the south that also abut the site. Furthermore, land to the north west, a little beyond Braintree Road, has planning permission to be developed as a DIY store. There is no reason to believe that that planning permission will not be implemented. If it were to be, as seems likely, it would deliver an even stronger urban context for the appeal development, further strengthening the physical relationship with this southern part of Braintree, notwithstanding the alignment of the designated settlement boundary.
 26. Due to the foregoing factors and subject to its detailed design, the developed site would appear as and function as a part of Braintree. This in itself would help ensure that it would not be seen as part of Tye Green, in spite of the site's reasonably close proximity to this village. I recognise that there would be some constraints on new planting within the site, including those associated with the overhead powerlines and with the sight lines required for the proposed roads. Nonetheless, the intervening open fields and retained existing planting, which could be supplemented by some new planting within the site, would also contribute to ensuring that the development would look and feel part of Braintree, distinct and separate from Tye Green.
 27. For these reasons, although the proposed development would reduce the physical gap between Braintree and Tye Green and its presence would be evident, particularly while traveling through the site along the realigned B1018 and on the right of way, and while not entirely consistent with the historic settlement pattern, it would not result in coalescence. On this basis, it would not conflict with Part D of CNP Policy 3.
 28. Nonetheless, it would fail to maintain 'the' physical gap between Braintree and Tye Green within the Open Countryside Buffer Area identified in Part Aii of CNP Policy 3. It is important to note that the Policy refers to 'the gap' rather than 'a gap'. Consequently, in this regard, the development would conflict with CNP Policy 3.
 29. The appeal site is located within the Silver End Farmland Plateau Landscape Character Area (the SEFPLCA), which covers a very substantial area to the south east of Braintree, extending as far south as Witham. The SEFPLCA also covers the significant majority of Cressing Parish. The site manifests several

characteristics of the SEFPLCA, as does much of the surrounding land within the SEFPLCA to the south of Braintree in the vicinity of Tye Green. These characteristics include gently undulating farmland, irregular predominantly large arable fields marked by sinuous hedgerows, small woods and copses providing structure and edges in the landscape, mostly tranquil character away from the major roads, and scattered settlement pattern, with frequent small villages.

30. Development of the appeal site as proposed would inevitably change its character and appearance resulting in the harmful loss of many of those characteristic features within the site, including the self-seeded woodland. Nor would the development itself be small scale. Nonetheless, given the site's relative small size in the context of the very much larger SEFPLCA, be it its full extent or its extent within the Parish, and its fairly contained nature, the appeal development would not have a significant effect on the SEFPLCA at large or at the Parish level. Consequently, the appeal scheme does not conflict with CNP Policy 2.
31. At the Inquiry, it was put to me that, even if the 'impact' of a proposed development on the SEFPLCA within the Parish were not 'significant', the three criteria of CNP Policy 2 would still need to be met in order to comply with the Policy. However, that is not how Policy 2 is worded and as such, in this case, those criteria do not have a bearing on whether the appeal development would accord with it or not.
32. In summary, for the reasons outlined above, the appeal development would, with careful control of the matters that would be reserved, appear as a part of Braintree and have a limited and largely localised effect on the area in the vicinity of the site. Nonetheless, it would diminish the physical gap between Tye Green and Braintree in conflict with the CNP and also alter the settlement pattern and result in the harmful loss of countryside that is characteristic of the area, that would, to a limited extent, be perceived from beyond the site, particularly while traveling along the B1018 and Long Green.
33. Consequently, while the appeal development would harm the character and appearance of the countryside between Braintree and Tye Green / Cressing, that harm would be moderate. Therefore, it would conflict, in this regard and in the other respects outlined above, with Policy RLP 2 of the Local Plan, Policies CS 5, CS 8 and CS 9 of the Core Strategy, and Policy 3A of the CNP.

Other Issues and Planning Balance

34. As outlined above, the appeal development would be at odds with the local adopted strategy for the location of new housing and would cause moderate harm to the character and appearance of the countryside of Cressing Parish between Braintree and Tye Green. It would also lead to the loss of Grade 2 agricultural land, which is identified as being 'best and most versatile' (BMV). As a consequence, the proposals conflict in these respects with Policy RLP 2 of the Local Plan, Policies CS 5, CS 8 and CS 9 of the Core Strategy, and Policies 3A and 7C of the CNP.
35. Bearing in mind para 213 of the Framework, although Policies CS 8 and CS 9 of the Core Strategy may not be entirely consistent with the Framework, purely as a benchmark for the purposes of making my decision, I have treated them, along with CNP Policy 3, as having undiminished weight.

36. The Council cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, they have jointly asked me to determine the appeal on the basis that supply lies in the range of 3.72 to 4.52 years. As a consequence, the fact that the appeal development would be at odds with the local strategy for the location of new housing and conflict, in that regard, with the development plan, including with CNP Policy 7C, currently carries no more than moderate weight. In this regard, I note and agree with the other appeal decisions that have been put to me that indicate that the conflict with Policies RLP 2 and CS5 should attract no more than moderate weight in comparable circumstances.
37. Policy 7C applies only within Cressing Parish and as such it does not affect housing delivery elsewhere in the District. Nonetheless, its weight is also constrained at present as it has the potential to substantially restrict housing delivery in Cressing Parish on land that is located beyond the settlement boundaries and that does not already have planning permission for residential development, such that it could have a significant influence on housing delivery within the District overall. In addition to the absence of a five years' supply of housing land, this is in the related context of a Local Plan that planned for the District's development needs to 2011 only and where there appears to be little prospect of the emerging Local Plan being adopted in the near future.
38. In these circumstances the so-called tilted balance, as set out in para 11 of the Framework, applies to the assessment and determination of appeals of this nature. With reference to this, para 14 of the Framework adds that the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided that four of its criteria apply. There is disagreement between the main parties over whether or not one of these criteria is met, criterion (b), concerning whether the CNP contains policies and allocations to meet its identified housing requirement.
39. Irrespective of whether criterion (b) is met, as a benchmark for the purposes of making my decision, I have worked on the basis that all four criteria are met. I recognise that the CNP is recently adopted and that it went through the required statutory process and was examined against the basic conditions and other legal requirements. Nonetheless, in the particular circumstances of the case, para 14 of the Framework has a limited effect on the weight carried by the identified conflict with the CNP. There are a number of reasons for this, the most significant of which are outlined in the following three paragraphs.
40. The Framework does not define how the housing requirement referred to in its para 14(b) is to be derived. Although it differed at the time that the CNP was prepared and submitted, the government's Planning Practice Guidance (the PPG) does provide guidance to this end. Consistent with the PPG, the Parish Council requested a figure from the Council. However, no figure was provided.
41. In such circumstances, the PPG says that relevant policies, existing and emerging spatial strategy, and characteristics of the neighbourhood area can be taken into account, yet it appears that the CNP considered only the requirements of Cressing Parish as a proportion of the whole District's housing need, without clear regard to the wider needs of the District. In this context,

- the PPG refers to the use of the neighbourhood planning toolkit on housing needs assessment, but it appears that that toolkit was not used for the CNP.
42. Overall, the housing requirement figure in the CNP, while having been through the examination process, does not appear to have been tested in any significant way as part of that process.
43. In this context, given that the appeal scheme would bring a range of benefits, most notably the delivery of a substantial amount of market and affordable housing in an area which currently has issues with housing delivery, which together carry considerable weight in its favour, the identified harm and development plan conflict carries modest¹, comparative weight bearing in mind the matters outlined above, and that the harm to the character and appearance of the area would be moderate and that the loss of BMV land carries limited weight given the large amount of such land in the District combined with the need to find sites for new housing.
44. Consequently, notwithstanding Framework para 14, in the current circumstances the adverse impacts of the appeal development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, it would be sustainable development in the terms of the Framework for which there is a presumption in its favour, such that the site is a suitable location for housing.

Other Matters

45. In the event that planning permission were to be granted and implemented the S106 Agreement, dated 9 December 2020, would secure the provision of on-site affordable housing at a rate of 40%; payments towards the provision of off-site outdoor and indoor sports facilities, allotments, healthcare services, early years and childcare provision, and visitor management measures in relation to Essex Coast Natura 2000 European Designations, and also support for the delivery of a travel plan for the appeal development; and the provision, maintenance and delivery of on-site public open space.
46. The Council has submitted a detailed statement (the CIL Statement), which addresses the application of statutory requirements to the planning obligations within the S106 Agreement and also sets out the relevant planning policy support / justification. I have considered the S106 Agreement in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the policies set out in the CIL Statement. Overall, I am satisfied that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.
47. The site is located within the Zone of Influence of the Blackwater Estuary Special Protection Area (the SPA). Consequently, the appeal development would be likely to have a detrimental effect on the SPA through unmitigated additional recreational use. The Council has completed a 'Habitat Regulations Assessment', which has been reviewed by Natural England resulting in no objection to the appeal proposals subject to mitigation. As outlined above,

¹ 'Modest' only in relative terms compared to the combined weight of the benefits.

such mitigation could be secured via the S106 Agreement. It is for me, as decision-taker and competent authority, to undertake an Appropriate Assessment of the appeal development under The Conservation of Habitats and Species Regulations 2017 (as amended). Having reviewed all of the evidence before me, I am content that mitigation would be required, as identified by the Council, and that it would be secured by the S106 Agreement, such that the proposed development would not have an adverse effect on the integrity of the SPA.

48. I have also been provided with a range of decision letters in respect to other planning appeals. While I am mindful of the need for consistency in decision-making, each application for planning permission must be determined on its individual merits and none of those decision letters have had a significant bearing on my decision.
49. In addition to the foregoing matters, concern has been expressed locally, including by Cressing Parish Council, in respect to local infrastructure, services and facilities as existing and proposed; the effects of the development on hedgerows, possible ridge and furrow field systems, biodiversity and the historic environment; car parking capacity at local stations; pedestrian / cycle links, including improvements to the right of way that crosses the site; employment opportunities in the area, including the potential for residents to have to commute outside the District; site contamination; the wider living conditions of residents; the usability of the proposed open space and absence of allotments; the cumulative effect of the development with other planned development; it may be premature / prejudicial to the local plan-making process and to the route of the A120; there should now be adequate housing land supply given recent consents and lack of need; the social effects on the community; highway safety, congestion and on-site parking; drainage and flooding; and that powerlines cross the site.
50. These matters are largely identified and considered within the Council officer's report on the appeal development. They were also before the Council when it prepared its evidence and when it submitted its case at the Inquiry and are largely addressed in its evidence and in the various statements of common ground. Other than as set out above, the Council did not conclude that they would amount to reasons to justify withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with the Council's conclusions in these respects subject to the S106 Agreement and the imposition of planning conditions.

Conditions and Conclusion

51. The Council and the appellant jointly prepared a list of draft conditions, which include the standard time limit / implementation conditions. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.
52. In order to provide certainty in respect to the matters that are not reserved for future consideration, a condition requiring that the development is carried out in accordance with the approved plans would be necessary. For that reason and to protect the character and appearance of the area, a condition limiting the number of dwellings permitted would also be necessary.

53. Conditions would be necessary to secure biodiversity and arboricultural mitigation, including details of lighting, to protect the character and appearance of the area, as well as wildlife and their habitat. Conditions to control ground floor levels of the permitted buildings, the provision of bin storage and further landscaping details would be necessary to help the development harmonise with its context. Conditions to control the details of surface and foul water drainage would also be necessary to reduce flood risk, to control surface water run-off and in the interests of public health.
54. Conditions would also be necessary to ensure that features of archaeological interest are properly examined, recorded and, where necessary, preserved. In the interests of highway safety and to safeguard residents' living conditions, conditions would also be necessary to ensure that the construction works proceed in accordance with a Construction Method Statement. Conditions requiring adequate remediation of any contamination affecting the site would be necessary to safeguard the health and well-being of future occupiers.
55. To promote sustainable modes of transport, reduce the need for travel and in the interests of highway safety, conditions to secure the implementation of a Residential Travel Plan, improvements to the right of way that crosses the site, and the upgrading of two existing nearby bus stops would be necessary. For these reasons, conditions would also be necessary to control the detail and provision of the proposed site access arrangements. With regard to the associated stopping sight visibility envelopes and control of any planting therein, the parameters suggested by the appellant, as informed by the Essex Design Guide, would be sufficient bearing in mind that those of the Design Manual for Roads and Bridges generally relate to the trunk road network.
56. A condition would also be necessary to secure, where needed, noise mitigation measures. In this regard, for the reasons outlined in the *Living Conditions* section above, the approach suggested by the appellant would suffice. However, a condition specifically to control facing materials to be used on the proposed buildings, as identified by the main parties, would be unnecessary given that 'appearance' would be a matter reserved for future consideration.
57. In conclusion, the proposed development would be at odds with the local strategy for the location of new housing, cause moderate harm to the character and appearance of the area and lead to the loss of BMV land in conflict with the development plan. However, in the current circumstances, notwithstanding Framework para 14, these adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. On that basis, the appeal scheme would represent sustainable development in the terms of the Framework, which is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole. Accordingly, subject to the identified conditions, the appeal is allowed.

G D Jones

INSPECTOR

APPEARANCES²

FOR THE LOCAL PLANNING AUTHORITY:

Emma Dring of Counsel

Instructed by Legal Services, Braintree District Council

She called
Michelle Bolger CMLI, Dip
LA, BA, PGCE, BA
Pamela Sharp BSc (Hons),
MCIEH
Timothy Havers BA, MSc,
RTPI

Director of Michelle Bolger Expert Landscape
Consultancy
Environmental Health Officer, Braintree
District Council
Principal Development Management Planner,
Braintree District Council

FOR THE APPELLANT:

Paul Tucker of Queens Counsel³

Instructed by Rawdon Gascoigne, Emery
Planning

He called
Simon Laws, DipLA, CMLI
Donald Quinn, BSc (Hons),
FIOA
Katrina Early Hawkins, BSc
(Hons), MSc, MIAQM, CEnv
Rawdon Gascoigne, MRTPI,
BA Hons

Managing Member of ADP LLP
Managing Director of Hepworth Acoustics Ltd
Chairman of Smith Grant LLP
Director of Emery Planning

INTERESTED PERSONS:

Cllr Susan Simpson
Tony Perkins

Cressing Parish Council
Local Resident

² Although by the time the Inquiry opened highways matters were substantially a matter of common ground, a round table session on highways matters was held in order for the main parties to explain their respective positions on this matter and for them to field any questions. The session was attended by Harry Flexman, MSc (Hons), Associate Transport Planner of Connect Consultants on behalf of the appellant and by Martin Mason of Essex County Council as local highway authority.

³ Mr Tucker was assisted by Freddie Humphreys of Counsel, however, he did not act as advocate for the appellant and attended primarily on the basis that Mr Tucker may not have been able to attend had the Inquiry extended into a sixth day, in which case he would have taken over as advocate on behalf of the appellant.

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/Z1510/W/20/3253661:

1. Details of the scale, appearance and layout of the building(s), and the landscaping of the site, hereinafter referred to as "the reserved matters", shall be submitted to and approved in writing by the Local Planning Authority (LPA) before any development takes place and the development shall be carried out as approved.

Application for approval of the reserved matters shall be made to the LPA not later than 3 years from the date of this permission.

The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

2. The submission of reserved matter applications pursuant to this outline planning permission shall together provide for no more than 250 dwellings.
3. The development hereby approved shall be carried out in accordance with the following approved plans:
 - Site Location Plan P01 REV05; and
 - Proposed Highway Layout 17126-012-A.
4. Any reserved matters application shall be supported by a Biodiversity Enhancement Strategy for Protected and Priority Species, which shall include:
 - Purpose and conservation objectives for the proposed enhancement measures;
 - Detailed designs to achieve stated objectives;
 - Locations of proposed enhancement measures by appropriate maps and plans;
 - Persons responsible for implementing the enhancement measures;
 - Details of initial aftercare and long-term maintenance (where relevant); and
 - A timetable for implementation.

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

5. Any reserved matters application that seeks approval of appearance, layout or scale of the building(s) shall be accompanied by full details of the location and design of the refuse bins and recycling materials separation, storage areas and collection points, including a timetable for the provision of these facilities. The development shall be carried out in accordance with the approved details.
6. Any reserved matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels. The development shall be carried out in accordance with the approved details.
7. Any reserved matters application relating to layout shall be accompanied by an Arboricultural Report for approval by the Local Planning Authority detailing existing trees, shrubs and hedges on the site to be retained and those to be

removed. The Report shall also detail protection measures for trees, shrubs and hedges identified as being retained and the development shall be carried out in accordance with the approved Report.

8. Development shall not be commenced until the above approved details of the means of protecting all of the existing trees, shrubs and hedges to be retained on the site from damage during the carrying out of the development have been installed and such measures shall remain in place throughout the construction phase of development.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges identified for retention.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges identified for retention.

No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs or hedges.

9. Prior to the commencement of development, a Biodiversity Construction Environmental Management Plan (BCEMP) shall be submitted to and approved in writing by the Local Planning Authority. The BCEMP shall include:

- Risk assessment of potentially damaging construction activities;
- Identification of "biodiversity protection zones";
- Reasonable Avoidance Measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on-site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on-site of an ecological clerk of works or similarly competent person; and
- Use of protective fences, exclusion barriers and warning signs.

The approved BCEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

10. Prior to the commencement of development, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the following:

- Verification of the suitability of infiltration of surface water for the development based on infiltration tests undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of the CIRIA SuDS Manual C753;

- Limiting discharge rates to 11l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event with a 10% allowance for urban creep;
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 100 year plus 40% climate change critical storm event - Final modelling and calculations for all areas of the drainage system;
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in Chapter 26 of the CIRIA SuDS Manual C753;
- Detailed engineering drawings of each component of the drainage scheme;
- A final drainage plan which details exceedance and conveyance routes, finished floor levels and ground levels, and the location and sizing of any drainage features;
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy;
- A Maintenance Plan detailing the maintenance arrangements for different elements of the surface water drainage system and maintenance activities / frequencies; and
- A timetable for implementation of the above.

The approved scheme shall be implemented thereafter in accordance with the approved timetable.

11. Prior to above ground construction, a scheme for on-site foul water drainage works, including connection point(s) and discharge rate(s), shall be submitted to and approved in writing by the Local Planning Authority. Prior to occupation of any phase of the development the approved works relating to that phase shall be carried out in complete accordance with the approved scheme.
12. No development or preliminary groundworks shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation (WSI) submitted to and approved in writing by the Local Planning Authority. The WSI shall include a mitigation strategy detailing the excavation / preservation strategy where appropriate and a timetable for the carrying out of this work. The development shall be carried out in accordance with the approved WSI.
13. A post-excavation assessment shall be submitted to the Local Planning Authority (LPA) within six months of the completion of fieldwork based upon the Written Scheme of Investigation approved under Condition 12, unless an alternative timescale is otherwise approved in writing in advance by the LPA. This shall result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

14. Prior to the commencement of development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority (LPA). The Statement shall provide for:

- Safe access to and from the site, including details of any temporary haul routes and the means by which these shall be closed off following the completion of the construction of the development;
- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials;
- The 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 the emission of dust and dirt during construction;
- A scheme for recycling / disposing of waste resulting from demolition and construction works;
- Delivery, demolition, site clearance and construction working hours;
- Details of how surface water runoff and groundwater shall be managed throughout the construction phase;
- Details of how the approved Statement shall be implemented and adhered to, including contact details (daytime and 24 hour) for specifically appointed individuals responsible for ensuring compliance; and
- Details of the keeping of a logbook on-site to record all complaints received from the public and the action taken in response. The logbook shall be available for inspection by the LPA and shall include information on the action taken in response to the complaint.

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

15. Prior to the commencement of development, an investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a 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 shall be submitted to and approved in writing by the Local Planning Authority. The report of the findings shall include:

- A survey of the extent, scale and nature of contamination;
- 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, and
 - Archaeological sites and ancient monuments; and
- An appraisal of remedial options, and proposal of the preferred option(s).

This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

16. Prior to the commencement of development, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been prepared, and submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site does 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. The development shall be carried out in accordance with the approved scheme.
17. Following the completion of measures identified in the remediation scheme as approved under Condition 16, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and submitted to and approved in writing by the Local Planning Authority prior to the occupation of any dwellings.
18. Notwithstanding Conditions 16 and 17, should contamination be found that was not previously identified or not considered in the approved remediation scheme, that contamination shall be made safe and reported immediately to the Local Planning Authority (LPA). The site shall be reassessed in accordance with Condition 15 and a separate remediation scheme shall be submitted to and approved in writing by the LPA. Such approved measures shall be implemented and completed prior to the first occupation of any parts of the development.
19. The landscaping scheme required by Condition 1 of this permission shall incorporate a detailed specification of hard and soft landscaping works and details of boundary treatments and means of enclosure. This shall include plant / tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting. It shall also include details of the position, design, height and materials of the boundary treatment and means of enclosure.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development.

All hard surface areas approved as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development, shall be replaced in the next planting season with others of a similar size and species.

20. Prior to occupation of the dwellings hereby permitted, a lighting design scheme for public areas shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on-site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging, and show how and where external lighting shall be installed (through the provision of appropriate lighting contour plans, isolux drawings and technical specifications) so that it can be clearly demonstrated that any areas to be lit shall not disturb or prevent bats using their territory.

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

21. No occupation of the development shall take place until a suitable access has been built from Long Green or the B1018 Braintree Road in the form of one of the proposed roundabout accesses approved under this planning permission, and no more than 50 dwellings shall be occupied until the approved link road and second roundabout access has been delivered in accordance with the details controlled by Condition 25.
22. Prior to the commencement of development, a scheme to upgrade two existing bus stops, namely the Braintree bound stop on Millennium Way (ID ref: FREEPOR6) and the Witham bound stop on B1018 between Galley's Corner and Fowler's Roundabout (ID ref: 3802502), shall be submitted to and approved in writing by the Local Planning Authority. The completion of these upgrades shall be carried out in accordance with the approved scheme prior to first occupation of the development.
23. Prior to the commencement of development, a scheme to upgrade the existing Public Right of Way Footpath 4 Crossing over that part of the route, which is within the site boundary, to include implementation timescales, shall be submitted to and approved in writing by the Local Planning Authority. The completion of the approved upgrades shall be in accordance with the approved details and timescales.
24. Prior to the commencement of development, a Residential Travel Plan for the developed site shall be submitted to and approved in writing by the Local Planning Authority. The approved Plan shall be implemented prior to first occupation of the development.
25. Prior to the commencement of development, a drawing detailing the simple priority access(es) along the link road between the proposed B1018 Braintree Road / site access roundabout and the Long Green / site access roundabout shall be submitted to and approved in writing by the Local Planning Authority. The drawing shall provide the general arrangement between the heads of the splitter islands at either end of the link road. The layout shall include:
- The site accesses which shall be simple priority T-junctions (without ghost island right turn lanes);
 - A minimum 6.75m wide carriageway;

- A minimum 3.5m wide footway / cycleway on one side of the above carriageway and a minimum 2m wide footway on the other; and
- A minimum of two bus stops on the above carriageway.

Stopping sight visibility envelopes shall be provided as shown on approved drawing 17126-012-A, which shall be kept clear of obstructions between 0.6m and 2.4m (except for isolated slim objects). All trees shall be removed within the visibility envelopes unless otherwise approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details and with the trigger points for the implementation of these details as set out in Condition 21.

26. Prior to the commencement of development, a detailed noise mitigation report shall be submitted to and approved in writing by the Local Planning Authority. The report shall detail measures that shall be incorporated into the development to ensure that the proposed residential development is adequately protected from such noise. The assessment shall be completed in line with BS8233. The development shall only be carried out in accordance with the approved details and shall be retained as such thereafter.