



Appeal Decision

Inquiry held on 24 to 27 November 2020

Site visit made on 28 October 2020

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2021

Appeal Ref: APP/P1560/W/20/3256190

700 St Johns Road and St Johns Nursery site, Earls Hall Drive, Clacton on Sea

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kelsworth Limited against the decision of Tendring District Council.
 - The application Ref 18/01779/FUL, dated 19 October 2018, was refused by notice dated 19 February 2020.
 - The development proposed is demolition of nursery buildings and dwellinghouse. Erection of 195 residential units (comprising 6 two bed houses, 87 three bed houses, 33 four bed houses, 25 five bed houses, 12 one bedroom apartments and 24 two bedroom apartments), and 8 live work units (mixed commercial units measuring 1,064 square metres in total with flats above). Associated roads, open space, drainage, landscaping and other infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The planning application was amended by the appellant prior to its determination by the Council. The description of the development subject to this appeal (the development) appearing on the Council's decision notice is as stated in the banner heading above and that description is accepted by the appellant.
3. While the Inquiry finished sitting on 27 November, I adjourned it, rather than formally closing it to allow for the submission of:
 - A certified copy of an executed Unilateral Undertaking (UU) entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).
 - A final version of a list of suggested planning conditions agreed between the appellant and the Council, which was submitted on 4 December 2020.
 - Clarification about the proximity of the appeal site to the various Special Protection Areas for birds (SPA) and Special Areas of Conservation (SAC) and details for the SPAs and SACs (designation citations, conservation objectives and condition). This information having been submitted by the

Council on 4 December 2020 and comprises inquiry core documents (CDs) CD8.20 to CD8.25.

- Copies of any exchanges of correspondence between the Council and the Office for National Statistics (ONS) or other documentation in the public domain concerning the matter of unattributable population change (UPC) in Tendring. A note addressing this matter was submitted by the Council on 4 December 2020 (CD13.13).
 - Clarification about the inclusion of housing sites with resolutions to approve within the Council's calculation of its five year supply of deliverable housing sites (5yrHS), as stated in the Tendring Strategic Housing Land Availability Assessment of May 2020 (SHLAA) (CD6.3). This clarification was provided by the Council on 4 December 2020 in CD13.11 and CD12, supplementing the information provided by the Council in CD13.10.
4. The Council refused planning permission for five reasons (RRs). However, at the pre-inquiry case management conference held on 24 September 2020 the Council advised that it would not be 'pursuing' (defending) the third RR (living conditions for adjoining residents). The Council in the proof of evidence (PoE) provided by its planning witness¹ restated its intention not to defend its third RR. Notwithstanding the Council's position with respect to the third RR I have had regard to the representations made by residents concerning their living conditions.
 5. The fourth and fifth RRs concerned the absence of planning obligations entered into under a legal agreement² relating to: the provision of affordable housing; financial contributions for local infrastructure provision and effects on the integrity of the SPAs and SACs, in particular, the Hamford Water SPA. The Council through the giving of its written and oral evidence, however, made it clear that in the event of the appellant entering into planning obligations relating to the matters referred to in the fourth and fifth RRs then the concerns raised in those RRs would become uncontentious.
 6. With respect to the development's effect on the Hamford Water SPA and further to a question I raised at the inquiry, the Council confirmed on 4 December 2020³ that the appeal site had incorrectly been identified as being in the zone of influence (ZoI) for this SPA and that the development should be considered as being within the ZoI for the Colne Estuary SPA, the Blackwater Estuary SPA, the Dengie SPA and the Essex Estuaries SAC. I have therefore treated the wording of the fifth reason for refusal as though it related to the aforementioned SPAs and SAC.
 7. A UU was executed by the appellant on 14 December 2020⁴. The UU contains planning obligations binding upon the appellant and its successors in title that would secure the provision of: 23 affordable homes, open space on site and enhanced footway and cycle facilities; financial contributions for education, healthcare and bus facilities; and a financial contribution to assist with the operation of the Essex Coastal Recreational disturbance Avoidance and

¹ Paragraph 1.10 of Mr Carpenter's PoE

² An agreement or unilateral undertaking entered into under Section 106

³ Within the text of a covering email from the Council submitted to the Planning Inspectorate on 4 December

⁴ A certified copy of the UU was submitted to the Planning Inspectorate on 15 December as per the timetable for its submission that was set while the inquiry was sitting

Mitigation Strategy (RAMS) to mitigate the effects of the development's occupation on the Colne Estuary SPA, the Blackwater Estuary SPA, Dengie SPA and the Essex Estuaries SAC.

8. As the planning obligations contained in the executed UU have addressed the concerns identified by the Council in its fourth and fifth reasons for refusal, I have treated those RRs as not being subject to any dispute between by the appellant and the Council. I return below to the planning obligations as other matters.
9. The adopted development plan, the Tendring District Local Plan of 2007 (TDLP), is in the process of being replaced by the emerging Tendring District Local Plan 2013-2033 (the eLP). The Council intends that the eLP will comprise two parts (sections). Section 1 of the eLP containing strategic policies and proposals that will '... apply to the whole of North Essex (including Tendring, Colchester and Braintree) ...', while Section 2 will contain policies and proposals specific to Tendring⁵. While the whole of the eLP has been submitted for examination, the two sections are being examined separately.
10. The examination of Section 1 of the eLP commenced in 2018 and was concluded on 10 December 2020 with the examining Inspector's (EI) report being made publicly available that day⁶. The EI has concluded that Section 1 of the eLP would be sound with the making of recommended main modifications and would be capable of being adopted by the Council. Further to the publication of the EI's report the appellant and the Council were given the opportunity to make written comments on any implications the EI's conclusions on the housing requirement for Tendring might have upon the cases that the parties made while the inquiry was sitting. In that regard the Council and the appellant both made comments on 18 December. The Council has advised it is expected that at a Full Council meeting on 26 January 2021 a decision will be made as to whether Section 1 of the eLP should or should not be adopted.
11. As Section 1 of the eLP has reached a very advanced stage in its preparation I consider it should be considered as being a material consideration of great weight for the purposes of the determination of this appeal.
12. The examination of Section 2 of the eLP is expected to commence following the completion of the examination of Section 1. Section 2 of the eLP therefore remains liable to change and I therefore consider that very little weight should be attached to the policies of Section 2 of the eLP for the purposes of the determination of this appeal.
13. The inquiry was formally closed in writing on 21 December 2020.

Main Issues

14. Given the Council's position with respect to the third, fourth and fifth RRs referred to above, I consider the main issues are the effect of the development on:
 - the character and appearance of the surrounding area; and

⁵ Paragraph 20 of the Council's Statement of Case (CD12.2)

⁶ The eLP examining Inspector's report and schedule of recommended Main Modifications were submitted as inquiry documents by the Council on 11 December 2020 as CD13.16 and CD13.17

- the safety and free flow of traffic on the local highway network.

Reasons

Character and Appearance

15. The site has an area of 7.6 hectares and the majority of it comprises the St John's Nursery. The nursery is occupied by glasshouses that can lawfully be used for horticulture, with the ancillary sale of produce 'grown on' at the site⁷. The site also includes a chalet bungalow and its grounds at 700 St John's Road (No 700) and part of the grounds of the bungalow at 762 St John's Road (No 762). The development would involve the removal of all of the glasshouses and the provision of a total of 195 dwellings comprising a mixture of houses, some blocks of flats and eight live work units. The proposed houses would variously be two, two and a half and three storeys in height, while the blocks accommodating the flats and live work units would be three and four storeys high. The chalet bungalow at No 700 would be demolished to provide a new vehicular and pedestrian access/estate road. In addition, there would be land take at No 762 to facilitate a new pedestrian and cycle link with St John's Road just to the east of Earls Hall Drive.
16. There is no dispute that the nursery's glasshouses are of no particular architectural merit, given their functional design. That said the glasshouses are low-rise buildings, which I found not to appear out of place, given their siting at the transition between Clacton's suburban area and the essentially open farmland characterising the area to the north of St John's Road. The proposed housing would lie behind the ribbon of bungalows, chalet bungalows and occasional two storey houses in this part of St John's Road. St John's Road at this point is generally characterised by road frontage development, with the St John's Nursery being a notable exception. The other exceptions being the Leisure Glades caravan park, benefitting from a planning permission for a 62 pitch extension⁸, and the development of houses and bungalows at and to the rear of 824 St John's Road granted planning permission under application reference 18/00379/OUT (appended to CD12.1) further to a similar proposal being allowed on appeal⁹.
17. Mr Thomas, in responding to one of my questions at the inquiry, confirmed that he was not asked by the appellant to consider redesigning the development's layout within the vicinity of the site's northern boundary, when it was decided that the thirty or so Poplar trees¹⁰ along that boundary would not be retained as part of the development. That decision being made after the planning application's submission and further to the Council's tree officer advising that it would be inadvisable for the Poplar trees to be retained within the development.
18. Replacement tree planting along the site's northern boundary, secured by the imposition of a planning condition, could be undertaken. However, such planting would take time to become established and provide any meaningful visual screening for a row of 22 houses of between two and three storeys in height. That row of 22 houses being significantly taller than the glasshouses,

⁷ Paragraph 72 of enforcement appeal decisions APP/P1560/C/18/3214046 and APP/P1560/C/18/3214047 (CD7.5)

⁸ Permission 18/00952/FUL granted on 15 April 2019 (appended to CD12.1)

⁹ APP/P1560/W/15/3002161 (CD7.7.6)

¹⁰ As identified in the submitted Arboricultural Impact Assessment (CD2.3)

with the appreciation of the mass of the glasshouses in part being mitigated by the screening afforded by the Poplar trees.

19. I share the concern expressed by the Council that there could be an incompatibility between the longer term retention of any new screen planting and the occupation of the dwellings adjoining the site's northern boundary. That being because the rear gardens adjoining the site's northern boundary would be of a limited depth and the presence of tall screen planting could affect the utility of those gardens, a number of which would serve four or five bedroom houses. The Council contends that relying on screen planting within back gardens would not be good practice, given the vulnerability of such planting to removal by the occupiers of individual properties. The imposition of a planning condition would be capable of securing the short term retention of any new tree planting. However, such a condition would not ensure that planting's retention in perpetuity, with their being no certainty that the retention of trees planted as part of the development could be secured through the making of a tree preservation order (TPO).
20. Although the development would be situated behind the existing frontage dwellings on St John's Road, it would be open to view to varying degrees by users of the public footpath running along Earls Hall Road. Given that and notwithstanding the fact that the area within the vicinity of the nursery is not subject to any special landscape designations, I consider it important that the treatment of the site's northern boundary should be handled so that the development would integrate well with its surroundings. I am not persuaded that the development would do that because of the juxtaposition of a row of rear gardens facing directly onto the open farmland to the north. I therefore consider that the appearance of this part of the development would be poor and would fail to provide an appropriate response to its context, at what would become a new point of transition between housing and the open countryside beyond.
21. I accept that the site is of a scale that could accommodate some new buildings of more than two storeys in height without such buildings becoming disrespectful of the established suburban context. However, I consider it would be inappropriate to have some two and a half and three storey houses that were sited only around 12 metres from the northern boundary. In that regard what is proposed at the nursery would depart from the approach that is expected to be followed in connection with the implementation of the 950 dwelling scheme at the nearby Rouses Farm, where built development within the vicinity of the long western boundary next to the retained farmland would mainly be of one or two storeys and no more than 10.5 metres in height¹¹. Additionally, at Rouses Farm it is expected that a 20 to 30 metre wide landscape buffer would be provided along that development's countryside boundary¹².
22. The absence of a freestanding landscape buffer along the northern boundary would also be at odds with the 'approach' promoted in the Council's landscape impact assessment for various sites, including the St John's Nursery that was

¹¹ Subject to planning application 17/01229/OUT and as shown on the building heights parameter plan for that development (CD9.1) and which is subject to a resolution to grant planning permission made on 30 May 2018 (page 25 of CD6.3)

¹² Paragraph 5.14 of Mr Russell-Vick's PoE

undertaken in 2010 (the Amec report)¹³. In the Amec report it was suggested that along the nursery's northern boundary the existing hedges should be retained to form part of a 20 metre wide 'green buffer'. Within Appendix 4 of the Amec report site specific 'Potential Settlement Impact Mitigation' measures were identified and for sites 1/3 and 1/4 the provision of a '... strong defendable landscape boundary along the northern perimeter ...' was recommended.

23. While the Amec report does not have the status of formally adopted local planning policy or guidance, within the context of testing the capacity for potential new housing sites, it does outline an approach for how in very general terms the nursery might be redeveloped in a manner intended to be respectful of its context. Within the Amec report an indicative density of 25 dwellings per hectare (dph) was put forward for the nursery. The suggested approach for the nursery being outlined without being influenced by any particular proposal for this site and against the backdrop of Policy HG7 of the TDLP indicating that new housing should be provided at a minimum of 30 dph.
24. I recognise that in places the site's existing buildings and boundary treatments do not have an attractive appearance when they are viewed from Earls Hall Road. That said I am not persuaded that the development when viewed from Earls Hall Drive '... would offer a substantially improved visual experience for walkers and residents using the footpath'¹⁴.
25. It is proposed that eighteen houses would have rear gardens backing onto the site's eastern boundary. However, the site's eastern boundary is not as publicly visible as the northern one and here it is proposed that the existing trees would be retained. Those existing trees, predominantly Oaks ranging between 7.0 and 18 metres in height¹⁵, would be towards the ends of longer gardens, when compared with the garden depths proposed along the northern boundary. I therefore consider the well established trees adjoining the eastern boundary would be less susceptible to removal compared with the screen planting intended for the northern boundary, with there being scope to secure the former's retention through making TPOs. I therefore consider the layout and design of the development within the vicinity of the site's eastern boundary to be unobjectionable.
26. Many of the houses and the flat blocks would be taller than the ribbon of dwellings on the northern side of St John's Road and some of those new dwellings would be visible through the roof level gaps between the existing dwellings. However, I consider that only fleeting or distant views of the new houses and flat blocks from St John's Road and further afield to the south would be possible. In that respect I am of the view that the new dwellings would not have an overt presence and that in the views from the south this development would not adversely affect the area's character and appearance. Discounting any views from Earls Hall Road I am also of the view that the proposed development would not appear out of place when viewed from further afield to the east or west.

¹³ Identified as part of 'Land North of St John's Road and North of Cann Hall Estate, Clacton (Sites 1/3 and 1/4) in Appendix 3 of the Amec report submitted as Appendix 1 to Mr Robinson's PoE

¹⁴ Paragraph 4.40 of Mr Robinson's PoE

¹⁵ As identified in the Arboricultural Impact Report of December 2019 (CD2.3)

27. As I have indicated above, I consider buildings of more than two storeys need not necessarily be objectionable at the nursery. Block C would be a four storey building and this building was originally designed to have a fully flat roof. However, Block C's design was amended prior to planning permission being refused by the Council and it is proposed that it would have a mixed pitched and flat roof form. While the pitched roof elements of Block C would be in sympathy with the roof types characterising this suburban location, I consider Block C would be of a scale that would be uncharacteristic of its surroundings, with there being a reliance on what for this area would be a unique flat roofed central spine. I consider that the inclusion of that flat roof element in Block C's design is indicative of this building being over scaled.
28. The development because of its backland nature would be served by a comparatively long and eleven metre wide estate road, comprising a vehicular carriageway, footways along each side and planting on its eastern side. While such a long estate road approach into the heart of the development would be uncharacteristic of its surroundings, I do not find this aspect of the scheme of itself to be objectionable. That is because for vehicular users of St John's Road passing by, the length of the estate road would not be immediately apparent, while for pedestrians using St John's Road the length of the access would be of no particular consequence. For prospective occupiers of the development, should they find the appearance of the main access to be functionally disagreeable that would be a factor that they could take into account when making decisions about whether or not to live in the development.
29. The Council has expressed the view that it is unclear why Earls Hall Drive has not used as the vehicular access¹⁶. However, as part of the pre-application discussions that took place between the appellant, the Council and Essex County Council Highways (ECC), it appears that ECC was concerned by the prospect of Earls Hall Drive being used as the vehicular access, given its status as a public footpath, and promoted the formation of a new access to the east¹⁷. Even if Earls Hall Drive was to be used as the vehicular access for the development, it would still be served by a relatively long estate road and that would not overcome the Council's concern about the length of the access.
30. The first RR contends that should the development be granted planning permission that would set a 'precedent' for similar developments. However, individual developments should be considered on the basis of their individual circumstances and as no directly comparable sites have been identified by the Council, I consider there to be no merit in the precedent concern raised in the first RR.
31. For the reasons given above I conclude that the development, in particular, along its northern boundary would have an unacceptable effect on the character and appearance of the area. I consider that the harm I have identified would give rise to conflict with Policies QL9 and QL11(i) of the TDLP. That is because the development would not maintain or enhance the local character of the area, with the siting, height, scale and massing of the houses along the development's northern boundary being unacceptable, with the design and layout of those houses failing to incorporate existing site features of the landscape, namely the Poplar trees, while the replacement northern

¹⁶ Paragraph 5.13 of Mr Russell Vick's PoE and paragraph 6.8 of Mr Carpenter's PoE

¹⁷ Letter of 9 February 2016 from the Council to the appellant forming Appendix 1B of the overarching SoCG (CD12.3A)

boundary planting has not been designed to function as an integral part of the new development.

32. I also consider that there would be some conflict with the seventh criterion of Policy HG13 of the TDLP. That is because as backland development, as defined for the purposes of Policy HG13, the northern part of the development would be out of character with the area. However, as I have found that the main estate road access would not cause visual detriment within the streetscene, I consider that this aspect of the development would accord with Policy HG13's third criterion.
33. Section 12 (Achieving well-designed places) of the National Planning Policy Framework (the Framework) addresses the quality and appearance of new development. Given the harm to the character and appearance of the area that I have identified, I consider that the development would be contrary to paragraphs 124 and 127 of the Framework insofar as it would not be of a good design, with it failing to add to the overall quality of the area and there being some potential for the landscaping and rear garden areas along the northern boundary not to function well together over the lifetime of the development. I also consider that there would be conflict with the National Design Guide, most particularly paragraphs 40 to 42, 51 and 52, because elements of the development's design would not relate well to its local context or respond to the existing local character.

Highways

34. The second RR in essence identified a concern about the ability of the estate road's junction with St John's Road to operate in unison with the traffic light controlled junction proposed for Rouses Farm, which would be around 110 metres to the east¹⁸. The Council arguing as part of its appeal case that should these two junctions not operate in unison then there would be the potential for queuing right turning traffic waiting to enter the Rouses Farm to impede (block) right turning traffic from entering the development's estate road. Should such blocking arise it has been further submitted that would impede the flow of westbound through traffic on the B1027.
35. An additional limb to the Council's case advanced by its three highways witnesses is that during the summer months, June through to September¹⁹, there is a seasonal increase in the use of the B1027/St John's Road, which has not been adequately assessed by either the appellant or ECC as the local highway authority. It being submitted that a seasonal increase in the use of the B1027 arises from vehicular movements generated by the summertime occupation of the large number of static homes and other holiday accommodation in the area.
36. A local resident, Mr Everett, also made submissions at the inquiry raising concerns about: how the traffic arising from the development had been quantified and the effect of that traffic on the operation of the local highway network; and the design of the junction between the estate road and St John's Road, most particularly the absence of the provision of a right turning/ghost lane.

¹⁸ With there being 97 metres between the stop line for the signal controlled Rouses Farm junction and the appeal site's proposed junction with St John's Road (paragraph 4.1 of the Technical Note forming Appendix RF-D to Mr Fitter's PoE

¹⁹ As clarified variously through the giving of the evidence of Mr Williams, Mr Cosier and Councillor Bray

37. The Council's inclusion of a highways reason for refusal was against a backdrop of there being no objection from ECC to the development. That said from the brevity of ECC'S formal consultation response of 29 January 2020 to the Council²⁰, it is far from clear how the highway authority actually assessed the appellant's Transport Assessment (TA - CD1.88) and arrived at its conclusion that *'From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority ...'* subject to the provision of some mitigation measures.
38. A little more can be gleaned from ECC's letter of 1 May 2020 to St Osyth Parish Council²¹ in which it commented *'As with all large planning applications the Highway Authority has undertaken extensive investigation and analysis of the submitted transport assessment and travel plan accompanying this planning application. This work has concluded that the proposal is not contrary to current National and Local policy and safety criteria and has been found acceptable to the Highway Authority in terms of its impact upon the local highway network'*. Mr Fitter in giving his evidence in chief for the appellant also remarked that ECC did ask 'searching questions' of him. Be that as it may, the absence of any meaningful reasoning in ECC'S consultation response I can appreciate was distinctly unhelpful to the members of the Council's planning committee.
39. The appellant's comparison of the existing and proposed trip rate generation in section 8 of the TA has been criticised. That criticism revolving around how the vehicular movements generated by the existing use of the nursery have been calculated²², given that the site was only partially in use when the TA was prepared and the TRICS database²² does not address horticultural 'nurseries with ancillary garden centres' (paragraph 8.3 of the TA). Given those circumstances an existing trip generation calculation was performed by the appellant based on the expected trip rate for the use of the 253 space car park extension granted planning permission under file reference 17/01770/FUL on 8 December 2017. The results from that calculation are shown in Table 8.1 of the TA, with the number of movements (ie arrivals and departures) during the AM peak (08:00 to 09:00), PM peak (17:00 and 18:00) and the whole day, respectively estimated at 37, 18 and 1,841 movements.
40. While making comparisons between existing and proposed trip generation in TAs is well trodden ground, in this instance I do not consider that exercise to have been particularly informative. That is because the TA was written around a month after the issuing of an enforcement notice on 14 September 2018 requiring the cessation of various non-horticultural uses at the nursery. Those uses subsequently having been confirmed as being unlawful through the determination of the enforcement notice appeals on 5 December 2019. Consequently, the existing use estimate of 1,841 movements per day in the TA was excessive.
41. Given the brevity of ECC'S formal response to the Council, which post dated the determination of the enforcement notice appeals, it is very unclear what weight ECC may have placed on the existing and proposed trip generation

²⁰ Letter contained in CD3.4

²¹ Appendix 4 to Mr Williams PoE

²² The recognised database used by transportation professionals to make predictions for trip rates and traffic generation for new developments

comparison made in the TA. That said, I consider what is of consequence in this instance, given the proposal to create an entirely new estate access, is the volume of vehicular traffic the development would be likely to generate and whether or not the local highway network could accommodate that traffic alone, as well as in combination with expected traffic growth in the area.

42. With respect to the assessment of the effect of the development's traffic on the operation of the local highway network, the appellant has placed reliance on an automated traffic count undertaken in April 2017. April being recognised as a 'neutral' month for the purposes of undertaking traffic surveys, ie one unaffected by school holiday periods. Mr Fitter in giving his evidence confirmed that the extant national guidance relating to the assessment of traffic flows is stated in the Planning Practice Guidance (PPG) and it states:

'In general, assessments should be based on normal traffic flow and usage conditions (eg non-school holiday periods, typical weather conditions) but it may be necessary to consider the implications for any regular peak traffic and usage periods (such as rush hours). Projections should use local traffic forecasts such as TEMPRO drawing where necessary on National Road Traffic Forecasts for traffic data'²³.

43. There is therefore nothing unusual about the appellant relying on a traffic survey that was undertaken in April, as opposed to one conducted during a summer month. In that regard Mr Fitter commented that in some areas, such as Dorset and the Lake District National Park, applicants are required to undertake traffic surveys during the summer months. However, neither ECC nor the Council through their policy or guidance require summer surveys to be undertaken. If the seasonal increase in the use of the B1027 was at a level that had become a significant issue year on year, then I would have expected it to be something that ECC and/or the Council would be familiar with and would be a matter that all developers were being requested to take account of when submitting their TAs. However, there seems to be no history of this seasonality issue having been raised previously with developers, with the TAs for seven applications, including Rouses Farm, having been reviewed by the appellant in that regard²⁴.
44. With respect to the operation of the junctions for the development and Rouses Farm with St John's Road, the appellant has undertaken sensitivity testing to indicate how much extra traffic attributable to a seasonal effect would be required for those junctions to exceed their 'functional' capacities and cause unacceptable levels of congestion. In the case of simple priority junctions, such as that proposed for the development, their operational capacity is measured in terms of the ratio to flow capacity (RFC), with the functional maximum for this type of junction considered to be an RFC of 0.85. For signal controlled junctions their operational capacity is measured by reference to the degree of saturation (DoS), with the functional capacity usually taken to be a DoS of 90%.

²³ Paragraph: 015 Reference ID: 42-015-20140306

²⁴ Paragraph 3.5 of Mr Fitter's rebuttal statement

45. The results of the appellant's sensitivity testing are summarised in paragraph 3.10 of Mr Fitter's rebuttal statement as:

'The baseline traffic flows could be increased by 15% in the AM peak and 38% in the PM peak before the proposed Rouses Farm traffic signals exceed 90% DoS on any approach. The baseline traffic flows could be increased by 31% in the AM peak and 41% in the PM peak before the proposed site access junction would exceed RFC 0.85.'

46. The Council has provided no empirical evidence challenging the reliability of the appellant's sensitivity testing for the effects of seasonality on the flows of traffic. I therefore consider that I can only reasonably be guided by the appellant's sensitivity evidence.
47. On the evidence available to me, I consider that the appellant's reliance on a traffic survey conducted in April, rather than between June and September, reveals no significant deficiency in the appellant's TA and the conclusions drawn from it by ECC. What has also become apparent through the presentation of the Council's evidence is that throughout the whole of the period that ECC was considering the appeal development it had available to it the results from the traffic survey commissioned by it and undertaken during June and July 2018 concerning part of the B1027 to the west of the nursery²⁵. Those survey results being for part of the summer period and appearing not to demonstrate to ECC that there was a seasonal traffic flow issue that the appellant needed to address before ECC could make its consultation response to the Council. Consequently, for the purposes of the determination of this appeal I consider the traffic seasonality issue that has been raised attracts little weight.
48. It has been contended that the absence of a right turning lane at the junction between St John's Road and the estate road would not comply with the design standards for such junctions, most particularly CD123²⁶ of the Design Manual for Roads and Bridges (DMRB)²⁷. The DMRB being requirements and guidance published by Highways England (HE) primarily for the purposes of guiding the design of new or altered parts of the strategic highway network (motorways and some A class roads) for which HE is the highway authority.
49. Local highway authorities, such as ECC, do not have to apply the requirements and guidance contained in the DMRB to the roads they have jurisdiction over. In considering the effects of the development on the operation of the B1027 there is therefore no compulsion to apply the provisions of CD123, something Mr Fitter confirmed in response to a question I put to him.
50. To prevent queued vehicles waiting to turn right into the estate road from impeding the flow of westbound traffic on St John's Road it has been argued that a right turning lane, a 'major road central treatment' (which include 'ghost islands') in the language of CD123, should form part of the development's design. Paragraph 2.3.1 of CD123 states that *'The selection of priority junction and major road central treatment for single carriageway roads should be determined based on the standard of major road and traffic*

²⁵ Pump Hill and Bypass Road contained in Appendix 6 of Mr Williams PoE

²⁶ 'Geometric design of at-grade priority and signal-controlled junctions'

²⁷ CD13.4

flows on both the major and minor roads. Figure 2.3.1 illustrates approximate levels of provision for varying traffic flows'. Figure 2.3.1 indicates that below a flow of 13,000 two-way annual average daily traffic (AADT) on a junction's major road the provision of a 'simple' priority (T-type) junction would usually be appropriate. Figure 2.3.1 also indicates that ghost island provision would be appropriate where the major road has a two-way AADT of between 13,000 and 18,000.

51. Paragraph 2.3.1 and Figure 2.3.1 of CD123, however, need to be read in conjunction with the 'Note' immediately following them. That note states '*The 2-way AADT design year flows are used to determine the approximate level of junction provision prior to more detailed traffic modelling to check capacity*'. The note in CD123 indicates that a flow of over 13,000 AADT is not an absolute threshold for providing right turning lanes, with that AADT being a level at which more detailed traffic modelling should be undertaken to determine whether something other than a simple junction would be necessary. Mr Fitter in his rebuttal statement (paragraphs 7.9 to 7.11) explained that is the process that was followed.
52. The capacity for the estate road's junction with St John's Road was modelled by the appellant using the Transport Research Laboratory's 'PICADY' software. The results of that modelling in October 2018 were included as Appendix I in the appellant's TA and were therefore available to ECC when it was considering the proposed development. It is apparent from ECC'S email to the Council of 2 September 2019²⁸ that it was mindful of the possible need for a right turning lane to be provided because it commented:

*'The other key point is the dedicated run turn lane; I note from the Stage 1 Safety Audit there were concerns about potential rear end shunts if one was not provided and the designers comments appear to suggest that there is spare capacity not to warrant a dedicated right turn lane. At the very least we would like to see the Safety Audit recommendation: **to carry out further assessment and analysis of the traffic model to determine the appropriate level of right turn provision required.** The reason being due to the size of development and current attributes of the road we would normally have a dedicated right turn lane incorporated in the proposals.'* (The highlighting of text being as used by ECC)

53. It however appears that ECC in making the above quoted comments failed to recognise that when the safety audit findings of 14 February 2019 were submitted to it on 11 June 2019, the designer's (Mr Fitter) response (21 February 2019) to the audit's findings had been included²⁹. It also appears that the appellant's safety auditors were unaware of a junction capacity analysis having been undertaken in advance of being instructed to conduct an audit, with neither the TA nor the PICADY output data being available to the auditors³⁰.
54. The appellant has modelled the effect of the development's traffic on the operation of the Rouses Farm junction using 'LinSig' software. That modelling has identified a mean maximum queue for passenger car units (PCUs) turning

²⁸ Appended to Councillor Bray's PoE

²⁹ Appendix C of Mr Fitter's PoE

³⁰ Appendix A of the Stage 1 Road Safety Audit in Appendix C of Mr Fitter's PoE

right into the Rouses Farm access of 22.1 vehicles³¹, assuming an average vehicle length of 5.5 metres. A queue of 22 vehicles waiting to enter Rouses Farm would extend back to the access for the development, with there being 97 metres³² between the stop line for the traffic signals and the estate road for the development. 97 metres being sufficient to accommodate 17.6 PCUs. A queue of 22 vehicles could therefore block right turns being made into the development's estate road and go onto impede the flow of westbound traffic on St John's Road. However, for that to happen eastbound drivers would have to fail to observe Rule 151 of the Highway Code (Rule 151) and cause entry into a side road to become blocked³³.

55. I consider a mean maximum queue length of 22 vehicles would be very much at the worst case end of possible queue lengths. That is because the figure of 22 vehicles would equate to the average of the maximum queue length, rather than the average of all queue lengths for vehicles turning into Rouses Farm.
56. A queue length of 22 vehicles in practice would therefore likely to be an exception and not the norm for vehicles seeking to enter Rouses Farm. Additionally, for queues of that length to actually block vehicles seeking to enter the development's estate road and also impede westbound through traffic, there would also need to be vehicles waiting to make a right turn into the development. So, for the mean maximum queue length to be of significance for westbound traffic on St John's Road it would need to coincide with times when there were also vehicles waiting to turn right into the development and Rule 151 was not being observed. The effect of the non-observance of Rule 151 being something that might be alleviated through the use of 'keep clear' markings or a 'box-junction' (yellow hatching), as alluded to in section 7 of Mr Fitter's rebuttal statement.
57. Mr Fitter has submitted in his evidence that the capacity analysis that has been performed is subject to some double counting of future traffic growth. That is because in line with standard practice the baseline (2017) traffic flow for the B1027 has been subjected to a growth multiplier (national road traffic forecast [NRTF]) to derive a flow for 2023, which is the development's notional completion year used in the TA. To that future year figure the predicted traffic from both Rouses Farm and the development has been added, even though Rouses Farm is a committed development and would be accounted for in the NRTF multiplier. Mr Fitter in his evidence in chief also advised that the nursery's existing traffic generation had not been deducted from the baseline traffic flow used to prepare the TA.
58. Additionally, all of the junction capacity modelling has been undertaken on the basis of the development being for 210 dwellings, as originally proposed, and not 195 dwellings as now proposed. Mr Fitter in giving his evidence in chief also advised that no trip rate distinction had been made between the market and affordable dwellings within the development, even though in TRICS it is recognised that affordable homes generate lower rates. I consider that when all of the foregoing factors are taken into account the assessment of the effects of the operation of the development's junction with St John's Road alone and in conjunction with the operation of the Rouses Farm junction has

³¹ Appendix E of Mr Fitter's PoE

³² Paragraph 4.1 of the Technical Note included within Appendix D of Mr Fitter's PoE

³³ Paragraphs 7.13 and 7.14 of Mr Fitter's rebuttal statement

been undertaken on a reasonable and robust basis, with the traffic generation predictions for the development being subject to some double counting and overestimation.

59. The development would cause some additional use of St John's Road and that could affect the entry or exit to the existing dwellings in the vicinity of the appeal site. However, I consider the amount of additional traffic using this part of St John's Road associated with the development would not be so great as to cause unacceptable delays to the entry or exit to the existing nearby dwellings.
60. For the period between 2017 and 2019 there were seven personal injury accidents (PIAs) on St John's Road within the vicinity of the nursery and the appellant has submitted that accident rate is below average for a road of this type, with the available data showing '... no significant patterns or clusters'³⁴. Mr Fitter in response to a question I put to him commented that the cause of the accidents between 2017 to 2019 were the result of driver error and/or interactions as opposed to the nature/condition of St John's Road. Regrettably there was a fatal accident in April 2020, however, the investigation into the cause of that accident is ongoing. I consider the available evidence has not demonstrated that the use of the development's access would adversely affect highway safety in the area.
61. Above I have referred to ECC'S formal consultation response to the Council being very brief. Notwithstanding that I consider there can be no doubt that ECC considered the need for the provision of a right turning lane and was satisfied, on the basis of the information available to it when it made its formal comments to the Council in January 2020, that the development could be granted planning permission without such a turning lane being provided. In that regard it is evident from the contents of the letter sent to St Osyth Parish Council on 1 May 2020³⁵ ECC made a conscious decision to require the provision of a combined footway and cycleway rather than a right turning lane, given that within the vicinity of No 700 there was insufficient highway land available to accommodate both, as confirmed by Mr Fitter at paragraph 4.29 of his PoE.
62. It has been contended that inadequate consideration has been given to the provision of a right turning lane. By extension it has been argued that ECC reached an incorrect conclusion about the need for a right turning lane. However, no empirical evidence has been submitted by the Council demonstrating that ECC should not have reached its conclusion on the adequacy of the development's junction and I am not persuaded that I should reach a contrary view to that held by the highway authority.
63. It is evident that the Jaywick Lane junction and some of the other junctions to the east of that junction are already operating above or close to their capacities, with some mitigation measures expected to be provided as part of the implementation of the Rouses Farm development³⁶. Those junction capacity issues are likely to be contributing to the travel delays variously referred to by the Council's highway witnesses.

³⁴ Section 5 of Mr Fitter's rebuttal statement

³⁵ Appendix 4 of Mr Williams' PoE

³⁶ Section 6 of Mr Fitter's rebuttal statement and the planning conditions expected to be imposed on the planning permission for Rouses Farm listed in the committee minutes of 12 March 2019 appended to CD12.1

64. The additional traffic generated by the nursery's redevelopment, on the face of it, could have the potential to exacerbate the congestion at the existing junctions to the east. That is because there is currently uncertainty about when the mitigation to be provided by the Rouses Farm development will be delivered, given the current absence of a planning permission for that scheme, and the appeal development could be occupied in part, if not wholly, prior to the junction improvements being delivered³⁷. However, the appellant has argued that the traffic generated by the development would '*... result in a very low proportional increase in traffic at any other junction on the local highway network*'³⁸. The peak hour proportional increases for the Jaywick Lane roundabout having been assessed as being no more than 3% for any arm, a net increase that would be less than the daily variation³⁹. In the absence of any empirical evidence having been presented demonstrating that the development would generate anything other than a low proportional increase in traffic at the junctions to the east, I share the appellant's view that there would be a negligible effect on the operation of those junctions.
65. For the reasons given above I therefore conclude that the proposed development would not adversely affect the safety and free flow of traffic on the local highway network. I therefore consider that the development would accord with Policies QL10(i) and HG13(iii) of the TDLP because the access to the site would be practicable and the highway network would be able to safely accommodate the additional traffic the proposal would generate.
66. The second RR cites conflict with Policy TR1a (development affecting highways) of the TDLP. However, Policy TR1, rather than Policy TR1a, has been identified as a 'most relevant' development plan policy in the 'General' Statement of Common Ground (SoCG- CD12.3A). Mr Fitter at paragraph 3.21 of his PoE has referred to Policy TR1a as having been 'erroneously' referred to in the second RR and instead he has drawn attention to Policy TR1 (transport assessment) of the TDLP, without recognising that Policy TR1a is a policy in its own right.
67. Given the nature of objection to the development stated in the second RR and as Policy TR1a concerns development affecting highways, I am of the view that Policy TR1a was correctly cited in the RR. I consider there would be no conflict with Policy TR1a because there would be no unacceptable hazards and inconvenience to traffic. For completeness I also consider that the development would accord with Policy TR1, given that a TA has been submitted and it does not indicate that the development would have materially adverse impacts on the transport system.
68. I also consider that there would be no conflict with paragraphs 108, 109 and 127f) of the Framework because there would be no residual cumulative impacts on the road network that would be severe warranting the refusal of planning permission.

³⁷ Based on Mr Robinson's response to the development timetabling question I raised with him at the inquiry and the initial build rate of 30 dwellings per year rising to 60 dwellings per annum as envisaged for Rouses Farm (Appendix 4 of the SHLAA)

³⁸ Page 8 of the appellant's closing submissions (CD13.15)

³⁹ Section 9 of the TA

Other Matters

Living conditions

69. With respect to the siting of the development relative to the existing dwellings in St John's Road I consider that there would be sufficient separation for there to be no unacceptable overlooking of the adjoining homes. In that regard there would be no conflict with Policy QL10 of the TDLP.

Affordable housing

70. The submitted UU would require the provision of 23 affordable homes (approximately 12%) on site. While that level of provision would be less than the 40% expectation stated in Policy HG4 of the TDLP the Council is now promoting 30% affordable housing provision. In this instance the Council recognises that the demolition of the glasshouses would represent a significant abnormal cost affecting the development's viability and its ability to provide affordable homes.
71. The Council is content that for viability reasons the provision of 23 affordable homes would be appropriate and I see no reason to depart from that view. I therefore consider that the development would make adequate affordable homes provision under of Policy HG4 of the TDLP and would be consistent with the policy for the provision of affordable housing set out in the Framework.

Effects on infrastructure

72. To mitigate the development's effects on local infrastructure the UU would secure:
- The provision of and the management for open space on the site, equivalent to at least 10 percent of the site's area.
 - The making of education contributions totalling £1,770,393 for early years/childcare, primary and secondary facilities in the area.
 - A healthcare facilities contribution of £67,666.
 - A bus services contribution of £104,000 and the upgrading of three bus stops on St John's Road.
 - The provision of a 3.0 metre wide shared footway and cycleway on the northern side of St John's Road between its junction with Earls Hall Road and extending eastwards to tie in with the footway and cycleway improvements proposed for the Rouses Farm development.
73. Those planning obligations would variously address infrastructure requirements covered by Policies QL12 (planning obligations), COM6 (provision of recreational open space), COM26 (education provision) and TR3a (provision for walking) of the TDLP. I consider that the planning obligations would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them, as they would primarily neutralise the demand upon local infrastructure generated by the development's occupation.

Effects on the designated habitats

74. The appellant and the Council agree that the development's occupation would be likely to have an adverse effect on the integrity (AEOI) of the qualifying features (bird species) that frequent the Colne Estuary SPA, the Blackwater Estuary SPA and the Dengie SPA and the condition of the habitat within the Essex Estuaries SAC. Those effects arising from the making of additional recreational visits to the SPAs and the SAC. Having regard to the information about the SPAs and SAC available to me, I consider that this development in combination with others in the areas could give rise to AEOI for the SPAs and the SAC through additional recreational activity.
75. To avoid any increased recreational pressures causing AEOI for the SPAs and SAC the Council, along with other local planning authorities in the area, has developed and is implementing the RAMS (CD8.7). The operation of the RAMS includes the provision of a warden service with the purpose of managing and educating visitors to designated habitats. The UU would secure a RAMS' contribution of £23,848.50. I consider that the making of that contribution would be necessary to ensure that this development did not cause AEOI for the SPAs and SAC. The payment of that contribution would accord with Policy EN11a of the TDLP and the RAMS.

Whether the most important development plan policies are out-of-date

76. Paragraph 11 of the Framework indicates that the presumption in favour of sustainable development should apply. For decision taking that means:

'... c) Approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting planning permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

Footnote 7 of the Framework states *'This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73) ...'*

77. Paragraph 73 of the Framework states:

'... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old³⁷.'

Footnote 37 of the Framework states:

'... Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.'

78. Paragraph 11d)i does not apply in this instance because the nursery is not situated in a protected area and does not form a protected asset for the purposes of footnote 6 of the Framework. Under the provisions of paragraph 11d) for the purposes of the determination of this application there are two routes under which the presumption in favour of sustainable development could be engaged. The first route being the absence of a 5yrHS, while the second would be because the most important development plan policies for the determination of the application are out-of-date.

Housing land supply route

79. On 16 December 2020 the Secretary of State made a Written Ministerial Statement (WMS) providing an update on the Government's proposals for changing the way in which the standard method (SM) is calculated. On the same day amendments to the 'Housing and economic needs assessment' section of the PPG were also published. The changes to the SM will apply to cities and towns that have been specified in the PPG. Tendring is unaffected by the recently made changes to the calculation of the SM and those changes are therefore not material to the determination of this appeal.
80. The strategic policies of the TDLP are more than five years old and the appellant and the Council agree that there is no 5yrHS with respect to the need using the SM of calculation. That being confirmed in the Council's Strategic Housing Land Availability Assessment of May 2020 (the SHLAA) (CD6.3), with a supply of 4.45 years being identified in section 7 of the SHLAA. A 5yrHS of 4.45 years being based on the SM generating a local housing need of 865 dwellings per year, giving an overall five year housing requirement of 4,541 dwellings, inclusive of a 5% buffer⁴⁰.
81. I consider the appellant rightly questioned at the inquiry the inclusion of the delivery of housing from some sites that only had resolutions to grant planning permissions (resolution sites) within the 4.45 years of supply stated in the SHLAA for the period between 1 April 2020 to 31 March 2025. One such resolution site being Rouses Farm, which received its resolution to grant planning permission around two and a half years ago⁴¹ and for which the SHLAA identifies 90 dwellings being delivered by 31 March 2025. At the inquiry's close Rouses Farm continued not to benefit from a planning permission.
82. For the purposes of the determination of this appeal I requested the Council to recalculate its 5yrHS excluding all of the resolution sites which have been identified in the SHLAA as delivering dwellings by the end of March 2025. The recalculation of the 5yrHS being set out in CD13.12. In addition to Rouses Farm there are three other resolution sites which the SHLAA has assumed

⁴⁰ Tendring District Council having become a 5% buffer authority following the Government's publication of the Housing Delivery Test measurement for 2019 (CD6.3 and CD8.14)

⁴¹ 30 May 2018 - Appendix 1 of the SHLAA

would deliver a further 135 dwellings by 31 March 2025⁴². When the 225 dwellings from the four resolution sites are deducted, then there was a 5yrHS of 4.20 years on 1 April 2020⁴³, when measured against a local housing need derived from the SM. While planning permissions for two of the resolution sites have now been granted, I consider that the 94 dwellings predicted to be delivered from those sites by the end of March 2025, as identified in CD13.11, should not be treated as though permissions had existed on 1 April 2020.

83. However, under the provisions of Policy SP3 of Section 1 of the eLP an annual housing requirement of 550 dwellings a year for Tendring has been found to be sound by the EI. A housing requirement of 550 dwellings a year being significantly less than the SM derived local housing need figure of 865 dwellings per year. However, the EI at paragraph 52 of his report has commented:

'The policy SP3 requirement for Tendring is not derived from the official household projections, due to the distorting effect of those projections of errors that gave rise to exceptionally large unattributable population change [UPC] in the district between 2001 and 2011 Censuses. In IED/012 and IED/022 I set out my reasons for endorsing the alternative approach used to derive the demographic starting-point for Tendring, which in turn underpins the housing requirement figure.' (CD13.16)

84. At paragraph 54 of the eLP report the EI has further remarked that to counter the potential for worsening housing affordability in Tendring '*... the housing requirement for Tendring includes a substantial 15% affordability uplift ...*'.
85. Until Section 1 of the eLP is adopted then paragraph 73 (including footnote 37) of the Framework, advises that the SM should, rather than must, be used to establish a local housing need figure for Tendring. That national policy is a material consideration of great weight. However, the examination of Section 1 of the eLP has established that the official household projections for Tendring are subject to distortion due to errors arising from the UPC. In that regard there is evidence available demonstrating that the ONS recognises that for Tendring there is an error with the mid year estimates, which feed into the calculation of the household projections, with a '*migration error... likely to be in the range of 5-6,000 people*⁴⁴. That migration error being thought to represent 47% to 57% of the UPC for Tendring⁴⁵, with the positive UPC figure for Tendring being around 10,500 and '*... one of the biggest of any LPA in England*⁴⁶.
86. With Section 1 of the eLP so recently having been found to be sound, it seems likely that this part of the eLP, including emerging Policy SP3, will imminently progress to adoption. I consider those circumstances to be a very important material consideration, outweighing the advice in paragraph 73 of the Framework that the SM should be used. That approach being consistent with the advice stated in paragraph 48 of the Framework, because Section 1 of the

⁴² South of Ramsey Road (41 dwellings), Former Martello Caravan Park, Walton on The Naze (53 units) and Land west of Church Road, Elmstead market (41 units)

⁴³ Ie the beginning of the five year period for the purposes of the SHLAA

⁴⁴ Email of 29 November 2017 from the ONS to a consultant instructed on the Council's behalf appended to CD13.13

⁴⁵ Paragraph 13 of the examining Inspector's IED012 of 27 June 2018 appended to CD13.13

⁴⁶ Paragraph 8 of IED/012

eLP has reached such an advanced stage in its preparation. When an annual housing requirement of 550 dwellings is used and a historic shortfall allowance of 212 dwellings and a 5% buffer are added, then a total five year requirement of 3,110 dwellings has been identified by the Council in the SHLAA.

87. Against a requirement of 3,110 dwellings the Council is able to demonstrate the availability of a 5yrHS of 6.14 years, including the deduction of 225 dwellings from the four resolution sites as set out in CD13.12. A 5yrHS of 6.14 years represents a surplus of around 20% when considered against a five year requirement of 3,110 dwellings.
88. Even if the adoption of Section 1 of the eLP does not happen in January 2021, as currently envisaged by the Council⁴⁷, on the evidence available to me I consider that the SM derived local housing need figure of 865 dwellings per year is so erroneous it simply cannot be relied upon as the basis for assessing the current 5yrHS position for Tendring. That is because of the distortion caused by the UPC, with the 2014 based household projection for Tendring, an essential input into the SM, being subject to a significant statistical error that the ONS has recognised exists. Given those circumstances I consider the SM yields a deeply flawed local housing need figure for Tendring.
89. I recognise that my approach to the consideration of this matter differs to that of the Inspectors who have determined four other appeals in the Council's area drawn to my attention⁴⁸. However, there has been a very recent material change of circumstances postdating the determination of those other appeals, namely the completion of the examination for Section 1 of the eLP. That means that what was an 'interim finding' of the EI that a housing requirement based on 550 dwellings per year was likely to be acceptable, as was for example the situation when the Mistlely appeal was determined on 23 December 2019, has now become a firm conclusion.
90. As I am of the view that for the purposes of the determination of this appeal the Council can currently demonstrate that a 5yrHS exists, I consider this possible route to engaging the presumption in favour of sustainable development under paragraph 11d) of the Framework does not apply in this instance.

Non-housing land supply route

91. At paragraph 4.2 of the general SoCG (CD12.3A) a large number of TDLP policies have been identified as being relevant development plan policies. Later on in this SoCG Policies QL1, QL9, QL10, QL11, HG4, HG13, TR1, TR3a, COM6, COM26, ER3 and EN11a of the TDLP have been identified as being the 'most relevant development plan policies'. For the reasons I have given above I consider that Policy TR1a of the TDLP should be added to that group of policies. Of those development plan policies, I am of the view that a distinction can be made between those that are 'relevant' and those which are 'most important for determining the application'.

⁴⁷ The Council's email of 18 December 2020 (CD13.20)

⁴⁸ APP/P1560/W/19/3239002 Land at Footh Farm, Thorpe Road, Clacton on Sea (CD7.1)
APP/P1506/W/19/3220201 Land to the South of Long Road, Mistlely (CD7.2), APP/P1560/W/18/3201067 Land off Grange Road, Lawford (CD7.3) and APP/P1560/W/18/3196412 Land west of Edenside, Bloomfield Avenue, Frinton-On-Sea (CD7.4)

92. While Policies HG4, TR3a, COM6, COM26, ER3 and EN11a are relevant policies I consider they do not come within the category of being the most important policies for the determination of this application because they relate to matters that would be addressed via the planning obligations contained in the UU or be capable of being addressed through the imposition of planning conditions, most particularly with respect to the provision of the live work units.
93. As the development would involve the redevelopment of a site that is not within the settlement boundary for Clacton there would be some conflict with Policy QL1 (spatial strategy) of the TDLP. As I have found that for the purposes of the determination of this appeal there is a 5yrHS, I consider Policy QL1 is not out-of-date. However, under Section 2 of the eLP the Council intends that the nursery will be included within the settlement boundary without being allocated for a specific form of development. Given the prospective change to the settlement boundary the Council has raised no in principle objection to the nursery's redevelopment⁴⁹ and because of that background I consider the conflict with Policy QL1 of itself should not be treated as being determinative. I am therefore of the view that while Policy QL1 is a relevant policy, it is not a most important policy in this instance.
94. Of the development policies identified by the appellant and the Council as being the 'most relevant', I consider that Policies QL9, QL10, QL11, HG13, TR1 and TR1a constitute the basket of the most important policies for the purposes of determining this application. That is because those policies address general design considerations for new development. The provisions of Policies QL9, QL10, QL11 are generally consistent with the policies contained within the Framework. In addressing backland development Policy HG13 contains seven criteria and the wording of some of this policy is not wholly consistent with the Framework. However, I consider insofar as Policy HG13 seeks to achieve well designed development it is consistent with the Framework. I consider Policies TR1 and TR1a are broadly consistent with paragraphs 108b), 109 and 127f) of the Framework because they seek to ensure that new development does not unacceptably impact upon highway safety or severely impact on the road network.
95. I consider the basket of most important development plan policies for the determination of this application are for the most part consistent with the Framework and are not out-of-date for the purposes of paragraph 11d) of the Framework.

Planning balance and overall conclusions

96. For the reasons given above I have concluded that the development would have an unacceptable effect on the character and appearance of the area. I consider that harmful effect of the development is a matter of very substantial weight and importance in the planning balance. I have found that the effects of the development on the safety and free flow of traffic on the local highway network would be acceptable and that is something that weighs significantly for the development. The development, through the planning obligations included in the UU, would have a neutral effect on local infrastructure.

⁴⁹ Paragraph 5.14 of Mr Carpenter's PoE and reiterated by Mr Carpenter when he gave his oral evidence

97. I have identified the most important development policies for determining this application. Of those policies the development would be in conflict with Policies QL9, QL11 and HG13, while there would be compliance with Policies QL10, TR1 and TR1a. Nevertheless, I conclude the proposed development would conflict with the development plan when taken as a whole.
98. Paragraph 11 of the Framework establishes the presumption in favour of sustainable development. What is frequently referred to as the “tilted balance” may be engaged via two routes. With respect to housing provision, for the reasons I have given above I have concluded that the Council can currently demonstrate a five year supply of deliverable housing sites to meet its local housing need. With respect to the basket of most important development plan policies, for the reasons given above I am of the view it is not out-of-date for this case. For those reasons I consider the tilted balance should not be engaged. Having regard to my conclusion in the preceding paragraph, I consider the presumption in favour of sustainable development does not apply to the proposed development under either the provisions of the Framework or Policy SP1 of the eLP⁵⁰.
99. I have found the most important development plan policies with which the development would be in conflict, Policies QL9, QL11 and HG13, to be generally consistent with the Framework. Given that I consider significant weight should be attached to the conflict with those policies.
100. The development would provide a number of social, environmental and economic benefits. The provision of 195 dwellings, including 23 affordable homes and eight live work units, would assist in delivering new homes in the Council’s area and important social and economic benefits would arise through the construction and occupation of those dwellings. However, I consider the social and economic benefits of providing these dwellings should be tempered by the current availability of a six year supply of deliverable housing sites. I therefore attach moderate weight to the social and economic benefits arising from the provision of the proposed dwellings.
101. In visual terms there would be some environmental benefits arising from the removal of the glasshouses. However, I consider the removal of those buildings would not outweigh the harmful visual aspects of the development that I have identified. There would be some benefits arising from the provision of public open space and play space on site and the potential to enhance and create wildlife habitats on site. However, those benefits of the development would largely mitigate effects of the development and I therefore consider they attract little weight in the overall balance. While the site’s redevelopment would have the potential to remove contamination from it, there is no evidence of any such contamination being a significant issue. I therefore consider that matter attracts very little weight.
102. Overall, I consider that there are matters that weigh substantially for the development in the planning balance. However, as I have indicated above there would also be a very substantial harm. I am therefore of the view that the matters weighing positively for the development are insufficient to outweigh the significant negative harmful effect and do not indicate that a

⁵⁰ As worded in the Schedule of Recommended Main Modifications under reference MM4 in CD13.17

decision should be made otherwise than in accordance with the development plan.

103. For this case it is unnecessary for me to undertake an Appropriate Assessment (AA) under the Habitats Regulations relating to the development's effects upon the SPAs and SAC, as I am dismissing the appeal. However, if I had done so and a positive outcome had flowed from such an AA that would not have affected the planning balance or my overall conclusions.
104. I consider that the harm I have identified could not be overcome through the imposition of reasonable planning conditions. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR

APPEARANCES

FOR TENDRING DISTRICT COUNCIL:

Robin Green	Of Counsel instructed by the Council's solicitor
He called	
Councillor Jeff Bray	Vice Chairman of Tendring District Council's Planning Committee, who gave highways evidence
Martin Carpenter BA (Hons) MRTPI	Director, Enplan
Ray Crosier	Local resident, who gave highways evidence
Philip Russell-Vick DipLA CMLI	Director, Enplan
Neil Williams	Local resident and Clerk to St Osyth Parish Council, who gave highways evidence

FOR THE APPELLANT:

Clive Newberry	Of Queen's Counsel instructed by Michael Robinson of e3 Design
He Called	
Richard Fitter IEng FCILT FICE FIHE	Director of Entran Limited
Michael Robinson BA (Hons) Dip TP MRTPI	Planning consultant with e3 Design
Dominic Thomas BSc BArch	Director, Chetwoods

INTERESTED PARTIES

Richard Everett	Local resident
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INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY

CD8.20	Map of Colne Estuary Special Protection Area (SPA)
CD8.21	Citation document for Colne Estuary SPA
CD8.22	Conservation Objectives for Colne Estuary SPA
CD8.23	Colne Estuary SPA feature condition summary
CD8.24	Map of Blackwater Estuary SPA
CD8.25	Citation document for Blackwater Estuary SPA
CD8.26	Conservation Objectives for Blackwater Estuary SPA
CD8.27	Blackwater Estuary SPA feature condition summary
CD8.28	Map of Dengie SPA
CD8.29	Citation document for Dengie SPA
CD8.30	Conservation Objectives for Dengie SPA
CD8.31	Dengie SPA feature condition summary
CD8.32	Map of Essex Estuaries Special Area of Conservation (SAC)
CD8.33	Citation document for Essex Estuaries SAC
CD8.34	Conservation Objectives for Essex Estuaries SAC
CD8.35	Essex Estuaries feature condition summary
CD10.1	List of draft conditions with notes (4 December 2020)
CD11.1	Certified copy of Unilateral Undertaking executed on 14 December 2020
CD13.1	Mr Newberry's Opening Statement for the appellant
CD.13.2	Mr Green's Opening Statement for the Council
CD13.3	Richard Everett's speaking note
CD13.4	CD123 Design Manual for Roads and Bridges - Geometric design of at-grade priority and signal-controlled junctions
CD13.5	The TRICS Good Practice Guide 2016
CD13.6	The Council's Presentation for the Character and Appearance roundtable discussion
CD13.7	Images supporting LPA's Presentation for the Character and Appearance roundtable discussion
CD13.8	Appellant's Presentation for the Character and Appearance roundtable discussion
CD13.9	Images supporting Appellant's Presentation for the Character and Appearance roundtable discussion
CD13.10	Note on the effect of the removal of the Rouses Farm development from the five year housing land supply

- CD13.11 Note regarding sites identified in the SHLAA (May 2020) as having resolution to grant permission
- CD13.12 Note on the effect of the removal of developments without extant consent (when SHLAA published) from the five year housing land supply
- CD13.13 Note regarding correspondence on the Unattributable Population Change
- CD13.14 Mr Green's Closing submissions for the Council
- CD13.15 Mr Newberry's Closing submissions for the Council
- CD13.16 Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan (10th December 2020)
- CD13.17 North Essex Authorities' Shared Strategic Section 1 Local Plan Schedule of Main Modifications
- CD13.18 Email of 4 December 2020 from the Council accompanying the submission of various requested documents
- CD13.19 Email of 11 December 2020 from the Council accompanying the submission of CD13.16 and CD13.17
- CD13.20 Email of 18 December 2020 from the Council commenting on the receipt of the Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan
- CD13.21 Email of 18 December 2020 from the appellant commenting on the receipt of the Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Local Plan