



Appeal Decisions

Hearing (Virtual) Held on 9 - 10 March 2021

Site Visit made on 10 March 2021

by Graham Chamberlain BA(Hons) MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2021

Appeal A - APP/V0510/W/18/3213834

**Land South of Main Street, Main Street Witchford, Cambridgeshire
CB6 2HQ**

- 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 Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth against the decision of East Cambridgeshire District Council.
 - The application Ref 17/02217/OUM, dated 21 December 2017, was refused by notice dated 12 April 2018.
 - The development proposed is described as 'residential development of 31 dwellings, proposed access arrangement and associated works together with the setting aside of land for educational use by the Rackham Church of England Primary School'.
 - This decision supersedes that issued on 16 July 2020. That decision on the appeal was quashed by order of the High Court.
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Appeal B - APP/V0510/W/19/3227487

**Land South and West of Nos 85 to 97 Main Street, Main Street, Witchford,
Cambridgeshire CB6 2HT**

- 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 Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J. Holdsworth against the decision of East Cambridgeshire District Council.
 - The application Ref 18/01611/OUM, dated 9 November 2018, was refused by notice dated 12 February 2019.
 - The development proposed is described as 'residential development involving the erection of 33 dwellings, proposed access arrangements and associated works'.
 - This decision supersedes that issued on 16 July 2020. That decision on the appeal was quashed by order of the High Court.
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Decision

1. Appeal A - The appeal is dismissed.
2. Appeal B - The appeal is dismissed

Applications for costs

3. Applications for an award of costs were made by Abbey Properties Cambridgeshire Ltd, P. Seymour, M. Seymour, N. Holdsworth and J Holdsworth against East Cambridgeshire District Council and by East Cambridgeshire District Council against Abbey Properties Cambridgeshire Ltd, P. Seymour, M.

Seymour, N. Holdsworth and J Holdsworth. These applications will be the subject of separate Decisions.

Preliminary Matters

4. The planning applications were submitted in outline with all matters of detail reserved for future consideration save for access into the site. I have assessed the appeals on this basis and treated the drawings as an illustration of how the proposals could ultimately be configured (apart from the site access from Main Street). I have considered the two appeals concurrently, but on their own merits, because there are common matters between them.
5. At the hearing the Council sought to submit additional evidence addressing five-year housing land supply calculations. It was at my request and relevant to my considerations and therefore I accepted it. The appellants were afforded an opportunity to address the submissions in writing after the hearing. Similarly, the applications for costs were responded to in writing after the hearing. The planning obligation for Appeal B was also submitted after the hearing following its engrossment by the Council. I share the view of the parties for the reasons given in the submissions that the planning obligations submitted in both appeals meet the relevant tests¹ and can be taken into account.
6. At the outset of the hearing the Council confirmed that it had withdrawn from the previously agreed Statement of Common Ground (SOCG) as, in their view, it has been overtaken by events. The parties were unable to agree a new SOCG. At my request Historic England (HE) were consulted on both appeals because the appeal sites are in the setting of the Grade II* listed St Andrews Church. Historic England did not submit substantive comments.
7. The draft East Cambridgeshire Local Plan was withdrawn by the Council in 2019 and therefore the emerging policies referred to in the Council's reasons for refusal are no longer relevant. Since the decisions were issued the Witchford Neighbourhood Plan (NP) was made on the 21 May 2020 and now forms part of the development plan. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The parties confirmed that the judicial review of the NP brought by Abbey Properties Cambridgeshire Ltd was unsuccessful.

Main Issues

8. The main issues in these appeals are:
 - The effect of the proposals on Local Green Space;
 - Whether the appeal sites would be suitable locations for the proposed developments, with particular reference to the spatial and locational strategies in the development plan;
 - The effect of the proposed developments on the character and appearance of the area;
 - Whether the proposed developments would preserve the settings of St Andrews Church, which is a Grade II* listed building and 89, 91, 93 Main Street, which is a Grade II listed building; and

¹ That the obligations are necessary to make the developments acceptable, directly related to the developments and fairly and reasonably related in scale and kind to the developments

- Whether the development proposed in Appeal A would make adequate provision for affordable housing.

Reasons

The effect of the proposals on Local Green Space

9. Policy GI2 of the NP designates 'The Horsefield' as a Local Green Space (LGS). The extent of the designation is identified on Policy Map 11. The red line site area in respect of Appeal A includes the whole of the Horsefield LGS. The access road in Appeal A would be within the LGS and it is highly likely that housing would be positioned in The Horsefield behind 105-119 Main Street. Appeal A would therefore have a direct physical impact upon the LGS. The housing proposed in Appeal B would be accommodated entirely outside the LGS. However, the access road would need to go through The Horsefield and therefore Appeal B would also have a direct physical impact on the LGS.
10. Policy GI2 states that development on LGSs will not be acceptable other than in very special circumstances in line with national policy, or where it will enhance the function of the space without compromising the primary function of the space as a LGS. Accordingly, it is not necessary to demonstrate very special circumstances if the second test in the policy is adhered to. The second test in Policy GI2 has two limbs, that there must be an enhancement of the function of the LGS, but that enhancement should be achieved without compromising its primary function. The phrase 'without compromising' in this context means without weakening or harming the primary function of the LGS. The Policy does not state that any potential enhancement should be balanced against any compromise of the LGS's primary function.
11. The supporting text to Policy GI2 explains that the LGS designations in the NP are underpinned by evidence, which includes a local green space report² ('LGS Report'). This document, which was scrutinised by the NP Examiner, articulates the primary value and function of The Horsefield as a LGS with reference to the Witchford Landscape Appraisal (WLA). It explains that the Horsefield is an area of countryside that reaches into the village and reinforces its rural character and status as a rural community. It is one of the few remaining tracks of land in the village that does this and has a pleasant and historic strip field character.
12. The Horsefield is also part of a network of LGSs which collectively provide the context for a pleasant circular walk around the countryside just outside the village and a sense of relative tranquillity. In this respect its primary function is spatial, being a pastoral track of land that strengthens local distinctiveness. Thus, the rural character and appearance of The Horsefield is inextricably linked with its primary function as an LGS. The views towards the fen landscape is an important ancillary benefit of this primary function.
13. Both schemes make provision for the provision of public open space in The Horsefield through the submitted planning obligations. This has the potential to enhance the function of The Horsefield as it could become a multi-purpose space with open access instead of a paddock crossed by footpaths. It would therefore become more than a space to pass through. However, Appeal A would result in an engineered access road cutting into the site. This alone would harmfully erode the rural character of the LGS and thus compromise its

² Witchford Neighbourhood Plan Local Green Space Designations Report May 2019

primary function as a track of countryside that strengthens local distinctiveness. This impact would be replicated in Appeal B. Appeal A would also result in housing being erected in the LGS and this would inherently harm its rural character.

14. The housing in both schemes would not directly impede the view from Main Street because it would be positioned to the side of the main visual corridor from the road. However, the housing in Appeal A, especially if located broadly in the position of Plots 1-3 and 11-13, would be very apparent and thus harmfully narrow the view from Main Street and change the foreground context. The housing in Appeal B would have less of a presence in this view and therefore the harmful impact would be less pronounced. That said, the housing in Appeal B would seriously urbanise the setting of the public footpaths that pass through the LGS to the detriment of its rural context and character. This would also be the case in Appeal A. Thus, the enhancement of the function of The Horsefield would not be achieved in either scheme without compromising its primary function as a LGS.
15. The previous Inspector came to a different view on this matter when considering the proposals. His decisions were quashed and are not capable of having legal effect, but his findings may still be material to my deliberations. Nevertheless, on this matter they carry very limited weight for two reasons. Firstly, he appears to suggest that Appeal B would only affect the setting of the LGS, when it would have a direct physical impact due to the access. Secondly, he seems to have found that the proposals would compromise the primary function of the LGS, but not to an 'unacceptable degree'. However, this is not the test in the Policy for reasons I have already set out.
16. In conclusion, the proposals would not enhance the function of The Horsefield without compromising its primary function as a LGS. Therefore, for the development to be acceptable within the terms of Policy GI2, the appellants will need to demonstrate that there are very special circumstances in line with national policy. This is a matter to which I will return.

The spatial and locational strategy

17. To promote sustainable patterns of growth, Policy Growth 2 of the East Cambridgeshire Local Plan 2015 (LP) sets out a locational strategy for development. It states that most development will be focussed on the larger market towns of Ely, Soham and Littleport and that more minor development will take place in villages which have a defined envelope. The Policy then goes on to explain that outside the defined envelopes, development will be restricted to a list of categories provided it would have no significant adverse impact on the character of the countryside. The appeal schemes would not fall within any of the categories of development listed in Policy Growth 2. The corollary being that the proposals would be at odds with this policy.
18. Policy SS1 of the NP sets out the spatial strategy for the area covered by the NP. It states that development within the defined envelope of the village, which has been expanded through the NP, will be supported provided it adheres to the other provisions of the plan. Outside the village envelope, development will be restricted to three broad categories. The appeal schemes would sit outside these categories. Again, the corollary being that the proposals would be at odds with Policy SS1.

19. In conclusion, the proposals would be at odds with, and harmfully undermine, the spatial and locational strategies for housing in the development plan and the public interest in having a planning system that is genuinely plan led. In this respect the appeal sites would not be suitable locations for the proposals.

The effect on the character and appearance of the area

20. Witchford is an old settlement set on top of a 'fen island'. It was originally a modest village but has been subject to a significant amount of estate housing development in more recent times. That said, the southern side of Main Street between Mill Lane and Grunty Fen Road has broadly retained a linear character with a verdant tract of land behind. This parcel of land is a significant core component of the distinct and discernible 'Witchford Strip Pasture' landscape character area (LCA) identified in the WLA. This assessment identifies landscape character at a more local level than national or county assessments³.
21. Much of the LCA is perceived as a broadly continuous, intimate, and verdant track of land divided into small linear parcels. This is unusual in the context of the open fenland landscape around the village. The LCA is also perceived and experienced in the setting of historic buildings such as the church and this provides it with a tangible historic character. The remnants of the strip fields require some interpretation⁴, but once this has been explained their presence is clear on the ground and this reinforces the sense of being in the historic core of the village. The LCA is therefore of medium to high landscape value.
22. The appeal sites are positioned towards the centre of the LCA and have a pleasant rural character. They are a point of transition between the built-up character of Main Street and the open countryside to the south of the village. The perception of leaving the settlement and entering countryside happens quite quickly due to the slope of the land, the generous levels of soft landscaping, the rural context of the footpaths and the single depth nature of the development along the southern side of Main Street. Map 8 in the NP identifies the Horsefield as part of the landscape extending into the settlement with specific views identified⁵. There is also an attractive view from Main Street looking out of the settlement across the Horsefield towards open countryside.
23. That said, the Horsefield is not in itself a strip field, although it is smaller than is typical in the area. The Horsefield is currently poached and divided in an ad hoc manner by fencing. This can be easily remedied, but the condition of the site does currently detract from its overall scenic quality. The eastern part of the sites is a strip field with an intimate character but is overgrown. Moreover, a verdant village edge is apparently not unusual on a Fen island settlement.
24. Given these points, I share the view of the landscape experts present at the hearing that the appeal sites are not valued landscapes when applying the factors set out in GLVIA3⁶. However, they nevertheless have attributes that provide intrinsic character, beauty and value, principally the intimate pastoral appearance that is untypical in the local context of Witchford and atypical of the wider Fens landscape. The appeal sites also have some scenic value due to the contribution to local views into and out of the settlement, as well as cultural

³ National Character Area 49: The Fens and the Cambridgeshire Landscape Guidelines 1991, LCA 8: Fenland

⁴ Usefully provided by historic maps in the appellant's Built Heritage Statement

⁵ These broadly correspond to Viewpoints (VPs) 6, 9/10 and 11 in the appellants Landscape and Visual Impact Assessment (LVIA)

⁶ Guide to Landscape and Visual Impact Assessment third addition, Landscape Institute

value from being a surviving remnant of an earlier landscape and settlement pattern. Thus, the sites contribute to the value of the LCA and the setting of the village and are sensitive to change.

25. Both appeal schemes would physically alter the sites through a significant suburbanising impact. This would adversely affect their rural character and the way the landscape flows into the village when viewed and experienced from Main Street, the Millennium Wood (in Appeal A) and the public rights of way. The in-depth nature of the development would jar with the linear character of that part of Main Street in the LCA and meaningfully delay the sense of arrival into open countryside, especially in Appeal B. The presence of the housing would also harmfully disrupt the continuity of the LCA as a recognisable track of verdant land. In this respect the proposals would be discordant interlopers in the LCA. An impact that would be compounded by the loss of established vegetation, the provision of lighting and activity from vehicles coming and going. The developments would also erode the strip field character and views of the church tower, thereby diluting the historic value of the LCA. As a result, both of the schemes would significantly harm landscape character and the special qualities of Witchford.
26. A sensitive design would provide some mitigation. For example, additional planting could offset, over time, some of that lost. A meadow and orchard could be attractive features and the highway access could be designed to be flanked by planting and finished in rustic materials. However, the proposals would still have inherently negative impacts on the values and rural character of the sites and the LCA, particularly the discordantly located bodies of housing. Accordingly, there would remain a significant net adverse impact despite the possible mitigation outlined by the appellants. Public access could improve the recreational value of the sites but would not mitigate the physical and perceptual impacts on landscape character.
27. The visual impacts of the proposals would be reasonably contained in the wider landscape with only partial views of the development possible from vantage points outside the village, such as Edna's Wood or Grunty Fen Road (VPs 10 and 11 in the appellant's LVIA). However, the localised impact would be significant adverse with the developments being very harmfully apparent from several VPs, including VPs 5 and 6 in the appellant's LVIA, the latter corresponding with a key view identified in the NP. The housing in Appeal B would have a particularly undesirable impact in this view. Overall, the proposals would significantly harm the character and appearance of the area.
28. Thus, the proposals would not protect, conserve or enhance key views (set out in the NP) or the contribution the appeal site makes to the character of the settlement edge or the pattern of traditional landscape features (the strip fields). As a result, the proposals would be contrary to Policy ENV1 of the LP.
29. Policy LC1 of the NP states that development proposals shall respect and not adversely impact the key views identified on Map 8. The proposal would not achieve this for the reasons already set out. Moreover, the proposal would not conserve the valued setting of the historic core of the village and would undermine the strong connection between the settlement and countryside. The proposals would therefore be at odds with this policy as well as Policy H3 of the NP, which seeks to secure developments that complement local distinctiveness

and character by retaining or enhancing the special qualities of Witchford as described in the WLA.

30. In some respects, my findings are consistent with the previous Inspector, who found that the proposals would have local effects that could be considered significant but wider effects that would not be. He therefore found no conflict with Policy ENV1 of the LP. I have come to a different view because the evidence before me was different. Ms Farmer, who is the author of the WLA, represented the Council at the hearing and was able to articulate the evidence underpinning the NP as well as provide her own expert views. This evidence demonstrates that a local effect would be of consequence in this instance and contrary to Policy ENV1. It was not evidence before the previous Inspector, and I found it to be persuasive and compelling given what I later observed during my site visit. Moreover, the previous Inspector did not overtly consider the proposals against Policies LC1 and H3 of the NP, whereas I have.

Whether the proposals would preserve the setting of listed buildings

31. The Church of St Andrew was listed Grade II* in 1952. It has Norman origins and is constructed from field rubble stone and limestone dressings with eighteenth century gault brick repairs. Several layers of development are evident from the medieval period right up to the nineteenth century. It is therefore of considerable architectural and aesthetic value and this is experienced predominately from close range or medium distance views directly to the south (usefully illustrated on Page 33 of the NP).
32. The church tower is an important part of the building and reinforces its status and provides legibility in the landscape. As such, there is some historical and evidential value in experiencing the church tower in views from the surrounding landscape. The church tower is visible from the appeal sites, but it is heavily screened to the point that only a small part can be seen. Due to the distance between the appeal sites and the church, the appeal schemes would not interfere with how its architectural detailing, materials and construction techniques are experienced and appreciated. Moreover, the proposed developments would not obscure views of the church from the south and therefore the way its architectural and aesthetic value/setting is experienced in the landscape and village scape would be preserved and thus not harmed.
33. As a long-standing focal point in village life the church is important to the area's social history. It has been a feature of a rural fenland community for centuries and would have had a standing as a place of worship. This results in communal and evidential value. There is also a particularly important historical link with Reverend Hanworth Edward Rackham who served as minister for forty years and is associated with the development of the village, including the nearby school. This provides further historical value. The evidence before me does not suggest the spatial and visual relationships between the appeal sites and the church are especially important to how this evidential, communal, or historical value of the church is experienced. The appeal schemes would therefore preserve the setting/value of the church.
34. Nos 89, 91, 93 Main Street (Nos 89-93) was listed Grade II in 1988 and is currently a small terrace that probably dates from the seventeenth century. Historic mapping indicates that they were previously a single property that has subsequently been subdivided. The building is thatched and faced in local bricks. Being of the rural vernacular it is a building intrinsically linked to the

local landscape and derives historic and aesthetic value and significance from being experienced with a verdant rural backdrop.

35. The verdant rural character of the land behind Nos 89-93 allows an impression to be gained of how the cottages once stood in a sparsely arranged linear settlement atop a fen island. However, this contribution to significance should not be overstated, as the immediate context has altered over time and the building's principal value rests in the vernacular design, the construction materials and the craftsmanship. Nevertheless, the eastern part of the site in Appeal A, and most of the site in Appeal B, contribute modestly to the experience and understanding of the building and its setting.
36. The construction of housing to the immediate south of Nos 89-93 would introduce some development within part of the rural area which forms foreground views to and from the listed building. The effect could be moderated by controlling the height and design of properties at the reserved matters stage, but this would not address the inherent urbanisation that would still occur. This urbanisation of the land behind the listed building would interrupt and thus harm the long standing spatial and visual connectivity evident between the listed building and the rural landscape behind them.
37. In conclusion, the proposals would not harm the setting of St Andrews Church, but they would modestly harm the setting and significance of Nos 89-93. The setting of this listed building would not be preserved. Overall, the proposals would therefore be at odds with Policy LP12 of the LP, which seeks to secure developments that preserve a listed building's setting.

Whether Appeal A would make adequate provision for affordable housing

38. Policy HOU3 of the LP states that in the north of the district a minimum of 30% of the total number of dwellings to be provided should be affordable housing. Appeal B would meet this requirement through the submitted planning obligations. However, the appellants have provided two separate planning obligations in respect of Appeal A. One would provide 16% affordable housing (five homes) and the other none.
39. The appellants submit that this level of provision is policy compliant because Policy HOU3 states that the proportion of affordable housing will be the subject of negotiation. As part of this, consideration will be given to financial viability including exceptional costs. Therefore, the appellants are correct to state that a proposal can provide less than 30% affordable housing and adhere to Policy HOU3. That said, for an assessment of financial viability and exceptional costs to be robust, consistent and transparent, it would be necessary for a financial viability assessment to be submitted as part of a planning application, and this is exactly what the fourth bullet point in Policy HOU3 requires.
40. The appellants have not provided a financial viability assessment. Instead, during the hearing I was advised that Appeal A would be subject to two exceptional costs. These being the provision of services to the parcel of land which would be transferred to the County Council for a school expansion and the 'opportunity cost' of 'gifting' (not selling) that land to the County Council. However, nothing of substance has been submitted demonstrating that it would be inherently impractical to place a financial value on these development costs and then undertake a viability assessment to ascertain whether the scheme can afford them alongside the provision of affordable housing.

41. In conclusion, the appellants have failed to adequately demonstrate that either of the levels of affordable housing proposed in Appeal A, which would both be below that required in Policy HOU3, is appropriate in this instance. Appeal A would therefore be at odds with Policy HOU3.

Other Considerations

Whether the Council can demonstrate a five-year housing land supply

42. The Council has presented what it considers to be the current five-year housing land supply position in a document titled 'Five Year Land Supply Report 1 April 2020 to 1 April 2025' (FYLSR). The FYLSR was prepared to inform the Council's Annual Monitoring Report and address the requirement in Paragraph 73 of the National Planning Policy Framework (the 'Framework') that a local planning authority 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. The appellants have reviewed the FYLSR and provided their own findings. It was agreed at the hearing that the relative positions of the parties would roll over for a short period past 1 April 2021.
43. Paragraph 74 of the Framework sets out one mechanism for demonstrating a five-year housing land supply - an Annual Position Statement (APS). The use of the term 'can be' rather than 'must' or 'shall' in Paragraph 74 results in the mechanism being optional. Thus, the Council are not required to have a recently adopted plan or a subsequent annual position statement in order to demonstrate a five-year housing land supply.
44. The above is reinforced by guidance in the Planning Practice Guide⁷, which states that for decision taking purposes, an authority will need to be able to demonstrate a five year housing land supply when dealing with applications and appeals and can do this in one of two ways. The two options available are to use the latest available evidence, such as annual monitoring reports, or confirming the supply in the way set out in Paragraph 74 of the Framework.
45. There is no requirement upon the Council to formally consult stakeholders on the FYLSR or have it tested. Such requirements are engaged if the Council seeks to demonstrate/confirm its supply through an annual position statement⁸. It is therefore unnecessary to reduce the weight attached to the FYLSR simply because the final document has not been consulted upon or formally tested. In any event, the Council have engaged with stakeholders in the preparation of the FYLSR with a view to amassing the 'clear evidence' of deliverability it needs to include some of the sites in the supply.
46. The FYLSR sets out the latest available evidence as the Council sees it. It is therefore in accordance with the guidance in the PPG and is an acceptable means of seeking to demonstrate a five-year housing land supply as required by Paragraph 73 of the Framework. The FYLSR is a starting point and it is open to any party to challenge and test it in the context of an application or appeal. This is what the appellants have done with reference to the buffer to be applied to the housing requirement and whether all the sites in the Council's anticipated supply are 'deliverable' within the meaning of the Framework.

⁷ Planning Practice Guide (PPG) Paragraph: 004 Reference ID: 68-004-20190722

⁸ PPG - Paragraph: 015 Reference ID: 68-015-20190722

47. Paragraph 73 of the Framework explains that a buffer must be applied to the five-year housing land supply calculations. The buffer can be 5%, 10% or 20% depending on specified circumstances. A buffer must be applied in all instances. There is no indication that planning judgement is involved in ascertaining which one is relevant. In this respect Paragraph 73 is instructional.
48. A 20% buffer is required if the Council's housing delivery is below 85% of the housing requirement. This is calculated by central government following a prescribed methodology. The most recently published Housing Delivery Test calculations confirmed that delivery in East Cambridgeshire was 87% of its requirement. As a result, a 20% buffer should not be applied. A 10% buffer should not be applied either because the Council are not seeking to demonstrate a five-year supply through an APS or recently adopted plan.
49. The PPG⁹ states that the 5% buffer applies where an authority is not seeking to demonstrate a five-year housing land supply. The appellants submit that as the Council are seeking to demonstrate a five-year supply through the FYLSR, the 5% buffer cannot be applied. However, I do not read the PPG in that way. In my view it is simply saying that the 5% buffer applies when a Council is not seeking to demonstrate a five-year housing land supply through Paragraph 74 of the Framework. In any event, even if there is an inconsistency between the Framework and PPG, this can be resolved in favour of the Framework which is national policy rather than guidance. Paragraph 73 of the Framework is unambiguous in instructing which buffer to apply. As neither a 20% nor 10% buffer is relevant in this instance, the only option is a 5% buffer.
50. Although the appellants expressed some frustration with the use of the standard methodology for calculating the Council's housing requirement, they do not seek to advance a different figure. It is therefore a point of agreement between the Council and appellants that the basic five-year housing requirement is 2961 homes. The application of a 5% buffer brings this up to 3109 homes. Therefore, when using the appellants' estimate of deliverable supply¹⁰ as the most up to date evidence, the Council can demonstrate a five-year housing land supply covering 5.11 years. An Inspector in another recent appeal decision also identified a supply over five years¹¹. Accordingly, Paragraph 11d) of the Framework is not relevant on account of the Council's housing land supply position.

Are the 'most important' policies out of date

51. The original Statement of Common Ground listed those policies that were considered to be relevant to the appeals and 'most important' for determining them. Although the Council has withdrawn from this document it is nevertheless a useful starting point given what I heard at the hearing. I agree with the list of most important policies therein save for the inclusion of Policy GROWTH 4, which allocates land for development. This policy flows from the locational strategy set out in Policy GROWTH 2, which in turn flows from Policy Growth 1. Policy GROWTH 4 is relevant to my considerations as part of the spatial strategy in the LP, but it is not a 'most important' policy because it does not set out a housing requirement, a locational strategy for growth or provide specific guidance on how to consider development proposals at Witchford.

⁹ PPG - Paragraph: 023 Reference ID: 68-023-20190722

¹⁰ Which is 3177 homes over the five-year period

¹¹ APP/V0510/W/20/3245551

52. Policies HOU3 and ENV1 both relate to matters directly relevant to the proposals and are most important. Policy ENV7 is relevant, but not most important as there is no allegation its provisions would be breached by the proposals subject to the imposition of a condition. ENV12 is 'most important' as it provides guidance on considering the effect on the setting of listed buildings. Thus, the most important policies from the LP are:

- Policies GROWTH 1, GROWTH 2, HOU3, ENV1 and ENV12

53. To this list it is necessary to add policies from the recently adopted NP. Policy SS1 sets out the spatial strategy for the NP area, Policy LC1 is concerned with landscape character, Policy GI2 is relevant to proposals effecting LGS and Policy H3 sets out criteria against which housing schemes should be assessed. All these matters are important in gauging the acceptability of the proposals. The most important policies from the NP are therefore:

- Policies SS1, LC1, GI2 and H3

54. Policy GROWTH 1 is out of date because the housing requirement it specifies is out of date. This may have infected the entire spatial strategy, including Policy GROWTH 2, because settlement boundaries may be too tightly drawn, housing may be directed to too few settlements and there may not be enough allocations. The Council are in the process of reviewing Policy GROWTH 1 to assess this. The Council are currently able to demonstrate a five-year housing land supply, but that is probably despite, instead of, Policies GROWTH 1 and 2.

55. As a result, and based on the evidence before me, Policy GROWTH 2 does not carry full weight. However, Policy GROWTH 2 is about more than just delivering housing numbers. It sets out a locational strategy that seeks to guide the majority of development to the larger settlements where the greatest range of services and facilities are available. This approach does not preclude some housing at Witchford and supports service provision and retention, economic growth and sustainable transport and is therefore consistent with the Framework in respect of these matters.

56. Moreover, the aim in Policy GROWTH 2 of seeking to restrict development beyond settlement boundaries is consistent with the objective in the Framework of development recognising the intrinsic character and beauty of the countryside. Furthermore, the restrictions imposed by the policy are not overly stringent due to a comprehensive list of exceptions. These exceptions provide a degree of flexibility and are consistent with the Framework. On balance, Policy Growth 2 is up to date. Inspectors have reached differing conclusions on this point and therefore I have reached the conclusion I have based on the evidence before me. In so doing I note that it is consistent with the recent findings of another Inspector who considered the same point and apparently had similar evidence and submissions before her¹².

57. Policy SS1 of the NP also directs development to sites within a defined settlement envelope. The settlement envelope of Witchford was expanded to accommodate land where permissions have recently been granted for residential development. As such, the NP makes provision for around 330 homes, albeit without allocating sites (although that was the original intention). This level of growth exceeds the indicative housing requirement by some way

¹² APP/V0510/W/20/3245551

and would result in around a 33% increase in the number of dwellings in the village. In this context, the strategy of directing development to sites in the settlement envelope of Witchford is not out of date and was found acceptable by the NP Examiner. As such, Policy SS1 is not out of date. Again, this finding is consistent with those of the Inspector referred to in the preceding paragraph, who found that the policy is 'clearly not out of date'.

58. In reaching this view I have considered the Council's approval of an application for housing outside the settlement boundary at 225-239 Main Street. However, this was a proposal for 100% affordable housing and therefore the Council took the view that it adhered to Policy SS1. The approval is not therefore, an indicator that Policy SS1 is out of date.
59. Policy ENV1 is consistent with the aims of Paragraph 127 and 170 of the Framework and is therefore up to date. Similarly, the evidence before me indicates it is still necessary to deliver affordable housing and at the scale sought by Policy HOU3. The approach it advocates is consistent with Paragraph 62 of the Framework. It is also an up to date policy. Policy ENV12 does not include the 'heritage balance' set out in Paragraphs 195-197 of the Framework and therefore it is out of date. However, a conflict with this policy is not inconsequential as it sets out policy for conserving listed buildings which is otherwise consistent with the expectations in Paragraphs 184 and 193 of the Framework. Policies LC1, GI2 and H3 have recently been examined prior to the NP being 'made' and were found to be consistent with the Framework, a conclusion I share.
60. To sum up, of the list of most important policies identified, only Policies GROWTH 1 and ENV12 are out of date. I therefore find that the most important policies for determining the applications are not out of date when considered as a collective basket. Thus, Paragraph 11d) of the Framework is not engaged.

The benefits of the proposal

61. The housing delivered in both appeals would support housing choice and supply. This would be at a point in time when Policy Growth 1 is out of date and the Council has underperformed in respect of the Housing Delivery Test such that an Action Plan is required. It may be that the Council will ultimately need to identify further housing sites when preparing the Action Plan. Moreover, the HDT calculation being above 85% may be down to a short-term adjustment to account for the Covid-19 pandemic and an understanding with Peterborough City Council. This is all in the context of a widely fluctuating housing land supply position over recent years.
62. However, at this point in time the Council are currently able to demonstrate a five-year housing land supply, albeit marginal. This is not a ceiling but is nevertheless an indication that the Council are currently in the process of significantly boosting the supply of housing as promoted by Paragraph 59 of the Framework. Moreover, the HDT results confirm that in present circumstances there has not been significant under delivery. The Council has also suggested that its delivery figures are conservative due to a significant number of new homes in the pipeline. That said, the fact that they have not progressed may indicate that they are in the wrong place or that there are other issues with delivery.

63. At a local level the recently made NP makes provision for a significant increase in the number of homes by expanding the settlement boundary and directing housing to sites within it. Planning permission has already been granted for significant growth in the village. The indicative housing requirement would be exceeded if the sites with planning permission come forward. Overall, the delivery of housing is a moderate benefit in favour of each appeal.
64. Both proposals would increase the population of the village and thus support the local economy. They would also support the vitality and viability of the local community as future residents could use local services and join clubs and organisations. However, I was advised at the hearing that local services and facilities are not suffering for lack of patronage and substantive evidence to the contrary is not before me. Moreover, the village is already likely to grow by 33% in the short to medium term given the number of extant permissions and therefore additional economic and social benefits from extra housing beyond this would not be a significant benefit. It would be a matter of moderate weight. To this there would be modest benefits from a 10% net gain in biodiversity and the short-term benefits to the construction industry.
65. As explained earlier, the appellants have failed to demonstrate in respect of Appeal A that 0% or 16% affordable housing would be appropriate. The 16% offer is nearer to policy compliance and therefore I have considered this. The provision of any affordable housing would be a benefit of the scheme given the local need and high house prices. However, five homes would be a modest contribution and would be significantly below policy compliance. Affordable housing is also being delivered as part of recently approved development in the village. Based on the evidence before me the delivery of affordable housing in Appeal A would be a limited benefit. Appeal B would provide a policy compliant 30% affordable housing, which is approximately 10 homes. This is a moderate contribution that carries middling weight as a benefit.
66. The appeal schemes would deliver large amounts of public open space well in excess of that usually required by the Council through its Developer Contributions Supplementary Planning Document. The reference to public open spaces in the planning obligations would suggest unfettered public access. The planning obligations also include mechanisms that would enable these spaces to be publicly owned and managed, although there is no guarantee of this and therefore the spaces may ultimately be run by a management company in line with an approved scheme. The delivery of public open space is a high order benefit of both proposals, although it is qualified to a modest extent by the lack of evidence demonstrating any quantitative deficit in public open space.
67. Appeal A includes provision to transfer a parcel of land to the County Council for a possible school extension, which would include early years facilities and a new access. The extent to which this is a benefit was a matter discussed at length at the hearing. The County Council commissioned a feasibility report¹³ to look at the options available for a significant school expansion. However, it was based on the premise of seeking to accommodate 420 pupils by September 2021. No party is suggesting this is still currently the case and therefore the report is somewhat dated. It has also been superseded by the NP, which sets out a mechanism for reviewing primary school and early years capacity. The appellants suggest the Examiner's findings on the NP in respect of this were

¹³ The Mile Stage 1 report

- not based on the full picture, but the Examiner fact checked matters with the County Council and there has been no successful legal challenge on this point.
68. The Parish Council's plausible analysis demonstrates that by 2025/26 there would be a forecast shortfall of 1 primary school place if all currently approved development is constructed. Being a forecast, this could be an under or overestimate. That said, a likely shortfall of one space in five years' time does not suggest a pressing need to expand the school in the way suggested in the Mile Stage 1 report. It would be development beyond that provided for in the NP, such as the appeal schemes, that will place pressure on the capacity of the primary school and result in the 'tipping point' referred to by the County Council. The review of the NP would provide a mechanism for any notable tipping point to be addressed were it to materialise in the future.
69. The County Council has not objected to Appeal B even though this scheme would not make a land gift, block any opportunity for a westward expansion of the school and increase the demand for school places. This is a strong indicator that the land gift is not currently essential for managing school capacity, with financial contributions being adequate in this regard. Similarly, the County Council has confirmed that the shortfall in early years provision could be met through expanding the school or from contributions towards an alternative project if the land for a school expansion did not become available.
70. It is also important to note that a school expansion is not currently in the County Council's capital programme and there is no guarantee planning permission would be forthcoming given the requirements of Policy LC1 of the NP. Policy SS1 permits, in principle, essential education infrastructure outside the settlement boundary of the village, but the evidence does not suggest the expansion is currently essential or will be soon. For all these points, the gift of land would not be a compelling or 'great' benefit.
71. That said, the County Council have confirmed that a school expansion is the preferred long-term solution to addressing primary and early years capacity. Its approach in this respect is an understandably prudent and precautionary. The land gift would facilitate a cost-effective solution were a school expansion required in the long term. For this reason, the land gift is still a matter of significant weight in favour of Appeal A.
72. The planning obligations submitted pursuant to both appeals make provision for financial contributions towards infrastructure. These contributions are required to mitigate the impacts of the proposal and are therefore neutral matters rather than benefits.

Planning Balance

73. In this instance Policy GI2 would only permit development within a LGS if there are very special circumstances in line with national policy. The Council and appellants agreed at the hearing that the basis for this assessment should be the application of Paragraphs 143 – 144 of the Framework. I share this view because Paragraph 101 of the Framework states that policies for managing development within a LGS should be consistent with those for Green Belts.
74. In effect, both developments should be regarded as being tantamount to 'inappropriate development' within a LGS because they would both result in the primary function of the LGS being harmfully compromised. Such development

should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the LGS, and any other harm, is clearly outweighed by other considerations.

75. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt and I consider this is also the level of weight that should be given to harm to a LGS. In addition, the proposals would result in significant localised harm to the character and appearance of the area sufficient to result in a conflict with Policies ENV1 of the LP and Policies LC1 and H3 of the NP. This is a matter of significant weight. The proposals would also be at odds with the locational strategy in Policy GROWTH 2. This conflict carries moderate weight because of Policy GROWTH 2's links with the out of date Policy GROWTH 1. That said, the conflict with Policy SS1 is of significant weight as it is up to date and part of a recently made NP. In addition, both schemes would modestly harm the setting of a listed building. Considerable importance and weight must be given to the desirability of preserving the setting of a listed building. Appeal A would also be at odds with Policy HOU3.
76. The benefits of the proposal in Appeal A carry more weight than those in Appeal B due to the land gift for a school extension. That said, the benefits that would be provided by each of the appeal schemes would not cumulatively exceed significant weight.
77. In conclusion, in either appeal the harm to the LGS, and any other harm, would not be clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the developments do not exist. Both proposals would therefore be at odds with Policy GI2 of the NP. Given this conclusion there is no need to undertake a separate heritage balance as usually required by Paragraph 196 of the Framework. Even if I am wrong in respect of attaching substantial weight to the harm to the LGS, the combined force of the harm I have identified, and the subsequent conflict with the development plan as a whole, including the up to date NP, would still outweigh the collective benefits in each of the proposals.

Conclusion

78. Both appeals would be contrary to the development plan and there are no other considerations which outweigh these findings. Accordingly, for the reasons given, the appeals have not succeeded.

Graham Chamberlain
INSPECTOR

APPEARANCES

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INTERESTED PARTIES

Natalie Blaken
Cllr Ian Allen
Jan King

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. My Kay's updated five-year housing land supply table.
2. Appellant's written response to the above.
3. Completed planning obligation in respect of Appeal B.
4. Rebuttals and final comments relating to the applications for costs.