



Appeal Decision

Hearing (Virtual) Held on 21 and 22 September 2021

Site Visit made on 22 September 2021

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/11/2021

Appeal Ref: APP/B1550/W/20/3251565

Former Cherry Orchard Brickworks, Cherry Orchard Lane, Rochford, Essex SS4 1PP

- 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 Cherry Orchard Homes and Villages Ltd against the decision of Rochford District Council.
 - The application Ref 17/00877/OUT, dated 15 August 2017, was refused by notice dated 28 October 2019.
 - The development proposed is described as 'Outline application, with some matters reserved for a proposed retirement village consisting of up to 32no. over 55's apartments, 22no. over 55's dwelling houses; 9no. over 55's bungalows; 30no. over 55's assisted living apartments; 34no. over 55's sheltered apartments, 93no. bed care home and up to 903sqm of A1 floorspace; up to 397sqm of A3 floorspace; up to 1,974sqm of B1 floorspace; up to 890sqm of D1 floorspace; and access to the site the only reserved matter for consideration at the outline stage'.
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Decision

1. The appeal is allowed and planning permission is granted for a proposed retirement village consisting of up to 32no. over 55's apartments, 22no. over 55's dwelling houses; 9no. over 55's bungalows; 30no. over 55's assisted living apartments; 34no. over 55's sheltered apartments, 93no. bed care home and up to 903sqm of A1 floorspace; up to 397sqm of A3 floorspace; up to 1,974sqm of B1 floorspace; up to 890sqm of D1 floorspace and access to the site, in accordance with the terms of the application, Ref 17/00877/OUT, dated 15 August 2017, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access into the site. I have assessed the proposal on this basis and treated the drawings as simply being an illustration of how the proposal could ultimately be configured. In this respect, the layout shown on Drawing Numbers 16.615/210a and 406/103 has not been submitted for approval and is shown for illustrative purposes.
3. I have taken the description of development from the Statement of Common Ground (SOCG). This has been altered slightly to confirm that the residential properties would be for the over 55's and the types of developments expressed are to be 'up to' maximums. Accordingly, the appellant would not be able to increase the amount of residential development advanced at the reserved

matters stage. This provides clarity and flexibility without amending the proposal and therefore no party has been prejudiced by the change.

4. Throughout this decision I refer to 'B1 uses' as this is the term used in the relevant policies and the evidence before me. However, the B1 use class¹ has been replaced by a new Class E(g). Within this decision any reference to B1 uses should be treated as being interchangeable with the new Class E(g). The description of development does not need to be altered to reflect the introduction of the new Class E due to transitional arrangements.
5. At my request through a prehearing note, the parties submitted additional evidence in advance of the hearing or at the event. All parties were afforded an opportunity to address this evidence. The appellants submitted a Core Documents list, but this included several documents that were not in front of the hearing and had not been sent to the Council. As such, I have not considered any of the documents listed at core document tables 3², 4³, 5 and 6 unless previously submitted.
6. The Council and appellant agreed that the red line site area could be amended to remove a recently constructed nursery and office building from the appeal site without this change having any significant bearing on my assessment and without prejudice to any party. I share this view because the evidence before me indicates the proposal could still be accommodated on the remainder of the site. I have therefore accepted the change.
7. A revised version of the National Planning Policy Framework (the 'Framework') has recently been published. The Council and appellant were afforded a chance to provide comments in respect of this change. Since issuing its decision the Council has adopted the Essex RAMS⁴ as a Supplementary Planning Document. I have taken all submissions relating to these changes into account. The Council and appellant also agreed that the emerging Local Plan is of limited weight given its stage of preparation.
8. The hearing was adjourned to allow the appellant time to finalise a planning obligation⁵ and the Council to submit suggested wording for additional planning conditions. The hearing was subsequently closed in writing.

Main Issues

9. Through the Statement of Common Ground, the Council confirmed that it no longer wished to pursue its reason for refusal relating to the risk from flooding. This is because the Council are of the view that an acceptable sequential test has been undertaken by the appellant. I have no reason to come to an alternative view. Moreover, as layout is a reserved matter there is scope for development within the appeal site to follow a sequential approach. As such, the main issues in this appeal are:
 - The effect of the proposed development on the provision of employment land;

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

² Save for documents 1, 2, 3, 4, 5, and 6

³ Save for documents 4, 6, 7 and 9

⁴ Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document

⁵ This was subsequently supplemented by a second obligation in order to increase the Environmental Monitoring and Mitigation Contribution to that necessary

- The appropriateness of the spatial location of the proposed development, with particular reference to the position of the vehicular access, the potential proximity of development falling within the B2 Use Class and the accessibility of services and facilities; and
- Whether the proposal would provide an adequate range of homes and make adequate provision for affordable housing.

Reasons

The effect of the proposed development on the provision of employment land

10. Policy ED4 of the of the Core Strategy⁶ (CS) sets out the Council's intention to allocate land to the north and west of London Southend Airport for employment uses within a business park. Policy NEL3 of the Allocations Plan⁷ restates this aim and explains that the extent of land allocated for employment in this location will be addressed through a Joint Area Action Plan⁸ (JAAP) prepared with Southend-on Sea Borough Council.
11. Policy E3 of the JAAP allocates land for a large employment site split into three areas. Area 1 is allocated for 20,000sqm of floor space falling within the B1 and education use classes. Areas 2 and 3 are allocated for B1 and B2 uses amounting to 30,000sqm and 49,000sqm respectively. The policy also permits supporting non B1/B2 uses where it can be demonstrated they are necessary to support the operation and/or requirements of employees working at the allocation. The Council's Economic Growth Strategy (2017) outlines the strategic importance of delivering the JAAP sites, in part due to the District's low jobs density, which is below regional and national averages and results in high out commuting.
12. The appeal site incorporates a large proportion of Area 1. The provision of up to 1,974sqm of B1 floor space would be consistent with Policy E3. The other commercial uses, although not B1 or educational floor space, would support the operation and/or requirements of employees by providing complementary services employees of the wider business park may need. As a result, the Council understandably raises no objections in respect of the commercial uses proposed as part of the appeal scheme.
13. Nevertheless, the provision of 128 homes for the over 55's and a 93-bed care home would be outside the scope of what is allocated in Policy E3 of the JAAP. The proposal would therefore be at odds with Policy E3, as well as the aspirations in Policy ED4 and NEL3, and this is a point accepted by the appellants. However, the appellants suggest that the conflict with the policy is limited because the quantum of employment floor space approved in Areas 2 and 3 under application 15/00781/OUT included a commercial led development (the Airport Business Park) that exceeds what has been allocated. The SOCG confirms that 86,900sqm has been approved and construction work commenced. This is an 'over provision' of around 7,900sqm.
14. Accordingly, the appellant submits that the over provision can be used to offset the allocation for Area 1. This would leave a residual allocation for Area 1 of

⁶ Local Development Framework Core Strategy Adopted Version 2011

⁷ Local Development Framework Adopted 25 February 2014

⁸ London Southend Airport and Environs Joint Area Action Plan Adopted December 2014

c12,100sqm⁹. The appeal scheme would reduce this further. Bearing in mind that the appeal site covers around 60% of Area 1, there would remain scope to provide a very large proportion, if not all, the remaining allocated employment floor space in the 40% of Area 1 not covered by the proposal. Therefore, the Council accepts that even if the appeal scheme were allowed, it would still be possible to deliver the floor space allocated for Area 1.

15. However, there are some limitations to the appellant's analysis. Firstly, an outline permission for 86,900sqm of commercial floorspace is not the same as delivered floorspace and therefore it cannot be considered as land 'in the bank'. Moreover, the allocations for each area in Policy E3 can reasonably be interpreted as minimums given that they are prefaced by the term 'at least'. Consequently, there would still be an opportunity cost in providing the residential element in lieu of employment floor space. That said, for reasons I go into, the retirement village would create a significant amount of employment and there is some evidence that demand for B1 floor space may not currently be as high as projected and is hard to deliver within the constraints of viability. The proposal would also provide some commercial and employment floorspace. These factors, taken with the existing 'over provision' in Areas 2 and 3 means the conflict with Policy E3 is a matter of moderate weight against the scheme.
16. Although not listed in the Council's reason for refusal, both the Council and appellant confirmed at the hearing that Policy DM32 of the DMP¹⁰ is relevant to my assessment. I share this view because there is no substantive evidence before me demonstrating that Policy E3 has recently been reviewed. Moreover, it lacks the flexibility to react to changes in demand for land and to allow a rapid response to changes in economic circumstances. Thus, Policy E3 lacks the flexibility required by Paragraphs 82 and 122 of the Framework, which could be problematic given the long-term nature of the allocations. That said, Policy DM32 provides flexibility by allowing alternative non employment uses¹¹ subject to criteria. Thus, Policies E3 and DM32 together provide an approach that is broadly consistent with the Framework.
17. Policy DM32 sets out a sequential approach whereby B1 and B2 uses should be considered in the first instance and then alternative uses if they can be justified. There is no requirement in Policy DM32 to consider B8 uses before alternatives such as the appeal scheme.
18. The first criteria in Policy DM32 requires an assessment of the number of jobs likely to be provided by the alternative non B1/B2 use(s). It does not require a set number of jobs or any particular employment density. The appellant's analysis suggests the number of jobs created would be similar¹² to that which would be delivered by a previously approved scheme at the appeal site for an entirely commercial development¹³. The figures are to an extent based on guidance provided by the Homes and Communities Agency (HCA)¹⁴ and therefore have some merit.

⁹ 20,000sqm – 7,900sqm

¹⁰ Local Development Framework Development Management Plan Adopted 16 December 2014

¹¹ In this context it is uses outside the B1 and B2 use classes

¹² Between 572 and 685 jobs compared to the approved scheme that would deliver between 537 and 681

¹³ 17/00710/FUL

¹⁴ Employment Density Guide 2015

19. However, the appellant's analysis advances a different employment mix to that proposed in the application. It also suggests that 30 assisted living apartments and 63 dwellings for the over 55's would create 204 jobs. This is based on discussions with Runwood Homes but seems difficult to comprehend as some of the residents of these over 55's dwellings may not require any care, and those in the assisted living homes would not need full time care. The assumptions behind the analysis are not provided and therefore a robust rationale is missing. As a result, the appellant's figures on this point lack credibility and carry limited weight.
20. The Council's figures are based on the HCA guidance as well and indicate that a policy compliant scheme advancing B1 uses would provide around 631 full time equivalent (FTE) jobs and the approved scheme around 600. Using the same guidance, the commercial elements of the appeal scheme would provide around 251 FTE jobs. This would mean that the D1 floor space, the care home and the other residential accommodation would have to provide around 349 FTE jobs to be similar. The appellant suggests that the care home could provide approximately 140-186 jobs and I have no reason to doubt this. As a result, the commercial elements and the care home could provide between 391 and 437 jobs. The D1 floorspace would provide additional employment. There would also be temporary employment arising from construction and the subsequent occupation of the homes could generate further employment e.g. gardening, trades and delivery drivers.
21. The appellant has been in discussions with potential end users and has proposed a mix of uses that they consider are deliverable. I have no reason to doubt this. As a result, the proposal is likely to generate a range of 'real jobs' at differing levels (including managerial and skilled employment) in the medium term as opposed to the theoretical numbers based on job density guidance. The apparent local challenges in delivering B1 floor space, which I am about to set out, cast doubt on whether the number of hypothetical jobs derived from the HCA guidance would be achieved. As a result, the proposal would have a significant positive effect on job creation in the area.
22. In assessing the viability of B1 and B2 employment floor space, the Council has referred to the EDNA¹⁵. This study identifies several strategic changes that are likely to affect the demand for employment floor space in the area. This includes businesses being squeezed out of the London market, growth at London Southend Airport and in migration from East London. The EDNA study also considered the demand and supply of offices by assessing market conditions and the effect this has on rents. The study suggests that demand for offices rose between 2010 and 2015 and that Rochford has a limited supply to address this. Thus, it identified a high demand/under supply in Rochford. Similar trends were identified for industrial floor space. The study tested different scenarios, and these indicated an increasing demand for offices and manufacturing/industrial floorspace up to 2036. The South Essex Grow-on Space study also identifies a growing demand for smaller employment units.
23. There are however some limitations to the EDNA. Principally, it is a strategic level document which considers broad trends and scenarios rather than an employment land study that could be more fine grain in detail. The EDNA study also relies on data that is now a little old. For this reason, it has failed to

¹⁵ South Essex Economic Development Needs Assessment December 2017

address some significant recent changes including 'BREXIT', alterations to permitted development rights and the Covid pandemic. The latter may result in a trend towards more home and flexible working (that could suppress demand for office space) and a lengthy downturn in the aviation industry. I was advised at the hearing that two low-cost carriers have ceased operations from the airport in part as a result of the pandemic.

24. The appellant has also provided two opinions from local industry experts¹⁶ that consider demand and viability in a local context and at a detailed level. These reports are also dated and are a snapshot in time, but nevertheless indicate that the allocation in the JAAP may be aspirational. This is because there is apparently no effective demand in the area for new office space. Evidence supporting this contention is that although marketed, The Airport Business Park is proving slow to fill. There is also strong competition from the Chelmsford and Basildon markets, which are closer to London/the M25. That said, the offices above the adjoining nursery were occupied quite soon after completion. Both opinions also seem to infer that there is demand for industrial uses. In this context, twelve small speculative industrial units have been approved nearby.
25. The agents also provide an analysis that new build commercial floor space is unlikely to provide a viable return. This is supported by the low level of build out to date. The development that has occurred is either non-employment (a café), required subsidies¹⁷ or is apparently a relocation/consolidation¹⁸ rather than a speculative scheme aimed at drawing in new businesses.
26. The appellants also submit that they have not pursued the approved scheme because it would not be viable to do so. This is understandable given the commercial agents' advice combined with the appellants own knowledge and experience as a developer. That said, I cannot rule out the possibility that the approved scheme has not been pursued because the appellants have a long-standing ambition for a retirement village, which may provide a greater return. The fact remains that the application was submitted. It is unlikely the developer would have done this if there was no prospect of the development occurring.
27. Thus, the evidence before me is contradictory and not up to date. It seems that there are some considerable challenges to delivering employment floorspace within the JAAP allocation. However, this may be a short-term problem that does not entirely undermine the long-term demand trends identified in the EDNA and the long-term approach taken through the allocation. Road, utilities, and footpath infrastructure, as well as landscaping, is now in place and some development has occurred. On balance, the applicant has not demonstrated that there is no reasonable prospect of an application coming forward at the appeal site for B1/B2 uses.
28. The remaining criteria in Policy DM32 can be dealt with more briefly. For reasons I go into, the residential accommodation proposed as part of the appeal scheme would be compatible with existing uses and the remaining employment allocation. The Council and appellant have agreed through the SOCG that the proposal would not harmfully impact the vitality and vibrancy of the district's town centres and I have no reason to disagree. Given that there is

¹⁶ Ayers and Cruiks and Glenny

¹⁷ The Launchpad Innovation Centre

¹⁸ Ipecco

permission for 86,900sqm of employment floor space, that 40% of Area 1 would remain for B1 uses and the appeal scheme includes some commercial development, including B1 floorspace, the proportion of alternative uses within the wider allocation would not be harmfully unbalanced. Finally, again for reasons I go into, the proposal would adequately address wider sustainability issues such as sustainable transport and the need for housing for older people.

29. In conclusion, the appeal scheme would be at odds with Policies E3, ED4 and NEL3 because it would result in development at odds with the strategy for employment land and the allocation. This conflict carries moderate weight for the reasons already set out. Policy DM32 allows alternative uses subject to a judgment involving six criteria. There is evidence that it would be challenging to viably deliver B1 and B2 floorspace and that demand is not currently high. Nevertheless, the appellants have failed to demonstrate that there is no reasonable prospect of an application coming forward. This is principally due to the analysis provided in the EDNA. As a result, the proposal would be at odds with Policy DM32 as well, although the extent of the conflict is tempered to a moderate level because five of the six criteria within the policy weigh in favour of the proposal or would not be offended.

The appropriateness of the spatial location of the proposed development

30. The Council's preference is for the appeal scheme to be accessed from a single point taken from the roundabout to the south. This has followed discussions with the Local Highway Authority. If access was taken from this location, then residents of the appeal scheme would have to pass through the employment area. This would not harmfully undermine the living conditions of future occupants because the route would likely be pleasantly landscaped and pass a landmark building, as per the current aspirations. In any event, access from the south would only require residents to pass through a small part of the wider employment area.
31. Notwithstanding the above, the Council has failed to provide robust evidence underpinning the need for the development to be accessed from the south. The appeal site can currently be accessed from the west via Cherry Orchard Lane. The junction between Cherry Orchard Lane and Cherry Orchard Way has already been altered to prevent right hand turns. The Transport Assessment submitted with the application, the findings of which have not been directly challenged by the Council, does not identify any highway safety or capacity concerns with access from Cherry Orchard Way via Cherry Orchard Lane. In this context, a single access from the south would be unnecessary. That said, it would be beneficial to secure permeability and linkage with the wider employment allocation, and this is shown on the submitted drawings.
32. The provision of residential accommodation within an employment allocation could have implications for the types of employment uses that could ultimately come forward. In simple terms it would be spatially undesirable to place homes next to factories. That said, the presence of existing residential homes and a children's nursery to the immediate west of the appeal site would likely constrain B2 uses at the appeal site. Thus, Area 1 is allocated for B1 uses which, by definition, can be carried out within a residential area without detriment to amenity. As a result, the redevelopment of the remainder of Area 1 in a way compatible with the allocation is likely to be the most appropriate employment use and should not be constrained by the appeal scheme.

33. The indicative masterplan¹⁹ within the appellant's Design Code and Masterplan document indicates that the proposed commercial units could be used to buffer the residential part of the appeal scheme from the rest of the employment allocation. The appellant also indicated that the development directly to the south of the appeal site may ultimately be hotels and offices. As such, the presence of residential properties within the employment allocation would not, in this instance, undermine the interests of good spatial planning.
34. There are few facilities within an 800m walk of the appeal site. Cherry Orchard Way is also a busy road and therefore the attractiveness of walking along this route is diminished. However, Rochford station and town centre are about one mile away and can be accessed along an alternative route that includes pleasant footpaths linked with pavements. It is not inconceivable that the active over 55's would walk or cycle on occasion into Rochford and to the station. Some may even seek employment at the adjoining business park.
35. In addition, there is a large and attractive country park to the west of the appeal site and the planning obligation includes provision to provide a walking route to this facility. There is also a scattering of other facilities nearby including a golf course, public house and petrol station/shop. As a result, some future residents need not be entirely car reliant.
36. However, given the age profile and care needs of some of the residents it is likely most trips would be by private car unless this is addressed. Accordingly, the proposal would provide some on-site facilities including retail and healthcare. I heard from the appellants that delivering these facilities would be necessary to make the retirement village an attractive proposition for future residents. There is no substantive evidence before me that delivering these facilities would be unviable. Nevertheless, it would be necessary to secure the delivery of these facilities to reduce the need to travel by car to access basic everyday services. The parties have drafted a phasing condition that would secure the delivery of services prior to the occupancy of some of the homes.
37. Moreover, the planning obligation includes clauses that would deliver a contribution towards bus service improvements and a minibus service to shuttle residents to the shops and back. There would also be footway improvements (or an *in lieu* financial contribution to deliver these), a car club (to provide an alternative to car ownership and thus promote sustainable travel options) and a travel plan. As a package, these measures would suppress the need to regularly travel by private car. On balance, I am satisfied the scheme would adequately promote sustainable transport.
38. The Council's reason for refusal pertaining to this main issue does not refer to any development management policies. Nevertheless, I conclude that the spatial location of the proposed development would be acceptable and consequently, as a material consideration, there would be no conflict with the Framework in this regard.

Whether the proposal would provide an adequate range of homes

39. Policy H5 of the Core Strategy states that new developments must contain a mix of dwelling types to ensure they cater for all people within the community. The policy goes on to explain that the mix should have regard to local need.

¹⁹ The appellant confirmed that the inclusion of a B2 unit in the north east corner was an error

40. It would be impractical for every development to cater for all people within the community and therefore Policy H5 needs to be approached with this in mind. That said, a larger scheme can address a greater range of needs. To this end the appeal scheme seeks to provide a broad range of homes for older people, from the active over 55's to those that require significant care. Dwelling types range from specialist housing, including a care home and sheltered apartments, to assisted living apartments and bungalows. The type of housing is not unduly narrow in scope and would include a mix of accommodation in the C2 and C3 use classes. It would therefore cater for different sectors of the community, albeit within the older person's market.
41. There are practical benefits in providing this type of housing in a critical mass. It allows for the economy of services and health care provision. It also reduces the risk of loneliness and isolation, as residents would be more likely to be living next door to people at a similar stage in life. Mixing in housing capable of being occupied by the under 55s would dilute these benefits. The housing would be sufficiently close to Rochford, the business park and an adjoining children's nursery for the proposed retirement community to feel like part of a wider community.
42. The appellant has provided evidence from the South Essex Strategic Housing Market Assessment that demonstrates that there is an annual need for around 50 specialist older persons homes per annum and this is not disputed by the Council. It also demonstrates that there would be a general increase in the population of the over 65's. The mix is therefore informed by local needs.
43. In conclusion, the proposal provides a mix of dwelling types that will cater for a range of different people within the community. The retirement village would also address local needs. Accordingly, the proposal would adhere to Policy H5 of the CS.

Whether the proposal would make adequate provision for affordable housing

44. Policy H4 of the CS requires 35% of the dwellings on all developments of 15 or more homes to be affordable housing. This level of affordable housing is required to address an evidence-based need and is therefore necessary to make the development acceptable, directly related to the impacts of the proposal and fairly and reasonably related in scale and kind to the scheme.
45. The appellant's have confirmed through the planning obligation that they would provide 35% affordable housing, with the tenure and mix to be approved by the Council at each phase. The care home is likely to be excluded from this requirement as it would not provide independent 'dwellings'. The Council could test this at the reserved matters stage.
46. There is however a qualification that the affordable housing would be reserved for the over 55's. Limiting the affordable housing in this way could constrain the ability to fill the homes. For example, if there is not the need for the affordable housing to be occupied by the over 55's then the homes could stand empty despite there being a need from the under 55's. Thus, the Council does not consider this approach would best meet the needs of the district. Moreover, the Council suggest that the demand for accommodation from the over 55's is very small because only around 57 applicants are on the waiting list and a third of all affordable housing is for the over 55's. That said, the need could grow as the population of older people increases as it is projected to.

47. Nevertheless, in the event that the Council considers the affordable homes proposed would not be occupied, the appellant would instead be required, through the planning obligation, to provide a commuted sum for general affordable housing provision off site that would not be age restricted. The commuted sum would be set following independent testing and review. Local and national policy generally aims for affordable housing to be provided on site and the proposal may not achieve this. That said, Policy H4 does not preclude this approach in rare cases. In this instance it would be a 'last resort' and would allow the benefits from clustering older peoples housing together to be better realised. In the circumstances, a fallback position of a commuted sum is reasonable. In conclusion, the proposal makes adequate provision for affordable housing and therefore a conflict with Policy H4 would not occur.

Other Matters

The benefits of the proposal

48. The proposal would deliver a notable level of residential accommodation which would assist overall housing land supply in the district. That said, the evidence before me demonstrates the Council are currently able to demonstrate a five-year housing land supply and is therefore currently in the process of significantly boosting the supply of housing. In this context, the benefits to housing supply are of moderate weight. To this I add the benefits that would be gleaned from delivering 35% affordable housing or a commuted sum in a worst-case scenario.
49. The growth in the over 65's population will increase the need for specialist housing for older people in the district and wider area. During the hearing I was referred to an extract from the SHMA, which demonstrates that the growth in older people in Rochford would be around 10,000 people (over 65) by 2037. Most of these people would be over 75. This demographic trend would result in an upper range need for 1,156 homes, or around 50 specialist homes each year and 11 communal housing bed spaces. The appeal scheme could help to address this need and would also provide choice. It may also help address the needs in the wider South Essex area (327 homes per annum).
50. However, the figures in the SHMA are an upper projection and therefore lack certainty. Moreover, much of the District's need identified in the preceding paragraph would likely be addressed by development already granted by the Council, such as the Rocheway project and/or other care homes²⁰. This demonstrates that the absence of a local policy aimed at older peoples housing is not hampering the delivery of this type of accommodation. Moreover, not all the homes proposed in the appeal scheme would fall to be considered specialist older persons housing and the mix is not fixed in any event. I therefore share the view of the Council that the delivery of older peoples housing alone would not outweigh the conflict with the development plan.
51. Nevertheless, an aging population is a national trend. This means catering for an ageing society is necessary to drive productivity and is therefore a component of the Government's Industrial Strategy. Furthermore, older peoples housing such as that proposed can provide savings for the NHS. This is because on-site care can address physical and emotional needs, such as reducing loneliness and falls. Providing older persons accommodation is also

²⁰ 17/00120/FUL

likely to free up other homes for others in the housing chain. Based on the evidence before me, the delivery of older peoples housing as part of the proposal would still amount to a benefit. I afford it moderate weight. The planning obligation secures the housing for the over 55's and this is necessary to secure the benefits that would flow from such provision.

52. I have already outlined the likely uplift in local employment that would be generated by the scheme. Added to this would be economic benefits to the construction industry and the significant circulation of funds from future residents, employees, and businesses. The economic benefits of the proposal would therefore be a matter of significant weight in its favour. The scheme would also provide some limited benefits to biodiversity through enhancement measures and some of the sustainable transport projects would modestly benefit the wider community as well as mitigate some of the development's impacts.

Appropriate Assessment

53. The appeal site is located within a zone of influence placed around relevant European sites as established in the Essex RAMS and reiterated in Natural England's letter of the 16 August 2018. There is no dispute that population growth resulting from new housing within this zone would likely result in an increase in harmful recreational disturbance at the European sites. Accordingly, the proposal in combination with other plans and projects would be likely to have a significant adverse effect on the relevant European sites when following a precautionary approach. Hence, an appropriate assessment, in accordance with the Habitat Regulations²¹, is required to consider the implications of the proposal on the European sites in view of their conservation objectives.
54. The European sites have been designated because they include habitats that support rare bird species. The overarching conservation objectives for the relevant European sites is to avoid a deterioration of habitats and minimise disturbance, thereby ensuring the integrity of the sites is maintained.
55. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the Essex RAMS, which is a document and approach supported by Natural England as the Statutory Nature Conservation Body. The contribution would be pooled with others and used for access management and monitoring at the European sites in line with details set out in the Essex RAMS. I was advised at the hearing that the payment of the financial contribution feeds into an ongoing strategic project which includes the procurement of wardens.
56. In addition, the appellant would undertake works to provide pedestrian access from the appeal site under Cherry Orchard Way to the nearby Country Park. This is a large semi natural greenspace that encompasses attractive meadows and woodland. I have not been directed to substantive evidence that demonstrates the country park would not act as a suitable alternative natural greenspace which would draw residents of the appeal scheme away from visiting the European Sites.
57. The financial contribution and pedestrian access to the country park would be secured through the submitted planning obligations. These mitigation measures

²¹ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended).

would be directly related to the impacts of the proposal on the European sites. They are necessary to make the development acceptable and are directly, fairly and reasonably related in scale and kind to it.

58. The planning obligations do not include any requirement that the Council spend the contributions in the way envisaged. However, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended. In this respect it has an agreement with Chelmsford City Council, which is the organisation responsible for delivering the Essex RAMS. There are also published mechanisms (the RAMS) in place to ensure the money is used to deliver the strategic mitigation project, which is monitored.
59. Thus, the proposal would not adversely affect the integrity of the European sites, the conditions of which need not deteriorate as a result of the proposal.

Other effects on biodiversity

60. The results of the biodiversity surveys submitted with the application were time limited and are now out of date. However, I was advised at the hearing that additional surveys have recently taken place to support another planning application proposing an extensive development of the appeal site. I was advised by both the Council and appellant that these surveys indicate that the biodiversity baseline has not significantly changed and therefore the mitigation and enhancement measures recommended in the first suite of surveys would still be relevant. In this context, I am content for biodiversity matters to be addressed through a condition.

Tree lined streets

61. The Council and appellant advised me at the hearing that the residential element of the proposal could be delivered whilst adhering to the new requirement in the Framework that streets are tree lined. This would be addressed through the reserved matters. I have no reason to doubt this as the indicative masterplan shows considerable scope for tree planting.

Other Planning Obligations

62. In addition to the obligations relating to the appropriate assessment, the scheme being for the over 55's and affordable housing discussed above, the planning obligation includes clauses relating to healthcare and sustainable transport. There are also clauses relating to local employment but there is no development plan policy basis for this, and the evidence does not demonstrate it is necessary. I have therefore not taken the local employment obligations into account.

Healthcare

63. Comments provided by the Mid and South Essex Health and Care Partnership explain that there is currently negative GP infrastructure capacity with a deficit of around 980.5sqm. The appeal scheme is likely to exacerbate this by increasing the deficit by about 21.9sqm. To address and mitigate this, the Partnership are seeking a financial contribution of £50,370. The figure is evidence based and derives from an analysis of build costs. The contribution is therefore necessary and proportionate. The planning obligation would secure this contribution prior to the occupation of the dwellings.

Sustainable transport

64. Policy T4 of the JAAP seeks to secure a quality bus service to manage traffic growth, provide good levels of accessibility and ensure that the JAAP area is sustainable. A bus service is also required to provide travel options for future occupants so that they are not reliant on private motorised transport. To this end the planning obligation makes provision for a bus service contribution of £200,000, which is supported by the Local Highway Authority.
65. For similar reasons, Policy T5 of the JAAP requires the establishment of a segregated route for walking and cycling to the north. This is supported by a document titled 'Linking the Community'. The planning obligation addresses this by including clauses that would require the developer to undertake footway/cycleway works. Ancillary to this, the planning obligation also includes a package of measures to support sustainable transport including a car club, shuttle bus, residential travel information packs²² and a travel plan. The latter is a direct requirement of Policy T5 of the CS. Electric vehicle charging points would also be secured through the planning obligation as promoted by the Framework. As already set out, the package of sustainable transport measures is necessary given the location of the appeal site.

Conclusions on the planning obligation

66. The necessary obligations addressed throughout this decision would be secured through the submitted undertakings, which the Council has checked. For the reasons set out above, the obligations are necessary and directly related to the impacts of the proposal. In addition, the obligations would be fairly and reasonably related in scale and kind to the development because it follows the methodology. I have therefore taken them into account.

Conditions

67. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the parties. In addition to standard commencement conditions, it is necessary to define the reserved matters and require their approval. I have included 'access' as a reserved matter in order to deal with internal circulation routes. A drawings condition relating to the position of the accesses is nevertheless added in the interests of certainty.
68. To protect living conditions, it is necessary to address potential land contamination, construction management, incorporate flood resilience measures and develop a foul water strategy. To reduce flood risk, it is necessary to secure details of surface water drainage, including at the construction phase, and the maintenance and management of any system. To protect highway safety, it is necessary to secure bound surfaces and to prevent water discharge.
69. To protect as yet unknown archaeology, it is necessary for a scheme of investigation and recording to be secured. To promote sustainable construction, it is necessary for details to be approved and implemented, including BREEAM ratings and decentralised or renewable energy. To protect and enhance biodiversity it is necessary to secure mitigation and enhancement measures and for up-to-date surveys to be submitted. To adequately manage surface

²² A condition in this regard is therefore unnecessary

water drainage, it is necessary to secure drainage details and subsequent maintenance.

70. In the interests of the character and appearance of the area, wildlife and adapting to climate change it is necessary to secure details of tree protection. To secure the benefits gleaned from delivering commercial development, and minimise the conflict with the development plan, it is necessary to secure the delivery of B1 development (or equivalent) and remove permitted development rights for commercial to residential development. In the interests of sustainable transport, it is necessary to impose a phasing condition.

Planning Balance

71. The proposal would be at odds with and undermine the allocation and strategy for employment land in Policies ED4 of the CS, NEL3 of the Allocations Plan and E3 of the JAAP. This is not justified under Policy DM32 of the DMP, which the proposal would also be contrary to. I have afforded this conflict with the development plan moderate weight for the reasons already given.
72. The proposal would deliver several benefits, the most notable being a high number of jobs, albeit not that predicted by the Council, as well as other economic benefits. It would also deliver a large body of housing for the over 55's, alongside other benefits. Together, the benefits are of significant weight.
73. On balance, the points in favour of the scheme would outweigh its harm and the subsequent policy conflict. This indicates that the proposal should, in this instance, be determined otherwise than in accordance with the development plan. This is a finding based on the specific circumstances of the case and the evidence before me. As a result, it should not set any generalised precedent and therefore the Council's concerns in this respect are unfounded.

Conclusion

74. In conclusion, the proposal would be contrary to the development plan as a whole but in this instance, there are material considerations which outweigh this finding. Accordingly, the appeal has succeeded.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Peter Atkin
Neil Ryan
Gary Coxhall
Dominic Morris
Dougal Ainsley

Pegasus Group
Neil Ryan Property Group
Third Dimension
Gowling WLG
Gowling WLG

FOR THE LOCAL PLANNING AUTHORITY

Katie Rogers
Yvonne Dunn
Daniel Goodman
Daniel Kudla
Christopher Irwin

Rochford District Council
Rochford District Council
Rochford District Council
Rochford District Council
Rochford District Council

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

1. Revised list of agreed planning conditions
2. Engrossed Planning Obligation dated 30 September 2021
3. Engrossed Supplementary Planning Obligation dated 26 October 2021
4. Essex Coast RAMS Supplementary Planning Document
5. The Council's CIL Compliance Table
6. The appellant's analysis of employment figures projected to arise from the proposal

Schedule of Conditions

1. No development shall commence within any phase (Reserved Matters application site area) until plans and particulars showing precise details of the layout, scale, appearance, access (save for access points to the site as shown on the approved plans) and landscaping of the site (herein after called the "Reserved Matters") within the phase have been submitted to and approved in writing by the Local Planning Authority. All development at the site shall be carried out in accordance with the Reserved Matters details approved.
2. In the case of the Reserved Matters, application for the first reserved matters application shall be made no later than the expiration of two years beginning with the date of this permission. Application for the approval of the remaining "Reserved Matters" referred to in Condition 1 above shall be made to the Local Planning Authority before the expiration of three years from the date of this planning permission.
3. The development to which this permission relates shall be commenced not later than the expiration of two years from the approval of the first reserved matters and the remainder of the development shall be begun not later than:- (i) the expiration of three years from the date of the grant of outline planning permission, or (ii) within two years of the approval of the reserved matters for the phase or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The development hereby approved shall be constructed in strict accordance with the approved plans; 406/103, 16.615/207 rev B and 16.615/210a (save for in respect of that part of the vehicular access to the site in position 3 on 16.615/210a that lies outside of the site boundary).
5. Prior to commencement of any work on site including ground works, tree protection fencing shall be installed in accordance with details as set out in the Arboricultural Impact Assessment dated 4 September 2017 ref P2665.3.1.A and the development shall be carried out in accordance, in all other respects, with the method statements in this report unless alternative details are otherwise agreed in writing by the Local Planning Authority in which case fencing and methods shall be installed/complied with in accordance with the amended details. Fencing as agreed shall remain in place throughout the construction period or until the Local Planning Authority has advised in writing that it can be removed in advance of completion.
6. No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:-
 - a. A Preliminary Risk Assessment (PRA) including a Conceptual Site Model (CSM) of the site indicating potential sources, pathways and receptors, including those off site.
 - b. The results of a site investigation based on (a) and a detailed risk assessment, including a revised CSM.

- c. Based on the risk assessment in (b) an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions. The plan shall also detail a long-term monitoring and maintenance plan as necessary.
- d. No occupation/use of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the remediation strategy in (c) has been submitted to and agreed in writing by the Local Planning Authority. The long-term monitoring and maintenance plan in (c) shall be updated and be implemented as approved.
7. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.
8. Prior to the first occupation of each building at the site, nest boxes shall be installed on the building in accordance details that shall have been submitted to and agreed in writing by the Local Planning Authority. Boxes as agreed shall remain in perpetuity. Details shall include;
- Schwegler (or similar woodcrete) bird boxes (house sparrow terraces and multi-chambered swift boxes) and;
 - Proposed siting of the boxes on an elevation plan - showing the boxes facing away from the prevailing wind / rain (between north and southeast) and placing of house sparrow terraces at least 2m above ground level in areas where shrubs and / or climbers provide cover within 10m of the box and placing of swift boxes at least 5m above ground level at locations with an open aspect where birds have a clear flight line directly up to the box entrance.
9. No development or preliminary groundworks of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority. The archaeological work will comprise full recording of the brickworks and assessment to determine if archaeological features survive beneath the brickworks or elsewhere on the site. This may be followed by excavation if archaeological features are found. All fieldwork should be conducted by a professional recognised contractor in accordance with a brief issued by the Local Planning Authority.
10. Prior to the commencement development within any phase (excluding ground clearance works), details of how the development will utilise rainwater harvesting and water recycling systems, as well as other environmentally sustainable features such as green roofs/walls (unless details are provided to demonstrated that this is not feasible or not viable),

shall be submitted to and approved in writing by the Local Planning Authority. The details as agreed shall be implemented prior to first beneficial use of the development (to which the system relates) hereby approved.

11. Prior to the commencement development of development (excluding ground clearance works) in any phase, details of how the development (excluding any residential development) within the phase (a phase equating to a Reserved Matters application site) will achieve a BREEAM rating of excellent (unless details are provided to demonstrate that this is not feasible or not viable in which case details to demonstrate what rating can be achieved and these details shall be submitted to and approved in writing by the LPA), shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details as agreed.
12. Prior to the commencement development (excluding ground clearance works) in any phase, details of how the development within the phase will secure at least 10 percent of their energy from decentralised and renewable or lowcarbon sources unless this is demonstrated to be not feasible or not viable shall be submitted to and approved in writing by the Local Planning Authority. The details as agreed shall be implemented prior to first beneficial use of the development (to which the agreed provision relates) hereby approved.
13. Prior to commencement of the development in any phase, details shall be submitted to and agreed in writing by the Local Planning Authority to demonstrate how the development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning. The development shall be implemented in accordance with the agreed details.
14. No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.
15. No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure.
 - Limiting discharge rates to 3.4l/s/ha for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change.
 - Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
 - Final modelling and calculations for all areas of the drainage system.
 - Demonstrate all storage features can half drain in less than 24 hours.

- The appropriate level of treatment for all run off leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Ensure there is a provision of 10% for urban creep included in storage calculations.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation.

16. No works shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
17. No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of longterm funding arrangements should be provided.
18. The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
19. No unbound material shall be used in the surface treatment of the vehicular access within 30 metres of the highway boundary.
20. There shall be no discharge of surface water onto the Highway.
21. No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for: i. the parking of vehicles of site operatives and visitors ii. loading and unloading of plant and materials iii. storage of plant and materials used in constructing the development iv. wheel and underbody washing facilities
22. Prior to first occupation at the site or as otherwise agreed in writing by the LPA, adopted vehicular Highway within the site shall be provided (in accordance with details agreed at the Reserved Matters stage) which shall extend right up to the eastern boundary of the site to enable vehicular access to the eastern portion of the remaining part of the Area 2 allocation within the Joint Area Action Plan (2014) from within the site hereby granted planning permission.

23. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 (GPDO) as amended, the commercial floorspace/premises hereby approved shall be retained as commercial uses and shall not benefit from provisions with the GPDO to change use to residential.
24. Prior to the submission of any Reserved Matters application, an up-to-date report including results of an up-to-date survey of the site for badgers which shall identify the extent of any badger setts within or adjacent to the site and which shall detail proposed mitigation including in respect of the layout of the site and proximity of proposed development to any setts, shall have been submitted to and approved in writing by the LPA. The development shall be conducted in accordance with the agreed mitigation and the Reserved Matters application(s) relating to layout shall accord with the approved report.
25. All non-residential floorspace hereby approved that would have fallen within the B1 Use Class of the Town and Country Planning (Use Classes) Order 1987 or equivalent shall remain for use solely within this Use Class in perpetuity notwithstanding the incorporation of the B1 Use Class within Use Class E of the Town and Country Planning (Use Classes) Regulations 2020.
26. Prior to the first occupation of any residential unit/dwelling at the site, floor space for a convenience food store and doctor's surgery shall have been delivered at the site in accordance with a phasing plan that has first been submitted to and approved in writing by the Local Planning Authority.
27. Any works to existing hedgerows/trees or other vegetation clearance at the site shall take place outside the bird nesting season (March to August inclusive) unless a suitably qualified person has inspected any hedges/trees or other vegetation to be cleared and confirmed in writing that works can be carried out and this written confirmation has been submitted to and agreed in writing by the LPA.
28. Prior to commencement of development details of proposed ecological enhancement measures as referenced in the supporting ecological studies submitted with the application 17/00877/OUT including the provision of bird and bat boxes at the site and a timetable for their provision on site, shall have been submitted to and approved in writing by the Local Planning Authority. Enhancement measures as approved shall be provided in accordance with the agreed timetable and retained in perpetuity.

End of Schedule