



## Appeal Decision

Inquiry held on 10 January 2023

Site visit made on 10 January 2023

**by Jonathan Bore MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30<sup>th</sup> January 2023

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**Appeal Ref: APP/Z1510/W/22/3306479**

**Land to the north of London Road, Kelvedon, Braintree, Essex, CO5 9AU**

- 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 Barkley Projects LLP against the decision of Braintree District Council.
  - The application Ref 17/00679/OUT, dated 12 April 2017, was refused by notice dated 10 March 2022.
  - The development proposed is for a mixed-use neighbourhood development comprising up to 300 dwellings, health centre, local retail area, care home, an early years and childcare facility, open space and landscape buffers, and supporting infrastructure that includes sustainable drainage and two accesses from London Road.
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### Decision

1. The appeal is allowed and outline planning permission is granted, with all matters reserved, for a mixed use neighbourhood development comprising up to 300 dwellings, health centre, local retail area, care home, an early years and childcare facility, open space and landscape buffers, and supporting infrastructure that includes sustainable drainage and two accesses from London Road, on land to the north of London Road, Braintree, CO5 9AU in accordance with the terms of the application, Ref 17/00679/OUT, dated 12 April 2017, and the submitted site location plan, subject to the conditions set out in Annex 1 to this decision.

### Background

2. The appeal concerns an application for outline planning permission, with all matters reserved. The original application was for 250 homes and included an employment area, but was amended to the present description by agreement with the Council on 14 September 2021. The application was accompanied by a concept plan and a design code, which are discussed below under Issue 2. Despite issuing a refusal of planning permission in March 2022, the Council did not defend its decision at the inquiry because it cannot currently demonstrate a 5-year supply of housing land, as discussed under Issue 1.

### Main Issues

3. The main issues in this appeal are:
  1. current housing land supply and its implications for the application of planning policy;

2. whether the appeal scheme is appropriate for Kelvedon in respect of its location, built form and community facilities, and the extent of the public benefits that would arise from the scheme;
3. the effect of the scheme on the countryside, landscape and ecology;
4. the effect of the scheme on the significance of nearby listed buildings, having regard to their settings, and on the significance of other heritage assets.

## Reasons

### **Issue 1: current housing land supply and its implications for the application of planning policy**

4. It is common ground between the Council and the Appellant that, currently, there is 4.86 years' supply of housing land within Braintree District. This position is contrary to Policy SP4 of the adopted North Essex Authorities' Shared Strategic Plan, which forms Section 1 of the Braintree Local Plan, which obliges each authority to maintain a sufficient supply of deliverable sites to provide for at least five years' worth of housing. Under Policy SP4 it is incumbent on the Council to work proactively with applicants to bring forward sites that accord with the overall spatial strategy and relevant policies in the plan.
5. The site is just south-west of Kelvedon, between the London Road, B1024, and the main railway line that links Liverpool Street with Colchester and beyond. Being outside the settlement, the scheme conflicts with Policy LPP1 of the Braintree Local Plan, Section 2 of which was adopted in July 2022, which confines the site to uses appropriate to the countryside. The scheme also conflicts with Policy NE5 of the Kelvedon Neighbourhood Plan, adopted in July 2022, because it would interfere with a viewing cone, illustrated in Volume 2, Appendix D of the plan, which crosses the site from the junction of London Road with the A12 towards the spire of St Mary's Church and the edge of the village. This cone is a designation for landscape purposes and does not relate to the setting of the listed church, a matter discussed under Issue 4.
6. Owing to the deficit in housing land supply, Local Plan Policy LPP1 and Policy NE5 of the Neighbourhood Plan can both, despite the recent adoption of these plans, be regarded as out of date with reference to paragraph 11 of the National Planning Policy Framework (NPPF). The NPPF states that in such circumstances planning permission should be granted other than in the conditions discussed in the next paragraph.<sup>1</sup>
7. The consequences of the overall policy framework and the shortfall in housing land supply mean that planning permission should be granted for the proposed development unless, in short, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, or where there are certain assets of particular importance which provide a clear reason for refusing the development proposed. The benefits of the scheme, which include the provision of housing, affordable housing and a range of community facilities, are considered in Issue 2; and the impacts of the scheme on the countryside,

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<sup>1</sup> As there are no housing allocations in the neighbourhood plan, the different balance for neighbourhood plans described in paragraph 14 of the NPPF does not apply.

ecology, habitats and the listed buildings beyond the north-east and south-west sides of the site are discussed in Issues 3 and 4.

**Issue 2: Whether the appeal scheme is appropriate for Kelvedon in respect of its location, built form and community facilities, and the extent of the public benefits that would arise from the scheme**

8. Kelvedon with Feering is designated a Key Service Village in the Local Plan. These are large villages serving a wider rural hinterland, and are capable of meeting day to day needs through the availability of a range of community and retail facilities and links by public transport and road to the larger towns. The scale and location of the appeal scheme, with its range of community facilities, discussed below, its position on a bus route along London Road, and its immediate accessibility to the westbound A12, would be consistent with the designation of Kelvedon with Feering as a Key Service Village. It would accord with Policies SP3 and SP6 of the North Essex Authorities' shared strategic plan in respect of spatial strategy and infrastructure & connectivity. It would also be in accordance with Policy HO1 of the Kelvedon Neighbourhood Plan, which allows for further new residential development above Local Plan housing requirements, subject among other things to the provision of appropriate and timely infrastructure.
9. The scheme would deliver 300 dwellings, of which 40% would be affordable in accordance with Local Plan Policy LPP31. In addition, it would deliver a community hub containing a range of facilities including a health centre, a local retail area, a care home and an early years and childcare facility, in accordance with Local Plan Policy LPP61, which supports new or enhanced community facilities. These would be secured by a planning obligation. The health centre would replace an existing facility on London Road which is closer to the centre of the village. Evidence presented at the inquiry demonstrated that the existing health centre is not of a suitable standard to meet the needs of a modern GP's practice; the proposed new facility would provide the opportunity for better car parking together with the ability to provide a more holistic service including minor surgery and facilities for practitioners such as physiotherapists and social prescribers, ultrasounds and clinics for targeted health conditions, none of which can be provided to the same level at the existing health centre.
10. The application was accompanied by a concept plan and design code. These are only indicative, but they demonstrate that a scheme of 300 homes and a community hub can be successfully accommodated on the site whilst ensuring that the scale and layout of the development remain in keeping with the modest scale of Kelvedon. In terms of form and location, the scheme would continue the essentially linear form of Kelvedon, so its effect on the setting of the village would be limited. The concept plan and design code also demonstrate that a scheme can be designed with appropriate layout and connectivity and that adequate amounts of open space and structural landscaping can be provided on site, together with a landscaped buffer to mitigate the effect of the scheme on nearby listed buildings, a matter returned to under Issue 4. The provision of open space and allotments is included within the planning obligation. The scheme would thus accord with Local Plan Policy LPP52, which promotes good layout and design in new development, and with Policy LPP50, which requires appropriate open space in new development.

11. The concept plan shows the community hub as being in two possible locations within the site. The Council's preference is for a south-western location to take it further away from the existing houses on London Road. However, from my observations, and having regard to the views of local people who spoke at the inquiry, a south-western location would be too far from the centre of the village, diminishing the public benefits arising from the scheme. A location at the north-eastern end of the site would be more easily walkable from other parts of the village, for those wishing to access the retail, healthcare, and early years and childcare facilities; it would be more likely to promote active modes of transport; and it would allow the development on the site to integrate more effectively with the village and its existing facilities along London Road. There would be enough space on the site to enable the living conditions of the nearby residents on London Road to be protected through careful design and landscaping. Provided the community hub is located at the north-eastern end of the site, the scheme would relate well to Kelvedon. This is a critical factor in the successful integration of the site with the village and the full realisation of public benefits, and I have made it the subject of a condition.
12. The impact of the community hub on the existing facilities in the village would be slight. The shops would be small and below the size that would require a retail impact assessment; this is an indication that their impact on the existing retail facilities in the village would not be significant. The scheme would therefore not conflict with Local Plan Policy LPP9, Retailing and Regeneration. Indeed, taken overall, the hub located at the eastern end of the site would provide a range of facilities that would complement those in the village. The site has the capacity to accommodate different walking routes, and the planning obligation includes improvements to the footway along London Road, which would assist in integrating the site with the village. The scheme would accord with Local Plan Policy LPP42, which promotes sustainable transport.
13. In conclusion, the scheme would be appropriate for Kelvedon in respect of its location and its facilities, and it would deliver substantial public benefits: these include new homes and affordable homes in a district that currently does not have a 5 year supply of housing land, together with a range of community facilities which would enhance the role of Kelvedon as a Key Service Village, including the provision of a much-needed new health centre. The scheme would accord with a wide range of development plan policies as described above.

### **Issue 3: the effect of the development on the countryside, landscape and ecology**

14. The site consists of a large, gently undulating and relatively featureless arable field with little intrinsic landscape interest. It is not subject to any national or local landscape designation and no public rights of way cross the site. There are some views across the site from public viewpoints towards the edge of Kelvedon, its church spire and trees, and the groups of listed buildings at Church Hall Farm and Crabb's Farm, as discussed below under Issue 4, but these features are mostly glimpsed at a distance through the hedge along London Road, or from passing trains, and they have limited significance for the landscape character of the site or the setting of the village. The viewing cone in the Neighbourhood Plan, referred to earlier, is taken from a point close to the A12 off-ramp towards St Mary's Church. There is a roadside footway in this location, but it is not heavily used as it is a long way from the village edge. In this position the church spire is more likely to be glimpsed at speed from

vehicles rather than observed by pedestrians. The spire is an almost insignificant feature from this distance, and the village edge is mostly appreciated as a line of trees. The development would interfere with the viewing cone, but the degree of harm would be small. The scheme would accord with Local Plan Policy LPP67 Landscape Character and Features, which requires proposals to be sympathetic to the character of the landscape, settlement edge and countryside.

15. Regarding ecology, the preliminary Ecological Appraisal (September 2021) found that the site is comprised of common habitats of generally low ecological value, although a hedgerow and deciduous woodland pocket on site is of local importance. The site may provide suitable habitat for protected and/or notable species, with reptile presence confirmed in historic surveys. The 2017 bat survey found no evidence of roosting bats although bats have been sighted in the general area. Conditions are attached which deal with the various ecological issues. The scheme would provide opportunities to supplement the existing hedgerows, whilst the proposed landscaping and buffers shown indicatively on the concept plans would provide opportunities for biodiversity net gain.
16. In order to mitigate visitor pressure on a range of designated sites on the Essex Coast, the planning obligation includes a requirement for 5.6 hectares of open space, well above the amount normally required for a development of this size, together with the provision of a 2.7 km long circular route for dog walkers, and provision is also made for a contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). With these on-site and off-site mitigation measures, the habitats regulations assessment and appropriate assessment conclude that there would be no adverse effect on the integrity of these sites alone or in-combination with other plans or projects.
17. Therefore, despite the conflict with Policies LPP1 of the Local Plan and NE5 of the Neighbourhood Plan, the impacts on the countryside and landscape setting of the village would be slight. The scheme would protect important habitats and a condition is attached which requires an improvement in biodiversity. Subject to the planning obligation and an appropriate condition, the proposal would accord with Local Plan Policies LPP66 in respect of the protection, enhancement, management and monitoring of biodiversity, LPP63 Natural Environment and Green Infrastructure, LPP64 Protected Sites and SP2 Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).

**Issue 4: the effect of the scheme on the significance of nearby listed buildings, having regard to their settings, and on the significance of other heritage assets**

18. There are groups of listed buildings beyond the north-eastern and south-western sides of the site.
19. Church Hall Farm is a historic farmstead on the south-western edge of Kelvedon, immediately to the north-east of the site. The group contains four Grade II listed structures. Church Hall Farmhouse is primarily 18<sup>th</sup> century, with 19<sup>th</sup> and 20<sup>th</sup> century additions and alterations, and is a combination of different ranges and forms. The building has significance for its architectural and aesthetic qualities. To the north is a barn which has been subject to re-cladding but may contain fabric of the fourteenth to the sixteenth centuries,

together with an ancillary building, likely to have been a stable, of the 16<sup>th</sup> Century, and to the east is a 16<sup>th</sup> Century granary, which was converted in the 19<sup>th</sup> Century to a house. These buildings derive significance from their age, form, appearance and their role as part of a high-status farmyard. Their primary relationship is with each other, as a farmstead, but there is also some visual interaction of these buildings with St Mary's Church and the historic western core of Kelvedon.

20. The farmstead was once part of a much larger, prosperous landholding, which included the appeal site, and was formerly associated with the Bishop of London. There is therefore a degree of shared significance and shared setting to the four buildings within the farm and a former functional and ownership relationship with the appeal site. There are also some visual interrelationships with the site; the barn is clearly seen in parts of the northern end of the site, the farmhouse is just visible from parts of the site, whilst the other two buildings are less visible.
21. However, later buildings, boundary treatments and tree and hedge planting have altered the appearance of the group and have eroded its visual relationship with the appeal site, with the result that, even at relatively close quarters, the importance of the site as part of the group's visual setting has been diminished. Moreover, seen from a greater distance across the site, the buildings are only glimpsed against the leafy background of the village edge. The visual appreciation of the historic link with the site and surrounding land is relatively weak and there is no longer a functional link with the appeal site because the farm has fallen out of its original agricultural use. The individual buildings within the group now relate more closely to each other and to their immediate settings.
22. Most of the significance of the Church Hall Farm buildings is found within their physical fabric and structure, and within their immediate settings within the former farmyard, which would not be affected by the development. There would be some harm to the buildings' settings arising from the development of the field to which it was once connected functionally, the severance of the farmstead from the open countryside, and the proximity of new development. However, the concept plan demonstrates that it would be possible to incorporate a substantial open planted buffer between the development and these listed buildings, and whilst this could not address the harm caused by the severance of the group from open agricultural land, it would be sufficient to prevent the development from impinging visually on the settings of the listed buildings. This is particularly important in the area adjacent to the barn and the farmhouse and is made the subject of a condition. The ability to appreciate the status, age, function, and interrelationship of the listed buildings would be unaffected. The scheme would cause less than substantial harm to their significance.
23. To the north of Church Hall Farm is St Mary's Church, which is listed Grade I. The building dates to the twelfth century, but has experienced several phases of development including 13<sup>th</sup> Century north and south aisles, a 14<sup>th</sup> Century chancel, a 14<sup>th</sup> Century lower tower stage, a 15<sup>th</sup> Century clerestory and tower third stage, 16<sup>th</sup> Century additions 19<sup>th</sup> Century restoration. The tower is topped by a slender spire of modest height. The east boundary wall of the churchyard is Grade II listed.

24. The church is heavily screened in views from the site by mature deciduous and evergreen trees within and around the extensive churchyard. Its setting includes the churchyard and the immediate vicinity, including Church Street and Old Vicarage, but there is little intervisibility between the church and the site. The spire and part of the top of the tower can be seen from some locations across the site, but they are not prominent features, appearing slightly above and behind the treetops at a distance. To register them, they have to be sought out against the background. The church is a substantial building, but it does not dominate the wider landscape, nor does it appear to have been designed to dominate it. The occasional longer views contribute little towards an understanding of the building's significance. There would be some harm caused by the severance of the church from open countryside, so that from the west it would no longer be perceived as on the edge of the village, and there would be a small degree of harm caused by the loss of some distant views towards the church spire, but the scheme would cause less than substantial harm to the significance of the listed church.
25. South of the church is the 18th Century Old Vicarage, listed Grade II. The setting of the Old Vicarage, like that of the church, is largely confined to its immediate surroundings; these include the church, the churchyard and the historic part of Church Street. The site can be perceived from the windows and garden at the rear of the house, and vice-versa, but views are heavily filtered through extensive tree planting within the mature grounds. The Old Vicarage and its grounds have an enclosed feel and in effect create their own setting on this side of the building. The development would not harm the ability to appreciate the age, design and interrelationship of the Old Vicarage with the church and Church Street. There would be some harm to the building's setting simply because of the proximity of new development to a building which is currently sited on the edge of the village, but this would be slight because of the existing screening and would be mitigated by the landscaped buffer which would be an integral part of the development. The harm to its significance would be less than substantial, at the low end of the scale.
26. Some way to the west of the site is Crabb's Farm, on Cranes Lane, which is Grade II listed. The main farmhouse is of the 16<sup>th</sup> and 17<sup>th</sup> Centuries, but with later alterations; it is largely timber framed and plastered, its roofs red clay tiled, and its windows are largely timber casements probably of the 19<sup>th</sup> Century. Its architectural and archaeological interest comes from the age and quality of its historic fabric as an example of an Essex Yeoman's farmhouse, originally of reasonably high status, of the late medieval and early modern period.
27. Immediately southeast of the farmhouse, and attached to it, is a Grade II listed barn which may date from 1500. It is part wattle and daubed, with a largely weatherboarded exterior and a plain clay tiled roof. The building has a well-preserved and good quality internal frame and, much restored, is now used as a wedding venue. As with the farmhouse, the barn derives its significance mostly from its historic fabric, as a high-quality and well-preserved example of a late medieval Essex barn of a reasonable scale.
28. The immediate setting of these buildings is the former historic complex of the farmstead itself, which now has a domesticated and landscaped appearance in keeping with its use as a home and as a venue for weddings, rather than as a functional farmyard. There is a visual relationship with the wider agricultural

land around, but Crabb's Farm is some distance from the appeal site and its buildings are well-screened by trees and mature gardens, even in winter. The roofline and some of the upper parts of the buildings can be seen in the distance from across the site, but it is not possible to obtain a clear picture of the buildings or their significance. There is no evidence that land within the site at any point fell within the ownership of Crabb's Farm.

29. The buildings at Crabb's Farm therefore derive their significance mostly from their historic fabric and their age and importance as examples of good quality Essex yeoman farming of the late medieval and early modern periods. Their setting is largely confined to a small area of land immediately around the farmstead. Any new homes would be over 130m away at the closest and outside the setting of these buildings. The scheme would not harm the significance of the listed buildings at Crabb's Farm.
30. As regards other heritage assets, there is a high potential for the survival of previously unknown archaeological remains, particularly in the northern part of the site close to the village. An archaeological investigation is required in accordance with LPP59 Archaeological Evaluation, Excavation and Recording and this is made the subject of a suitable condition.
31. To conclude on this issue, the scheme would cause less than substantial harm to the significance of the listed buildings at Church Hall Farm, the St Mary's Church and the Old Vicarage. The level of harm would be diminished by the provision of a buffer to separate the buildings from development on the site, and this is made the subject of a condition. The scheme would not harm the significance of the buildings at Crabb's Farm. The potential for archaeological remains can be made the subject of a condition as described above.
32. The conclusion of less than significant harm is reached in respect of the effect of the development on the setting of each of the individual buildings and in respect of its cumulative effect on the totality of the listed buildings. The scheme would accord with Local Plan policies LPP47 Built and Historic Environment, and LPP57 Heritage Assets and their Settings.

### **Other Matters**

33. An argument was presented that the appeal proposal should allow for a future connection to the adjacent undeveloped land near Crabb's Farm, to enable a larger co-ordinated scheme to be brought forward. However, such a scheme is not before me, and this point can be given very little weight. The appeal proposal is acceptable as it stands, and it is not necessary to attach a condition to this permission which would facilitate a future connection with the adjacent land.

### **Overall conclusions**

34. The scheme would provide important public benefits, including the provision of new homes and affordable homes in a district with a shortfall in housing land supply, together with the provision of a new health centre and other community facilities. The impact of the scheme on the countryside and setting of the village would be limited and the scheme would protect important habitats. There would be no harm to the settings of the listed buildings on the south-western side of the site and less than substantial harm to the significance of the listed buildings on the north-eastern side, which would be

outweighed by the substantial public benefits of the scheme. Although the scheme would not accord with Policy LPP1 of the Braintree Local Plan or Policy NE5 of the Kelvedon Neighbourhood Plan, the shortfall in housing land supply renders these policies out-of-date within the terms of the NPPF and the adverse effects of the scheme would not significantly and demonstrably outweigh the benefits described above. For all these reasons the appeal is allowed.

### **Conditions**

35. A set of 32 planning conditions extending to some 16 A4 pages was suggested by the parties. These are too numerous and prescriptive for an outline application on a large open site with the characteristics described above and relatively few nearby properties. An outline application is intended to allow for flexibility in the subsequent process of developing access, appearance, landscape, layout and scale. I pointed this out at the inquiry, but given that similar conditions were included in two recent appeal decisions, the parties requested some explanation of any divergence from those decisions. I do not know the circumstances that led to those decisions, but below is an explanation of the approach I have taken towards the conditions.
36. Paragraph 56 of the NPPF states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Some of the suggested conditions fail against these criteria, having regard to the nature of the development and the site, and many contain more detail than is necessary for the grant of planning permission, being akin to detailed specifications. I have condensed many of these conditions. NPPF-compliant conditions are necessary in respect of the following subjects. Where appropriate I have commented on the conditions in the parties' schedule of suggested conditions.
37. The standard outline conditions are attached. The reserved matters of appearance, scale and layout should cover the planning and design of the development, including matters such as the location and design of walls, fences and means of enclosure; finished levels; the location of refuse facilities; the location and design of lighting in accordance with Local Plan Policy LPP77, and the appearance and location of electric vehicle charging points, which are required in new residential development by the building regulations. For the avoidance of doubt, I have listed these components to ensure that they are included in the reserved matters submissions.
38. A condition requiring the community hub to be located towards the north-eastern end of the site is necessary for the reasons given in this decision, together with design details to ensure the residential living conditions of properties are protected against the operation of the hub. These design details should be submitted as part of the reserved matters submissions for appearance, landscaping and layout. A further condition limiting noise from plant and equipment at the community hub is attached.
39. Landscaping is covered by reserved matters, and in this particular case it is a matter for the parties to decide their approach towards existing hedgerows and trees as well as future planting; these matters can be considered holistically as part of the overall landscape scheme submitted as a reserved matter. The quantity of open space is covered in the planning obligation, but it is necessary to attach a condition relating to the positioning and scale of the landscape

- buffer along the north-eastern part of the site to protect the settings of the nearby listed buildings.
40. Part of the site is close to the main railway line, and a condition is required addressing noise attenuation to protect residential living conditions in the affected part of the site.
  41. An on-site archaeological investigation is required by condition in accordance with Local Plan Policy LPP59 because of the archaeological potential of the site described above.
  42. Conditions are required seeking biodiversity net gain, and requiring the future management of the landscape and ecology through a landscape ecological management plan. Conditions are also required to ensure the conservation of protected species during construction and after completion; the mitigation of impacts on priority farmland birds where these exist, and the reduction of construction impacts on reptiles, evidence for which has been found near the railway line and hedges.
  43. Conditions are also required to address the issues arising from construction, to protect residential living conditions, highway safety and areas of biodiversity; and to require the submission of the details of surface water and foul drainage to ensure compliance with Local Plan Policies LPP74, LPP75 and LPP76, although the degree of detail in the suggested conditions is unnecessary.
  44. A condition requiring the submission of relevant travel plans is attached in the interests of encouraging sustainable transport. However, the suggested condition which seeks to include travel packs with six one-day vouchers for use on public transport goes beyond the tests of necessity and reasonableness. More practical measures to encourage sustainable and active movement include the footway widening and improvements which are included in the planning obligation.
  45. Some of the parties' suggested conditions are unnecessary or unenforceable.
  46. Several require the submission of details concurrent with the applications for the discharge of reserved matters, but there is no means of enforcing the timing of applications in this way. The solution is to make it clear that these are aspects of design that fall within the compass of the reserved matters, as discussed above, and I have drawn up the conditions to make this clear.
  47. Suggested condition 3 is unnecessary because it simply repeats the terms of the permission, and the restriction on the size of the retail units is restricted by the planning obligation.
  48. A condition requiring compliance with the parameter plans and the design code would not be precise or enforceable because these plans and documents are indicative only.
  49. Regarding suggested condition 6, it is a matter for the Council to satisfy itself whether, on the submission of the relevant details, the affordable homes and any bungalows proposed comply with Building Regulations 2015 Part M(4); the best way of ascertaining this might well be certification from a building control professional, as the Council have pointed out, but a planning condition prescribing this process is not necessary for the development to go ahead.

50. A similar point arises in respect of the suggested condition requiring the developer to demonstrate that it is in possession of licences from Natural England pursuant to the Conservation of Habitats and Species Regulations. The licences are obtained under other legislation, and although it is obviously helpful for the Council to know that they have been obtained (or are not required) this is simply a procedural matter and a planning condition requiring it is not necessary for the development to go ahead.
51. Finally, regarding suggested condition 19, a condition on contaminated land and remediation is not necessary because the Phase 1 Contaminated Land Assessment (2017) stated that there is no evidence to suggest that previous agricultural uses of the site have created a plausible source of contamination; the search data did not identify any pollution incident or adjacent use that could pose a plausible source of contamination and the risk was considered nil to very low.

### **Planning obligation**

52. The planning obligation under s106 of the Town and Country Planning Act 1990 contains a requirement to submit a residential phasing strategy and requirements to complete the health centre prior to first occupation of any of the dwellings; to complete the retail units prior to the first occupation of 200 dwellings and to impose limitations on the size of the retail units; to complete the care home and the early years facility prior to occupation of 50 dwellings; to make contributions towards outdoor sports, community facilities, healthcare, education, library improvements, the recreation avoidance and mitigation strategy and the monitoring of travel plans; to provide for and manage off-site skylark habitat; to provide for amenity space; to provide a substantial amount of open space, including provision for dog walking, and provide for its management, phased provision and future maintenance; to provide and transfer allotment land; to provide affordable housing according to a specified mix; and to provide for a range of improvements for pedestrians including pavement widening on London Road.
53. These are all required to make sure the development is acceptable, accords with Local Plan Policy LPP78 regarding infrastructure delivery and impact mitigation, and accords with the range of planning policies described above.

### **Conclusion**

54. For all the reasons given, I allow the appeal.

*Jonathan Bore*

INSPECTOR

## **ANNEX 1: PLANNING CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan EG003-001 REV 00.
- 5) The community hub shall be located towards the north-eastern end of the site.
- 6) The reserved matters for access, appearance, landscaping and layout shall demonstrate how the potential for noise, disturbance, visual intrusion and light pollution from the community hub on the living conditions of neighbouring residents is to be mitigated.
- 7) The reserved matters applications for layout and appearance shall include the location and design of walls, fences and means of enclosure, finished levels, the location of refuse facilities, the location and design of lighting and the appearance and location of electric vehicle charging points.
- 8) The landscaping details submitted as part of the reserved matters application shall include indications of all existing trees and hedgerows on the land, identify those to be retained or translocated, and shall set out measures for their protection throughout the course of development.
- 9) The landscaping scheme submitted as part of the reserved matters application shall include a substantial landscaped buffer in the north-eastern part of the site, with dimensions at least equivalent to that shown on the indicative design code and concept plan, which shall be designed to protect the settings of the listed buildings at Church Hall Farm, St Mary's Church and the Old Vicarage. The landscaped buffer shall be completed in accordance with the approval of the reserved matters.
- 10) All planting, seeding or turfing comprised in the approved landscaping scheme shall be carried out in accordance with an implementation programme to be agreed in writing with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 11) A sound attenuation scheme designed to protect residential living conditions in those dwellings likely to be affected by external noise from

the adjacent railway line shall be submitted to and approved by the local planning authority before work on the relevant phase is commenced. The scheme shall include both external works including bunding and planting, and details of building design and acoustic performance including any necessary ventilation and cooling. The sound attenuation works shall be completed before the dwellings in the relevant phase are occupied, and shall be retained thereafter.

- 12) No development or preliminary groundworks shall take place until a programme of archaeological investigation has been carried out on site in accordance with a scheme submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance; the programme and methodology of site investigation and recording and post investigation assessment; the provision to be made for analysis and recording, publication and dissemination and archive deposition of the analysis and records of the site investigation; and the nomination of a competent person or organization to undertake the works set out within the written scheme of investigation.
- 13) A scheme for the achievement and maintenance of measurable net gains in biodiversity in connection with the development hereby approved, which shall include a phasing plan and a landscape ecological management plan to secure the long-term effectiveness of the scheme, shall be submitted to and approved in writing before development on site is commenced, and the scheme shall be implemented in accordance with the approved details.
- 14) A scheme for the conservation of protected species and their habitats shall be submitted to and approved in writing by the local planning authority before any works of construction, including preliminary groundworks, have commenced and the scheme shall be implemented in accordance with the approved scheme. The scheme shall include conservation measures during construction, and design and maintenance measures to ensure the conservation of the protected species following the completion of the development.
- 15) Prior to the commencement of development, a survey of the site, the details of which shall be agreed in writing with the local planning authority, shall be carried out to assess the presence of breeding birds. If the survey identifies priority farmland birds that are likely to be affected by the development, a farmland bird mitigation strategy, including timescale, phasing, methodology and monitoring, shall be submitted to and approved in writing by the local planning authority before any works of construction take place. The mitigation strategy shall be implemented in accordance with the approved details.
- 16) No development or preliminary groundworks on any phase shall commence until a scheme for the reduction of impacts to reptiles during construction, following the provision of updated reptile surveys, has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details.
- 17) No above ground development shall commence within any phase of the development until a scheme for on-site foul water drainage works for the relevant phase has been submitted to and approved in writing by the local planning authority. Prior to the occupation of any phase, the foul

- water drainage works relating to that phase shall be implemented in accordance with the approved scheme.
- 18) No above ground development shall commence within any phase of the development until a scheme for surface water drainage for the relevant phase, based on sustainable drainage principles and including details of how long-term maintenance is to be secured, has been submitted to and approved in writing by the local planning authority. Prior to the occupation of any phase, the surface water drainage works relating to that phase shall be implemented in accordance with the approved scheme.
  - 19) No development shall take place, including any works of demolition, until a construction method statement has been submitted to, and approved in writing by the local planning authority. The statement shall provide for the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding; wheel washing facilities; measures to control the emission of dust and dirt during construction; a scheme for recycling/disposing of waste resulting from demolition and construction works; measures to minimise the risk of off-site flooding during construction; and contact details and complaints procedures. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
  - 20) No site clearance, demolition or construction work shall take place on the site, including the starting of machinery and delivery of materials, outside the following times: Monday to Friday 0800 to 1800 hours; and Saturday 0800 to 1300 hours. No work shall be carried out on Sundays, Public Holidays and Bank Holidays.
  - 21) A construction environmental management plan shall be submitted to and approved in writing by the local planning authority before any development, including preliminary groundworks, is commenced, containing details of how construction impacts on areas of biodiversity on the site are to be avoided or mitigated. The plan shall be implemented in accordance with the approved details.
  - 22) A travel plan for the residential part of the development shall be submitted to and approved in writing by the local planning authority and the travel plan shall be implemented upon the first occupation of any dwelling.
  - 23) A travel plan for the community hub uses shall be submitted to and approved in writing by the local planning authority and the travel plan shall be implemented upon the first occupation of the community hub uses.
  - 24) The level of noise from any plant and equipment at the community and retail uses in the community hub shall be limited to 10 dB(A) below the background noise level, expressed as a LA90, 15 minutes, measured from the boundary of the nearest residential property.

**ANNEX 2: APPEARANCES**

FOR THE APPELLANT:

Charles Streeten – of Counsel

He called

Mr Robert Pomery MRTPI: Pomery Planning Consultants

Mr Laurie Handcock IHBC: Director, Built Heritage and Townscape, Icen projects

Dr Ricardo Pinto-Wright LMS-T(GP), DFFP: Partner, Kelvedon and Feering Health Centre

Mr Karl O'Brien: Barkley Projects LLP

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga – of Counsel

Mr Ranatunga did not call any witnesses.

RULE 6 PARTY

Mr Melville Dunbar AA DIPL PLAN, RIBA, FRTPI, FFB, RIAI: Melville Dunbar Associates, on behalf of Wendy and Geoff Scott, owners of adjacent land

INTERESTED PARTIES:

Katriona Golden: local resident

Cllr Paul Thorogood: District Councillor and County Councillor

Thomas Foster: local resident

John Elliott: local resident

## **ANNEX 3: DOCUMENTS AND PLANS**

### **Documents**

1. Core documents CD1 to CD33
2. Completed planning obligation dated 11 January 2023
3. List of suggested conditions
4. Appendices to Mr Pomery's proof of evidence
5. Appendices to Mr Handcock's proof of evidence
6. Statement of Dr Pinto-Wright
7. Statement of Mr Elliott
8. Appendices to Mr Dunbar's evidence
9. Statement of common ground on relevant planning policies
10. Statement of common ground on the 5 year housing land supply and other relevant planning matters
11. Statement of common ground on heritage assets
12. Statement of common ground on the community hub
13. Statement of common ground on landscape

### **Plans**

1. Location plan submitted with the application
2. Parameter plans (indicative)