



Appeal Decision

Hearing held on the 7 June 2023

Site visit made on 7 June 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/Z1510/W/22/3312296

Gershwin Park, Land North East of Reid Road, Witham, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by BGF4 (Witham) LLP, Barchester Healthcare and Churchmanor Estates against the decision of Braintree District Council.
 - The application 21/03618/FUL, dated 7 December 2021, was refused by notice dated 6 June 2022.
 - The development proposed is described as the 'Erection of single storey building of 262sqm to provide 3 neighbourhood retail units (Class E), a three storey building to provide a 70 bedroom care home (Class C2) and 44 residential dwellings (Class C3) comprising of dwellinghouses and a three storey apartment building, alongside access, parking, landscaping and other associated works'.
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Decision

1. The appeal is dismissed.

Main Issues

2. Following the submission of the appeal, the Council and appellants entered into further discussions and were able to finalise a legal agreement pursuant to section 106 of the Town and Country Planning Act. As a result, the Statement of Common Ground between the Council and appellants confirms that the proposal would deliver an adequate mix and layout of affordable housing, would preserve the integrity of the Essex Coast sites and would make appropriate provision for education and health infrastructure as well as open space, allotments and sports facilities. As a result, I have not addressed these points in a main issue as they are no longer in dispute.
3. Considering the foregoing, the main issues in this appeal are: 1) The effect of the proposed development on the character and appearance of the area; and 2) The adequacy of the living conditions of future occupants, with particular reference to outdoor amenity space and privacy.

Reasons

The effect on the character and appearance of the area

4. The appeal site encompasses a parcel of land within the Maltings Lane/Gershwin Park Urban Extension. A masterplan was prepared for this area but some of the original design concepts have been diluted. Nevertheless, the area to date has broadly been developed as per the 2012 iteration of the masterplan. In this respect the appeal site forms part of a central area that is

intended to be a neighbourhood centre. This area already includes a food store, day nursery, public house primary school and recreation ground. A community hub to the immediate north of the appeal site has not been delivered yet. Accordingly, the appeal site occupies a central and important position within the urban extension. The appellants state that a properly designed local centre should result in an urban design climax in scale, activity and variety. The appeal scheme has the potential to positively contribute to such an outcome.

5. There are two broad character areas either side of the appeal site. One being mainly residential in nature and located to the northeast and the other a cluster of commercial buildings to the west. The masterplan indicates that the commercial area is to be extended to the south of the appeal site with office type development set in a generously landscaped and verdant area. Accordingly, the appeal site occupies a challenging position because any scheme would need to mediate different character areas and address as yet unresolved and vacant parcels of land.
6. The residential area to the northeast of the appeal site is broadly characterised by a perimeter block structure with winding roads and parking areas within the blocks. Houses tend to be positioned close to the back edge of the pavement and this results in a tight grain with buildings framing narrow streets. Soft landscaping within the streets is generally limited to small front gardens and rarely involves street trees. The residential area therefore has a compact, urban feel although there is some relief provided by pockets of landscaping between the urban blocks. Examples of this can be found in Sneezum Walk, Greenwell Road and at points along Haygreen Road. Gershwin Boulevard also has a strong landscaped structure with houses set behind a wide avenue of trees and hedges. Greenery is therefore an important part of the area due to the softening and cohesion it provides.
7. The residential development nearest to the appeal site is arranged around the junction of Owers Road and Haygreen Road. The housing is characterised by standard house types where the detailing is sparse and generally includes only porch hoods and the occasional chimney. Dormer windows are flat and articulate otherwise bulky roofs. The properties in Owers Road are set back from the street behind an access road and a wide grass verge devoid of street trees (despite their presence being shown on the masterplan). A primary school addresses the street, and is also set behind a grass verge, but it has an uncomfortable relationship with the nearby roundabout. Overall, the area around the junction of Owers Road and Haygreen Road presents an unremarkable street scene.
8. The existing cluster of commercial development to the west/southwest of the appeal site is more spacious but dominated by parking. This is particularly apparent when entering Drury Road, as the car parks at the public house and nursery flank the vista towards the appeal site. The buildings in this area have different orientations, forms, and designs to one another. As a result, the street scene of Reid Road and Drury Road lacks cohesion and is generally poor. A well-considered scheme at the appeal site presents an opportunity to enhance this area of townscape.
9. The Council and appellants agreed at the hearing that the townscape immediately around the appeal site could be described as mediocre at best.

This forms the context and baseline for considering the appeal scheme. Nevertheless, I share the view of the Council that the development plan seeks a high standard of design quality, including enhancements where appropriate. This is consistent with the National Planning Policy Framework (the Framework), which also seeks to raise design aspirations by stating that schemes which are not well designed should be refused. As a result of this ambition, a mediocre townscape should not be used to justify further mediocre development. Indeed, the National Design Guide sets out ten characteristics of well-designed places and this includes an enhancement of the surroundings as well as a coherent pattern of development.

10. The proposed retail/Class E units would be set behind a car park, and this would reduce the building's ability to enclose and frame Reid Road. It's under scaled massing relative to the proposed care home and existing supermarket would not assist in this respect and appear out of place. Additional floors, perhaps containing flats, may have assisted in giving the building more presence but there is no evidence this was explored.
11. There is also limited evidence before me to demonstrate the setback arrangement is essential for the retail units to function, especially as many customers could arrive on foot. In this respect, the Council conceded at the hearing that the level of parking could be reduced. The layout would not be out of character given the immediate context, but the extent of hard standing to the front of the shop would not enhance the street scene of Reid Road or replicate the greenery envisaged in the masterplan for the commercial area. There may be scope to reduce the level of hardstanding in lieu of additional planting, as the turning area¹ appears excessive, but this would not entirely mitigate the limitations identified.
12. The retail building would have blank elevations to the side and rear with one side also encompassing a service yard that would be contained by fencing. This arrangement is not entirely necessary, as demonstrated to an extent by the dual frontage of the nearby supermarket. Nor would it be conducive with good pedestrian friendly urban design as active edges would not be presented to the pedestrian link or the parking area that would serve the care home. The service yard and turning area would also be tight to the adjoining pedestrian link resulting in only minimal space for intervening planting.
13. Nevertheless, the north-western elevation would flank only a small section of the pedestrian link and with some amendments secured through a landscaping condition, the quality of the treatment along the boundary with the pedestrian link could be acceptable. The activity in the parking areas to the front and rear of the units, and the good visibility across these spaces, would also ensure the pedestrian link did not feel enclosed or unsafe.
14. Nevertheless, the rear elevation of the retail building would be more problematic as it would be long, unrelieved, and seen in association with a close boarded fence. There would be no space for soft landscaping in the current layout and therefore a hard and unattractive feature would be apparent in views from the care home car park, the pedestrian link and perhaps even the future community hub. Accordingly, the retail unit overall would be a poor-quality addition to the area.

¹ As shown on Drawing A20-030-PL008 Rev B

15. As demonstrated by the massing plan in the Design and Access Statement, the care home would be a large building in the context of the area arranged over three storeys and with elevations of a similar length to the nearby supermarket. However, and unlike the supermarket, or any other building nearby, the care home would occupy a much greater proportion of its plot with all elevations relatively close to the boundaries. It would therefore have an imposing presence, leave little space for the extent of landscaping envisaged in the masterplan and appear out of character with the spacious arrangement of existing buildings in Reid Road and Drury Road.
16. However, the massing would be broken up into elements through contrasting materials and setbacks. There would also be space for some perimeter landscaping in the form of a hedge and trees. Moreover, the street scene of Reid Road and Drury Road is poor in part because of the spacious arrangement and the underwhelming relationship of buildings to street. Therefore, the position of the southwestern elevation closer to the road, but behind a low hedge, would provide enclosure and structure to the street scene. On balance the massing of the care home relative to its plot would be acceptable.
17. That said, the Design and Access Statement outlines several design principles including the location of key frontages. The key frontages for the care home are identified as being to the southwest onto Reid Road and to the northeast onto a pedestrian link. This makes sense as a key frontage onto Reid Road would improve this street and address the vista from the roundabout. A second key frontage onto the pedestrian link would enhance the quality of this important route through the site. It is therefore unfortunate that the main entrance into the building, which is set within its principal elevation, would face northwest towards the side elevation of the retail units. This would provide a more direct link to the retail units but would not result in a sufficiently positive interaction with Reid Road and thus a strong sense of legibility from the southwest.
18. The proposed Reid Road elevation has the potential to incorporate signage, and this would provide some legibility. A cluster of trees would also provide a focal point in views from the roundabout over time. However, the lack of an entrance from the street and the generally unbalanced composition of that elevation would result in a weak façade. The north-eastern elevation would be even worse with few windows at ground floor level and a generally functional appearance that would do little to enliven the important pedestrian link.
19. Section 5 of the Design and Access Statement outlines several design details and these, along with the differing materials and articulation provided by the setbacks, would prevent the building appearing utilitarian. In addition, the parking for the care home would be discretely located and approached along a treelined entrance drive. These would be positive aspects which would partially offset but not outweigh the adverse elements of the proposed care home.
20. The proposed apartments would occupy space that was originally master planned as an open space, but the Council take no issue with this. Aesthetically, the proposed apartments would have simple elevations with a coherent and balanced placement of windows. Subject to detailing, the balconies would not appear as an afterthought and their use would provide vitality. The apartments would not respond to the appearance of other flats

nearby, such as the pleasant block at Ingles Drive, but they would not appear utilitarian and would reflect the flat roof design of the care home.

21. However, the entrance points would lack legibility due to an underwhelming presence and no direct access from a street. The apartment building would also cover a large portion of the plot with several parts of the building uncharacteristically close to the site boundaries. Accordingly, the building would not relate comfortably to the shape and size of the plot and would appear dominant, bulky and shoehorned into the available space, especially given the extent of parking, which includes some tandem spaces. Unlike the care home, there would also be a general lack of greenery around the apartments caused by the extent of hardstanding. The overall effect would be a poorly designed and harmful addition to the area.
22. The retail unit would be set behind a car park and appear under scaled; the care home would be side on and close to the edge of the road, and the apartment building shoehorned into its plot. The three buildings would also have different scales and orientations and an ad hoc approach to entrance points and legibility. As a result, they would lack a coherent pattern of development. This would not necessarily be out of character with the existing context of Reid Road/Drury Road, but I have already explained that new development should not seek to replicate existing town scape of poor quality.
23. There would be some opportunities to bind the buildings together through materials and landscaping. For example, the hornbeam hedge proposed around the care home could be extended around the apartments and retail units to provide visual continuity. Nevertheless, the scheme overall would not successfully relate well to Reid Road and Drury Road.
24. The housing area would be structured around a perimeter block with properties tight to the edge of the road. This would reflect the broad urban character of the residential area to the north-east. In this respect the same could be said of the flat roofed dormers and their alignment with the ground floor windows. Indeed, the concept of repeated house types would be in keeping. The open space would also provide some relief and be consistent with the disposition of such areas found elsewhere in the wider urban extension. The visitor parking within this space would not be problematic if well landscaped. The pallet of materials used in the houses would also have some harmony with the apartments. The Council are also satisfied that Plots 17-20 would adequately address the vista from the Owers Road roundabout. However, there would otherwise be considerable drawbacks with the housing area.
25. Firstly, the house types would be aesthetically very poor due to the lack of detailing and awkward proportions. The only detailing would be soldier courses around the windows and porches. As a result, the houses would appear bland and utilitarian. Furthermore, the two and half storey dwellings would have bulky dominant roofs and house types A/C, A/A/C and B/B/C would appear very contrived due to the incorporation of two, and two and a half storey dwellings together in terraces and semis. This would result in a strident ridge projection and large roofs.
26. The central parking court, whilst not out of character in principle, would be poorly detailed, being flanked by fencing but with little space for planting to soften what would be a hard and unattractive space. The trees in the rear gardens of nearby properties would do little to mitigate this. Moreover, the

main vistas along the street would be towards parked cars in front of Plot 1, which would not be an appropriate end stop. The feature tree in this location would be in a front garden and could not mature adequately as a result. The parking at Plot 20 would also appear squeezed in and unduly prominent as would the parking for Plot 16, which would also be a poor end stop to an internal vista.

27. The houses would also be very close to the road leaving little space for meaningful soft landscaping in front gardens. This would result in a hard street scene comprised of houses and intervening parking. There would also be no space for the street to be tree lined with planting occurring in the public realm. As a result, a condition could not be imposed requiring such. The latter would be at odds with the Framework, which states that planning decisions should ensure that new streets are tree-lined as an important contribution towards the character and quality of urban environments. Their provision also has benefits in respect of addressing, or adopting to, climate change. Seeking to replicate street scenes that predate the Framework is not a compelling reason for failing to follow this guidance, as it could be repeated over and over again to the point that tree-lined streets are seldom provided. In any event, more recent development such as that in Raven Drive is tree lined.
28. Similarly, the extent of tree planting elsewhere in the scheme is not a compelling point either, because many of these would be in rear gardens or private areas where they would have limited visibility, or the longevity could not be secured. Nor is the position of the houses at the local centre adequate justification for not lining the street with trees. Indeed, given that the route through the site could be used by many residents in the wider area to get to the public house, supermarket and the proposed shops, the quality should be lifted through the provision of a tree lined street.
29. The scheme has been based, in part, on the housing in Owers Road. However, this would be a flawed approach given the outcome would not be a well-designed scheme that enhances the area. This is all the more unfortunate given the presence of some positive reference points nearby. Of note is the northern section of Elgar Road, which has a very pleasant arrangement that includes hedges and trees within the street.
30. In summary, the appeal site is challenging, and some compromises are likely to be required to deliver development here. I also have some sympathy with the appellants' argument that design aspirations should be proportionate to the context of the area. Nevertheless, the appeal scheme would have too many compromises and would not result in a positive urban design climax at the local centre. Indeed, for the reasons set out elements would be out of character and/or lacking adequate quality. Thus, the scheme when judged as a whole would not be well designed.
31. In conclusion, the effect of the proposal on the character and appearance of the area would not adhere to Policy SP7 of the Section 1 Local Plan² or Policy LPP52 of Section 2³. The former requires all new development to meet high standards of urban and architectural design, enhance the quality of existing places and the public realm, provide buildings of architectural quality and include well integrated parking. The latter requires high standards of layout

² North Essex Authorities Shared Strategic Local Plan Section 1

³ Braintree District Council Local Plan Section 2

and design and landscaping and buildings that reflect or enhance the area and are of high architectural quality.

The effect on the living conditions of future occupants

32. The proposed apartment building would have three elements that would wrap around a central amenity space. A second small triangle of amenity space would be provided to the south-west of the building. Given the modest size of these areas they would not be of high amenity value. Moreover, the central space would be gloomy, and the other located by a road.
33. However, the appellants confirmed at the hearing that the spaces are intended to function more as areas for ornamental planting and not the main outdoor amenity space for the residents of the apartments. Instead, each flat would have access to a balcony where there would be opportunities to sit out and dry washing. Children would be able to play at the larger open space within the development, which would have equipment, or at the nearby recreation field. There are also other areas of open space nearby. As a result, the proposed amenity spaces adjacent to the apartments can function principally as ornamental spaces without injuring the living conditions of future occupants.
34. The garden to the care home has been carefully designed with the end users in mind. There would be areas to sit in or out of the sun or away from drafts. Planting would be provided to soften the space and enhance wellbeing, and a circular path would loop around the exterior of the building to provide exercise and reassure those with dementia. The size of the garden would also adhere to relevant care guidelines. Resident lounges, terraces and dining rooms would also be provided internally alongside a café. As a result, those that are able would have a choice of spaces to visit and socialise away from their bedrooms. As a result, the living conditions of future occupants would be acceptable.
35. The distance between the nearest part of the care home and the apartments would be around 31m, which is sufficient to maintain privacy. There would also be some intervening tree planting. As a result, there would not be harmful inter overlooking to the detriment of living conditions. The occupants of the ground floor apartment at the north-eastern end of the building would have a bedroom window hard up to the pavement. Consequently, the privacy of this room would be compromised due to a lack of defensible space. However, being a dual aspect room, the window could be obscure glazed. This would not be ideal but on balance it would not be harmful either.
36. The rear elevation of Plot 21 would be angled so that occupants would have a direct line of sight at close range over the part of the rear garden at Plot 20 directly behind that house. This would be the most sensitive part of the garden where residents of Plot 20 would likely sit out on a patio or such like. The orientation of Plot 21 would therefore severely compromise the living conditions of the occupants of Plot 20 due to a lack of privacy. The garden at Plot 20 would also be narrow and therefore limited space for screen planting would be available. A 2m close board fence may provide some mitigation, but not from the upper floor windows at Plot 21.
37. This impact would be compounded by the position of Plot 22, which would directly overlook the remainder of the garden at Plot 20. The harmful living conditions at Plot 20 would be mirrored at Plot 17, where a similar relationship would be evident with Plots 14 and 15. The appellants have pointed to the

Essex Design Guide and the advice therein that a separation distance can be reduced to 15m when two buildings are angled from one another. I can see the rationale for this when considering overlooking between windows as there would not be a direct line of sight. However, this would do little to mitigate the direct overlooking of garden space. Thus, the guidance does not dissuade me from my judgment that the relationship described above would be harmful.

38. In conclusion, the living conditions at the care home, apartments and the majority of the houses would be adequate. However, the living conditions at Plots 20 and 17 would be harmful due to a lack of privacy. As a result, there would be a conflict with Policy SP7 of Section 1 of the Local Plan and Policy LPP52 of Section 2, which seek to secure development that protects the amenity of future residents with regards to overlooking and provide high standards of accommodation.

Planning Balance

39. Policy SP1 of the Section 1 Local Plan states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. In this respect, it is common ground that the Council are currently unable to demonstrate a five-year housing land supply, that the most important policies for determining the application should be deemed out of date and the presumption in favour of sustainable development in Paragraph 11 of the Framework applies. The presumption states that, in this instance, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. The appeal scheme would occupy an accessible location which visitors and residents could travel to and from by sustainable transport. The appellants and Council agree that this is a point of significant weight in its favour. The care home would also reduce loneliness and pressure on NHS bed spaces and free up existing houses when residents move in. Furthermore, it would provide a much-needed facility given the ageing population and the qualitative and quantitative shortcomings in current provision. Mindful of the advice in Paragraph 62 of the Framework I consider the appellants have presented a strong case⁴ that significant weight should be given to this matter.
41. The appeal scheme would contribute the equivalent of around 83 homes to the district's housing supply. The extent to which this would be a benefit is in dispute. The appellants' submissions⁵ indicate that since 2016 the Council has only been able to demonstrate a five-year supply sporadically. That said, the Housing Delivery Test Measure of 125% demonstrates that supply has picked up in recent years. Furthermore, the Council has recently adopted the Section 2 Local Plan which provides a reservoir of supply. It is therefore working positively to address the shortfall, which is not extensive (at around 4.29-4.86 years). Nevertheless, 83 homes would make a notable dent in the short fall, which is between 138 and 701 homes. The Framework also seeks to significantly boost the supply of housing, especially in built up areas. For these reasons, I afford housing delivery significant weight as a benefit.

⁴ Principally the Witness Statement by Nigel Newton Taylor

⁵ Housing Delivery and Housing Land Supply by Jeff Richards

42. The appeal scheme would make provision for 13 affordable homes (secured through the planning obligation), and these could be delivered quickly and at a point in time when there is an acute shortfall as demonstrated by the appellants' submissions⁶ and agreed in the Statement of Common Ground. The appellants suggest this is a matter that should carry substantial weight and point to a recent appeal from 2023 relating to a site in Witham where an Inspector came to that conclusion. However, that appeal was for a scheme of up to 230 homes with 30% affordable housing provision. The quantum of affordable housing in that case would be much greater than that being proposed in the scheme before me. The delivery of 13 homes would be a modest but very welcome addition that carries significant weight as a benefit.
43. The appellants' submissions⁷ indicate that around 85 full time equivalent jobs would be created by the proposal in Essex at the operational phase with £4.2 million gross value added annually to the economy. Future residents could also have an annual spend of around £1million on retail, leisure goods and services. Most of this spending would be in the local area and an additional £890,000 would be spent per annum on Council Tax. The construction phase would also see around £21.7 million in investment, which would support around 85 full time jobs over the 18-month construction period. I have no reason to doubt any of these figures. As a result, the economic benefits carry significant weight when viewed through the prism of Paragraph 81 of the Framework.
44. The retail units would also provide a useful local facility and the open space could be used by existing as well as future residents. The scheme would also provide biodiversity enhancements and contribute towards allotments and sports infrastructure⁸. These matters add further moderate weight in favour of the scheme given the direction provided by the Framework⁹. The benefits of the proposal are collectively of a high order.
45. During the hearing the Council made the point that the principle of development is supported given the location in Witham and therefore many of the benefits listed above could be secured by an alternative scheme with a better-quality design. In this respect, it is notable that the appellants have not undertaken a design review, referred in detail to the National Design Guide or used design tools such as Building for a Healthy Life, which could have otherwise aided the design process and an assessment of the scheme's quality.
46. The scheme has been through several design iterations with the first (in October 2019) placing the care home in a larger plot with an attractive design that could have resulted in a good relationship with Drury Road. It nevertheless had other limitations given the number of bungalows that would have been squeezed in. The subsequent scheme presented in May/June 2020 also sought to squeeze in flats behind the retail units. The June 2020 scheme had an overall coherence with the apartments being a feature building and the houses behind arranged in a logical structure. Nevertheless, the retail units would have been hard up to the pedestrian link without intervening landscaping and a small cul-de-sac at the south of the site would not have responded appropriately to any of the surrounding streets.

⁶ Affordable Housing Hearing Statement of James Stacey BA (Hons) Dip TP MRTPI

⁷ Socio Economic Benefits by Turley Economics

⁸ The health and education contributions would mitigate the effect on infrastructure and would be a neutral matter

⁹ Including Paragraphs 93, 98 and 180

47. Accordingly, the numerous iterations demonstrate there would be challenges in successfully accommodating the quantum of development proposed. Therefore, a reduction may be necessary to ensure the proposal is well designed. However, I share the view of the Council that it's unlikely an alternative scheme would need to be notably reduced in size. Indeed, the June 2020 scheme seemed promising. Consequently, it is unlikely that the same benefits of the appeal scheme would be delivered in an alternative design, but most probably would.
48. The Framework states that the creation of high quality, beautiful and sustainable places is fundamental to what the planning and development process should achieve. It goes on to explain that good design is a key aspect of sustainable development and creates better places, referring to strong neighbourhood centres and active street frontages in particular. It also states that developments should add to the overall quality of a place and be visually attractive. As a result, the Framework states that developments which are not well designed should be refused. These design policies¹⁰ are not referred to in Footnote 7 of the Framework and therefore cannot disapply the tilted balance. However, they are nevertheless very important objectives of the Framework. Added to this, and with reference to living conditions, the Framework states that developments should promote high standards of well-being and amenity for future users.
49. In conclusion, given the strong steer provided by the Framework in respect of design quality and residential amenity, and the likely opportunity to redesign the scheme in a way that would secure most of the benefits outlined, I find that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. As a result, the application of Policy SP1 of the Section 1 Local Plan, which incorporates the 'tilted balance' in the Framework, does not indicate the proposal should be permitted.

Other Matters

50. As the appeal has been dismissed, the proposal will not have an impact on the integrity of the Essex Coast sites and therefore an appropriate assessment¹¹ is unnecessary. I have carefully considered the comments of interested parties and note the general support for the proposal, especially the care home. I have however come to the findings I have for the reasons given.

Conclusion

51. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Graham Chamberlain
INSPECTOR

¹⁰ Including Paragraphs 92, 126, 130, 131 and 134

¹¹ See Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended).

APPEARANCES

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INTERESTED PARTIES

Darren Blake
Angela Kilmartin
Katherine Eades

Oakwater Projects
Local resident
Local resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- Revised list of suggested conditions
- Completed planning obligation
- Extracts from the Essex Design Guide, 2005 and 2018 versions