



---

# Appeal Decision

Hearing held on 23-24 April 2024

Accompanied site visit made on 24 April 2024

**by J Bowyer BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> June 2024**

---

**Appeal Ref: APP/Z1510/W/24/3338229**

**Land South of Springfields and North of the Flich Way, Braintree, Essex**

- 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 First Oak Partnership Ltd against the decision of Braintree District Council.
  - The application Ref is 23/02722/OUT.
  - The development proposed is described as 'outline application for the erection of 74 affordable residential dwellings with all matters reserved except access'.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal relates to an application for outline planning permission. Approval is sought for means of access to the site. Matters relating to appearance, landscaping, layout and scale are reserved for future consideration, although a number of parameter plans are submitted for determination and these have informed my assessment of the proposal.
3. The submission also includes illustrative plans, including a site layout and landscape masterplan. While these plans show one potential way that the site could be developed, they are not submitted for approval and there could be alternative ways to bring forward a scheme within the extent indicated by the parameter plans as part of a reserved matters ('RM') submission. I have therefore treated details apart from those relating to access as illustrative.
4. Prior to the Hearing, the appellant submitted a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) dated 28 March 2024 ('the s106'). The Council confirmed that this would address its third reason for refusal in respect of provision for affordable housing, infrastructure and mitigation for effects on European sites. The obligations and undertakings within the s106 were discussed at the Hearing, and I have had regard to the s106 in determining the appeal.
5. An interested party made representations during the Hearing referring to the Flich Way, which runs adjacent to the site, as a non designated heritage asset ('NDHA'). This had not been previously raised or considered in the written evidence and the main parties were not in a position to respond during the Hearing. I therefore agreed with the main parties that comments could be submitted in writing. I duly received comments from each main party which I

have taken into account in my decision. The Hearing was subsequently closed in writing on 8 May 2024.

6. I undertook an unaccompanied site visit of the area surrounding the appeal site on 23 April 2024 during an adjournment of the Hearing, and an accompanied visit to the site itself on 24 April 2024.

### **Main Issues**

7. The main issues are:
  - i) whether or not the proposal would be in a suitable location having regard to the spatial strategy and its location in the countryside;
  - ii) the effect of the proposal on the character and appearance of the area;
  - iii) whether or not living conditions for future occupiers of the site would be acceptable in respect of privacy, outlook and the provision of amenity space;
  - iv) whether or not the proposal would make adequate provision for parking; and
  - v) whether or not the Council can demonstrate a five year supply of deliverable housing sites.

### **Reasons**

#### *Suitable Location*

8. The Braintree District Local Plan 2013-2033 ('the LP') comprises the North Essex Authorities' Shared Strategic Section 1 Plan (adopted 2021) ('the S1LP') and the Section 2 Plan (adopted 2022) ('the S2LP').
9. Policy SP 3 of the S1LP provides the Spatial Strategy for North Essex, and sets out that existing settlements will be the principal focus for additional growth, with development accommodated within or adjoining settlements according to their scale, sustainability and existing role. However, the S1LP has to be read together with the S2LP which includes a district-specific spatial strategy and other policies that relate specifically to the Braintree District area. The overarching spatial strategy as outlined in both the S1LP and S2LP seeks to concentrate development on locations including the town of Braintree, but the S1LP additionally identifies development boundaries. These are noted as marking the distinction between a built up area and its surrounding countryside and providing a guide to where new growth should be directed. Policy LPP 1 of the S2LP further stipulates that development outside of development boundaries will, amongst other things, be confined to uses appropriate to the countryside.
10. The appeal proposes 74 dwellings on a broadly triangular field on the edge of Braintree. While Braintree is identified as a focus for development in the LP, the dwellings would be located within countryside outside of the identified Braintree development boundary. As the appellant accepts, the development would not comprise a use appropriate to the countryside, and the proposal in this location would therefore conflict with Policy LPP 1 of the S2LP.
11. Given the conflict with Policy LPP 1 of the S2LP, the development would be contrary to the overall spatial strategy for growth. As a consequence, I conclude that the proposal would not be in a suitable location.

### *Character and Appearance*

12. The main part of the appeal site comprises an agricultural field with trees and hedgerows in a belt of varying depth around the boundaries. To the north east of the site, the belt merges with a corridor of mature vegetation around the River Brain/Pods Brook which sets the site apart from development within Braintree to the east. Running along the south of the site is the Flitch Way, a cycling and walking trail following the line of the former Braintree to Bishops Stortford railway, beyond which are open agricultural fields.
13. Part of the north west boundary of the site adjoins dwellings on Springfields which are part of the Sun Lido estate; a fairly high density development of predominantly two-storey dwellings of similar styles. The rest of this boundary adjoins an open parcel known as 'Gilda Terrace' where outline planning permission has been granted on appeal for development including up to 120 dwellings<sup>1</sup>. An access route from Rayne Road running through the Gilda Terrace site is also included within the appeal site area.
14. Access is the only matter forming part of the development applied for as part of the outline application, and the illustrative plans that have been submitted including the site layout and landscape masterplan are for illustrative purposes only. Nevertheless, I need to be satisfied that an acceptable scheme to accommodate the quantum of development proposed could be devised at reserved matters stage, taking into account various matters including design, parking and effects on landscape character and appearance.
15. In considering landscape effects, the main parties agree that the appeal site is not a 'valued landscape' within the terms of the Framework and I have no firm reason to find differently. Nevertheless, it is an open and undeveloped field within the countryside and the Framework sets out that planning decisions should contribute to and enhance the natural and local environment including by recognising the intrinsic character and beauty of the countryside.
16. The Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment 2006 identifies that the site is part of Landscape Character Area ('LCA') A12 - Pods Brook River Valley. The Assessment notes that Pods Brook lies in a narrow shallow valley, and highlights sensitive key characteristics and landscape elements of LCA A12 including a complex pattern of small pastoral fields and deciduous woodland plantations along the valley floor with hedgerows with hedgerow trees delineating field boundaries. At the edge of Braintree, woodland cover is reduced and the valley becomes more open with larger arable fields that slope down to meet at the Brook.
17. LCA A12 cuts into LCA B13 - Rayne Farmland Plateau. LCA B13 is generally characterised by gently rolling hills with wide flat tops and valleys covered by predominantly medium to large arable fields interspersed with small grass paddocks and pasture.
18. The Council has not challenged the appellant's assessment within their Landscape and Visual Impact Appraisal ('LVIA') of medium landscape value, susceptibility to change and sensitivity for each of LCA A12 and B13 and I concur that this would be reasonable.

---

<sup>1</sup> Appeal ref APP/Z1510/W/20/3265895

19. As an agricultural field with tree and hedgerow boundaries which slopes down towards Pods Brook, the appeal site exhibits some key characteristics of LCA A12. It makes a moderate and localised contribution to the LCA, and I agree with the appellants that the site has a medium baseline landscape value.
20. In considering the landscape susceptibility and sensitivity of the site, the appellants highlight nearby development in Braintree as an urbanising influence. However, in contrast to Gilda Terrace where housing along two sides of the site was noted in the appeal decision, development adjoins only a small part of one boundary of the appeal site. Based on my observations, there is also greater screening of the Sun Lido development by vegetation in views from the appeal site than is present in views from Gilda Terrace. While this screening is not complete, it serves to set the housing development apart from the appeal site both physically and visually, reducing the extent of intrusion. The River Brain/Pods Brook corridor further provides for clear distinction to the development beyond to the east of the site. Despite some traffic and other noise that was audible at the site during my visit, the representative landscape features together with the openness of the site confer a pleasant, generally rural quality. While it is a parcel on the edge of LCA A12 and close to residential development, I find that the site is clearly appreciated as part of the rural setting around the Braintree settlement edge. This includes from the Fritch Way, where the site makes an important contribution to providing an open buffer between development within the built-up area and the Fritch Way and more open countryside beyond.
21. The site may lack a significant sense of tranquillity which is a feature of the wider A12 LCA. Even so, I find given these factors that the site's susceptibility to change is more reasonably assessed as medium rather than the medium/low suggested by the appellants, and its sensitivity to change would also be medium.
22. In reaching this view, I note that the extent of the built up area in the vicinity would be increased with development on the Gilda Terrace site. However, the approved scheme shows a generous swathe of open space along the boundaries with the appeal site and the Fritch Way. This would significantly temper the effect of the Gilda Terrace development on how the appeal site is experienced. The adjacent development does not alter my overall assessment of the landscape value, sensitivity or susceptibility to change of the appeal site.
23. The Council has not raised an objection to the point of access for the development which would be taken from Rayne Road via a road that would serve the Gilda Terrace development. Within the main part of the site, access roads would then be required to serve the proposed dwellings and the illustrative layout shows a roughly triangular arrangement of roads with housing fronting onto the streets. The illustrative plans show streets within the main part of the site to be narrower than are indicated on the adjacent Gilda Terrace parcel. However, boundary vegetation around the site and intervening open space would provide for both physical and visual distinction between the respective developments such that the difference would not be jarring and would not in itself be objectionable.
24. The number of streets within the site is also relatively small and I can see no reason that differences in the scale and appearance of buildings sufficient to provide for a sense of identity and legibility could not be achieved as part of a RM submission.

25. That said, the streets shown on the illustrative plans are all of fairly narrow width. This has implications for the potential to incorporate trees sufficient to provide for 'tree-lined' streets which the National Planning Policy Framework ('the Framework') seeks as part of development. The Council has also raised concerns including in respect of the proximity of dwellings to retained trees around the site boundaries, particularly to allow for their future growth; the visual dominance of parking along some streets; and a lack of detail to show how changes in land levels on the site would be addressed. With reference to the development as it is shown on the illustrative plans, I share these concerns which I consider would result in detriment to the quality of the development, particularly when taken together. The arrangement of rear gardens adjoining open space along the River Brain/Pods Brook corridor would also be contrary to guidance offered by the National Model Design Code and would require careful treatment to provide privacy and security for occupiers while ensuring protection for trees and a sympathetic visual transition to the open space.
26. I recognise that layout, scale, appearance and landscaping are reserved matters. The illustrative plans do not represent the only way that the site could be developed, and individually, I consider that it may well be possible for changes or additional detail to come forward at RM stage to overcome the concerns. Indeed, I have noted the appellant's suggestions of potential ways that the illustrative scheme could be amended. However, it seems to me that changes to address many of the concerns identified would be likely to result in demands for additional space within the site. Such demands may be modest in isolation, but they could combine to result in a significant requirement within the scheme. Furthermore, while the appellant has drawn my attention to overprovision of amenity space against standards within the illustrative layout which could offer some flexibility to accommodate changes, adequate separation would still need to be maintained between dwellings to provide suitable privacy.
27. Given the cumulative range of concerns noted above and irrespective of the overall density of the scheme, I have some doubt from the evidence currently before me that it would be possible to devise a scheme at RM stage to satisfactorily accommodate the quantum of development applied for on the site while achieving a suitably high quality design that would assimilate well with its surroundings.
28. Even if that were not the case, the proposal would essentially transform the site to a housing development resulting in a significant and permanent change to its nature and character and the loss of the agricultural field which contributes to the landscape character of the area. Given the relatively small size of the site, the magnitude of the effect on the wider landscape would be minor. Having regard to the position of the site beyond LCA B13, I also agree with the main parties that landscape character effects on this LCA would be broadly neutral by year 15.
29. I acknowledge that the illustrative proposals suggest that the majority of trees and hedgerow around the site could be retained. However, the development would extend the edge of Braintree further into this part of LCA A12 along the valley close to Pods Brook. Although there would be a landscape buffer, it would also bring built form notably closer to the Flitch Way than both existing development and the permitted development on the Gilda Terrace site. As a

- consequence, the open setting around this part of Braintree and the buffer to wider countryside to the south of the Flitch Way would be markedly reduced.
30. While the landscape buffer may be multifunctional, it would be smaller than the potential area of residential development and the illustrative proposals further suggest that the buffer would itself include structures such as drainage features, play, albeit natural, seating and pathways. In my judgement, there would not be an enhancement to the balance of landscape elements on the site overall. Instead, I consider there would be a discernible loss of characteristic landscape features and urbanisation of the site that would not be mitigated by retained or proposed new planting. I cannot therefore agree with the appellant's contention that the landscape effects of the proposal on the site or LCA A12 would be neutral or beneficial.
  31. Irrespective of the detailed appearance and materials of the buildings and potential for new planting, I find given these factors that the effect on the landscape character of the site would be negative. I agree with the main parties that this effect would be moderate/major at year 1, reducing to moderate at year 15 as planting establishes. I further find that the effect on LCA A12 would also be negative, albeit that I accept the effect would be localised and of minor magnitude.
  32. Turning to visual effects, it is common ground between the main parties that effects on most receptors would be minor and neutral by year 15. There is dispute however in respect of views from the Flitch Way.
  33. Based on my observations at my visit and the evidence before me, the Flitch Way is a well-used walking and cycling route, including for leisure. It travels through both built-up areas and more open countryside, and the transition between these areas is undoubtedly part of the experience of path users. However, views from the path into more rural areas provide an attractive sense of relief and I consider that they are a particularly important part of the special qualities and overall experience of the Flitch Way as a comparatively tranquil route extending out from the built-up area into the surrounding countryside.
  34. Looking north from the Flitch Way near to the appeal site, there are some views of buildings including at Sun Lido, but the separation distance and intervening vegetation significantly limits their prominence and I found this development to have only a very minor influence. There is development closer to the Flitch Way to the east of the site, but the intervening River Brain/Pods Brook vegetated corridor provides for distinct sense of separation. Looking south, there is some development visible around the A120, but this is quite some way in the distance. While the countryside around this part of the Flitch Way is not remote or unspoilt, it still has a pleasant rural quality. Furthermore, the fact that open views towards the south are more extensive and accessible does not negate the value of the views towards the north and I consider that views to both sides of the path are important to the appreciation of the transition from town to countryside which is discernible on crossing the landscape corridor around the River Brain/Pods Brook.
  35. In this context, I find that the open appeal site makes a valuable positive contribution to the overall experience of this part of the Flitch Way. I therefore agree with the Council that the sensitivity of views from the Flitch Way here is high rather than medium/high as the appellant argued.

36. I have already noted that the proposal would bring housing much closer to this section of the Flitch Way than both the existing development to the north and the permitted development on the Gilda Terrace site where a landscape buffer approximately twice the depth of the shallowest part of the buffer suggested on the appeal site is indicated. I acknowledge that development would not extend along the whole length of the site beside the Flitch Way and that there would be greater separation to buildings towards either end of the buffer. Even so, I find that there would be a pronounced and unmistakable increase in the proximity of development to this part of the Flitch Way.
37. Furthermore, much of the Gilda Terrace site is at a higher land level than the adjacent section of the Flitch Way, with a vegetated embankment that considerably restricts opportunities for views from the path, helping to reduce the likely visual impact of the development there. The appeal site however is generally at a similar or lower level to the Flitch Way which would significantly increase opportunities for views of development. Having regard to the greater exposure of the appeal site in combination with the closer proximity of buildings to the Flitch Way, there would be a much greater perception of the presence of development on the appeal site in contrast to at Gilda Terrace. The effects of the schemes are not therefore directly comparable and I consider that the proposal would present a much stronger urbanising influence to the Flitch Way than other nearby development west of the River Brain/Pods Brook.
38. The visual effect would be localised to a fairly short section of the Flitch Way near to the site. Existing vegetation also provides for some filtering of views and this could be increased with new planting as part of the proposal. However, the provision of drainage features within the landscape buffer would be likely to constrain areas of potential planting and some views of the development would remain.
39. In these views, the proposal would result in notable and unwelcome encroachment of urbanising development to the countryside setting around this part of Braintree and there would be a marked reduction in the rural character of this section of the Flitch Way that would not be mitigated by the potential for landscaping. Having regard to the high sensitivity of views from the Flitch Way, I find that the proposal would detract significantly from users' experience of this part of the Flitch Way route.
40. The harm that I have identified to landscape character would be predominantly focused on the site itself with only a minor adverse effect on LCA A12. Visual effects would also be localised. Nevertheless, there would be harmful erosion of the rural setting to this part of Braintree and I consider that the proposal would be conspicuous and obtrusive to users of the Flitch Way, with marked detriment to the attractiveness of the route as it travels beyond the built-up area into the surrounding countryside. Overall, I find that the proposal would cause significant harm to landscape character and appearance.
41. I recognise that the appeal site is not part of the green buffer around Braintree designated under Policy LPP 68 of the S2LP. However, while the designation of green buffers may have been informed by evidence including assessments considering landscape capacity, the supporting text to Policy LPP 68 explains that they are identified in order to prevent coalescence between neighbouring towns and villages. In this respect, the proposal would not bring development closer to Rayne than existing buildings along Rayne Road or the development

permitted on the Gilda Terrace site. As a result, I am satisfied that the gap between Rayne and Braintree would not be meaningfully narrowed so as to cause coalescence. Nevertheless, a lack of harm in this regard is not a positive factor that would weigh in favour of the proposal, and it does not offset the landscape harm that I have identified.

42. Drawing matters together, I acknowledge that the illustrative plans submitted with the appeal are not fixed and show one potential way that development could be brought forward. However, I have some doubt from the evidence before me that 74 dwellings could be accommodated on the site while ensuring suitably high quality design that would assimilate well with its surroundings. The proposal would in any event result in significant harm to landscape character and appearance.
43. I appreciate that constraints on the site include the irregular shape and the need to ensure efficient use of land, but I nevertheless conclude for these reasons that there would be unacceptable harm to the character and appearance of the area. The proposal would conflict with requirements within Policy SP 7 of the S1LP and Policies LPP 35 and LPP 52 of the S2LP broadly for a high standard of design which reflects or enhances local distinctiveness, relates well to local character and makes appropriate provision for landscaping. It would also be contrary to Policies SP 3 of the S1LP and Policies LPP 1 and LPP 67 of the S2LP insofar as they broadly seek sympathetic development that integrates successfully into the local landscape, growth that conserves the setting of existing settlements and recognition and protection of the intrinsic character and beauty of the countryside.

#### *Living Conditions*

44. Policy SP 7 of the S1LP and Policies LPP 35 and LPP 52 of the S2LP include requirements broadly seeking a high standard of accommodation and amenity for future residents of development with regard to factors including overlooking, overbearing effects and provision of appropriate and usable amenity space.
45. The illustrative plans show a number of dwellings where the close proximity of neighbouring properties would result in awkwardly shaped amenity spaces, constrained outlook and potential for overlooking, all of which would detract from living conditions for occupiers of the dwellings. I acknowledge the illustrative status of these plans, but they suggest to me that accommodating the number of dwellings that are proposed on the site would be likely to result in at least some areas where relationships between buildings could well be tight such that providing adequate outlook and amenity spaces of satisfactory quality could be challenging.
46. That said, the details of the layout, scale, appearance and landscaping of the development which would largely determine living conditions experienced by future occupiers of the site are not before me at this outline stage and there is more than one way to develop the site. In this context, and noting also that the Council has not raised concerns about living conditions for the vast majority of the dwellings indicated on the illustrative plans, I find that the quality of living conditions for future occupiers of the site is not determinative in this case.

### *Parking*

47. Policy SP 7 of the S1LP includes a requirement for parking facilities to be well integrated as part of the overall design of development. Policy LPP 52 of the S2LP further includes a requirement that development should not have a detrimental impact on the safety of highways.
48. The Council accepts that the illustrative plans show provision of an adequate number of parking spaces, but is concerned that visitor spaces would be poorly distributed which could result in on-street parking, causing obstruction or detriment to highway safety. In particular, I note that relatively few visitor spaces are indicated along the southern street.
49. However, the shortfall suggested on the southern street would be very modest and distances to visitor parking elsewhere would not be long. Moreover, the illustrative plans are just that, and details of layout which would include the layout of parking are not before me at this outline stage. As I have noted in respect of living conditions, there is more than one way to develop the site and I find in this context that the arrangement of parking is not determinative in this case.

### *Housing Supply*

50. The appellant disputes the Council's claim that it can demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing ('a 5YHLS') which the Framework indicates would be the relevant requirement for the purposes of determining this appeal.
51. In calculating the 5YHLS position, both main parties have considered the period from 1 April 2023 to 31 March 2028, and agree a requirement for 4,367 dwellings. Against this, the Council considers there is a deliverable supply of 5,070 dwellings, or 5.8 years. The appellant considers that the deliverable supply should be taken as 3,710 dwellings, or 4.2 years.
52. The Framework glossary sets out that to be considered 'deliverable', sites for housing should, amongst other things, be achievable with a realistic prospect that housing will be delivered on the site within 5 years. It further identifies two categories of sites. Category a) sites are those which do not involve major development and have planning permission, and all sites with detailed planning permission. These should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years. Category b) includes sites with outline planning permission for major development which should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
53. Many of the elements of the deliverable housing supply claimed by the Council are agreed between the parties and would provide a total of 3,785 dwellings. However, the appellant disputes the inclusion of 10 sites with major outline permission (one of which includes an element of C2 bedspaces) and one further site which had a resolution to grant permission at the base date of the assessment. There is also dispute in respect of the application of a lapse rate,
54. Where specific sites are disputed, the appellant essentially argues that 'clear evidence that housing completions will begin', has not been provided so as to comply with the Framework definition of 'deliverable'. The Framework does not further define what is meant by 'clear evidence', although the Planning Practice

Guidance gives some examples. It indicates that evidence to demonstrate deliverability may include current planning status, firm progress being made towards the submission of an application, firm progress with site assessment work or clear relevant information about site viability, ownership constraints or infrastructure provision. However, this is not a closed list. Furthermore, the list of sites in category b) of the Framework definition of deliverable includes sites with permission in principle, sites allocated in the development plan or sites identified on brownfield registers as well as sites with outline planning permission for major development. In this context, I do not consider the appellant's suggestion that sites with major outline permission which are yet to have an RM submission made for housing will generally fail to pass the clear evidence test to be compelling as a point of principle.

55. However, and having regard to the various appeal decisions and court judgments referred to by the main parties where deliverability has been considered, I do agree with the appellant that the expectation within the Framework for 'clear evidence' requires something cogent as opposed to simply mere assertions.
56. I also agree with the Council that the reference in the Framework definition of deliverable to 'clear evidence that housing completions will begin on site within five years' should be read in the context of the preceding part of the definition. This refers to a 'realistic prospect' that housing will be delivered on the site within 5 years', and the Council argues that sites should be capable of delivering completions, but that there is no requirement for certainty or probability. To my mind, whether there is a realistic prospect of delivery is a matter of judgement, albeit one to be reached on the basis of an assessment of factors that may influence delivery informed by clear evidence. My assessment of the disputed sites below has been made against this context.
57. I have also had regard to a recent appeal decision on a site at Land to the Rear of 231 Witham Road, Black Notley where the deliverability of many of the disputed sites in this case was considered ('the Black Notley Appeal')<sup>2</sup>. However, that appeal was determined under the written representations procedure and in considering housing supply, the decision records that the only information provided by the Council comprises the notes attached to its Housing Trajectory. I have had regard to the assessments in the Black Notley Appeal, but I have reached my own conclusions on the basis of the evidence before me. This includes the discussion during the Hearing as well as additional written statements from the main parties considering housing supply matters which were not before the Black Notley Inspector.

#### *Disputed Sites*

##### *Phase 4 Land North East of Rectory Lane, Rivenhall (210 dwellings)*

58. This site relates to the fourth phase of development on a wider site which has previously delivered 443 homes in phases 1 to 3. The fourth phase has outline permission for up to 230 dwellings, although only 210 are included in the Council's claimed deliverable supply.
59. In March 2023, two parallel RM applications, each for 225 dwellings were submitted. The Council confirmed at the Hearing that necessary information

---

<sup>2</sup> Appeal ref APP/Z1510/W/23/3325050

had now been received to validate the applications which differ in respect of the inclusion of a bus gate. The applications for RM follow the approval of design codes required by conditions on the outline permission and the Council advises that they have been brought forward following a Planning Performance Agreement ('PPA') with pre application meetings and Councillor engagement. I do not have written details of the pre application discussions and I note that there has been some slippage from the timetable envisaged in the PPA which suggested presentation to the Planning Committee in April 2024. However, the Council explained that this delay reflected work to address concerns that had been raised by Councillors with the proposal and I consider the engagement carried out to date could reasonably be expected to minimise likelihood of further significant delay.

60. The appellant highlights that the site is not in the ownership of a developer, but disposal of the site would be in the business interests of the site promoter and while the transfer of the site is therefore an additional step to complete, I do not consider this would necessarily be a barrier to delivery. Furthermore, the Council advises that the landowner in this case is the same as for phases 1, 2, and 3 where there is a proven record of delivery. The rates of delivery anticipated by the Council would also be in line with what has been achieved on the wider site, and given the existing relationships and experience on the site, I see no reason that prompt discharge of conditions to enable delivery starting in 2025/26 would be unrealistic.
61. Taking these factors together, I am satisfied overall that there is clear evidence to support the inclusion of the 210 dwellings anticipated by the Council within the deliverable supply.

*Phase 5 South West Witham Growth Location (110 dwellings)*

62. This site relates to an outline permission for development including up to 750 dwellings. The Council has provided a copy of an email advising that the developer intended to submit a RM application for Phase 5 of this site in April 2024 although this had not been submitted by the date of the Hearing. The email alone would not constitute 'clear evidence'.
63. However, the Council refers to pre application discussions with the developer and as the Inspector in the Black Notley Appeal noted, there is a 'track record' of delivery here with Phases 3b and 4 under construction and partly completed. In my view, it would be reasonable to anticipate the developer would seek to continue delivery on the site without pausing construction, and there is no firm information before me to suggest there would be any particular impediment to achieving this. Furthermore, the rates of delivery assumed by the Council would not be significantly out of step with those achieved historically and which I have little reason to doubt could be realistically maintained.
64. In the Black Notley Appeal, the Inspector found that it was not evident that it would be realistic to suppose that all units will be delivered by 2028 and adopting a benevolent view included 55 dwellings in the supply. However, the Council points to the lead in time to Phase 3b/4 which was referenced by that Inspector as having been disrupted by the pandemic and an application for variation of conditions so as to be much longer than other phases. Given the information that is before me in this appeal including in respect of details of past progress on the site, I am satisfied that there is sufficiently clear and cogent evidence to show a realistic prospect of delivery by 2028 as assumed by

the Council. I therefore consider that inclusion of 110 dwellings from this site in the deliverable supply is adequately justified.

*Land at Woodend Farm, Witham (190 dwellings)*

65. This site relates to an outline permission for development including up to 400 dwellings. While the site may not yet be in their ownership, a series of applications to discharge conditions on the outline permission have been submitted by a developer and in some cases determined. An RM application for a section of spine road has also been determined and a further RM application for central open space is pending. Some of the applications have been pending for a fairly prolonged period since March and April 2023. However, the Council explained that staffing issues in landscaping had led to delays but that steps had been taken to address these issues and outstanding matters were now being actively progressed.
66. The Council also pointed to pre application discussions and a PPA that is to be negotiated for RM for housing. I do not have written detail of these, but taken together with the other submissions to date, which include a phasing plan, I consider that there is clear evidence of serious and meaningful work ongoing and firm progress being made to bring forward the development. While there may be a requirement for fairly significant highway works to support the development, the developer is in discussions with the Highway Authority and a s278 Agreement is being negotiated.
67. In my judgement, these factors demonstrate a realistic prospect that dwellings are capable of being delivered on the site within the relevant 5 year period. That said, the complexity of the site and need for submission of RM for housing as well as for significant highway works to be carried out mean that I consider the likelihood of completions from 2025/26 as assumed by the Council to be overly optimistic. Pushing delivery back by a year would be reasonable and would remove 65 dwellings from the supply. I therefore include 125 dwellings from the Woodend Farm site in my assessment.

*Land North of Maldon Road, Hatfield Peverel (110 dwellings)*

68. This site has outline permission for up to 110 dwellings. An RM application including details relating to discharge of some conditions has been made. However, I note that the application was made by the land promoter. For the reasons above, I consider the fact that the site may not yet be in the ownership of a developer should not necessarily preclude it from being considered deliverable. Nevertheless, any developer would be likely to operate according to their own requirements for development and it is unclear whether there has been developer input to the RM submission. I therefore have some doubt as to whether a developer would be likely to implement any resulting permission in the same form. Accordingly, I consider it uncertain at best that the RM, if approved, would directly result in housing completions, certainly within the timescales assumed by the Council. Nor is there other substantive information from the promoter, developer or any other party to corroborate the timescales as appropriately realistic here.
69. That said, I accept that site assessment work has undoubtedly been carried out to support the RM submission, and that this could inform any revised proposals. Given this work, I do not totally discount that there is a reasonable prospect of some housing completions within the 5 year period. However, I

consider it would be prudent to assume slippage from the Council's trajectory, delaying the first completions to 2026/27. This would result in a deliverable supply of 70 dwellings from the site.

*Land East of Broad Road, Straits Mill (140 dwellings)*

70. This site has outline permission for development including up to 1,000 dwellings. Design codes were part of the outline permission. A phasing scheme and landscape ecology management plan have since been approved, and reserved matters have been submitted for a section of the spine road. Nevertheless, there appears to be significant infrastructure and planning work that remains outstanding and the appellant highlights multiple ownerships and requirements such as a need for remediation of landfill and remodelling of ground levels which would add complexity.
71. The Council advises that the site is being marketed and that there is developer interest. However, there are no firm details before me to show that any developer, or indeed the applicant for the outline permission, is currently engaged in serious and meaningful work to bring forward detailed proposals that would allow for construction of dwellings to start. Moreover, while an overall phasing strategy may have been agreed, this does not establish when individual phases would be implemented and there is no other firm detail before me to indicate what timescales for delivery would be realistic. The trajectory assumed by the Council allows for a longer lead in time that averages indicated in the Lichfields 'Start to Finish' report ('the Lichfields Report'), but it is clear that delivery has already slipped from previously anticipated trajectories, including that considered reasonable by the Inspector in an appeal concerning land to the west of the A131 High Garrett<sup>3</sup>.
72. Work on site assessment would have been part of the outline and I note the submissions that have been made to date. However, only limited practical progress is evidenced and does not lead me to a different view than the Inspector in the Black Notley Appeal that what has been provided falls short of 'clear evidence' of deliverability. I consider that the inclusion of 140 dwellings from this site in the 5YHLS has not been justified and it should be removed.

*Land off Bournebridge Hill, Greensted Green (150 dwellings)*

73. This site has outline permission for up to 200 dwellings. The permission was subject to a planning obligation which essentially requires planning permission for cycle and pedestrian links to be in place before submission of RM. An application for the links was made but has been pending since April 2023. This is an extended period of time, but the Council explained that the delay was the result of issues with lighting which have required revisions to the scheme and that the decision will be delegated and is anticipated within a relatively short period. I have no firm reason to doubt this will be forthcoming.
74. However, while the Council advised that pre application discussions with a developer who is advanced in the purchase of the site have taken place and that a Planning Performance Agreement ('PPA') is being negotiated, the PPA is not yet in place and I have no written details of the pre application. Nor do I have clear details of any separate discussions that the Council suggests are ongoing with the Highway Authority and Lead Local Flood Authority. There may

---

<sup>3</sup> Appeal ref APP/Z1510/W/21/3278620

be an intention on the part of a developer to bring forward development, but I can therefore treat this as little more than assertion and the lack of detail means that it is difficult to form any firm view on the extent of progress.

75. Moreover, there is no information before me from any developer to indicate what timescales for delivery might be realistic. The delivery trajectory assumed by the Council would not be out of step with average rates and timescales indicated in the Lichfields Report, but these are averages and while I have no reason to doubt the general strength of the local housing market area, that alone is not compelling evidence that adherence to average timescales would be realistic to this specific site.
76. I appreciate that work on site assessment would have been part of the outline. However, I am not satisfied that there is adequately clear evidence of progress that has since been made to substantiate a realistic prospect of delivery within the 5 year period. Accordingly, I find that sufficient justification for the inclusion of this site in the 5YHLS has not been provided, and it should be removed.

*Land North of London Road, Kelvedon (140 dwellings and C2 bedspaces equivalent to 36 dwellings)*

77. This site has outline permission for development including up to 300 dwellings and a care home.
78. A proforma completed by the land promoter in July 2023 indicated that the site was being sold to a developer and that RM would be submitted by the end of 2023 with completions commencing in late 2024. However, no RM application or discharge of conditions applications have yet been submitted.
79. The Council advises that a request for pre application discussions has now been received and that RM are in preparation and will be accompanied by a PPA. It also refers to discussions with the highway and surface water drainage authorities. However, in the absence of firm details to substantiate any of this, I can treat it as little more than assertion and the lack of detail means that it is difficult to form any firm view on the extent of progress.
80. Moreover, there has already been slippage from the timescales that were suggested in the proforma completed in July 2023. While the site may be in a relatively strong housing market area, there is no other specific information before me to indicate what timescales for delivery could now be considered to be realistic here.
81. Site assessment work would have informed the outline permission, but there is little definite evidence indicating firm progress since that stage and I am not satisfied that there is tangible information to show that delivery within the 5 year period is a realistic prospect. In my judgement, sufficient justification for the inclusion of this site in the 5YHLS has not been provided, and it should be removed.

*Land West of Boars Tye Road, Silver End (94 dwellings)*

82. This site has outline permission for up to 94 dwellings. No RM application or discharge of conditions applications have yet been submitted.

83. The Council refers to an approach that has been made by a developer working on a bid for the site. However, in the absence of firm details, I can treat this as little more than assertion. Even if that were not the case, I cannot know if their bid will be successful. While there may be interest in the site, I have no substantive information to demonstrate meaningful progress in bringing forward development on the site. Irrespective of the strength of the local housing market, there is also no firm detail to corroborate likely timescales for progress as realistic according to the conditions of the specific site.

84. Notwithstanding work on site assessment that would have been part of the outline, I consider the information provided in respect of this site to fall short of clear evidence sufficient to establish a realistic prospect of delivery within the 5 year period. Accordingly, I find that sufficient justification for the inclusion of this site in the 5YHLS has not been provided, and it should be removed.

*Small Acres, Maldon Road (16 dwellings) and Land East of Braintree Road, Tye Green (35 dwellings)*

85. These permissions concern developments of relatively small scale and I have no firm reason to doubt their accessibility credentials or the strength of the local housing markets. Be that as it may and even if I were to accept the Council's view that the sites are not subject to constraints, there are no firm details before me indicating progress on either site since the grant of outline permission to bring development forward. In the absence of any such specific information, I do not find there to be sufficient clear evidence that housing completions are capable of beginning on these sites within five years to offer a realistic prospect of delivery within the relevant period. I have therefore discounted these sites.

*Land at Mount Hill, Halstead (54 dwellings)*

86. This site had a resolution to grant outline permission at the base date for the 5YHLS assessment. Outline permission has subsequently been granted.

87. A proforma completed by the land promoter in July 2023 indicated that the site was being sold to a developer/housebuilder and that RM were anticipated by the end of 2024, with housing completions estimated from 2026. However, this would depend on a successful RM application. Moreover, it is unclear if the site has been sold and while the proforma suggests there are no constraints on the site, there is no firm detail before me to indicate any serious and meaningful work that might be ongoing to bring forward RM. I can therefore treat the dates suggested on the proforma as speculative at best.

88. I acknowledge that this is a fairly small greenfield site and the Council's comments that it is a relatively strong housing market area. Nevertheless, the information provided does not in my view constitute clear evidence that there is a realistic prospect of delivery. I therefore consider the inclusion of the site in the 5YHLS to be premature and find that it should be removed.

*Lapse rate*

89. The appellant argues that a lapse rate of 15 dwellings per year (a total of 75 dwellings) should be applied to reflect the fact that some permissions may lapse where owners change their minds, neglect time limits, or constraints emerge. The suggested rate reflects a lapse rate that was included in the housing trajectory in the S2LP. Be that as it may, this trajectory serves a

different purpose and I am not persuaded that it should offer a standard or benchmark for the assessment of 5YHLS.

90. There may be some permissions that could lapse and so may not come forward. For the purposes of 5YHLS assessment however, the Framework sets out that sites which do not involve major development and have planning permission and all sites with detailed planning permission should be considered deliverable until the permission expires unless there is clear evidence that homes will not be delivered within five years. Furthermore, neither the Framework nor the Planning Practice Guidance refer to application of a general lapse rate in the assessment of 5YHLS.
91. The appellant suggested at the Hearing that it would not be realistic to look at every site with detailed permission or involving non-major development in detail. Nevertheless, in the absence of clear evidence that sites will not deliver within five years, I am not persuaded having regard to the definition of deliverable in the Framework that there is a compelling basis to discount these elements of supply through application of a lapse rate. Nor do I consider it would be reasonable to apply a general lapse rate to sites which have been specifically assessed and found to be deliverable; either by the main parties where there is no dispute or in my assessment above.
92. I further note that the Council's evidence indicates that levels of supply from windfall sites are much higher than has been assumed in its 5YHLS assessment. The appellant has not offered substantive challenge to the level of additional supply indicated which would exceed the suggested lapse rate by some way. It therefore seems to me that this would in reality at least offset the potential effect on the overall housing supply position of any permissions that did lapse.
93. I therefore consider there are no persuasive grounds to apply a lapse rate in this case.

#### *Housing Land Supply Conclusion*

94. On the basis of my assessment above, I find that there is sufficient clear evidence to justify the inclusion within the deliverable supply of a total of 515 dwellings from the disputed sites at Phase 4 Land North East of Rectory Lane, Rivenhall; Phase 5 South West Witham Growth Location; Land at Woodend Farm, Witham; and Land North of Maldon Road, Hatfield Peverel. It may be that other disputed sites could also come forward, but I consider the information provided currently on these sites to fall short of clear evidence that there is a reasonable prospect of delivery within the 5 year period.
95. Adding the 515 dwellings that I have found deliverable from the disputed sites to the 3,785 dwellings from sources that the main parties agree would be deliverable results in a total deliverable supply of 4,300 dwellings. I have further found that there are no persuasive grounds to apply a generic lapse rate in this case. I therefore consider the deliverable supply to be 4,300 dwellings. This is below the requirement for 4,367 dwellings and results in a 4.9 year supply.
96. At 67 dwellings, the shortfall would be very slight, but I conclude that the Council has not demonstrated a five year supply of deliverable housing sites.

## Other Matters

97. The Flitch Way follows the route of a former railway line between Braintree and Bishops Stortford which was opened by the Great Eastern Railway in 1869. The track is no longer present, but its linear form remains clear and it has a visible presence as a routeway connecting the towns. From the information before me, I agree with the main parties that the Flitch Way would comprise a NDHA. I consider that much of its significance derives from its intrinsic historic and archaeological interest as a former railway line, informing an understanding of the economic and social history of the area.
98. In terms of its setting, the appellant comments that the route of the railway line was chosen primarily for practical reasons rather than any aesthetic connection with its surroundings. I further note that the setting in the vicinity of the appeal site has evolved since the railway line was built. Be that as it may, the passage of the route through rural surroundings between built-up areas contributes to the understanding of its historic context and function in providing a connection between Braintree and Bishops Stortford. Insofar as it relates to this appeal, I therefore find that the rural setting to the NDHA does make some contribution to its significance.
99. I have already found under the second main issue that the proposal would result in encroachment of urbanising development to the countryside. As a consequence, the rural setting of this part of the Flitch Way would be eroded. However, I consider that the resulting harm to the significance of the NDHA would be very limited given that only a part of the Flitch Way's overall significance is derived from its setting and that the appeal site is only a very small part of this setting.
100. Noting that the proposal would have some effect on the significance of the Flitch Way as a NDHA, the Framework advises that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. I return to this matter in my planning balance below.
101. From the information before me, the Blackwater Estuary Special Protection Area ('SPA') and Ramsar site and the Essex Estuaries Special Area of Conservation ('SAC') are vulnerable to the effects of recreation. The appeal site is located within the area from which most visitors to these sites are identified as originating from and the development could therefore result in additional visitors, increasing recreational pressure. This pressure, particularly when taken in combination with other plans and projects, could lead to an adverse effect on the integrity of the sites. In order to mitigate potential recreational effects of development, the s106 includes a financial contribution in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy ('the RAMS') towards a programme of strategic mitigation measures. The Council is satisfied that the s106 would ensure adequate mitigation such that the integrity of the SPA and Ramsar and SAC sites would not be adversely affected and I have no firm reason to find differently.
102. Had I found the proposal to be otherwise acceptable, I would need to formally consider the effect of the proposal on the integrity of these sites and the potential for mitigation within the framework of an Appropriate Assessment. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further as it could not be determinative.

103. I have had regard to representations made by interested parties which raise additional concerns including regarding traffic levels, pressure on local infrastructure and effects on biodiversity and neighbouring living conditions. However, none of the matters raised alter my conclusions on the main issues or overall planning balance.

### **Planning Obligation**

104. I have considered the obligations within the submitted s106 in light of tests for obligations outlined at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ('the CIL Regulations'). These tests require that obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

105. The s106 provides that all of the proposed dwellings would be affordable and requires a scheme to be submitted which would, amongst other things, provide for 15 affordable rent and 59 shared ownership dwellings. This would exceed the requirement that would apply under the terms of Policy LPP31 of the S2LP. However, the description of development refers to 74 affordable dwellings and the provision of 100% affordable housing is one of the considerations in favour of the proposal advanced by the appellant to outweigh conflict with the development plan. I have given this weight as a benefit of the proposal in the planning balance and I therefore consider that the stipulated provisions relating to affordable housing would be necessary to make the development acceptable in planning terms. I am also satisfied that these obligations would be directly related to the development, and fairly and reasonably related in scale and kind to the development.

106. Obligations relating to the RAMS contribution would be necessary to mitigate effects of the proposal on the Blackwater Estuary SPA and Ramsar site and the Essex Estuaries SAC. Obligations relating to provision and management of open space, amenity space and play areas within the site; and links between the site and the Flitch Way and Footpath 108 would be necessary to support sustainable travel choices, address requirements within the development plan and to properly secure the proposals detailed in the submitted parameter plans. Obligations relating to refuse collection would be necessary to ensure suitable arrangements were in place to meet needs of future occupiers. Further obligations would provide for financial contributions towards healthcare, outdoor sport, allotments, education including early years and childcare, libraries, highway improvements and improvements along the Flitch Way as well as monitoring. The CIL Statement of Compliance provided by the Council, representations by Essex County Council and Mid and South Essex NHS and the explanation given by the Council at the Hearing offer further explanation and justification for the contributions sought, detailing why they are necessary as a result of the development and how they would be spent.

107. With regard to the evidence provided, I consider that all of these obligations would be required to address the impacts of the development, and I am satisfied that they would in each case be necessary to make the development acceptable in planning terms, directly related to the development proposed and fairly and reasonably related in scale and kind to it.

108. I find that each of the obligations in the s106 would comply with the tests at Regulation 122(2) of the CIL Regulations which are reflected in the Framework and can be given weight. I have therefore taken them into account.

### **Benefits of the Proposal**

109. Having regard to the imperative outlined in the Framework to significantly boost the supply of housing and my findings in this case that there is a current shortfall in housing supply, the provision of 74 dwellings on the site is an important benefit.

110. However, while I have found that the Council is not able to demonstrate a 5YHLS, the shortfall is very slight. Furthermore, the LP is seeking to deliver housing 10% in excess of the level of need and although the appellant has contested the deliverability of elements of the Council's identified housing supply in the short-term, there is no compelling evidence before me suggesting that overall housing delivery across the plan period would fall short of what is expected. Indeed, the Council's evidence shows a significant upturn in delivery alongside progress on the S2LP with housing completions in the last few years exceeding targets by a healthy margin. This is borne out by the results of the Housing Delivery Test which show recent delivery has been significantly above requirements.

111. Even if I were to have found the housing supply position to be as low as the 4.2 years argued by the appellant, it seems to me having regard to this context that there would be a strong possibility of the position improving in the short-term. Furthermore, as the Black Notley Appeal Inspector noted, the Council will not need to show a five-year housing land supply for applications made after the publication of the revised Framework on 19 December 2023.

112. I consider these to be moderating factors so that overall, I afford significant weight to the benefit of housing delivery.

113. The proposed dwellings would also contribute to the supply of affordable housing. The evidence before me shows that delivery of affordable housing over the LP period has been some way below the level of identified need and the appellant further highlights Housing Register data suggesting a significant number of households in need of affordable housing. Rates of affordable housing delivery have increased in recent years since the S2LP was found sound and the Council referred at the Hearing to preliminary figures indicating delivery of around twice the level of annual need in 2023/24. Even so, there would remain a cumulative shortfall in provision against targets since the start of the plan period, albeit fairly modest and reducing.

114. The provision of 100% affordable housing on the site would be significantly above what would be required by the LP and even if future development on allocated sites meets policy requirements as the Council anticipates, this provision would contribute to addressing the historic shortfall. I therefore consider the provision of affordable housing to be an important benefit of the proposal. However, I note that a scheme proposing 100% affordable dwellings without grant funding would be unusual. The appellant advised that discussions with the landowners have been on the basis of a 100% affordable scheme and I would reasonably expect this to influence land value. The signatories to the s106 in this case also include a Registered Provider and I have no firm reason to doubt their commitment to the scheme. Be that as it may, the Council's

viability consultant comments that their experience is that the price a Registered Provider is able to pay for a shared ownership dwelling will usually cover no more than build costs, and offers for affordable rent properties often will not cover the full build costs. Such terms would not cover any land value and in the absence of substantive evidence to demonstrate viability, raise some question in my mind over realistic prospects for delivery. Balancing these factors, I afford significant weight to the benefit of affordable housing.

115. There would be economic and social benefits associated with the proposal, both during construction as well as spending and support for local services by future occupiers. I give these benefits moderate weight noting that they would be fairly limited on account of the scale of the development and that employment opportunities would further be largely temporary during construction.
116. The proposal includes a biodiversity net gain of at least 10%. The appellant suggested that this would attract limited weight, but I afford moderate weight given that legislative requirement for gains at this level would not apply to the appeal scheme. Conversely, I acknowledge the appellant's intention for landscaping on the site to be multifunctional, but landscaping is a reserved matter and so full details of provision are currently unclear. Moreover, the landscaping buffer to the Flitch Way would in large part be required to mitigate the effects of the development. I therefore give limited weight to landscaping as a benefit.
117. Through the s106, there would be financial contributions towards social and physical infrastructure. These contributions would be necessary to mitigate the effects of the development proposed. Insofar as they could support improvements that would be available to the existing and future community locally there would be some benefit, but I consider this would be minor and carries limited weight.
118. Both main parties give moderate weight to location and accessibility of the proposal and I concur with this assessment. However, the connection to the Flitch Way supporting opportunities for walking and cycling is in my view part of the accessibility of the site and I am not persuaded that promoting active travel should attract weight as a separate benefit.

### **Planning Balance**

119. I have identified that there would be harm to the significance of the Flitch Way as a NDHA, although I have found that this would be very limited. I further note the Council does not consider that harm to the NDHA would have been so significant as to constitute a reason for refusal and has not identified conflict with the development plan in this respect. Taking a balanced judgement, I consider that the range of benefits of the proposal noted above would clearly outweigh the very limited harm that would be caused to the significance of the Flitch Way as a NDHA.
120. However, I have also found that the proposal would be contrary to the overall spatial strategy for growth so that it would not be in a suitable location and there would be conflict with Policy LPP 1 of the S2LP. The conflict with the planned strategy for growth weighs significantly against the appeal.
121. I have identified concerns about living conditions for future occupiers of the site and the distribution of parking indicated within the submission. It is open to the

appellant to take on board these concerns as part of any subsequent proposal, but these matters have not been determinative given the illustrative status of the plans. However, I have found that there would be unacceptable harm to the character and appearance of the area. While this harm would be localised, the proposal would detract notably from the experience of receptors using the Flitch Way in particular and I afford it significant weight.

122. Overall, I have identified conflict with a number of policies of the LP and given the range and importance of the matters raised, I consider that the proposal would conflict with the development plan when it is read as a whole.
123. Notwithstanding that the shortfall is marginal, my finding that the Council is unable to demonstrate a 5YHLS means that paragraph 11d of the Framework is relevant. In this case, 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.
124. The 5YHLS position also indicates that the spatial strategy and development boundaries under S2LP Policy LPP 1 are not meeting current housing requirements. However, for the reasons above, this is likely to be a short-term situation. There is also no argument before me that the spatial strategy would otherwise be inconsistent with the Framework which sets out that the planning system should be genuinely plan-led. In this context, the location of the proposal contrary to the spatial strategy would still weigh against the development.
125. Moreover, the proposal would be contrary to the Framework insofar as it seeks, amongst other things, recognition of the intrinsic character and beauty of the countryside and developments that function well and add to the overall quality of the area and that are visually attractive and are sympathetic to local character including the surrounding built environment and landscape setting. I consider that these adverse effects of the proposal in these respects would be considerable.
126. I have carefully considered the benefits of the proposal noted above, and I am particularly mindful of the provision of housing and affordable housing as significant benefits. However, even setting aside any harm from the location of the development, the adverse impacts of the proposal would in my judgement significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development within the Framework. Neither do I find that there are material considerations which, applying section 38(6) of the Planning and Compulsory Purchase Act 2004 would be sufficient to justify a decision otherwise than in accordance with the development plan.

## **Conclusion**

127. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

*J Bowyer*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Matthew Dale-Harris	Barrister, Landmark Chambers
Rory Baker	Ceres Property
Craig Crowley	Home Group
Christian Gilham	LRW
Wayne Gold	Goldev
Vanessa Ross	Arc
Tom Rumble	Woolf Bond
Joel Waugh	Conisbee

### FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams	Barrister, Cornerstone Barristers
Bobby Browne	Wynne Williams Associates
Kathy Carpenter	Braintree District Council
Neil Jones	Braintree District Council
Joanna Lilliott	Holmes & Hills

### INTERESTED PARTIES:

Mike Eldred	Chair, Rayne Parish Council
Sandra Reynolds	Friends of Flich Way

## **DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING**

- HD1 Updated Habitat Regulation Assessment Record, submitted by the Council.
- HD2 Speaking notes, submitted by Sandra Reynolds.
- HD3 Welcome to the Flich Way Leaflet, submitted by Sandra Reynolds.
- HD4 Braintree District Local Plan 2022 and Proposal Maps, submitted by the Council.
- HD5 Essex County Council Parking Standards Design and Good Practice 2009, submitted by the Council.
- HD6 Essex Design Guide 2005, submitted by the Council.
- HD7 Email containing Council Fees and Charges Table and minutes of Cabinet meeting in February 2021 approving the proposed charges, submitted by the Council.
- HD8 Heritage Statement on the Flich Way, submitted by the appellant.
- HD9 Letter of 7 May 2024 in response to HD8, submitted by the Council.