

CD6.25

Appeal Decision – Burnham-on-Crouch

Preface:

This appeal decision is important because it deals with a scheme providing housing for older people which is relevant to the consideration of the appeal scheme. The Inspector gave very substantial positive weight to the provision.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



Appeal Decision

Inquiry held on 1 to 4 March 2022

Site visit made on 4 March 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/X1545/W/21/3283478

Land 250M North of 16A Maldon Road, Burnham-on-Crouch, 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 Think Green Land Ltd against the decision of Maldon District Council.
 - The application Ref OUTM/MAL/21/00075, dated 25 February 2021, was refused by notice dated 10 June 2021.
 - The development proposed is to extend the retirement community by erection of 232 dwellings (Class C3), an ancillary multi-use community building (Class F2), construction of estate roads, footpaths, car and cycle parking, drainage infrastructure, allotments, hard and soft landscaping, and associated works.
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Decision

1. The appeal is allowed and planning permission is granted to extend the retirement community by erection of 232 dwellings (Class C3), an ancillary multi-use community building (Class F2), construction of estate roads, footpaths, car and cycle parking, drainage infrastructure, allotments, hard and soft landscaping, and associated works, all at Land 250M north of 16A Maldon Road, Burnham-on-Crouch, Essex, in accordance with the terms of the application Ref OUTM/MAL/21/00075, dated 25 February 2021, subject to the conditions set out at Annex C.

Application for Costs

2. At the inquiry, an application for costs was made by Think Green Land Ltd against Maldon District Council. The application is the subject of a separate Decision.

Preliminary Matters

3. The proposal is to extend a retirement village that was granted outline planning permission (Ref 18/00443/OUT) on 13 September 2019. I refer to this as 'Phase 1' in my Decision.
4. The appeal is for outline planning permission with appearance, landscaping and scale reserved, and access and layout applied for in full. It has been agreed that the following drawings are the formal drawing set for the appeal: Site Location Plan 6683-1101-P2; Existing Site Plan 6683-A-1102-P1; Proposed Site Plan 6683-A-1103-P3; Proposed Ground Floor Site Plans –6683-A-1104-P3, 1105-P2, 1106-P1, and 1107-P1; Existing site and services layout plans 14885/JD/1 to 8 (inclusive).

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the area, including to landscape; and,
- the effect of the proposal on the living conditions of the occupiers of 2 to 16A (evens) (inclusive) on Maldon Road, and Watkins Lodge, Caidge Cottage and Holyrood Lodge on Green Lane, in regard to outlook.

Reasons

Planning policy

6. The Development Plan includes the Maldon District Approved Local Development Plan 2014-2029, dated July 2017 (the LP), and the Burnham-on-Crouch Neighbourhood Development Plan Referendum Version – June 2017 (the NP).

Character and appearance

7. The appeal site is agricultural fields. There are some hedgerows, both to the borders of the site, and to a limited extent within the site. There is further open countryside to the north, east and west. To the south and south east are the existing residential properties lining the north side of Maldon Road, which bleed into Burnham-on-Crouch to the east. This part of Burnham-on-Crouch is called Ostend, but it is joined to Burnham-on-Crouch with unbroken development along both Maldon Road and Green Lane, and it has the character of an outer suburb of the town, rather than as an independent village or hamlet.
8. The appeal site itself and the wider countryside comprise large fields, a fairly flat but slightly rolling topography, and intermittent hedgerows and tree belts. The site has already largely lost its medieval field pattern. It is an unremarkable, but pleasant, area of typical arable countryside, typical of the landscape character area E2 Tillingham and Latchingdon Coastal Farmland¹. It is also influenced by the western edge of Burnham-on-Crouch, which directly borders the appeal site to the south. This part of the appeal site has an urban edge character. It is common ground, and I agree, that the area is not a valued landscape, as defined by the National Planning Policy Framework (the Framework).
9. Phase 1 is due to be constructed to the south west of the appeal site, and the appeal site would be accessed through the Phase 1 development. The Phase 1 reserved matters (Ref 20/00846/RES) were approved on 14 October 2020. All pre-commencement conditions have been discharged. The appellant is awaiting agreement of the s278 and purchase of a parcel of land, but tenders are being issued or already issued. There is real, demonstrative progress on the implementation of Phase 1. It is common ground, and I agree, that this therefore forms the baseline for assessment of the landscape and visual effects of the proposal. In the context of Phase 1, the appeal site would have a strong edge of settlement character, being bound on two sides by existing development or an existing road.

¹ As described in the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments, by Chris Blandford Associates, dated September 2006

10. It is proposed to develop the appeal site to extend the Phase 1 retirement community. The appeal works would comprise bungalows, blocks of flats, community facilities, car parking, internal access roads, and extensive landscaping. The landscaping would include significant new tree planting within the site and also a thick and well vegetated border. It would be of very similar, almost identical, character to the Phase 1 development to the south west.
11. The Council do not advance a case that the detailed design of the proposal would harm the character or appearance of the area, or the wider landscape. Under cross examination, the Council conceded this also applied to the issues of the proposed car parking and lighting, and that the proposal, overall, complies with the Maldon District Design Guide SPD, dated December 2017 (the Design SPD). It is common ground, and I agree, that the relevant consideration is therefore the visual and landscape effects of the proposal, in principle.
12. The proposal would demonstrably and irrevocably alter the landscape from agricultural open countryside, albeit in a settlement edge location, to an urban development. However, Phase 1 has already established precisely the same type of development on an adjacent site, including proposing built development past an existing hedgerow boundary to the north. Also, the proposed landscaping would largely screen the proposed built form, when it matures, and the proposed buildings would be one or two storeys, minimising their visual effect, and consequently the effect of the proposed development on the landscape character. The greatest effect would be to users of the footpaths that run through, and to the north east of, the site and are currently along open fields. However, even to those receptors, the presence of Phase 1 and the screening landscaping would reduce the visual harm.
13. The proposed landscaping, particularly the extensive screening, would still cause some harm to landscape and visual character, because it would be introducing a long, landscaped barrier in the middle of an open field, not following established hedgerow patterns, and still affording some glimpsed views of the built development behind. However, it is not possible to entirely hide or integrate built form of the type proposed on an open field without some residual effects. The proposal has minimised the effects as much as could reasonably be expected.
14. The appeal proposal would substantially increase the size of the proposed retirement village over and above that of Phase 1 on its own. However, the visual and landscape effects of the proposal would be localised to the appeal site and nearby surroundings because from further afield both Phase 1 and the appeal proposal would be seen almost entirely in the context of the existing development along Maldon Road and Green Lane, and the appeal proposal itself would be seen in the context of the already approved Phase 1. Phase 1 has already established the principle of a large scale development in this part of Burnham-on-Crouch, and for development away from the Maldon Road frontage and into the adjacent countryside. Also, a view over open fields to a tree belt, or hedgerow, is typical of the landscape and visual character of the wider area.
15. Nevertheless, there would be some, if limited, residual harm to the character and appearance of the area, including harm to the landscape, from the introduction of substantial built form onto a field. For the reasons set out

above, both the landscape and visual harm from the proposal would be minor, and at the bottom end of the scale of harm. This is also common ground between the parties.

16. Policy S8 of the LP lists a number of development types that may be appropriate outside settlement boundaries, as is the case with the appeal site. It is common ground, and I agree, that the proposed development falls within this list of development types, at part m) of the policy. The policy, however, restricts development of this type to that which would not harm the intrinsic character and beauty of the countryside. There would be minor harm to the character and appearance of the area and the proposal therefore conflicts with this element of Policy S8. Policy D1 of the LP is with regard to design, and requires development to respect and enhance the character and local context of an appeal site. Several specific design aspects that apply to the policy are listed, including landscape setting at part 1c). The minor harm identified to the landscape character and appearance conflicts with this policy. However, there is no conflict with any other element of the policy, including element 1d) with regard to layout, because the other aspects are related to detailed design, which is agreed to not be harmed. It is also common ground that the proposal meets the Design SPD, which is specifically referenced in the policy.
17. Policy HC.2 of the NP is in relation to 'development features', in other words detailed design. The proposal does not, therefore, conflict with this policy. I acknowledge that the first part of the policy references general character and appearance, but this is clearly in the specific context of 'development features', which is both the title of the policy and also set out in the second part of the policy. In a similar vein, the proposal accords with Policy HO.8 of the NP, which is in relation to 'housing design principles', not character and appearance issues in principle. Also, the policy references a long list of Housing Design Principles in Appendix 2 to the NP, against which the appeal proposal accords.

Living conditions

18. There are a number of dwellings situated along the northern side of Maldon Road and Green Lane that have rear gardens that back onto the appeal site. The proposal would introduce a substantial, fairly tall, vegetated border along the rear boundary of the rear gardens of these properties. There would be some, but limited, glimpsed views of some of the proposed buildings through the border, even when it has reached maturity. The proposal would undeniably greatly foreshorten what are currently fairly extensive views from the properties out over open countryside. However, it is an established part of the planning system that there is no 'right to a view'. This is also common ground between the main parties.
19. The relevant consideration is, therefore, what effect the proposal would have on the living conditions of the occupiers of the affected dwellings, in regard to outlook. In this respect, the rear gardens of the relevant dwellings are all large. The distance between the houses and the proposed border planting is at least 60m, and in many instances much further. Therefore, whilst there would be some feeling of enclosure to the rear gardens backing onto the appeal site, this would be extremely limited and would only occur to any noticeable degree to a small proportion of the rearmost element of the gardens. Even if this part of the garden happens to be a well used element by the occupants, the size of the

gardens provides ample opportunities for the enjoyment of the rest of the gardens with negligible, if any, effect on living conditions.

20. Consequently, there would not be material harm to the living conditions of the existing occupiers of 2 to 16A (evens) (inclusive) on Maldon Road, and Watkins Lodge, Caidge Cottage and Holyrood Lodge on Green Lane. The proposal would therefore accord with Policy D1 of the LP in this respect, which seeks to protect the amenity of surrounding areas, including in regard to outlook.

Other Matters

Letters of objection

21. Several letters of objection have been submitted, and a neighbour, Mr David Kennedy, also spoke in opposition to the proposal at the inquiry. They raised several issues in addition to those addressed above: the site was submitted and rejected from the Council's 'call for sites'; there would be a loss of privacy as well as outlook; and, the loss of productive arable farmland.
22. I have taken all of these factors into consideration. The decision in the call for sites is not directly relevant to the appeal proposal, which I have assessed on its own merits. Due to the distance between the proposed dwellings and the existing house and the proposed intervening landscaped screening, there would be no noticeable loss of privacy to existing occupiers. As set out in the officer's report, the land is classified as Grade 3 – good to moderate - and, therefore, the development would not result in the loss of the best or most versatile agricultural land.

Appropriate Assessment

23. The site falls within the 'Zone of Influence' of five of the European designated sites scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitats Regulations Assessment (HRA) was submitted with the application the subject of the appeal, and this concluded that the proposal, without mitigation, would have both direct and indirect effects on the Blackwater Estuary Special Protection Area (SPA) and Ramsar site; the Crouch and Roach Estuaries SPA and Ramsar site; and, the Essex Estuary Special Area of Conservation (SAC) (collectively 'the sites').
24. Therefore, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires a competent authority to make an Appropriate Assessment (AA). I am the competent authority for the purposes of the appeal and I have undertaken an AA, as detailed below. An AA was submitted in support of the application the subject of the appeal. This is dated December 2020. I have reviewed the AA and consider it to be a robust and comprehensive assessment, and, in accordance with guidance from Defra, have largely adopted the previous AA.
25. Natural England (NE) has identified that the conservation objectives for the two relevant SPA and Ramsar sites are: to maintain or restore the extent, distribution, structure and function of the habitats, and also the supporting processes on which the habitats and their qualifying features rely; and, to maintain or restore the population of each of the qualifying features and the distribution of the qualifying features within the sites. The qualifying features of the SPA sites include over-wintering bird assemblages that require low levels of disturbance to enable feeding, and for the SAC the maintenance of its

hydrological regime. NE has also identified that the conservation objectives for the SAC are to maintain and restore the qualifying habitats, particularly the qualifying features including sandbanks, mudflats, and salt meadows.

26. Without mitigation, the proposal would have direct effects on the qualifying features of the sites through water quality problems associated with waste water discharges and surface water flooding from the appeal site. It would also have indirect effects through habitat fragmentation and effects resulting from recreational disturbance, such as increased dog walking and marine-based recreation, and potential air quality impacts.
27. An initial Surface Water Drainage Report, dated October 2020, and a Stage 1 Flood Risk Assessment were submitted in support of the application the subject of the appeal. They conclude that surface water flooding is not a significant risk and that it would be possible to manage surface water and restrict discharge to greenfield levels, thereby limiting the potential for off-site flood risk to be increased. The detail of this could come through the detailed design and can be secured by condition(s) and a s106 planning obligation. Because there are no specific concerns raised regarding this factor, it is likely that suitable design and mitigation measures could be incorporated to ensure there would be no significant effects on the interest features of the sites. Additionally, no specific concerns are raised regarding foul water but this would need to be confirmed at the detailed design stage. This could be controlled by condition.
28. The proposal would provide a Community Centre and GP Surgery, which may allow the residents in the outer settlements to avoid travelling into nearby Burnham-on-Crouch for such facilities. The proposal also includes the provision of electric bicycles and a bus service to Burnham-on-Crouch. Subject to these measures being secured by condition(s) and relevant clauses in a s106 planning obligation, the proposal would, therefore, reduce the reliance on private cars and thereby would not cause harm to the sites with regard to air quality.
29. The proposal includes substantial on-site landscaping and public open space, at over 11 ha and including over 5 km of on-site pedestrian and cycle routes, affording the opportunity for significant on-site recreation. This is likely to reduce the likelihood of residents using the protected sites for recreation. However, the proposal would introduce many new people to the area and it is likely that there would be resultant increased recreational pressure on the sites, eg from dog walking. The RAMS identifies mitigation against identified recreational disturbance to the sites, which is for contributions to an agreed scheme of 'off-site' measures. Off-site mitigation may include but not be limited to: wardens, information/signage boards, set dog walking routes/management/off lead requirements and visitor engagement. A s106 planning obligation can secure the mitigation payments.
30. For the reasons set out above, the proposal would not be likely to have significant effects on the sites, after mitigation. It has therefore been demonstrated that, subject to the proposed mitigation measures to be secured by condition(s) and relevant clauses in a s106 planning obligation, the proposal would not adversely affect the integrity of the relevant protected sites.

Ecology

31. A Preliminary Ecological Appraisal Report (PEA), dated November 2020, was submitted in support of the application the subject of this appeal.
32. The appeal site has a moderate suitability for foraging, commuting and roosting bats, particularly because it is dark, and the oak trees have a medium potential for bat roosts. The oak trees are to be retained, and also protected during construction by condition. The proposed new hedgerow planting would result in the enhancement of foraging and commuting habitat for bats, and the provision of bat boxes, as recommended in the PEA and which could be controlled by condition, would ensure that bat habitat would not be harmed. There would be the potential for harm from proposed lighting but this could be effectively mitigated by minimising light spill and directing it away from boundaries and retained mature habitats. This could be secured by condition. If any roosting bats are encountered during construction, then an ecologist could be consulted and appropriate measures could be agreed. This could be controlled by condition.
33. A Water Vole Survey Report, dated April 2021, was submitted in support of the application the subject of this appeal. This identified the presence of water voles on the appeal site. Further surveys would therefore be required prior to the commencement of construction, in relation to licensing requirements. However, there is no reason to believe that the licensing would not be granted and that suitable mitigation measures could not be undertaken. This is particularly because the proposed landscaping would significantly enhance water vole habitat and the overall effect on water voles would be positive.
34. As part of the PEA, a Great Crested Newt survey was carried out indicating that no great crested newts (GCN) were present. However, a nearby pond has the potential to host GCNs and it has not been possible to survey the pond due to the appellant being refused access. As set out in the Great Crested Newt Approach report, dated May 2021, a precautionary Non-Licensed Method Statement is therefore required to safeguard any potential GCN throughout the proposed works. However, there is no reason to believe that this would not be forthcoming, because of its precautionary nature and because no GCNs have been found on the appeal site.
35. Construction of the development could adversely impact breeding birds through direct harm and disturbance, including to nests. This could be effectively mitigated through controls over the timing and nature of clearance and construction work, as set out in the PEA. This could be controlled by condition. If any birds listed under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) were found to be nesting on the appeal site, then an ecologist could be consulted and appropriate measures could be agreed. This could be controlled by condition. The provision of bird boxes to enhance nesting opportunities could be secured by condition.
36. The PEA finds that, because of the suitable habitats on the appeal site and within the wider landscape, it is likely that badgers are active in the local area. In the absence of mitigation, there is potential that the proposal would cause harm or disturbance to badgers during the construction. Badger surveys are therefore required, as set out in the PEA, and could be secured by condition.

37. Subject to the mitigation measures set out above, the overall effect of the proposal on ecology would be positive and there would be a biodiversity net gain. This is because the majority of the site is agricultural fields with low existing ecological value. Where there are hedgerows and some mature trees, which provide more valuable habitat, they would largely be retained, with the exception of Hedgerow 4 where a section would be removed to make way for a road. The proposed landscaping would provide considerable additional hedgerow planting. The proposed creation of ponds would also provide a net gain in valuable aquatic habitats.

Planning Obligation

38. A s106 Planning Obligation, dated 9 March 2022 (the s106), has been submitted.
39. The s106 secures 25 of the proposed dwellings to be for affordable housing, 20 of which are to be provided on-site and five of which are to be provided on Phase 1. 80% of the affordable dwellings would be Affordable Rent and 20% would be Intermediate Housing. An affordable housing financial contribution of £4,207,875 (index-linked) towards off-site affordable provision is also secured.
40. The s106 controls the proposed dwellings so that they only be for persons aged 55 years old and over, and where care and support can be provided as required from an on-site provider. This is necessary to ensure that the proposed accommodation is controlled to be for older persons.
41. The provision of charging points for electric cycles, the electric cycles themselves, and Residential Travel Information Packs to the first occupiers of each dwelling are secured. A minibus service is secured, to provide transport for staff, residents and visitors to the development from Burnham-on-Crouch, free of charge. This is subject to reviews of its effectiveness after three years of operation. These provisions, both individually and together, are necessary to provide suitable transport alternatives to the car.
42. A healthcare contribution of £114,570 (index-linked) is secured, to be used towards the provision of primary healthcare in the vicinity of the appeal site. This is necessary to mitigate the increased pressure on primary healthcare in the vicinity of the appeal site from the proposed increase in the number of older persons.
43. A highways contribution of £25,000 (index-linked) is secured to improve safety and capacity at the junction of the B1010 Maldon Road and the B0121 Southminster Road/Church Road junction. This is necessary to ensure highway safety and to mitigate the pressure on traffic levels that would be caused by the extra car journeys generated by the proposal.
44. The provision of local open space, and the specification of the landscaping and other works within the open space are secured. So is the provision of suitable Surface Water Drainage System(s). In addition, the setting up and funding of a Local Maintenance Company is secured, which would be responsible for the on-going maintenance of the open space and the Surface Water Drainage System(s).
45. A phasing plan is secured, with the detail of the phasing to be agreed prior to commencement of development. This is to include agreement between the

Council and the appellant on the provision of the multi-use facility prior to occupation of the 150th dwelling, or as otherwise agreed.

46. The multi-use facility in the appeal scheme, and the medical centre and sports and recreation centre from Phase 1 are all secured to be available for use for residents of either Phase of the scheme.
47. The contribution towards the mitigation of potential harm to the RAMS, as explored in detail in the AA above, is secured, set at £127.30 (index-linked) per dwelling.
48. Monitoring fees for Essex County Council, the mini-bus assessment, and the Council are secured. This is in accordance with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Planning Balance

49. In the section that follows, I have adopted the following ascending scale in terms of weighting – very limited, limited, moderate, significant, substantial, very substantial.

Housing

50. The proposal is for a retirement village and would provide older persons accommodation. However, the housing would fall under use class C3, for general housing, and the proposal would therefore contribute to the Council's general housing supply. The current housing land supply is low, at only 2.92 years, falling significantly below the target of five years. It is also getting worse, having fallen from 3.78 years at the exchange of Proofs of Evidence in January 2022, to the now agreed 2.92 years. The need for housing is therefore critical, acute and deteriorating. Providing more housing is one of, if not the most, important aspirations of local and national planning policy. I therefore place very substantial positive weight on the proposed housing.

Location

51. The Maldon District Council Local Development Scheme 2021-2024, dated February 2021, shows that key strategic allocations to try and address the housing land supply shortfall are not coming forward. A Local Plan Review is many years away. There is no realistic prospect of a plan-led solution to the housing land supply problem. Given this situation, it is common ground that proposals for residential development outside of settlement boundaries are acceptable, in principle. In addition, Burnham-on-Crouch is at the highest of four hierarchies of settlement, as set out in the LP, and provides a good range of services and facilities. The proposal complies with Policy S1 of the LP, which is the primary policy for directing development. Consequently, the appeal site does not represent an inappropriate location for development, in principle. This factor weighs neutrally in the planning balance.

Older persons accommodation

52. The Framework defines 'older people' as people that are over or approaching retirement age. No age range is specified, but this is clearly focussed on 65+ years old. Whilst the proposed dwellings would fall within use class C3, they would be the subject of age restrictions for occupancy to those aged 55+ years old. This includes the potential for some people younger than the Framework's

definition to be future occupants. However, the nature and design of the proposal, with the communal facilities, and with on-site care and support packages to be offered and secured through the s106, mean that, in reality, the average age of future occupants is likely to be higher than 65 years old. The proposal is, in fact, for 'specialist elderly housing'.

53. The Council, at paragraph 9.5 of the Maldon district Local Housing Needs Assessment Final Report, dated May 2021 (the HNA), specifically highlights the importance of such accommodation in the area because of its higher than average proportion of elderly persons. Paragraph 2.12 of the LP states that this is the key issue for the District and Policy S2 of the LP and Policy HO.3 of the NP are both with regard to the importance of providing elderly persons accommodation. Despite this, the Council have identified a substantial shortfall of market older persons accommodation, at 355 dwellings. The need for elderly persons accommodation is therefore urgent and critical and I place very substantial positive weight on the proposed dwellings.

54. All of the proposed dwellings would meet Building Regulation M4(3) Wheelchair User Standards. The HNA shows an unmet need of 99 such dwelling types. It is difficult to see how this will be met without specialist developments such as the appeal proposal, because there is no policy requiring such dwellings be provided in normal housing developments. I therefore place moderate positive weight on the fact that the proposed dwellings are M4(3) compliant.

Housing stock

55. The proposed elderly persons accommodation would allow older households to move out of their existing properties, thereby freeing up housing stock for younger buyers. It is common ground, and I agree, that this would help to free-up the market for housing for the general population, specifically by releasing more family accommodation onto the market. I place substantial positive weight on this.

Affordable housing

56. The Council has a shortfall of 817 affordable homes, which is a very substantial shortfall in the context of a District where this equates to more than two years housing land supply for all types of housing. It is agreed that the need for affordable homes is acute and worsening. As with general housing, there is no realistic prospect of plan-led solutions. I therefore place very substantial positive weight on the proposed on-site affordable housing, including the five units to be allocated on the Phase 1 site. I also place substantial positive weight on the proposed contribution of circa £4.2m towards off-site affordable housing provision.

Health and wellbeing

57. Uncontested evidence has been provided that the retirement village would help to improve the health and wellbeing of residents, in comparison to them remaining in their own homes. The proposal would help the residents to live independently for longer whilst reducing pressure on existing health and social care systems. This is particularly important because 47.5% of households over 65 years old in the District have a long term health problem or disability. I place significant positive weight on this.

Economy

58. There would be economic benefits in the short term through construction employment, and in the longer term through expenditure by future occupants and/or workers in the area. There would also be long term economic benefits from the creation of jobs in the development. I place significant positive weight on this.

Services

59. The s106 secures contributions towards transport and healthcare in the area, which in combination with developer contributions from other developments, would result in benefits to the wider community from improved services. I place moderate positive weight on this.

Environment

60. There would be environmental benefits as a result of the enhancement and provision of landscape and ecological features, specifically a considerable amount of new hedgerow planting, trees, ponds and wildflower areas. There would also be a biodiversity net gain. I place significant positive weight on this.

Harms

61. There would be some, albeit very limited, increased feeling of sense of enclosure to the rearmost part of the gardens. However, this would not be sufficient to cause any material or noticeable harm to the living conditions of neighbouring occupiers. This weighs neutrally in the planning balance.

62. There would be minor negative harm to the character and appearance of the area, including landscape harm. However, the level of harm is almost the bare minimum that could be expected from the development of a field for housing. There is relevant because there is no objection to the principle of such development, in a location outside a defined settlement boundary, because of the housing land supply shortfall. The conflicts with Policies S8 and D1 of the LP, which are minor in any event, therefore have significantly reduced weight in the planning balance. I place limited weight on this harm, which is in itself limited in nature.

Conclusion

63. It is agreed that the housing land supply is 2.92 years. None of the areas or assets of particular importance set out at paragraph 11di of the Framework provide a clear reason for refusing the development proposed. The 'tilted balance' as set out at paragraph 11dii of the Framework is therefore engaged and the policies most important for determining the appeal are out of date.

64. The benefits of the proposal are many and substantial. In particular, it would provide much needed housing, of two types where the need is particularly acute and critical, in the form of elderly persons accommodation and affordable housing. There are also a number of other still significant benefits, as listed above. The adverse impacts of the proposal are limited to minor adverse harm to the character and appearance of the area, and to landscape character.

65. Overall, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the

Framework taken as a whole. Quite the reverse, in fact. The appeal should therefore be allowed.

Conditions

Reasoning

66. A schedule of possible conditions was discussed at the inquiry. I have considered the possible conditions in the light of that discussion and of government guidance on the use of conditions in planning permissions.
67. In addition to the standard time limit for submission of reserved matters and implementation of the development conditions, a condition specifying the relevant drawings provides certainty.
68. A design details condition, and a condition limiting the number of storeys of the proposed building types, are necessary to ensure the character and appearance of the area is protected.
69. A landscaping condition is necessary to protect the character and appearance of the area, and to secure the provision of car parking and internal access roads.
70. A series of contamination conditions are necessary to establish the level of risk(s) posed by contamination, to control the effect of construction on contamination (if found), and to secure appropriate protection and remediation measures.
71. A condition requiring details to minimise the risk of off-site surface water flooding, and groundwater contamination, during construction is necessary to secure appropriate protection measures during construction against flooding and groundwater flooding. A further condition requiring details of surface water drainage for the completed scheme is necessary to ensure appropriate drainage works are completed to protect against unacceptable levels of surface water flooding. These conditions are also necessary for habitat protection.
72. A Construction Method Statement is necessary to control the effects of construction on the living conditions of nearby occupiers, highway safety, traffic congestion, and the character and appearance of the site during construction.
73. A condition in relation to the protection of trees is necessary to protect the character and appearance of the area, and habitat protection.
74. Conditions requiring an Archaeological Assessment and a Written Scheme of Investigation are necessary to establish the archaeological significance of the site, and to secure appropriate protection and archaeological work.
75. A condition requiring a lighting scheme to be agreed, installed and maintained, is necessary to protect the character and appearance of the area, the living conditions of nearby residents, and to mitigate the effect of lighting on bat habitat.
76. A condition requiring that the works conform to the PEA, HRA, and species specific surveys submitted in support of the original application the subject of this appeal is necessary in order to suitably protect and enhance ecology on the appeal site. The condition also secures the appointment of appropriately qualified ecological expertise during construction, to ensure that there would be

- no unacceptable effects in relation to bats and breeding birds during construction.
77. A condition requiring details of foul drainage is necessary in relation to ecology because, although no specific concerns have been raised regarding foul water, it has been noted in the supporting documentation that this would need to be confirmed at the detailed design stage to protect against potential significant effects to the protected ecological sites.
78. A condition securing cycle parking is necessary to ensure that methods of transport other than the car are encouraged, in accordance with Policies D1 and T2 of the LP which, amongst other criteria, seek to reduce the need to travel, particularly by car.
79. A condition securing the facilitation of superfast broadband is necessary to ensure that the development provides suitable communications infrastructure, in accordance with Policy I1 of the LP.
80. Conditions confirming the proposed dwelling mix, and that all dwellings meet Building Regulation M4(3) 'wheelchair user dwelling' are necessary to ensure that the housing is delivered as proposed.
81. A condition securing the submission of a Waste Management Plan is necessary to ensure a suitable waste management scheme comes forward, in accordance with Policy D2 of the LP which requires, amongst other criteria, that large scale proposals be supported by just such a plan.
82. A condition limiting the hours of use of the proposed community facility is necessary to protect the living conditions of the occupiers of the proposed dwellings.

Pre-commencement

83. The pre-commencement conditions are necessarily worded as such, because a later trigger for the submission and/or implementation would limit their effectiveness or the scope of measures which could be used.

Suggested conditions not included

84. A condition requiring a phasing plan was suggested by the main parties, but this is also secured by the s106 and a condition would therefore be unnecessary duplication. I have not, therefore, imposed this condition.
85. Conditions in relation to licensing granted by NE in relation to GCN and water voles were suggested by the main parties. However, there is nothing before me that suggests that the licenses would not be forthcoming. I do not consider that an offence would be likely under the Habitats Regulations. The licensing regime sits outside of the planning system. I have not, therefore, imposed these conditions.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Fraser, of Counsel. He called:

Arron Breedon MRTPI Consultant on behalf of Maldon District Council

FOR THE APPELLANT:

Sarah Reid of Counsel. She called:

Jeremy Smith CMLI Director, SLR Consulting Limited

Matthew Spry MRTPI Director, Lichfields

MIED FRSA

Sarah Hare Solicitor, Holmes and Hills LLP

INTERESTED PERSONS:

David Kennedy Local resident

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

- 1 Opening Submissions on Behalf of the Appellant, dated 1 March 2022
- 2 Opening Statement by Maldon District Council, dated 1 March 2022
- 3 List of Appearances on Behalf of the Appellant
- 4 Additional Objection Comments, by David Kennedy, Chestnut House, Green Lane
- 5 Note on Progress of Local Plan Sites, titled 'Site context'
- 6 Final Draft s106 Planning Obligation, dated 2 March 2022
- 7 Proposed clause 3.16 for s106 Planning Obligation
- 8 Site Notice Photographs
- 9 Inspector's Site Visit Walking Route Drawing
- 10 Closing Statement by Maldon District Council, 4 March 2022
- 11 Closing Submissions on behalf of the Appellant, dated 4 March 2022
- 12 Updated s106 Planning Obligation, dated 4 March 2022
- 13 Costs Application on behalf of the Appellant, dated 4 March 2022
- 14 Response to Costs Application by Maldon District Council, dated 4 March 2022
- 15 Note of response to costs application on behalf of the Appellant, dated 4 March 2022
- 16 Final s106 Planning Obligation, dated 9 March 2022

ANNEX C: SCHEDULE OF PLANNING CONDITIONS

- 1) Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 6683-1101-P2; Existing Site Plan 6683-A-1102-P1; Proposed Site Plan 6683-A-1103-P3; Proposed Ground Floor Site Plans –6683-A-1104-P3, 1105-P2, 1106-P1, and 1107-P1; Existing site and services layout plans 14885/JD/1 to 8 (inclusive).

Pre-commencement

- 5) As part of the application for the 'appearance' reserved matter, details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted. The details as approved shall be constructed prior to occupation of the relevant part of the development, and thereafter shall be retained.
- 6) As part of the application for the 'landscaping' reserved matter, full details and specifications of both hard and soft landscape works shall be submitted. The landscaping details shall include, but not be limited to:
 - i. the layout of the hard landscaped areas with the materials and finishes to be used;
 - ii. details of the means of enclosure;
 - iii. car parking layouts;
 - iv. schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers / densities and details of the planting scheme's implementation, aftercare and maintenance programme; and,
 - v. vehicle and pedestrian accesses.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The hard and soft landscaping works shall be carried out in accordance with the approved details before the relevant part of the development is occupied, and in accordance with an implementation programme that shall have previously been submitted to, and agreed in writing by, the local planning authority. The completed scheme shall be managed and/or

maintained in accordance with an approved scheme of management and/or maintenance.

- 7) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to, and approved in writing by, the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i. a survey of the extent, scale and nature of contamination;
 - ii. the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and,
 - archaeological sites and ancient monuments.
- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to, and approved in writing by, the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to, and approved in writing by, the local planning authority before the development, or relevant phase of development, is occupied.
- 9) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority in accordance with a timetable as previously submitted to and approved in writing by the local planning authority. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority for approval in writing. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.

- 10) No development shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved and thereafter maintained.
- 11) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include, but not be limited to:
 - the on-site parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development; and,
 - wheel and underbody washing facilities.
- 12) Prior to commencement of development, an Arboricultural Method Statement and Arboricultural Supervision Schedule shall be submitted to, and approved in writing by, the local planning authority. The statement and schedule shall provide indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. No other trees shall be removed or felled unless otherwise agreed in writing by the local planning authority. The approved documents shall be adhered to at all times.
- 13) No development including any site clearance or groundworks of any kind shall take place within the site until an Archaeological Assessment, by an accredited archaeological consultant, has been submitted to, and approved in writing by, the local planning authority. The purpose of the Assessment is to establish the archaeological significance of the site.
- 14) No development, including any site clearance or groundworks of any kind, shall take place until a programme of archaeological work has been completed in accordance with a Written Scheme of Investigation which shall have been submitted to, and approved in writing by, the local planning authority. The Written Scheme of Investigation shall be informed by the results of the Archaeological Assessment. The development shall then be constructed in a manner that accommodates the approved programme of archaeological work. All fieldwork should be conducted by a professional recognised archaeological contractor.
- 15) No development shall take place until details of the external lighting strategy for the site, including the luminance and spread of light and the design and specification of the light fittings, have been submitted to, and approved in writing by, the local planning authority. The agreed illumination scheme shall be installed prior to occupation of the relevant part of the development. All external illumination within the site shall be retained in accordance with the approved details. There shall be no other lighting of the external areas of the site unless otherwise agreed in writing by the local planning authority.

Other triggers

- 16) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be

reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to, and approved in writing by, the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development, or relevant phase of development, is resumed or continued.

- 17) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report (Surface, November 2020), the Water Vole Survey Report (Surface, April 2021), the Great Crested Newt Survey Report (Surface, May 2021) Habitats Regulation Assessment (Surface, November 2020) and the Appropriate Assessment (Surface, December 2020). This shall include the appointment of an appropriately competent person, eg an ecological clerk of works, to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Pre-occupation

- 18) Prior to occupation, a detailed surface water drainage scheme for the site shall have been submitted to, and approved in writing by, the local planning authority, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development. The scheme shall include, but not be limited to:
- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753;
 - If infiltration is proven not to be viable then the scheme should be limiting discharge rates to no more than the 1 in 1 year greenfield rate, calculated off of the contributing area, for all storm events up to and including the 1 in 100 year plus 40% allowance for climate change storm event. All relevant permissions to discharge from the site into any outfall should be demonstrated;
 - Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
 - Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event;
 - Final modelling and calculations for all areas of the drainage system;
 - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753; Detailed engineering drawings of each component of the drainage scheme;

- A final drainage plan which details exceedance and conveyance routes, finished floor and ground levels, and location and sizing of any drainage features; and,
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The development shall not be occupied until the drainage works have been completed in accordance with the submitted and approved scheme. The drainage works shall thereafter be retained.

- 19) Prior to occupation, details of foul drainage scheme to serve the development shall have been submitted to, and agreed in writing by, the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.
- 20) Cycle parking shall be provided prior to the occupation of the relevant part of the development, in accordance with Maldon District Council's adopted standards. The approved facilities shall be secure, convenient, covered and retained at all times.
- 21) A strategy to facilitate superfast broadband for the future occupants of the dwellings hereby approved, either through below ground infrastructure or other means, should be submitted to the local planning authority for approval in writing. The method to facilitate superfast broadband shall be implemented in accordance with the approved strategy prior to the occupation of the relevant part of the development and retained thereafter.

Monitoring and management

- 22) The dwelling mix for the development hereby approved shall be as follows, unless otherwise agreed with the local planning authority in writing:
 - 33 one-bedroom bungalows;
 - 64 two-bedroom bungalows;
 - 35 three-bedroom bungalows;
 - 32 one-bedroom flats;
 - 46 two-bedroom flats; and,
 - 22 three-bedroom flats.
- 23) A Waste Management Plan shall be submitted as part of either the appearance and/or the landscaping reserved matter(s) application(s), and shall thereafter be implemented as agreed.
- 24) The development hereby approved shall be carried out in a manner to ensure that all the residential accommodation hereby approved comply with Building Regulation M4(3) 'wheelchair user dwelling'.
- 25) Use of the community facility hereby approved shall be limited to 07:30 to 23:00 Monday to Saturday and 08:00 to 22:00 on Sundays and Public Holidays. No customers or visitors shall be present upon the premises outside the permitted hours of use.

- 26) The bungalows and community facility building hereby permitted shall be no greater than single storey in height and the apartment blocks hereby permitted shall be no greater than two-storeys in height.

=====END OF SCHEDULE=====