



## Appeal Decision

Inquiry held on 10-13 April and 17-19 April 2018

Site visit made on 19 April 2018

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13<sup>th</sup> September 2018**

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**Appeal Ref: APP/P1560/W/17/3185776**

**Land to the south of Bromley Road, Ardleigh, Colchester CO7 7SE**

- 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 Gladman Developments Ltd against the decision of Tendring District Council.
  - The application Ref 17/00859/OUT, dated 24 May 2017, was refused by notice dated 25 August 2017.
  - The development proposed is the erection of up to 145 dwellings, the removal of prefabricated livery stables and the provision of public open space, landscaping and sustainable drainage systems and vehicular access point from Bromley Road.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 145 dwellings, the removal of prefabricated livery stables and the provision of public open space, landscaping and sustainable drainage systems and vehicular access point from Bromley Road at Land to the south of Bromley Road, Ardleigh, Colchester CO7 7SE, in accordance with the terms of the application Ref 17/00859/OUT dated 24 May 2017, subject to the conditions set out in the schedule annexed to this decision.

### Preliminary matters

2. The Inquiry opened on 10 April 2018 and carried on for six further days. The Inquiry was adjourned on 19 April to allow final submissions by the main parties to be submitted in writing, together with several other outstanding documents, in accordance with an agreed timetable. Following receipt of these the Inquiry was formally closed in writing on 3 May 2018.
3. At the Inquiry an application for costs was made by the appellants against the Council. The Council's response to the application and the appellants' reply were submitted in writing in accordance with the timetable. The application is to be the subject of a separate Decision.
4. Before the Inquiry opened, I made an initial visit to familiarise myself with the site and surrounding area. I carried out a formal inspection of the site and its surroundings, accompanied by representatives of the main parties and some local residents, on 19 April. I also made further unaccompanied visits to assess the proposal from other requested locations, including one to observe traffic

- conditions at the morning peak at Bromley Road/Hawthorn Avenue/Harwich Road.
5. The application under appeal was submitted in outline form, with only the principle of development and the proposed new access to the site for full approval at this stage. The other matters of the layout of development, and its scale, appearance and landscape treatment ('the reserved matters') would be for later detailed consideration. However, the application was supported by a Design and Access Statement ('DAS') that analyses how the site might be developed, and was accompanied by an Illustrative Development Framework Plan<sup>1</sup> and an Illustrative Masterplan<sup>2</sup>. These informed the assessment of the effects of development on the character and appearance of the area in the submitted Landscape and Visual Appraisal ('LVA')<sup>3</sup>. While recognising that much of this information is indicative only, I have taken it into account in the assessment of the appeal.
  6. Before the Inquiry, a signed Statement of Common Ground ('SCG') was submitted, which sets out matters not in dispute between the appellants and the Council. The SCG outlines an agreed description of the site and its surroundings and the policy context for consideration of the appeal proposal, including the adopted and emerging Local Plans and the Government's National Planning Policy Framework ('NPPF'). However, following the close of the Inquiry an updated NPPF was published. As the appeal must be determined in the light of up-to-date policy, all further references to the NPPF in this decision will be to the 2018 updated version, unless otherwise indicated. The parties were allowed additional time to make submissions on the implications of the revised policy framework, and these have been taken into account in my consideration of the appeal.
  7. A separate SCG was submitted on the matter of the housing land supply ('the HSCG'). The table in this document that sets out the main parties' differing estimates of the current deliverable supply of housing was updated following discussion at the Inquiry.
  8. The appellants also concluded a SCG with Essex County Council as highway authority ('the TSCG'). This shows that the County Council no longer objected to the proposal, subject to conditions being imposed, on grounds of highway safety and the effect on the wider highway network, and that the location was regarded as acceptable in respect of access to shops and services. As a result, the main SCG confirms that the Council no longer wished to defend the third reason for refusal of the planning application. However, these issues were still contested by some other interested parties and are considered later in this decision.
  9. The fifth reason for refusal of the application related to the lack of commitment to provide affordable housing and other infrastructure. The SCG records the intention to provide affordable housing at the level of 30% sought by emerging local policy and that other infrastructure provision would be secured by a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The appeal was accompanied by a draft unilateral undertaking ('UU') setting out covenants on the provision and management of

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<sup>1</sup> CD 1.4 Plan Ref 7637-L-03-C

<sup>2</sup> Plan Ref 7637-L-04

<sup>3</sup> Subsequently reviewed and augmented in evidence for the appeal

affordable housing and open space on the site and the payment of a financial contribution to healthcare provision. A signed copy of the UU submitted during the Inquiry was withdrawn following discussion and a certified copy of a slightly amended form provided with the final submissions. The Council now accepts that the UU would address the concerns raised by the relevant parts of this reason for refusal. I return to this matter later in this decision.

10. Following the close of the Inquiry, decisions were issued on three conjoined appeals for housing development at the village of Great Bentley<sup>4</sup>. As these appeals had been referred to in evidence, I considered that the decisions could be relevant to the decision in the current appeal. Time was allowed for the main parties to submit representations on the decisions, and these have been taken into account in my consideration of the appeal.
11. At the same time as the Inquiry, the examination of Section 1 of the Tendring District Local Plan *2013-33 and Beyond* was ongoing. This strategic element of the Plan was prepared and submitted jointly by three North Essex authorities - Tendring District Council, Colchester Borough Council and Braintree District Council - and is intended to form an identical strategic element to each authority's Local Plan. Section 2 of each Local Plan contains policies and allocations specific to that authority, and would be subject to later examination after scrutiny of Section 1 had been concluded. Following the close of the Inquiry, the Examining Inspector wrote to the three authorities setting out his initial findings on Section 1<sup>5</sup>. As the emerging Local Plan ('ELP') had been cited in the reasons for refusal of the application and is relevant to the appeal, further time was allowed for the main parties to submit representations on the content of the Inspector's letter, and these have been taken into account in my consideration of the appeal.
12. Shortly afterwards, the Examining Inspector issued a second letter<sup>6</sup> setting out his views on Chapter 4 and Policy SP3 of the ELP, which deal with housing requirements for the three districts. As the Inspector's conclusions on the housing requirement for Tendring are relevant to the appeal, again further time was allowed for the main parties to submit representations on the letter, and I have also taken these into account.

### **Main Issues**

13. In the light of the reasons for refusal of the application and of matters of common ground, it was agreed at the opening of the Inquiry that the main issues in the appeal are:
  - The site's suitability for the proposed development, having regard to:
    - the location outside a defined settlement boundary;
    - the effect on the character and appearance of the area;
    - the effect on biodiversity and nature conservation;

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<sup>4</sup> Appeals ref. APP/P1560/W/17/3183678, APP/P1560/W/17/3183695, APP/P1560/W/17/3183626

<sup>5</sup> Letter dated 8 June 2018: Advice on the Next Steps in the Examination - Examination Document ref IED011

<sup>6</sup> Letter dated 27 June 2018: Meeting the Need for New Homes (Plan Chapter 4) - Examination Document ref IED012

- Whether the Council can demonstrate a five-year supply of deliverable housing land sufficient to meet the up-to-date requirement and, if not, the weight to be given to that issue;
- Whether the proposed development would be premature having regard to the emerging Local Plan and proposals for the Tendring Colchester Borders Garden Community.

## Reasons

14. The appeal site comprises two large fields with a total area of some 7.33ha, separated by a hedge. The fields have been divided by wire fences into individual paddocks for grazing horses, and also contain some low stable blocks reached by a rough track. The fields occupy rising ground to the east of the Salary Brook, and are enclosed to the south and east by Churn Wood, an extensive block of ancient broadleaved woodland. Access to the site is gained from Bromley Road, which climbs quite steeply from a bridge across the brook and forms the northern boundary of the site.
15. The rising land to the west of Salary Brook has been developed during the 1980s as suburban housing, known as the Longridge Park estate. This borders the larger Greenstead housing area to the south. These residential areas lie within Colchester Borough, with the brook defining the edge of the built-up area of the town as well as the administrative boundary. The brook is adjoined on the Colchester side by a linear green space, through which runs the Salary Brook Trail footpath/cycleway that carries on beyond Greenstead to link to the university campus.
16. The wider surroundings of the site to the east, north and south predominantly comprise fields and woodland. Churn Wood is designated as a Local Wildlife Site ('LWS'), and a small field between it and the brook is separately designated as the Churn Wood Meadow LWS. A considerable length of the valley floor to the south of this is also designated and managed as a Local Nature Reserve.
17. The appeal proposal seeks outline planning permission to erect up to 145 dwellings. The illustrative plans suggest that some 4.24ha of the site would be built upon, leaving some 3.09ha as green space, which would be mainly in a zone adjoining the brook that would contain an equipped play area but would also include a perimeter path suitable for dog walking. It is suggested that a range of types and sizes of houses would be provided, with the great majority no taller than two storeys.

### *Planning policy context*

18. The development plan for the purposes of the appeal comprises the saved policies of the Tendring District Local Plan ('TDLP') adopted in 2007. However, it is agreed by the main parties that the TDLP was drafted to meet development needs up to 2011, based on a former core strategy, and that the spatial strategy set by Policy QL1 and the housing requirement of Policy HG1 should now be seen as out-of-date. Therefore, it is also agreed that the appeal proposal should be assessed in accordance with the presumption in favour of sustainable development, set out by paragraph 11 of the NPPF<sup>7</sup>, which advises that permission should be granted unless any NPPF policies that protect assets

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<sup>7</sup> Updating Paragraph 14 in the original NPPF

of particular importance provide a clear reason for refusal or unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. I accept that agreed position.

19. ELP Policy SP2 sets out the spatial strategy for the North Essex joint area, including the development of three new Garden Communities ('GCs') as a focus for housing and employment, supported by appropriate transport and social infrastructure. The key requirements for the design and delivery of these "holistically and comprehensively planned" new communities are set out by Policy SP7, including a commitment to bring forward a Development Plan Document ('DPD') for each GC. Policy SP8, which deals specifically with the Tendring Colchester Borders Garden Community ('TCBGC'), establishes the broad location of the new community on land to the east of the appeal site, to be separated from the built-up area of Colchester by a green buffer. The policy confirms that the DPD will set out the GC's nature, form and boundary, to provide the basis for subsequent masterplans and guidance. Tendring and Colchester Councils have progressed preparation of the DPD, with consultation on an Issues and Options Report now concluded.
20. The Examining Inspector's initial findings on the examination of Stage 1 recognise the ambitious and innovative nature of the jointly proposed GCs, but raise serious concerns on the feasibility and viability of the proposals as currently presented, and on the adequacy of the Sustainability Appraisal that supports the plan. The Inspector concludes that the GC proposals are currently unsound and outlines three options for further progress, ranging from withdrawal of the plan, to suspension of the examination to allow further work on the GC proposals, or to modify the plan to omit the GC elements, but with a commitment to early review of those parts.
21. It is not yet known which of these options, or another, the three authorities will seek to pursue. But it is clear that any is likely to result in significant delay to the eventual adoption of a replacement local plan.
22. The NPPF confirms that weight may be given to relevant policies in emerging plans according to the stage of preparation of the plan, the extent of unresolved objections and the degree of policies' consistency with the NPPF<sup>8</sup>. In the light of the Inspector's findings, the ELP Section 1 faces difficulties in each of those respects. The Council now submit that rather than the moderate weight to ELP policies suggested in evidence to the Inquiry, the relevant policies should now be afforded limited weight. The appellants submit that the appropriate level of weight, previously suggested as limited, should now be negligible (as close to no weight as possible). In my view, that would not properly reflect the Inspector's acknowledgement of the value of the work done to date and of the potential options to bring forward soundly based proposals for GCs in the relatively near future or to proceed with the remainder of the plan, subject to agreed main modifications. Therefore, at the current time, I consider that only limited weight can be given to the GC elements of ELP Section 1 as it stands, but that other policy strands are worthy of moderate weight. Since the examination of Section 2 is contingent on the conclusion of Section 1, and it has not yet received even the partial endorsement given to Section 1, it follows that somewhat less weight can be given to its policies.

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<sup>8</sup> NPPF paragraph 48

23. The emerging DPD is at a much earlier stage than the ELP and, while useful in showing the two neighbouring Councils' intentions in response to consultation, must attract very limited weight at present.

### **Site suitability**

#### *Location outside designated settlement boundary*

24. TDLP Policy QL1 sets the spatial strategy and defines a hierarchy of settlements. The policy seeks to concentrate development within the larger urban areas of the District, with the best access to employment and services, and to allow limited development to meet local community needs at smaller settlements. Development is to take place within the defined settlement boundaries. Land outside these boundaries is defined as countryside and only development consistent with "countryside policies" is to be permitted. The latter are not specifically identified, but the supporting text explains that outside the defined settlement boundaries policies that aim to conserve and enhance the countryside for its own sake will apply, and that only development that does not detract from the appearance or character is to be permitted.
25. The SCG acknowledges that, as the site lies outside the settlement boundary and is not allocated for development, the appeal proposal is contrary to Policy QL1. The adoption of the TDLP predates the publication of the original NPPF in 2012. However, relevant TDLP policies have been saved by direction of the Secretary of State and remain in force as the development plan, to which primacy must be given in decision taking. The issue is the weight to be given to the proposal's conflict with policy. The NPPF advises that weight will depend on the policy's consistency with the more recent national policy context<sup>9</sup>.
26. I agree with the Council that the approach to the location of development at a sustainable hierarchy of settlements outlined by Policy QL1 remains broadly consistent with the NPPF. I note that a similar approach is taken by ELP Policy SP2, which has not attracted criticism by the Examining Inspector, and is amplified by ELP Policies SPL1 and SPL2.
27. The main parties differ on which are the "countryside policies" referred to. I consider that they are those that allow for specific forms of development, to support the rural economy or to allow for rural exception housing, and do not include Policy EN1, which deals with landscape quality.
28. In allowing some types of rural development, Policy QL1 does not offer blanket protection of the countryside, but can be seen as directing development to appropriate locations in a plan-led approach, while paying due regard to the intrinsic character of the countryside, which is not inconsistent with the NPPF. This reflects the findings of the Inspector in the recent Great Bentley appeals. However, there is no dispute that the NPPF supports a less prescriptive approach to countryside protection than earlier national policy on which the TDLP was based. Therefore, in common with the Inspectors who determined recent appeals at Mistley<sup>10</sup> and Elmstead Market<sup>11</sup>, I conclude that any conflict with Policy QL1 should attract only moderate weight.

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<sup>9</sup> NPPF paragraph 213

<sup>10</sup> Appeal Ref APP/A1560/W/17/3176089

<sup>11</sup> Appeal Ref APP/A1560/W/17/3169150

29. The settlement boundaries defined by Policy QL1 allowed for “planned peripheral growth”. But I do not accept the appellants’ argument that the appeal proposal draws support from Policy QL1 because the policy includes the “Colchester Fringe” with other towns as a second tier location for development. The TDLP stipulates that this relates only to a small part of the built-up area of Colchester that lies within Tendring District.
30. However, it is clear that the defined settlement boundaries no longer accommodate housing need, so that the Council has had to allow some development outside the currently identified boundaries and to bring forward greenfield allocations, particularly the GC proposals, in the ELP. The appeal site has not been brought forward for consideration through the plan-led approach. The proposal therefore falls to be assessed on its merits, in the light of housing need and its potential addition to the supply.

#### *Character and appearance*

31. The submitted DAS is intended to set out how the proposal would respond to the site and its setting, and the LVA seeks to assess the proposal’s likely landscape and visual effects. Expert evidence for the appellants includes a review of the LVA, with some minor changes to it. The Council has not produced its own appraisal, but relies on the assessment of the LVA by its tree and landscape officer, supplemented in evidence by its main planning witness.
32. The local landscape has been subject to character appraisal at a range of different scales. At county level, the Essex Landscape Character Assessment places the site within the Tendring Plain Landscape Character Area (‘LCA’). As might be expected, the scale of assessment is rather broad for a site of this size. The LCA comprises the undulating plateau which covers the great majority of Tendring District, but does note the presence of narrow valleys with moderate sloping sides. Pressure for urban development at the edge of Colchester is noted. The LCA’s sensitivity to “small urban extensions” (defined less than 5 ha) is recorded as Low. The appellants’ application of this to the appeal proposal appears to rely on the exclusion of all proposed potential green areas. The site area is 7.3 ha, which would define it as “major urban extension”, for which the sensitivity level is graded as Medium.
33. Greater relevance can be found in the finer grain of the Tendring District Landscape Character Assessment, which identifies the Clay Valleys Landscape Type, within which LCA 6B, the Ardleigh Valley System, includes the appeal site. Because the sloping valleys have largely escaped agricultural intensification, the LCA is noted as of strong character, but with some decline in condition. Again the pressure for development is noted, with the LCA found to be of moderate sensitivity. The recommended strategy is to Conserve and Restore by, among other measures, limiting further infill development. Volume 2 of the study is intended to inform policy formulation and development management. Among the recommendations for LCA 6B is that the clear boundary with the urban edge of Colchester should be maintained and development should not extend into the Ardleigh Valley system. The potential “limited built development” outlined by the study would not include a major residential enclave.
34. Similar characteristics and recommendations for the Ardleigh Valley are found in the Colchester Borough Landscape Character Assessment, while a more focused study on Landscape Capacity of Settlement Fringes in Colchester

- Borough awards the area high landscape value with limited capacity for development.
35. Not all of the detailed judgments of these studies are accepted by both main parties to the appeal, but I find they show a consistent theme that the Salary Brook valley forms an important edge to the urban area of Colchester, and that the correct strategy for it should be one of conservation and restoration rather than development. The particular value of the LCA, which I also noted on my visits to the area, appears to lie in the variety it offers from the otherwise level plateau that covers so much of the district, with its green slopes providing the setting for blocks of mature woodland.
36. Although the appeal site has a relatively confined visual envelope, it forms part of a continuous sequence of spaces along the valley, which can be readily understood from the Salary Brook Trail and from the wider footpath network<sup>12</sup> as marking the urban edge. Despite some screening by trees along the valley floor, there is a clear appreciation of the site rising as a green slope<sup>13</sup>. From the higher roads on the valley side, particularly from the open space at Longridge<sup>14</sup>, the extent of the site can be experienced, providing a green base for Churn Wood. The LVA sees the presence of existing housing in the foreground in views such as this or from the Salary Brook Trail as a factor that would lessen the impact of development on the appeal site, but in my judgement the contrast offered by the undeveloped land adds to rather than detracts from its value.
37. The form of the site can also be appreciated, more so during the winter months, on leaving Colchester along Bromley Road, where the bridge marks a clear point of transition from the urban area to the open countryside<sup>15</sup>.
38. The effect of the proposed development would be to extend suburban character out along Bromley Road and up the slope towards the plateau. Despite the retention of most of the hedge and bank along Bromley Road, the altered character of the site would be perceived, principally from the site entrance. From the west side of the valley, the development would be seen covering the slope.
39. The LVA's conclusions on long-term effects are predicated on the success of mitigation planting, such as that indicated on the Green Infrastructure Plan and Sections submitted in evidence. There would undoubtedly be some scope for mitigation of effect once planting had matured. I share some of the Council's concern about the effectiveness of the amount of tree planting indicated, but I accept that there would be scope at reserved matters stage to seek further detail and more planting if required.
40. The Council does not seriously question the judgments reached by the LVA, as updated in evidence. Thus the effect on the character of the site and its immediate surroundings as moderate/major at the outset, reducing to moderate after 10 years, is broadly accepted, but with the important caveat that the effect would be permanent. I consider that a reasonable qualification to make.

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<sup>12</sup> See LVA Viewpoint 7, 11

<sup>13</sup> See LVA Viewpoints 8, 9

<sup>14</sup> See LVA Viewpoint 6

<sup>15</sup> See LVA Viewpoints 4, 3



41. Some possible inconsistency in the grading of visual effects was tested at the Inquiry, but the Council has not offered any distinctly different analysis. In my judgement, some of the grades may slightly underestimate adverse effects both at completion and after 10 years, where influenced by the predicted success of mitigation, such as for residents and users of Longridge and nearby roads. However they do not undermine the methodology or the LVA as a whole.
42. There is no dispute that the site and its context would not meet the high bar of being classed as a "valued landscape" in NPPF terms<sup>16</sup>. Nevertheless, I agree with the Council that it is of more than ordinary value, and that the adverse effects of development would be greater than those associated with building upon any greenfield site at the urban edge.
43. TDLP Policy EN1 seeks to protect and, where possible, enhance the quality of the district's landscape and its distinctive local character. Among the features identified for special protection are the settings and character of settlements. Policy QL11 requires new development to minimise adverse environmental impacts and to be of a scale and nature appropriate to the locality. There should be no material loss or damage to important environmental assets, such as (amongst others) areas of landscape value.
44. The appellants submit that Policy EN1 is not fully consistent with the NPPF, on the grounds that it seeks to protect all local landscapes, as opposed to the "valued landscapes" identified by the NPPF<sup>17</sup>. I accept that the reference in Policy QL11 to "areas of...landscape value" can be seen as equivalent to the NPPF term. I also accept that Policy EN1 is not fully consistent with the NPPF's more selective approach to landscape protection. But that is not to say that the NPPF offers no protection to landscape, as indicated by the requirement to recognise the intrinsic character and beauty of the countryside.
45. I find that the acknowledged harm to landscape character and adverse visual impacts, notwithstanding the scope for mitigation, would be contrary to Policy EN1. However, the weight to be given to that conflict is reduced because of the policy's lack of full consistency with the NPPF.

#### *Biodiversity and nature conservation*

46. TDLP Policy EN6 seeks to protect and enhance local biodiversity, unless other planning benefits outweigh protection, in which case compensation is to be provided. Policy EN6a resists development that would have an adverse effect on protected species. Emerging policy set out in ELP Policy PPL4 sets similar objectives, placed within the context of the hierarchy of international, national and local designations. In more general terms TDLP Policy QL11 seeks to prevent material loss or damage to areas of ecological value. This is echoed by ELP Policy SPL3, which requires mitigation measures where adverse impacts are unavoidable. There is no dispute that these policies are consistent with the NPPF.
47. The application was accompanied by an Ecological Appraisal ('EA') dated May 2017 that included the results of Extended Phase 1 habitat and protected species surveys carried out in the first part of that year. Survey work carried on up to and following the refusal of planning permission, and an updated EA incorporating these results was issued to support the appeal in January 2018.

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<sup>16</sup> NPPF paragraph 170(a)

<sup>17</sup> NPPF paragraph 170(a)

48. The Council's fourth reason for refusal was that the ecological analysis and consideration of mitigation was inadequate to rule out potential adverse effects on protected species and sensitive areas. Its evidence to the Inquiry focused on inadequate assessment of potential effects on two protected species, dormice and barbastelle bats. It was also put that the EA results suggest the possible presence in the southern part of the site of a potential priority habitat, Lowland Dry Acid Grassland ('LDAG'), which should have merited more detailed survey and analysis.

#### Dormice

49. The updated EA shows that a comprehensive on-site nest tube survey for dormice produced no positive results. The Council does not dispute that the survey was thoroughly carried out in accordance with recognised best practice<sup>18</sup>, and that it scores highly in accordance with methods set out in a research paper from 2003<sup>19</sup> published by English Nature (now Natural England ('NE')). The Council's concern relies on a caveat in that paper that negative nest tube results do not provide conclusive proof of lack of use of the site by dormice. But this does not appear to have translated into a positive recommendation in the subsequent survey best practice guidance. Given the acknowledged presence of the species in the local area it is not clear that wider ranging surveys, as now advocated by the Council, would add more conclusive evidence of the potential effect of the proposed development.

50. I accept that less weight can be given to the oral evidence of additional checks of nut consumption, as these appear to have been relatively informal and were not included in the updated EA. However, I note that the objection on this ground by Essex Wildlife Trust was withdrawn following submission of the additional survey results. I find that the survey effort was proportionate and adequate to allow a professional conclusion to be reached that the use of the site by dormice is not a significant constraint on development and that proposed mitigation measures should help to minimise effects on the species in the wider area.

#### Bats

51. It is not disputed that survey activity for bats also followed recognised best practice<sup>20</sup>, with a combination of manual and automated techniques. The survey results showed no likely roosts on the site but some limited use of the site for foraging and or/commuting, apparently mainly confined to the linear hedges and wooded edges. The issue is whether the small degree of activity by the rare barbastelle species should have prompted further surveys to allow a more complete understanding of the use of the site by this important species.

52. I acknowledge the Council's point that the survey methods, involving different locations at different times, make it difficult to reach a detailed conclusion on a consistent pattern of activity by the barbastelle bats. However, the key findings of the survey are adequate to confirm low numbers of this species, reflective of its general population distribution, but to suggest no special importance of this location, and to confirm that the activity and locations recorded are consistent with the expected use by the species which favours linear water and woodland

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<sup>18</sup> English Nature *Dormouse Conservation Handbook* 2006

<sup>19</sup> English Nature Research Report No.524 *Surveying dormice using nest tubes: Results and experiences from the South West Dormouse Project* 2003

<sup>20</sup> The Bat Conservation Trust *Bat Surveys for Professional Ecologists: Good Practice Guidelines (3<sup>rd</sup> edition)* 2006

features. It is not clear that further detailed and wider surveys as advocated by the Council would necessarily have allowed a different conclusion to be reached on the potential effect of development.

53. The Council's concern about proposed bat mitigation measures is that they are 'generic' and hence have not adequately taken into account the needs of the barbastelle. However, the focus on protection of the Salary Brook corridor and the creation of new linear networks with restricted artificial lighting would be equally relevant to the barbastelle. The evidence suggests that the loss of open closely grazed areas appears unlikely to be significantly harmful.
54. Therefore, notwithstanding the bats' importance as an Annex II species, I find that the survey effort and consideration of mitigation has been sufficient to allow a balanced professional conclusion that the effect on the species would not be materially adverse.

#### Acid grassland

55. The Council also argues that part of the site offers indications that it could comprise Lowland Dry Acid Grassland ('LDAG') which is rare in the county, and could if confirmed lead to designation as a LWS and a Priority Habitat. The argument hinges on the acknowledged abundance in upper parts of the site's southern compartment of one of the two indicator species for this habitat type, sheep's sorrel, and on the relative significance of other plant species.
56. The updated EA does not expand upon the text of the first EA in respect of habitats and flora and its conclusion in respect of the presence of LDAG remains unchanged. However, it cannot be taken that no further attention was paid to this issue. The evidence on behalf of the appellants was that later visits to the site for other surveys did allow habitat conditions to be monitored.
57. The EA raises the potential for acid grassland and discounts it. I accept that this was a legitimate professional judgment, based on the assessment of relative abundance of species present and of site conditions. Therefore, even though the LWS site selection guidance advises that even small areas of this locally rare habitat would merit designation, I find that the need for further more detailed surveys, possibly requiring grazing to be stopped, has not been shown.

#### European sites

58. The fourth reason for refusal of the planning application also cited insufficient information to conclude lack of significant effects on designated European sites<sup>21</sup> and their underpinning SSSIs<sup>22</sup>. This reflected the advice given by NE in response to the original EA. The appellants sought to address this concern by the submission of a Habitat Regulations Assessment ('HRA') Screening Report. NE's later advice, following submission of the updated EA, confirmed it was satisfied that there would be no significant adverse effects on these sites, subject to mitigation measures to be secured by condition. The terms of the condition proposed by the Council would involve the later approval of a scheme of mitigation in accordance with NE's representation.

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<sup>21</sup> The Stour and Orwell Estuaries Special Protection Area ('SPA') and Ramsar site, the Colne Estuary SPA and Ramsar site and the Essex Estuaries Special Area of Conservation ('SAC')

<sup>22</sup> Sites of Special Scientific Interest

59. Since the Inquiry, the judgment of the Court of Justice of the European Union in the case of *People over Wind*<sup>23</sup> has been published. The appellants have addressed the implications of the judgment in a supplement to their NPPF submission. The judgment has confirmed that measures proposed to mitigate effects on a European site can no longer be taken into account at the initial screening stage, but only if there is a need to proceed to carry out an Appropriate Assessment ('AA').
60. The appellants have reviewed their HRA Screening Report and submit that the proposal taken either alone or in combination would have no significant effects on the relevant sites, so that AA is not required. With regard to the effects of the appeal proposal alone, the case for low recreational impact is based on the low overall increase in population arising from the development, its distance from the protected sites, the availability of other more accessible recreational sites and the availability of on-site open space which would provide for most informal outdoor activity, in particular dog walking and children's play. As this open space would be provided in accordance with local and national policy on residential amenity and local green infrastructure, rather than as avoidance or mitigation for any effect on protected sites, it does not unbalance the screening. With regard to effects in combination with other plans and projects, which in this case would include proposals of the ELP, it is argued that the lack of any effect above a *de minimis* threshold from the site alone means that there would be no contribution to any such effects.
61. I endorse the study's analysis and accept its conclusion of no significant effects, so that an AA is therefore not required. It follows that the measures sought by NE are not necessary as mitigation, and a condition for that reason would not be justified. However, the provision of open space to the extent proposed would be secured by means of the submitted planning obligation. The Recreation Disturbance and Avoidance Strategy envisaged by the ELP is not yet in existence, so that there is no basis to establish the terms of any financial contribution, but in any event the absence of significant effect means that a contribution either to the Strategy itself or to preparatory surveys would not be justified in this instance.

*Conclusion on biodiversity and nature conservation*

62. I conclude that the Council's concerns about potential adverse effects on biodiversity and nature conservation have not been borne out, and that the proposal would comply in this respect with TDLP Policies NE6, NE6a and QL11 and would accord with ELP Policies PPL4 and SPL3. As an AA would not be required, the tilted balance of considerations would not be disengaged.

*Conclusion on site suitability*

63. The appellants' appraisals show that there would be no obstacle to approval of the proposal on grounds of biodiversity and nature conservation. It is accepted that the location of the site outside the settlement boundary is contrary in principle to TDLP Policy QL1. I have also found that the adverse impact on the character and appearance of the area would be contrary to TDLP Policy EN1. However, the weight to conflict with these policies is reduced owing to their lack of total consistency with the provisions of the NPPF. The judgment of the

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<sup>23</sup> People over Wind, Peter Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

site's suitability for the proposed development becomes a matter of balance against other considerations.

### ***Housing land supply***

64. The Council's ability to demonstrate a five-year supply of deliverable housing is disputed by the appellants. The primary consequence of a failure to maintain this level of supply is to render policies for the provision of housing out-of-date in accordance with NPPF policy<sup>24</sup>, and thereby trigger the 'tilted balance' set by the presumption in favour of sustainable development. However, as noted earlier, it is already common ground in this appeal that the relevant policies should be regarded as out-of-date and that the 'tilted balance' is invoked. Therefore, the significance of the level of the deliverable supply is a matter of the weight to be applied in the final balance.

### ***Up-to-date housing requirement***

65. The Council's position on setting the housing requirement is based on the 2016 update to a study carried out by Peter Brett Associates ('PBA') on behalf of Tendring and the adjoining North Essex districts that make up the housing market area ('HMA'). The updated study proposed an Objectively Assessed Housing Need ('OAHN') in Tendring of 11000 units over the period 2013-2033, or 550 dwellings per annum ('dpa'). This is the figure that has been submitted for examination in the ELP and is put forward by the Council for the purposes of this appeal. The appellants' analysis presented in evidence to the Inquiry concludes a considerably higher OAHN of at least 674 dpa.
66. The PBA updated study's calculation of the figure adopts a very different approach in Tendring to the other districts, due to concern over the quality of demographic data. In particular, Unattributable Population Change ('UPC') showing the difference between ONS population estimates and the actual census outcomes, is exceptionally high in this district. While the amount of UPC is accepted in this appeal, its implications in establishing the correct level of future housing need are disputed.
67. The Council's evidence included a detailed report on UPC prepared by consultants NMSS in December 2017, which advocated a reduction in OAHN to 480 dpa, and the Council had for a time adopted that figure. However, in the appeal at New Road, Mistley<sup>25</sup>, the Inspector decided that there was uncertainty around this figure, and that 550 dpa should be preferred, as this was the figure to be tested at the ELP examination.
68. At the very recently decided Great Bentley appeals, which actually opened before the Mistley appeal, the Council sought to adjust the 480 figure to 485 dpa, but again the Inspector concluded that, while there was merit in this approach, a figure of 550 dpa would be more robust in the light of the ongoing ELP examination.
69. A consistent theme in these decisions, as in the earlier decision at Sladbury's Lane, Clacton<sup>26</sup>, is that the proper forum for determining OAHN is the local plan examination, where the full range of all interested parties' views can be taken into account, and not a s78 appeal with its inevitably more narrowly focused

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<sup>24</sup> NPPF 2018 paragraph 11(d) and footnote 7

<sup>25</sup> Appeal Ref APP/A1560/W/17/3176089

<sup>26</sup> Appeal Ref APP/A1560/W/17/3196220

- evidence. This view has been endorsed by the courts<sup>27</sup> and I consider it to be equally relevant to the present case.
70. In his second letter of initial findings on the examination of the ELP, the Inspector set out his conclusions on Chapter 4 of Section 1, and Policy SP3 which deals with housing supply. For Tendring, he unequivocally endorses the approach of the updated PBA study, as supported by the more recent submissions on UPC and the implications of the 2016-based sub-national population projections. He supports the starting point of 480 dpa, while noting indications that the true figure could be slightly lower, and a market signals uplift of 15%, which would also allow for job growth and affordable housing need. The resulting figure of 550 dpa is confirmed as the OAHN for Tendring and a sound basis for ELP Policy SP3.
71. In response, the appellants raise concern that some evidence was presented to the Inspector after the examination hearings and was not open to response by other interested parties. However, the Inspector was clearly satisfied that he had sufficient inputs to enable him to reach a conclusion. The appellants' assessment was presented at the hearings, and he also had before him a higher figure of 776 dpa proposed by the Home Builders Federation.
72. The appellants acknowledge that the Inspector's conclusions are a material consideration of "some weight". In my view, the confirmation of the OAHN through the examination is a matter of very significant weight. Given the acknowledged status of the examination as the optimum forum to confirm the OAHN, it would be difficult for this appeal decision to take strong issue with it. The Inspector's letter addresses the issues raised in evidence on this appeal, and I have found no good reason to reach a different conclusion on those matters.
73. The Inspector's letter notes the Government's intention to introduce a new standard method of calculating housing need, to which the appellants had referred in evidence. The use of a standard method is now enshrined in the updated NPPF<sup>28</sup> and the PPG has been partly amended accordingly to explain its application<sup>29</sup>. The appellants now calculate the OAHN based on the standard method to be 838 dpa<sup>30</sup>, which would be an increase over the 749 dpa arising from the draft standard method.
74. The NPPF expects the standard method now to be used unless exceptional circumstances justify an alternative approach. The Council argue that such circumstances apply in this case, referring in particular to the Examining Inspector's conclusions. I accept that those findings provide a strong argument for moving away in this instance from the standard method, which is based on population projections here found to be uniquely compromised.
75. Furthermore, the transitional arrangements included in the NPPF allow for emerging plans submitted up to 24 January 2019 to be examined in accordance with the former policy framework. This would apply to the ELP, which, subject to the North Essex Authorities' response to the Inspector's initial findings, could

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<sup>27</sup> See the *Hunston* Court of Appeal judgment quoted here in evidence for the appellants - *City and District Council of St Albans v The Queen (oao) Hunston Properties Ltd and SSCLG* [2013] EWCA Civ 1610

<sup>28</sup> NPPF 2018 paragraph 60

<sup>29</sup> PPG: Housing and economic development needs assessments Updated 24 July 2018

<sup>30</sup> Barton Willmore: Note on the Standard Method Housing Need for Tendring, attached to Appendix 1 of the appellants' Comments on NPPF 2018

continue to proceed through examination, either by omitting the proposed Garden Communities or by opting for a suspension to allow further work on them. In those scenarios the figure of 550 dpa would be likely to be confirmed as the adopted OAHN. The third scenario outlined by the Inspector would involve withdrawal of the ELP and work to commence on a revised version. In that case, there would still be a strong argument for basing the revised plan on the analysis done to date until population figures could be rectified.

76. For all the above reasons, I agree with the Council that 550 dpa should be accepted as the OAHN for the purpose of this appeal. I also agree that the figure promoted by the appellants can be disregarded as it too relies on the official population figures and does not represent a reasonable alternative to the standard method.
77. To assist with establishing the up-to-date five-year requirement in the run-up to the Inquiry, the Council brought forward its assessment of the current position on housing delivery up to March 2018. This has allowed the base date for calculating the current requirement to be rolled forward to April 2018. The reported figure of 565 completions during 2017/18 was said to be still marginally provisional, but is sufficiently robust for the purposes of this appeal and is accepted in the HSCG. Based on this, with an OAHN of 550 dpa the shortfall in completions since 2013 amounts to 811, giving a five-year requirement of 3561.
78. In accordance with NPPF policy, a buffer must be added to reflect past under-delivery. In evidence to the Inquiry, it was agreed that this should be at the higher 20% level advised by the original NPPF in cases of persistent under-delivery. The NPPF now advises that such under-delivery should be assessed over the previous three years, and that from November 2018 this will be by means of a new Housing Delivery Test ('HDT')<sup>31</sup>. Guidance on the application of the HDT states that for the first three years of its operation, as the standard method begins to be applied, delivery should be measured against averaged household projections<sup>32</sup>. The appellants suggest that these figures should also be used to assess under-delivery in this case. With completion over the years 2015-2018 of 1468 units against averaged household projections of 1877, the delivery rate would be 78%. When the HDT comes into operation, a rate less than 85% would trigger application of the 20% buffer.
79. The NPPF does not specifically advise on the correct approach until the HDT comes into operation. But, particularly given the concern over the reliability of population and household projections in Tendring, I agree with the Council that there is a strong case in the interim period to continue to assess delivery against the OAHN. The record shows that completions exceeded the OAHN in two of the last three years. When set against the combined OAHN of 1650 units, the 1468 completions would result in a delivery rate of 89%. Therefore, I accept the Council's new case that there has not been significant under-delivery and that the correct level of buffer should be 5%. With the agreed 'Sedgefield' approach to addressing the shortfall, the full five-year requirement from 2018/19 to 2022/23 amounts to 3739 units<sup>33</sup>.

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<sup>31</sup> NPPF paragraph 73

<sup>32</sup> Housing Delivery Test Measurement Rule Book (MCHLG July 2018) paragraphs 21-22

<sup>33</sup> Appellants' Comments on NPPF 2018 Appendix 1, Table at paragraph 33

### *Housing supply*

80. The Council's revised annual position statement included its updated provisional housing trajectory and assessment of likely delivery on large sites with and without permission. These showed a deliverable supply of 4649 units, which would have equated to 5.45 years' supply against its proposed requirement of 4273 units. By the close of the Inquiry, the Council had accepted that two sites would not deliver as first predicted and reduced the total deliverable supply to 4626 units, which would have provided 5.41 years' supply. Following a minor adjustment of 11 units, the appellants' position was that the actual supply would amount to 3835 units. This would have given a supply of 3.33 years' against their assessment of a total requirement of 5761 units, based on an OAHN of 647 dpa, but would also be well short of the 4273 requirement.
81. Both main parties have reviewed their positions in the light of the NPPF changes, but continue to sustain these estimates. The appellants' update helpfully sets out comparative estimates of supply against both the Council's OAHN of 550 dpa and the standard method of 838 dpa, as well as their own 647 dpa. Thus it can be seen that the appellants' worst-case supply of 3835 units would exceed the five-year requirement of 3739 units.
82. However, the appellants' estimate relies on a number of assumptions in respect of three areas of dispute. These need to be reviewed in the light of the current policy position in order to establish the actual deliverable supply.

### *Inclusion of Class C2 units*

83. The appellants dispute the inclusion in the supply of 60 units at Coppins Court, Clacton, granted permission in 2017 as an "independent living" scheme for older people. It is common ground that the need for institutional residential accommodation should not form part of the OAHN, and hence accommodation provided to meet that need should not be included in the estimate of the deliverable supply to meet the OAHN.
84. The appellants' objection to the inclusion of this development lies in its approval as accommodation within Class C2, which is the class defined as "residential institutions"<sup>34</sup>. Reference is made to an appeal decision for development at Bewdley, Worcestershire<sup>35</sup>, where the Inspector gave weight to the specification of Class C2 and a prohibition of use within Class C3 (dwellinghouses) in deciding to discount two sites from the claimed supply.
85. In that decision the test applied by the Inspector was whether the units could be regarded as "ordinary dwellinghouses". I agree with the Council in the current appeal that this may have been an over-exacting interpretation. Further analysis is needed on whether the units provide for independent living, whether or not an element of care is also available. Indeed, the definition of Class C3 also allows for some care provision.
86. The SHMA Update prepared for the four authorities in late 2015 includes specialist housing for older people within the estimate of future need, comprising sheltered housing and extra-care housing. A clear distinction is

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<sup>34</sup> Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>35</sup> Appeal Ref APP/R1845/W/17/3173741



drawn with the need for spaces in nursing homes and residential care homes, which in accordance with recognised practice do not form part of the OAHN.

87. The evidence suggests that the Coppins Court development would be more akin to extra-care accommodation, in the availability of a degree of care within the context of independent living, than to fully institutional living. I consider it reasonable for the Council to include these units within the supply to meet the OAHN.

*Large sites with planning permission*

88. The Council's estimated supply is predominantly made up of large sites with planning permission. The current progress of each site is set out in the updated assessment report. At the Inquiry, the Council conceded that one site with permission (Harwich Valley Land) should be omitted from the deliverable supply. The appellants dispute the deliverability of 10 other sites.
89. Evidence to the Inquiry was founded on footnote 11 to the original NPPF, which stated that sites with current planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years. The appellants pointed to a number of doubts and potential obstacles that might prevent, or in one case delay, delivery of each site, with the Council outlining the evidence and assumptions that had led it to conclude that the permitted schemes would be capable of delivering at the anticipated rate.
90. The appeal now falls to be determined in the light of the revised NPPF. This clarifies that the above definition continues to apply to small developments of less than 10 dwellings and to sites with detailed planning permission, but that sites with outline planning permission should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years<sup>36</sup>. The appellants lay particular emphasis on this latter revision. The precise nature of the evidence required is not yet spelt out. Draft Planning Practice Guidance<sup>37</sup> issued with the draft NPPF update referred to the possible identification, in consultation with the industry, of indicators of likely delivery. However, until such guidance is confirmed, I consider it wisest to take a precautionary approach, and to expect the necessary evidence to involve a clear commitment to a programme of delivery.
91. Of the 9 disputed sites, 4 have full planning permission. Clearly these are not prime development opportunities, and have a number of constraints to be resolved. However, in each case planning permission has been granted within the past 18 months. There has been limited evidence of significant progress since then, with pre-commencement conditions yet to be discharged on 3 of the permissions. Nevertheless, it is still early to conclude that the evidence clearly indicates that delivery will not take place within the five-year period.
92. In the case of the two sites at Brooklands, Jaywick, anticipated intervention by the Council as part of regeneration effort in the area could accelerate development. At Stanton Euro Park, Harwich, a new developer has submitted a further application for a larger number of dwellings, which remains under consideration. Approval of that proposal would tend to indicate a greater likelihood of delivery, but the new submission does not confirm abandonment

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<sup>36</sup> NPPF 2018 Annex 2: Glossary

<sup>37</sup> ID4

of the permitted scheme. Even if the revised proposal were not approved, despite acknowledged marginal viability there is no clear evidence that the permitted scheme for 38 units could not proceed. On balance, I find that these sites should be taken as part of the deliverable supply.

93. However, in the case of the fourth permitted site, the former Martello Caravan Park, Walton on the Naze, the Council concede that the permitted development of 16 apartments is not now going to proceed. The figure of 10 units included in the Council's supply estimate relates to an alternative application for 10 houses, which has yet to be approved, and is subject to outstanding objections. As reliance cannot be placed on the extant permission, and there is an absence of clear evidence that completions will take place within five years, the site should be omitted from the deliverable supply.
94. Similar evidence is needed to justify inclusion of the remaining 5 sites under dispute, all of which have outline planning permission. Three of the sites have not yet had applications for approval of reserved matters, which must be seen as a key milestone in the delivery process. The Council's own assessment acknowledges potential difficulties in bringing forward development on these sites. In the case of Brickfield Lane, Parkeston and Stourview Avenue, Mistley, uncertainties about viability and access prevent full confidence of delivery within the period. Phase 2 of Admiral's Farm, Great Bentley, appears less constrained but relies on timely completion of Phase 1, which cannot be assumed. These sites should accordingly be omitted from the predicted supply.
95. Of the 2 sites for which approval of reserved matters has been sought, the Council's evidence suggests delays are likely at Long Road, Mistley, as revised proposals and appeal(s) are resolved. There is insufficient certainty to include the site in the deliverable supply. The proposed 51 units at Great Oakley appear to comprise a bespoke form of development, to be driven by demand for individual units. The application for reserved matters for the first phase of 23 units is relatively recent, but there is no suggestion of difficulties in finalising an acceptable proposal. I agree with the appellants that it would be unwise to include more than this first phase in the supply.
96. In the light of the above, I find that the Council's predicted supply from large sites with permission needs to be reduced by 250 units, in addition to the agreed deletion of 20 units at Harwich Valley Land.

*Sites proposed for allocation in the emerging plan*

97. At the Inquiry, the Council's estimated supply included 8 sites identified as allocations in Part Two of the ELP. It was agreed that one of these, St John's Road, Clacton, had recently been granted outline planning permission on part of the site for 12 units (11 net), and was no longer in dispute for this level of provision. However, the absence of reserved matters approval and clear evidence of developer intent now suggests that it is too early to confirm this site in the supply.
98. The NPPF definition of deliverability places sites allocated in the development plan on the same footing as sites with outline permission, in terms of the need for clear evidence of likely completions. The appellants argue that the lack of reference to emerging allocations means that they cannot therefore be considered deliverable. However, the original NPPF made no specific mention of emerging allocations, but the courts found that under that definition there was

no bar in principle to their inclusion in the deliverable supply of sites without planning permission<sup>38</sup>. I consider it unwise to assume a blanket presumption against the possible inclusion of emerging allocations. But the now more stringent definition places a greater demand for the production of clear evidence of likely completions.

99. In the present case, the proposed allocations form part of the Section 2 ELP. Section 2 has been submitted, but the examination is not to proceed until the Section 1 examination has reached a satisfactory position. The appellant has referred to recent appeals in other North Essex districts, where even before the new definition, an Inspector found that it would be premature to include ELP sites that are contrary to the current plan and had unresolved objections<sup>39</sup>, and in the other the planning authority had opted not to include ELP sites in its estimate of deliverable supply.
100. The Examining Inspector's initial findings outline three potential options for the future progress of the ELP examination. Whichever option is pursued, it seems clear that there will now be some delay, perhaps of considerable length, before any examination of Section 2 proposals could proceed. As a result, there is a reduced likelihood of objections to draft allocations being resolved through the plan-making process in time to give confidence of delivery within the five year period.
101. Copies of the representations made on the disputed draft allocations were provided to the Inquiry. Only one site ('Barleyfields', Weeley), had a high number and breadth of objections. Objections to other sites for the most part sought mitigation of effects, for example on heritage assets or nature conservation, to be included in the policy. Several allocations were subject to objection that the site was outside the current settlement boundary and represented an encroachment into the countryside. But if that were an insurmountable objection, the appeal proposal would also fail. In one case (Orchard Works, Clacton, which had been allocated in the current plan) no objections were reported.
102. That site is the subject of a current application for full planning permission, as is one other site (Land north-east of the Montana Roundabout). Should these applications be approved, the sites could then be regarded as deliverable unless there was clear evidence to the contrary. But until that time, inclusion of the sites in the deliverable supply would be premature. All but one of the other emerging allocations is subject to a current application for outline permission. The Council has confidence that objections to these can be resolved, but in the absence of clear evidence that the sites will start to deliver in time, they ought not be included in the supply.
103. Therefore, in these instances the issue of objections to the emerging allocations is not overcome by the possible earlier approval of the outstanding planning applications. The only emerging allocation that is not subject to a current application ('Oakwood Park', Little Clacton) has the active support of a developer, who is reported to be close to resolving access and other issues. However, the Council's own assessment questions the site's current availability, so that on that ground alone it would not meet the test of deliverability.

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<sup>38</sup> *Wainhomes (South West) Holdings Ltd v SSCLG* [2013] EWHC 597 (Admin); *St. Modwen Developments Ltd v SSCLG & East Riding of Yorkshire Council & Save Our Ferriby Action Group* [2017] EWCA Civ 1643

<sup>39</sup> Appeal Ref APP/A1530/W/17/3178656

104. Taken together, the above reservations lead me to conclude that all of the disputed emerging allocations, including St John's Road, should be omitted from the supply, a reduction of 446 units<sup>40</sup>.

*Conclusion on housing land supply*

105. On current evidence, I have found that the Council's estimated supply should be reduced by 696 units, which would leave a five-year deliverable number of 3930 units. There would therefore be a greater margin in excess of the requirement than argued by the appellants, at about 5.25 years' supply.

106. My conclusion that the Council can demonstrate an adequate deliverable supply echoes the conclusions at the recent Great Bentley and Mistley appeals, albeit for rather different reasons. My finding is based on the assessment of the latest evidence before me, with the updated NPPF being a particularly significant factor.

107. I acknowledge that the supply position is relatively marginal. However, it is clear that the situation on many of the above sites could change quite rapidly, even for those yet to secure outline permission. Delay on the adoption of the ELP would become less critical for the supply if emerging allocations had already received permission and had a clear path through to delivery. Equally, introduction of the HDT could affect the supply in a different way. But as things stand, I find that the ability to show a deliverable supply tends to support the Council's opposition to the proposal.

***Prematurity***

108. The second reason for refusal of the application, sustained at the Inquiry, related to the issue of prematurity, in particular whether approval of the appeal proposal would prejudice the emerging plans for the TCBGC. Notwithstanding the Council's concession of reduced weight to the ELP following the Inspector's first letter, it continues to maintain a prematurity argument.

109. As outlined earlier, the NPPF confirms that weight may be given to relevant policies in emerging plans according to the stage of preparation of the plan, the extent of unresolved objections and the degree of policies' consistency with the NPPF<sup>41</sup>. However, a refusal of planning permission on grounds of prematurity is unlikely to be justified other than in the limited circumstances where two factors are found. These require the plan to be at an advanced stage towards adoption and the proposal to be so substantial that to grant permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to the emerging plan<sup>42</sup>.

*Advanced stage*

110. The NPPF does not define the term "advanced stage". In the ordinary course of an examination, the fact that a plan had been submitted and the examination had progressed through hearings to initial findings could be taken as reaching an advanced stage, but subject to an awareness of the need for necessary main modifications, and the potential for further objections to them.

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<sup>40</sup> Allowing for the agreed reduction of 3 units at Land north-east of the Montana Roundabout

<sup>41</sup> NPPF 2018 paragraph 48

<sup>42</sup> NPPF 2018 paragraph 49

111. However, in this case the Examining Inspector's Stage 1 findings represent a considerable setback for the ELP. There is now a very significant question mark over the soundness of the centrepiece of the plan, the GC proposals. Whichever option is ultimately pursued by the joint authorities, significant further work will be required to address the matters identified. In these circumstances, it would be wrong to conclude that the ELP was at an advanced stage.

*Pre-determination*

112. Among the requirements set by ELP Policy SP8 is to be a network of multi-functional green infrastructure, to include "a new country park...along the Salary Brook corridor and incorporating Churn Wood". Reference is also made to the proposed country park "safeguarding the important green edge to Colchester". The Issues and Options Report also outlines the creation of a country park, but the Concept Framework illustrated, which had been worked up following earlier consultation, shows the appeal site as part of "a connected network of amenity open spaces" separating the current urban edge of Colchester from the main developable area of the TCBGC.
113. In absolute terms, the area of the appeal site and its potential housing yield are both small by comparison with the planned scale and output of the GC. Development of the appeal site alone could not be said to pre-determine decisions about the scale, phasing or development of the GC as a whole. The TCBGC Overlay included in the appellants' landscape evidence<sup>43</sup> shows that the overwhelming majority of the GC proposal could remain deliverable as indicated on the Concept Framework.
114. The evidence given to the Inquiry by the promoters of the GC and local people who had taken part in consultation gives very clear testimony to the importance placed by them on the country park proposal as a key element of the GC. However, the potential implementation of the country park is clearly at a relatively early stage, with no approaches as yet to landowners or any published approach to site assembly. It is not clear from the Concept Framework, whether the full length of the Salary Brook corridor would be feasible to include in a managed country park.
115. I do not accept the appellants' view that built development on the appeal site would not be uncharacteristic of the country park experience, based on the proposed amount of open space to be provided. The development of the appeal site would eat into the potential broad swathe of open land to the east of Salary Brook. Although it would take up a relatively short component of the entire length of the brook corridor, it would be an important central location. It would directly conflict with the essential requirement of ELP Policy SP8 of safeguarding the green edge to Colchester. Nevertheless it would not prevent the creation of a substantial country park to the north or to the south, linked with Churn Wood. Because the Salary Brook Trail would be unaffected, development of the appeal site would still allow "a connected network of amenity open spaces" along the corridor.
116. The Salary Brook corridor forms an environmentally rich well-defined edge to the urban area. Safeguarding the edge is clearly a worthwhile objective, and the opportunity to do so through the creation of a country park along the entire length of the corridor offers potentially great benefits. However, it is the

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<sup>43</sup> Proof of evidence of Gary Holliday, Appendix 6

maintenance of some form of green separation from existing settlements that seems to me to be central to the GC concept, rather than its precise character as a country park. I accept that, were the appeal site to be developed, Churn Wood and potentially other land identified on the Concept Framework would continue to provide a significant buffer. The development would partly pre-determine decisions about the nature and scale of the green buffer, but would not fundamentally undermine the plan-making process.

#### *Conclusion on prematurity*

117. For the reasons set out above, I find that the appeal proposal could not be regarded as harmfully premature in respect of the ELP.

#### **Other matters**

##### *Traffic and highway safety*

118. The Council's decision not to pursue the third reason for refusal on highway safety grounds arose from the highway authority's confirmation that these matters had been satisfactorily addressed by the appellants and the conclusion of the TSCG. Nevertheless concerns continued to be raised by local residents and representatives, and strongly felt submissions were made to the Inquiry, particularly by those who had been directly affected by a previous fatal accident near the site.
119. The primary concern relates to the safety of the proposed access off Bromley Road, and the danger of collisions between vehicles using Bromley Road and those leaving the site or waiting to turn into it. However some of this concern may have been based on a misunderstanding of the actual location of the access, which would be some 25m closer to Colchester than the existing. The proposed access arrangement has been subject to an independent safety audit. Notwithstanding the width, curved alignment and gradient of Bromley Road, I am satisfied that the sightlines agreed would allow adequate visibility in both directions, and find no reason to challenge the TSCG agreed position on this issue. Should the development proceed, the expansion of the built-up area, to be marked by the extension of street lighting on Bromley Road, would also allow the possibility of a review of speed limits. The submitted Transport Assessment ('TA') gives confidence that there would be no other safety issues arising in the vicinity as a result of increased traffic from the development.
120. Significant concern was also raised about potential severe congestion at the junction of Bromley Road with Hawthorn Avenue and the associated junction with Harwich Road. I find no reason to take issue with the predicted traffic generation, which is derived from TRICS data, and which would result in a relatively marginal increase in peak hour movements on Bromley Road. Subject to implementation of the proposed improvement to the Hawthorn Avenue junction, which could be secured by condition, the TA predicts that any adverse effects of increased traffic would be fully mitigated and that both junctions would operate successfully. While I acknowledge local evidence of problems in this location, my own observation of the junctions at school time in the morning peak did not give me any reason to reject the agreed professional assessment.

121. I find that the balance of the evidence suggests that increased post-development traffic would not have unacceptable effects on the safe and efficient operation of the highway.

#### *Accessibility*

122. The schools at Hawthorn Avenue and the well-stocked convenience store opposite lie within recognised distance for accessing such facilities on foot, with a continuous footway available. The TA also outlines the distances from a range of other facilities, both on foot and by bicycle. I acknowledge that some of these distances are not optimal, which reflects the site's location at the edge of the urban area, but they are also not uncommonly found in outer suburban areas. I also accept that the evidence presented by objectors shows that some of the designated cycle routes potentially available to any future residents have inherent design and maintenance flaws. However, I am satisfied that these modes would be available as realistic options for future residents. The appellants' evidence also shows that bus stops on Longridge and Bromley Road would be within an acceptable distance and that their relatively limited services could provide a marginally workable non-car mode for commuting and shopping trips. The increased number of residents, together with proposed improvements to bus stops, could help to increase usage and service provision. However, a much better service is also accessible within walking distance at Hawthorn Avenue.

123. The site is at the edge of one of the largest towns in the region, well connected by road and rail. Its accessibility must be seen as high in comparison with many other sites in the Council area, and would not support rejection of the appeal proposal.

#### *Infrastructure and services*

124. There is no evidence that local schools would not be able absorb additional pupil numbers arising from the development. A range of secondary school provision would be accessible. The UU would produce a financial contribution towards the enhancement of facilities at the nearest medical practice. Objectors' concerns that this would be difficult to achieve are not borne out by clear evidence. I find that subject to this mitigation there would be no unacceptable impact on local infrastructure and services.

#### *Heritage assets*

125. The SCG records agreement that there would be no adverse effect on the historic environment, and this was not a reason for refusal of the application. However, the appellants' Heritage Desk-Based Assessment ('HDBA') concludes that Hill Farm, whose garden adjoins the site boundary at the top of the hill, should be classed as a non-designated heritage asset. Because of Hill Farm's historic links with the fields of the appeal site and the intervisibility between them, the HDBA finds that there would be a minor adverse effect on the setting of the heritage asset. The appellants conclude that there would be slight harm to the significance of the asset but that, when subject to a balanced judgement in accordance with NPPF advice<sup>44</sup>, this would be outweighed by the benefits of the proposal.

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<sup>44</sup> NPPF paragraph 197

126. The adjacent former farm buildings, now all converted to residential and domestic use, are listed Grade II, with the most prominent being the former barn, now re-named as Crockleford Grange. At the Inquiry, I sought to establish why the setting of these buildings would not be as adversely affected as Hill Farm's. The supplementary paper later submitted by the appellants seeks to resolve this.
127. The HDBA confirms that the site forms part of the setting of the listed buildings and that the historic relationship of the site and Hill Farm applies also to the listed ancillary buildings. Hill Farm is somewhat closer to the site and slightly more visible from within the site. The sloping ground prevents views of the site from the listed buildings, and this seems to have been a critical factor in the HDBA assessment. However, it seems likely that development in accordance with the illustrative masterplan, coming near to the top of the slope, would be visible from some of the listed buildings. This would be very much closer than the existing residential area across the valley. The supplementary paper confirms that the effect of development on the view back across the valley towards Hill Farm would be harmful to its heritage significance, but the listed former barn is also clearly visible in the same view<sup>45</sup>.
128. For these reasons, I find that the identified adverse effect on the setting of Hill Farm would also apply to the setting of the listed buildings. There would be very minor harm to their significance as a result, which must be balanced against the proposal's public benefits.

### ***Planning obligation***

129. The amended UU eliminates a minor lack of precision in the original version and now provides a properly executed deed of obligation. The Council has provided a CIL Regulation Compliance Statement which sets out the policy basis for each of the UU covenants and their compliance with Regulations 122 and 123 of the CIL Regulations<sup>46</sup>.
130. Affordable housing is to be provided in response to the latest evidence of need at the rate of 30% sought by ELP Policy LP5, which is now seen as the likely maximum viable level and justifies departure from TDLP Policy HG4. The provision of open space and the need to secure its future management are in accordance with TDLP Policy COM6. The provision towards medical care would allow Parsons Heath Medical Centre to respond to additional demand for services arising from the development, in accordance with TDLP Policy QL10.
131. I am satisfied that each of the covenants would be fully supported by policy and would meet the tests for obligations set by Regulation 122(2) and echoed by the NPPF<sup>47</sup>, in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind. The obligation can therefore be taken into account in support of the appeal proposal.

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<sup>45</sup> Shown in LVA viewpoint 6. The HDBA Plate 9 refers to an unlisted 'Crockleford Grange' house, but this appears to be misleading.

<sup>46</sup> Community Infrastructure Levy Regulations 2010 (as amended)

<sup>47</sup> NPPF paragraph 56



## ***Balance of considerations***

### *Benefits of proposal*

132. The NPPF outlines the overarching interdependent objectives for planning to achieve sustainable development: social, economic and environmental.
133. The main social benefit would lie in the provision of up to 145 additional dwellings. While this is to be seen in terms of the Council's current ability to demonstrate a five-year supply of deliverable housing, there is no dispute that the provision of 30% affordable housing, in a context of continuing unmet need, would be a significant benefit. Modest social benefits would also arise from the enhancement of bus stops and footways. Owing to the site's lack of connectivity with nearby housing, the provision of play facilities and public paths would be of value primarily to residents and would not result in a wider public benefit.
134. Economic benefits, as set out in the appellants' Socio-Economic Sustainability Statement, would include the direct and indirect employment and investment generated by the construction of the dwellings over a four year period. In the longer term, future residents could be expected to be economically active and to contribute to the support of local businesses and services. It can be said that similar benefits could also be achieved by any housing development of this scale, particularly one more policy-compliant. But given the potential delay in adoption of the ELP, the likely delivery of these outcomes is important. Improved operation of the Bromley Road /Hawthorn Avenue junction should also contribute to economic benefit by reducing congestion.
135. Against these there would be a minor long-term disbenefit from the loss of 1.5ha of 'best and most versatile' agricultural land. However, use of the site for keeping horses means that the land is not currently exploiting this quality, and there is nothing to suggest that the current use would not continue in the absence of development. Overall, the economic benefits of the scheme would be considerable.
136. The potential ecological enhancement measures proposed and the provision of greater than minimum areas of open space and green infrastructure would represent moderate environmental benefits.

### *Planning balance*

137. As outlined earlier, the main parties have agreed that, for the purposes of the NPPF presumption in favour of sustainable development, the adopted development plan policies for the supply of housing are out of date.
138. In assessing the proposal against national policy, the first test is therefore whether NPPF policies that protect assets of particular importance, such as designated heritage assets, provide a clear case for refusal<sup>48</sup>. In this case, I have found minor harm to the significance of the group of listed buildings adjoining Hill Farm due to the change to their setting. The harm would be very much less than substantial and would be outweighed by the public social and economic benefits of the provision of market and affordable housing, as outlined above. The buildings' relationship with the appeal site is now largely of

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<sup>48</sup> NPPF paragraph 11(d)i and footnote 6

historic interest only and appreciation of their visual relationship is relatively constrained. Even applying the special regard to the desirability of preserving the building's setting required by statute, rejection of the proposal for this reason would not be justified.

139. The second test is whether the adverse impacts of allowing the proposal would significantly and demonstrably outweigh its benefits when assessed against the policies of the NPPF as a whole<sup>49</sup>. In addition to the very minor heritage harm, there would also be slight harm from the loss of BMV land. Much greater adverse impact would arise from the significant harmful effect on the character and appearance of the area, through the expansion of development across the Salary Brook valley. These are matters of significant weight.
140. I have found that the Council can currently demonstrate a five-year supply of deliverable housing. However, the supply position is quite volatile and could significantly change in the near future following revised planning practice guidance. I recognise the steps taken by the Council to increase supply, by bringing forward the ELP, but that is now subject to some delay. I note also that permissions are being granted in suitable locations, but these seem unlikely to influence the supply to the same extent as the other potential changes. Furthermore, the national objective is a significant boost in supply, so that the five-year supply figure is not to be taken as a ceiling. Therefore, the social benefits of the provision of additional housing, and in particular affordable housing, also attract significant weight, and the economic benefits moderate weight. Some additional modest weight is added by the proposal's environmental benefits.
141. In these circumstances, I find that the proposals' primarily social and economic benefits would not be significantly and demonstrably outweighed by its adverse environmental impacts. The tilted national policy balance would support approval.
142. In terms of the development plan, the conflict with TDLP Policy QL1 is not disputed, but as the Council accepts that the policy is out of date, I give only moderate weight to the conflict. I have found that there would also be conflict with TDLP Policy EN1, but that is also of reduced weight. The Council is clearly committed to working with neighbouring authorities to bring forward the ELP as an innovative approach to housing and economic growth. The environmental quality of the proposed green buffer to the east of Colchester is an important consideration. However, as a result of the post-hearing findings, the weight that can be given to the emerging plan is reduced. Therefore, in this instance I find that the policy conflict would be outweighed, and that the NPPF balance provides an important material consideration that indicates a decision other than in accordance with the development plan.

## Conditions

143. The Council's draft schedule of conditions was discussed at the Inquiry and a number of amendments subsequently made. Having considered the revisions, I have made some further changes in the interests of precision and enforceability. I am satisfied that the conditions now set out in the schedule

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<sup>49</sup> NPPF paragraph 11(d)ii

- annexed to this decision are necessary to make the development acceptable and otherwise meet the tests set out in the NPPF<sup>50</sup>.
144. The condition on submission of reserved matters and commencement of development is standard. I agree with Council that the appellants' offer of a shorter submission time would not be necessary. Identification of the approved plans is necessary to confirm the extent of the development and the location and form of the approved access.
145. While landscaping is a reserved matter, conditions are necessary at this stage to ensure the quality and timing of final implementation and the protection of trees, in the interests of character and appearance. Approval of building and site levels is necessary to ensure a satisfactory relationship between buildings.
146. Approval of external lighting is necessary to avoid light pollution, to safeguard living conditions and to minimise impact on protected species.
147. A Construction Method Statement is required to protect the amenities of the occupiers of nearby residential properties and the surrounding area and in the interest of highway safety and environmental protection. The Statement is required prior to the commencement of development to ensure that measures are in place to safeguard the amenity of the area prior to any works starting on site.
148. Two conditions are justified to ensure that the biodiversity of the site is protected and enhanced and effectively managed following the completion of the development, and to ensure that any delay in construction is preceded by more up-to-date survey work.
149. Approval of details of the site access and its implementation prior to construction of any dwelling is justified in the interest of highway safety. The approval and implementation of off-site highway works is necessary to ensure that the impacts of the proposed development on the wider highway network are fully mitigated, and to encourage travel by modes other than the private car for journeys to and from the completed development.
150. A programme of archaeological work is justified to enable full investigation and recording, as the site lies within an area of archaeological interest. The implementation of the agreed programme of works is required prior to the commencement of development to ensure that any archaeological interest on the site is recorded before construction works start.
151. The approval and implementation of a surface water drainage scheme and the approval and implementation of ongoing maintenance arrangements are necessary to ensure the satisfactory drainage of the site and to prevent flooding. Failure to provide the above required information before commencement of works could result in the installation of a system that is not properly maintained and could increase flood risk or pollution hazard from the site.

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<sup>50</sup> NPPF paragraph 55

**Conclusion**

152. For the reasons set out above, and having regard to the submitted UU, I conclude that the appeal should be allowed and outline planning permission granted subject to conditions.

*Brendan Lyons*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon of Counsel	Instructed by Tendring District Council
He called:	
Cristina Howick MA(Oxon) BSc	Partner, Peter Brett Associates
Neil Harvey BSc MCIEEM	Natural Environment Manager, Place Services
Alison Hutchinson BSc MRTPI	Partner, Hutchinsons

### FOR THE APPELLANTS:

Thea Osmund-Smith of Counsel	Instructed by Gladman Developments Ltd
She called:	
James Donagh BSc(Hons), MCD, MIED	Director, Barton Willmore
Gary Holliday BA MPhil CMLI	Director, FPCR
Ian Cronshaw BA(Hons) MCIHT	Associate Director, Ashley Helme Associates
Suzanne Mansfield PhD MCIEEM CMLI	Ecology Director, FPCR
Chris Dodds BA(Hons) MCD MIED	Associate Director, Planning Prospects
Christien Lee BSc(Hons) MCD MRTPI	Senior Planner, Gladman Developments Ltd

### INTERESTED PERSONS:

Councillor Paul Smith	Leader, Colchester Borough Council; Director, North Essex Garden Communities Ltd
Councillor Tim Young	Deputy Leader, Colchester Borough Council; Deputy Director, North Essex Garden Communities Ltd
Tim Foster	Ardleigh & East Colchester Conservation Society
Sir Bob Russell	High Steward of Colchester; former MP
Sam Gibbs	Local resident
Manda O'Connell	Local resident
Chris Downes	Strategic planning specialist, North Essex Authorities
Andrew Bilby	Local resident
Ian Davies	Ardleigh & East Colchester Conservation Society
Councillor Carlo Guglielmi	Member, Tendring District Council and Essex County Council; Alternate Director, North Essex Garden Communities Ltd
Jeff Orton	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Unilateral undertaking
- 2 Draft Schedule of conditions
- 3 Government response to the Planning for the Right Homes in the Right Places consultation
- 4 Draft Planning Practice Guidance
- 5 Appendix 3 to Proof of Evidence of Neil Harvey
- 6 Opening Statement on behalf of the Appellant
- 7 Opening Statement on behalf of the Local Planning Authority
- 8 Statement and Summary by Ardleigh and East Colchester Conservation Society
- 9 Statement by Sir Bob Russell
- 10 Unattributable Population Change Table
- 11 Statement by Andrew Bilby
- 12 CIL Regulation Compliance Statement
- 13 Appellant's Response to Third Party Submission on Highway Matters
- 14 Photograph showing carriageway and footway widths
- 15 Extract from Essex Development Construction Manual
- 16 Plan of bus routes
- 17 Extract from Highways Statement of Common Ground and plan
- 18 Google aerial view of site
- 19 Satellite aerial view of site
- 20 Table of comparison retail prices
- 21 Comparison of shopping for bird seed and fatballs
- 22 Plan and photographs of cycle route from Colchester North Station to Longridge Park
- 23 Plan and photographs of Salary Brook Trail
- 24 Employment deprivation table
- 25 Map of locations of murders in Colchester
- 26 Press report of robbery on Salary Brook Trail
- 27 Police crime maps
- 28 Timetable for bus route 1
- 29 Paper on The Discrepancy between the ONS Estimates of Births, Deaths and Migration Flows for Tendring and the Census Population Estimates for 2001 and 2011
- 30 Map of site visit route
- 31 Statement by Councillor Guglielmi
- 32 Statement by Jeff Orton
- 33 Appeal Decision Ref APP/P1560/W/17/3179991
- 34 Appeal Decision Ref APP/P1560/W/17/3178051
- 35 Policy extracts from Tendring District Local Plan
- 36 Statement of Common Ground: Revised Table on Housing Land Supply following round table session
- 37 Amended Draft Schedule of Conditions
- 38 Costs Submission on behalf of the Appellant

**DOCUMENTS SUBMITTED AFTER ADJOURNMENT OF THE INQUIRY**

39	Schedule of representations received on Publication Draft Local Plan
40	Colchester Borough Council Local Wildlife Site Review 2015
41	Response to Costs Application by the Local Planning Authority
42	Closing Submissions on behalf of the Local Planning Authority
43	Amended unilateral undertaking
44	Response to Inspector's queries relating to the impact of the appeal proposals on designated and non-designated heritage assets
45	Appellant's Reply to Costs Application Rebuttal
46	Closing Submissions on behalf of the Appellant

**DOCUMENTS SUBMITTED AFTER CLOSE OF THE INQUIRY**

47	Great Bentley Appeal Decisions Ref APP/P1560/W/17/3183678; APP/P1560/W/17/3183695; APP/P1560/W/17/3183626
48	Appellant's Note addressing Great Bentley appeal decisions
49	Note on the implications of the Great Bentley appeal decisions on behalf of the Local Planning Authority
50	Local Plan Inspector's Post-Hearings Letter of 8 June
51	Council's response to the Local Plan Inspector's Letter of 8 June
52	Appellant's Note addressing the implications of the Local Plan Inspector's Letter (8 June)
53	Local Plan Inspector's Supplementary Post-Hearings Letter of 27 June
54	Council's response to the Local Plan Inspector's Letter of 27 June
55	Appellant's response to the Local Plan Inspector's Letter of 27 June
56	National Planning Policy Framework: Comments on behalf of Tendring District Council
57	Appellant's Comments on NPPF 2018
58	Council's response to Appellant's comments on NPPF 2018
59	Appellant's response to Council's comments on National Planning Policy Framework

**Appeal Ref: APP/P1560/W/17/3185776**  
**Land to the South of Bromley Road, Ardleigh, Essex, CO7 7SE**

**Schedule of conditions Nos. 1-14**

1. Details of the scale, appearance and layout of the buildings and the landscaping of the site (hereinafter referred to as "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.

Application for approval of all of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this decision. The development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters to be approved.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan ref 7637-L-01; Access Plan ref 1532/1/01/A

Landscaping

3. Any reserved matters application relating to landscaping as required by Condition 1 of this permission shall incorporate a detailed specification of hard and soft landscaping works for the development. This shall include plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying, refuse storage, signs and lighting.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in phases to be approved as part of that scheme by the local planning authority. All areas of hardstanding shall be constructed using porous materials laid on a permeable base. Prior to the occupation of each dwelling, the hardstanding associated with that dwelling shall be fully laid out and made available for use.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species.

Tree Protection

4. Development shall not commence until details of all trees, shrubs and hedges to be retained, including any trees located outside but adjacent to the site boundary, together with the means of protecting them from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of development and shall remain in place until after the completion of the development.

Levels

5. Any reserved matters application relating to scale or layout shall be accompanied by full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels.



The details shall be provided in the form of site plans showing sections across the site at regular intervals with the finished floor levels of all proposed buildings and adjoining buildings. The development shall be carried out in accordance with the approved levels.

Lighting

6. Details of any proposed external lighting for public areas of the site for each phase of the development shall be submitted to and approved in writing by the local planning authority as part of the reserved matters application relating to landscaping. The details shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles, luminaire profiles and energy efficiency measures).

The details shall also:

- a) identify those areas/features on site that are particularly sensitive for bats and where development would be likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and  
b) show how and where external lighting would be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit would minimise disturbance or risk preventing the above species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed, maintained and operated in accordance with the approved details.

Construction Method Statement

7. No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- Safe access to/from the site;
  - The parking of vehicles of site operatives and visitors;
  - The loading and unloading of plant and materials;
  - The storage of plant and materials used in constructing the development; - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - Wheel washing facilities;
  - Measures to control the emission of dust and dirt during construction;
  - A scheme for recycling/disposing of waste resulting from construction works.
  - Details of hours of site clearance or construction
  - A scheme to control noise and vibration during the construction phase, including details of any piling operations
  - Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.
  - A scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

#### Biodiversity

8. No development shall commence or site clearance or on site investigation works take place until a Biodiversity Management Plan for the site which shall set out the site-wide strategy for protecting and enhancing biodiversity including the detailed design of proposed biodiversity enhancements and their subsequent management once the development is completed, is submitted to and approved in writing by the local planning authority in line with the recommendations contained in the submitted Ecological Appraisal dated January 2018. Development shall be implemented and thereafter maintained in accordance with the approved Management Plan.
9. In the event that development is not commenced within 3 years of the date of this decision (or having commenced is suspended for more than 12 months), no development shall take place until details of further surveys to establish the presence of any protected species which could be affected by the proposed development, and a mitigation/compensation scheme if required, have been submitted to and approved in writing by the local planning authority. Mitigation/compensation works shall be carried out in accordance with the approved scheme.

#### Highways

10. Prior to the construction of any dwelling, the vehicular access to the site shall be constructed in accordance with Access Plan 1532/1/01/A and in accordance with a detailed scheme that has been submitted to and approved in writing by the local planning authority.
11. No development shall commence until a scheme for off-site highway works, to include a timetable for their implementation and details of their ongoing management and maintenance, has been submitted to and approved in writing by the local planning authority.

The scheme shall include:

- a) the conversion of the Bromley Road/ Hawthorn Avenue junction from a priority controlled junction to a mini-roundabout, in accordance with drawing 1532/09/B.
- b) The introduction of tactile paving at the Longridge/ Bromley Road junction.
- c) Bus stop improvements at 4 no. stops closest to the site:
  - Longridge stops (2 no.): providing shelters, raised kerbs for low floor access and timetable display cases;
  - Bromley Road stops (2 no.): providing raised kerbs for low floor access, and timetable display cases.

The works shall be carried out in accordance with the approved details.

#### Archaeology

12. No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning

authority. The scheme shall include an assessment of significance and research questions and:

- i) the programme and methodology of site investigation and recording;
- ii) the programme for post investigation assessment;
- iii) the provision to be made for analysis of the site investigation and recording;
- iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) the provision to be made for archive deposition of the analysis and records of the site investigation;
- vi) the nomination of a competent person or persons/organization to undertake the works.

#### Drainage

13. Development shall not commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
- a) Additional detailed modelling of the Salary Brook to demonstrate that an unrestricted discharge from the site will not have an adverse impact on downstream flood risk;
  - b) 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, to include modelling to demonstrate the impact of long term storage to offset the increased volumes of water leaving the site as a result of the development;
  - c) Final modelling and calculations for all areas of the drainage system;
  - d) The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
  - e) Detailed engineering drawings of each component of the drainage scheme;
  - f) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
  - g) A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall be implemented prior to occupation in accordance with the approved details.

14. Development shall not commence until a Maintenance Plan detailing the maintenance arrangements, including responsibility for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the local planning authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements shall be provided.

Surface water system maintenance shall be carried out in accordance with the approved Maintenance Plan. A yearly log of work carried out shall be kept and shall be made available for inspection upon a request by the local planning authority.