The Planning Inspectorate

Appeal Decision

Inquiry held between 30 January and 6 February 2018

Site visit made on 7 February 2018

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2018

Appeal Ref: APP/A1530/W/17/3178656
Land off Bakers Lane, Braiswick, Colchester, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments against the decision of Colchester Borough Council.
- The application Ref 170200, dated 27 January 2017, was refused by notice dated 25 May 2017.
- The development proposed is outline planning application for the erection of up to 122 dwellings with public open space, landscaping and sustainable drainage system (SUDs) and vehicular access points from Bakers Lane. All matters reserved except for means of access.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is split into distinctive parcels separated by Bakers Lane. I will refer to the smaller area to the west of the lane as Parcel A and the larger area to the east as Parcel B. However, I will refer to both parcels together as 'the appeal site' or 'site' for ease of reading.

3. The application is in outline with all matters except for means of access reserved for subsequent approval. Other than the location plan the other drawings which form part of the application are the access details contained within the Transport Assessment (Drawing Nos P16066-001B and P16066-003). I have treated the Development Framework Plan forming part of the Design and Access Statement as an indication of how the site could be developed.

4. A completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted towards the end of the inquiry[1]. The S106 includes obligations relating to affordable housing; the maintenance and management of on-site open space; the provision and management of a sustainable drainage system (SUDs); the management and interpretation of Moat Farm Dyke Ancient Monument (AM); and contributions towards education, health care and off-site sports and recreation facilities. I return to the S106 later in this decision.

[1] ID22

5. The decision notice contains seven reasons for refusal. However, following further investigation, those relating to 'important' hedgerows and archaeological remains (reasons 4 and 6) were withdrawn by the Council prior to the inquiry. Moreover, during the inquiry agreement was reached between the parties that the S106 would secure the range of planning obligations referred to in reason 7.

Main Issues

6. Taking into account the above background and the evidence before me, the main issues are:
(1) the effect on the character and appearance of the area;
(2) whether the development would be in a sustainable location taking into account the availability of different transport modes and the accessibility of services;
(3) whether the Council is able to identify a five year supply of deliverable housing sites against the housing requirement; and,
(4) whether any harm in relation to issues (1) to (3) above and conflict with the development plan is outweighed by other material considerations.

Reasons

Character and Appearance

7. The appeal site lies to the south-west of Braiswick. Parcel A, with a site area of about 1.3 ha, is trapezium shaped amenity grassland connected with Ramparts Farm. This parcel is fairly level but falls away towards the north-west boundary. Parcel B comprises two arable fields of around 7.5 ha, sloping down towards the Great Eastern railway line to the south and separated by a hedgerow which widens to a copse at its southern end. Both sites have hedgerows or trees to most boundaries, including those that front onto Bakers Lane. Some of the perimeter trees, including woodlands to the southern and eastern boundaries, are subject to an unconfirmed Tree Preservation Order (TPO). Moat Farm Dyke, within a belt of woodland, runs along the eastern boundary of Parcel B.

8. The site lies within an enclave of open land bounded by the A12 to the west, the railway line to the south, Braiswick to the north and public open space and modern housing development beyond the dyke to the east. The proximity of the site to the edge of Braiswick and the effects of noise from the A12 and the railway have some influence on the site's character. Moreover, there is regular vehicular movement along Bakers Lane during peak hours as it acts as a cut-thorough from Braiswick to Lexden and Junction 27 of the A12.

9. However, the surrounding vegetation largely screens the new development to the east of Moat Farm Dyke. Ramparts Farm and Meadow View to the north are on large plots and form a visual buffer from the higher density development to the north and a subtle edge to the settlement. Indeed the part of Parcel B to be built upon is separated from Meadow View and other housing to the north by open land so in any event is not contiguous with the built-up area. The A12 and railway are both in cuttings. The hedge-lined Bakers Lane has the characteristics of a rural road. Therefore, the site and its immediate surroundings are pleasantly rural in character despite the nearby urban influences.

10. The site lies on the upper slopes of the Colne Valley. The Essex Landscape Character Assessment (LCA) of 2003 included the enclave lying within the Colchester and Environs Urban Landscape (G4). The enclave displays one of the key characteristics of G4 – 'variable size regular hedgerowed fields in the fringing farmland'. The Essex LCA recognises that G4 has a moderate landscape sensitivity to major urban extensions which may be capable of being absorbed but should be considered on their individual merits.

11. The LCA which formed the evidence base for the Colchester Core Strategy (CS)[2] showed the enclave lying within the A5 Colne River Valley Slopes Landscape Character Area. The enclave displays some of the Key Characteristics of the A5 Landscape Character Area such as a narrow tree-lined lane but it is not visually connected to the wider river valley landscape because of the containment provided by the bands of vegetation either side of the railway and A12. This containment is evident from longer distance views.

12. The appeal site does not have any particular landscape designation. The site and the remainder of the enclave are distinct from the wider Colne Valley, the scenic quality is not outstanding and the characteristics are not rare. Other than forming part of the setting of the AM, the enclave does not have demonstrable physical attributes which would take it beyond mere countryside. Therefore, the appeal site does not lie within a valued landscape which the National Planning Policy Framework (the Framework) seeks to protect and enhance. The site is of medium landscape quality which reflects the sensitivity referred to above and moderate value ascribed by a further landscape report prepared as part of the evidence based for the CS[3].

13. Rooftops would be visible from some locations but development would be substantially screened by trees from longer distance viewpoints in the Colne Valley and from elevated ground to the south and south-west. When seen in filtered views from and across the valley in winter, the houses would form a continuation of residential development spreading out from Colchester on the upper slopes of the valley to the north of the railway line. The development would not encroach onto the steeper v-shaped valley slopes to the south of the railway or the swathe of meandering river valley between the railway and the A133 that penetrates the urban area of Colchester. These areas are undeveloped and more sensitive in landscape terms. Therefore, in respect of the wider landscape, the impacts would be low. Moreover, visual impacts from a distance would be modest.

14. That said the change in the landscape for the intimate enclave of countryside to the north of the railway would be dramatic. The creation of a carriageway with pavements, kerbs and potentially street lighting would change a significant stretch of Bakers Lane from a rural to a suburban road. Sections of the hedges and hedgerow trees lining the lane, including the bank to the frontage of Parcel A and two trees covered by the TPO, would be lost. The open grassland comprising Parcel A and the sloping field adjacent to the lane forming part of Parcel B would be replaced with housing estates and a hard urban edge, however well-designed. The field to the eastern part of Parcel B would be more manicured and would include the artificial landform of the attenuation basin. The localised landscape effects would be major. The development would not be capable of being absorbed into the landscape.

[2] CD 11.8 – Colchester Borough Landscape Character Assessment (November 2005)
[3] CD 11.24 – Review of Countryside Conservation Areas in Colchester Borough (August 2005)

15. In terms of visual effects, users of the footpath to the south of the railway and the open space to the east of the dyke would have glimpsed views of the development through trees and hedges and would perceive a change from a rural enclave to an area dominated by suburban development. This perception would become more pronounced in winter.

16. However, the most significant effects would be for footpath and road users within the enclave. Existing screening of Parcel A from Footpath No 127 would reduce the impact of development, albeit housing would be glimpsed through the hedge, particularly in winter, and there would be a perception of a significant change in the character of the area. Where the footpath meets the lane the effects would be more pronounced. Rural views of the hedge-lined lane and over the arable fields would be replaced with an engineered road and housing development. Similar visual impacts would occur for those using Bakers Lane. The lane is used by some for leisure purposes, notably as a means of linking nearby footpaths. Leisure users of the footpaths and lane would be receptors particularly sensitive to change. It is noted that a further landscape study of settlement fringes[4] to be read alongside the LCA identified Bakers Lane as offering a key view from, and a distinctive approach to, the settlement[5]and a later Townscape Character Assessment[6] highlighted key views across Parcel B[7].

17. The intention would be to plant replacement hedgerows and hedgerow trees along the altered lane. However, the new landscaping would be in the context of a more engineered highway solution. Moreover, it would take many years for the vegetation to reach a maturity equal to that of the existing. Views of suburban development through the access points could not be mitigated at all. The character of the lane and the fields either side would irrevocably change. The localised visual effects would be substantially adverse.

18. There would also be visual impacts for occupants of Ramparts Farm and Meadow View. However, these views are private. In relation to Ramparts Farm the views would be knowingly exchanged for significantly enhanced land value. I see these effects as only moderately adverse.

19. In conclusion, whilst there is a gradation of effects from the wider to the localised landscape and visual effects follow a similar trajectory, overall the proposal would be substantially harmful to the character and appearance of the area. The development would conflict with Policy ENV1 of the CS as the site is unallocated greenfield land outside settlement boundaries, the land would not be protected or enhanced in accordance with the LCA and within such areas development is to be strictly controlled. The development would also breach Policy SD1 of the CS in that it would not sustain, or be compatible with, the character of the countryside. Policy ENV2 is not relevant as it relates to the rural communities identified in Appendix B of the CS.

20. The above conclusion acknowledges one of the core land-use planning principles contained within the Framework, that of recognising the intrinsic character and beauty of the countryside.

[4] CD 11.7 – Landscape Capacity of Settlement Fringes in Colchester Borough (August 2005)
[5] Figure 7 of CD 11.7
[6] CD 11.26 – Townscape Character Assessments – Colchester, Tiptree, West Mersea and Wivenhoe (June 2006)
[7] Figure 2.4a of CD 11.26

Sustainability of Location

21. The site is close to the edge of Braiswick which itself forms part of the Colchester urban area. The town is recognised by existing and emerging local plans as the most sustainable location in the Borough where most housing growth has been and will be accommodated.

22. That said part of the site is not contiguous with the urban area. The site would not be particularly permeable with the nearby built-up area. Most journeys would be undertaken by heading north up Bakers Lane. The lane to the south may provide a short cut for drivers to the A12 but is narrow, winding, unlit and has steep sections so would not be attractive to pedestrians or cyclists wishing to make essential journeys during peak periods. Using the footpaths across the valley bottom towards the town centre would not be a realistic alternative for those needing to access employment, education or other services. Moat Farm Dyke forms a barrier to the east. Realistically there is only one way in and one way out for modes of travel other than the private vehicle.

23. There are no facilities on the doorstep. The nearest primary school, although only a short distance to the east as the crow flies, would require a walk on roadside pavements of about 1600m due to the position of the dyke. The nearest convenience store is at West Bergholt, a similar distance from the site and again reached primarily by roadside pavements. No off-road cycling routes are available. Parents would be unlikely to walk to school with their children or allow youngsters to walk or cycle independently. Few journeys would be undertaken to these destinations on foot or by cycle. Those facilities that are nearer such as Colchester Golf Club, a beauty salon and dentist are not essential for day-to-day living.

24. The railway station and town centre are about 2200m and 3600m respectively from the appeal site. The nearest secondary school to the north west of the town centre is about 3300m from the site. Again journeys by foot to these destinations would be unlikely. Cycling would be an option as they and a wide range of other facilities are within a 5 km catchment. The use of the B1508 for cycling is recognised by signage at its junction with Bakers Lane. But traffic flows, parked cars and the lack of segregated cycle paths over most of the route lengths would put off all but the more experienced cyclists during busy periods as reflected in the notation for Bergholt Road on the Colchester Cycling Map[8]. A more likely alternative to the private car would be using the bus service to the railway station and town centre which runs along Bergholt Road. The bus stops are over 500m from the centre of the parcels but the distance is compensated for by the frequency of the service and the projected journey time door-to-door of less than half-an-hour.

25. The proposed improvements to footways on Bakers Lane, including widening over a narrow section, and the enhancements to the bus stops would assist in improving pedestrian safety and making public transport a reasonable alternative to the car. Residential Travel Information Packs could be used to encourage sustainable modes of travel. However, it is unlikely that these measures would make walking or cycling to local services significantly more attractive as nothing can be done about the distance or nature of the overall routes.

[8] ID5

26. I have had regard to guidance on walking distances particular the 'desirable' and 'acceptable' distances of 500m and 1000m, the upper limit of 2000m for some facilities and the characteristics of walkable neighbourhoods having facilities within 800m. Whilst the 2km distance on foot mentioned in Manual of Streets may be undertaken by some it is very much an upper limit and based on my experience the majority would not contemplate a journey of much more than 1km to school, work, the shops or other day-to-day services and instead would resort to the car. Journeys by private vehicle would not be particularly long, electric vehicle charging points could be required by condition and car sharing could be encouraged as part of a travel plan. But within or close to an urban area such as Colchester development should be capable of being closer and better integrated with, and connected to, facilities.

27. I have noted the various appeal decisions referred to which deal with accessibility. These cover a range of situations. Some of the sites are in villages where opportunities to maximise sustainable transport solutions will be different. In others facilities are closer than in the case of the appeal site. Additional facilities or public transport provision were proposed in at least two of the cases. None of the developments appear to be directly comparable with the proposal before me which I have considered based on the evidence on its own merits.

28. I acknowledge that Essex County Council as local highway authority did not object on transport grounds and indeed have signed a Statement of Common Ground to indicate that the development is 'acceptable from a…..transportation perspective' subject to certain improvements. However, this does not prevent the local planning authority making its own judgement in the context of national and local policy and its ability to assess the relative merits of sites and development proposals.

29. All in all and despite the existence of a good bus service nearby, the development would not be in a particularly sustainable location taking into account the availability of different transport modes and the accessibility of services. There would be conflict with Policies TA1 and SD1 of the CS as the development would not reduce the need to travel and not be focused on a highly accessible and sustainable location. In relation to the Framework key facilities such as a primary school and local shop would not be within walking distance of the properties and the development would not be focused on a location which is or can be made sustainable. The harm arising would be significant.

Five Year Housing Supply

Areas of agreement

30. During the inquiry the main parties agreed on a number of matters that affect consideration of the five year housing supply[9].

31. Firstly, the requirement should be based on the emerging local plan's[10] (ELP) objectively assessed need (OAN) figure for the plan period of 920 dwellings per annum (dpa). Although this may well constitute a minimum this is the most robustly evidenced figure before me.

[9] ID13
[10] Publication draft of the Colchester Borough Local Plan June 2017 (2013-2033)

32. A shortfall in provision of 167 dwellings since the base date of the ELP and the use of the 'Sedgefield'[11] approach to address the shortfall are also agreed. The period for assessment of the five year supply should be 1 April 2017 to 31 March 2022. Issues relating to the capacity of a number of sites and lead-in times on other sites have also been resolved. Based on the evidence I see no reason to take a different view on these matters.

Areas of dispute

33. The areas of dispute relate to:

- Whether there has been a record of persistent under delivery;
- Whether some emerging local and neighbourhood plan allocations should be included in the five year supply; and,
- Whether two sites in non-residential use and some sites which have gained planning permission since the base date should be included in the five year supply.

(i) Persistent under delivery?

34. Paragraph 47 of the Framework requires that local planning authorities identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. Persistent under delivery is not defined in the Framework or Planning Practice Guidance (PPG) but dictionary definitions point to it as something that continues to exist or occur over a prolonged period.

35. In terms of measuring past delivery against a requirement the Council rely on the CS housing figures up to 2013/14. The CS includes a minimum requirement of 830 dpa from 2006 to reflect higher completions up to that date as explained at paragraph 7.34 of the Inspector's CS Examination Report and page 52 of the CS. That said the overall figure of at least 19,000 homes is derived from the East of England Plan (RSS) and does not reflect the full OAN, as indicated in the Panel Report for the RSS.

36. However, the 830 dpa is the development plan requirement for the period from 2001 and forms the only tested figure against which the Council could measure delivery. It would not be appropriate to retrofit another untested proxy figure based on, for example, household projections for that period, even though the 830 dpa is 'artificially low'. The Planning Advisory Service makes this point on their website. Moreover, 2008-based household projections overstated household numbers as became apparent when results from the 2011 Census were published. The lower target pre-2013/14 will have informed the current OAN figure. The parties are agreed that from 2013/14, the OAN of 920 dpa from the ELP should be used as the measure.

[11] Addressing the totality of the shortfall in the next 5 years

37. Taking the 830 dpa and 920 dpa figures as a minimum requirement for the period from 2001/02, the Council has failed to deliver that amount of housing in 6 of the 16 years. Over a shorter 10 year period there has been a shortfall in delivery in 5 of the years. Looking at cumulative completions against the requirement, there has been a surplus of 849 dwellings over the 16 year period and a shortfall of 56 dwellings over the 10 year period. That said if the period was to be adjusted to an 11 year period there would be a surplus of 364 dwellings due to significant delivery in the peak year of 2006/07.[12]

38. The PPG advises that the assessment of the record of delivery is more robust if a longer-term view is taken as this is likely to take account of the peaks and troughs of the housing market cycle. Taking a 16 year period would encompass two periods of housing market growth and one period of decline. A period of 10 years would include the last recession and a period of growth since then.

39. Taking the 10 year period, I would not describe the record of the Council as one of persistent under delivery given that the requirement has been met in half of the years. Four of the years when delivery was deficient coincided with the double-dip recession. The cumulative shortfall is very modest taking into account the recession.

40. I conclude that a record of persistent under delivery of housing has not occurred and a 5% buffer should be applied to the requirement. This equates to a five year requirement of 5,005 dwellings[13].

(ii) Emerging Plan Allocations

41. In terms of the supply side, emerging local and neighbourhood plan allocations are the main difference between the parties (752 units). Footnote 11 of the Framework advises that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable.

42. The ELP is currently being examined, with Stage 1 hearings held in January 2018 and Stage 2 hearings likely to take place around April 2018. Failure to register a valid representation and put it before the Inspector means that additional Stage 1 hearings may need to be held. There are objections to the allocations proposed to be included in the supply, including some from Highways England. The Council consider that the objections are surmountable, hence the allocations, and are confident about delivery on those sites selected. Discussions with developers are ongoing on some sites. Sites which are contrary to the development plan have been granted planning permission in recent years.

43. However, it would be premature to include sites which are contrary to the current development plan and are subject to objections in the five year supply as they cannot be considered to be available now or offer a suitable location for development now. The Inspectors in the appeal decisions relating to Sandford, North Somerset and Staunton, Gloucestershire came to the same view[14]. The

[12] All figures taken from ID1
[13] ID13
[14] ID3 (see para 31 in particular) and ID4 (see para 47 in particular)

Inspector in the Purton appeal[15] accepted that some sites in a plan subject to examination should be included in the supply but in that case Main Modifications had been published so there was more certainty about the sites. The adjoining authorities of Braintree and Chelmsford do not currently include draft allocations in their five year housing land supply calculations although Tendring include some 214 units in its supply.

44. Similar issues affect emerging neighbourhood plan allocations in Wivenhoe in that the plan is currently being examined, the two sites are outside the current development boundary and both sites are subject to objections.

45. Accordingly emerging allocations (752 units) should not be included in the five year supply. Assuming that the ELP moves forward towards adoption and the neighbourhood plan is made, the position could change quickly, particularly given the Council's proactive approach to bringing sites forward. Sites are likely to become allocations forming part of the development plan and/or commitments soon. In these respects the ELP will be the principal means of addressing the shortfall in supply, to reflect a genuinely plan-led approach.

(iii) Other Sites

46. The two sites in non-residential use are commitments in that the Riverside Centre has prior approval for change of use from offices to residential and Chapmans Farm has planning permission which does not expire until July 2019. The agents for the former suggests build out from 2019. I have not been made aware of any legal or ownership problems in connection with either site. The landowners have an interest in developing the sites. Delivery for both sites is shown as commencing towards the end of the 5 year period. There is a realistic prospect of 64 units from the sites contributing to the five year housing land supply.

47. The base date of 1 April 2017 should be drawn as a line in the sand such that permissions that have lapsed after that date should be included but new sites that obtained permission since should not be included. In my view this is an equitable approach as set out in my pre-inquiry note. Otherwise other variables such as completions would need to be included. Whilst I understand the Council's desire for the information to be up to date as possible, changes in circumstances would be picked up in the housing supply assessment as it is rolled forwards post 1 April 2018. Whilst this issue is not determinative in considering whether there is a five year supply given my conclusions on draft allocations, my stance is consistent with other Inspectors[16]. Excluding permissions which post-date 1 April 2017 deducts 188 units from the Council's assessment of the supply.

Conclusions on five year housing land supply

48. Taking into account the deduction of 752 units from draft allocations and 188 units from post-base date permissions, there would be a five year supply of 4,351 dwellings which is some 654 homes below the minimum requirement of 5,005 dwellings. This equates to a supply of about 4.35 years[17]. Therefore, currently the Council is unable to identify a five year supply of deliverable housing sites against the housing requirement.

[15] ID11
[16] See for example ID4 (paras 51-55 in particular) and ID11 (para 44 in particular)
[17] Based on Table in ID13

Other Considerations

49. The Framework sets out the Government's view of what constitutes sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development – economic, social and environmental.

50. In terms of the economic role, some 113 Full Time Equivalent (FTE) construction jobs would be provided together with 123 FTE indirect jobs. There would be some 145 economically active new residents. Occupiers would spend money locally on goods and services, estimated as over £3.5m annually. The development would give rise to New Homes Bonus and Council tax payments. The loss of 7.5ha of the best and most versatile agricultural land would cause some harm but overall the economic benefits would be considerable.

51. Turning to the social role, the provision of new market and affordable housing would be substantial benefits, particularly in the context of the Government's objective of significantly boosting the supply of housing to meet the need for new homes and the shortfall in housing supply. These objectives were emphasised in the introduction to the Housing White Paper of February 2017. The 122 units would make a significant contribution (approaching 19%) to the shortfall of 654 units, assuming all could be delivered in the next 5 years. In relation to affordable housing, the 30% contribution from the site would exceed the development plan requirement of 20% set out in Policy H4 of the CS and contribute to a mixed and inclusive community. This would be a particular benefit taking into account the evidence that the need for 267 affordable homes per annum has not been met since 2013.

52. I have also taken into account the appellants' point that the 267 dpa figure is an under-assessment of the true need as it assumes that many single person households under the age of 35 would share accommodation provided by the market, due to housing benefit restrictions. However, the Council's calculation appears to reflect PPG advice on the type of households to be considered in affordable housing need.

53. Reference was also made to the length of the housing waiting list and Gateway to Home Choice figures for Colchester relative to other nearby local housing authorities. However, the housing register is an over estimation of need as it is operated on an open basis. I was told that 54% of those on the register were assessed as not in housing need.

54. Although Inspectors have taken different views on the assessment of the housing needs of younger single person households[18], based on the evidence the output of 267 dpa as a component of OAN seems to be a reasonable assessment of the total affordable need. Moreover, as ELP Policy DM8 will require 30% affordable housing and the Council is addressing housing needs in a number of ways other than through developer contributions the figure should be achievable going forward. That said those waiting for homes now are 'real people in real need'.

55. Parts of the site are affected by noise from the A12 and the railway so the living environment for some would be compromised. However, the undisputed

[18] For example Interim Report of Examining Inspector for Gloucester, Cheltenham and Tewkesbury CS and appeal decisions ref: APP/W1525/W/16/3162344 dated 10 January 2018 (para 82) and APP/F1610/W/15/3121622 dated 23 February 2016 (paras 29 to 40)

evidence is that mitigation could provide an adequate living environment. Therefore, the harm arising from this consideration is limited.

56. Taking into account the Development Framework Plan, on-site open space and green infrastructure provision would amount to 5ha which exceeds the requirement for a development of this scale. However, in view of the lack of permeability of the site, this would be of only limited value to the wider population.

57. The contributions to education, health care and off-site sports and recreation would offset the impact of additional demands on local services. The safety of highway users would not be compromised subject to footway and road improvements being carried out. The evidence indicates that the highway network could cope with the additional traffic movement arising from the development. That said the housing would not be particularly accessible to local services. The development would be sufficient distance from neighbouring dwellings such that living conditions would not be materially affected.

58. Overall substantial social benefits would arise from the development.

59. In terms of the environmental role I have found substantial harm in terms of the character and appearance of the area. I have also found significant harm because of the deficiencies with regard to the sustainability of the location and the consequent reliance on the private car.

60. Proposals for ecological mitigation and enhancement would compensate for the loss of existing trees and hedgerows. The use of SUDs would ensure that surface water run-off would not cause local flooding.

61. Moat Farm Dyke currently has a largely rural setting, when seen as the backdrop to Parcel B and from the east, which contributes to its significance. The residential development, manicured open space and attenuation basin shown on the Development Framework Plan would affect the setting. However, the detailed layout of the open space and basin could be controlled by condition. Moreover, the contributions to the management and interpretation of the AM would be beneficial. The proposal would preserve the significance of the heritage asset, including the contribution made by its setting.

62. Overall there would be substantial harm to the environmental role of sustainable development not gains.

Planning Obligations

63. I have assessed the obligations referred to in paragraph 4 against the legal and policy tests. The obligations relating to affordable housing would secure the benefits referred to in paragraph 51. The obligations for the maintenance and management of public open space and SUDS are required to ensure that a high quality development would be secured and flood risk would be mitigated throughout the life of the development. Those in connection with the AM would assist in preserving the significance of the heritage asset (paragraph 61 refers). The contributions to education, health care and off-site sports and recreation are necessary for the reasons given in paragraph 57. The terms of the S106 would ensure compliance with Policies SD2 and H4 of the CS.

64. The obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore, the obligations meet the legal and policy tests and I have taken them into account in my decision.

The Development Plan, the Planning Balance and Conclusions

Development Plan

65. The site lies outside the defined settlement boundary and is not allocated for development. I do not subscribe to the argument that the development would comply with the development plan because it would satisfy a number of generic policies and would fall to be considered against the last section of Policy SD1 of the CS. In respect of Policy SD1 I adopt the reasoning of the Inspector in the Tollgate Village appeal[19]. ENV1 and TA1 are the dominant policies as they deal with unallocated land outside of settlement boundaries and accessibility issues. The proposal conflicts with these policies and the development plan as a whole. Development that conflicts with the development plan should be refused unless material considerations indicate otherwise.

66. In accordance with paragraph 215 of the Framework, the weight to be given to the conflict with development plan policies is affected by their consistency with the Framework. In addition because the Council cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing are not up-to-date.

67. Policy ENV1 seeks protection and enhancement of the countryside and the strict control of development. This goes beyond the objective of the Framework of recognising the intrinsic character and beauty of the countryside and protecting and enhancing only valued landscapes. The terms within the policy reflect superseded Government guidance in Planning Policy Statement (PPS) 7. The settlement boundary is out-of-date as there is no five year housing supply. However, the policy recognises that the boundaries will need to be reviewed, an exercise previously conducted through the Site Allocations Development Plan Document (adopted October 2010) and that is currently being undertaken in the ELP. This approach is a reflection of the plan-led system sought by the Framework. Significant but not full weight should be given to the conflict with Policy ENV1.

68. With regard to Policy TA1, it seems to be entirely consistent with the objectives of the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable. The conflict with Policy TA1 should carry full development plan weight.

69. Policy SD1 includes reference to the CS housing requirement which is not an OAN derived figure. The policy also takes a sequential approach that gives priority to previously-developed land (PDL) which reflects the defunct PPS3 rather than the Framework. The policy was re-visited when selected policies were examined after the introduction of the Framework[20]. However, despite the intention to update policies due to non-compliance with the Framework, that review only resulted in the 'bolting on' of the last section which reflects the content of paragraph 14 of the Framework. Therefore, the policy contains both

[19] ID17 (paras 12.2.4 to 12.2.7 of Inspector's Report)
[20] Focused Review of CS and Development Policies

consistent and inconsistent provisions. The weight that can be given to conflict with different elements of the policy varies from full weight for the bolted on part and that relating to accessible and sustainable locations, considerable weight to the provisions relating to sustaining the character of the countryside and limited weight to the housing requirement and the sequential approach to PDL.

70. The Myland and Braiswick Neighbourhood Plan (NP) made in December 2016 also forms part of the development plan. The NP does not include any housing allocations. No conflict with any specific NP policies is cited. The NP is therefore neutral in respect of the proposal albeit recognising that 'the main housing development programmes….are encompassed by the Colchester Borough Council Local Plan' and making reference to the draft allocation in the ELP referred to below as well as the Northern Gateway proposals.

71. Paragraph 216 indicates that decision-takers may give weight to relevant policies in emerging plans depending on the stage of preparation, unresolved objections and consistency with the Framework. There would be a degree of conflict with draft Policies SG1 and OV2 of the ELP as the development would not be highly accessible and would be outside the defined settlement boundaries as currently drawn. An allocation is proposed at Braiswick for up to 70 dwellings to the north of the B1508 but the appeal site has not been included. However, although the ELP is at an advanced stage, there are unresolved objections to the housing requirement, settlement boundaries and allocations so the conflict with the ELP carries limited weight.

72. Whilst I acknowledge the Council's concerns about the knock-on effects should permission be given for an unallocated site outside the settlement boundary, the development is not so substantial, or its cumulative effects would not be so significant, that permission would undermine the plan-making process. Dismissal of the appeal on the grounds of prematurity is not justified.

Planning Balance and Conclusions

73. The Council cannot demonstrate a five-year supply of deliverable housing sites. Policies SD1 and ENV1 are not fully consistent with the Framework. Therefore, although the development plan is the starting point for decision making and there is conflict with Policies ENV1, TA1 and some aspects of Policy SD1, the development plan is out-of-date in several respects, including in relation to its policies relevant to the supply of housing.

74. Therefore, as no specific policies of the Framework indicate that development should be restricted, it is appropriate to apply the tilted balance within the final bullet point of paragraph 14 of the Framework in deciding whether the proposal accords with the presumption in favour of sustainable development. The final part of Policy SD1 applies the same tilted balance. Paragraph 14 and Policy SD1 indicate that where relevant policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

75. I give substantial weight to the harm to the character and appearance of the area and significant weight to the harm caused by the fact that the development would not reduce the need to travel and would not be focused on

a highly accessible location. The harm caused by the loss of agricultural land and a living environment affected by noise would be limited.

76. The market and affordable housing would achieve economic and social benefits. Some of the economic and social benefits are generic and could be claimed by any scheme of this scale. However, there is a shortfall in the supply of housing and an unmet need for affordable housing in the Borough. The shortfall is not substantial, the Council is taking steps to remedy the shortfall through the ELP and the Council has a good record in working with developers to bring sites forward. That said the scheme would make a significant contribution to affordable housing need as provision is above the development plan target. The provision of open space above the policy requirement is of some, albeit limited, benefit. Overall the economic benefits carry moderate weight whereas I ascribe substantial weight to the social benefits.

77. The other considerations are neutral in the planning balance.

78. I conclude that the adverse environmental impacts of the proposed development and the conflict with the development plan and the ELP that arises from these adverse impacts would significantly and demonstrably outweigh the economic and social benefits. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. Although the development of countryside on the edge of Colchester and other settlements is inevitable to meet housing needs, the harm in this case would be unacceptable.

79. For the above reasons the proposal would not constitute sustainable development and the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles of Counsel	Instructed by Karen Syrett of Colchester Borough Council
He called	
Nigel Cowlin BA(Hons) Dip LA CMLI	Managing Director of Nigel Cowlin Ltd
Rachel Forkin BA(Hons) MA MRTPI	Transportation Officer
Christina Howick MA MSc	Partner of Peter Brett Associates
Karen Syrett BA(Hons) MRTPI	Place Strategy Manager

FOR THE APPELLANT:

John Barrett of Counsel	Instructed by Gladman Developments Ltd
He called	
Jonathan King BSc MLD CMLI	Technical Director of Wardell Armstrong LLP
Mark Clements MCIHT	Director of PRIME Transport Planning
Neil Tiley	Associate of Pegasus Group
Christopher Ball BSc(Hons) MA MRTPI	Gladman Developments Ltd

INTERESTED PERSONS:

Councillor Martin Goss	Borough Councillor
Councillor Brian Jarvis	Borough Councillor
Robert Waites	Secretary of Braiswick Residents Association
Colin Ellis	Local Resident

PLANS AND DOCUMENTS SUBMITTED TO THE INQUIRY

ID1 & ID1a	Updated Tables 7.2 and 7.3 from Neil Tiley's Proof of Evidence submitted by the Council
ID2	Note on persistent under-delivery by Christina Howick submitted by the Council
ID3	Appeal decision ref: APP/D0121/W/15/3139633 dated 12 October 2016 (Sandford) submitted by the appellants
ID4	Appeal decision ref: APP/P1615/A/14/2228466 dated 3 July 2015 (Staunton) submitted by the appellants
ID5	Colchester Cycling Map submitted by the Council
ID6	Opening statement on behalf of the appellant
ID7	Opening statement on behalf of the Council
ID8	Enlarged extract from the Countryside Conservation Plan in CD11.25 submitted by the Council
ID9	Extract from CSA LVIA showing Viewpoints submitted by the Council
ID10	Mid Layer Super Output Areas Colchester 004 and 007 (MSOA) submitted by the Council
ID11	Appeal decision ref: APP/Y3940/A/11/2165449 dated 27 November 2013 (Purton) submitted by the Council
ID12	E-mails exchange with housebuilders and agents submitted by the Council
ID13	Position statement on Housing Land Supply prepared by the Council and appellants
ID14	Chronology of ELP submitted by the Council
ID15	Car Parking Charges for Colchester Railway Station submitted by the appellants
ID16	Existing open space and public rights of way in the vicinity of the appeal site submitted by the Council
ID17	SoS decision and Inspector's conclusions on appeal decision ref: APP/A/1530/W/16/3147039 dated 4 August 2017 (Stanway) submitted by the appellants
ID18	Chief Planning Officer (MHCLG) letter dated 30 January 2018 submitted by the Council
ID19	Matters to be dealt with in evidence by Joy Thomas - submitted by the Council
ID20	Matters to be dealt with in evidence by Blaise Gammie - submitted by the Council

ID21	Information about development at Colchester Rugby Club submitted by the Council
ID22	Unilateral Undertaking dated 6 February 2018 together with Powers of Attorney submitted by the appellants
ID23	Extract from Colchester Gazette dated 23 January 2018 submitted by Colin Ellis
ID24	Note on Housing Land Supply and Emerging Allocations in the HMA submitted by the Council
ID25	Note on Housing Land Supply and Emerging Allocations in the HMA submitted by the appellants
ID26	Conditions Update – suggested form of conditions relating to noise and electric vehicle charging points
ID27	Closing submissions on behalf of the Councilf
ID28	Closing submissions on behalf of the appellants