

APPEAL REF: APP/C1570/W/22/3296426

Outline planning application for the erection of up to 233 residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road. All matters reserved except for means of access

Land south of Radwinter Road (East of Griffin Place)

Response on behalf of the Rule 6 Party to the Appellant's costs application

Introduction

1. Planning Practice Guidance (PPG) advises that costs can be awarded where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. In this case:
 - a. The Appellant in this case has made an application for a full award of costs.
 - b. The application is for a full award of costs against the Rule 6 Party.
 - c. The Application relates to both the substance and procedure of the Rule 6 Party's case.
 - d. The application is made before the close of the inquiry, counsel for the Appellant having indicated that he was going to do so on day 2.
2. The Rule 6 Party considers that the application is ill-founded and without merit.

Background

3. The Rule 6 Party (consisting of two authorities at parish council level) had contributed by way of comments to the appeal application, and then made the decision to participate in this appeal and to seek Rule 6 status.
4. They submitted a Statement of Case on 25 May¹, without professional assistance, with the intention of supporting the LPA and providing supplementary evidence on, in particular, air quality.

¹ Copy at Appendix 1 for ease of reference

5. However, the Rule 6 Party were left high and dry by the changed position of the LPA; they felt that the LPA (and County Council) reaching agreement on one issue had consequences which had not been satisfactorily considered.
6. Rather than the LPA's members' reasons for refusal being "*painfully weak to the point of being embarrassing*" (paragraph 5 of the Appellant's costs application), the Rule 6 Party felt that in the absence of the due process of a development management regime, and without the guidance of those elected members (and with the appeal being "outsourced"), there was a danger of an absence of "joined-up thinking".
7. The Rule 6 Party had been here before. Application UTT/13/2060/OP (which included 300 dwellings) was refused by Uttlesford District Council, and an appeal was lodged by Kier Homes Ltd in May 2014; an appeal was lodged (APP/C1570/A/14/2221494), and then by a letter dated 21 August 2014² the LPA declared that it had resolved NOT to defend the appeal. Nonetheless, the appeal proceeded and a local inquiry was held; the Inspector's decision letter of 2 June³ dismissed the appeal, and the application for costs made by the Appellant against the LPA was dismissed on the same date⁴, the Inspector noting that the scope of the Rule 6 party's case was a matter for them.
8. Counsel for the Appellant asserts (paragraph 8) that "***One might have imagined that the Parish Council and the Town Council would have taken notice of the fact the professional officers and even the Councillors had recognised there was no substance left in the reasons for refusal. But seemingly undeterred they pressed on***". However, context is everything; it was not until 22 July that the late material – so late that it gave rise to consideration of the Wheatcroft principles – was produced. This was undoubtedly difficult for a parish council to address; however, they did so, seeking professional advice and witnesses, and addressing their position through the Scott Schedule.

Procedural claim

9. The Rule 6 Party raised issues in its early Statement of Case which it had thought could be addressed by agreeing with LPA witnesses, cross-examining the Appellant's witnesses, and making submissions.
10. The potential Rule 6 evidence was not "vast", and was clear from the Scott Schedule (to those who bothered to read it); thus:

² Copy attached at Appendix 2

³ Copy attached at Appendix 3

⁴ Copy attached at Appendix 4

- a. The Rule 6 Party were committed to pursuing Air Quality, by evidence if needs be, because of shortcomings in the material produced by the Appellant. The Appellants produced further material which was reviewed by the Air Quality professional engaged by the Rule 6 Party and considered to be acceptable (without such clarification it not being so), and this was promptly confirmed by the Rule 6 Party saving further cost and inquiry time, being a good practical example of reasonable behaviour. (By way of contrast, the Appellant chose to present unchallenged evidence on affordable housing, to no good end.)
- b. The Rule 6 Party was concerned at landscape issues and commissioned a report. It was decided that this could be by way of written representation, again saving further cost and inquiry time, being a good practical example of reasonable behaviour.
- c. The Rule 6 Party was particularly concerned about heritage matters. It commissioned advice from a former chief heritage officer which it was clear should be given by way of oral evidence. It was; and Mr Stephenson, on behalf of the Appellant agreed as to the impact amounting to “harm”, being “less than substantial harm” in relation to the NPPF.

11. In relation to the detailed criticisms of counsel for the Appellant:

- a. Sustainability: The comments in the Statement of Case relate to sites identified in the Saffron Walden Neighbourhood Plan, which is likely to effectively become an up-to-date part of the development plan on Friday of this week. However, this was contextual, and never a matter for evidence.
- b. Ecology: The loss of hedgerow was not simply an ecology matter, but informed heritage-related issues which were explored by counsel with the Rule 6 Party’s heritage witness, and his own witness. On day 3, in evidence-in-chief, Mr Frampton stated that the hedgerow was not “protected” as such (because the grant of planning permission would override the Hedgerow Regulations), but it was “definitely a material consideration”.
- c. Noise: It is simply not true that the references to noise in the Statement of Case (paragraphs 26 and 34) state they would “....provide evidence to support their claims that noise from traffic generated by the proposal would harm residents of both Swards End and Saffron Walden”.
- d. Drainage: Again, it is simply not true that the references to flooding in the Statement of Case (paragraphs 27 and 28) state they would provide evidence; rather they were content that the matter be dealt with on the basis of the written representations already submitted.

12. The suggestion that the Rule 6 Party “struggled to find any professional witnesses to support its case” (paragraph 11) brings no credit to the Appellant or counsel. The exercise, apart from Air Quality, started with the Appellant’s email of 22 July. It is up to the Rule 6 Party to choose how to present its case, and PINS is at pains to stress that written representations will be taken into account every bit as much as oral presentations (with obvious adjustment as to “weight”). If a party is content with such written representation, with inherent implications for efficiency of inquiry time, then it is a matter of potential praise, not criticism.

13. The “procedural” claim is therefore strongly denied.

Substantive claim

14. Counsel for the Appellant raises issues with the two witnesses who spoke to the inquiry.

(i) Highways

15. Counsel fundamentally misunderstands the Rule 6 Party’s case; it is not that the highway mitigation works which formed part of the proposal had not been considered, but rather that the mitigation works which are an essential part of the proposal have not been adequately secured, and without those the scheme cannot be given planning permission. That is the corollary of (1) the evidence of his own transportation witness, Mr Elliott, and (2) the woeful inadequacy of the “agreed” form of section 106 agreement, which fails to ensure that the package of mitigation measures is actually secured.

(ii) Heritage

16. The Rule 6 Party’s heritage witness agreed with the Appellant’s heritage witness, that there would be less than substantial harm to the conservation area arising from the traffic lights (and harm to the settings of listed buildings). There was disagreement about the extent of that “less than substantial harm”, but that is not unreasonable behaviour (and neither did the witness at any time say it was “*only slightly less than substantial harm*”). The suggestion that the witness was unreasonable in their assertions is denied; she agreed on the fundamental level of harm, as per the NPPF, with the Appellant’s witness.

17. The criticism of entering heritage assets was also answered by the Appellant’s own heritage witness; in cross-examination, he replied that as a “developer’s” consultant he was often unable to gain access, and it was an adequate approach to assess heritage assets without access to the interior of a property. Rather more tellingly, his evidence that there was no intervisibility between the appeal site and

Pounce Hall might not bear the same scrutiny as the conclusion of the Rule 6 Party's witness on the subject.

18. Even more pertinent, it is not for a heritage witness to speculate on the planning balance exercise. That is a matter for the decision-maker, on submissions after hearing the evidence and considering the written representations that have been made. Such evidence from Appellants is only made palatable by the addition of salt.

Conclusion

19. It is axiomatic that the that the District Council caused the appeal to occur, which generated the need for the inquiry (paragraph 21 of the costs application, although the choice of procedure is a matter for PINS taking account of representations from the main parties and its own guidance).

20. The claim for costs is refuted:

- a. In relation to the procedural claim, to suggest that, absent the Rule 6 Party's evidence, there would have been no need to hear any live oral evidence at the inquiry does not bear any scrutiny, and nor does the suggestion that four days of inquiry time is down to the Rule 6 Party. The highways evidence was necessary to inform the necessary round table session on conditions and planning obligations, as was the landscape and planning evidence. It is a matter for the Appellant as to why the housing evidence was necessary.
- b. In relation to the substantive claim, the proof of the pudding is in the eating. The Appellant's heritage witness agreed with the core of the Rule 6 Party's heritage evidence, that the High Street / Church Street traffic lights and associated paraphernalia causes less than substantial harm to the designated heritage asset that is the conservation area. That evidence was not "exaggerated", and the consequences of it are now a proper matter for consideration by the decision-maker in accordance with the ***Barnwell*** case.

Philip Kratz
GSC Solicitors LLP
13 September 2022

APPENDIX 1

STATEMENT OF CASE FOR SAFFRON WALDEN TOWN COUNCIL AND SEWARDS END PARISH COUNCIL

APPEAL APP/C1570/W/22/3296426 AGAINST REFUSAL OF PLANNING PERMISSION APPLICATION UTT/21/2509/OP FOR 233 homes at Radwinter Road

**APPEAL BY ROSCONN STRATEGIC LAND & T E BAKER AND S R HALL, THE EXECUTORS OF MR E C BAKER & MRS J BAKER
AT LAND SOUTH OF (EAST OF GRIFFIN PLACE) RADWINTER ROAD, SEWARDS
END, SAFFRON WALDEN, ESSEX, CB10 2NP**

1.0 INTRODUCTION

- 1.1 The Appeal site comprises two fields that abut the Eastern edge of the town of Saffron Walden. These are part of the Parish of Swards End and provide the green space that separates Swards End village from Saffron Walden town.
- 1.2 Planning Permission application ref UTT/21/2509/OP was refused on 18 March 2022.
- 1.3 Saffron Walden Town Council (SWTC) and Swards End Parish Council (SEPC) support the Council's reasons for refusal and will be putting forward the case against the proposals on the grounds of these and the significant environmental effects described in our previous submissions.
- 1.4 Our objections are summarised as follows:
 1. The site is outside the designated Development limits. (Local Plan S1 and S7). The reasoning for these policies is broadly consistent with NPPF. Saffron Walden is a service centre and hub for surrounding rural areas, and is subject to constraints of traffic congestion, air quality and the location of employment. Urban extensions for housing are those well-related to the principal bus and rail corridors, and in where there is a wide range of facilities that encourage journeys to be made on foot, particularly to and from work and school.
 2. In the countryside, which will be protected for its own sake, planning permission will only be given under Local Plan Policy S7 for development that needs to take place there, or is appropriate to a rural area. The different character areas have a greater or lesser capacity to accommodate development, and their character comes from the relationship between historic settlements and groups of buildings, ancient woodlands, historic lanes, field boundaries, historic parks, geology, indigenous tree and hedge species, river systems and so on. Open elevated areas with long views to ancient woodland, typical of parts of Uttlesford, are particularly sensitive. The Bran End Appeal SWTC SEPC Appendix A3.4 Pages 3 and 4 are material.

Sustainability

3. The site is within the parish of Swards End, a small settlement with approximately 190 houses. Development of the scale proposed would be disproportionate to the scale of the existing settlement.
4. The proposal is not within a sustainable location and it lacks sustainable connection. Under NPPF 87 it triggers policies using a sequential approach for the location of development and less problematic sites are already allocated within the Development

Plan and the Emerging Neighbourhood Plan, including sites which are better connected to the town centre.

5. Local Plan Policy GEN1 requires development to be accessible to services and facilities, reflecting NPPF 79, 104 and 105. The submitted drawing *Layout of Proposed Development* shows that there are no connections other than onto the busy narrow Radwinter Road, and none to the adjoining housing. The majority of trips would be undertaken by car; the alternative comprises distant, indirect route or unlit routes (depending whether there is access onto the adjoining housing or not), slopes and poor accessibility to the town centre.
6. The town centre is well beyond the typical 10 minute walking distances and the indirect route proposed does not comply with the *Building for a Healthy Life* (especially pages 14-20) and *Manual for Streets* criteria of a *walkable neighbourhood* (including paragraphs MfS 4.4.1, 4.4.2 and 6.3.6). The indirect route proposed on the *Layout of Proposed Development*, using Radwinter Road, does not provide a comfortable walking environment and would not provide the *healthy, inclusive and safe places* sought in NPPF 92;
7. The layout of the Site is dominated by underground safety buffer zones (see Constraints Maps in SWTC SEPC Appendix A1.1 and *Constraints and Opportunities Plan*), making connections across the site difficult and resulting in an uncharacteristic group of housing islands which appear to have little connectivity for service and emergency vehicles;
8. The proposed development abuts onto a group of recent housing development sites but lacks the necessary assessment of Cumulative impacts required under Local Plan GEN6 (infrastructure), para 3.7 (traffic) and NPPF111. The other sites were allocated for housing and the reason this site has not been, should become clear during the process of the Inquiry.

Land Use

9. The development involves the loss of high grade agricultural land. The Appeal Inspector for the adjacent Kier Thaxted Road site concluded '*the loss of the best and most versatile agricultural land has not been justified*' (See SWTC SEPC Appendix A3.5), and lack of justification equally applies to this site. The proposed development would reduce the viability of the remainder of the land requiring access through the Site (contrary to NPPF 97(b)). The requirements for extensive buffer zones ensure that this is not a site that can be an efficient use of a site for housing (NPPF 124 and 125). In comparison, the infrastructure does not prevent this being an efficient site for agriculture (ENV5).

Landscape and Countryside Impact

10. The Local Plan Policies within Countryside aim to protect countryside for its own sake and direct development where capacity and character best accommodates it (para 2.2.8), its appearance protects or enhances character (such as paras 5.9, 5.10 and 5.13) or there are special reasons why the specific form proposed needs to be there (Policy S7). These policies are broadly consistent with NPPF.

11. The development involves the loss of openness and loss of significant characteristics of the fields and of identified countryside and landscape qualities. It also involves the loss of intrinsic character and beauty and the significant role of the Appeal Site's fields in separating the settlements.
12. The open fields provide a good example of the most important characteristics identified of the character area A1 Cam River Valley.
13. The Appeals Inspector at West Street Coggeshall (SWTC SEPC Appendix A3.1) considered that it would be too narrow to just consider the appeal site. A site may be important because of its position in the landscape as part of it, and as the interactions of people and place are necessary in the perceptions of landscape, people will perceive the site in a wider context. In this case, the context is the valley of the tributary of the Cam Valley, that runs from Swards End to Saffron Walden, and is a valley and PROW heavily used for recreation, particularly by walkers and joggers. The Value taken as a group with the connected valley landscape is out of the ordinary in accordance with the Landscape Institute technical note *Assessing Landscape Value outside national designations* (2021) attached as SWTC SEPC Appendix A4.3.
14. The impact of the proposal is significant and detrimental, as the houses would be visible up the hillside viewed from the Slade Valley PROW in a context where there are no houses and instead a backdrop of field. The houses would intrude on the skyline of the Slade tributary Valley, to a greater elevation and spread than any other perceived intrusion. This would harm the elements of tranquillity and wildness, and introduce a discordant modern built element into a view that was previously only of St Mary's Church tower and the C17 Pounce Hall.
15. The introduction of houses into the green gap results in the coalescence of the settlements of Saffron Walden and Swards End. The merging, scale and location of the proposal would result in the loss of Swards End's distinct identity. As a result, the proposal would not *safeguard the character of Uttlesford's historic settlements* (para 5.1) and would not *protect the character of the village approach* (para 6.3).
16. The site is one of the highest in the locality, rising from the valley floor to the high plateau south-east of Saffron Walden. Development on the hillside is therefore prominent, especially when viewed from the PROW on the valley floor, on the northern slopes of the valley and at night. That development and light pollution would merge across the former fields and against the skyline, and there would be a marked loss of rural character and night sky as a result (GEN 5).
17. Proposals to screen development with trees do not prevent development being perceived, and do not preserve the views, night sky, character and openness of the landscape and countryside. In this case, the gentle folds of the hillside would also be obscured. The Bran End Appeal is material (SWTC SEPC Appendix A3.4).

Access

18. The Local Plan strategy and policies aim to locate and design new sites that encourage modes of transport other than the car in response to specific key issues (LP paragraphs 9.3 and 9.4). The access onto the road network and the surrounding network are not capable of carrying the traffic generated by the development safely, there is insufficient

clarity about the proposed access to establish how it provides sufficient visibility to avoid compromising road safety, and whether it would meet the needs of users and needs of people with disabilities. There is conflict with the retained farm access and, as above, the distance and limited provision of alternatives ensures the development is reliant on the majority of journeys being made by car.

19. The local road network is also unsuitable for the scale of traffic associated with the number of houses proposed. To the east, Radwinter Road remains narrow, winding and rural, and it is narrowed by parking along Swards End village street. It is not suitable for significant additional traffic. To the west, it is necessary to go into the historic centre of Saffron Walden which is narrow, congested and subject to an Air Quality Management Area (AQMA). The eastern edge of the town has been subject to a disproportionate amount of new development, concentrated on the bottlenecked Radwinter Road/Thaxted Road junction within the AQMA. Likewise, it is not suitable for significant additional traffic (Local Plan para 9.3).

Traffic, Travel Plan and AQMA

20. The additional 400+ cars will have a significant and harmful impact on the local road system and environment, including to exacerbate the use of the unsuitable single track roads Cole End Lane and Redgate Lane as an unofficial by-pass. Local Plan policy paragraph 15.2 identifies significant problems with traffic specifically in Saffron Walden to the extent that *'at various times during the day the existing road system is unable to cope with the number of trips being made'*. It describes measures to be undertaken within the Local Plan period. These measures have included the AQMA and are consistent with NPPF 186.
21. The objection by the Environmental Health Consultee is material, including further concerns about inconsistent information, increased congestion and quantity of traffic at the *problem junction* of Thaxted/Radwinter Road and concerns about deliverability.
22. There are material inconsistencies in assessments of base line and impact, such as assuming connections through adjoining sites that are not deliverable and not shown on the Parameter Plan, and the assumption that the Link Road will be delivered, when the Masterplan shows it can only be accessed from one end, where it is inconsistent with the design of the access within the Appeal, and would be substandard due to the design and limited space allocated for it. The proposal for the Link Road within the Iceni letter of 2/3/2022 is not reflected and secured within the documents available so far and it is unclear how this will be adopted, managed and funded.
23. The impact on Swards End is understated, such as the Appellant's Appendix G which concludes there is no increase at R1 and does not allow for vehicles travelling in an easterly direction from the Site and those seeking to avoid the congestion in the town centre.
24. Highways proposals within Saffron Walden put forward as mitigation are not certain and robust, and they lack assessment of impact on the built environment and heritage assets. Particular concern relates to the cellars of buildings along High Street and the narrow Church Street, most of which are listed and include some of the oldest buildings in the centre of town.

25. There is cumulative impact and added risk with the existing access retained as a farm access and with the added vehicle, cycle and pedestrian movements from recent developments.
26. The key cause of excessive noise has been identified within the application as being traffic generation. Local Plan Policy ENV 11 states that noise generating development will not be permitted if it would be liable to adversely affect the reasonable occupation of noise sensitive development nearby, which would include existing and proposed houses and their amenity spaces. This is consistent with NPPF 185, and then potentially allows for a balance against need for the development, and the impact should firstly be assessed in order to realistically carry out the balancing exercise. The significant increase in noise is likely to affect both Swards End and Saffron Walden and should take into account area specific causes such as topography, narrow roads and hills, which to date has not been done.

Flooding

27. Site flood evidence, photographs and topography show there is a significant risk of waterlogging and flooding. The EA Surface Water Map (SWTC SEPC Appendix A7.1) shows flooding down all the mini-valleys of this hillside, across the large field, across the meadow and along this part of Radwinter Road. This is supported by personal accounts within the public responses and photographs including within SWTC SEPC Appendix 10.1. As the scale is significant, NPPF Footnote 7 applies and precedes the tilted balance under Paragraph 11. NPPF 161 – 165 direct development in a sequential manner to those locations with least risk. Paragraph 6.4 of the Local Plan confirms this was taken into account in the 2005 LP allocations which excluded this site. NPPF 167 directs local planning authorities to ensure that flood risk is not increased elsewhere.
28. The proposed use is more vulnerable to that flooding (NPPF Footnote 7 and Annex 3). The proposed development will also increase hard surfacing and runoff.
29. The development will include changes to flow, loss of permeability and increased flow of surface water down the steep spine road/s.

Safety

30. The location of the development is adjacent a major hazard site and pipelines (including COMAH and NPPF 45). There has been objection in principle from the pipeline operator on grounds that they cannot be maintained;
31. There is lack of safe access and egress from this development in the case of emergency. The frontage and the access is within the area of greatest risk (UDC Constraints Map). There are no alternatives provided in order to preserve life. The proposal is therefore not in accordance with NPPF 97.
32. The HSE Guidance and Buncefield Enquiry are relevant as they direct advice that the effects of the explosion should be considered as being 250m, subject to which direction the cloud travelled and any watercourse being located within that distance, which would potentially extend the effects. Both the proposed and existing vehicular access to this site are within 250 metres so would be out of action, and the fuel leakage would potentially spread into the site along the watercourse.

33. There is a conflict with the farm operation, as it overlaps areas being used by the residents; and retains a substandard entrance.
34. There is conflict with noise and vibration from Radwinter Road and Cumulative impacts under NPPF174 and Local Plan Policies ENV10 and ENV11.

Heritage

35. The proposals do not conserve and enhance as required under the 1990 Act, Local Plan Policy ENV1, NPPF20(d) and NPPF Section 16. They do not preserve or enhance the setting or surroundings as required under the 1990 Act, ENV2 and NPPF Section 16. There is risk that the proposed unassessed highways works under S106 will fail to preserve the character and significance of the listed buildings beyond the boundaries of the Site under 1990 Act, ENV2 and NPPF Section 16.
36. The Headland Archaeological report describes an enclosure of unknown date on the eastern side of the site. It was assessed as having moderate archaeological potential. NPPF 205 complements LP Policy paragraph stating that the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.
37. The photographs of View SWTC SEPC 4 show limited intrusion into the river valley setting of Pounce Hall. The greater spread and height of the proposed housing above the treeline will intrude into the valley setting of the Grade I listed St Mary's Church and Grade II Pounce Hall. The relevant views for setting include side views and also views likely from the interior of the garden elevation of Pounce Hall.
38. These views are of Grade I St Marys Church, a key *heritage feature* of the Saffron Walden Conservation Area and settlement. The elevated position of the Church and notable height of its spire contribute to the significant long views and identity of the building and settlement from afar, as described within the CAA and Pevsner (SWTC SEPC Appendix A5). There is similarity with the Appeal at Poplar Hill Stowmarket (SWTC SEPC Appendix A3.3), where NPPF 199 directed that the weight given to its significance should be at the highest level, and therefore even a low level of harm could be material.
39. The Highways proposals are likely to compromise cellars and below ground structures of the adjacent houses, especially where streets are narrow. List entries are provided of those likely to be most affected and these are plotted within the CA Appraisal (SWTC SEPC Appendix A5.7).

Ecology

40. The proposals do not accord with Local Plan paragraphs 12.13-12.17 which support Landscape and Countryside policies ENV7 and ENV8. These policies are comparable with NPPF 8c, 20d, 28 and Section 15.
41. The proposals do not clarify the extent of loss in order to create visibility splays. The Hedgerow Appraisal in the PEA assumes local rather than national designation (4.2.7). This is incorrect as they qualify as Important hedges, the national designation, under the Hedgerow Regulations 1997, on numerous counts (SWTC SEPC Appendix A6).
42. PEA Table 3 raises the issue of hedges that are Important but lose protection because they adjoin a dwelling. Clause 3(3) of the Hedgerow Regulations is a significant material

consideration as it would apply and potentially remove the statutory protection of the Important hedges should this Appeal succeed.

43. Bats and protected species are not robustly and transparently surveyed. According to Table 4, the bat survey was carried out at the wrong time. Despite a night-time visit at which Potential Roosting Features were recorded, the numbers and types of bats are not described and the bat roost potential of the hedgerow and hedgerow trees is not given. No reference is made to Pounce Wood, designated ancient woodland, SSSI, Local Wildlife Site and bat habitat, directly across the valley only 160 metres away.
44. Table 4 *biodiversity gain* does not take into account the likely extent of loss and the high ecological quality of Important hedges and mature habitats versus replacement.

Design

45. As the application was in outline, only those elements within the Parameters Plan and principles of development have been commented on, on the basis that the detailed design will be compatible and controlled under Reserved Matters and condition.
46. There is conflict with the character of the locality due to specific site constraints, services, pipes and drainage.
47. The underground services buffer zones prevent development along the contours to nestle development into the landscape. The proposed layout, form, height, scale and spread of development across the visible hillside will exacerbate the impact of development and loss of openness. The large blocks with 4 storey frontages are not characteristic of the scale of the locality and the river valley. They would be the most prominent part of the development and viewed at a higher level than the receptor, which is likely to increase their visual dominance

Planning balance

48. We will provide response to the case being put forward of a *tilted balance* and the level of *substantial weight* cited in paragraph 2.1 onwards. The Housing delivery Test and 5-year Land Supply Statement cited in para 2.3 of the Appellant's Statement of Case is over a year old.
49. The Appellant proposes Planning Obligations be provided to meet the requirements to make the development acceptable in planning terms (para 2.6). We will comment when available, but the onus is again on the developer and currently there is no assurance and mechanism in place to secure the acceptable level to deal with the identified shortcomings including of community facilities, healthcare, childcare, primary and secondary education requirements, school transport, public services, transport provision, water supply, drainage, other infrastructure and maintenance obligations that arise from the development in order to preserve the amenity of the existing communities, as required under GEN6. It would not overcome the unacceptable elements of the proposals listed above.
50. The slope of the site, location in relation to the fuel store, distance from the facilities and lack of connectivity ensures that this site is unlikely to provide the housing of greatest need, i.e. for the growing elderly population, and that treated sequentially under NPPF 87 and 88, other housing sites would be more viable, more efficient, and

more beneficial. The *substantial weight* cited by the Appellant in paragraph 2.4 does not reflect this. *Substantial weight* is being attributed by the Appellant to Affordable housing (para 2.5), but the provision is at the basic level and no more than required under policy.

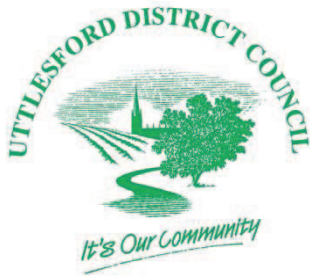
2.0 CONCLUSION

- 2.1 Saffron Walden Town Council and Swards End Parish Council have provided detailed comment on the unsuitability of the proposals at Scoping and application stages and will be putting these forward with supporting policy and evidence at the Inquiry. A list of Appendices is provided with this Statement and an indication of their relevance and scope is provided in the summary above.
- 2.2 Currently, as described above, there is uncertainty about the level of impact, mitigation and of Obligations being provided to contribute to shortfalls in infrastructure and facilities, and to make unacceptable elements of the application acceptable. These potentially affect the locality and residents within Saffron Walden and Swards End, so we respectfully request being also involved in this and any S106 element of the Inquiry.
- 2.3 We do not propose any specific conditions at this stage but will likewise wish to provide input when specific wording of conditions is being proposed for the Inspector to consider, including potentially against shortfalls in provision.

Saffron Walden Town Council and Swards End Parish Council

25 May 2022

APPENDIX 2



UTTLESFORD DISTRICT COUNCIL

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21 August 2014

Your ref:
APP/C1570/A/14/2221494
Our ref: UTT/13/2060/OP

FAO Leanne Palmer

Please ask for Mr A Taylor on
01799 510601
email: planning@uttlesford.gov.uk

Dear Madam

**APPEAL BY KIER HOMES LTD
SITE AT LAND NORTH AND SOUTH OF THAXTED ROAD, SAFFRON WALDEN**

Following the receipt of the above appeal the Council has reviewed its position in relation to defending the reasons for refusing the application.

The Full Council of Uttlesford District Council has resolved NOT to defend the appeal made by Kier Homes at Land North and South of Thaxted Road, Saffron Walden.

Yours faithfully

Mr A Taylor
Assistant Director Planning and Building Control

cc Kier Homes Ltd, c/o Mr G Hanlon, Savills

APPENDIX 3

Appeal Decision

Inquiry opened on 17 March 2015

Hearing session held on 18 March 2015

Site visit carried out on 20 March 2015

by Mike Moore BA(Hons) MRTPI CMILT MCIHT

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

Decision date: 2 June 2015

Appeal Ref: APP/C1570/A/14/2221494

Land off Thaxted Road, Saffron Walden, 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 Kier Homes Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/13/2060/OP, dated 1 August 2013, was refused by notice dated 2 May 2014.
 - The development proposed is outline application with all matters reserved except access for residential development of up to 300 dwellings, pavilion building, extension to skate park and provision of land for open space/recreation use, including an option for a new primary school on a 2.4 hectare site.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry, an application for costs was made by Keir Homes Ltd against Uttlesford District Council. That application is the subject of a separate decision.

Preliminary Matters

3. The Inquiry sat on 17, 18, 19 and 20 April 2015. A hearing session to consider matters relating to the housing land supply was held on 18 April 2015.
4. The application was submitted in outline with all matters reserved except access. Application drawing 267/179/003 Rev B is an indicative masterplan showing a possible layout for the proposed development. However, such details are reserved for future consideration. After the application was received by the Council, the stated description of development was revised by the appellant company to that recorded above. This was to include reference to the option for a new primary school. The application was determined by the Council in that context. I have considered the appeal on this basis.
5. After the appeal had been made the Council resolved not to defend its decision at the Inquiry. As such, it offered no formal evidence to the Inquiry other than on the matter of whether or not there has been a record of persistent under-delivery when determining the buffer to be applied in calculating the 5-year housing land supply. This was the only matter of disagreement between the

Council and the appellant company identified in their Statement of Common Ground.

6. At the Inquiry I was provided with a completed and signed planning obligation between the appellant company, the Council and Essex County Council, dated 9 March 2015 ('the s106 agreement'). This covers various matters including the provision of affordable housing, land for recreation, a link road and a bus service, the option for the school site, financial contributions towards healthcare, a cycleway scheme, public open space and education. I consider later, as appropriate, the provisions of the agreement.
7. After the Inquiry had closed, the Minister of State for Housing and Planning wrote to the Chief Executive of the Planning Inspectorate on, amongst other things, landscape character in planning decisions. In the light of the main issues in this case, further comments on the Minister's letter were sought from the main parties and I have taken the responses into account in my decision.

Main Issues

8. Based on what I have read, heard and seen and having regard to national and local planning policy on the location and provision of new housing, the main issues are:
 - the effects of the proposed development on:
 - a) the character and appearance of the area;
 - b) the efficient operation of the local highway network;
 - c) air quality in Saffron Walden;
 - d) the living conditions of nearby residents in terms of possible noise and disturbance;
 - e) the best and most versatile agricultural land; and
 - f) local infrastructure and services, including education and waste water treatment;
 - and
 - whether or not the proposal would provide a suitable location for housing, having regard to the principles of sustainable development.

Reasons

Background and Planning Policy

9. The development plan for the area includes the saved policies from the Uttlesford Local Plan (LP), adopted in 2005. The Council has recently withdrawn from examination its emerging draft Local Plan (DLP), following the conclusions of the examining Inspector ('the DLP Inspector'), dated 19 December 2014, which set out soundness issues that could not be overcome by modifications.
10. As the DLP has been withdrawn, the provisions of paragraph 216 of the National Planning Policy Framework ('the Framework') in terms of attaching appropriate weight to policies in emerging plans cannot apply. However, the DLP Inspector's conclusions were based on his assessment of the recent evidence put to him at the examination. Where relevant to this appeal the evidence and the conclusions are a material consideration to which I attach substantial weight.

11. The appeal site fell within a proposed allocation in the withdrawn DLP – Saffron Walden Policy 1. The DLP Inspector concluded that in strategic terms this was a sound allocation, although he identified some risks to its effectiveness in the way that it was being brought forward. The appeal site comprises the southern part of the allocation while the northern part (the 'Manor Oak site') has a resolution to grant planning permission subject to a section 106 agreement. The central section, however, has not been subject to a planning application related to the allocation.
12. The Framework indicates that relevant policies for the supply of housing are not considered up to date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. In this case there was no dispute between the main parties as to the sites that comprise the land supply and their deliverability.
13. The DLP Inspector concluded that it would be reasonable and proportionate to make an upward adjustment to the objectively assessed need for housing in the draft plan by around 10% to about 580 dwellings per annum (dpa). Although the DLP has been withdrawn, the Council has subsequently based its calculation of the housing land supply on this requirement and the appellants have not challenged this. No alternative figure was promoted at the Inquiry. The 580 dpa is based on the evidence presented to the DLP Inspector at the recent examination and I am satisfied on the evidence for this appeal that it is the appropriate yardstick against which to measure the land supply.
14. The Framework requires that in calculating the 5-year supply against the requirement there should be an additional buffer of 5%, increased to 20% where there has been persistent under delivery of housing. The DLP Inspector concluded that the housing delivery performance had not fallen significantly below appropriate targets for the years in question and therefore that the buffer did not need to be increased beyond 5%. This conclusion accorded with that of a number of Inspectors determining housing appeals in the District¹. However, in a more recent appeal decision² relating to Bannister Green, Felsted that Inspector took a different view. Using the annual dwelling requirement suggested by the DLP Inspector she concluded that, as the Council would not have achieved this delivery target for the last 4 monitored years and in only 6 of the last 13, there had been persistent under delivery and the 20% buffer should apply.
15. The evidence for the DLP examination shows that in the period 2001 to 2014 house completions exceeded the appropriate target in 7 years and fell below it in 6. If the higher requirement of 580 dpa is applied to the years since 2011 that would have been within the DLP plan period, then the targets would have been achieved in 6 years and missed in 7. However, variations about the annual requirement are to be expected. The Council has exceeded its cumulative requirement for 9 of the 10 years since 2004 even if 580 dpa is used as the target for recent years. The housing requirement for this past period has otherwise been derived from the former East of England Plan which emphasised that the targets were minima with a need to provide for an upward trajectory of completions. Nonetheless, taking account of the peaks and troughs of the housing market cycle it seems to me that the evidence does not support a conclusion of persistent under delivery.

¹ Including APP/C1570/A/14/2213863, APP/C1570/A/13/2208075 and APP/C1570/A/14/2212188

² APP/C1570/A/14/2226257

16. The Bannister Green Inspector's decision was issued after the full conclusions of the DLP Inspector were published. However, it relates to a hearing event that took place prior to this. The decision refers specifically to his summarised conclusions, which did not comment on the housing land supply, and not to the full version, which did. There is no evidence that the Bannister Green Inspector was aware of the full conclusions. The land supply would have been subject to thorough consideration and examination by the DLP Inspector in a way that cannot be replicated in the course of determining an individual appeal.
17. My conclusion is that there has not been persistent under delivery and therefore a 5% buffer is appropriate. In that context, on the evidence before me there is a 5-year supply of deliverable sites in the District and policies for the supply of housing are not out of date as a result of that consideration.
18. Separate from housing land supply matters, the Framework indicates that the weight to be given to relevant policies in existing plans should accord with their degree of consistency with the Framework. In this case the LP predates the Framework.
19. LP Policy S1 in combination with the Proposals Map defines development limits for the main urban areas such as Saffron Walden, including proposed urban extensions. Policy S7 defines the countryside as all those parts of the LP area beyond the Green Belt that are not within settlement boundaries. The appeal site lies outside the boundary for Saffron Walden and therefore is within the countryside, which Policy S7 seeks to protect for its own sake. Policy S7 applies strict control on new building. Development is only permitted if its appearance protects or enhances the particular character of the part of the countryside in which it is set or where there are special reasons why the development in the form proposed needs to be there.
20. The Council's Comparability Assessment examines the degree to which each LP policy is consistent with the Framework. It indicates that there are no consistency implications for S1, whereas S7 is only partially consistent. In the latter case this is because the policy strictly controls new building whereas the Framework supports sustainable growth and expansion of businesses and enterprises in rural areas. Other appeal Inspectors³ have concluded that Policy S7 is consistent with the Framework, at least in part. I agree that, although the Framework does not seek to protect the countryside for its own sake, Policy S7 would nevertheless embrace an approach that recognised its intrinsic character and beauty and sought to protect valued landscapes. To that extent, this Policy is consistent with the Framework and I can attach full weight to that aspect.
21. Defining development limits assists in deciding where policies for the countryside apply and in principle is compatible with the Framework. However, as the LP only covers the period to 2011 and the settlement development limits were set in that context, this limits the weight that can be attached to Policy S1.

³ APP/C1570/A/14/2213863, APP/C1570/A/13/2209678, APP/C1570/A/14/2212188, APP/C1570/A/14/2226257

Character and appearance

22. The appeal site includes two areas of land - to the north and south of Thaxted Road. It is intended that the land to the north would accommodate the housing while that to the south would include the recreational uses and the option for the primary school. The land is currently in use as arable fields. It abuts existing leisure and residential development on the edge of Saffron Walden.
23. The site is not covered by any special landscape designation but is situated within the 'Cam River Valley' landscape character area, as defined in The Landscape Character of Uttlesford District (2006) (LCA). However, it is located in a tributary valley of the River Cam. Thaxted Road is in the valley bottom with the land sloping upwards on the appeal site to the north and, more gently, to the south. There is a limited relationship with the main part of the river valley due to the separation resulting from the presence of Saffron Walden to the west and higher ground to the south-west and north-east. The regional scale assessment in the East of England Typology confirms this by showing the site as being in a Settled Chalk Valleys character type reasonably enclosed by Saffron Walden and the more elevated Wooded Plateau Farmlands character type.
24. While the LCA identifies this as a character area with relatively high sensitivity to change, these factors mean that the site is not highly visible in panoramic inter and cross-valley views. The LCA suggests planning guidelines that include ensuring that any development on valley sides is small-scale and responds to historic settlement patterns, form and building materials. In terms of the setting of Saffron Walden, the Council's Historic Settlement Character Assessment (2007) concludes that, in respect of the land between The Kilns development on Thaxted Road and existing housing at Rylstone Way, the effect of development would be neutral. In summary, the contribution of the appeal site to the landscape character is limited.
25. The locality is crossed by a series of public footpaths from which the development would be seen and it would also be visible from other public vantage points, including from Thaxted Road, and from adjacent dwellings, particularly at Rylstone Way. However, there is a significant amount of existing and committed development on the northern side of Thaxted Road, separated from the existing main urban edge by part of the appeal site. This includes existing residential development at The Kilns, with planning permission for up to 52 units, an Aldi discount foodstore (under construction as part of a planning permission that includes retail warehouse units and a garden centre), a civic amenity site, salt depot and light industrial development.
26. The appeal site is in a location where the countryside meets the town. The existing development is prominent on Thaxted Road and, when fully completed, will amount to a substantial urban built form that will have a very significant effect on the character of the area. Many views of the appeal site, especially the part to the north of Thaxted Road where the housing would be located, would be in the context of this development and that existing on the urban edge of the town. There would be a significant local change here as a result of the appeal proposals, with development on arable fields, but the indicative masterplan shows that an appropriate layout and landscaping within and

around the development could be achieved that would assist in mitigating its impact.

27. The outdoor sports and recreational facilities part of the scheme would retain a largely open character. In any event, LP Policy LC4 supports such development outside development limits, including associated buildings. The school, if required, would be well related to the settlement and reflect a need for more school places. Apart from the Manor Oak site, there has been no indication of another alternative location for the school, which would therefore accord with LP Policy LC3, which deals with community facilities outside settlements.
28. Although the Framework does not seek to protect the countryside for its own sake, it nevertheless recognises its intrinsic character and beauty. It encourages the re-use of previously developed land and seeks to protect and enhance valued landscapes. Outside designated areas, the impact of development on landscape can be an important consideration. The Minister's letter on these matters refers to a number of other appeal decisions where Inspectors have given this factor significant weight. Development must be suitable for the local context and the Inspectors concluded that it was not in those cases. In this instance, the context is one of limited wider landscape and visual impacts and an acceptable relationship with existing and committed developments. As such, I conclude that the proposed development would not have a significant adverse effect on the character and appearance of the area. It would not conflict with those aims of LP Policy S7 that seek to protect the intrinsic character and beauty of the countryside.

Highways

29. Access to both parcels of land comprising the appeal site would be achieved through a new signal controlled junction on the B184, Thaxted Road, close to the existing skateboard park. Off-site highway improvements to the capacity of junctions at Thaxted Road/Radwinter Road/East Street and Thaxted Road/Peasland Road are proposed to provide some mitigation for the traffic effects of the development. These would be secured under the s106 agreement. Concerns have been expressed about whether the topography at the first of these junctions would accommodate the improvements, whether a safe pedestrian crossing could be achieved and the possible effect on trees. Taking account of the detailed drawings and my own on site observations, I am satisfied that the works would be achievable to a safe standard and that only poorer quality trees would be affected.
30. The application is supported by transport assessments which include forecasts of base traffic and committed development traffic flows. They examine the effects of the development on ten junctions in Saffron Walden, most of which are in or adjacent to a conservation area. The majority of junctions are forecast to operate above capacity without the appeal development but with the proposals they show limited further adverse impacts. There has been no objection from Essex County Council as local highway authority, having regard to its own assessment of the withdrawn DLP.
31. In the light of concerns expressed by the Town Council and 'We Are Residents', the appellant company has undertaken further analysis that, amongst other things, provides for a 90/10 split in the distribution of traffic to the north or south on Thaxted Road, rather than the 70/30 split assumed in the original work. The analysis also incorporates additional committed developments to be

- in place by 2020. The highway authority's response to the application was based on the original work. The DLP Inspector's conclusion was based on the highways implications of the full allocation in the light of the highway authority's assessment of the DLP and other evidence, but there is no indication that he took account of the 90/10 split in respect of the appeal site.
32. This is not an unrealistic scenario as the committed developments include sites in the 5 year housing land supply. The town centre and main locations for jobs, services and facilities (including schools) are to the north in Saffron Walden. All the affected junctions are to the north.
33. There has been some element of double counting of employment growth in the further analysis and assumptions have had to be made about some committed developments for which there has been no transport assessment. A Tesco store extension included as a commitment will not take place, the proposed travel plan or modal shift may have some impact, as may 'peak spreading' but these have not been modelled. Nonetheless, opportunities for re-routing trips on the constrained network in Saffron Walden are extremely limited. Furthermore, although no allowance is made for highway improvements in the town, other than the junction improvements proposed by the appellants, it is unclear with the withdrawal of the DLP as to what these should be, the timescale for delivery and funding arrangements. It has not been demonstrated that these factors in totality would significantly change the outcomes of the further analysis.
34. In terms of the results, the accuracy of queue length predictions diminishes significantly as the ratio of flow to capacity and the degree of saturation exceed 100%. Nonetheless, it is clear that the extent of congestion in the original assessments has been underestimated. The cumulative effect of the proposed development and other commitments would be significant at some key junctions in terms of additional delays and queuing at important times of the day.
35. Through the s106 agreement, the appeal proposal would secure the southern part of a link road that is intended to run from Thaxted Road to Radwinter Road through the withdrawn DLP Saffron Walden Policy 1 allocation. The owners of the central element of the intended allocation had agreed a statement of common ground with other interested parties whereby their land would be brought forward for development during the plan period in a manner compatible with the adjacent parts.
36. The DLP Inspector was concerned that the function and specification of the link road and its benefits had not been explained. However, the traffic modelling evidence for the appeal shows that it would assist in providing relief to the Thaxted Road/Radwinter Road junction and the local highway authority indicates that the intention is to channel traffic away from the town centre, forming a new cross town route. This would be in conjunction with a range of junction improvements around the town but I have indicated above my misgivings about these. With the withdrawal of the plan and no planning application for the central section of the Policy 1 allocation, there is no clear timescale for the delivery of the full link road.
37. In the shorter term it is intended that the Manor Oak development should facilitate an interim link road by using existing roads in the Shire Hall industrial estate. The planning permission for that development has not yet been issued

while a s106 agreement is being negotiated. There may be matters to be resolved concerning the alignment on the Manor Oak site and the industrial estate roads are busy with parked vehicles.

38. Overall, I can attach only very limited weight to the provision made for the link road in the appeal scheme or to any benefits that might result from the full route in the light of the uncertainties about delivery.
39. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of that development are severe. Given the number of junctions in the town that would be affected and the existing peak hour congestion, it has not been satisfactorily demonstrated that this would not be the case here. My conclusion is therefore that the proposed development would have a materially adverse effect on the efficient operation of the local highway network. In that regard it would conflict with the aims of LP Policy GEN1 which, amongst other things, seeks to ensure that traffic generated by development is capable of being accommodated by the surrounding highway network.

Air quality

40. There is an Air Quality Management Area (AQMA) in Saffron Walden due to concerns about levels of nitrogen dioxide (NO₂). In the order of 6,000 residents live in this area. The Council has an Air Quality Action Plan (AQAP) which focuses on measures to reduce traffic congestion in the historic market town with its narrow streets. LP Policy ENV13 includes the aim of seeking to prevent long term exposure to poor air quality. The Framework aims to prevent the adverse effects of air pollution. It states that policies should take into account the cumulative effects on air quality from individual sites and that planning decisions should ensure that any new development in AQMAs is consistent with the local AQAP. In this case the appeal site is outside the AQMA but traffic from the development would have implications for NO₂ emissions on roads and junctions within it and is a material consideration.
41. Concentrations of NO₂ have exceeded the annual mean objective of 40 µg/m³ at several locations in the AQMA. Forecasts of NO₂ produced by the appellants, other promoters of developments in the town and on behalf of Essex County Council for consideration of the DLP show a range of possible predicted future values. Key variables include assumptions about the cumulative effects of developments and the rate at which new European standards on motor vehicle emissions will bring down levels of pollution. In the latter context, both 'with and without emissions reduction' scenarios have been examined. The appellants also undertook further modelling of the cumulative air quality impacts of the likely developments in Saffron Walden in line with their updated traffic flow forecasts, including the revised distribution of traffic from the site on Thaxted Road.
42. Most of the forecast NO₂ concentrations are due to existing traffic levels and background emissions. However, in combination with other developments and in the 'without emissions reduction' scenario the proposals would contribute in a small way to increases in NO₂ at several of the receptor locations. The official forecasts of emissions reductions have been shown in the past to be optimistic. Nonetheless, some decline is likely as measures are put in place to ensure that vehicles meet the standards in reality. Taken overall, it is reasonable to assume that actual reductions will fall somewhere between the

forecasts and the 'no reductions' position. In the light of this conclusion it is unlikely that there would be any new exceedences of the NO₂ objective.

43. Applying the Environment Protection UK guidance on the significance of the air quality impacts of the development proposals, they would be at worst a medium priority consideration. On the balance of the evidence before me I am not persuaded that the air pollution implications of the proposals would be so significant that they would amount to a reason to dismiss the appeal. While I have attached only very limited weight to the possibility of the link road, this would be likely to offer air quality benefits to the AQMA. There would also be some small benefits or mitigation from the contribution the proposals would make to the Wenden Road cycle route and a travel plan for the site. Although the AQAP focuses on reducing traffic congestion, taking all these factors into account I consider that the proposals would accord with its underlying aims.
44. I conclude that there would not be a material adverse effect on air quality in Saffron Walden. As a result, the proposals would not conflict with the objectives of LP Policy ENV13 or the Framework.

Noise and disturbance

45. The proposals include an extension to the existing skateboard park which is situated adjacent to the site, next to the Lord Butler Leisure Centre. The nearest housing is at Tukes Way and Peal Road, separated from the facility by a mainly open area. There is existing concern at noise from the skateboarding activities.
46. Matters of scale, layout and appearance are reserved and the design and size of the extension to the skateboard park would be part of a subsequent reserved matter application. In combination with any conditions which might be appropriate at that stage, depending on the design details, this should address any issues of additional noise from that source.
47. A construction method condition would control noise and disturbance during the building phase of the development as a whole. In general terms the relationship between the overall development and neighbouring housing can be addressed in the detailed design so as to avoid any significant harm to living conditions.
48. In this context, I conclude that the proposal would not result in unacceptable additional noise and disturbance to nearby residents. As such, it would not conflict with the aim of LP Policy GEN4 that seeks to prevent material disturbance or nuisance to surrounding occupiers.

Agricultural land

49. The Framework requires that the economic and other benefits of the best and most versatile agricultural land should be taken into account. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.
50. LP Policy ENV5 only permits development of the best and most versatile land where opportunities have been assessed for accommodating development on previously developed land or within existing development limits. Where agricultural land is required, areas of poorer quality should be sought except

where sustainability considerations indicate otherwise. This accords generally with the thrust of the Framework.

51. The appellant's detailed report on the land north of Thaxted Road shows it to be some 74% Grade 3a and 26% Grade 2, which is defined as the best and most versatile. Some 80% of land within the District is Grade 2. In concluding that the Saffron Walden Policy 1 allocation was strategically sound, the DLP Inspector did not identify the agricultural land quality as an overriding factor. However, I have seen no comparative assessment of development locations in Uttlesford. As such, while the loss of the best and most versatile land would be modest in the context of the general quality of agricultural land in the District, this would be a disbenefit of the proposal to be weighed in the overall balance in my decision. In the circumstances it would carry only limited weight but would nonetheless conflict with the aims of LP Policy ENV5.

Local infrastructure and facilities

52. Amongst other things, the s106 agreement seeks to address the implications of the proposed development for some local infrastructure by way of financial contributions. The Council does not have an adopted Community Infrastructure Levy (CIL) and there is a limit on the pooling of contributions from planning obligations. However, the Council's approach is to secure the necessary improvements through site specific funding from larger developments such as the appeal proposal and there is no evidence that the pooling limit would cause difficulties in this regard.
53. The s106 agreement provides for financial contributions towards both primary and secondary education as well as the land for the primary school site option, should this not occur at the preferred location in the Manor Oak development. The contributions are necessary and proportionate based on the likely numbers of pupils that the development would generate. The development by itself would not justify the whole of the school site and the agreement includes a mechanism which allows for a deduction from the financial contributions to allow for this. A contribution towards capital costs of additional healthcare on specific projects, commensurate with the needs generated by the development, would also be proportionate and meet the Framework paragraph 204 and CIL Regulation 122 tests.
54. The transfer of land south of Thaxted Road to the Council (or another public body) for recreational purposes and the contribution of £500,000 towards improvements to the skateboarding facilities, sports pitches, running track, a pavilion/associated building or buildings and car parking are included in the s106 agreement. These features fall within the description of development for the appeal proposal. It has not been suggested that the recreational provision would be insufficient to serve the residential development proposed.
55. The Uttlesford Open Space, Sport Facility and Playing Pitch Strategy (2012) identifies a District-wide need for some, but not all, types of sports pitches. However, while local sports clubs identified specific issues and aspirations for their organisations, there is no overall quantitative needs assessment for further provision in Saffron Walden itself.
56. The financial contribution is based on the cost of levelling the land rather than any detailed calculation as to the amount of playing field provision or facilities required by the proposed residential development. Indeed, the appellants'

Regulation 122 Assessment concludes that the land provision is larger than that required to mitigate the proposed development but that the “additional provision facilitates achieving the long term aspirations for Saffron Walden and addresses the current highlighted deficit”. I am in no doubt that the playing fields and other facilities would be a valued benefit for local people. However, I must apply the statutory tests in the CIL Regulations. These include that planning obligations are necessary to make the development acceptable in planning terms and are fairly and reasonably related in scale and kind. I cannot be sure that the recreational land and contribution meet these requirements. As such, they cannot be taken into account in my decision.

57. While concern has been expressed about the capacity of the Saffron Walden Waste Water Treatment Works to accommodate the proposed development in combination with other proposals, Anglian Water has indicated that the works can treat flows from the whole DLP site. Subject to a foul water condition, there are no clear technical reasons to sustain an objection to the proposal on these grounds.
58. Overall, in the light of these considerations, I conclude that the proposed development would not have a significant adverse effect on local infrastructure and services. It would therefore accord with the aims of LP Policy GEN6 which seeks to ensure that provision is made for infrastructure made necessary by development.

Sustainability of location

59. The Framework requires that developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However, opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Saffron Walden is the principal town in a mainly rural District and has a wide range of services and facilities. I note that the DLP Inspector in finding the larger proposed allocation sound in strategic terms raised no locational concerns relating to sustainable transport and access to services.
60. The appropriate distance thresholds to apply when measuring pedestrian access to facilities, including whether these should be crow-fly or on the ground distances or taken from the site access or the centre of the site, were disputed. The distances to several facilities are further than desirable but there is a reasonable range within a preferred maximum according to Institution of Highways and Transportation guidelines. The existing leisure centre and an Aldi supermarket, under construction, are adjacent to the site and there are employment opportunities at Shire Hill industrial estate.
61. The town currently has a high percentage of journeys to work on foot, reflecting its compact character and the distribution of employment opportunities. The site is closer to the town centre than some other existing residential areas. However, from some parts of the appeal site the town centre would be further than the preferred on foot maximum. I walked the most likely route, unaccompanied, as part of my visit. It would be reasonably straightforward in my estimation, albeit the distance would deter those less mobile.
62. There are almost no dedicated facilities for cyclists in Saffron Walden and the configuration of the road network, with its junctions, narrow streets and parked

vehicles, does not provide a good environment for cycling. This accounts in part for a low proportion of trips by that mode. The appellant's agreed contribution to the Wenden Road cycleway facility would assist with trips to Audley End rail station but this relates to a rural lane, outside the town itself. However, it remains that most of the town is within a reasonable cycling distance of the site.

63. The section 106 agreement provides for a bus service from the town centre to be supported for the first 5 years of the development at a frequency that is not out of place in the context of a rural market town. The agreement requires that bus stops should be within 400m of any dwelling. While the service would only be assured for 5 years and does not have to be in place until prior to the occupation of the 50th house, this would provide an opportunity for it to establish.
64. I consider that the various sustainable transport measures in the section 106 agreement are justified and proportionate, meeting the tests in the Framework and CIL Regulation 122.
65. A draft framework travel plan was submitted with the planning application. It is common ground between the Council and the appellants that the provision of such a plan, aimed at promoting the use of non-car modes could be achieved through an appropriate condition. Any contribution that the travel plan will make in this regard is likely to be very modest.
66. In terms of access to services and facilities by sustainable transport modes, my conclusion is that, taking account of the opportunities available in a market town in a largely rural District, the site would provide a suitable location for housing. However, this is only one part of a consideration of its overall sustainability. The Framework uses a much wider definition, identifying three dimensions to sustainable development – economic, social and environmental, which I consider below.

Conclusions and planning balance

67. In terms of the economic aspect of sustainable development the proposals would provide employment during the construction period and new residents would support local services and businesses. However, the conclusion on the effect of the proposals on the efficient operation of the local highway network is a significant negative factor with adverse economic effects through congestion and delays.
68. The Framework seeks to boost significantly the supply of housing. However, based on the evidence put to me, there is a 5 year housing land supply and the evidence that this was likely to continue for at least 2 more years was not contested. The Council is preparing a new local plan which is intended to be adopted by 2017 in accordance with the Development Plan Scheme. The additional houses provided by the appeal proposals would be a social benefit but these factors moderate the weight that I attach to that consideration.
69. The s106 agreement provides for 40% of the housing to be affordable (up to 120 units). This accords with LP Policy H9. The most recently published Strategic Housing Market Assessment (SHMA) for the District (2012) shows that about 54% of total needs are for affordable housing. On the basis of the current best estimate of objectively assessed needs, over 300 affordable dpa

would be required. However, the Council has recently changed the need criteria for inclusion on its housing waiting list, resulting in a significant reduction in numbers, suggesting a lower affordable requirement. The definition of affordable housing is broader than just those on the waiting list, who are likely to include mainly those in need of social rented properties. Nonetheless, this tempers the weight that I attribute to the provision of affordable homes here as a social benefit to be weighed in favour of the proposals.

70. The proposed development would provide some improvements to education and health facilities which, while proportionate to the scheme, would also be likely to provide some benefits to existing residents. There would be no unacceptable harm to the living conditions of nearby residents in terms of noise or disturbance.
71. In respect of the environmental dimension, I have concluded that there would not be material harm to the character and appearance of the area or to air quality in Saffron Walden. However, the loss of the best and most versatile agricultural land has not been justified.
72. The relevant LP policies on highway impacts and agricultural land are not out of date. On the basis of the current evidence, the harm that I have identified in these respects in combination would be significant, outweighing the benefits that I have outlined. Although the DLP Inspector had found the larger Saffron Walden Policy 1 allocation to be sound in strategic terms, he also identified risks to its effectiveness. In any event, the appeal site forms only part of that allocation. On the basis of the detailed evidence before me, overall the proposals would not amount to sustainable development.
73. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

M J Moore

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams of Counsel	instructed by Michael Perry, Assistant Chief Executive, Uttlesford District Council
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He called

Alison Hutchinson BA(Hons) MRTPI	Partner, Hutchinsons Planning and Development Consultants
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FOR THE APPELLANTS:

Simon Bird of Queen's Counsel	instructed by Mr Garth Hanlon of Savills (UK) Ltd
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He called

Jonathan Billingsley MA BPhil CMLI	Director, The Landscape Partnership
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John Hopkins MSc CMILT MCIHT	Director, Transport Planning Associates
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David Walker BSc MSc PhD MIEMA MIEnvSc MIAQM CSci CEnv	Equity Director, Peter Brett Associates LLP
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Garth Hanlon BSc MRTPI	Planning Director, Savills (UK) Ltd
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FOR SAFFRON WALDEN TOWN COUNCIL AND 'WE ARE RESIDENTS':

Matthew Reed of Counsel	instructed by Birketts Solicitors
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He called

Dr Michael Bull BSc PhD FIAQM MIEnvSc CSci CEnv	Director, Ove Arup & Partners Ltd
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Bruce Bamber MA CMILT MCIHT	Director, Railton TPC Ltd
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Alan Storah BSc DipTP DipMS MRTPI	Planning Consultant
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INTERESTED PERSONS:

Keith Mackman	Uttlesford District Councillor
Dan Starr	'We Are Residents'
Richard Freeman	Church Street Residents Association
Mike Young	Chairman, Wimbush Parish Council

Geoff Jones	Head Coach, WaldenJNR
Clare Thompson	Personal Trainer
Malcolm White	Former Clerk to Saffron Walden Town Council
Derek Jones	Chair, Saffron Walden Organisation for Sport
Chris Dodge	Development Officer, Saffron Striders Running Club
Ian McKernan	Chairman, Saffron Walden Rugby Club
David Peasgood	Chair, WaldenTRI
Ian Herd	Trustee and Chairman, Saffron Walden Skate Group and Hub Management Committee
Brad Howe	Skate Group Member
Rebecca Ilett	Trustee, Saffron Walden Skate Group and Hub Management Committee
Cameron Harris	Skate Group Member
Grace Mooney	Skate Group Member
Gill Haigh	Trustee, Saffron Walden Skate Group and Hub Management Committee
Jane Gray	Trustee and Secretary, Saffron Walden Skate Group and Hub Management Committee

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Section 106 agreement between the Council, Essex County Council and the appellants
- 2 Corrected section 106 agreement between the Council, Essex County Council and the appellants
- 3 Bundle of letters of support for the proposed development
- 4 Statement by Keith Mackman
- 5 Statement by Dan Starr
- 6 Statement by Mike Young
- 7 Statements by representatives of various sports organisations in Saffron Walden
- 8 Statements by members of Saffron Walden Skate Group and the Hub Management Committee
- 9 Statement of Common Ground – Matters of Disagreement between the appellants and Saffron Walden Town Council/We Are Residents
- 10 Extract from East of England Plan May 2008
- 11 Table showing cumulative delivery of housing against 10 year annual requirements submitted by the Council
- 12 Local Development Scheme February 2015
- 13 Minutes of Council Cabinet 17 February 2015
- 14 Extract from Landscape Character Assessment of Uttlesford District
- 15 Tables showing comparisons of traffic flows, committed development assumptions and traffic forecasts with and without mitigation submitted by the appellants
- 16 Summary of operational traffic assessments, including delays
- 17 Note on TEMPRO growth factors to 2020 from Mr Hopkins and email comments from Mr Bamber
- 18 Email 11 March 2015 from Essex County Council on the proposed link road and a travel plan
- 19 Email 20 March 2015 from Mr Hopkins on travel plan condition
- 20 Diagram showing links and junctions in Saffron Walden

- 21 Proposed cycle facility, Wenden Road, Saffron Walden: scheme outline plan and Highways Panel minutes 6 January 2015
- 22 Local Air Quality Assessment: Results of further modelling of 2020 opening year using 2013 and 2016 emission factors submitted by Mr Walker
- 23 EPUK Guidance Figure 1: Steps for Local Authority to Assess the Significance of Air Quality Impacts of a Development Proposal
- 24 Regulation 122 assessment of planning obligations submitted by appellants
- 25 Letter from NHS Property Services to Council 17 September 2013
- 26 Uttlesford Open Space, Sport Facility and Playing Pitch Strategy January 2012
- 27 Letter from Council to We Are Residents concerning sports and open space provision 9 May 2014
- 28 Council's Developer Contributions Guidance Document January 2015
- 29 Comments on Affordable Housing in Saffron Walden submitted by the appellants
- 30 Note on changes to the Council's housing waiting list
- 31 Email from appellants to Council concerning decision not to submit a second application

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- 32 Draft conditions agreed between the appellants and the Council following the conditions session at the Inquiry
- 33 Council's comments on Minister's letter to PINS Chief Executive, dated 9 April 2015
- 34 Mr Storah's comments on Minister's letter to PINS Chief Executive, dated 17 April 2015
- 35 Mr Hanlon's comments on Minister's letter to PINS Chief Executive, dated 17 April 2015

PLANS

A1-A4 Application plans

APPENDIX 4

Costs Decision

Inquiry held on 17 to 20 March 2015

Hearing held on 18 March 2015

Site visit made on 20 March 2015

by Mike Moore BA(Hons) MRTPI CMILT MCIHT

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

Decision date: 2 June 2015

Costs application in relation to Appeal Ref: APP/C1570/A/14/2221494 Land off Thaxted Road, Saffron Walden, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Kier Homes Ltd for a full award of costs against Uttlesford District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for an outline application with all matters reserved except access for residential development of up to 300 dwellings, pavilion building, extension to skate park and provision of land for open space/recreation use, including an option for a new primary school on a 2.4 ha site.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The application for a full award of costs by Keir Homes Ltd and the response by the Council were both made in writing at the Inquiry. However, the applicants explained orally that the application should not include those costs arising from the preparation of the section 106 agreement which would have been incurred in any event if the planning application had been approved by the Council. I have therefore considered the application on the basis of a partial award of all costs except those associated with the section 106 agreement.
3. National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The Council's decision, refusing the planning application against the advice of its officers, was issued on 2 May 2014. The appeal was made on 2 July 2014. On 19 August 2014 the Council resolved not to contest the appeal and offered no evidence to the Inquiry, save on a detailed point concerning the housing land supply which did not form part of the reasons for refusal. Accordingly, it is a matter of fact that the Council failed to produce evidence to substantiate its reasons for refusal.
5. At the same Committee as the appeal planning application was determined the Council resolved to grant planning permission (Ref: UTT/13/3467/OP) for,

amongst other things, up to 230 dwellings at the 'Manor Oak' site which comprised the northern part of a proposed allocation in the Council's Draft Local Plan (DLP) (subsequently withdrawn). The appeal application comprised the southern part of the allocation. Other applications have been approved by the Council which were on draft allocations in the DLP.

6. Local planning authorities are at risk of an award of costs with respect to the substance of the matter under appeal if they do not determine similar cases in a consistent manner (PPG, para 16-049). There has been no planning application for the DLP allocation in its entirety. The Manor Oak site is separated from the appeal site by a central area of land that has not been subject to a planning application. In my view, the Council was entitled to take a separate view of the component parts of the allocation, having regard to their particular characteristics.
7. The other sites referred to relate to a range of different proposals in locations across the District. Even though a site is proposed for allocation in a draft plan, the detailed merits of the proposals must still be considered and the plan itself may change. In this context, the Council was not inconsistent in its decision-making.
8. It is unacceptable to suggest that the applicants had another option to the appeal, of submitting a further planning application. Once having chosen to appeal it is appropriate for that to proceed in a proper manner and for parties to behave reasonably.
9. Where the local planning authority does not review their case promptly following the lodging of an appeal they are at risk of an award of costs. In this case, the Council responded quickly to the appeal being lodged and had informed the applicants of its decision not to contest it some 8 days before the statements of case were due. The need for review is part of sensible on-going case management. It should not be a shield for Councils to reverse unreasonable decisions. However, in this case they acted in an expeditious manner.
10. The applicants had to provide detailed evidence to the Inquiry as a response to the case being promoted by a Rule 6 party. This was not directly the result of the Council's decision as the scope of the Rule 6 party's case was a matter for them.
11. Local planning authorities are also at risk of an award of costs by preventing or delaying development which should clearly be permitted (PPG, para 16-049). While I have not agreed with all of the Council's reasons for refusal I have nevertheless dismissed the appeal. The Council's actions have therefore not delayed development. Taken in the round and in the light of my decision on the appeal I consider that the Council's actions do not amount to unreasonable behaviour.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M J Moore

INSPECTOR