Town and Country Planning Act 1990 ("the TCPA 1990")

Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)

Before Inspector Mrs C Masters, MA (Hons), Chartered Fellow RTPI

In the matter of an inquiry into an appeal pursuant to s.78 of the TCPA 1990

by

Rosconn Strategic Land

and **T E Baker** and **S R Hall** (executors of Mr E C Baker and Mrs J Baker)

against the refusal by

Uttlesford District Council

of an application for planning permission for:

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.

at

Land south of Radwinter Road (East of Griffin Place), Sewards End, Saffron Walden

Inspectorate ref: APP/C1570/W/22/3296426

LPA ref: UTT/21/2509/OP

CLOSING STATEMENT ON BEHALF OF UTTLESFORD DISTRICT COUNCIL

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*Common abbreviations: Appellants = Rosconn Strategic Land & T E Baker and S R Hall (executors of Mr E C Baker & Mrs J Baker); LPA = Local Planning Authority; Council = Uttlesford District Council, the LPA; HA = Highway Authority; ECC = Essex County Council, the HA; Proposals = the proposals the subject of the appeal, including as amended; Appeal Site = the land south of Radwinter Road, east of Griffin Place, Sewards End, Saffron Walden, the subject of the Appeal; SoC = Statement of Case (so, AppSoC, LPASoC); SoCG = Statement(s) of Common Ground (so, Planning SoCG, Supplementary Transport SoCG); Table 5.1 = Table 5.1 of the Supplementary Transport SoCG **[CD/B40]**; TCPA 1990 = Town and Country Planning Act 1990; PCPA 2004 = Planning and Compulsory Act 2004; NPPF = National Planning Policy Framework; CIL Regulations = the Community Infrastructure Levy Regulations 2010; Reg.122 = Regulation 122 of the CIL Regulations; CD = core document (CD numbers are in **[bold]**).*

Introduction

1. This is the written closing statement on behalf of Uttlesford District Council, the local planning authority ("the Council").

2. The focus is on the Inspector's two main issues (which are tackled under their respective headings below), though the closing does address certain other points that have arisen in the course of the Inquiry.

3. As regards the ultimate question for this Inquiry, whether the appeal should be allowed applying the overarching statutory tests set by s.70 of the TCPA 1990 and s.38(6) of the PCPA 2004, as the Council has made clear: provided the Inspector validates the obligations in the s.106 planning obligation (validation in accordance with clause 4.1), and imposes the conditions as now discussed at roundtable session, the answer is yes.

4. Structure henceforth:

   (1) The main issues, which will be addressed briefly (given the evidence before this Inquiry is that there is no substantive dispute between the Council and the Appellants as to these);

   (2) The other points that have arisen, which again will be addressed briefly; and

   (3) Conclusion.

Main Issue 1: Do the Proposals adequately provide for sustainable transport, including pedestrian and cycle provision?

5. In a nutshell, it is agreed that provided the mitigation measures set out in Table 5.1 of the Supplementary Transport SoCG **[CD/B40]** ("Table 5.1") are secured, there will be no conflict with highways/transport policy (and guidance), including in terms of sustainability. See paras. 5.2 – 5.5 below Table 5.1. See also the evidence of Mr Elliott, Mr Dawes and Mr Frampton. Hence the answer to the Inspector's question posed by Main Issue 1 is yes, with the proviso regarding the conditions and s.106.

6. The detail of the highways/transport mitigation measures set out in Table 5.1 has been further explained by Mr Dawes, both in his Proof and in his oral evidence, and also by Mr Elliott and Mr Frampton, as well as by Ms Wilkinson in the conditions/s.106 roundtable.

7. As to the evolution of the highways/transport mitigation package, and the response of the Council and ECC, both authorities have done precisely what they ought to have done. Albeit the Appellants decided to move to appeal against non-determination, the authorities did not hold back from active engagement with the Appellants. As a result, when the Appellants advanced a package providing adequate mitigation, the authorities

then reacted appropriately and the Council withdrew the substantive Reasons for Refusal subject to suitable conditions and a s.106 planning obligation.[1]

8. As to why the package was advanced only at appeal stage, rather than at application stage, that is regrettable but we are where we are.[2] For the avoidance of any doubt, the Council has seen the Appellants' characterisation of the Council's Reasons for Refusal in the Appellants' costs application against the Rule 6 Party, and rejects that characterisation utterly, but matters have moved on.

9. All professionals involved in the development of that package, both on the Appellants' side as well as for the authorities, are to be commended for the collaborative and problem-solving approach that lies behind it.

10. The two issues that have raised their head at this Inquiry regarding the transport/highways mitigation package concern: (1) compliance with the tests set by Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations"), and potentially by extension with the legal tests for conditions properly reflected by the NPPF (given the interrelationship between conditions and the s.106 regarding the transport/highways mitigation); (2) heritage impacts of mitigation at the Church Street/High Street junction, and in particular the submissions of the Rule 6 Party regarding the need for a traffic regulation order.

11. These are taken in turn.

<u>Compliance with the Regulation 122(2) tests</u>

12. Despite apparent suggestions here and there, this is a non-issue for all bar one item (the relief road safeguarding).

13. The Council's position and its evidence is clear that the Regulation 122(2) tests,[3] and the test for conditions (see NPPF para.56), are met for all highways/transport obligations and conditions (and indeed for *all* obligations and all conditions, which goes to Main Issue 2). The only exception, such as it is, is that the Council takes a neutral stance as to whether the obligation to safeguard the relief road land meets the tests, but in any event the Council acknowledges that brings strategic planning benefits.

14. Importantly, the Appellants' clear position and its evidence, whatever their Leading Counsel might have suggested during the conditions/s.106 session, is no different.

[1] Letter from the Council's Director of Planning, Mr Dean Hermitage, written with authority from the Chair and Vice Chair of the Council's Planning Committee, dated 25 July 2022 **[CD/B46]**.
[2] ECC's position was clear from ECC's March 2022 objection (and so the Council's related Reasons for Refusal, which at Reasons 1 and 2 repeat that objection word for word, can have come as no surprise). However, the Appellants moved to give the short-notice of intention to appeal based on non-determination, rather than work up the necessary mitigation before determination of the application, and the rest is now history.
[3] Repeated at NPPF para.57.

15. It is worth spending a little time on the evolution of the Appellants' position.

16. First, AppSoC **[CD/B10]**. AppSoC stated that the Appellants considered a westerly pedestrian/cycle link *'desirable rather than…necessary'* [para. 2.18].

17. Next came the Planning SoCG **[CB/B38]**. An important document. One that followed the Statements of Case for *all* Main Parties, including the Rule 6 Party – a point addressed below. That, at para. 6.1 (p.25), made clear that the Appellants would enter into s.106 planning obligations in relation to the list that followed *'subject to being satisfied of their lawfulness'*. That can have only one meaning: the Appellants would enter into the planning obligations if satisfied they passed the Regulation 122(2) tests.

18. After the general Planning SoCG, and the first Transport SoCG **[CD/B39]** came the Supplementary Transport SoCG, with its Table 5.1 and Section 5 as a whole.

19. The Appellants then in due course produced the s.106 that is before the Inquiry. Which includes provision for all of the "measures" in Table 5.1, including, of course, the westerly cycle/pedestrian link, *plus* safeguarding of relief road land.

20. That can have only one meaning: the Appellants' satisfaction that the obligations meet the Regulation 122(2) tests, save for the possible exception of the relief road safeguarding (and, further, the Appellants have not quibbled with the Council's CIL Statement, but to the contrary have supported it). It was (and is) evident there had been a marked shift regarding the westerly cycle/pedestrian link from the position set out in AppSoC.

21. Finally, the evidence.

22. Mr Elliott gave evidence first. Despite Mr Kratz for the Rule 6 Party tying Mr Elliott in the odd knot or two regarding the necessity of the westerly cycle/pedestrian link, and indeed improvements to the Tesco pedestrian access, any confusion was resolved by XX of Mr Elliott for the Council.

23. Mr Elliott confirmed in XX for the Council, that *all* of the "measures" listed in Table 5.1 are *necessary* highways/transport mitigation measures for this development, his only caveat being that this was subject to the extra layer of "deliverability" in the s.106.

24. Mr Elliott's caveat is understandable, as the Appellants are, the Council appreciates, concerned not to find themselves in a true "ransom" situation vis-à-vis the third party land required to complete the westerly cycle/pedestrian link.

25. Mr Dawes confirmed the necessity of the measures and their compliance with the Regulation 122(2) tests when he gave his evidence, and indeed the compliance of *all* the obligations in the s.106 (and the conditions), and he was not challenged on that in any way.

26. Mr Frampton, for his part, when XXd by Mr Kratz for the Rule 6 Party regarding the Tesco pedestrian crossing improvement and the westerly cycle/pedestrian link, was clear (writer's note, not verbatim record, but reasonably close):

> Q: I'm still at a loss to understand, in order to pass the test for a planning obligation they must be necessary, and what we're saying…
>
> A: they are necessary but it's accepted that they may not be achievable – so we've committed we'll use our endeavours to make that link, but if we cannot the Highway Authority have accepted not going to the wire
>
> Q: So not necessary in [?] absolute term[?].
>
> A: That would be right, but in terms of good planning and design it's the right thing to do and everyone, balance of probability believes it will happen, but if it doesn't there's another avenue, CPO, and Highways Authority can step in
>
> (emphasis added)

27. Of course, that a *necessary* item of mitigation is not *absolutely secured* does not render it any less necessary.

28. Mr Frampton was then XXd for the Council and was clear that *all* the obligations in the s.106 (not just the highways/transport measures) meet the Regulation 122(2) tests, save only for a possible caveat regarding the relief road safeguarding.

29. That is the evidence. It is consistent. It also merits emphasis that the Council's evidence from Mr Dawes regarding the necessity of the planning obligations and their compliance with the Regulation 122(2) tests as a whole, and likewise the appropriateness of the conditions that work together with the s.106 to secure the mitigation, was not challenged. This applies equally to the Inspector's Main Issue 2.

30. A specific issue arose regarding the substantive application of the Regulation 122(2) tests, and in particular the first test, of necessity (see Regulation 122(2)(a)), to the one "measure" that the Appellants' Leading Counsel suggested during the conditions/obligations session might *not* be necessary: the westerly cycle/pedestrian link. As to this, whilst Mr Elliott was of course right to say that without the cycle/pedestrian link there would still be cycle/pedestrian access via Radwinter Road, it does not (remotely) follow that the westerly cycle/pedestrian link is anything other than necessary. It clearly is. As anyone who has walked or cycled to and from Saffron Walden town centre and the Appeal Site along Radwinter Road would appreciate, a genuinely cycle/pedestrian friendly way out of/into the Appeal Site is necessary by reason of this development (as well as meeting the other elements of the Regulation 122(2) tests, beyond the necessity test). It is unsurprising, then, that all relevant witnesses gave the evidence they did.

31. The fact that ECC and the Council have, deeply pragmatically, not required a cast-iron guarantee of the westerly cycle/pedestrian link in no way robs it of its necessity.

32. The Council has acknowledged, properly and fairly through Mr Dawes' Proof and oral evidence and in submissions to the Inquiry, that the finalised s.106 does not secure the westerly cycle/pedestrian link. Rather, it places the Owners under an obligation to use all reasonable, but not commercially imprudent, endeavours to secure it within 12 months of the start of development (as defined in the s.106). As *per* Mr Dawes' Proof, it is acknowledged that this is not a perfect scenario, but nonetheless the Council judges that, pragmatically, the obligation in the s.106 is the most likely to deliver (and in good time) rather than trap all sides in a true ransom standoff. It is common ground between the Council and the Appellants that, on balance of probabilities, the link will be delivered.

33. Indeed, after submissions for the Council during the conditions/s.106 session regarding (a) the *necessity* of the westerly cycle/pedestrian link, and (b) the Council and ECC's entirely *pragmatic* decision not to require a Grampian condition or an equivalent-to-Grampian obligation in the s.106, it was understood that the Appellants' Leading Counsel did, in fact, say he agreed with all that had been said. But the Council does not need to rely upon that and makes these submissions in the event that is not what is submitted for the Appellants in closing.

34. The Council and ECC regard it as vital that the package of measures is secured through the planning obligations in the s.106, and the westerly cycle/pedestrian link in particular was and is a key to ECC's withdrawal of its objections and to the Council's decision to withdraw the Reasons for Refusal.

35. The other Table 5.1 item the subject of specific discussion, the Tesco pedestrian crossing improvement, is also quite clearly necessary for the purposes of the Regulation 122(2)(a) test, as well as meeting the other Regulation 122(2) tests. True it is that without the improvement there would still be a pedestrian crossing there, but that does not make it anything other than necessary, in planning terms, to make these Proposals acceptable and is no answer the Regulation 122(2) questions. If the Tesco pedestrian access is to actually suitably serve the future residents of this development, the improvement is clearly needed (try crossing there at any time of day, let alone in poor visibility: the Inspector will have seen this on the site visit), and needed by reason of this development (as well as meeting the other elements of the Regulation 122(2) tests, beyond necessity).

36. As are all the other items of transport/highways mitigation at Table 5.1. We return, again, to the clear evidence given by Mr Elliott when XXd for the Council, the evidence given by Mr Dawes, the evidence given by Mr Frampton when XXd both for the Rule

6 Party and for the Council, and also Ms Wilkinson's contribution at the conditions/s.106 roundtable.

37. As regards the one other transport/highways item the subject of discussion, the relief road safeguarding, the Council can only repeat that its position regarding Regulation 122(2) compliance is one of neutrality, but there are very obvious strategic planning benefits to the safeguarding (and it is proper to observe that Ms Wilkinson's expert transport planning evidence that this is the only realistic route for a relief road, in circumstances where any material further growth at Saffron Walden will require a relief road, was not, and is not, challenged).

Heritage impacts of traffic mitigation and relevance of the potential/likely need for a TRO

38. As regards the heritage impacts, the Council makes no particular submissions beyond referring the Inspector to the evidence the Inquiry has heard as to the specifics and the evidence from Mr Dawes regarding the planning balance.

39. The Rule 6 Party has suggested that because there might be the need for a Traffic Regulation Order ("a TRO") (pursuant to the Road Traffic Management Act 1984) to realise the mitigation arrangements proposed for the Church Street/High Street junction, or indeed the other two junctions in Saffron Walden town centre for which mitigation is proposed, then the Inspector cannot be sufficiently confident the mitigation, agreed as necessary, will be delivered.

40. That is not accepted, for several reasons, but ultimately this comes down to real rather than fanciful risks.

41. For the purposes of this submission it is assumed that a TRO or TROs would be required.

42. Firstly, in so far as a TRO and/or the necessary consultation on a TRO meant that the order making body (ECC) was faced with issues already considered by this Inquiry, the fact that the Inspector had already decided on those issues would mean the order making body could not reasonably take a different view to the Inspector, in the absence of a new material consideration. There is an analogy with the case law concerning s.278 agreements under the Highways Act 1980. The statutory power to enter into a s.278 agreement lies in the Highway Authority 'if they are satisfied it will be of benefit to the public' (similarly, a Road Traffic Authority is not *bound* to decide to make a TRO by the terms of the 1984 Act). In the case of a s.278 agreement, the Court of Appeal explained in *R v Warwickshire CC, ex p Powergen* (1997) 75 P&CR 89 that the discretion to enter into such an agreement is to be exercised consistently with the workings of the town and country planning regime, certainly where the need for a s.278 agreement has been determined by the planning regime. That is not merely because

s.278 compliments the town and country planning regime, but because it would be unreasonable in the *Wednesbury* sense for the highways authority to refuse an agreement after the planning system has considered full argument on its concerns and reached a view (in *R v Warwickshire CC, ex p Powergen* (1997) 75 P&CR 89, after the planning inspector had rejected the highway authority's highway safety objections to proposed access arrangements, the highway authority could not reasonably refuse to enter into the necessary s.278 agreement).

43. To take the most obvious example, if the Inspector was to decide to grant planning permission here, then that would be on the basis that harm to heritage by reason of the Church Street/High Street traffic measures ("less than substantial" harm being acknowledged by the Appellants' heritage expert Mr Stephenson, albeit at a much lower level on the "less than substantial" scale than that suggested by Ms Newell for the Rule 6 Party) was outweighed by the benefits of the Proposals. So the issue would have been decided at this stage, within the town and country planning regime, and it would require some new material consideration (and a weighty one) to justify ECC not abiding by that decision when deciding whether or not to make any TRO required to facilitate the mitigation.

44. Secondly, whilst one can never know what issues might be advanced in a consultation on a TRO, it is proper to proceed on the basis that if an issue has not been raised here, at this Inquiry, by the Rule 6 Party or anyone else, it is unlikely that some decisive issue will be raised at TRO stage. The Rule 6 Party has raised heritage, and that has been the subject of evidence and the Inspector can reach a view. But despite suggestions for the Rule 6 Party that the emergency services, for instance, might wish to weigh in on a TRO consultation, there is nothing substantive behind that. So whilst one can never say never, working in the world of real rather than fanciful risk leads inevitably to the conclusion that the Inspector can be sufficiently confident any necessary TRO would be made and the necessary mitigation would come forward.

45. Thirdly, of course, we know that the order-making authority, ECC, is in favour of the mitigation.

Main Issue 2: Is the necessary infrastructure secured (and are the tests met)?

46. This has been addressed above, in the course of discussing Main Issue 1.

47. There is no doubt that the Proposals give rise to the need for a range of infrastructure/infrastructure contributions (in the broad sense of that term, including such as bus service contributions: see the Council's CIL Compliance Statement), but

the clear position of both the Council and the Appellants is that the combination of the agreed conditions and the s.106 meets that need.

48. The evolution of the Appellants' position regarding s.106 planning obligations and the Regulation 122(2) tests and the tests for conditions and the evidence given relevant to that has been addressed above and will not be repeated. The tests are met, with only the possible exception of the relief road safeguarding.

49. The Inspector understandably queried the justification for the sum of £1,400 per dwelling in relation to the maintenance contribution for the Public Open Space.

50. As the Council understands matters, the issue is not that a *maintenance contribution per se* does not meet the Regulation 122(2) tests, but the justification for that particular figure.

51. The Council has provided an addendum to the CIL Compliance Statement. That will not be repeated.

52. However, essentially (and this is in line with the public open space "stewardship" paragraphs of the Council's consultation draft Developer Contributions SPD quoted in that addendum): (i) calculation of a maintenance contribution is inevitably site specific, and that is necessarily so in terms of the type of work that needs to be done and the amount of each type of work, as each piece of Public Open Space will be different with different maintenance requirements; (ii) whilst the *rates* for the various types of work can be derived from measured rates that are industry-standard, it is an exercise of judgment to settle on a per-dwelling figure, which judgment turns on the particular nature of the Public Open Space at issue; (iii) the Council's Landscape Officer has exercised that judgment and concluded that the £1,400 per dwelling figure is appropriate.

53. As the Council has further observed in that addendum: (a) the maintenance contribution is not a sum that would go to the Council, but to Sewards End Parish Council and *only* if the Parish Council agreed terms with the Owners to take on the Public Open Space; (b) the Parish Council has told the Inquiry it is content with the amount; (c) if the Owners and the Parish Council cannot come to terms, it will be for the Owners to maintain through a management company (with no money going to any public body).

Other issues

Development plan

54. Two particular points have arisen regarding the development plan/emerging development plan.

Saffron Walden Neighbourhood Plan

55. *If* the Saffron Walden Neighbourhood Plan passes referendum (scheduled for 15 September 2022, though query whether that date will be held in light of the mourning period for HM the Queen), it will in due course be "made" by the Council and so become part of the development plan. For planning purposes, given that "making" is a purely mechanical act, there is no obvious reason it should not carry full weight as soon as it passes referendum, if it does so. The Council has undertaken to advise the Inspector, through her case officer, and the other Main Parties, of the referendum result.

56. That the Appeal Site is outside the Neighbourhood Plan area does not, the Council would suggest, in agreement with Mr Frampton, mean that the Neighbourhood Plan is not material to this Appeal or that, if material, its policies carry no weight. There are sustainable transport policies within the Neighbourhood Plan and (a) there are transport mitigation measures for these Proposals within the Neighbourhood Plan area that engage those policies (b) issues of sustainable transport provision, e.g. cycling and walking routes, do not respect boundaries, and the Neighbourhood Plan makes specific policy provision regarding the road traffic and air quality impacts of development east of the development limits, which policy too is engaged by these Proposals.

57. The Council makes this point out of an abundance of caution. It considers the sustainable transport policies within the Neighbourhood Plan satisfied by the highways/transport mitigation package at Table 5.1.

Uttlesford Local Plan and consistency with NPPF

58. Mr Frampton has sought to criticise the Uttlesford Local Plan ("the Local Plan") on a basis that goes *beyond* an argument based on the lack of a five-year housing land supply ("5YHLS") and what that means for the Local Plan in terms of the NPPF (which the Council has, quite properly, never sought to dispute but fully acknowledged and factored in).

59. The criticism has taken two very distinct forms, the second of which the Appellants cannot properly pursue.

60. The first strand of criticism is on the basis that the Local Plan is, necessarily, long in the tooth.

61. The second strand of criticism is on the basis of asserted inconsistency with the NPPF.

62. There is no call to make any more of these criticisms than is strictly necessary. It is not necessary for the Inspector to reach a decision on them in order to allow the Appeal and grant planning permission, for the obvious reason that the Council accepts it lacks a 5YHLS and in the circumstances the NPPF "tilted balance" is engaged. Hence it is difficult to see what these points add.

63. In any event, they are now dealt with.

64. As regards the first strand of criticism, there is no particular controversy to this, but it does not materially advance matters. It is a straightforward fact that the Local Plan plans only to 2011 and is based on the data gathered for its production. Given the lack of a 5YHLS, and as Mr Dawes fairly acknowledged in his Proof at para.5.18, this means that *'Land such as this (which is designated countryside and safeguarded for minerals) must be considered, until, such time that a new local plan and allocated sites are in place and development can be plan led'*. Hence Mr Dawes' acceptance of the Appellants' Leading Counsel's point that as the Local Plan planned only to 2011, not beyond, it is in that sense out of date. In practice, the point adds little if anything of substance to the fact the Council lacks a 5YHLS: it is little more than the other side of that coin. The Appellants will no doubt submit that the Inspector should reduce the weight afforded any restrictive policies in the Local Plan, as did the Inspector in the Willaston appeal in *Richborough Estates v East Cheshire* (*per* Lord Carnwath JSC at para.63).[4] But the Inspector in Willaston was legally entitled to do so in the *Wednesbury* sense (and weight is, of course, for the decision-maker) because the restrictive policies were derived from "settlement boundaries that in turn reflect out-of-date housing requirements" (and see also para.66).

65. Moreover, none of the above (as was pointed out in XX of Mr Frampton by the Council) addresses the fundamental question posed by the NPPF as to whether pre-NPPF local policy is or is not "out of date". It is not a question of age, but of <u>consistency</u>, as per NPPF para.219:

> 219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

66. Simply because a local plan is old, does not necessarily mean that its policies are inconsistent with the NPPF. Rather, one must look to the substance.

67. This consistency point is the second strand of criticism advanced by Mr Frampton in his Proof, but it cannot properly be pursued by the Appellants at the Council's expense.

68. If the Appellants wished to argue against Local Plan Policy on the basis of *inconsistency* in the NPPF, it was beholden on the Appellants to make that position clear in the proper way, and, importantly, to put that position (policy by policy) to the Council's planning witness, Mr Dawes.

[4] [2017] UKSC 37

69. None of which the Appellants did, including through XX of Mr Dawes.

70. Rather, what has happened is that the Appellants *did not* advance an inconsistency argument in their Statement of Case, failed in any way to raise it following receipt of the Council's or the Rule 6 Party's Statements of Case in the Planning SoCG prepared *after* those Statements of Case, then even when Mr Frampton raised it in his Proof did not XX Mr Dawes on that basis, despite Mr Dawes' evidence clearly setting out his opinion on the point *and* specifically addressing the two policies/areas of which Mr Frampton makes particular criticism.

71. To break this down:

    (1) AppSoC **[CD/B10]**, a document prepared by Mr Frampton, does not argue that any Local Plan policy is out of date by reason of anything other than lack of 5YHLS.

    (2) That point was specifically noted in LPASoC **[CD/B12]** at para. 6.3 (p.13). The Appellants could not possibly have been unaware their SoC did not run the point.

    (3) LPASoC was duly submitted by the 26 May 2022 deadline, as was the Rule 6 Party SoC, which relied upon, *inter alia* Policy S7 (countryside).

    (4) The Planning SoCG was prepared **[CD/B38]** (it was signed off on 7 June 2022). It was, again, Mr Frampton's document so far as the Appellants' side is concerned.

    (5) The Planning SoCG, as one would expect, discusses the development plan and lists relevant policies, including relevant policies of the Local Plan at 3.4. This includes *both* policies, Policy S7 (countryside) and Policy ENV5 (agricultural land) in respect of which Mr Frampton argues inconsistency. It contains a list of matters not agreed. The Planning SoCG contains no suggestion that a consistency point was being raised as an issue by the Appellants.

    (6) Then Mr Frampton's proof raised inconsistency with the NPPF in relation to the two policies, Policy S7 (see 3.20(ii)) and ENV5 (see 3.22).

    (7) Mr Dawes' Proof **[CD/E1]**, for its part, specifically addresses Policy S7 and also the loss of agricultural land when weighing the planning balance (see paras. 3.4 and 5.27-5.28). Moreover, Mr Dawes address the Local Plan Policies generally in his Proof at para. 3.7, and gives his evidence that they *'remain broadly consistent with the NPPF and should therefore be given due weight at this appeal in accordance with paragraph 219'*.

    (8) Mr Dawes was the Council's only witness and dealt specifically with planning policy matters. He was also the only planning witness outside the Appellants' team. No case based on *policy inconsistency with the NPPF* was put to him in XX.

(9) For the Appellants to then seek to pursue inconsistency arguments, through Mr Frampton's oral evidence, is not open to them. The Appellants cannot, as was at one point suggested, pray in aid the case made by the Rule 6 Party. The Rule 6 Party's case was set out before the Planning SoCG and, importantly, if the Appellants wanted to attack the Local Plan Policies on this basis they had to XX Mr Dawes accordingly. It is not even the case that the Appellants troubled to clearly set out an allegation of inconsistency with the NPPF in the Scott Schedule they prepared with the Rule 6 Party: they simply referred in an unspecific way to a run of paragraphs in Mr Frampton's proof (see **[CD/B45**] at page 1).

72. In any event, this question of the consistency of Policy S7 with the NPPF was considered very recently (27 August 2021) by Inspector Paul Thompson, DipTRP MAUD MRTPI in appeal ref. APP/C1570/W/20/3263440 concerning land to the north of Rosemary Lane, Bran End, Essex, CM6 3RX, appended to the Rule 6 Party SoC **[CB/B30]** (starting at p.63). The appellants there appeared through a silk (Megan Thomas KC), a professional planning witness and a number of other witnesses (see p.77). The first main issue was '*whether the proposal is consistent with policies relating to housing in rural areas, with regard to the protection of the countryside'*. S7 was to the fore.

73. Having found (consistent with Mr Dawes' view that the Local Plan remains broadly consistent with the NPPF) that a run of policies including GEN1 and GEN2 are generally consistent with the NPPF (para.70), the Inspector turned to S7 and found (para.72):

> *72. Policy S7 refers to development outside of settlement boundaries. In isolation of other considerations, this would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, this does not fundamentally undermine the continued relevance of such an approach, particularly as its aim is to protect or enhance the character of the countryside from development that does not need to be there. This differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for development boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of the policy, as being partially consistent with the current Framework.*

74. That is consistent with the Council's approach, and inconsistent with the Appellants' approach. The Appellants' reliance on appeal decisions out of area, so concerned with different development plans (which plans are to be taken as a whole) is inapposite and does not assist the Inquiry. Equally, the Appellants' effort to tear Policy S7 down by

pointing to language that it derives from superseded PPG misses the point, because the question is not where the text came from, but how the text compares to the current NPPF. The Inspector's findings regarding Policy S7 are well founded, given NPPF 174(b).

75. The Inspector then continued (para.73) to discuss the reality that development will have to take place beyond existing settlement boundaries, so consistent with Mr Dawes' evidence (see above), and then to ascribe weight to the Policy.

76. As for ENV5, that is dealt with in the next appeal decision in the Rule 6 Party's pack **[CB/B30]**, a June 2015 decision of Inspector Mike Moore BA(Hons) MRTPI CMILT MCIHT (ref: APP/C1570/A/14/2221494, concerning land off Thaxted Road, Saffron Walden, Essex) at para.50. The Inspector found it *'accords generally with the thrust of the Framework'*. That remains well-founded, given NPPF 174(a).

SHMA figures

77. There is nothing between the Council and the Appellants regarding the weight to be given to both affordable and open marking housing. The Council and the Appellants agree (see LPASoC at 7.1) that each should attract substantial weight.

78. As regards affordable housing, although the Proof of the Appellant's affordable housing witness, Mr James Stacey **[CD D7]**, *suggested* that the SHMAs on which the Council relies might underestimate the level of affordable housing need, a point raised again in EiC of Mr Stacey, as Mr Stacey fairly accepted under XX that is not an issue for this Inquiry and, moreover, he emphasised that was why he had not sought to advance an alternative affordable housing need figure, but worked on the basis that the need figures in the SHMAs are minimums.

Conclusion

79. As the Council said in opening, as explained by Mr Dawes' Proof, the Council considers that, subject to suitable conditions and a s.106, the planning balance lies in favour of a grant of permission. Suitable conditions and a s.106 have now been agreed with the Appellants, and provided those conditions are attached and the obligations in the s.106 "validated" by the Inspector, that remains the Council's position.

JAMES BURTON

39 Essex Chambers, WC2A 1DD

13 September 2022