The Planning Inspectorate

Appeal Decision

Hearing held on 24 May 2017

Site visit made on 24 May 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th September 2017

Appeal Ref: APP/P1560/W/16/3164169
Land South of Centenary Way/North of London Road, Clacton on Sea, Essex CO16 9QZ

- 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 Mr Ray Chapman, Ray Chapman Associates against the decision of Tendring District Council.
- The application Ref 15/01720/OUT, dated 10 November 2015, was refused by notice dated 20 June 2016.
- The development proposed is outline planning application for the erection of up to 175 dwellings, provision of permanent public open space and supporting site infrastructure with all matters reserved apart from access.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 175 dwellings, provision of permanent public open space and supporting site infrastructure at Land South of Centenary Way/North of London Road, Clacton on Sea, Essex CO16 9QZ in accordance with the terms of the application, Ref 15/01720/OUT, dated 10 November 2015, subject to the conditions set out in the Schedule to this decision.

Procedural Matters

2. The application was made in outline with all matters reserved other than means of access. I have considered the appeal on that basis. Several plans were submitted in support of the proposal. The parties agreed at the Hearing which plans were for indicative purposes and which were for determination as part of this appeal. I have taken the plans into account accordingly.

3. During the appeal, the appellant submitted a revised site location plan to exclude Council owned highway verge which had previously been shown to be in their ownership. I am satisfied that no interests would be prejudiced by this minor amendment and I have taken the revised plan into account in making my decision.

4. The site address given on the appeal form differs from that on the original application form. The parties agreed at the Hearing the one given on the appeal form is a more accurate reflection of the site's location. I have therefore used that address in the heading and formal decision above.

5. Following the Hearing, the Council published the Tendring District Local Plan: 2013-2033 and Beyond – Publication Draft. This supersedes the Preferred

Options Consultation Document referred to previously. The parties have been given the opportunity to comment on the document and I have taken those comments into account.

6. Following the Hearing, the Council submitted a report relating to the Local Plan Committee meeting of 12 June 2017 in respect of the housing land supply position in Tendring. All relevant parties have been given the opportunity to comment on the document and I have taken the report, and all comments received in respect of it, into account.

7. Prior to the Hearing and at the Hearing itself, the parties were given the opportunity to consider and comment on the implications of the Supreme Court Judgement in Richborough Estates v Cheshire East BC [2017][1] issued on 10 May 2017. I have taken account of all representations on this matter in determining this appeal.

8. The proposal would fall within the description of development at paragraph 10(b) of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. A Screening Direction by the Secretary of State concluded that the proposal would not constitute EIA development. I have dealt with the appeal on this basis and I am satisfied that there is sufficient submitted information to determine the proposal.

Main Issues

9. The main issues are:

- the effect of the proposal on the function of the Local Green Gap and the character and appearance of the area;
- whether the Council can demonstrate a five year supply of housing land;

Reasons

Planning Policy Context

10. The development plan comprises the saved policies of the Tendring District Local Plan 2007 (LP). Although beyond its end date, it remains the development plan.

11. The appeal site is identified on the LP Proposals Map as part of a Local Green Gap (LGG). At the Hearing, the parties confirmed that the relevant policy in respect of this appeal is saved Policy EN2 of the LP. Policy EN2 sets out that the LGG is to be kept open and essentially free from development. The purpose of the LGG is to prevent the coalescence of settlements and to protect their rural settings. Specifically, the Clacton/Little Clacton LGG is intended to safeguard the separate identity, character and openness of the setting of Little Clacton by protecting the undeveloped land either side of Centenary Way. It also seeks to prevent further ribbon development in the London Road area between Clacton-on-Sea and Little Clacton, safeguard the open character of the land either side of the Little Clacton Bypass and preserve and, where possible, enhance views from the settlements.

[1] Suffolk Coastal District Council V Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

12. The Council are currently undergoing preparation of the Tendring District Local Plan: 2013-2033 and Beyond – Publication Draft. I have been referred to specifically, relevant draft Policies PPL6 in respect of Green Gaps and LP1 in respect of locational strategy.

13. Whilst I recognise the plan has moved to the next stage of preparation, it has nevertheless yet to undergo examination in public (EIP). It was indicated at the Hearing that the Council expects the plan to undergo EIP in early 2018. It was also evident that there are outstanding objections to the relevant policies within the plan. Therefore, whilst I have had regard to the emerging policies, I afford them limited weight.

14. In a previous iteration of the emerging plan, the appeal site was allocated as a potential housing site. Nevertheless, that proposed allocation has since been removed following the Council's decision to refuse planning permission for the appeal proposal. Whilst I have had regard to the appellant's views on this matter, given the limited to which I afford the emerging plan, it follows that limited weight is to be afforded to the potential allocation or otherwise of the site.

15. At the Hearing, the Council confirmed that the appeal site is not formally designated as a Local Green Space in the LP, having regard to paragraphs 76 to 78 of the National Planning Policy Framework (the Framework).

16. Paragraph 49 of the Framework states that policies for the supply of housing should not be considered up to date if a five year supply of deliverable housing land cannot be demonstrated. For decision-making this means, by reference to the fourth bullet point of paragraph 14 of the Framework, granting permission unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Local Green Gap

17. The appeal site comprises a large expanse of fields which form part of the LGG between Clacton and Little Clacton. The primary purpose of the LGG at this point is to maintain separation between Clacton and Little Clacton. The site is located at the narrowest gap between the two settlements.

18. To the east, the site adjoins a Morrisons supermarket and petrol filling station. It also adjoins for the remainder of its eastern boundary Highfield Grange Holiday Park. Whilst these developments lie outside of the Settlement Development Boundary (SDB) of Clacton in the LP, they infill the entire area between the SDB and the appeal site, and comprise a significant expanse of urban form. Thus, I find that, physically and functionally, they form part of the built up area of Clacton. To that end, the appeal site adjoins the built up area of the settlement.

19. There are properties on London Road to the west of Clacton, including on the appeal site itself. Nevertheless, they are separated from Clacton by the large open land of the appeal site and appear as sporadic, ribbon development physically unrelated to the settlement.

20. On the north side of Centenary Way is a large expanse of open, agricultural land which lies to the east and south of the built up area of Little Clacton. To the west of Little Clacton is an area of open land between the settlement and

the A133. The appeal site lies on the south side of Centenary Way, which acts a definable boundary in the extent of the setting of Little Clacton. From what I heard at the Hearing, and from my own observations, I find the appellant's view that the setting of Little Clacton is largely focussed on the open land to the west and east of the settlement a compelling assessment.

21. Nevertheless the appeal site, by virtue of its extensive, largely undeveloped character, does make a moderate contribution towards the setting of Little Clacton in the sense that it plays an important role in the function of the LGG in providing a physical separation between the two settlements. When travelling along Centenary Way between the two, there is a clear sense of this separation as the built up area of Clacton is not predominately apparent until one reaches the Morrisons supermarket. By ensuring the appeal site, and therefore the LGG, is largely free from development at this point, the setting of Little Clacton is maintained in its present form.

22. Whilst the parties agree that the proposal would not significantly affect the open character of the land either side of the Little Clacton bypass, it would introduce substantial built form into an area which is generally free from development. As a result, the development would fail to protect a large area of land on the south side of Centenary Way which is predominately undeveloped, in conflict with LP Policy EN2.

23. Indeed, it would significantly reduce the functional openness of the LGG at this point and result in a substantial, physical expansion of the built up area of Clacton towards Little Clacton. To that end, the proposal would significantly change the character of the LGG and, as a result, would fail to safeguard the existing setting of Little Clacton, again in conflict with Policy EN2.

24. However, the site does contain mature vegetation on its northern boundary. Thus, visually, the appeal site's contribution to the setting of Little Clacton, and indeed Clacton, is limited as its open character is not readily apparent. Furthermore, part of the appeal site currently operates as a regular car boot sale. Whilst this use has little associated built form, it nevertheless creates an urbanising effect on a frequent basis.

25. Moreover, the proposal would incorporate a significant amount of landscaping. A substantial element of linear open space would be provided along the northern extent of the site and the built form would be set back between 30 to 70m from Centenary Way. There would also be substantial planting along the northern boundary which would largely screen the development from Centenary Way. This would have a similar feel to the heavily planted northern side of Centenary Way. Overall the appellant indicates around 24% of the total site area would be retained as permanent green infrastructure and open space. In my view, a considerable element of the site's open character would be retained.

26. I note the appeal site is not entirely invisible from vantage points within Little Clacton. Nevertheless, such views are largely confined to an element of the north-western corner of the site. Otherwise, I was able to see that there is little visual relationship between the appeal site and Little Clacton. The land in the north-western corner of the site would be incorporated into the wider landscaping scheme. The proposal would therefore maintain a clear visual gap between Clacton and Little Clacton and would preserve existing views between the settlements, particularly when travelling along Centenary Way. Indeed,

there would remain a noteworthy gap between the proposed built form and that of Little Clacton. This would prevent any significant, physical coalescence and indeed, little of the coalescence that would occur would be appreciable on the ground. Consequently, I find the proposal would safeguard the separate identity of the two settlements.

27. I conclude, therefore, that, as the proposal would not protect the undeveloped land either side of Centenary Way and would fail to safeguard the character and openness of the setting of Little Clacton, it would have a harmful effect on the function of the LGG and the character and appearance of the area. Thus, the proposal would conflict with LP Policy EN2. However, I find the extent of the harm would be mitigated to a degree as the proposal would safeguard the separate identity of the two settlements and would preserve views between the settlements. As a result, I afford the harm to the function of the LGG and the character and appearance of the area moderate weight.

Housing Land Supply

28. The Framework seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their requirements.

29. At the time the application was determined, it was common ground between the parties that the Council was unable to demonstrate a five year supply of deliverable housing. Indeed, the Council's written statement to this appeal indicates that the position, at the time, was that a 4.4 year supply could be demonstrated.

30. Nevertheless, at the Hearing, the Council confirmed that it believes it can currently demonstrate a housing land supply of 5.1 years and consequently, that relevant policies for the supply of housing should be considered to be up to date.

31. In contrast, the appellant argues that, notwithstanding the findings of the Inspector in the recent Rush Green Road appeal decisions[2], that the supply situation has materially changed in that period and the Council can only demonstrate, at best, a 3.4 years supply of housing land.

Housing Requirement

32. The Council's supply calculations are based on a requirement of 4,303, or 861 dwellings per annum (dpa), over a five year period. This takes into account the full shortfall in delivery since 2013 and a 20% buffer as required by paragraph 47 of the Framework. It is agreed by the parties that 2013 is an appropriate base date for calculating the shortfall in housing delivery and that, using the 'Sedgefield' method, the shortfall should be taken into account in the first five years. The parties also agree that the Council has a record of persistent under delivery and therefore a buffer of 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land[3] is appropriate.

[2] APP/P1560/W/16/3145531, APP/P1560/W/16/3156451 and APP/P1560/W/16/3145531
[3] The Framework – Paragraph 47

33. Prior to the Hearing, the parties agreed that total delivery for the period 2013-2017 was 1,256 dwellings. Nevertheless, the Council indicated that, completions for the year 2016/2017 had risen in that time with the final delivery total since 2013 at 1,364 dwellings. The appellant does not dispute the figure.

34. The disparity between the main parties largely derives from contradictory views on what the objectively assessed need (OAN) for Tendring District should be. The Council has applied an OAN requirement of 550 dpa in its calculations. This figure is recommended in the latest OAN Study produced in November 2016 on behalf of authorities in the Housing Market Area[4]. In contrast, the appellant argues that the OAN should be 625 dpa based on the 2014-based DCLG sub-national household projections (SNHP) for Tendring published in 2016 in line with the Planning Practice Guidance (the Guidance) which states that the SNHP should be the starting point for determining the OAN[5].

35. Whilst the Council's OAN deviates from the projections, the November 2016 OAN Study, in Section 3, establishes the population projections before considering the factors that have led to the recommendation for a lower OAN. The November 2016 OAN Study identifies a high Unattributed Population Change (UPC). UPC is a discrepancy in the official population statistics relating to the population changes between the 2001 and 2011 censuses. During such periods, mid-year population estimates are made. In Tendring, the 2011 census published results which were different to the estimates. Between 2001 and 2011, the population in Tendring stayed almost exactly the same, whilst the mid-year population estimates had anticipated an additional 10,000 persons over that period. The population projections which give the SNHP do not take into account UPC. Due to this, the OAN Study recommends that, in places where UPC is large, such as Tendring, SNHP's cannot be relied upon.

36. At the Hearing, the appellant made reference to the March 2016 report of the Local Plan Expert Group (LPEG) established in 2015 by DCLG. The recommendations of the LPEG included changes to guidance on the calculation of OAN, in particular, that the use of SNHP should not be rejected due to concerns in respect of UPC. I am also conscious that there are dangers in a reduced OAN where there is a persistent record of under-delivery as it may supress need.

37. However, the Guidance sets out that information provided in the latest full assessment of housing needs (in this instance the 2016 OAN Study) should be considered. Whilst the Council's OAN figure has not yet been tested through examination and thus, I cannot attribute full weight to the OAN Study, it is nevertheless clear that there are two likely causes of the UPC which have given an OAN figure below the SNHPs. Either, there were errors in the counting for the 2011 and/or 2011 censuses, or there were errors in the mid-year population estimates, with unrecorded or misreported migration. Either way, it seems to me that there is adequately robust justification for the Council to take a different starting point than the latest population projections.

38. The Guidance states that the weight to be attributed to the SNHPs should take account of the fact that they have not been tested which could evidence a

[4] Objectively Assessed Housing Need Study November 2016 Update by Peter Brett Associates on behalf of Braintree District Council, Chelmsford City Council, Colchester Borough Council and Tendring District Council
[5] The Guidance - Paragraph: 015 Reference ID: 2a-015-2014306

different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals. The evidence before me suggests that is the case here.

39. The recommended demographic starting point of 480 dpa for Tendring over the plan period is set out in the OAN Study. Taking into account a market adjustment signal results in a recommended range of 500-600dpa. The Council has therefore adopted the mid-point recommended by the OAN Study.

40. I note there are outstanding objections to the Council's OAN through the local plan process. However, the Guidance is clear that the examination of a Local Plan is intended to ensure that up-to-date housing requirements will have been thoroughly considered and examined in a way that cannot be replicated in the course of determining individual appeals[6]. Indeed, in *Hunston v SSCLG [2013] EWCA Civ 1610,* the Court of Appeal held that it is not for an Inspector on a S78 appeal to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. Thus, it would not be appropriate for me here, particularly on the basis of the evidence before me, to fully examine the Council's evidence base which underpins the emerging Local Plan and come to a definitive view on the OAN for Tendring.

41. To that end, I find that for the purposes of assessing whether or not the Council can demonstrate a five year housing land supply in respect of this S78 appeal, an OAN of 550 dpa is sufficiently robust.

42. As a consequence, I find the Council's requirement figure of 861 dpa a reasonable basis on which to determine whether or not a five year supply of housing land can be demonstrated.

Deliverable Housing Sites

43. Paragraph 47 of the Framework requires local authorities to identify a supply of deliverable sites. The Framework in Footnote 11 states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and, in particular, that development of the site is viable. It also notes that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years.

44. The Council argues that there is a deliverable supply of 4,381 dwellings over the next five years. This comprises around 3,611 dwellings on large sites of 10 or more dwellings with planning permission or with Council planning committee resolutions to grant planning permission subject to S106 agreements. It also includes around 770 dwellings from windfall sites of 9 dwelling or less.

45. In terms of the large sites, the appellant has drawn attention to two[7] included on the Council's list which together would deliver 89 dwellings over the five year period. The appellant indicates that the planning applications in relation to those sites had been withdrawn. However, the Council confirmed at the Hearing that was not the case and those two sites now benefit from permission.

[6] The Guidance - Paragraph: 033 Reference ID: 3-033-20150327
[7] LPA Refs: 16/00671/FUL and 16/00656/FUL

46. Nevertheless, the Council has not applied a lapse rate to the large sites. Rather the Council argues that the omission of sites from the supply which it believes will not come forward in the first five years essentially acts as a lapse rate. However, if sites are not considered to be deliverable, then it would not be reasonable to include them within the supply in any event. Lapse rates are intended to take into account that for a range of reasons, deliverable sites do not come forward for development or do not deliver the anticipated number of dwellings.

47. Moreover, the information before me relating to the sites contained within the supply is limited. From the evidence before me, I am not satisfied that the Council has suitably demonstrated that all sites within the supply would be deliverable or indeed whether any sites within the supply have constraints to be overcome or whether there are other reasons why they may not be developed. As such, it is reasonable to conclude that not all sites with planning permission will be implemented as suggested. I therefore consider that it would be appropriate to apply a lapse rate of 5% on sites with permission and 10% for those without as suggested by the appellant.

48. The Council has also assumed no completions in year 1 from sites with outline planning permission. However, a significant proportion of the supply would derive from sites with outline planning permission. Whilst the Council indicated at the Hearing that some sites shown as outline within the supply now have reserved matters agreed, I nevertheless agree with the views of the appellant and Mr Bending as expressed at the Hearing that it is unlikely all those outline permissions will begin to deliver from year 2, as it would not provide sufficient time for the approval of reserved matters or the discharge of conditions precedent. Indeed, I agree with the appellant that little evidence has been provided by the Council to allow scrutiny on the deliverability or otherwise of the sites. To that end, the Council's approach in not applying lapse rates and assuming all sites with planning permission will deliver is an overly optimistic one.

49. The Council indicated at the Hearing that, as of 1 April 2017, there were 974 dwellings with planning permission on sites of 9 or fewer. The 770 figure factored into the Council's calculations is based on trends for past delivery of sites below 10 dwellings. This also assumes a non-delivery rate of around 20% on such sites. Whilst I recognise concerns about the grouping of windfalls and small sites together, I consider for the purposes of this appeal, the Council's approach to windfall sites is sufficient robust.

50. Nevertheless, the Council's overall figure of 4,381 dwellings shows that there is an excess of just 78 dwellings above the five year requirement. Given that it has not applied a lapse rate and has not taken account of sufficient lead in times for sites with outline planning permission, I consider it reasonable to take the view that the deliverable supply of housing sites would fall significantly below the 4,303 requirement and, on the evidence before me, would be closer to the 3,605 figure suggested by the appellant. This all points to a deliverable supply significantly below five years worth.

Conclusion on Housing Land Supply

51. Given my findings in respect of the requirement I find the appellant's figure of 3.4 years to be overly pessimistic. However, given my findings in respect of the deliverable supply of housing sites, I find the Council's figure of 5.1 years

overly optimistic. Assuming the Council's requirement figure and the appellant's supply figure, taking into account the higher delivery on windfalls and the inclusions of sites which have permission which the appellant assumed had not, I find the five year supply of housing land for the purposes of this appeal to be closer to the 4.4 years originally suggested by the Council.

52. I conclude, therefore, that the Council is unable to demonstrate a five year supply of housing land.

Policies for the Supply of Housing

53. In light of the Supreme Court judgment in *Richborough Estates,* the Council and the appellant agree that LP Policy EN2 is not a relevant policy for the supply of housing. It follows that, in the absence of a five year supply, it is not deemed to be out-of-date by virtue of paragraph 49 of the Framework.

54. However, the Supreme Court made it clear that the important issue is not whether particular policies should be categorised as "policies for the supply of housing", but whether the result from the application of those policies is a five year supply in accordance with the objectives of paragraph 47. If there is a failure to provide a five year supply, it is the shortfall itself which triggers the operation of the 4th bullet point of paragraph 14 whether this is due to the policies which specifically deal with housing provision or because of other restrictive policies. In such circumstances, I find LP Policy EN2 to be out-of-date for the purposes of the Framework and paragraph 14 is therefore engaged.

Planning Obligations

55. A signed and completed S106 unilateral undertaking has been submitted. It would secure financial contributions towards education facilities and healthcare services. It would also make provision for on-site open space and for 12 dwellings to be gifted to the Council for the provision of affordable housing.

56. LP Policy QL12 states that the Council may seek planning obligations from developers in line with the now obsolete Circular 05/2005. Nevertheless, the Circular is broadly similar to Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (CIL) which require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Thus, I am satisfied LP Policy QL12 is generally consistent and up-to-date.

57. The Local Education Authority indicates that early years and childcare facilities, as well as primary schools, within the catchment of the appeal site are forecast to have a deficit in places going forward and, as a result, would not be able to accommodate the demand arising from the development. The Council, therefore, considers a financial contribution of £218,579 towards early years and childcare is necessary, whilst a contribution towards primary school places of £639,030 is necessary. On the evidence before me, both in writing and at the Hearing, I have no reason to disagree and I am therefore satisfied that the education contribution accords with paragraph 206 of the Framework and the CIL Regulation 122 tests.

58. Similarly, NHS England indicates that the development would likely have an impact on two GP Practices in the vicinity of the appeal site which do not currently have adequate capacity for the likely number of patients that would arise from the development. As such, a financial contribution of £52,820 towards the two practices is sought. I agree, on the evidence before me, that such a contribution would meet the tests of paragraph 206 and CIL Regulation 122.

59. LP Policy COM6 requires developments on sites of over 1.5ha to provide at least 10% of the land as public open space. The undertaking commits to provide not less than 10% of the site for land suitable to be used by members of the public as a recreational play space along with a financial contribution towards its maintenance. I am satisfied on the evidence before me the contribution would be necessary to make the development acceptable and reasonable in all other aspects.

60. Paragraph 47 of the Framework makes clear that Councils should meet the full, objectively assessed need for affordable housing. Paragraph 50 sets out that this need should be met on site. LP Policy HG4 requires up to 40% of dwellings on sites of 15 or more dwellings to be affordable. The Council points to its own evidence base in the preparation of the Draft LP which indicates that 40% would render residential development in the District unviable. Both parties therefore agree that a contribution equivalent to 35% on-site provision would be suitable in this instance. I see no reason to disagree. The undertaking provides for 12 affordable housing units to be transferred to the Council at a nominal cost. This would negate the need for the Council to obtain funding to build out the units and would, financially, be equivalent to a 35% contribution. I am satisfied therefore that the proposed affordable housing contribution would meet the tests of paragraph 204 and CIL Regulation 122.

61. At the Hearing, the Council indicate that it had some concerns that the undertaking contains a mechanism for a review of the scheme's financial viability in respect of affordable housing to be sought at any time up until commencement of development. However, the appellant indicated at the Hearing that the mechanism is to ensure sufficient flexibility to respond to changing market conditions in order to prevent against the development becoming financially unviable and ultimately, not being built out. I agree such an approach would be reasonable. Thus I consider the inclusion of the viability mechanism would not mean the planning obligations contained within the undertaking would fail to meet the appropriate tests and I have, therefore, taken all those obligations into account.

Other Matters

62. I have had regard to the concerns of local residents regarding the potential impact of the proposal on traffic volumes on the surrounding road network. However, it was indicated at the Hearing that the Local Highway Authority has raised no objection to the proposal and that the surrounding highway network has adequate capacity to accommodate the development.

63. To the north of the appeal site, within Little Clacton, is the Grade II Listed Building of Stone Hall. No substantive concerns have been raised relating to the impact on the setting of the listed building and, on the evidence before me, I have no reason to disagree. As such, I am satisfied that, given the

intervening distances involved, the proposal would preserve the setting of Stone Hall.

Conditions

64. In addition to the standard time limit conditions for the submission of reserved matters and for commencement (1-3), I consider a condition restricting the development to not more than 175 dwellings in line with the terms of the application necessary to protect the function of the LGG and the character and appearance of the area (5).

65. A condition relating to the approved plans is necessary to provide certainty. Although landscape and layout are reserved matters, it is necessary to require compliance with the proposed landscape strategy and parameters plan to ensure that future development on the site does not result in harm to the LGG and the character and appearance of the area beyond that considered here (4).

66. Again, whilst landscaping is a reserved matter, I agree with the parties that conditions relating to a landscape and public open space management plan, the implementation of landscaping and the protection of trees are necessary to provide certainty over the extent of landscaping within the development and to ensure the health of retained trees (6, 7 and 8).

67. A condition is necessary to ensure improvements to the highway network in the interests of highway safety (9). A condition in respect of a travel plan is necessary to ensure future residents have a choice about how they travel and to encourage sustainable transport modes (10).

68. Conditions are necessary in respect of surface water drainage to ensure residents are not unduly exposed to the risk of flooding (11, 12 and 13). A condition for a construction method statement is necessary to prevent harmful impacts on the living conditions of local residents (14).

69. A condition is necessary to prevent harmful impacts resulting from contamination (15). It is also necessary to impose a condition to ensure that a foul water strategy is agreed to prevent harm to local residents and the environment from foul water discharges (16).

70. To ensure the proposal does not harm ecology or biodiversity, it is necessary to impose a condition requiring the agreement of an ecological mitigation scheme (17). I have imposed a condition relating to fibre optic broadband connectivity to ensure that such economic and social benefits form part of the development. I have, as agreed at the Hearing, omitted the suggested wording of the Council relating to the agreement of an alternative where fibre optic standards cannot be achieved as this would provide insufficient certainty (18). Finally, a condition is necessary to ensure biodiversity gains are secured (19).

Planning Balance and Conclusions

71. The Framework is clear regarding the statutory status of the development plan. I have found that the proposal would, on the whole, conflict with LP Policy EN2. Thus, I am statutorily required to dismiss the appeal, unless other considerations indicate otherwise. The Framework is one such consideration and, as national policy, one of some importance.

72. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. Where policies are out-of-date, as is the case here, for decision-making this means, by reference to the fourth bullet point of paragraph 14, granting permission unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

73. I have found that the Council is unable to demonstrate a clear and robust five year supply of housing land. Whilst, I find the 3.4 year supply suggested by the appellant somewhat pessimistic, it nevertheless points to the need for the Council to significantly boost the supply of housing. Having regard to the *Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)* case, the weight to attribute to the benefit in increasing the supply of housing will depend on factors such as the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet.

74. Whilst I recognise the positive steps the Council is taking towards addressing the shortfall, in the context of the lack of five year supply, I find the shortfall to be significant. Moreover, having regard to the persistent under-delivery in previous years and the failure of the application of LP Policy EN2 to achieve the objectives of paragraph 47 of the Framework, I find the proposal would make a considerable contribution towards boosting the supply of housing in the District. Assuming the Council's figures that the site would not come forward until year 3 and that it would deliver around 30dpa, it would make a contribution to the supply of between 90 and 120 dwellings in the next five years. This is a considerable proportion of the requirement and, therefore, a benefit to which I afford substantial weight.

75. Whilst the proposal would result in the loss of the existing car boot sale on the site, and the local employment in generates, it would nevertheless generate significant employment during the construction phase and a considerable increase in spending in the local economy from future residents. It would also generate increased income for the Council through New Homes Bonus receipts and Council Tax revenue.

76. The development would also provide 12 affordable homes. These would be gifted directly to the Council as a registered provider, in contrast to the regular approach of providing them at a discount from open market value. The appellant indicated at the Hearing that this, in financial terms, would be the equivalent of a 35% contribution. The Council confirmed that it was satisfied an adequate contribution to affordable housing would be provided. I have no reason to disagree. This would, therefore, be a significant social benefit.

77. A substantial proportion of the appeal site is designated as a Local Wildlife Site largely due to the presence of corky-fruited water-dropwort and adders tongue fern. It was indicated at the Hearing that the current car boot sale use of the site is resulting in continuing degradation of the species. It is proposed to set aside land within the site which would be retained and managed to enhance their value in providing habitat for the species. It was put to me at the Hearing that some of the fauna is still present and could be transplanted through suitable techniques into the new habitat. There is no compelling evidence to convince me such an approach would not be suitable. As a result, I find the

development would result in a net gain in biodiversity. This is an important benefit to which I afford significant weight.

78. Paragraph 17 of the Framework seeks to actively manage patterns of growth to make the fullest possible use of public transport, walking or cycling. The appeal site would be located in reasonably good distance of the closest services and facilities, with the adjacent supermarket providing easily accessible shopping for everyday needs of future residents. The site would also benefit from good public transport links to Clacton Town Centres, as well as other supermarkets, employment opportunities and several other services and facilities. As such, in balancing the transport system in favour of sustainable modes of transport, in line with Framework paragraph 29, it would have significant environmental benefits.

79. On the other hand, I have found that the proposal would result in harm to the function of the LGG and the character and appearance of the area. Nevertheless, I afford such harm moderate weight as the proposal would safeguard the separate identity of Little Clacton and would preserve views from both settlements.

80. Furthermore, whilst the proposal would, on the whole, conflict with Policy EN2, I afford that conflict limited weight as I find the Policy out-of-date for the purposes of the Framework. Indeed, whilst Policy EN2 is consistent with paragraph 17 of the Framework which recognises different roles and character of area, I agree with the appellant that the wording of the policy cannot simply be disregarded. The policy explicitly refers to the plan period, which has now lapsed. In my view the LGGs are time expired, indeed the Council recognises that in seeking to review them through its work on the emerging plan. I am also conscious of the views of the LP Inspector expressed in paragraph 6.10 of the Inspector's Report which states that the LGGs were not meant to endure beyond 2011.

81. In conclusion, I find that the adverse impacts of the development to be such that they would not significantly and demonstrably outweigh the benefits of the proposal. To that end, applying the titled balance in paragraph 14 of the Framework, the proposal would constitute sustainable development for which there is a presumption in favour of. This is a consideration which would, in this instance, outweigh the conflict with the development plan.

82. In conclusion therefore, for the reasons given above, and having considered all relevant matters, I conclude that the appeal should be allowed.

Jason Whitfield

INSPECTOR

SCHEDULE

1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the Location Plan dated October 2016 titled 'Draft Resubmission: Redline Location Plan', 13510/NP/1 Rev A titled 'Existing Site Layout', 15/68-SK01 Rev A titled 'Landscape Strategy', P-OUT-USE-A titled 'Parameter Plan: Land Use', 46667/P/001 Rev A titled 'Proposed Development Access' and 46667/P/003 titled ' Proposed Highway Mitigation Works'.

5) The number of dwellings hereby permitted shall not exceed 175 (one hundred and seventy-five).

6) No development hereby permitted shall commence until a Landscape and Public Open Space Management Plan (LPOSMP), including a lighting strategy, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas, has been submitted to and approved in writing by the local planning authority. The LPOSMP shall be carried out in accordance with the approved details and timescales contained therein.

7) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the landscaping details required under Condition 1 shall be carried out during the first planting and seeding season (October – March inclusive) following the commencement of the development hereby permitted, or in such other phased arrangement to be first agreed in writing by the local planning authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.

8) No development hereby permitted shall commence until details of tree protection measures, including during the construction phase, have been submitted to and approved in writing by the local planning authority and such measures as approved shall be implemented fully in accordance with the approved details.

9) No development hereby permitted shall take place until the following have been provided or completed in accordance with details to be first submitted to and agreed in writing by the local planning authority:

    a) Any existing site accesses off London Road permanently removed;

    b) A priority junction off London Road to provide access to the site. The junction shall have as a minimum a 5.5m wide carriageway, two 2.0m footways, 6m kerbed radii with dropped kerbs/tactile

paving crossing points and a 120 x 2.4 x 120m clear to ground visibility splay.

c) Improvements at the London Road/Progress Way/Centenary Way roundabout as shown in principle on planning application drawing number 46667/P/003 Rev B;

d) Upgrade to current Essex County Council specification (or any subsequent amending specification) of the four bus stops that would serve the site. Two in London Road in the vicinity of the proposed site access and two in London Road north of the Progress Way/Centenary Way roundabout;

e) A minimum 2m wide footway along the full length of the sites London Road frontage (site access frontage);

f) An extension (minimum 3m wide) of the Centenary Way shared footway/cycleway to the shared footpath/cycleway off London Road into the site, south of the Progress Way/Centenary Way roundabout; and,

g) A minimum 2m wide footway on the south side of London Road to serve the westbound bus stop adjacent to the site access to include a dropped kerb/tactile paving crossing point between the footway and the existing (to be widened) footway on the north side of London Road.

10) Prior to the occupation of the development hereby permitted, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, to include six one day travel vouchers for use with the relevant local public transport operator, the details of which shall be first submitted to and agreed in writing by the local planning authority.

11) Prior to the commencement of the development hereby permitted, a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, shall be submitted to and approved in writing by the local planning authority. The mitigation measures contained therein shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.

12) Prior to the commencement of the development hereby permitted a maintenance plan detailing the maintenance arrangements of the surface water drainage system, including responsibilities for the system, shall be submitted to and agreed in writing by the local planning authority.

13) Yearly logs of all maintenance of the surface water drainage scheme shall be kept in accordance with the approved maintenance plan to be included in the details to be approved under condition 11 for the lifetime of the development hereby permitted.

14) No phase of development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority for that particular phase. The statement shall include:

a) The proposed hours and days of working;

b) Use of barriers to mitigate noise;

c) The need for and method of any piling;

d) The selection and use of machinery;

e) Vehicle movements plans;

f) Waste management measures;

g) Methods and details of dust suppression during construction;

h) Proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic; and

i) Details of a wheel washing facility.

The development shall be carried out in accordance with the approved statement.

15) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice, and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR11) (or equivalent British Standard and Model Procedure if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of the development hereby permitted, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and verification report for all the remediation works shall be submitted to the local planning authority within 20 days of the report being completed and thereafter approved in writing by the local planning authority.

16) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the approved foul water strategy.

17) No development shall take place, including any ground works or demolition, until an Ecological Mitigation Scheme has been submitted to, and approved in writing by the local planning authority that addresses the recommendations in the Extended Phase 1 Habitat Survey dated April 2015, the Bat Emergence and Return to Roost Survey dated July 2015, Botanical Survey dated August 2015 and the Great Crested Newt eDNA Survey dated July 2015 all by James Blake Associates Ltd. The scheme shall be constructed and completed in accordance with the approved Ecological Mitigation Scheme and prior to the occupation of any part of the proposed development.

18) The development hereby permitted shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details to be first submitted to and approved in writing by the local planning authority.

19) Prior to the commencement of the development hereby permitted on any part of the land identified as a Local Wildlife Site (Te92) a biodiversity offsetting scheme which secures the provision of a net gain in biodiversity within the local area shall be submitted to and agreed in writing by the local planning authority. The scheme should identify a suitable provider and shall include, but not be limited to, a full description of the offsetting proposal, measurable benefits and timescales. Thereafter the development shall be carried out in accordance with the scheme prior to the commencement of the development on any part of the land identified as a Local Wildlife Site.

APPEARANCES

FOR THE APPELLANT:

Paul Shadareveian QC of Counsel	Cornerstone Barristers
Rachel Bodiam	Director and Head of Strategy and Concept, James Blake Associates Ltd
Richard Clews	Associate Planner, Strutt and Parker LLP
Sam Hollingworth	Associate Planner, Strutt and Parker LLP
Mary Power	Ecology Team Leader, James Blake Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Gary Guiver	Tendring District Council
Graham Nourse	Tendring District Council

INTERESTED PERSONS:

Chris Bending	Land Logic

DOCUMENTS

1) Local Plan Committee 3 November 2016 Report of the Head of Planning – 2016 Local Plan Preferred Options Consultation Response Summary
2) Braintree District Council, Chelmsford City Council, Colchester Borough Council, Tendring District Council – Objectively Assessed Housing Need Study, November 2016 Updated by Peter Brett Associates

PLANS

1) Plan Reference: 46667/P/001 Rev A
2) Extract Plan - Local Wildlife Site