



Appellant's response to the LPA's statement of case and the comments made by third parties

Residential development of up to 9 dwellings – Land to
the south of Old Road, Chatburn

for Mr Townsend

Emery Planning project number: 18-406

LPA ref: 3/2018/0582

PINS ref: APP/T2350/W/19/322816

Project : 18-406
Site address : Land to the south of
Chatburn Old Road,
Chatburn
Client : Mr Townsend
Date : July 2019
Author : Ben Pycroft

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1. Introduction and summary

- 1.1 Emery Planning is instructed by Mr Townsend (the Appellant) to submit this statement in response to the statement made by Ribble Valley Borough Council (the LPA) and the comments made by third parties in relation to his appeal against the LPA's decision to refuse to grant permission in principle for up to 9 dwellings at land to the south of Chatburn Old Road, Chatburn (LPA ref: 3/2018/0582, PINS ref: APP/T2350/W/19/322816).
- 1.2 As the Inspector will be aware, the scope of issues relevant to the grant of permission in principle is limited to location, land use and amount of development. If the appeal is successful and permission in principle is granted, other matters would then be considered at the technical details consent stage. The fact that 'permission in principle' is granted, does not mean that an implementable planning consent cannot be refused where 'technical details' indicate that it is the appropriate outcome. This last point does not appear to have been fully understood by local objectors and indeed Members of the planning committee.

Summary of the Appellant's response to the LPA's statement of case

- 1.3 The LPA alleges that the appeal proposal is contrary to policies DMG2: "Strategic Considerations" and DMH3: "Dwellings in the Open Countryside and AONB" of the Core Strategy on the basis that the proposal is located in the open countryside and not "in" (i.e. within the settlement boundary) of Chatburn.
- 1.4 However, we have already set out in our Statement of Case that policies DMG2 and DMH3 allow for the "expansion" and "consolidation" of development on the edge of but outside of the settlement boundaries of Tier 1 Villages such as Chatburn (i.e. in the open countryside). In fact, the LPA has recently agreed with the case that we set out in our appeal statement:
- 1 – In the officer's report to committee for the resubmitted PiP application at the appeal site, which we appended at EP1 of our appeal statement;
 - 2 – In the case it presented to the HED DPD Inspector at the examination hearing sessions earlier this year. This is set out in the officer's report to committee for the resubmitted PiP application (EP1 of our appeal statement); and

3 – In its case at a recent public inquiry, which took place on 8th, 9th and 10th May 2019 into an appeal made by Gladman Developments Ltd against the Council's decision to refuse to grant outline planning permission for up to 110 no. dwellings at land at Henthorn Road, Clitheroe. As is recorded in the appeal decision (appended at **EPR2**), which was published on 19th June 2019 i.e. before the LPA's statement of case was submitted for the current appeal, the LPA's case at that inquiry was that policy DMG2 is “permissive of development beyond the settlement boundaries”, essentially for the reasons we have already set out in our appeal statement. The Henthorn Road Inspector allowed an award of costs against the LPA because whilst it had alleged conflict with policy DMG2 in the reason for refusal for the Henthorn Road proposal, it accepted at the Inquiry that policy DMG2 was permissive of development beyond the settlement boundaries and made no attempt to justify a conflict with that policy. A copy of the costs decision is appended at policy **EPR3**.

- 1.5 Given the above, it is surprising and unreasonable that the Council has now completely changed its case in terms of its application of policies DMG2 and DMH3 of the Core Strategy and now claims - contrary to its own case elsewhere before two separate Inspectors – the policies are not permissive of residential development beyond the existing settlement boundaries. In the two appeal decisions referred to by the LPA, there is no evidence to suggest that the Inspectors considered the definitions in the glossary of the Core Strategy as we have set out in our appeal statement and to the extent that the Henthorn Road Inspector considered them. Furthermore, the two appeal decisions were published before the Council presented the case it did at the Henthorn Road public inquiry (when costs were awarded against it) and had confirmed that the policies are permissive of development beyond settlement boundaries to the HED DPD Inspector.

Summary of the Appellant's response to comments from third parties

- 1.6 This statement also responds to the comments made by the Mr Evans MP, Councillor Scott, the Parish Council and neighbours. However, most of the comments made are not relevant to the PiP application and many relate to issues, which will be addressed at the technical details stage – should the appeal be allowed and permission in principle be granted.

Conclusions

- 1.7 Having taken into account the LPA's statement and the comments made by third parties, our case on behalf of the Appellant remains that the proposed development is in accordance with the development plan and therefore it should be approved without delay in accordance with paragraph 11(c) of the Framework. In the event the Inspector disagrees and finds that the proposed development would be contrary to the development plan, there are other material considerations, which mean that permission in principle should still be granted. These are that the proposed development would assist in meeting the unmet housing requirements for Chatburn and the Borough as a whole.

2. Local Planning Authority's Statement of Case

Section 3 – Appeal site and surrounding context

- 2.1 At paragraph 3.2, the LPA's statement explains that the majority of the site is located outside of but adjacent to the settlement of Chatburn. It states that the appeal site is located predominantly in the open countryside.
- 2.2 Please refer to paragraphs 5.6 to 5.8 of our appeal statement (pages 8 and 9), which explain that on the proposals map of the Districtwide Local Plan (adopted 1998), the whole of the appeal site is located outside of but adjacent to the settlement boundary of Chatburn. It also explains that part of the appeal site is located within the settlement boundary for Chatburn as proposed through the HED DPD. As we explain in our appeal statement, this has been adopted for development management purposes. For the avoidance of doubt, a map that shows this is appended at **EPR1**.

Section 4 - Relevant Planning Policy and Guidance

- 2.3 We address paragraphs 4.5 to 4.10 of the LPA's statement, which deal with the Core Strategy policies below. In terms of the HED DPD, it is relevant to note that whilst no extension to the existing settlement boundary of Chatburn is proposed, this is in the context of the LPA's case which it presented to the HED DPD Inspector that the Core Strategy policies are in fact **permissive** of development beyond settlement boundaries.
- 2.4 The HED DPD Inspector's report has not been published at the time of writing. Whilst the Council consulted on main modifications earlier this year, there were 46 responses, including objections.

Section 5 – Case of the Local Planning Authority

- 2.5 Paragraph 5.1 of the LPA's statement explains that at the Henthorn Road appeal, the Council claimed its five year housing land supply at 30th September 2018 is 5.75 years. It does not explain that the Henthorn Road Inspector concluded the five year supply was 5.07 years¹.
- 2.6 Paragraph 5.2 of the LPA's statement then states that because the Appellant in the current case is not challenging the LPA's position regarding its five year supply it can be concluded that the Appellant agrees with the LPA's position that it can demonstrate a five year housing

¹ Please see paragraph 38 of appendix **EPR2**

land supply. This is not correct. Our case is that even if the Council can demonstrate a five year housing land supply, permission in principle should still be granted because the policies in the Core Strategy are permissive of development beyond settlement boundaries. This is regardless as to whether or not the Council can demonstrate a five year housing land supply. Indeed, the Henthorn Road Inspector allowed the appeal and granted planning permission for 110 dwellings even though he found there was a 5.07 year supply. This is because he had already concluded that the Core Strategy policies were permissive of development beyond settlement boundaries.

2.7 Paragraph 5.5 of the LPA's statement then deals with Chatburn's "minimum" housing requirement but claims that only one dwelling is required to meet the minimum housing requirement of 27 dwellings in Chatburn. This is not correct. As we have already set out in paragraphs 6.32 to 6.40 of our appeal statement (pages 18 to 20), only 14 no. dwellings have either been completed or committed to contribute to the 27 dwelling figure and therefore 13 no. dwellings remain. The reason for this is essentially because some of the sites the Council has included within the completions and commitments for Chatburn are already included in the 432 dwelling figure on sites "not within the 32 defined settlements or the principal settlements" as shown in table 4.12 of the Core Strategy. These sites should not be included in the 27 dwelling figure. It is of note that the LPA has failed to address this issue in its statement despite the issue being clearly set out in our appeal statement.

2.8 Paragraphs 5.6 to 5.10 of the LPA's statement then claim that the appeal proposal is contrary to policy DMG2 of the Core Strategy. The LPA's case is essentially that the second part of policy DMG2 of the Core Strategy does not apply to the appeal proposal because the site is not "in" a Tier 1 Village, but is in the open countryside. For ease of reference, the second part of policy DMG2 states:

"Development proposals in the principal settlements of Clitheroe, Longridge and Whalley and the Tier 1 Villages should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement."

2.9 The Council claims that the use of the word "in" is explicit, meaning development proposals in or "inside" the settlement boundary. However, policy DMG2 makes no reference to settlement

boundaries. As we explained in our appeal statement², the glossary to the Core Strategy confirms that "rounding off" requires development to be within the settlement boundary. However, in contrast, the following definitions are given for "consolidation" and "expansion":

- **Consolidation** – *"Refers to locating new developments so that it adjoins the main built up area of a settlement and where appropriate both the main urban area and an area of sporadic or isolated development."*
- **Expansion** – *"This is limited growth of a settlement generally it should be development which is in scale and keeping with the existing urban area."*

2.10 The site adjoins the main built up area of Chatburn and the development proposals would provide limited growth at a scale and in keeping with the existing urban area. Therefore, the proposed development accords with policy DMG2 as it would be either be consolidation and / or the expansion of Chatburn, which is in accordance with this part of the policy. It does not have to meet all three of the definitions set out in the glossary.

2.11 As we also set out in our appeal statement³, the third part of policy DMG2, which begins "within the Tier 2 villages and outside the defined settlement areas" clearly refers to land not in the principal settlements or Tier 1 Villages, where consolidation and / or expansion is allowed elsewhere in the policy. This was also the conclusion of the Inspector in the very recent Henthorn Road appeal, as we discuss below.

2.12 On 19th June 2019 (i.e. before the LPA's Statement of Case was due on 25th June), a decision was published in relation to an appeal made by Gladman Developments Ltd against the decision of the Council to refuse to grant outline planning permission for the erection of up to 110 no. dwellings at land at Henthorn Road, Clitheroe (LPA ref: 3/2018/0688, PINS ref: APP/T2350/W/19/3221189). The appeal decision is attached at appendix **EPR2**. The Henthorn Road appeal site is located outside of the settlement boundary of Clitheroe as shown on the location plan appended at **EPR4**. In allowing the appeal and granting outline planning permission, the Inspector concluded that policy DMG2 is permissive of development that adjoins the settlement boundary of Clitheroe.

2.13 Paragraphs 15 to 18 of that appeal decision are particularly relevant to this case. They state:

² Paragraphs 6.12 to 6.23, pages 14 to 16

³ Paragraphs 6.24 to 6.30, pages 16 and 17

"15. The Core Strategy does not define an up-to-date settlement boundary for Clitheroe. Key Statement DS1 indicates that specific allocations will be made through the preparation of a separate Allocations Development Plan Document. Consequently, the settlement boundaries currently utilised by the policies of the Core Strategy are those defined by the proposals map of the preceding Ribble Valley Districtwide Local Plan. It is not a matter of dispute that the site is located outside of, but adjacent to, the existing settlement boundary of Clitheroe and therefore, lies within open countryside.

16. Part 1 of Policy DMG2 of the Core Strategy provides 'strategic considerations' for the location of development. It states that "development proposals in the principal settlements of Clitheroe, Longbridge and Whalley and the Tier 1 Villages should consolidate, expand or round-off development so that it is closely related to the main built up areas". Those quoted terms are defined in the Core Strategy glossary. 'Rounding Off' requires development to be within the settlement boundary. However, 'consolidation' is defined as locating development so that it adjoins the main built up area of a settlement. 'Expansion' allows for limited growth of a settlement.

17. Conflict with Policy DMG2 is identified as a reason for the refusal of planning permission for the appeal scheme. However, during the Inquiry the Council accepted that the policy is permissive of development that adjoins the settlement boundary and confirmed that development outside the settlement limits of Clitheroe would not necessarily conflict with the provisions of this policy. In this respect, I have no other evidence to suggest that the proposed development would otherwise constitute the consolidation and expansion of the settlement within the context of Policy DMG2.

18. Indeed, the Council confirmed that several developments outside of, but adjoining, the settlement boundary of Clitheroe had previously been permitted pursuant to the provisions of this policy. As such, the Council conceded that it would not be correct to conclude that the appeal scheme breaches Policy DMG2 and that the principle of residential development on the site would be appropriate."

2.14 The LPA is now advancing a completely contrary position to the one it:

- a) presented to the HED DPD Inspector;
- b) set out in the case officer's report to the Planning Committee for the resubmitted PIP application;
- c) presented at a very recent public inquiry in relation to a planning appeal made by Gladman Developments Ltd regarding land at Henthorn Road, Clitheroe.

2.15 We discuss each in turn below.

a) The examination of the HED DPD

2.16 As set out in our statement of case (and apparently accepted by the LPA in this appeal), at the examination hearing sessions, the application of the Core Strategy policies was discussed. The case presented by the LPA to the HED DPD Inspector was that no further land needed to be allocated in the submission draft of the HED DPD because the Core Strategy policies allow residential development on the edge of existing settlements. This position is recorded in the committee report for the resubmitted application (appendix EP1 of our statement of case), which we repeat below for ease of reference:

“5.4.6 In assessing this planning application, due regard has been given to the discussions held during the EiP into the Housing and Economic Development DPD which, during its siting from Tuesday 22nd January and Wednesday 23rd January 2019, considered the proposed housing allocations and housing matters within the Borough. During the course of the examination, which was attended by representatives of developers and private landowners as well as Council Officers, the Inspector focused on the Council's housing land supply and the appliance of the Core Strategy housing policies in the determination of residential planning applications. There was debate on whether the Core Strategy Policies restricted windfall housing developments and the location of new housing. At the request of the Inspector, Council Officers were required to provide details of planning applications granted for residential development within sustainable locations but outside of the defined settlement boundaries when the Authority could demonstrate a 5 year housing land supply. This was sought to demonstrate how the housing policies in the Core Strategy, i.e. DMG2 and DMH3, are applied within the Borough.

5.4.7 Council Officers provided details of a number of sites that have been granted planning consent for residential development in such locations. It was made clear during discussions between the Inspector and those present at the EiP that the Council's housing policies must be applied to enable degree of flexibility to ensure that it meets the aims and objectives of the NPPF which seeks to 'significantly boost the supply of homes'.

5.4.8 As such it must be recognised that following the EiP policies DMG2 and DMH3 of the Core Strategy should not be applied in isolation nor should those policies be interpreted in such a way that would entirely restrict development for all new open market dwellings in the open countryside.” (our emphasis)

b) The case officer's report for the resubmitted application

- 2.17 As we set out in our appeal statement, the case officer's report for the resubmitted application concluded that the proposed development would comply with the definition of "expansion". We referred to paragraph 5.4.10 of the case officer's report (appendix EP1 of our appeal statement), which is repeated below for ease of reference:

"The application site adjoins an existing residential development site which extends from the main settlement area of Chatburn. This adjacent development site, which is under construction, has been included within the draft settlement boundary for Chatburn in the emerging Proposals Map. The application site is not bounded by consolidated development along more than two thirds of its perimeter and as such it is not considered to be 'rounding-off' as defined in the glossary of the Core Strategy. However, the development is considered to comply with the definition of 'expansion', as expressed in the Core Strategy as 'limited growth of a settlement which is in scale and keeping with the existing urban area'. The development site is particularly well-contained, being bordered by Lanehead Quarry to the west, protected trees which skirt the site to the west and south and existing development to the east. As such, on balance, and taking into account the Inspector's comments at the EiP into the Housing and Economic Development DPD, the proposed development, on the edge of a Tier 1 settlement, is considered to be acceptable in principle. (our emphasis)

c) Henthorn Road, Clitheroe

- 2.18 As we have set out above, paragraphs 15 to 18 of the Henthorn Road appeal decision record that the Council accepted that policy DMG2 is permissive of development outside of but adjacent to the settlement boundary of Clitheroe. Whilst Clitheroe is a principal settlement, the part of policy DMG2 which allows development outside of the settlement boundaries of the principal settlements also applies to the tier 1 villages, including Chatburn.
- 2.19 In fact, the Inspector allowed a partial award of costs against the LPA for referring to policy DMG2 in the reason for refusal and then not justifying the conflict with the policy. A copy of the costs decision is attached at appendix **EPR3**. Paragraphs 11 and 12 of the costs decision state:

"11. Despite conflict with Policy DMG2 being identified in the reason for the refusal of outline planning permission there was no attempt by the Council in the appeal to justify conflict with this policy. Although the proposed development lies outside of the settlement limits of Clitheroe, the Council advised that this policy is permissive of development that adjoins the settlement boundary as this constitutes consolidation and expansion of the settlement.

12. Taking into account the Council's views at the Inquiry that there would be no breach of this policy, I can see no reasonable justification for its inclusion in the reason for refusal. Consequently, I consider that the reference to a breach of Policy DMG2 constitutes unreasonable conduct that caused the appellant to incur unnecessary expense in providing evidence to demonstrate that there was no such breach." (our emphasis).

2.20 The Henthorn Road inquiry took place on 8th, 9th and 10th May, i.e. long before the LPA's statement of case was prepared. It is therefore surprising that the LPA now seeks to claim a contrary position to the one it advanced at the Henthorn Road inquiry. Indeed, the LPA seeks to rely on two appeal decisions (regarding Hammond Ground and Lowood), which pre-dated the case it presented at the HED DPD examination (January 2019), the committee meeting for the resubmitted PiP application (February 2019) and the Henthorn Road Public Inquiry (May 2019). There is no evidence to suggest that the Inspectors in the Hammond Ground and Lowood cases explored the definitions of "consolidation", "rounding off" or "expansion" in the way it was explored at the Henthorn Road public inquiry or by the LPA itself in its case made at the HED DPD examination or in the case officer's report for the resubmitted PiP application at the appeal site. Inspectors who have considered the point, the Council's publicly stated position, and the Council's professional planning officers have all consistently interpreted policy DMG2. We can only assume that the Members could not or would not do so – and no rational explanation has been offered in this appeal as to why. We are left with the firm impression that the members are simply unwilling to grapple that the proposal complies with their own development plan policies.

Section 6 – Planning Balance and Conclusion

2.21 The LPA's statement states that:

"the proposed development would create a harmful precedent for the acceptance for the acceptance of other similar unjustified proposals which would have an adverse impact on the implementation of the planning policies of the Council contrary to the interests of the proper planning of the area".

2.22 We disagree. The proposed development would not be unjustified. It would be in accordance with the Core Strategy policies, which are permissive of development outside of but adjacent to the settlement boundaries. The LPA accepted that this was the case at the recent Henthorn Road public inquiry and sought to demonstrate that this is the case to the HED DPD so that no further allocations need to be made.

2.23 We have no comments on the LPA's proposed informative note set out at paragraph 6.5.

3. Comments made by Third Parties

3.1 Comments on the appeal have been made by Mr Evans MP, a a Borough Councillor, Chatburn Parish Council and the local MP. We comment as follows:

Comments made by Mr Evans MP

3.2 Two letters have been submitted by Mr Evans MP.

3.3 The letter dated 16th April 2019 makes seven points. The first is that the application has been rejected three times. This is incorrect. The appeal application was refused. Whilst it was resubmitted and officer's twice recommended the resubmitted application be approved, it was also refused.

3.4 The second point is that residents are concerned the extra houses would go above and beyond the requirement in the Core Strategy. However, the requirements set out in table 4.12 of the Core Strategy are a "minimum" and as we have explained in our appeal statement, there is an outstanding requirement for 13 additional dwellings in Chatburn, which the appeal proposals could assist in addressing. No counter evidence to our statement has been presented by the LPA or third parties on this point.

3.5 The third point is that the proposal would lead to increased traffic problems and a lack of parking. Notwithstanding the fact that these are technical issues, which would need to be considered at the technical details stage, should permission in principle be granted, the Inspector will be aware that Lancashire County Council made no highways objection to the appeal application or the resubmission.

3.6 The fourth point refers to precedent, which we have addressed above in response to the LPA's statement.

3.7 The fifth point states that the site is "greenbelt". This is incorrect. The site is not located in the Green Belt.

3.8 The sixth point states that the site acts as a natural boundary between the village and the quarry and the proposals would "ruin" this part of the countryside. Whilst we disagree, the scale and appearance of the proposed development would be addressed at the technical details stage, should permission in principle be granted.

- 3.9 The seventh point states that site "provides the only habitat for wildlife in the area". There is no evidence that this is the case. However, matters relating to ecology would be addressed at the technical details stage, should permission in principle be granted.
- 3.10 The letter is accompanied by the decision notice for the refused resubmitted PiP application and the officer's report recommending it be approved. It is also accompanied by an update to the Planning Committee of March 2019 to state that whilst members at the Committee meeting were minded to refuse permission in principle, officer's maintained their recommendation that it should be approved. Mr Evans MP also includes the response of Lancashire County Council Highways to the resubmitted application, which again raises no objection (as above, this matter would be addressed at the technical details stage). Mr Evans MP also includes the response to the resubmitted PiP application from the Parish Council, which raises no new points to those we have already addressed or those which would be addressed at the technical details stage should permission in principle be granted. Like the Members of the Committee, it seems Mr Evans MP has not fully understood the development plan policies and has based his conclusions on the unreasonable interpretation that has been applied by members of the Council and which is the subject of our separate costs application.
- 3.11 Finally, Mr Evans MP includes a petition, which states that those who have signed it "object to new housing being built outside settlement boundaries in open countryside" and "that the rounding off of settlements for new housing in open countryside makes the Core Strategy settlement boundaries inadequate and defenceless to protect areas from over development". We have addressed these points in our response to the LPA's statement above. In summary, the Core Strategy policies are permissive of development beyond the settlement boundaries of certain settlements (including Chatburn) as long as they meet the definition of "expansion" or "consolidation". This was the conclusion of the Henthorn Road Inspector in a recent appeal decision. Indeed, the Examination of the policies will have heard competing views and the plan has been adopted after due consideration with the policy as now adopted. If there was any concern it was or should have been raised then, not now.
- 3.12 The letter dated 24th June 2019 makes three comments. The first is in relation to highways. This issue would be considered at the technical details stage should permission in principle be granted.

- 3.13 The second is in relation to the length of time the construction could take with reference to the adjoining site. However, the adjoining site is now almost complete and some of the delays caused to its completion such as the relocation of an electricity cable would not be the case with the appeal site. The Appellant wishes to develop the appeal site in the short term. Indeed, shorter timescales than the default position for starting on site could be conditioned at the technical details stage.
- 3.14 The third point refers to a "similar application" having been rejected in September 2018. For the avoidance of doubt, the application determined in September 2018 is the appeal application. It then refers to rubble / building debris having been placed on the appeal site. This debris was caused as a result of the recent excavation of the electricity cable referred to above at the adjoining site and the subsequent impact this had on the levels for that development. The developer of that site has temporarily placed this on the appeal site and is in discussion with the LPA in relation to its removal.

Comments made by Councillor Scott and Chatburn Parish Council

- 3.15 Councillor Scott and Chatburn Parish Council make similar comments to those raised in the letter of Mr Evans MP dated 24th June 2019 in relation to the building debris, which we have already addressed.

Comments made by residents

- 3.16 Mrs Chatburn makes points in relation to the Core Strategy, Chatburn's housing requirement, which we have addressed in our statement above. Mrs Chatburn raises concern about several issues which would be dealt with at the technical details stage.
- 3.17 Mrs England makes similar comments to Councillor Scott about the debris on the appeal site, which we have already addressed above.
- 3.18 Mr Kearsley makes comments about construction timescales, which we have addressed above.
- 3.19 Mr or Ms Myers makes comments about issues that would be dealt with at the technical details stage and about the debris, which we have addressed above.
- 3.20 Mr and Ms Grooby make comments about issues that would be dealt with at the technical details stage and about the timescales, which we have addressed above.




4. Conclusions

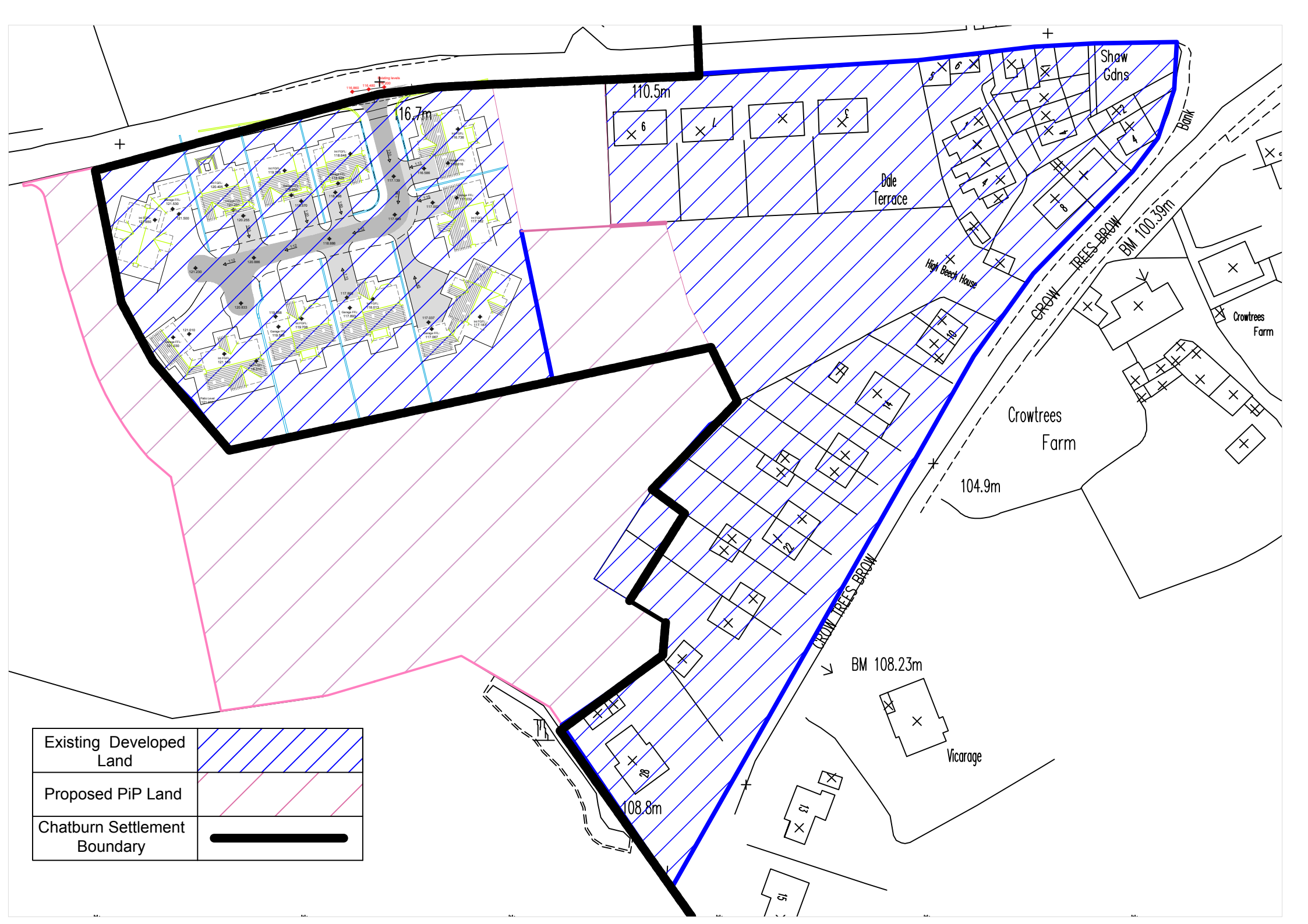
- 4.1 Having reviewed the LPA's statement and the comments made by third parties, our case on behalf of the Appellant remains that the proposed development is in accordance with the development plan and in particular policies DMG2 and DMH3 of the Core Strategy, which are referred to in the reason for refusal. Therefore, we conclude that permission in principle should be approved without delay in accordance with paragraph 11(c) of the NPPF and Key Statement DS2 of the Core Strategy: "Presumption in Favour of Sustainable Development".
- 4.2 In the event that the Inspector disagrees and finds that the proposed development would be contrary to the development plan, there are other material considerations, which mean that permission in principle should still be granted. These are that the proposed development would assist in meeting the unmet housing requirements for Chatburn and the Borough as a whole.

5. Appendices

- EPR1 Appeal site within the context of the emerging proposals map
- EPR2 Henthorn Road appeal decision
- EPR3 Henthorn Road costs decision
- EPR4 Henthorn Road location plan

EP1

Existing Developed Land	
Proposed PiP Land	
Chatburn Settlement Boundary	



EP2



Appeal Decision

Inquiry Held on 12-15 and 19-20 February 2019

Site visit made on 21 February 2019

by Robert Mellor BSc (Est Man) DipTRP DipDesBEnv DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2019

Appeal Ref: APP/Z1510/W/18/3207509

Land off Colchester Road, Bures Hamlet, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Braintree District Council.
 - The application Ref 17/02291/OUT, dated 21 December 2017, was refused by notice dated 26 June 2018.
 - The development proposed is for the erection of up to 98 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Colchester Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline and all matters are reserved for subsequent determination apart from the principle of the development and the means of access.

Main Issues

3. Having regard to the provisions of the development plan and to other material considerations, including national policy, I consider the main issues to be:
 - What effect the development would have on the landscape character and appearance of the area.
 - What effect it would have on the significance of heritage assets.
 - Whether adequate provision would be secured for affordable housing and for necessary infrastructure to support the development.
 - What effect the development would have on biodiversity including whether any likely significant effect on the Blackwater Special Protection Area/RAMSAR site would require that an Appropriate Assessment be made of such impacts before determining the appeal.
 - Whether there is a 5-year supply of housing land in Braintree District.

- Whether, having regard to the planning balance and to the provisions of paragraph 11 of the National Planning Policy Framework, if the most important development plan policies for determining the application are out-of-date, or if there is not a 5-year supply of housing land, should the proposal trigger a presumption in favour of this development of market and affordable housing or do any of the listed exceptions to that presumption apply here?

The Policy Context

4. Statute requires that the appeal be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan includes the saved policies of the Braintree Local Plan Review (2005) (the RLP) and the Braintree Core Strategy (2011) (the CS). Material considerations here include: the National Planning Policy Framework (2019) (the Framework); national Planning Practice Guidance (PPG); the emerging Braintree Local Plan (eLP); and the Dedham Vale Area of Outstanding Natural Beauty and Stour Valley Management Plan (the MP).

The Site and its Surroundings

5. Bures Hamlet in Braintree District, Essex, is on the western side of the River Stour and faces Bures St Mary in Babergh District, Suffolk, on the eastern side of that river. The built-up areas of the 2 settlements meet at the main river bridge and the 2 parishes function as a single village with many shared services.
6. The appeal site is an L-shaped open arable field to the south of Bures Hamlet. It fronts Colchester Road to the north east and is raised above the level of that road. To the south east the site boundary runs along the Cambridge Brook which joins the River Stour to the east of Colchester Road. To the south west the site is bounded by the embankment that carries the Marks Tey-Sudbury branch railway line across the valley of the Cambridge Brook. To the north west the site in part adjoins a smaller arable field owned by Braintree District Council and otherwise adjoins an area of mixed 20th century suburban residential development.
7. Each village has a designated conservation area. That at Bures Hamlet is limited to the village core. It excludes the appeal site and the adjacent 20th century housing which separates the appeal site from that village core. The Bures St Mary Conservation Area extends beyond the core of that settlement to include open land in mainly open recreational use on the east bank of the river opposite the appeal site.

REASONS

Landscape character and appearance

8. The appeal site lies outside but adjoining the development boundary of Bures Hamlet as currently defined in the development plan by RLP Policy RLP2 and CD Policy CS5 and also as defined in the emerging Braintree Local Plan by eLP Policy LPP1. Each policy treats the areas outside development boundaries as countryside where proposals are subject to a policy restriction on development that would exclude the proposed type of housing development. The proposed development would thereby be in conflict with both the current and emerging

development plan policies. However, the weight to be attached to the policies is disputed by the parties and is addressed below under the Planning Balance.

9. RLP Policy RLP 80 provides amongst other things that development will not be permitted that would not successfully integrate into the local landscape. However, it lacks more specific criteria for the assessment of proposals. CS Policy CS8 is a wide-ranging policy for the Natural Environment and Biodiversity. It applies both within and beyond the development boundary. Amongst other things it provides that development: *'must have regard to the landscape and its sensitivity to change and where development is permitted it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment'*. This provision remains applicable notwithstanding that, whilst there has been an assessment of landscape character, the further definition of Landscape Character Areas and guidance as envisaged in the policy (and in the text relating to Policy RLP 80) has not come forward.

Landscape Baseline

10. The Braintree Landscape Character Assessment (LCA) [ID12] is helpful in assessing the baseline situation on the Essex side of the River Stour. The site falls within the A2 Stour River Valley Landscape. That landscape type covers an extensive area and the LCVA is inevitably broad brush in its scope. However characteristic features identified in the LCA and found on and around the appeal site include, as identifiable landscape qualities: a broad flat valley floor; a patchwork of pasture and arable farmland on the valley sides; plantations of cricket bat willows on the floodplain; traditional settlements with limited modern development; panoramic views of the valley; and church towers as distinctive features. Visual characteristics include: the river as a focal point; churches as key landmarks; and panoramic views from valley slopes and along the valley floor.
11. Of particular relevance to the appeal proposal, the LCA identifies the skyline of the valley slopes as visually sensitive with potential new development being highly visible within views across and along the valley floor. Views to the valley sides from adjacent landscape character areas (such as here from the Suffolk side of the river) are also cited as sensitive. Overall the character area is assessed as having relatively high sensitivity to change.
12. Key planning and land management issues are identified as including: *'small urban extensions of the larger settlements within the valley'*. Suggested landscape planning guidelines include: *'Consider the visual impact of new residential development ... upon valley slopes'*, *'Maintain cross-characteristic views across and along the valley'* and *'Ensure any new development on valley sides is small-scale, responding to historic pattern, landscape setting and distinctive building styles.'*
13. Although near views of the appeal site are available from the adjacent road, railway, dwellings, and some agricultural land within Essex, there are also medium and long views of the appeal site from the valley floor and valley sides within Suffolk. From there the site is currently seen as rising open arable land on the valley side, partly enclosed by hedges and trees, and set against a backdrop of woodland along the railway embankment which disguises the man-made character of that feature. There are some long views from the valley floor within the Conservation Area across the site which in winter can include

- glimpses of the distant church tower at Mount Bures. From higher ground on the Suffolk side the site reads as a continuation of the similar rolling farmland to the south and also to the west beyond the railway. It contributes with that other land to what has been described as the green nest setting of Bures.
14. The landscape on the Suffolk side of the river is part of the baseline of the wider area around the appeal site and is important to its context. It shares many landscape and visual characteristics with that on the Essex side. In the Babergh landscape guidance (2015) [ID11] the adjacent landscape character areas are the 'Valley Meadowlands' on the valley floor and the 'Rolling Valley Farmlands' above. Relevant characteristics of the latter area include: '*From elevated locations ... substantial views are obtained*'; and '*Historic villages blend with the valley landscape, with the buildings complementing a landscape of the highest visual quality.*' An objective for both character areas is to: '*maintain and enhance the distinctive landscape and settlement pattern*'. The guidance warns in relation to the Valley Meadowlands that: '*The sense of tranquillity of this landscape ... can ... be impacted by development of the adjacent Rolling Valley landscapes which are often a focus for settlement and development*'. As the landscape on both sides of the valley share similar characteristics that effect would also apply to development on the Essex side.
 15. The appeal site lies close to the Dedham Vale Area of Outstanding Natural Beauty. However, there is little direct inter-visibility and no harm to the setting of the AONB has been alleged by the Council. Nevertheless, there is a long-standing ambition shared by the relevant local Councils and amenity groups to extend the AONB to include more of the Stour Valley. To that end a Report entitled: '*Special Qualities of the Dedham Vale AONB – Evaluation of the Area between Bures and Sudbury*' was commissioned from Alison Farmer and produced in 2016 (The Farmer Report).
 16. The Farmer Report concluded that only part of the extensive area evaluated was of a quality to merit designation as an extension to the AONB. It identified a potential candidate area for the AONB extension that includes Bures and the surrounding area. Amongst other things the Farmer Report commented on the relatively intact pattern of the landscape north and south of Bures and that a conservation area includes the valley floor. However, it also notes that peripheral development in Bures has altered the way in which the settlement sits in the landscape. Before defining a boundary for the AONB the Report cited a need for further scrutiny at Bures and two other settlements regarding whether the settlements should be included in the AONB or excluded. The Report noted on the one hand that the settlement is surrounded by high quality landscape but on the other that there have been housing estate extensions to the south west (adjoining the appeal site) and to the south east (in Bures St Mary). Particular scrutiny was recommended as to: '*the extent to which modern housing effects [sic] the intact character of the settlement and its relationship with the valley floor*'.
 17. I saw that whereas the two village conservation areas are mainly characterised by local vernacular buildings, often built in rows or terraces close to the road, the peripheral 20th century extensions referred to in the Farmer Report are made up of a mixture of ribbon and estate development in a variety of different contemporary styles and materials that are generally not characteristic of the Stour Valley. They are more suburban in layout than the historic village cores.

18. The appeal site adjoins some of that modern housing on part of its northern boundary but is otherwise buffered by an intervening field. The remaining boundaries adjoin woodland and the brook or Colchester Road, beyond which is an area of meadowland and the river. In its open and gently sloping condition as arable land I consider that the appeal site is part of the intact high quality landscape described in the Farmer Report and that its landscape character has not been significantly affected by the adjacent modern housing.
19. Unusually, the statutory Management Plan for the Dedham Vale AONB also includes the whole of the Stour Valley Project Area, although only part of that area is recommended in the Farmer Report for consideration for inclusion in an extension to the AONB. The Project Area lies outside the AONB boundary and does not itself have any statutory landscape or other designation. It is thus not subject to the statutory requirement to prepare a management plan. Nevertheless, the Management Plan is a material consideration. It does not seek to preclude housing development in the AONB or the Stour Valley. However, it qualifies support for such development as applying to that which: sits well with the patterns of historic villages; contributes to the architectural patterns of the area; and which seeks to meet the needs of the community in terms of affordable housing.
20. Paragraph 127 of the Framework provides amongst other things that planning decisions should ensure that developments are: *'sympathetic to local character and history including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)'*. Paragraph 170 of the Framework provides amongst other things that planning decisions should contribute to and enhance the natural and local environment by: *'a) protecting and enhancing valued landscapes, ... (in a manner commensurate with their statutory status or identified quality in the development plan)'* and *'b) recognising the intrinsic character and beauty of the countryside'*
21. I consider that recognition of the intrinsic character and beauty of the countryside would have little practical effect without an assessment of the particular qualities of the countryside and the landscape setting where development is proposed and the effect of that development upon them. Neither, having regard to Paragraph 127, do I consider that the exhortation to protect and enhance *'valued'* landscapes is necessarily limited to landscapes that have either a statutory designation or a local designation in the development plan.
22. The Framework does not provide a definition of a valued landscape. However, I consider it improbable that the addition of the words in brackets to paragraph 170(a) which occurred in July 2018 was intended to encourage policy makers to revive the practice of creating local *'Special Landscape Areas'* or similar designations in development plans as a means of identifying a valued landscape. Previous advice had sought to discourage such designations in favour of landscape character assessment which would identify the distinctive and valued qualities of landscapes. That is of particular relevance here where the RLP designations of Special Landscape Areas including in the Stour Valley were superseded in the CS by policies which referred to the use of landscape character assessment.

23. Had the creation of new local designations been the Government's intention then I consider that it would have been highlighted in the public consultation on the changes to the Framework and made explicit in the new text. Moreover, even if that were the intention there would be a long hiatus whilst all the necessary work was carried out to identify, consult upon, examine, and adopt the necessary policies as part of the statutory development plan framework, during which sensitive landscapes would remain vulnerable to insensitive development. In any event, whether or not the site qualifies as a 'valued landscape' in the terms of the Framework, the Framework at Paragraph 127 requires development to be sympathetic to its landscape setting. Such consideration must necessarily have regard to the sensitivity of that landscape.

Landscape Value

24. In this case I consider that there is ample evidence that the landscape around Bures, including the appeal site, is not ordinary countryside of no value but is of high sensitivity and is locally valued. That evidence encompasses: its inclusion in the Stour Valley Project Area and the Management Plan; the commissioning and conclusions of the Farmer Report; the submissions to Natural England to review the AONB designation; and the related text of the emerging Local Plan at paragraph 8.27 which highlights the sensitive nature of the upper Stour Valley and supports the aims of the Management Plan whilst also seeking to avoid prejudicing the expressed long term aim to extend the AONB to this area.
25. The appeal site itself displays many of the characteristics of the A2 character area. It is arable farmland on the rolling valley sides. It is visible both from within and across the valley. It contributes positively to the setting of Bures within the valley, notwithstanding that other nearby development may have had an adverse impact in that regard.

Landscape Effects

26. The planning application was accompanied by a Landscape and Visual Impact Assessment (LVIA). This focussed most attention on the site itself and its landscape features. These were assessed as of only medium landscape quality, sensitivity and value. The LVIA did not acknowledge the conclusions of the LCA that the landscape of the wider character area is of high sensitivity or the Farmer Report conclusions that the landscape south of Bures is of high quality (and similar to that of the AONB). I therefore consider that the LVIA understates the sensitivity and value of the appeal site as part of that landscape. Neither did it acknowledge the conclusions of that Report that the peripheral housing estate extensions had altered (and by inference harmed) the way in which the settlement sits in the landscape such that further scrutiny may conclude that the settlement would not itself merit inclusion in the AONB.
27. Where the LVIA does refer to the impact of the proposed development on that wider landscape it was seen only in the context that it would be an incremental addition to the existing settlement to the northwest. This led to a conclusion that there would be no significant adverse landscape effects and no more than moderate adverse visual effects in the near vicinity. I disagree.
28. The application is in outline and thus no design details have been submitted for determination. However, the lower part of the site to the south adjacent to Cambridge Brook is in a flood zone which would not be suitable for built

development. The proposal is for 98 dwellings and the illustrative layout indicates that this would probably be 2 storey development with a suburban style road layout. A respect for traditional architectural styles in the area as indicated in the Design Statement would imply relatively steep gabled roofs. Together with the raised level of the site above Colchester Road the overall effect would be a marked change from an open field visible from the valley floor as part of an area of open countryside to a relatively dense and homogenous block of suburban development without significant visual gaps. It would be of different townscape and visual character to the characteristic street scenes to be found in the village cores of the two conservation areas and also different in style, materials and form from the adjacent 20th century development.

29. Whilst the LCA and Management Plan preferences for 'small-scale' development are not defined, I do not consider that this proposal could be so described. That a similar preference is included in the guidelines for many other landscape character areas in Braintree is unsurprising given that this is a mainly rural area where most existing development has occurred organically and at a small scale. The development would add considerably to the peripheral extension of Bures Hamlet towards the south in the form of a large housing estate, exacerbating and extending the adverse effect that the 20th century development has already had on the historic settlement pattern, including in views from higher ground in Suffolk.
30. The development would contain views from the valley floor which would then be surrounded by built development on 3 sides. Panoramic cross-valley views would be restricted and there would be a loss of outward views from the valley floor to the open countryside. Even were the buildings to be limited in height to 2 storeys (or 9m) they would still break the skyline in views from the valley floor, a matter highlighted in the LCA. The development would also appear urban and intrusive as seen in near views from the Colchester Road and from the recreational cycle routes along that road. The indicated landscaping, which may be different in the final scheme, would take time to establish and would only partially mitigate these effects in the longer term by softening but not screening the edges of the development.

Visual Effects

31. Many of the landscape effects, including the loss of open landscape character and the restriction of views, would be perceived visually by neighbouring residents, persons using Colchester Road (including recreational cyclists), walkers on the network of local and longer-distance footpaths on the valley floor (including permitted paths), users of the open space opposite the site, and by both commuters and leisure users of the adjacent railway line. The sensitivity of these users would vary according to the reason for their presence as well as other factors such as distance from the development. The most sensitive users would be those using the public footpaths and the recreational cycle routes and the neighbouring residents. However other road and rail users would include those visiting the area for leisure purposes who can be expected to be more sensitive. All would experience some negative visual effects from the loss of longer views and the change in landscape character.

Conclusion

32. Paragraph 48 of the Framework provides amongst other things that existing development plan policies adopted prior to the publication of the Framework should be given due weight according to their degree of consistency with the Framework. In that regard, I consider that CS Policy CS8 is generally consistent with the Framework objectives to recognize the intrinsic character and beauty of the countryside, which certainly apply here, and for development to be sympathetic to, and enhance, its landscape setting, which this proposal would not. That policy merits substantial weight.
33. Having regard to the nature, scale and setting of the proposed development I conclude that it would be a major development with a significant adverse impact on the character and appearance of the countryside and on the sensitive landscape setting of Bures and Bures St Mary, including its Conservation Area, contrary to the Guidelines in the LCA and in conflict with CS Policy CS8 and RLP Policy RLP 80.

Heritage Assets

34. In the development plan the RLP and CS heritage policies are no longer consistent with more up-to-date policy for heritage assets in the Framework that includes provision to assess whether there is harm to the heritage significance of the designated or undesignated asset and then to weigh that harm with any benefits of the development. In this case I therefore attach greater weight to the Framework policies.
35. The appeal site is too distant from the listed churches and most other designated heritage assets in the wider area to have any appreciable effect on their settings or significance. The exceptions are the Bures St Mary Conservation Area and the Grade II listed Brook House which are closer to the site. The Conservation Area includes the open recreation land on former meadows on the opposite side of the River Stour. That is part of the valley floor and it is contiguous with surviving meadows beside the river. In its present form the appeal site is open countryside and it provides an open visual connection with the wider countryside. However, the built development of the appeal site at the proposed scale would be very visible from the conservation area and would close off that view to the west and create a much more urban setting. Those adverse landscape and visual effects would cause harm to the significance of the conservation area by reason of the loss of a significant part of its open countryside setting.
36. In the case of Brook House the appeal development would be seen in some long filtered views from that property as part of the wider setting of the listed house which otherwise has long been characterised by mainly open countryside. However, those views would be against a backdrop of more distant 20th century development which has already intruded on that setting to a degree.
37. In each case I agree with the conclusions of the main parties that there would be some, less than substantial, harm to the heritage significance of these designated assets. Any such harm nevertheless merits great weight in accordance with paragraph 193 of the Framework and falls to be weighed in the balance with the public benefits of the development.

38. The site includes some undesignated buried heritage assets which have been dated to the Bronze Age. However, they are of a common type and have been damaged by past human activity such as ploughing which has diminished their significance such that they would not satisfy the criteria for scheduling as ancient monuments. Neither are they visible except from the air as crop marks for a brief period in each growing season. The assets are unlikely to have a connection with other assets in the valley from different eras and there is no objection from the Council or its archaeological advisers to the loss of what little remains of the asset subject to an appropriate condition to investigate what remains. The very slight residual harm to significance from the loss of any physical remains would nevertheless fall to be included in the planning balance.

Affordable housing and necessary infrastructure

39. Planning permission was refused in part because of a lack of provision to secure both the promised affordable housing and also financial contributions to provide necessary social infrastructure, especially the creation of adequate capacity in health and education provision to serve the development.
40. A completed unilateral undertaking has been submitted by the Appellant under Section 106 of the Act which would ensure compliance with CS Policy CS2 in respect of the 40% affordable housing provision sought in rural areas. It also makes provision for financial contributions to enhance education provision and primary health services as requested by the local education authority (Essex County Council) and the NHS respectively. Other provisions include contributions to the provision or enhancement of sports facilities and allotments. Provision would also be made for on-site open space for public use.
41. It is possible that the education and health contributions in particular may be put towards facilities that would not be directly used by occupiers of the development. That is because residents would be likely to use existing facilities closer to the appeal site. In that case other persons may be displaced to go elsewhere, depending on how those facilities are managed in the future. However, with the agreed contributions and with similar provision in relation to other new development, the overall capacity of facilities in the area is likely to be adequate to account for the increase in overall demand.
42. I consider that these measures would accord with relevant Community Infrastructure Regulations and CS Policy CS11.
43. The provision made by the undertaking for potential mitigation of effects on bio-diversity is considered below.

Biodiversity

44. As an arable field the main part of the appeal site has limited bio-diversity or ecological interest and the development should not cause a direct loss of habitat. Moreover, there is the opportunity to enhance the site's flora as significant areas at the side edges are likely to be available to reinforce, strengthen, and diversify existing hedgerow and tree planting and to improve the bio-diversity of open parts of the site. That would more than compensate for the likely loss of one tree adjacent to the proposed access.

45. In respect of fauna it appears that the original ecological surveys may have correctly recorded and addressed the presence of badgers adjacent to the railway but missed some of the potential habitat of water voles and possibly otters along the brook. Whilst there would not necessarily be a direct loss of habitat or adverse effect on these protected species, it may be necessary to control public access to this area in a final design by fencing or other means and a suitable buffer. The illustrative layout indicates that there would be space available for that purpose although that would reduce the area of accessible public open space.
46. At the time of the application, Natural England had no objection to the proposed development. However, they have subsequently published draft proposals to mitigate the impacts of increased recreational use on Special Protection Areas (SPA) of European importance as wildlife habitats on the Essex Coast. These include the draft designation of a 22km zone from the Blackwater Estuary within which mitigation payments would be sought from new residential developments to fund management of the SPA.
47. Before a need for avoidance measures or mitigation payments could be justified it would first be necessary to establish if the development would have a likely significant effect on the SPA, in which case an Appropriate Assessment would then need to be undertaken.
48. The Appellant has submitted evidence to the effect that there would be no likely significant effect having regard to the remoteness of the site from the Blackwater Estuary SPA, the length of the routes between the site and that estuary (which exceed 22km) and the limited access possibilities at the nearest parts of the estuary. It is also pointed out that there are other similar SPAs at closer distances and that no objections in respect of a likely significant effect have been alleged. Nevertheless, the Appellant has offered a mitigation payment in case there is judged to be such an effect and if an Appropriate Assessment were to conclude that such mitigation was both necessary and appropriate. The Council relies on the blanket approach of Natural England in respect of distance. However, the Council's own evidence is that a development of less than 100 dwellings (as this would be) would not have a likely significant effect. When considering a near duplicate proposal on the same site the Council did carry out what it describes as an Appropriate Assessment and concluded then that the proposal would not adversely affect the integrity of the habitats site.
49. I do not rely on the Council's conclusions as they do not appear to have taken account of potential cumulative effects of multiple developments. However, I prefer the Appellant's evidence in relation to the actual potential effects and conclude that a development on this site at the outer edge of the draft zone and with limited opportunities for access along long and convoluted routes makes a pathway of effect unlikely and makes it improbable that the site's development would have a likely significant effect.
50. In these circumstances I do not consider it necessary to carry out an Appropriate Assessment or to require the mitigation payment described in the unilateral undertaking.
51. I conclude that the development is not in conflict with the bio-diversity provisions of CS Policy CS8.

Housing Land Supply

52. Although not a provision of the development plan, national policy at paragraph 73 of the Framework (2019) provides that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need where the adopted strategic policies are more than 5 years old [as here].
53. At the date when the application was determined in June 2018, the Council accepted that it was unable to demonstrate that it had the minimum 5-year supply of housing land required by the Framework (2012). Shortly afterwards in July 2018 the Government published the updated Framework (2018) which, amongst other changes, modified how the housing requirement should be calculated. Changes to the supporting Planning Practice Guidance were then published in September 2018 in respect both of the housing requirement calculation and the evidence sought to demonstrate the available supply.
54. In January 2019 the Council published an Annual Monitoring Report with a base date of 31 March 2018 and which claimed that the Council could demonstrate a housing land supply in excess of 5 years. This was based on a local housing need requirement using the recommended standard method and derived from the latest 2016 household projections.
55. Following a Technical Consultation the Government has made further relevant changes to the Framework and to the PPG. These were published during the Inquiry in February 2019. Amongst other things these changes provide that the 2014 household projections should be used when calculating the standard method and that alternative approaches to calculating housing need should only be considered at the policy-making stage and not in decision-making.
56. When calculated in line with the latest policy and guidance (and the results of the Housing Delivery Test - also published in February 2019), the Council continues to maintain that it has a supply in excess of 5 years. The Framework provides that there should be an annual assessment of supply. The PPG at paragraph 3-038 also allows that for applications and appeals it is only necessary to demonstrate supply once a year. The Council does not yet have up-to-date strategic policies on which an Annual Position Statement would be based. It therefore relies instead on the Annual Monitoring Report (AMR) published in January 2019.
57. The Appellant challenges the Council's supply figures as set out in the AMR. The main area of disagreement concerns the treatment of outline planning permissions for major development in the calculation of supply. Also at issue is whether sites subject only to a resolution to grant planning permission at the base date should be included (as for example where the grant of planning permission depends upon the completion of a Section 106 planning obligation).
58. Based on the 2014 household projections, and with an agreed 5% buffer, both main parties now agree that the local housing need at 31 March 2018 over 5 years is for 4,457 dwellings. The Council estimates the supply at 4,834 dwellings (5.42 Years) to include 2,247 dwellings on sites with outline permission at the base date, 200 at 'growth locations' and 267 at 'other sites'.
59. The Appellant has offered 2 alternative calculations. What is described as a 'strict' interpretation would result in a supply of 2,977 dwellings (3.34 years).

This excludes the above supply at the growth locations and other sites and reduces the supply on sites with outline permission to 857 dwellings, mainly due to a claimed lack of clear evidence that these would have been deliverable at the base date of 31 March 2018. In the alternative the Appellant has also calculated supply based on what is described as a '*benevolent*' approach which would result in a supply figure of 3,968 dwellings (4.45 years). In that case the supply from sites with outline permission at the base date would be 1,613 dwellings.

60. My attention has been drawn to how these matters have been addressed in other appeal decisions, albeit that they pre-dated the latest Government policy and guidance. In particular, in the Woolmer decision¹ the Inspector opined that the definition of 'deliverable' in the Glossary of the Framework 2018 is a closed list. If so, whilst the definition is set out in the first sentence, a closed list would mean that only the types of housing sites listed in the second and third sentences of the definition could qualify as deliverable. The Framework 2019 has slightly modified and restructured the definition but the changes do not provide additional confirmation that the list is closed.
61. The Council has drawn attention to the Salford decision² by the Secretary of State where sites with a resolution to grant permission subject to a Section 106 agreement had been included in the housing supply and the Secretary of State had made no criticism of that approach. However, as the supply in that case was agreed to be far in excess of 5 years it made no difference to the principal issues and it does not appear that the Secretary of State gave active consideration to that matter. I therefore accord it little weight.
62. In the Woolpit decision³ the Inspector concluded that all permissions issued after the base date should be excluded on the basis that its consideration would also require a review and extension of the period over which housing need is to be assessed. I disagree on that latter point. It is not necessary to adjust the housing need period if the assessment of supply only concerns that which is expected to be delivered within the original 5-year period. However, I agree that new planning permissions after the base date should be excluded and that would include permissions subject to a resolution to grant subject to a Section 106 obligation. Uncertainty about when such an obligation would be completed could put back a potential start date by months or even years. Information about significant new supply from such sources after the base date but before the annual assessment might nevertheless be material when considering the weight to be accorded to an identified shortfall in supply.
63. In respect of information received after the base date about the progress of sites with outline permission at the base date, I consider that this information should be included in the AMR in order to provide the necessary '*clear evidence*' of whether and when housing will be delivered. An example could be that a site with outline planning permission at the base date had subsequently been the subject of an application for full permission for a similar development in preference to a reserved matters application. That can occur when some amendment to the scheme had meant that whilst housing delivery was still expected a reserved matters application was not appropriate. That an

¹ Appeal Ref APP/C1950/W/17/3190821

² Document ID20

³ Appeal Ref APP/W3520/W/18/3194926

- essentially similar development was now being advanced by a different route should not to my mind preclude the site from inclusion in the base date supply.
64. The March 2018 base date of the Council's AMR preceded its publication by more than 9 months. However, a base date close to the beginning/end of the financial year is widely accepted as a suitable annual monitoring period. It is entirely reasonable that the base date is not updated to a new date for each application or appeal, as confirmed by the PPG. Reasons for the delay in preparing and publishing the report here include that the Framework was significantly modified 4 months after the monitoring period in July 2018 to include a new standard method to assess the housing requirement and a revised definition of deliverable sites for inclusion in the supply. Also, the PPG guidance about how to assess need and supply was only issued 6 months after the monitoring period in September 2018. It can be expected that subsequent reports using current guidance would be compiled and issued closer to the annual base date.
65. The Framework definition of deliverable sites provides that in some cases (including outline permissions for major sites and also for development plan allocations where there is as yet no planning permission) there should be clear evidence that housing completions will begin on site within five years. To establish the site's contribution to the housing supply there would also logically need to be an assessment of the amount of housing expected to be delivered within that five-year period.
66. Where there is to be reliance on an annual assessment then that clear evidence should logically be included in that published assessment or at least published alongside it. That would qualify as publicly available in an accessible format as the PPG requires. It would accord with guidance in PPG Paragraph 3-048 which applies to all forms of annual review including, but not limited to, annual position statements. That is not to say that there should be publication of every email or every note of a meeting or telephone conversation. The information can be provided in summary form but there needs to be some means of identifying the basis for the conclusion reached.
67. The information published here in the AMR is minimal and it relies heavily on unsupported assertions that a site will be delivered. That does not amount to clear evidence. In most cases it does not include the additional information that was introduced only in oral evidence at the inquiry such as: the date when a reserved matters submission was made or anticipated; when a S106 obligation was completed; why a full planning application and not a reserved matters application was submitted on a site that already had outline permission; the source of an estimate of a delivery rate; any assumptions and yardsticks that were applied where direct information was in doubt or missing; or other information of the type suggested in PPG paragraph 3-036. Information of that type could be readily summarised and published, possibly in a tabular form.
68. Overall, and having heard the Council's oral evidence about progress on sites which is said to have informed its conclusions in the AMR, I consider that the Appellant's 'strict' approach unreasonably excludes many sites where it is very probable that there will be significant delivery of housing within the 5-year period. On the other hand, the Council has over-estimated the rate at which some sites may be developed and progress on some sites remains unclear even

when taking into account the Council's additional oral evidence of what has occurred since March 2018. Sites that were subject only to a resolution to grant permission at the base date should be excluded.

69. I consequently do not consider that the Council has demonstrated in the AMR with clear evidence that it has a 5-year housing supply. Whilst there is insufficient evidence to make a precise assessment, the likelihood is that the supply is closer to the Appellant's 'benevolent' approach which concludes that there is a 4.45-year supply. That represents a shortfall, albeit not a severe one. The weight to be attached to the shortfall may also be reduced in that there is some evidence of factors which will increase supply such as the issuing of permissions for developments that were only subject to resolutions to permit at the AMR base date. There is also at least one permission issued on a major site after the base date where development has already commenced on site. It is also material that the eLP examination is advancing and that the adopted plan can be expected both to redefine the housing requirement and to make provision to address it.

Other Matters

70. I have taken into account all other matters raised in representations. In particular I consider that the location and dimensions of the access junction would be adequately safe. Although not clearly specified in the Section 106 agreement, the advance provision of dropped kerbs at junctions and raised kerbs at the bus stop could be the subject of a condition to facilitate disabled access.
71. For a small rural village, the accessibility by public transport is unusually good and there is a range of services and facilities within walking or cycling distance. The limited parking at the station would be likely to encourage rail users to walk or cycle to the station.
72. However, neither these nor the other matters raised outweigh my conclusions on the main issues.

The Planning Balance and Conclusions

73. I conclude above that the proposal would contravene adopted development policies for the control of development in the countryside outside development boundaries. There would also be conflict with policies to protect the character and appearance of the area and specifically with CS Policy CS8 in respect of the landscape and visual effects. That conflict here outweighs compliance with some other development plan policies such that there would therefore be overall conflict with the development plan.
74. However, the apparent lack of a deliverable 5-year housing supply means that at least some of the other most important development plan policies for determining the application are out of date inasmuch as they would not provide for a sufficient supply. In particular the CS Policy CS5 and RLP Policy RLP2 development boundary is out of date as there is a lack of evidence that sufficient housing to meet the identified local housing need could be provided within the adopted boundaries. Limited weight can yet be accorded to the emerging Local Plan and its development boundaries which are not yet part of the development plan which may change prior to adoption. That and the supply shortfall necessarily triggers the application of paragraph 11 of the

Framework, notwithstanding the evidence of progress towards delivering additional housing sites since the AMR base date, and progress on the eLP.

75. Paragraph 11 provides in these circumstances that planning permission should be granted unless:

- i) *'The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or*
- ii) *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

76. In relation to (i) I have concluded that there is not likely to be a significant effect on the Blackwater Estuary Special Protection Area. Whilst great weight is to be accorded to the less than substantial harm to the designated heritage assets, that harm falls to be weighed with the public benefits of the development.

77. The public benefits of the development include: the social benefits of the provision of market housing and affordable housing in circumstances where there is a local and national shortage against assessed needs; the economic and employment benefits associated with the construction and subsequent occupation of the housing including local spending in shops and services; some benefits to bio-diversity of flora; and the provision of on-site informal open space potentially in excess of policy requirements. However the latter merits only limited weight as no minimum level of provision is set out in the application, the Section 106 undertaking or the agreed conditions, and because there is no identified local lack of open space or play provision in the area.

78. Neither the harm to the setting and significance of Brook House nor the harm to the significance and setting of the Bures St Mary Conservation Area would outweigh the public benefits either separately or together. Thus, these effects would not on their own provide a clear reason for refusing the development or overcome the paragraph 11 presumption in favour of development. However, the harm to the setting of the conservation area overlaps with and reinforces other harm to the character and appearance of the area which also falls to be weighed with the benefits in the application of sub-paragraph ii above.

79. The main identified harm is the harm to landscape character and to the visual amenity of the area including the loss of the site's openness, the breach of the skyline by a large-scale development, and the loss or containment of open cross-valley views. This includes the associated conflict with relevant development plan policies in that regard including CS Policy CS8 which are important to the determination of the appeal and which are not materially inconsistent with national policy or out of date. Neither, having regard to Framework paragraph 127, would the development be sympathetic to its landscape setting.

80. My final conclusion is therefore that the proposal is in overall conflict with the development plan and that is not here outweighed by other material considerations. In the terms of paragraph 11(d)(ii) of the Framework the significant adverse impacts of granting planning permission would significantly

and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The appeal should therefore be dismissed.

Robert Mellor

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes	of Counsel instructed by Ian Hunt, Head of Law and Governance, Braintree District Council
He called	
Gill Wynne-Williams BA DipLA MLI	Landscape Architect and Managing Director of Wynne-Williams Associates Ltd
Beverley McClean BA DipCM MRTPI	Planning Officer, Dedham Vale Area of Outstanding Natural Beauty
Kathryn Carpenter BA(Hons) DipEnvPlg	Senior Planning Officer (Housing Supply) Braintree District Council
Melanie Corbishley BA(Hons) MA	Senior Planner, Braintree District Council

FOR THE APPELLANT:

Thea Osmund-Smith	Of Counsel, instructed by Megan Farmer
She called	
Silke Gruner BHons CMLI	Associate Landscape Architect and Urban Designer, CSA Environmental
Gail Stoten BA MCIfa FSA	Heritage Expert, Director of Pegasus Planning Group
Aiden Marsh BSc PhD MCIEEM CEcol	Ecological Director CSA Environmental
Matthew Spry BSc(Hons) DipTP (Dist) MRTPI MIED FRSA	Housing Land Supply, Senior Director Lichfields
Megan Farmer MPlan MRTPI	Planning Manager, Gladman Developments Ltd

INTERESTED PERSONS:

David Lee	Chair of Bures Hamlet Parish Council
Gill Jackson	Chair of Bures St Mary Parish Council
Elaine Conerney	Local Resident
Nicholas Temple	Neighbouring landowner and conservationist
Robert Erith	Chair, Dedham Vale Area of Outstanding Natural Beauty
Charles Aldous	Former Chair Colne-Stour Countryside Association
Geoffrey Probert	President, Suffolk Preservation Society
Hugh Turner	Concerning archaeological heritage
Ken Jackson	Concerning arboricultural and site related matters
Kenn Butcher	Concerning highways and transport matters
Sheila Butcher	Concerning the Statement of Community Involvement

DOCUMENTS

- 1 Appellant's Opening Statement
- 2 Council's Opening Statement

- 3 Statement of Common Ground
- 4 S106 Unilateral Undertaking
- 5 Appellant's Note Concerning Primary Education Impact
- 6 Extract from Annual Monitoring Report concerning affordable housing delivery
- 7 Approved Applications and Allocations in the Stour Valley Project Area
- 8 Gov.UK advice on AONB designation and management
- 9 Gruner Proof photos printed at A3
- 10 *Gladman v SSHCLG and Central Beds [2019] EWHC 127*
- 11 Joint Babergh and Mid Suffolk DC Landscape Guidance (August 2015)
- 12 Landscape Character of Braintree District (2006)
- 13 Essex CC Guide to Developer Contributions (2016)
- 14 Revised figures for financial contributions (2018)
- 15 *Baroness Cumberledge of Newick and Patrick Cumberledge v SSCLG and DLA Delivery Ltd [2017] EWHC 2057*
- 16 *Baroness Cumberledge of Newick and Patrick Cumberledge v SSCLG and DLA Delivery Ltd [2018] EWCA Civ 1305*
- 17 Decision Letter for Appeal Ref APP/R3650/W/16/3165974 Haslemere
- 18 *Gladman Developments Ltd v Daventry DC and SSCLG [2016] EWCA Civ 1146*
- 19 Letter dated 23 October 2018 to Braintree DC from Planning Policy Reform Division MHCLG
- 20 SofS Decision Letter for Appeal Refs: APP/U4230/W/13/2209607 & APP/U4230/W/17/3180726 Salford
- 21 Decision Notice for Application 18/02139/OUT (Playing Pitches at Cambridge Way, Bures Hamlet)
- 22 Statement by Elaine Conerney
- 23 Statement by David Lee
- 24 Statement by Nicholas Temple
- 25 Statement by Hugh Turner
- 26 Statement by Sheila Butcher
- 27 Statement by Gill Jackson
- 28 Statement by Ken Jackson
- 29 Statement by Robert Erith
- 30 Map of National Cycle Network Route 13 at Bures
- 31 'Cycling through a masterpiece' local cycle routes
- 32 Statement by Charles Aldous and appended photos of old Bures St Mary
- 33 Statement by Geoffrey Probert
- 34 Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (2018-2038) – Essex CC and Appendices to Document 34
- 35 Documents to support Mr Butcher's statement
- 36 Schedule of major housing sites with outline planning permission at 31 March 2018
- 37 Petition opposing the development of the appeal site with 592 signatures
- 38 Suggested site visit itinerary
- 39 Update of planning history of Station Field, Land West of Kelvedon Station

- 40 Updated 5 year Housing Land Supply position following February 2019 changes to National Planning Policy Framework
- 41 Statement of compliance for financial contributions in relation to Community Infrastructure Levy Regulations
- 42 Government response to the technical consultation on updates to national planning policy and guidance 19 February 2019
- 43 Supplementary written statement from Hugh Turner
- 44 Updated 5 year Housing Land Supply position following February 2019 changes to National Planning Practice Guidance on 20 February 2019
- 45 Appellant's Technical note in response to Mr Butcher's evidence on transport matters
- 46 Appellant's Statement in response to representations concerning increased noise from road traffic
- 47 Council's closing submissions
- 48 *CEG Land Promotions Ltd v SSHCLG and Aylesbury Vale DC [2018] EWHC 1799*
- 49 *Redhill Aerodrome Ltd c SSCLG and others [2014] EWCA Civ 1386*
- 50 *St Modwen Developments Ltd v SSCLG & Another [2017] EWCA Civ 1643*
- 51 Closing submissions on behalf of the Appellant

EP3



Costs Decision

Inquiry Held on 8 – 10 May 2019

Site visit made on 10 May 2019

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 19th June 2019

Costs application in relation to Appeal Ref: APP/T2350/W/19/3221189 Henthorn Road, Clitheroe, BB7 2QF

- 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 Gladman Developments Limited for a full award of costs against Ribble Valley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Henthorn Road.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.

The submissions for Gladman Developments Limited

3. The appellant's submissions were made in writing at the Inquiry. The basis of the claim for costs is that the Council acted unreasonably by failing to provide evidence to substantiate the matters referred to in the reason for refusal and not having regard to an appeal decision for residential development on land immediately to the north east of the appeal site (Ref APP/T2350/A/11/2161186) with access off Henthorn Road which considered matters relating to sustainability and accessibility.
4. In particular, the appellant considers that there was no attempt to in the appeal to justify conflict with Policy DMG2 of the Core Strategy 2008-2028 - A Local Plan for Ribble Valley (Core Strategy). This policy relates to development outside the settlement limits of Clitheroe. At the Inquiry the Council accepted that there would be no conflict with the provisions of this policy.
5. The Council also accepted that the concerns identified in the reason for the refusal of outline planning permission regarding access to the town centre by

cycling are unevidenced. The Council's sole case related to a view about a lack of accessibility by walking and by bus, with the latter not being identified in the reason for refusal of outline planning permission. The appellant considers that the Council has placed an over-reliance on arbitrary figures regarding acceptable walking distances. It also failed to take appropriate account of the content of the submitted planning obligation that secures the continuation of the bus service until 2026.

6. The appellant also considers that the Council's case on accessibility did not cogently explain why the appeal site is different from the neighbouring two sites where development has recently taken place and which were permitted in one case on appeal and in the other by the Council.
7. As a consequence of the above, the appellant considers that the failure of the Council to even try to defend aspects of the reason for refusal and the failure to provide substantive evidence on some matters it still pursued, including explaining why the appeal site is different from the neighbouring site, is unreasonable conduct. Such unreasonable conduct is considered by the appellant to have caused the incurrance of unnecessary expense. Furthermore, if the abandoned points had not been cited as part of the reason for refusal and the insubstantial case on the remaining points had not been pursued, taking into account similar adjacent case, then an appeal would not have been necessary. As such, the appellant considers that a full award of costs is justified.

The response by Ribble Valley Borough Council

8. The Council provided a handwritten response to the cost claim which was supplemented orally during the Inquiry. It is acknowledged that Policy DMG2 was not pursued but considers that the Development Plan had to be considered as a whole in addressing this matter. Therefore, this did not result in additional expense. The Council also accepts that cycling accessibility was also not pursued. However, Key Statement DMI2 of the Core Strategy was pursued with reference to walking and, as such, constitutes the policy basis for the consideration of accessibility issues. In considering Key Statement DMI2 as a whole, the Council considers that it would have been inconceivable for the appellant not to have addressed cycling in the assessment of all matters of accessibility.
9. The Council considers that the preferred walking distances as set out in the Chartered Institute of Highways and Transportation document 'Guidelines for Providing for Journeys on Foot' are not arbitrary and are well recognised as material considerations. In addition, Lancashire County Council, in its capacity as highway authority saw the proposed development as being at the 'extreme end' of accessibility for walking purposes.
10. With regard to the bus service, the Council considers that the planning obligation only guarantees the provision of the service until 2026 and it cannot be concluded that the appeal site will have access to a regular bus service beyond that date. Furthermore, with regard to the neighbouring site granted on appeal, the Inspector envisaged a 'high quality' bus halt on Lune Road which has not been provided, nor has the lighting of the route to the Leisure Centre which would be used by the prospective residents of the appeal site.

Reasons

11. Despite conflict with Policy DMG2 being identified in the reason for the refusal of outline planning permission there was no attempt by the Council in the appeal to justify conflict with this policy. Although the proposed development lies outside of the settlement limits of Clitheroe, the Council advised that this policy is permissive of development that adjoins the settlement boundary as this constitutes consolidation and expansion of the settlement.
12. Taking into account the Council's views at the Inquiry that there would be no breach of this policy, I can see no reasonable justification for its inclusion in the reason for refusal. Consequently, I consider that the reference to a breach of Policy DMG2 constitutes unreasonable conduct that caused the appellant to incur unnecessary expense in providing evidence to demonstrate that there was no such breach.
13. The reason for refusal specifically mentioned that the site had a lack of cycling access to the town centre. Notwithstanding the Council's view that Key Statement DMI2 needed to be considered holistically, there was a clear emphasis within the reason for refusal that cycling access was inadequate. Consequently, there was an understandable requirement for the appellant to address cycling issues in depth in the Inquiry.
14. With regard to cycling, the Council only identified that there were inadequate cycle parking facilities in the town centre. This matter was not referred to in the reason for refusal. No evidence was provided to substantiate the assertion in the reason for refusal that the site has a lack of cycling access to the town centre. In respect of the Council's only concern regarding a lack of facilities, the submitted planning obligation provides for a financial contribution to the cost of providing additional cycle parking facilities. This appropriately addresses the Council's only identified concern on this matter.
15. However, no evidence whatsoever was provided to justify the Council's position regarding a lack of cycling access from the site to the town centre as set out in the reason for refusal. Consequently, I consider that the unjustified reference to inadequate cycling access to the town centre constitutes unreasonable conduct that caused the appellant to incur unnecessary expense in providing evidence to demonstrate that cycling accessibility was adequate.
16. With regard to the bus service, this was not a matter specifically identified in the reason for refusal but was raised in evidence at the Inquiry. The Council's concerns relate to the fact that the 'quality bus stop' had not been provided and that service may not continue beyond 2026. No evidence was provided to suggest that there was any breach of the planning obligation attached to the permission for the site to the north east that was granted on appeal and which provided for the 'quality bus stop'.
17. The appellant identified that it was a matter for the highway authority to determine what they considered to be an adequate bus stop and no other evidence was provided that would enable me to take a contrary view. Whilst I was led to believe that a post and sign is shortly to be provided there were no plans by the highway authority to install a shelter. No evidence was provided by the highway authority to suggest that the form of bus stop currently provided is inadequate.

18. The submitted planning obligation would enable the continuation of the bus service until 2026. The provision of 5 years initial funding to enable the establishment of public transport patronage is reasonable and is not uncommon. The obligation effectively means that by 2026 a bus service serving the area in the vicinity of the appeal site would have been secured for 10 years (from 2016 to 2026). Whilst I accept that there can be no guarantee that the service would be sustained beyond 2026, the 10 year period that it would be in operation is more than adequate for public transport travel patterns and bus patronage to be established.
19. Consequently, I consider that the Council failed to appropriately substantiate its concerns regarding bus service provisions and did not appropriately take into account the provisions of the planning obligation that secured its provision until 2026. The view that bus service would be inadequate, the possible discontinuation of the bus service after 2026 and the fact that the bus stop provided was not a 'quality stop', despite no breach of any planning obligation being identified, are not substantive matters on which to conclude that accessibility by public transport was poor. Moreover, no reference to any inadequacy in public transport provision was identified in the reason for refusal.
20. As such, I consider that the lack of justification in alleging inadequate bus service provision constitutes unreasonable conduct. This caused the appellant to incur unnecessary expense in providing evidence to demonstrate that the bus service provision was adequate.
21. Turning to the matter of walking, both parties referred to guidance documents that provided various distances as to what constitute an appropriate walking distance. These documents predominantly refer to preferred distances. I consider that there is some subjectivity as to the distances that people may prefer to walk. Consequently, I consider that the distances set out in various documents are a guide only and cannot be applied prescriptively. The highway authority considered that the site was on the limit of accessibility. It lies approximately 2km from the town centre. As such, it was not unreasonable for the Council to raise concerns regarding walking accessibility in the reason for refusal.
22. The views of the Council regarding walking accessibility were relevant to the provisions of Key Statement DMI2 of the Core Strategy and were substantiated in the evidence provided in the appeal. I consider that that the Council had reasonable concerns about the accessibility of the appeal site to the town centre by means of walking which partly led to the decision to refuse the application. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme with regard to walking accessibility and therefore the appeal could not have been avoided in this regard.
23. The Council identified in the response to the cost claim that street lighting had not been provided to pedestrian route to the Leisure Centre from the adjacent Blakewater Road development to the north east of the appeal site. However, no breach of any planning conditions or obligation was identified. In my view this matter has little relevance in my consideration of the application for an award of costs. I have therefore attached no weight to these concerns in my consideration of this costs application.
24. With regard to the appeal decision on the neighbouring site (Ref APP/T2350/A/11/2161186) it is an established planning principle that each

planning application has to be considered on its own individual merits. However, there are clearly some similarities in the locational circumstances of that site and the appeal site in that distances and routes to the town centre are substantially the same. I recognise the appellant's concerns regarding this matter.

25. However, I have found above that the Council's concerns regarding walking accessibility were founded on a reasonable basis. I concur with the views of the highway authority that the site is at the extreme limit of walking accessibility. As such, I do not consider that the Council failed to take into account the appeal decision on the adjacent site in respect of walking.
26. It is clear from the evidence provided that the consideration of the relevance of other appeal decisions can be subjective. Just because I have found differently from the Council regarding walking distances does not mean to say that the Council's concerns had no basis. Accordingly, I do not find that the existence of the appeal decision on the adjacent site suggests that the Council failed to properly consider the merits of the scheme before me.
27. Finally, the appellant suggested that the Council could not demonstrate a five year supply of land for housing (HLS). Both main parties produced substantial evidence with regard to this matter. The dispute with regard to HLS was raised at the discretion of the appellant to which the Council produced adequate evidence to substantiate its position. Consequently, there is no basis for any award of costs in relation to this matter.

Conclusion

28. The Council's reason for refusing planning permission, as set out in its Decision Notice, specifically referred to matters of cycling and walking accessibility and identified conflict with a planning policy relating to the location of development outside of settlements limits. In providing no substantive evidence to support that part of the reason for refusal relating to cycling and in respect of a perceived conflict with Policy DMG2, I find that the Council behaved unreasonably in reaching its decision.
29. The Council partly relied on a deficiency in bus service provision which was not specifically identified in the reason for refusal in the same way that concerns regarding cycling and walking were. The bus service is already operational and would continue to be subsidised for a further five years under the terms of the submitted planning obligation. In respect of this matter, I consider that the Council acted unreasonably by failing to appropriately take into account the provisions of the obligation and the benefits that it would provide in securing public transport provision up to 2026.
30. I do not consider that any award of costs is justified with regard to matters relating housing land supply or accessibility by means of walking. Consequently, a full award of costs is not justified.
31. However, I conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting those parts of the Council's reasons for refusal and case relating to conflict with Policy DMG2, cycling and bus accessibility is justified

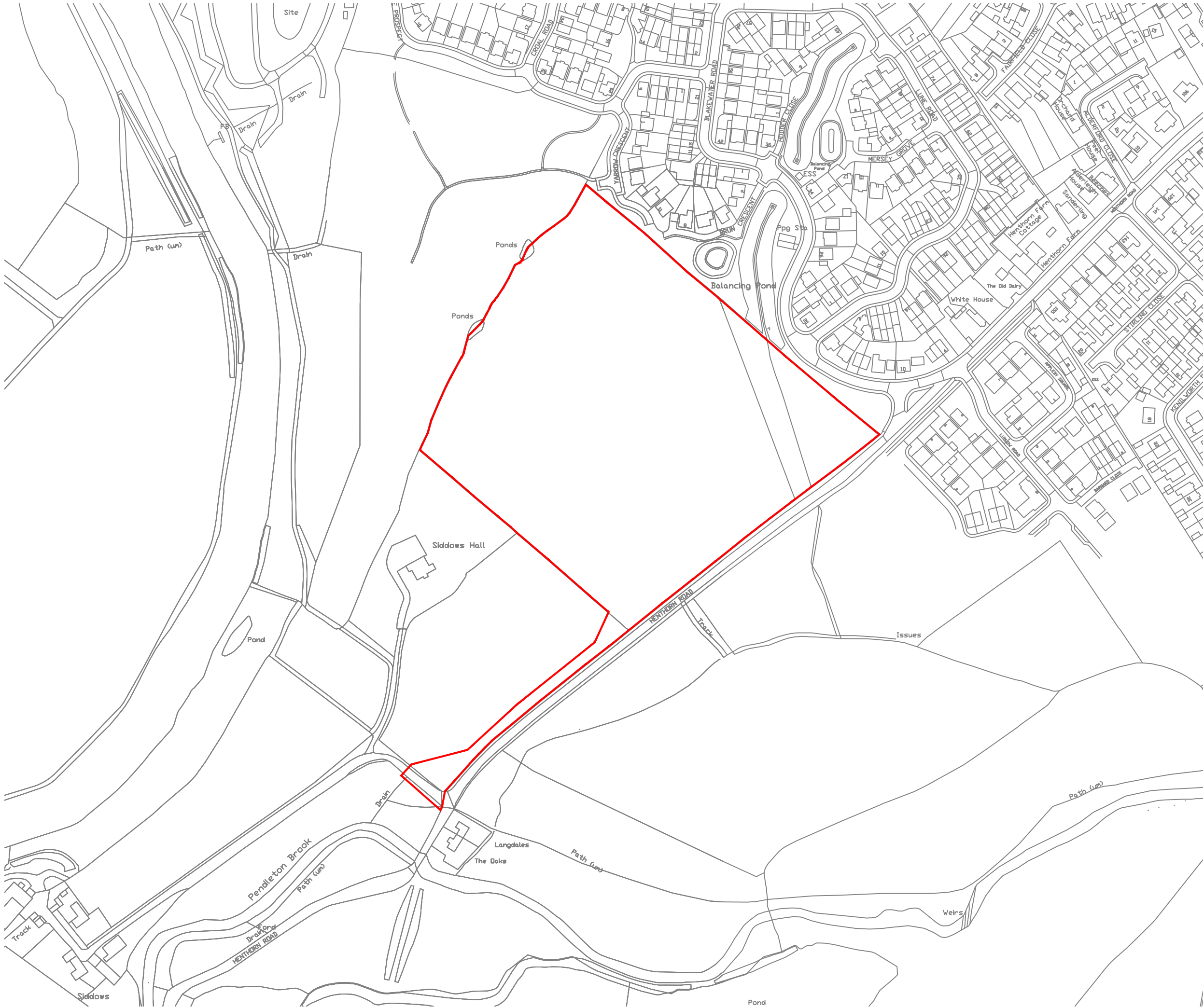
Costs Order

32. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ribble Valley Borough Council shall pay Gladman Developments Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's reasons for refusal, which concerned alleged conflict with Policy DMG2 and matters relating to cycling and bus service provision in relation to Key Statement DMI2 of the Core Strategy.
33. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

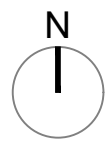
INSPECTOR

EP4



NOTES

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rev	date	description	dm	chkd
A	01.08.2018	Red line amended	SLS	SLS
-	27.07.2018	First issue.	SLS	SLS

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client
Gladman Developments Ltd

project
**Henthorn Road
 Clitheroe**

drawing title
LOCATION PLAN

scale
1:2500 @ A3

drawn / checked
SLS / SLS

revision date
01 August 2018

drawing number
8439-L-04

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