



Appeal Decision

Inquiry held on 20 to 23 September 2022

Site visit made on 22 September 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/V1505/W/22/3296116

Land at Maitland Lodge, Southend Road, Billericay CM11 2PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Inland Homes against Basildon Borough Council.
- The application Ref 21/01687/FULL, is dated 17 November 2021.
- The development proposed is the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works.

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of Maitland Lodge and the construction of 47 new homes (Class C3) with vehicular access onto Southend Road, together with associated infrastructure and landscaping works, in accordance with the terms of the application Ref 21/01687/FULL, dated 17 November 2021, subject to the conditions at Annex C of this Decision.

Preliminary Matters

Planning policy

2. The Development Plan for the area includes the Basildon District Local Plan Saved Policies September 2007 (the LP). The emerging Basildon Borough Local Plan 2014-2034 was withdrawn in March 2022. Its policies, therefore, have no weight, although the plan and its evidence base remain material considerations in the determination of the appeal.

Documents and evidence

3. A number of submissions were received during the inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents and drawings.

Putative Reasons for Refusal

4. The proposal was taken to planning committee in June 2022, where the Council agreed two putative reasons for refusal. The first reason is that the proposal

represents inappropriate development in the Green Belt (GB) and that 'very special circumstances' do not exist. It states that the proposal would cause substantial harm to openness and that its poor design would exacerbate this harm and would fail to provide a high quality beautiful place.

5. The second reason is in relation to securing adequate provision for on and off-site infrastructure, effects on the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS), and the provision of affordable housing. Subsequent to the planning committee, a s106 planning obligation, dated 7 October 2022, has been submitted. It secures:
 - a healthcare contribution to expand South Green Surgery;
 - an employment and skills contribution to broker job opportunities;
 - an open space, culture, play and sports provision contribution;
 - a contribution in respect of the Essex Coast RAMS;
 - a County Council monitoring fee and a Council monitoring fee;
 - a primary education contribution towards primary education facilities within three miles of the development and/or within Basildon Primary Group 1 (Billericay);
 - a secondary education contribution towards secondary education facilities within three miles of the development and/or within Basildon Secondary Group 2 (Billericay);
 - 16 of the proposed dwellings to be affordable housing, of which 15 would be affordable rented units at least 20% below local open market rent, and one would be shared ownership where the purchaser would have an initial equity share of not less than 25% and not more than 75%;
 - an Affordable Housing Scheme, requiring details of the location of the proposed affordable housing, and a Shared Ownership Marketing Strategy;
 - a further five of the dwellings to be First Homes, allocated to first time buyers at a discount to the market rate of 30%;
 - an Employment and Skills Plan;
 - a management company to carry out the long term management and maintenance of the on-site Open Space; and,
 - an Open Space Specification and the Management Plan regarding the open space.
6. The Council and Essex County Council's joint CIL Compliance Statement sets out the detailed background and justification for each of the obligations. I am satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (the CIL Regulations) and the tests at paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. The s106 therefore responds to these concerns and this putative reason for refusal is not a main issue for the appeal. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

Main Issues

7. The main issues are:
 - whether or not the proposal would be inappropriate development in the GB, including assessment of the effect of the proposal on the openness of the GB; and,
 - the effect of the proposal on the character and appearance of the area, in particular on landscape character.

Reasons

Green Belt

Inappropriate development

8. The majority of the appeal site lies in the GB. The area of the site outside the GB is Maitland Lodge and its garden and a thin sliver of land to the north east corner running along the back of the properties to the west of Southend Road. It is proposed to construct a number of new buildings within the GB land.
9. The GB land provides equestrian facilities, other buildings or built form and paddocks directly linked to the equestrian facilities and forming part of the curtilage of the equestrian buildings. The Framework states that the curtilage of developed land can be considered as, but is not necessarily, previously developed land (PDL). In this instance, the functional relationship of the paddocks to the developed stables and other buildings on the site is clear. The paddocks themselves include some built form and are a human intervention on the site. It is also common ground, and I agree, that none of the appeal site is in agricultural use. The residential garden areas to Maitland Lodge are within the part of the appeal site that is within the built-up area of Billericay. These are not, therefore PDL, as defined by the Framework. However, these areas are outside of the GB. I therefore agree with the appellant and the Council, who under cross-examination conceded this position, that all of the GB land within the appeal site is PDL.
10. It is also common ground, and I agree, that the proposal would include affordable housing that would meet an identified need within the Borough. This is expanded upon later in this Decision. Paragraph 149 of the Framework states that new buildings are inappropriate development in the GB, subject to a number of exceptions. Part g), second bullet point, relates to the redevelopment of PDL where the proposal would contribute to meeting an identified affordable housing need, and is therefore relevant to the appeal proposal. The bullet point states that, in such circumstances, development would not be 'inappropriate' if it would not cause substantial harm to the openness of the GB. I therefore assess the effect of the proposal on openness below.

Openness

11. The GB element of the appeal site is within a wider parcel of land in the GB called 'Area 25' as identified in the Basildon Borough Green Belt Topic Paper, October 2018 (the Topic Paper 2018). The appeal site is a small area of land within this wider parcel. There is open countryside to the west and the south, however there is extensive, mature boundary planting to the west, and lesser, but still significant, boundary planting to the south. The land to the east and west of the site is already built-up. The site is therefore highly visually constrained and makes only a limited contribution to the openness of the GB. This is a view shared by the Topic Paper 2018.
12. The GB element of the appeal site contains a number of buildings and structures associated with its equestrian and other uses. These are largely single storey. The proposal would be for 28 buildings, including a mix of houses and two blocks of flats, at up to three storeys but mostly either two or two and a half storeys in height. Overall, the proposal would result in an 80% increase

in footprint and a 124% increase in volume of built-form on the GB element of the appeal site. The level of the proposed increase in built-form would therefore be relatively significant.

13. The proposed garages would link several of the buildings. The layout would be relatively dense, there would be runs of rooflines that would be fairly close together and prominent, and relatively limited landscaping, save for incidental street trees and an area of open space to the south west corner. These design detail considerations influence the harm to openness of the proposal but only to a limited degree, as was accepted by the Council under cross-examination.
14. In addition, the proposal would spread built form across the whole site, rather than being concentrated to the eastern edge adjacent to the existing housing. There would also be a significant increase in activity on the site in comparison to the existing use for equestrian purposes and the gardens of the proposed dwellings would likely also be the subject of residential paraphernalia once occupied, further negatively affecting openness on the site.
15. However, the appeal site is largely visually self-contained by the mature planting to the west and existing development to the north and east. The southern boundary also has a relatively mature hedgerow but is more open. The proposed landscaping scheme, including some trees, would lessen this openness but the proposal would still be more visible from the south through this boundary than the existing built form. Importantly, though, as viewed from the south the proposed development would be seen in the context of the existing housing of Billericay. The existing housing rises slightly up the hill as viewed from the south and is clearly visible and fairly prominent.
16. Overall, there is relatively significant existing built form and the GB element of the appeal site is only a small part of a much wider parcel of GB land. The proposal would result in an increase in built form on the site both in overall footprint and volume and spread across the site. However, the appeal site is largely visually self-contained, with existing housing to Billericay to two sides of the site and the extensive existing and proposed boundary landscaping to the other two sides. Where the boundary planting would be more open the proposal would be seen in the context of the existing housing to Billericay. The harm to openness on the appeal site itself would therefore have limited effect on the wider GB. Allowing for the slightly greater harm to openness of the appeal site itself, the overall harm to the openness of the GB would be moderate.
17. It is important to note that the threshold for the proposal to be considered as inappropriate development is substantial harm. This is a high bar and the proposal clearly falls below it. The proposal is therefore 'not inappropriate' development in the GB. I do not, therefore, need to further consider issues in relation to GB development or make a determination on 'very special circumstances'.

Character and appearance

18. The Council's case with regard to character and appearance relates primarily to the effect of the proposal on landscape character, which I assess in this section. The Council also raised matters regarding detailed design that fall outside the above, which I turn to in the Other Matters section later in my Decision.

Existing

19. The appeal site includes a detached house along the western side of Southend Road, with the majority of the site lying behind this house. The area behind comprises a number of buildings and stables and associated hardstanding, fences and other ancillary development. There are also two grass paddocks which take up the western and central part of the site. The existing buildings have an equestrian use character and are single storey apart from Maitland Lodge. Some buildings are in poor condition and the site has grown organically with no discernible pattern to the layout.
20. To the east and north of the rear part of the site lies the existing edge of Billericay, with a mix of houses lining Mill Road, Homefield Close and Southend Road. The Maitland Lodge house is one of the properties on Southend Road. The surrounding properties are of a variety of architectural styles, being either detached or semi-detached houses or bungalows, and there is little to unify the architectural character. It is a typical, unremarkable, suburb. To the south and west are fields with mostly open countryside beyond. The site sits within Landscape Character Area 12¹, defined as an area of sloping farmland. However, it is only a small part of this wider area, which includes the extensive open farmland surrounding Billericay. The appeal site does not contain most of the key characteristics of the area, such as large fields.
21. Other than the entrance element where Maitland Lodge sits, the appeal site is mostly visually self-contained. The dwellings to the north and east only afford glimpsed views through to the site. There is a very mature hedgerow including substantial trees to the western boundary and a less mature and lower hedgerow, but which is still relatively substantial, to the southern boundary. Even views from neighbouring properties are at least partially screened by existing vegetation and boundary features. The appeal site is, however, visible from the south, largely to drivers approaching Billericay along Southend Road, but there are also some footpaths at mid-distance from the site to the south and west. However, where the site is visible, it is seen in the context of the urban edge of Billericay. The existing properties are clearly visible, set on rising land towards the north.
22. The wider landscape to the south and west is largely open farmland and is of higher quality. However, whilst pleasant countryside, this is also largely unremarkable agricultural fields. It is common ground, and I agree, that the wider landscape is not a 'valued landscape' within the meaning of paragraph 174 of the Framework. I assess the wider area to have moderate sensitivity to change. The appeal site itself, however, is of low sensitivity, through a combination of the partly-urbanising effect of the existing buildings and ancillary structures and hard standing, the edge-of-settlement character and the visual containment.

Proposed

23. It is proposed to demolish all the existing buildings and structures on the site and comprehensively redevelop to provide 47 dwellings. The proposed layout includes an access road from Southend Road which turns into a circle within the main/rear part of the site. A building, containing two houses, is proposed to the Southend Road frontage, adjacent to the proposed access road. A variety

¹ As set out in the Landscape Character and Green Belt Landscape Capacity Study December 2014

of dwellings are proposed within the site, including detached and semi-detached houses at two or two and a half storeys, and two blocks of flats at two and three storeys. Many of the proposed houses are also provided with car ports and there would be additional off and on-street car parking, including on driveways and in small car parks. An area of communal open space is proposed to the south west corner, which would also incorporate a balancing pond drainage feature. Some new planting is proposed, including trees, to the southern boundary.

Assessment

24. There would be a fair degree of consistency in the proposed architectural style of the buildings in terms of scale and layout but a certain amount of variety through different fenestration patterns and materials. The Essex Design Guide 2018 advises to avoid or conceal wide gable ends to roofs. Some relatively wide gable ends are proposed, but these are largely to side elevations not viewed directly from the proposed street. These side elevations often also would have car ports, adding articulation. There would be a variety of roof forms, silhouettes and detailing which is a positive factor which contributes to the architectural interest of the proposal. Overall, the architectural approach achieves a successful balance and would be in-keeping with the varied detailed design but consistent suburban character and appearance of the wider area.
25. The proposal is relatively dense and the proposed car ports would visually and physically link many of the buildings. However, these would be set back and would be lower than the host buildings and would remain subservient to them. The density would be similar to the surrounding area. The proposed open space would be relatively limited, but it is in the location of the site that would most benefit from visual softening, in the south west corner surrounded by open fields, and as stated in the Basildon Outline Landscape Appraisals of Potential Strategic Development Sites 2017. Paragraphs 119 and 124 of the Framework promote the effective and efficient use of land to provide homes. In this physical and policy context, the proposal would be of an acceptable density.
26. Nevertheless, the proposal would undeniably result in a change in character and appearance to the appeal site from the current equestrian use and building styles, and an increase in density and built form across the site, particularly to the currently open paddocks to the west and centre of the site. However, the overall density and detailed design of the proposal would be in-keeping with the character and appearance of the area. The appeal site is also of low sensitivity, is highly visually self-contained and, where more visible from the south, would be seen in the context of the existing housing of Billericay to the north, limiting any effects on the wider area.
27. Consequently, the proposal would not result in material harm to the character and appearance of the area, with regard to landscape effects. The proposal would therefore comply with Policy BE12(i) of the LP, which resists residential development that would harm the character of the surrounding area.

Other Matters

Housing

Market housing

28. A housing land supply range has been agreed between the parties, of between 1.6 and 2.33 years. Anywhere within this range is a very substantial shortfall against the target to identify a five year supply of housing land as set out in paragraph 68 of the Framework. In numerical terms, the shortfall equates to between 3,345 and 4,200 homes. There is also an under-delivery of housing in the Borough. The Government's 2021 Housing Delivery Test figures confirm a delivery rate of 41% against the housing requirement. Footnote 8 of the Framework states that even a delivery rate of 75% should be considered as substantially below the requirement. 41% is therefore a very substantial under-delivery. The delivery is also on a downward trend, with the most recent results being 45% in 2020, 44% in 2019 and 75% in 2018.
29. Under cross-examination, the Council accepted that housing delivery has been persistently poor over several years. This is also stated at paragraph 2.4 of the Council's Draft Housing Delivery Test Action Plan July 2021 (the Action Plan 2021). It would be difficult to come to any other conclusion on the basis of the above evidence. The shortfalls in housing land supply and housing delivery are stark. There is also no evidence before me that there is likely to be a marked improvement in the delivery of housing in the short to medium term. The Council's Action Plan 2021 states that the level of supply is not expected to significantly improve until a new Local Plan is adopted. In this regard, the Council's emerging Local Plan was recently withdrawn and its tentative timetable for the production of a new Local Plan would result in adoption, at best, in 2027.
30. It is important to remember that there are real world implications from the under-delivery of homes, including increased house prices, decreased affordability and an increasing number of individuals and families being forced to remain in unsuitable accommodation for their current needs. I therefore place very substantial positive weight on the proposed 26 open market homes.

Affordable housing

31. The Council's affordable housing need is agreed between the main parties to be 860 dwellings per annum (dpa), based on removing the backlog in addition to ongoing requirements. The current overall shortfall is 2,494 homes. Over the past seven years, the net delivery of affordable housing, ie after accounting for Right to Buy sales, is just 5 dpa. Affordable housing delivery is abysmal. The shortfall is acute and persistent. As with market housing, there is no evidence before me that there is likely to be a marked improvement in the delivery of affordable housing in the short to medium term.
32. The length of the waiting list on the housing register is up by 44% in the past year. The multiple of the income of people on lower quartile incomes necessary to buy a home in the Borough is 32% higher than seven years ago. These statistics sit in the middle of a much wider socio-economic and political conversation, not all which, I accept, will have been driven by the lack of affordable housing delivery. However, the persistent extremely low affordable housing delivery in the past years has contributed towards this real-world

harm. Each of the 2,494 affordable homes that should have been built, but have not, represent a missed opportunity to help alleviate the housing concerns of individuals and families. The situation represents a significant conflict with the economic and social overarching objectives set out in paragraph 8 of the Framework.

33. Policy BAS S5 of the LP sets a requirement for affordable housing of between 15 to 30% of the total number of units on a development site. The 'split' of the affordable housing between different affordable tenure types is not prescribed in policy and all tenures of affordable housing contribute to the affordable housing supply for the Borough. The proposed provision of 45% of total units, at 21 homes, is in excess of the policy requirements. However, given the critical situation regarding affordable housing delivery in the Borough, I place very substantial positive weight on all of the proposed affordable homes, not just those over and above policy requirements.

Appeal site location and nature

Previously Developed Land (PDL)

34. As established above, the element of the appeal site in the GB is PDL. Most of the remainder of the appeal site is also PDL, as it is land with existing built form and associated hard standing. However, there are two small residential garden areas associated with Maitland Lodge that lie outside of the GB, both of which do not constitute PDL, as defined by the Framework. Nevertheless, a significant majority of the site is PDL. Despite this, the site is not particularly intensively used, with large relatively open spaces for the paddocks. The proposed development to provide 47 houses would therefore represent an efficient use of land for homes, on a mostly brownfield site, partly within and partly directly adjacent to an existing settlement.
35. In light of the above, and as directed by paragraph 120(c) of the Framework, I place substantial positive weight on the proposed dwellings on the part of the appeal site within Billericay. I also place significant positive weight on the remainder of the development in this regard, which accords with the promotion of the effective use of land to provide homes at paragraph 119 of the Framework.

Sequential preference

36. The Council's Development Plan is out-of-date. The Local Plan was adopted in 1998, based on the period 1991-2001, with a housing requirement based on a previous Structure Plan adopted in 1982. The GB boundaries are therefore based on very old housing requirements and a completely different planning policy and political backdrop. Most of the Borough outside the three main towns is GB. It is common ground, and I agree, that due to the significantly higher housing requirements that the Council now faces, and that it cannot demonstrate a five year supply of housing land, significant GB release is inevitable.
37. It would be preferable if the GB release could be managed through the emerging Local Plan process, as set out at paragraphs 15 and 140 of the Framework. However, as set out above, a new Local Plan is at least five, and potentially many more, years from being adopted. It is therefore necessary to

consider proposals that come forward in the GB ahead of adoption of the new Local Plan.

38. In this regard, the now withdrawn Local Plan and its evidence base is still a material consideration. The evidence base allocated the site for development² and the withdrawn Plan carried this through to a site allocation (Site H21b), albeit for around 20 self-build homes rather than the 47 dwellings proposed as part of the appeal proposal³. However, the important consideration is that the site was found to be suitable for development and to be removed from the GB. In addition, this inquiry has established that the GB element of the appeal site is all PDL.
39. Therefore, the appeal site in general is sequentially preferable to non-PDL sites in the GB, which make up the majority of GB land in the Borough. In any event, as established above, the specific appeal proposal is 'not inappropriate' development in the GB. I therefore find no harm from the location of the proposal in the GB in addition to its sequential preference over non-PDL GB sites. This is a significant positive benefit of the proposal in the context of a Borough where GB release is accepted as being inevitable to meet its housing needs.

Accessibility

40. The appeal site is directly adjacent to Billericay and accessible to its large range of services and facilities, and also easily accessible to a range of bus routes and also Billericay train station. It is common ground, and I agree, that the appeal site is in a highly accessible location. I place significant positive weight on this factor.

Economic

41. The proposal would create short term employment during construction and would result in long term economic benefits from expenditure from the future occupants on goods and services in the area. Some of the future occupants would potentially have only moved a short distance and already be in the local area, but many are likely to be from further afield. As required by paragraph 81 of the Framework, I place significant positive weight on the economic benefits.

Biodiversity

42. A package of mitigation measures, such as tree protection fencing or sensitive site clearance, is set out in the Ecological Impact Assessment May 2022 and could also be secured by condition. Compensation is also proposed, for example through the contribution towards the Essex Coast RAMS. It is therefore proposed to follow the hierarchy set out at paragraph 180 of the Framework by first mitigating ecological effects and only then compensating for them. In addition, a biodiversity net gain of 10% is proposed and could be secured by condition. The Framework only requires 'a' net gain, rather than a gain of 10%. The proposal therefore goes beyond policy requirements in this regard. I place significant positive weight on this benefit.

² Housing and Economic Land Availability Assessment (HELAA) Review 2018, September 2018 (Site SS0189)

³ Basildon Borough Revised Publication Local Plan 2014 – 2034, October 2018 (Site H21b) and Housing Options Topic Paper November 2018 (New Site 3)

Detailed design

43. The proposed layout with a circular road leading to a single access point logically responds to the square shape of the rear part of the site and the narrow access area to Southend Road. The proposed building along Southend Road retains a building fronting onto the road, in-keeping with the established character of the road. Nevertheless, there would be limited harm to the character and appearance of this frontage through the proposed relatively wide access road.
44. The proposed three storey block of flats would be slightly taller and more bulky than the proposed and existing semi-detached properties in the area. However, it would be relatively small, towards the centre of the site and not readily visible from public or private views. The proposed public open space would be relatively small but is proposed in the south west corner of the site which is the most appropriate location for open space as it is furthest away from Billericay and one of the most visible parts of the appeal site. The open space would also incorporate a drainage feature but the detail of this could be controlled by condition to be attractive and there would be sufficient remaining space for recreational use by the future residents. The proposed shared surface approach to the internal road would work well in the context of the relatively small scale of the proposal. The Highways Authority raises no objection to this approach in terms of highway safety.
45. Matters of detailed design of the proposed buildings and the proposed hard and soft landscaping could be controlled by condition(s). Overall, the detailed design of the proposal would be in-keeping with the character and appearance of the area and would be acceptable. This weighs neutrally in the planning balance.

Appropriate Assessment

46. The appeal site falls within the Zone of Influence (ZoI) for the Blackwater Estuary Special Protection Area and Ramsar (the SPA). The proposal is for residential development and the future occupants are likely to travel to the SPA for recreation purposes, due to the proximity and as established by the appeal site falling within the ZoI. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment (AA) in such circumstances. As the Competent Authority, I have therefore undertaken an AA.
47. The conservation objectives for the SPA include maintaining or restoring the habitats for a number of breeding and non-breeding birds. The specific qualifying features likely to be affected by the potential increase in recreational pressure include the mudflat habitat that supports internationally and nationally important numbers of overwintering waterfowl, and semi-improved grassland that includes nationally scarce plants and rare invertebrates. The proposal would therefore likely result in adverse effects on the SPA, by itself and in combination with other development projects.
48. Consequently, I am satisfied that a mitigation payment is required to avoid an adverse effect on the integrity of the SPA. In this regard, the s106 secures a financial contribution, proportionate to the number of dwellings proposed, towards mitigating the effects of the likely increased recreational pressure. The payment has been calculated in accordance with the Essex Coast RAMS, which

applies to a number of protected areas include the SPA relevant to this appeal. The RAMS is a detailed strategy which has carefully considered the mitigation measures necessary to protect the designated sites. Natural England has confirmed that the contribution is appropriate and proportionate, and that, subject to the contribution, the proposal would not have an adverse effect on the integrity of the site. I am therefore satisfied that the mitigation would be effective. I am also satisfied that the planning obligation meets the tests set out in Regulation 122(2) of the CIL Regulations and paragraph 56 of the Framework.

49. Consequently, I consider that, subject to the s106, there would be no adverse effect on the integrity of the protected site, both on its own and in combination with other developments.

Interested parties

50. Several objections have been submitted, including from the Billericay District Residents Association, Great Burstead and South Green Village Council and the Campaign to Protect Rural England. The objections have commented on the issues covered above and also on drainage, flooding, highway safety, free-flow of traffic, harm to living conditions of neighbouring occupiers through lack of light and noise and outlook, contamination of groundwater, impact on local infrastructure eg schools and doctors, disruption during construction, and deterioration in air quality. Some neutral comments were also submitted requesting a horticultural scheme.
51. I have taken all of these factors into consideration. Most are not in dispute between the main parties. The Council concluded that there would be no material harm in these regards and I also note that both the Local Lead Flood Authority and Highways Authority have no objection to the proposal. No substantiated evidence has been submitted that leads me to any different view. Other concerns are addressed in my reasoning above, can be addressed by conditions or are dealt with by the planning obligations secured.

Conditions

52. A schedule of conditions was agreed between the parties ahead of the inquiry. This was discussed through a round-table session at the inquiry. I have considered the conditions against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and in the interests of clarity, precision, and simplicity. The appellant has confirmed acceptance of the pre-commencement conditions. I set out below specific reasons for each condition:
- In addition to the standard time limit condition, a condition specifying the relevant drawings provides certainty;
 - Construction Management Plan (CMP) and Site Waste Management Plan (SWMP) and Construction Environmental Management Plan (CEMP) conditions are necessary to protect the living conditions of neighbours, biodiversity, highway safety and the free-flow of traffic during construction;
 - The Biodiversity Survey and Biodiversity Enhancement Strategy, Landscape and Ecological Management Plan (LEMP), lighting design, Arboricultural Impact Assessment, and Ecological Impact Assessment conditions are necessary to protect existing biodiversity, to secure the proposed 10% biodiversity net gain, and to ensure maintenance of the relevant measures;

- Land contamination and remediation, archaeology, Secured by Design and waste and recycling conditions are necessary to ensure the proposal would have acceptable effects with regard to these technical considerations;
 - Tree protection, hard landscaping, soft landscaping, waste and recycling conditions, and Arboricultural Impact Assessment conditions are necessary to ensure a satisfactory standard of development protect and to protect and enhance biodiversity;
 - The materials and finished floor levels conditions are necessary to ensure a satisfactory standard of development;
 - The surface water drainage systems, maintenance of surface water drainage systems and finished floor levels conditions are necessary to ensure that suitable mitigation is provided regarding surface water drainage and flooding;
 - An Energy and Sustainability Strategy condition is necessary to ensure that the proposal reduces carbon dioxide emissions and therefore to mitigate climate change and assist in moving to a low carbon economy as set out in paragraph 8 of the Framework;
 - The visibility splays, access junction details and internal road and footway layout condition is necessary to protect highway safety and the free-flow of traffic;
 - The cycle parking and Residential Travel Information Pack conditions are necessary to encourage the use of a range of modes of transport other than the car; and,
 - The condition requiring details of upgrade works to nearby bus stops and pedestrian crossings is necessary to encourage the use of a range of modes of transport other than the car and to partially mitigate the increased pressure on public transport from the future occupiers of the development. It is necessarily worded as a Grampian type condition, since it relates to land outwith the control of the appellant.
53. A condition requiring electric vehicle charging points for all the proposed car parking spaces was requested by the Council but it is unnecessary because this provision is already set out in Requirement S1 of The Building Regulations 2010, Approved Document S 2021 Edition.
54. The CMP/SWMP, CEMP, Biodiversity Survey, land contamination and remediation, archaeology, tree protection, and hard and soft landscaping conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

Planning Balance

55. The proposal would not conflict with any Development Plan policies, including the four identified as most relevant to the appeal in the Statement of Common Ground, namely Policy BAS GB1 which sets the GB boundaries but has no specific control over GB development, Policy BAS S5 which sets affordable housing thresholds which the proposal exceeds, Policy BAS BE12 which requires proposals to conserve the character of the area, and Policy BAS BE24 which is in relation to crime prevention which could be adequately controlled by condition.
56. The proposal would not harm the character and appearance of the area, either with regard to landscape or detailed design. It would be 'not inappropriate'

development in the Green Belt. The s106 secures appropriate mitigation against any harms from the proposal on the SPA. These factors all weigh neutrally in the planning balance.

57. The proposed open market housing and affordable housing would be very substantial benefits of the proposal. The part of the proposal outside of the GB to be developed for housing would be a substantial benefit due to the use of suitable brownfield land within settlements for homes.
58. The remainder of the appeal site represents the effective use of land to provide homes. The appeal site is sequentially preferable to non-PDL sites in the GB in a Borough where GB release is inevitable to meet its housing needs. The appeal site is easily accessible to public transport, services and facilities, a biodiversity net gain over and above minimum policy requirements is proposed, and there would be both short term and long term economic benefits. These are all significant benefits.

Conclusion

59. The Council cannot demonstrate a five year supply of housing land and there is no clear reason for refusing the proposal related to areas or assets of particular importance. Having regard to paragraph 11d of the Framework, I have found no conflict with the Development Plan and a number of weighty benefits. Therefore, for the reasons above, the appeal is allowed.


INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson, of Counsel. He called:

Emily Beavan ARB	Principal Urban Design Officer, Basildon Borough Council (BBC)
Louise Cook MRTPI	Principal Planning Officer, BBC
Christine Lyons MRTPI	Head of Planning, BBC
Adeola Pilgrim MRTPI	Principal Planner, BBC
Lisa Richardson	Principal Planner, BBC
Charlotte McKay cFILEX	Principal Lawyer, BBC
Anne Cook	Principal Infrastructure Planning Officer, Essex County Council

FOR THE APPELLANT:

Zack Simons, of Counsel. He called:

Colin Pullan	Head of Urban Design and Masterplanning, Lambert Smith Hampton
Charles Crawford CMLI	Director, LDA Design
Hywel James MRTPI	Associate, Nexus Planning
Oliver Bell MRTPI	Director, Nexus Planning
James Stacey MRTPI	Senior Director, Tetlow King Planning Ltd
Ben Standing	Partner, Browne Jackson
Dominick Veasey MRTPI	Director, Nexus Planning
Hywel James MRTPI	Associate, Nexus Planning

ANNEX B: DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Addendum to Statement of Common Ground – Housing Issues, dated 20 September 2022
- 2 Affordable Housing Proof of Evidence Addendum and Errata Note of James Stacey BA (Hons) Dip TP MRTPI
- 3 *Herbert Hiley and The Secretary of State for Levelling Up, Housing and Communities vs East Lindsey District Council* [2022] EWHC 1289 (Admin)
- 4 Appellant's Opening and List of Appearances
- 5 Opening Statement on behalf of the LPA
- 6 Site Visit Routes, dated September 2022
- 7 Email regarding conditions 27 and 28 from Hywel James, dated 23 September 2022
- 8 Open Space Plan/Management Plan Ref 1760/L/02
- 9 Closing submissions on behalf of the LPA, by Giles Atkinson, dated 23 September 2022
- 10 Appellant's Closing Submissions, by Zack Simons and Isabella Buono, dated 23 September 2022

ANNEX C: CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 16007/400; 1760/P/01 Rev B; 16007-10, 11 Rev B, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 Rev A, 35, 36, 37, 38, 39, 100, 101.

Pre-commencement

- 3) No development shall commence, including any works of demolition, until a Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP) for the proposed development has been submitted to and approved in writing by the Local Planning Authority. The Plans shall incorporate details of:
 - a) the parking of vehicles of site operatives and visitors (construction traffic management);
 - b) loading and unloading and the storage of plant and materials used in constructing the development;
 - c) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - d) wheel and underbody washing facilities;
 - e) measures to control the emission of noise, dust and dirt during construction;
 - f) a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
 - g) details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.

The approved CEMP and SWMP shall be implemented for the entire period of the construction works.

No materials produced as a result of the site development or clearance shall be burned on site.

- 4) Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority following the recommendations made within the Ecological Impact Assessment ref. INL20854_EcIA dated 17.05.2022. The CEMP: Biodiversity shall include the following:
 - a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones";

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and,
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 5) A. No above ground new development, including demolition, shall commence until an updated Biodiversity Survey has been submitted to and approved in writing by the Local Planning Authority.
- B. A Biodiversity Enhancement Strategy for any identified protected and priority species in accordance with the Biodiversity Survey approved at A., shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the relevant part of the development. The content of the Strategy shall include the following:
 - a) measures equivalent to a 10% net gain in biodiversity;
 - b) purpose and conservation objectives for the proposed enhancement measures;
 - c) detailed designs to achieve stated objectives;
 - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - e) locations of proposed enhancement measures by appropriate maps and plans;
 - f) persons responsible for implementing the enhancement measures; and,
 - g) details of initial aftercare and long-term maintenance (where relevant).
- C. The Strategy shall be implemented in accordance with the approved details and timetable and, where appropriate, shall be retained in that manner thereafter.
- 6) No development shall commence, including any works of demolition, until an updated desk-top study has been submitted to and approved in writing by the Local Planning Authority, to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the proposed development.
- 7) If identified as being required following the completion of the desk-top study required pursuant to condition 6, a site investigation shall be carried out prior to commencement of development and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk

assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the sites existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority within three months of their completion.

- 8) If identified as being required following the completion of the site investigation pursuant to condition 7, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. Development shall be carried out in accordance with the written method statement. If, during redevelopment, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately, and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing by the Local Planning Authority and all requirements shall be implemented and completed in accordance with the approved method statement.
- 9) Following completion of measures identified in the remediation scheme pursuant to condition 8, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved method statement(s).
- 10) A. No development shall commence until:
 - i. A programme of archaeological investigation has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority; and,
 - ii. Any fieldwork required in accordance with the submitted WSI has been completed.

B. A Final Archaeological Report shall be submitted to and approved in writing by the Local Planning Authority, prior to occupation of the development.

C. The deposition of a digital archive with the Archaeological Data Service must be submitted within six months of the completion of any fieldwork required.
- 11) No development shall commence, including any works of demolition, until all trees to be retained have been protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition and construction – Recommendations. The protective fencing shall be retained for the duration of the construction process.
- 12) The hard landscaping scheme set out in drawing Ref INL20854-12-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The updated hard landscaping scheme shall be submitted to and

approved in writing by the Local Planning Authority prior to the commencement of development. The approved hard landscaping scheme shall be implemented prior to occupation of the development in accordance with the approved details.

- 13) The soft landscaping scheme set out in drawing Ref INL20854-11-Sheets 1, 2 and 3 and drawing Ref INL20854_10 shall be updated to accord with the additional landscaping features shown on drawing Ref 1760/P/01 Rev B. The revised soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Specific triggers

- 14) Prior to installation of external façade surfaces, full details, including samples, specifications, annotated plans and fire safety ratings, of all materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The external façade surfaces shall only be implemented in accordance with the approved details and shall be retained at all times thereafter.
- 15) No above ground new development shall commence, until an updated and detailed surface water drainage scheme for the proposed development, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
 - a) Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event;
 - b) Final modelling and calculations for all areas of the drainage systems for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change; and,
 - c) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

The approved scheme shall be implemented prior to occupation of the development.

- 16) No above ground new development shall commence until an Energy and Sustainability Strategy has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development and shall be maintained at all times thereafter.
- 17) No above ground new development shall take place until details of the existing and finished site levels and the finished floor and ridge levels of the proposed development have been submitted to and approved in

writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Pre-occupation

- 18) Prior to occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. This must include details of management of trees on site. The content of the LEMP shall include the following:
- a) Description and evaluation of landscape and ecology to be managed to include all woodland;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management (The southern and western boundary hedgerows will be protected from the development with garden fences, to prevent inappropriate management by the residents. The hedgerows will be appropriately managed long term by a management company);
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan; and,
 - h) Ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved LEMP shall be implemented in accordance with the approved details.

- 19) A. Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 63 metres to the north and 2.4 metres by 64 metres to the south, as measured from and along the nearside edge of the carriageway to a 1 metre offset, as shown in principle on planning application drawing Ref 151883/PD02 rev A prepared by Vectos. Such vehicular visibility splays shall be retained free of any obstruction at all times.
- B. The width of the access at its junction with the highway shall not be less than 6 metres and shall be provided with two appropriate kerbed radii as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- C. Prior to occupation of the development, footways a minimum of two metres wide shall be provided on both sides of the vehicular access. The footways shall extend from the site around the bellmouth junction, include a dropped kerb pedestrian crossing point and tie in with the existing footways on Southend Road.

- D. Prior to occupation of the development the internal estate road and footways shall be constructed as shown in principle on planning application drawing Ref 1760/P/01 rev B prepared by Archtech.
- E. Prior to occupation of the development, vehicular turning facilities, as shown on planning application drawing Ref 1760/P/01 rev B prepared by Archtech shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 20) Prior to first occupation of the flats, details of the proposed secure and covered cycle parking for future occupiers of these units shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be made available prior to first occupation of the flats in accordance with the approved details and thereafter permanently retained.
 - 21) No dwelling shall be occupied unless and until the existing bus stops known as Factory Site located on Southend Road adjacent to the site have been upgraded to provide raised Kassel kerbs, associated footway reprofiling, installation of bus stop clearway markings for both northbound and southbound stops, and a dropped kerb pedestrian crossing point provided on both sides of Southend Road in the vicinity of the northbound and southbound bus stops, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority.
 - 22) Prior to the first occupation of the relevant dwelling, a Residential Travel Information Pack (RTIP) for sustainable transport shall be submitted to and approved in writing by the Local Planning Authority. The RTIP shall subsequently be provided to the first occupant(s) of the relevant dwelling prior to first occupation of that dwelling. The RTIP shall include six one day travel vouchers for use with the relevant local public transport operator.
 - 23) Prior to the first occupation of the proposed development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate technical specification) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. No external lighting shall be installed other than in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme.
 - 24) Prior to occupation of the development, a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, shall be submitted to and approved in writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should also be provided. Drainage maintenance shall be carried out thereafter in accordance with the approved details. The applicant(s) or any successor(s) in title must maintain yearly Drainage Logs of maintenance which should be carried out in accordance with any approved

Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

- 25) Prior to occupation a detailed residential refuse and recycling strategy for the development, including the design and location of the refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority. The approved refuse and recycling stores shall be provided before the occupation of the development and thereafter permanently retained.

Pre-completion

- 26) A. The development hereby permitted shall use reasonable endeavours to achieve a Gold award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide.
- B. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development confirming that the agreed standards at A. have been met.
- C. In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) or any equivalent document superseding this Guide which is achievable for the development.
- D. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the relevant Phase of the development, confirming that the agreed standards at C., as relevant, have been met.

For observation

- 27) All works shall take place in accordance with the recommendations set out in the approved Arboricultural Impact Assessment and Method Statement Ref INL20854aia-amsA Rev A dated 10/02/2022 and the associated Tree Protection Plan Ref INL-20854-03 Rev B. Any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No materials, supplies, plant or machinery shall be stored, parked or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work must be replaced with semi-mature trees of the same or similar species in the next planting season, if not sooner.
- 28) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the updated Ecological Impact Assessment (May 2022).

=====END OF SCHEDULE=====