



## 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: 27<sup>th</sup> March 2019**

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**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National Planning Policy Framework, if the most important development plan policies for determining the application are out-of-date, or if there is not a 5-year supply of housing land, should the proposal trigger a presumption in favour of this development of market and affordable housing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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> 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 decision<sup>1</sup> 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 decision<sup>2</sup> 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 decision<sup>3</sup> 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

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<sup>1</sup> Appeal Ref APP/C1950/W/17/3190821

<sup>2</sup> Document ID20

<sup>3</sup> 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