
Appeal Decisions

Inquiry opened on 14 April 2015

Site visit made on 16 April 2015

by Frances Mahoney DipTP MRTPI IHBC

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

Decision date: 29 July 2015

Appeal A: APP/X1545/A/14/2224678

Land south of New Moor Farm and east of North End, Southminster

- 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 Maldon District Council.
 - The application Ref OUT/MAL/14/00219, dated 11 March 2014, was refused by notice dated 14 July 2014.
 - The development proposed is a residential development of up to 240 dwellings with associated infrastructure, open spaces, landscaping and community land.
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Appeal B: APP/X1545/W/15/3004973

Land south of New Moor Farm and east of North End, Southminster

- 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 Maldon District Council.
 - The application Ref OUT/MAL/14/00939, dated 30 September 2014, was refused by notice dated 13 February 2015.
 - The development proposed is a residential development of up to 220 dwellings with reserve sites for community and medical centre uses, ancillary infrastructure, open space and defined access.
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Decision

1. Both appeals are dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Ltd against Maldon District Council in relation to both appeals. That application is the subject of a separate Decision.

Preliminary matters

3. The Inquiry sat on 14, 15 and 16 April 2015. Appeals A and B both cover the same appeal site¹. Appeal A is for up to 240 dwellings whilst Appeal B is for up to 220 dwellings. Appeal B relates to a planning application submitted

¹ The address of the appeal site on both planning application forms was not helpful in locating its actual position. The address used in the headers above is that shown on the decision notices of the Council which more accurately reflects the appeal site's location.

following the refusal of planning permission for the development covered by Appeal A. The Appeal B scheme seeks to respond to the concerns of the Council set out in the reasons for refusal relating to the application the subject of Appeal A. Along with a reduction in the number of dwellings, the proposal also reserves a site for a medical centre use. In essence both appeals raise the same issues and accordingly, in so far as these matters relate to both developments, they have been dealt with jointly² as part of the consideration of these appeals.

4. Both appeals were refused by the Council, amongst other things, on highway grounds relating to the impact of the additional traffic generated by the proposed development on the local highway network and the free flow of traffic and highway safety. Additional information was submitted as part of the planning application in relation to Appeal B to supplement the Transport Statement for the planning application of Appeal A. The transport evidence is to be read across both appeal documents. However, following the independent assessment of the transport evidence by the Council's consultant, and a site visit by members and officers, having regard to advice and taking into account paragraph 32 of the National Planning Policy Framework (the Framework)³, the Council has not defended reasons for refusal No 1 of both Appeals⁴. Therefore, no highway case was proffered by the Council in this regard⁵. However, third parties did persist in their opposition to the proposals on highway grounds and these matters are addressed later in this decision.
5. The appellant company has also been working to address a number of matters relating to the securing of the provision of infrastructure related to the development. Two⁶ signed and completed unilateral planning obligations under section 106 of the Town and Country Planning Act⁷ (UUs) were submitted at the Inquiry dealing with the following matters;
 - the provision of affordable housing;
 - the provision of open space and community reserve site;
 - the formation of a management company providing means and administrative devices to manage and maintain the open space;
 - commuted sum for the implementation of the travel plan;
 - commuted sum towards school transport;
 - commuted healthcare contribution (both appeals), including provision of land for a medical facility (Appeal B only); and
 - provision and maintenance of a footpath through Pandole Wood.
6. I shall return later to the provisions secured by the UUs, which are material considerations in these cases.

² Unless specifically identified to the contrary.

³ 'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'.

⁴ Planning Committee resolved to withdraw the highway related reasons for refusal on 12 March 2015.

⁵ Maldon District Council's reasons for not opposing the above appeals on highway ground – Inquiry Doc 1.

⁶ One relating to Appeal A and one to Appeal B.

⁷ Inquiry Docs 4 & 5 respectively.

Main Issues

7. From the evidence before me, including all that I have seen and read, the main issues which are common to both cases are:
- the effect of the proposals on the character and appearance of the area, having regard to national and local planning policy on the location and provision of new housing;
 - effect on the special interest and significance of the Scheduled Ancient Monument;
 - effect on the free flow of traffic and highway safety;
 - whether the proposals would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development, in particular that relating to health provision;
 - and, in light of the above, whether the appeal proposals constitute sustainable development.

Planning Policy/Housing Land Supply

8. The development plan includes the Maldon Replacement Local Plan 2005 (RLP) which covers the period from 2001 to 2008. However, the RLP pre-dates the Framework. Therefore, paragraph 215 of the Framework is engaged, setting out that the weight to be given to relevant policies, in such existing plans, depends on their degree of consistency with those within the Framework.
9. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. It identifies that Councils should ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of either 5% or 20% (moved onward from later in the plan period), to ensure choice and competition in the market for land.
10. It was common ground at the Inquiry that the Council was unable to demonstrate the provision of five years worth of deliverable housing land, measured against their housing requirements⁸. However, it was explained that as part of the Maldon District Local Development Plan (LDP) Examination, a Housing Implementation Strategy⁹ had been produced. This showed an increase to 2.8 years of housing land supply¹⁰. The Council maintained that, with the latest strategic housing allocations in the LDP, it would be able to demonstrate 6.1 years worth of housing land supply. This was on the assumption that the housing allocations and associated phasing strategy were found to be sound by the Examining Inspector.
11. The interim findings of the Examining Inspector on the soundness of the Council's draft housing policies were anticipated shortly after the close of this

⁸ Mr Tai Wai Tsui's proof promotes only an initial 1.8 year supply of housing land available - paragraph 4.2.

⁹ Dated January 2015 – Appendix 2 to Tai Wai Tsui proof.

¹⁰ Confirmed by Mr Sung (with a 5% buffer) in evidence-in-chief.

Inquiry¹¹. Initially, the Council sought a deferment of the Inquiry. Subsequently, it was requested that the Inquiry be kept open until after the interim findings were released¹². They considered that if the Inspector's interim conclusions stated that he was satisfied that the housing policies, including the strategic housing allocations, were sound the Council would then be in a strong position to demonstrate that a five year housing land supply existed¹³.

12. However, there was no guarantee that the Examining Inspector would find the LDP sound. Moreover, whilst the Council had the opportunity to promote their case based on having more than a five year supply of housing land at the Inquiry, they did not adduce evidence to the contrary of the agreed position of deficiency as part of their promoted case. The whole of the Council's appeal evidence was predicated on the agreed position ie that of no five year supply.
13. On the basis of the following two factors the Inquiry closed upon the completion of the evidential cases of all parties:
 - the appellant was entitled to a speedy hearing and determination of the appeal proposals; and
 - as decision-maker I would, in any event, be obliged to have regard to relevant material matters that occurred after the close of the Inquiry up to the date of the decision, under the terms of *Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government* [2013] JPL 1145 judgement.
14. Following the close of the Inquiry, the Examining Inspector issued his interim findings on the 8 May 2015. These were, in essence, that the LDP had a number of serious deficiencies in relation to soundness, so much so that he could not recommend adoption of the Plan in any future report¹⁴. He did not comment on housing matters specifically, considering them to be neither relevant nor helpful to the position in which the Council found themselves.
15. In respect of their approach to defending these appeals, the Council placed considerable weight on the anticipated conclusions of the interim findings of the Examining Inspector in respect of housing land supply and the strategic allocations. Those conclusions have, in the event, not advanced the case for the Council in respect of their passage to a positive position on the five year housing land supply. Notwithstanding the terms of LDP Policy S2 which deals with strategic growth and sets out the objectively assessed housing need for the District¹⁵, the Council accept¹⁶ that, even though proactive progress is being made to bring forward the allocations of the LDP, their overall position on housing targets etc remains unchanged and they cannot currently demonstrate a five year supply of housing land. At the Inquiry, the Council also confirmed it was not relying on any prematurity argument in this appeal¹⁷.

¹¹ 8 May 2015.

¹² Maldon District Council's further submissions on the option of keeping the Inquiry open – Inquiry Doc 3.

¹³ Council's Planning Policy Advice Note – Section 3 – Wheeler's appendix E.

¹⁴ The fundamental obstacle to the finding of soundness related to the provision of travellers' accommodation – Inquiry Docs 22 & 24.

¹⁵ The appellant company still has an outstanding objection to the terms of this policy.

¹⁶ Inquiry Doc 23 – Council's letter dated the 4 June 2015.

¹⁷ Mr Sung agreed in cross-examination that the proposed developments would not harm the emerging LP, particularly in respect of rural allocations (LDP Policy S2) which are set at 420 dwellings over the plan period, as if permission was given before adoption of the LDP then the identified allocation would remain unaltered, but there would be no benefits either.

16. LDP Policy S8 is the main policy promoted by the Council within the LDP which deals with settlement hierarchy and development outside of defined settlement boundaries. It groups settlements by size and function, although the hierarchy does not in itself dictate the levels of growth for individual settlements¹⁸. Southminster is classified as a larger village with a limited range of services and opportunities for employment, retail and education. They serve a limited local catchment and do have access to public transport. In essence, the aim of the policy is to protect the countryside for its intrinsic value, character and attractiveness. The settlement boundary for Southminster has not changed materially within the LDP from that within the RLP¹⁹.
17. The Framework acknowledges that it is highly desirable that local planning authorities should have an up-to-date plan in place. The Council are working towards achieving this goal but the uncertainty that the interim findings of the Examining Inspector²⁰ has applied to the current timetable for the adoption of the emerging LDP²¹, and the lack of confirmation of compliance with the terms of the Framework diminishes the weight that can be attributed to the plan policies.
18. I have taken into account that the Council has adopted the pre-submission LDP as a material consideration for decision making. This does not, however, elevate the plan to a status comparable with that of development plan policy.
19. RLP Policy S1, which directs development to sites within development boundaries²², was based on evidence from the Structure Plan from 2001 and the now revoked Regional Strategy. The appeal site lies adjacent to, but outside of the settlement boundary of Southminster. The specified village settlement boundary would have been fixed, having regard to the need to accommodate development planned over the plan period. Logically then, post 2008, these boundaries would have the effect of constraining development, including housing, within these settlements.
20. Therefore, by implication, as the Council is currently unable to demonstrate a five year housing land supply, the RLP defined settlement boundaries would have the effect of constraining development, including housing, within settlements. On that basis, with reference to para 215 of the Framework, the settlement boundaries are out of date, as is RLP Policy S1.
21. RLP Policies S2 and H1 are relevant to development outside development boundaries. Their overall objective is to protect the character and amenity of all countryside outside the defined development boundaries. No case was promoted that the appeal site did not form part of the countryside setting of the village and I have considered it accordingly.
22. This policy approach does reflect the spirit of the terms of the relevant core planning principle of the Framework, that being to recognise the intrinsic character and beauty of the countryside²³. It is, nonetheless, inextricably linked with the constraining effect of the settlement boundaries on the housing

¹⁸ The hierarchy will help to inform the Council's future development strategies, including the production of a Rural Allocations DPD.

¹⁹ Mr Sung confirmed this in evidence.

²⁰ Particularly as no findings were made in respect of the housing policies.

²¹ Local Development Scheme indicates the adoption of the LDP late 2015, but the adoption date is now likely to be subject to significant slippage – Inquiry Doc 18.

²² Including Southminster.

²³ Paragraph 17, bullet point 5 of the Framework.

requirement. Therefore, I consider RLP policies S2 and H1 are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework and I shall appraise the weight to be afforded to them accordingly²⁴.

Reasons

The appeal site/proposals

23. The appeal site is some 9.52 hectares of open green field, agricultural pasture land. It lies on the eastern edge of Southminster. The village has a pleasant character mainly based on its residential nature, although the Maltings Industrial Estate to the south of the appeal site does offer local business and employment opportunities. The village has a range of services and facilities including a primary school, post office, food store, village hall and recreation ground. It also has public transport links to local settlements and urban areas including a train station which links through to London Liverpool Street.
24. The appeal proposals are in outline with only access to be considered. However, illustrative development framework plans for each proposal²⁵ show a potential layout in conceptual terms, with a single point of vehicular access at the northern end of the development area and a main distributor road bisecting the site from north to south. An area of open space is shown adjoining Pandole Wood²⁶ to the south-east. The existing line of substantial mature trees which cross the appeal site from west to east, delineating the line of one of the public footpaths which cross the site, would be maintained. I heard evidence that these footpaths are well used and my site visit experience confirmed this assertion. Whilst there is a difference between the number of dwellings proposed between Appeals A and B, other than the inclusion of the land for a medical facility in Appeal B, the overall concept of the developments differ little²⁷. These development framework plans illustrate how the proposed developments might be accommodated. Both the Council and the appellant company have considered the proposal on this basis and I similarly have taken them as informing my consideration of the development.

Housing need

25. The Council accept that the housing requirement within the RLP is out of date and that they do not have a five year supply of housing land²⁸. Whilst a lack of a five year supply of deliverable housing land does not provide an automatic 'green light' to planning permission, a balance must be struck.
26. The Council accept the shortfall is significant and that the weight to be attributed to that shortfall should be substantial.

²⁴ Mr Sung accepted in cross-examination that the relevant housing policies of the development plan were out of date.

²⁵ Appeal A 5541-L-103 G, Appeal B 5541-L-103 H.

²⁶ Scheduled Ancient Monument.

²⁷ The framework for Appeal B shows a more substantial belt of trees along the eastern and northern boundaries (buffer strip) than in the case of Appeal A. However, the extent of the landscaped buffer strip could be secured by condition and so I have considered both appeals on the basis of a similar approach to future boundary planting.

²⁸ Any difference between the parties' respective figures in the extent of their indicated land supply is of little consequence.

27. The shortfall must also be considered in the context of a response to the need for affordable housing which is an integral part of the Council's housing strategy. Historically over the last 10 years performance in relation to the delivery of affordable homes in the District has been significantly below that anticipated within the RLP. Delivery has averaged only 28 units per year over the last 3 years. Meeting all affordable need would require more than a fivefold increase in delivery²⁹. There is an acute estimated level of need in the District, with past completion levels representing a serious under-provision. The Council accepted that even with their local plan doing its best to meet the need for affordable homes, that need cannot be met and substantial weight should be given to this deficiency³⁰. The appeal proposals include a 30% affordable housing element secured by means of the terms of UUs which would represent a benefit to be accorded substantial weight.
28. In these circumstances, it is reasonable to conclude that the appeal proposal would contribute significantly to the unmet housing need within the District and this should weigh positively and heavily in the balance of the overall decision.
29. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered up to date if a five year supply cannot be demonstrated, as in this case. This has consequences for the reliance that can be placed on those policies in reaching a decision on these appeals. The Framework has, at its heart, a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision taking. Framework paragraph 14 confirms that for decision taking, where the relevant policies of the development plan are out of date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole or specific policies in the Framework indicate development should be restricted. It is necessary then to consider whether the impacts arising from granting planning permission are adverse and whether they would significantly and demonstrably outweigh the benefits of that permission. This is a further consideration to be weighed into the balance of my decision.

Character and appearance

30. Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by (amongst other matters) protecting and enhancing valued landscapes, although the term 'valued landscapes' is not defined. Whilst the landscape here is clearly valued by local people, it does not include specific attributes or landscape features which would take it out of the ordinary sufficient for it to amount to a 'valued landscape' in terms of the Framework.
31. That said, landscape is about the relationship between people and place. It provides the setting for our day-to-day lives. This is a landscape in which people spend their leisure time. They experience it both up-close and at a distance.
32. Cripplegate/Tillingham Road are the northern gateway into the village. The open fields and mature trees and hedgerows establish the verdant nature of

²⁹ Strategic Housing Market Assessment Final Report September 2014 paragraph 14.11.8 – Inquiry Doc 9.

³⁰ Mr Addae-Bosompra in cross-examination.

the countryside setting of the village. Cripplegate is exclusively ribbon development with the main built-up edge of the village being along North End. With open views across the appeal site from the junction of North End and Cripplegate (where the public footpaths fan out), and passing along Cripplegate in either direction, one is aware of the wider open countryside immediately behind the linear road frontage development on both sides of the road. There is a distinct sense of leaving the built up area of the village for the more tranquil, open countryside beyond. This is particularly so when travelling along Tillingham Road, towards Southminster, when open views across the arable landscape are achievable.

33. The appeal site lies outside the built up area of the village on the edge of the Tillingham and South Latchingdon Coastal Farmlands landscape character area. It comprises two arable fields enclosed, in the main, by mature indigenous hedgerows punctuated by mature trees. The two fields are divided by a broad green corridor accommodating the line of the public footpath and the distinct and striking line of mature trees which stride across the appeal site and on into the wider landscape. These are prominent and characterising features of the immediate landscape setting. These can be seen for some distance when viewed from the east and north and serve as a striking local landmark.
34. Beyond the appeal site off to the east is the wide panorama across the Dengie Marshes to the coast. These are large scale, low lying, flat, open expanses which can best be described as a 'big sky' landscape which extends out to the sea. The appeal site sits on a low ridge above the Marshes. From both North End and Cripplegate this facilitates open views, particularly from along the central green, tree-lined corridor of the appeal site, which lift the spirit and is a distinct impression of the wider countryside setting of the village and the expanse of the marshland landscape beyond.
35. Within the Dengie Marshes landscape the Middlewick Wind Farm is prominent in some views, including that from the public footpaths. However, the presence of these large, isolated utilitarian features, in this location, do not diminish the quality of the landscape or the views across it. They are not uncommon features in the British landscape and, to some extent, become less prominent over time due to their familiarity as landscape features. Their presence does not justify urbanising development in the countryside.
36. The immediate landscape of and around the appeal site is pleasant, attractive and open. The wider landscape to the east has a more remote and tranquil character and is a distinguished and attractive landscape. The appeal site is within a landscape of quality, defining the village setting and, as a ridge location, occupies an area of transition between the built up area and the flatter more open landscape to the east. In my view the appeal site has a stronger more distinct relationship with the open countryside surroundings of the village, stretching out to the flatter more open landscape to the east, than with the built up area. Views across the appeal site from the footpath junction of Cripplegate and North End, along the line of the parkland trees are particularly defining in this regard.
37. As a gateway location on the approach to the village, development on the appeal site has the potential to alter the character and appearance of the locality, extending the hard built up area of the village out into the open countryside. The applications are in outline, but the illustrative development

framework plans indicate how a development for 240 (Appeal A) and 220 (Appeal B) dwellings respectively, could be accommodated on the site in conceptual terms. It is proposed that the scheme could retain, manage and enhance existing boundary vegetation, as well as introduce informal open space to create visual boundary buffers. It should improve and complement the character and quality of the area³¹.

38. The appellant company accepts that the developments would, initially, be more visible than existing buildings at the edge of Southminster in the wider landscape and argued that this would result in a limited degree of landscape harm in the short term³². In my view, however, this assessment does not go far enough. I have no doubt that the extent, scale, massing and concentration of development in either scheme, would be readily discernible from the approaches to the village as well as from the footpaths which cross the site and when viewed in the landscape. The level of development proposed, concentrated within this near roadside field location would have a high degree of visual prominence.
39. Even taking into account the extent of the proposed open space, the surrounding landscape belt and the existing hedgerows and trees, developments of the scale proposed would present a visually intense concentration of built form which would extend out the hard urban edge of the settlement boundary.
40. In light of the above, I consider that the area of the appeal site has a medium susceptibility to change and a medium landscape value. The green corridor and magnificence of the parkland trees would be almost entirely subsumed into the spread of both the proposed developments. The extent of the landscape buffers and planting indicated necessary to screen and soften the impact of the development proposals, reinforces my views about the inappropriateness of the location³³. The developments would amount to urban sprawl which would not enhance the countryside, but erode its rural character, dominating the natural landscape. They would also unacceptably diminish the intrinsic character and beauty of the countryside³⁴. This carries significant weight in my consideration of this appeal, being relevant to an assessment of the environmental aspect of sustainable development.
41. In reaching this view I have taken into account Mr Sung's concession that much of the new housing development in the District over the next plan period would be likely to be in open countryside. Be that as it may, the selection of sites is not an appropriate matter for consideration as part of these appeals, suffice to remark that the harm to the countryside is a matter being appraised as part of the selection process. Whilst I appreciate there may well be some harm somewhere in the District as and when residential allocations come forward, this is not a good enough reason to off-set or diminish the harms I have identified above in relation to these appeals which are site specific.

³¹ The illustrative development framework plans do not give me confidence as to how developments of the scale proposed could be appropriately accommodated so as to safeguard the character and appearance of the countryside.

³² Appellant Company closing.

³³ For developments of the size proposed.

³⁴ The Framework Paragraph 17.

Scheduled Ancient Monument

42. Pandole Wood is a listed Scheduled Ancient Monument (No 212)³⁵. Such designated heritage assets are afforded the highest significance³⁶. Its significance centres on the Iron Age earthworks associated with settlement and defensible boundaries and later Roman defences of some complexity contained within the boundaries of the wood beneath the tree canopy. It is in private ownership, independent of the appellant company. The Wood has suffered in recent times from damage caused by unauthorised access, including BMX biking and metal detecting. English Heritage (now Historic England) suggests that the proposed developments, amounting to a substantial amount of housing in close proximity to the Wood, would be likely to lead to an increased interest in the site and an increased degree of unofficial access which could cause further harm to the designated heritage asset. These are reasonable assumptions to make. English Heritage advises that to off-set any harm which might arise from the appeal proposals, the site should be positively managed for its conservation interest via a management plan with funds secured³⁷ for a regular management cycle³⁸.
43. The appeal schemes include the provision of an informal footpath from the southern edge of the appeal site through Pandole Wood to Hall Road, close to the train station³⁹. The appellant company, through the terms of the UUs, would pay a contribution towards the costs of the provision and on-going maintenance of the footpath. However, the agreement only requires that the money be paid to the Council before the occupation of any dwelling. The owner of Pandole Wood is not a party to the UU. Whilst Pandole Wood may be under management with an English Heritage agreement, this does not in itself secure the proposed footpath, sufficient to mitigate any potential harm from increased use of the land by future occupiers of the proposed development. As such, the arrangement before me does not secure the actual provision of the footpath.
44. In any event, at the Inquiry, it was not satisfactorily explained how the proposed footpath would mitigate the increased interest and degree of unofficial access generated by the proposed development, although I acknowledge that there may be some benefit in regular surveillance of the Wood as pedestrians pass along the footpath. Nonetheless, there would still be nothing to confine walkers, dog walkers, cyclists and others to the footpath.
45. I do not doubt that the proposed development would generate increased interest in the Scheduled Ancient Monument. However, I am conscious that, in order to mitigate impact on the Scheduled Ancient Monument, English Heritage required a management plan with funds secured⁴⁰ for a regular management cycle. The proposed footpath could certainly be part of that management plan, but it would need to be presented in the context of a plan which specifically seeks to mitigate identified harms to the Scheduled Ancient Monument. Funds

³⁵ It is also the subject of a Tree Preservation Order (TPO/1/79).

³⁶ The Framework paragraph 132.

³⁷ Via a section 106 agreement.

³⁸ Ms Longman confirmed in evidence-in-chief that the Council relied on the evidence of English Heritage in relation to the impact of the proposals on the Scheduled Ancient Monument – this amounts to their letters set out at Appendix 2 of the Longman proof.

³⁹ It is unclear whether the proposed footpath route shown on Plan 2 of the UUs passes through the tree covered expanse of Pandole Wood.

⁴⁰ Via a section 106 agreement.

are secured for the provision and on-going maintenance of the proposed footpath⁴¹. If other works within a management plan were identified, funds could not then be diverted to those other appropriate aspects of the Wood's management. I have considered whether it would be possible to deal with the submission and implementation of a management plan by condition⁴² but, as Pandole Wood is outside of the control of the appellant company, such a requirement would need to be secured by another means.

46. In terms of its setting, the space in which Pandole Wood is experienced is essentially the open countryside to the east and north⁴³, Hall Road to the south, the Malting Industrial Park to the west and in wider views from along Station Road and from the houses along New Moor Crescent and North End. It is an important visual feature on the edge of the built up area of the village, adjoining open countryside. However, the physical mounds and bumps of the earthworks which have justified its designation as a Scheduled Ancient Monument are contained within the woodland. The proposed new houses would certainly change the wider setting of Pandole Wood bringing development closer from the north. However, the inclusion of green open space, as indicated on the Illustrative Development Framework Plans, immediately adjoining the Wood would serve to diminish the overall impact of built development on the features of importance within the Scheduled Ancient Monument⁴⁴. The degree of intervisibility between the main built up area of the new developments and the features of significance within the Wood would be minimal, maintaining an appreciation of the Scheduled Ancient Monument. However, the location of the proposed foul pumping station, being likely to be close-by to the elements of significance within the Wood, would impact on their setting. That notwithstanding, as part of the reserved matters further details of this part of the development would be required and its impact would be properly assessed at that stage with the option to seek an alternative location.
47. Crop marks and linear features of archaeological interest have been identified close by to the appeal site at New Moor Farm⁴⁵. These are subterranean features relating to a pre-historic settlement. The presence of possible associated heritage assets in the form of archaeological remains within the appeal site, requires investigation. A condition requiring the implementation of an appropriate archaeological mitigation strategy could be imposed to secure such investigations and works.
48. Therefore, taking into account the present circumstances it is evident that the proposed mitigation measure intended to overcome the harm to the Scheduled Ancient Monument is not secured or justified. As a result, there would be harm to the special interest and significance of the heritage asset. Even were it to be secured, I still have concerns relating to its mitigating benefits as users would not be confined to the path and could still roam the Wood. Consequently, the appeal proposals would not sustain or enhance the significance of the heritage asset and would undermine its conservation, findings to which I give considerable importance and weight⁴⁶.

⁴¹ Through the terms of the UUs.

⁴² Even the use of a Grampian type condition, in the circumstances of the land ownership and the lack of clarity in relation to the Wood's owner's commitment to any management plan, I do not consider this would have been an appropriate or robust means of delivering such a mitigating element of the proposals.

⁴³ Including the nearby public footpaths.

⁴⁴ This could be secured by condition.

⁴⁵ Independent of the Pandole Wood Scheduled Ancient Monument.

⁴⁶ Paragraph 132 of the Framework places great weight on the conservation of designated heritage assets.

Highway matters

49. Concern has been expressed by residents in relation to the impact of traffic generated by the proposed development on the existing highway network. However, the highway authority is satisfied that the existing road capacity is sufficient to accommodate the additional flow from the new development⁴⁷.
50. Local concern centred on firstly the methodology of the relevant transport assessments in respect of the time of year in which they were carried out, and secondly on the effect on the flow of traffic through the village with its residential streets congested by on-street parking.
51. The first transport assessment (Appeal A) was carried out in Spring 2013. This obviously did not take into account the harvest period when, I heard anecdotal evidence that, large agricultural machinery as well as lorries from the nearby straw merchant pass through the village. Therefore, the transport assessment was amended as part of the submission in relation to the second planning application (Appeal B), including survey results undertaken in August 2014. These showed that traffic movements during the 'harvest' period were less due to school holidays occurring at the same time.
52. Taking into account the totality of the transport evidence the highway authority is satisfied that the proposed roundabout access arrangements would provide a feature which would slow traffic to the appropriate speed and would not unacceptably impact on capacity or road safety in the vicinity. Junction modelling for the proposals also showed that the assessed existing junctions within Southminster, and the proposed roundabout access would continue to operate well within capacity beyond the assessed growth period. No concerns were raised by the highway authority regarding congestion and the capacity of roads within Southminster to accommodate growth from the proposed development.
53. I heard anecdotal evidence that there was already an issue for vehicles travelling along North Street and Queensborough Road, where parked cars impeded the free flow of traffic. I drove the route myself both in the evening and late afternoon. I did experience some waiting time to allow traffic coming in the opposite direction along North Street to pass, but the wait was minimal and this is not an unusual situation in towns and villages where Victorian streets have to accommodate on-street parking. I agree with Councillor Beale that this is a matter of traffic management and not necessarily bad driving. However, it is evident from the transport assessment that the appeal proposals would not significantly add to any conflicting traffic flows along North Street, or the other roads in the immediate vicinity. Therefore, the management of traffic in the village is a matter for the highway authority, Council, Parish Council and residents to pursue by other means.
54. The evidence before me leads me to the views that the appeal proposals would be located where there is physical and environmental capacity to accommodate the type and amount of traffic generated. The proposals also would improve walking and cycling routes to nearby services, facilities and public transport. On that basis, I consider the residual and cumulative impacts of the proposals

⁴⁷ Based on the Transport Assessments relating to both Appeals along with the advice of the Council's independent advisor and a site visit by members.

would not be severe⁴⁸. In this way the terms of RLP Policy T2 would not be compromised.

Health provision

55. The appeal proposals would generate additional residents who, quite reasonably, could expect to access local health provision. The problem, as eloquently put by Ms Morley, Practice Manager for the William Fisher Medical Centre⁴⁹, is that the existing practice, whilst still accepting new residents, is working at capacity. With new housing developments in Southminster currently under construction, the residents of which the Practice has agreed to take on, extreme pressure on the working of the Practice and the ability for residents to access health services will ensue. The responsible body in respect of health provision in Southminster is NHS England. Ms Morley was unaware of any forward planning or strategy in place for the development of healthcare services in this area by NHS England or the Council.
56. The evidence of Mr Addae-Bosomptra, on behalf of the Council, was that with no health facility in place to ensure access to health provision for the future residents of the development, permission should be withheld until such time as an appropriate medical facility was provided, ideally before the new houses were occupied. He suggested an embargo on further development in the village until such time as this deficiency had been addressed. He also suggested, as a solution, the imposition of a planning condition that work would not commence until such time as a medical centre had been built.
57. However, the provision of a new medical centre to serve not only the future residents of the proposed developments but also the rest of the village, would be a disproportionate and unjustified response, out of scale and kind to the development proposed, which would place an onerous burden on the appellant company⁵⁰. Moreover, a Council imposed embargo on development would frustrate development and would not further Government aims to boost the supply of housing.
58. The responsibility for health provision lies with NHS England. The appellant company agreed to a health care contribution as promoted by NHS England paid through the terms of the UUs. However, the calculation of this contribution was not adequately explained. In addition, no evidence was submitted by NHS England that further provision was required over and above the contributions secured. No evidence was provided either, of a specified project or area of service improvement which has been identified which could be considered to be directly related to the development, other than a general capacity issue. The respective sums would not be sufficient to build a new medical centre, and there was no suggestion that there were pooled contributions available from other new developments in Southminster to either contribute to a new medical centre, or that there was a strategy in place either with NHS England or the Council or in partnership to address this situation.

⁴⁸ The Framework paragraph 32.

⁴⁹ Provides local access to GP/NHS services for the residents of Southminster. It is located in the centre of the village, in a rented building, on a physically very contained site. Both of these factors make the extension of the building problematic.

⁵⁰ The Framework paragraph 204.

59. From the evidence I heard, it seems to me that the proposed development would generate a need for additional local health services. However, whilst I heard anecdotally that existing facilities were stretched and would continue to be so possibly to a point of closing the practice to new patients, the response of the responsible body was that an appropriate financial contribution would mitigate the effect of the appeal proposals on health care services (although as set out above, it was not clear how). The appellant company has responded to the request for such a requirement. Also, in response to the concern of the Council, land has been reserved for a medical facility within Appeal B⁵¹. I heard from Ms Morley that the William Fisher Medical Centre has no money to build a new centre even if the land were a gift. NHS England favours schemes involving the rental of premises rather than new build, although there is some money available for capital projects, but this is administered by NHS England on a priority basis. There was no evidence that NHS England would support or fund a new medical centre in Southminster.
60. In closing the Council highlighted that in their view no solution to this problem had been identified and that this was not an acceptable state of affairs. I agree. The stifling of development due to a perceived capacity issue would stifle the provision of much needed housing, including affordable housing in the District. However, the appellant company has complied with the request from NHS England to provide a healthcare contribution and that is all that has been asked of them by the relevant provider of that service. Whilst I acknowledge the concerns of the practitioners at the William Fisher Medical Centre and others, the weight of evidence is that NHS England is content that such a contribution would address the impact of the development appropriately. On this basis it is only for me to consider whether the extent of that contribution is justified or not.
61. Paragraph 204 of the Framework sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. This is in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations.
62. Taking into account the lack of direction/details from NHS England in respect of the development of health provision in Southminster and the immediate locality, I heard nothing that gave me confidence that the contribution requested was likely to be spent in accordance with the relevant tests. For this reason I do not consider it reasonable to take this aspect of the UUs into account. The lack of a NHS plan where the available funding would be appropriately targeted is a serious flaw which undermines any justification for the contribution. Further, without an official explanation for and commitment to build a new health centre in Southminster, the requirement for land for such provision would be a benevolent offer on behalf of the appellant company, but not justified on the evidence before me⁵².

Contribution to the achievement of sustainable development

63. There are three dimensions to sustainable development: environmental, social and economic. These roles should not be considered in isolation, because they are mutually dependant.

⁵¹ Subject to a reserve site period of 5 years from the date of commencement of development.

⁵² However, such land reserve does form part of the proposed scheme as part of Appeal B.

Economic role

64. The proposal would enhance/contribute to the economic role by the creation of jobs associated with the construction stage. New residents are also likely to support existing local services and businesses, with a possible increase in local jobs as a result.
65. In addition, the new dwellings would offer homes to residents who would contribute to the labour supply, some of whom would be likely to be local.
66. There is a good prospect that the proposed housing could be delivered on the site within five years⁵³. In addition, future Council tax payments and New Homes Bonus would be spent in the area. These are positive contributions to fulfilling the economic role which, in combination with the other economic benefits, I ascribe considerable weight.

Social role

67. The proposed housing would fulfil a social role by contributing to the support, strengthening, health and vibrancy of the local community by providing towards a supply of housing to meet the needs of present and future generations. This would include much needed affordable housing⁵⁴.
68. The proposal would also be likely to provide a mix of housing which would meet the social needs of the population of the District and in particular that of Southminster.
69. The development proposals also include the enhancement of the existing public footpaths which cross the appeal site. These would serve to maintain access for recreational purposes promoting the wellbeing of the local population.
70. Those new residents to the village would also have the potential to add to the vibrancy of the village by introducing new energy and enthusiasm. They could expand participation in local events and have the potential to introduce new skills and interests, as well as engagement with local governance.
71. In addition, the proposal would bring with it contributions towards open space, recreation, in particular play areas, and a community reserve site. All of these are secured by the terms of the UUs and these contributions have been shown to be necessary or justified to mitigate the effects of the new development in accordance with Regulation 122 of the Community Infrastructure Levy Regulations⁵⁵.
72. These elements would enhance local facilities and support the well-being of the local community and warrant a positive weighting of substance.

Environmental role

73. *Location* – As a larger village identified within LDP Policy S8, Southminster is a settlement where the Council will support sustainable developments within the defined settlement boundaries. The range of facilities and services in and around the village, along with ready access to public transport⁵⁶, are factors which have no doubt influenced the classification of the village by the Council

⁵³ Inquiry Doc 11.

⁵⁴ Secured under the terms of the UUs – Inquiry Docs 4 & 5.

⁵⁵ Inquiry Doc 7.

⁵⁶ Bus service and train service.

as being capable of supporting new residential development. In very recent times planning permissions have been granted for other developments around the village. Although the appeal site lies on the edge of the settlement, it is within walking distance of many of the village facilities, including the train station⁵⁷. Therefore, in respect of location and a movement to a low carbon economy, the sustainability of the appeal site is positive.

74. *Highways* – The future provision of through footpaths and cycleways as part of the reserved matters, as well as the implementation of the travel plan and off-site improvements would all encourage less car dependency and use of sustainable transport modes, making a positive contribution to the environmental role of the development.
75. *Living conditions of nearby residents* - The proposed site is sufficiently distant to neighbouring dwellings, so as to minimise any unacceptable harm to the outlook or privacy of existing residents. The Illustrative Development Framework Plans submitted give me confidence that a layout can be produced as part of any reserved matters application which would appropriately accommodate a new housing environment juxtaposed with that existing in this regard. The enhancement of existing boundary hedgerows and trees, would also serve to soften the impact of the new dwellings on the amenities of neighbouring residents.
76. The proposed new roundabout and access road would change the nature of Cripplegate in the vicinity of Nos 21 and 32, which would be some of the closest properties to these new highway features. However, they would be sufficiently distant to the existing dwellings and, along with the use of sympathetic boundary treatments, including landscaping, the impact on nearby residents could be minimised.
77. *Surface and foul water drainage* – The submitted flood risk assessment demonstrates that surface water management is achievable in principle without causing flooding on or off the appeal site. A condition requiring the submission of a surface water drainage scheme would be sufficient to deal with this issue. Surface water run-off could be controlled under the terms of a planning condition requiring the submission of a surface water drainage scheme were the appeals to be allowed. In respect of foul water drainage there is sufficient capacity within Southminster to accommodate the proposed developments⁵⁸.
78. *Open space/play areas/community reserve site* – The proposal also includes the provision of on-site open space, including play areas, a community reserve site, as well as enhancing the existing public footpaths and hedgerows and trees and creating a tree planted buffer zone. The long term management of these areas would improve the biodiversity of the location⁵⁹ as well as offering opportunities for recreation and improvements in individual's well-being⁶⁰. These factors positively contribute to the overall sustainability of the appeal site, with some provision within the UU being made for long-term management.

⁵⁷ At the site visit the walking time to the station was approximately 8 minutes, a reasonable stretch of the legs.

⁵⁸ Confirmed by Anglian Water.

⁵⁹ Including the retention, management and enhancement to improve species diversity and the quality of these habitats.

⁶⁰ These factors cross-over with the Social Role and have been accordingly weighed into both aspects as positive benefits.

79. However, even given the above positive factors in the balance of the environmental role of the proposal, due to the significant identified harm to the character and appearance of the countryside, and to the Scheduled Ancient Monument, in the circumstances of the unresolved and unsecured matter of its management resulting from the impact of the proposed development, these adverse effects would result in considerable environmental detriment.

Overall conclusion on sustainability

80. On balance the adverse harms identified within the environmental role relating to character and appearance and on the Scheduled Ancient Monument, outweigh the environmental, social and economic advantages of the scheme. Therefore, I conclude the appeal proposal would not constitute sustainable development as prescribed by the Framework. Taking into account the golden thread of the presumption in favour of sustainable development which runs through the Framework, I ascribe this finding substantial weight.

Conclusion and balance

81. Sustainable development is about change for the better. The appeal proposal would assist in the provision of much needed housing⁶¹ in the local area and the District in general. This is a highly significant material consideration and carries substantial weight in the context of paragraph 49 of the Framework. It would also have a social and economic role to play in achieving positive growth both now and in the future.
82. However, such benefits would be at significant cost to the intrinsic character and beauty of the countryside and its green, open, pastoral appearance; and there would be, as yet, an unresolved impact on the adjacent Scheduled Ancient Monument. Whilst the identified level of harm to the significance of the designated heritage asset may be less than substantial⁶², it is still significant, even taking into account the public benefits of the scheme⁶³. Such a conclusion of the degree of harm to the heritage asset itself, does not equate to a less than substantial objection to the grant of planning permission. The impact on heritage assets must be given considerable importance and weight. In this instance I find that the adverse effects identified to character and appearance and the designated heritage asset weighs more heavily against the proposal than the identified positive elements.
83. The presumption in favour of sustainable development set out in paragraph 14 of the Framework applies only to sustainable development. Taking this conclusion into account along with all other considerations set out above, including the contribution of the proposal to addressing the shortfall in housing supply, on balance, I conclude that the adverse impacts of the appeal proposal would significantly and demonstrably outweigh the benefits of granting planning permission. Therefore, the appeals should fail.

Frances Mahoney Inspector

⁶¹ Including affordable housing. I afford the deficiency in land supply substantial weight in the balancing exercise.

⁶² Under the terms of paragraph 134 of the Framework.

⁶³ Outlined in the economic, social & environmental roles as well as the provision of housing.

APPEARANCES

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Practice Manager William Fisher Medical Centre
Ward member Southminster
Ward member Southminster, Chairman of
Southminster Parish Council

Leslie Barclay
Duncan Kay
Maureen Sullivan
Paul Stone
Wendy Stamp

Local resident
Local resident
Local resident
Local resident
Local resident

INQUIRY DOCUMENTS

- Doc 1 Maldon District Council's Reasons for not opposing the appeals on highway ground
- Doc 2 Appellant's note on 'keeping the Inquiry open'
- Doc 3 Maldon District Council's further submissions on the option of keeping the Inquiry open
- Doc 4 Signed Unilateral Undertaking date 16 April 2015 Appeal A
- Doc 5 Signed Unilateral Undertaking date 16 April 2015 Appeal B
- Doc 6 Appeal APP/A2470/A/10/2143475
- Doc 7 CIL Compliance Scheduled
- Doc 8 What does Landscape mean?
- Doc 9 Maldon District Council Strategic Housing Market Assessment – September 2014
- Doc 10 Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government
- Doc 11 Performance of appellant company on delivery of development
- Doc 12 Pre-Submission Local Development Plan 2014-2029
- Doc 13 Comments of Senior Conservation and Urban Design Officer
- Doc 14 Appeal APP/P0119/A/12/2186546
- Doc 15 Letter from Council dated 2 April 2015 re housing land supply position
- Doc 16 Statement of Leslie Barclay
- Doc 17 Statement of Duncan Kay
- Doc 18 Local Development Scheme dated February 2015
- Doc 19 Gallagher Homes Limited, Lioncourt Homes Limited v Solihull Metropolitan Borough Council
- Doc 20 Solihull Metropolitan Borough Council v Gallagher Estates Limited, Lioncourt Homes
- Doc 21 Appeal APP/X1545/W/14/3001153

PLANS

- A Southminster Conservation Area
- B Scheduled Ancient Monument (212)
- C Scheduled Ancient Monument (198)
- D Location of North Street and Queensborough Road

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- Doc 22 Letter dated 14 May 2015 from appellant company submitting the Interim Findings on the Maldon District Local Development Plan
- Doc 23 Response letter from Maldon District Council dated 4 June 2015
- Doc 24 Letter from Examining Inspector dated 3 June 2015

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