



Appeal Decision

Inquiry opened on 13 November 2018
 Site visit made on 16 and 17 April 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th June 2019

Appeal Ref: APP/P1560/W/18/3194826

Lifehouse Spa and Hotel, Frinton Road, Thorpe-le-Soken CO16 0JD

- 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 Thorpe Hall Leisure Limited against the decision of Tendring District Council.
 - The application Ref 17/01739/OUT, dated 9 October 2017, was refused by notice dated 24 January 2018.
 - The development proposed is Lifehouse regeneration project comprising the erection of up to 200 dwellings, an 8 acre park, landscaping, access roads and associated infrastructure and ancillary works.
 - The inquiry was held on 13 to 16 November, 20 and 21 November 2018, 16 and 17 April 2019.
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DECISION

1. The appeal is dismissed.

REASONS

The Site and Proposal

2. The red line application site (the site) covers an extensive and irregular area of 21.85 hectares (ha)¹, extending from Thorpe Park Lane and the main line railway north to the access road off Frinton Road serving the hotel and spa. Station Road forms the western boundary. South of a public right of way (PROW) 180-14 the eastern boundary runs along the edge of Hall Row woodland. North of the PROW blocks of land to the south and east of the hotel and spa buildings are included within the site².
3. The planning application was for outline planning permission. Reserved matters were stated to be appearance, landscaping, layout and scale. Approval of access was sought at the outline stage. The details were confined to identifying the location of the access point to the development from Station Road³. A detailed scheme for the site access and for access within the development would be secured by planning condition.

¹ This figure is taken from the signed statement of common ground. The planning statement submitted with the planning application gave a figure of 24.68 ha (paragraph 2.1).

² Site location plan ref 18089se-01 (CD1)

³ Plan 1066 SK01 dated 16 August 2016

4. An illustrative master plan shows the proposed residential units on an area of land of approximately 11.8 ha to the south of the PROW (the housing site). This land is primarily meadow grass and amenity grassland and is currently available for guests at the hotel and spa to use as leisure and amenity space. The probability is that because of physical features the proposed housing would be situated on the sloping ground to the east and that the western side of the land would be open space, incorporating existing water bodies and new balancing ponds. The illustrative layout shows dwellings fronting onto highways including a perimeter road, connecting east west roads and a number of culs-de-sac. The illustrative plan also incorporates a central open space. Buffer planting is shown in two areas north of the PROW, outside the housing site.
5. The proposed off-site highway works originally included the introduction of linked traffic signals in the village at the junction of High Street with Landermere Road and at the junction of Station Road with Frinton Road. During the course of the appeal the proposal was amended to omit traffic signals at the Station Road junction. The package of off-site works now includes: signalisation of the High Street/Landermere Road mini roundabout⁴, alterations to the A133/B1033 roundabout, bus stop improvements including at two stops closest to the proposed site entrance and other minor highway improvements⁵.
6. The current proposal is a modified proposal of an earlier larger mixed use scheme including independent care units, holiday units, business units and health centre that was refused planning permission in June 2017.
7. An important point to note at the outset is that the site is not confined to the area of land south of the PROW. The proposal is put forward as an extension to the settlement, linking the hotel and spa complex, the village and the railway station. The Planning Statement described the proposed development as a mixed use project aimed at supporting both the regeneration of the Lifehouse and the growth of the village through new housing and job creation. The design and access statement and the master plans aimed to show how the regeneration project would integrate the north part of the site around the hotel and spa with the residential development on the land to the south in a comprehensive manner. Nevertheless, the heritage assessment and the landscape and visual impact assessment, when identifying the land, showed on plan the housing site.
8. Some parts of the site to the north of the PROW lie within Thorpe-le-Soken Conservation Area and also form part of Thorpe Hall, a grade II listed registered park and garden (the RPG). The housing site adjoins their southern boundary. Thorpe-le-Soken Station and Maltings Conservation Area lies to the south west of the housing site on the far side of Station Road.
9. Two Tree Preservation Orders (TPO) dating to 1995 cover individual trees, an area of trees and groups of trees on the site and wider Lifehouse site. The protected trees include two groups of oak trees on the northern edge of the housing site and a willow within the body of that site. Hall Row woodland also is protected by a TPO. The Council referred to Hall Row as ancient woodland but later confirmed this was an error. It has been assessed, together with nearby land, as a potential local wildlife site.

⁴ Plan SK14 Rev F

⁵ Plan SK04 Rev C

10. The land within the housing site slopes southwards towards the Holland Brook, south of the railway line. A tributary stream of the Holland Brook, which has been dammed within Thorpe Hall Park to create three ornamental lakes, runs down a shallow valley on the western side of the housing site.
11. The site is some 2.4 kilometres from the Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and RAMSAR site. This is the closest of a number of the European designated sites on the Essex coast and estuaries. Before the inquiry opened the Council and the appellant agreed that an appropriate assessment under the Habitats Regulations was required and that off-site mitigation would be necessary. I was unclear as to exactly what was being proposed and expressed concern that very little information had been submitted to enable an appropriate assessment to be undertaken. In November 2018 the appellant submitted a Report to Inform a Habitats Regulations Assessment, which included more specific proposals for mitigation by means of recreational open space on and near the site and funding towards strategic off-site measures.

Policy

12. The development plan includes the Tendring District Local Plan 2007 adopted in December 2007 (the Local Plan). A list of the saved policies relevant to the appeal proposal is contained within the statement of common ground (dated 10 October 2018). The most relevant policies will be referred to as necessary in my reasoning on the main issues. Local Plan Policy ER16 is directed at the provision of new tourist and leisure facilities and does not apply. Similarly Policy ER3, which is directed at the protection of employment land from redevelopment or change of use to a non-employment purpose, is not relevant.
13. A new Local Plan for Tendring District is under preparation. Section 1, covering strategic matters, has been prepared jointly by the North East Essex Authorities (NEAs). Section 2 contains policies relating solely to the District. Examination hearings into the emerging Local Plans⁶ started in January 2018 but have been suspended. The Inspector advised the NEAs in June 2018 that the garden community proposals in Section 1 were unsound and that in his view the NEAs had three options for taking forward the Section 1 and Section 2 plans. The NEAs decided to proceed broadly along the lines described as Option 2 and to carry out additional work on the evidence base and Sustainability Appraisal. The further work will enable the NEAs to decide whether they wish to pursue or amend the Plan strategy. As it currently stands the expectation is that the revised evidence base and additional sustainability appraisal will take place in mid-summer 2019, with hearing sessions taking place in the autumn of 2019. In view of this position, the emerging plan has limited weight.
14. The National Planning Policy Framework February 2019 (the Framework) replaces the first National Planning Policy Framework published in March 2012 and includes minor clarifications to the revised version of the document published in July 2018.

Main Issues

15. The main issues are the effects of the development on:

⁶ The Section 1 Plan was not prepared as a joint development document, rather each of the NEAs submitted a separate Local Plan containing a Section 1 and a Section 2 for examination, albeit the content of Section 1 is identical in each Local Plan.

- Meeting the housing needs of the district;
 - The local economy and employment;
 - Settlement form, landscape character and appearance of the countryside;
 - The setting of the RPG and the nearby conservation areas;
 - The European nature conservation designations alone and in combination with other plans and projects;
 - The capacity and safety of the local highway network;
 - The social and physical infrastructure of Thorpe-le-Soken and the surrounding area.
16. As will be seen later there is some overlap in the evidence, notably on the landscape and heritage issues.
17. Prior to the start of the inquiry the submission of additional information and revised proposals by the appellant enabled the highway authority to withdraw its objections to the proposals on highway grounds. A statement of common ground dated May 2018 sets out all the highways/transportation matters relating to the highway network that are agreed between the appellant and Essex County Council as the highway authority. In these circumstances the District Council did not seek to defend reason for refusal 3 regarding the impact of the proposal on the local highway network. Local residents were not satisfied that all their highway concerns were resolved.
18. During the adjournment of the inquiry over the period between November 2018 and April 2019 matters evolved in respect of updates to Government planning policy on housing land supply and the development of strategic policy for the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). These matters were fully addressed by the appellant and the Council through supplementary proofs and other submissions. In summary, a position was reached where the Council accepted that it was not able to demonstrate a 5 year housing land supply and that the tilted balance, set out in paragraph 11 of the Framework, applied in this case. In addition, the Council was satisfied that measures were in place to safeguard the European nature conservation designations.
19. A unilateral undertaking dated 16 April 2019 contained planning obligations to address matters related to education and health service provision, affordable housing, open space and ecology. The Council did not seek to defend the fourth reason for refusal on the understanding the deed would address its concerns on the lack of such provisions that it had at the time of the determination of the application. An earlier draft of the undertaking included provisions to transfer approximately 0.4 ha of land to the Council for the development of a general practice (GP) medical surgery to serve the proposed housing and the surrounding area. This provision was subsequently deleted, a matter I will return to in relation to the highways issue.

Contribution to housing needs

20. The aim of the Local Plan is to meet the housing needs of the whole community in a sustainable way. Policy HG1 made provision for a net dwelling stock

increase of 6,250 dwellings (417 dwellings per annum (dpa)) in Tendring District in the period 1 April 1996 to 31 March 2011. The plan's strategy is to meet as much of the District housing requirement as possible within settlements on suitable previously developed sites accessible to facilities and at appropriate densities to make efficient use of urban land. A strategic objective is to stimulate social and economic regeneration in the main urban areas and towns where there are high levels of unemployment, social deprivation and physical dereliction.

21. Accordingly, the housing land supply was primarily within the District's five main urban areas of Clacton, Harwich, Frinton/Walton, Brightlingsea and Lawford/Manningtree/Mistley. The necessary new greenfield requirement was to be met by planned peripheral development of the large urban area of Clacton rather than the expansion of other smaller settlements. A continuing supply of small scale residential development consistent with sustainability principles was envisaged within village development boundaries.
22. The Local Plan makes no allowance for meeting housing needs beyond 2011 and in this respect is out-of-date. No reliance may be placed on the emerging Local Plan with regards to either the dwelling requirement or the locational strategy given the position outlined in the policy section above.
23. Therefore, in the absence of adopted strategic policies and in accordance with paragraph 73 of the Framework, local housing need for the purposes of this appeal is derived from the standard method in Planning Practice Guidance. Using the 2014 based household projections and the published 2018 affordability ratio the agreed local housing need figure is 863 dpa, amounting to 4,315 dwellings over the period 2018/19 to 2023/24.
24. To comply with the Framework the Council 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. The supply should include a 20% buffer because of the significant under delivery over the previous three years, seen in the Housing Delivery Test, in order to improve the prospect of achieving the planned supply. The addition of the buffer results in a 5 year land supply requirement for 5,178 dwellings.
25. In order to be included in the five year housing land supply (5YHLS) a site should be deliverable within the definition set out in Annex 2 to the Framework. The number of years of supply fluctuated during the course of appeal. By April 2019 the parties were not in complete agreement as to the deliverable sites but were content that Tendring District's 5YHLS ranges from 3.50 to 4.02 years. In my view not all the disputed sites are deliverable because of the lack of 'clear evidence' of the type indicated in PPG guidance. Hence the current shortfall is likely to be closer to the lower end of the range. Nevertheless, even on the Council's case the shortfall is not marginal whilst on the appellant's case the shortfall is not substantial. A reasonable description is a significant shortfall.
26. A key point is that a 5YHLS is not able to be demonstrated, indicating that sufficient sites are not available to meet local housing need as derived using the standard method. With reference to paragraph 11 of the Framework, a consequence is that in applying Government policy a presumption in favour of sustainable development applies through the tilted balance in order to enable the development of alternative sites to meet the policy requirement. However,

the tilted balance would not apply in the event I find that policies in the Framework protecting designated heritage assets or habitat sites provide a clear reason for refusing the development proposed.

27. Against this background allowing land to be brought forward for up to 200 new dwellings potentially would contribute towards improving the District's 5YHLS and meeting local housing need. The appellant has placed emphasis on benefits being delivered quickly and early to secure delivery of housing units. However, any planning permission for this major development would be in outline. The appellant would not be the developer and, as set out in the supporting financial statement, the intention would be to dispose of the land to realise capital. The probability is that development would be phased. Before any reserved matters could be submitted planning conditions would require an approved phasing plan and an approved strategy for the provision of suitable alternative natural green space (SANG) to be in place. These factors alone indicate why there is not clear evidence available to confirm such matters as a timescale for submission of reserved matters applications and discharge of conditions, developers' delivery intentions, anticipated start and build out rates.
28. It may be expected that housing completions would begin on site within five years bearing in mind the reasons for the release of the land to realise capital for investment in the Lifehouse hotel and spa. Nevertheless, because of the lack of clear evidence it is not possible to say now that a grant of outline permission for major development would result in the site being deliverable and immediately contributing towards the 5YHLS. I note that the appellant adopted a similarly robust approach to other potential housing sites when considering housing supply and the Council's Strategic Housing Land Availability Assessment (SHLAA).

Affordable housing

29. The Local Plan in 2007 described Tendring as an area with a proven high need and demand for decent affordable housing. This description remains applicable having regard to the Council's annual monitoring reports, the median workplace affordability ratio and the views of the Inspector examining the emerging Local Plan. He considered affordable housing need is 278 dpa, given that the income levels in Tendring are significantly lower than the national average⁷.
30. Local Plan Policy HG4 requires 40% of new dwellings as affordable housing. However, the Council's own viability evidence in support of the emerging Local Plan demonstrated that 40% is unlikely to be viable within the district and between 10% and 30% is now sought by the Council. This approach is consistent with the emerging Local Plan Inspector's observation that there is no evidence to show a higher percentage requirement would be viable. Bearing in mind the more up to date evidence the proposed 30%, equivalent to 60 units, is acceptable.
31. A planning obligation would secure an approved affordable housing scheme before commencement of development. At this stage there is no indication of tenure split and what proportion of affordable dwellings would be affordable housing to rent, as opposed to other affordable routes to home ownership included within the definition of affordable housing in Annex 2 of the

⁷ The Council's OAHN Study Update (November 2016 CD/45) indicates a net affordable housing need of 160 dpa.

Framework. Therefore it is not possible to conclude the degree to which the type of affordable housing supported by the scheme would be available to meet local housing needs.

32. In effect the proposal does no more than be consistent with emerging policy on the proportion of affordable housing to be provided on site, given the total numbers of homes to be built and the absence of evidence to indicate whether viability is likely to be an issue. There is very little actual evidence to support the appellant's claim that the 60 units at the appeal site could start to be delivered in 2020.
33. In conclusion, the proposal would facilitate the delivery of a number of new affordable homes, in an area where delivery has been low and well below demand. Balanced against this significant contribution to local housing need are the other identified considerations that reduce the strength of the appellant's argument on the matter.

Other consideration: Unattributable population change

34. The Council submitted that the 2014 based household projections (and the 2016 based projections) used in the calculation of the local housing need figure were hopelessly wrong, resulting in an unreasonably and erroneously too high a figure. The error was due to unattributable population change (UPC). The Council maintained that the 'real' need in Tendring is likely to be much less than 863 dpa, in the order of 550 dpa. The Council urged that this consideration should be taken into account when considering the weight to be afforded to the conflict with Policy QL1 of the Local Plan and to the delivery of market housing.
35. The UPC related matter, the reliability of the household projections and potential alternative local housing needs figures were examined at some length at the inquiry in November 2018, before the clarifications in the February 2019 Framework. Prevailing Government policy is now clear that in decision-making on development proposals for specific sites the debate should focus on how to deliver more and better homes rather than how many homes are needed. To this end the standard method should be applied to assess an appropriate level of need in a straightforward, transparent way. It does not represent a mandatory target for a local authority to plan for but the starting point for the planning process. Where a local planning authority decides that exceptional circumstances exist and where land constraints are such that an authority may not be able to meet its identified need in full, the Local Plan process is the forum for examination.
36. The technical consultation on updates to national planning policy and guidance emphasised the Government's aspirations to deliver 300,000 homes a year on average by the mid 2020s. Reference was made to household projections being constrained by housing supply, the need to be more responsive to demand, declining affordability and the historic under-delivery of housing. To take account of the 'exceptional circumstances' argued by the Council in this appeal would not be in accordance with national policy to boost significantly the supply of homes and the reasoning behind the current use of the standard method to assess local housing need. In this respect I prefer the appellant's case that there has been a move towards a policy-driven approach aimed at maintaining higher levels of housing delivery.

37. Similar arguments by the Council in the Edenside appeal⁸ were supported by the Inspector who concluded that the continuing errors in the population projections arising from UPC raised significant questions about the validity of the local housing need figure of 857 dpa. He considered that figure was likely to be an overestimate of the true housing need in the district and that a figure of 550 dpa will probably be the housing requirement in the new Local Plan. He reflected these findings in applying development plan policy and carrying out the tilted balance.
38. Consistency in decision-making is important to uphold confidence in the planning and appeal process. The probability is that the 2014 based household projections have been derived from flawed demographic data for Tendring District, a conclusion reached by a number of inspectors in appeals and in the Local Plan examination.
39. Nonetheless I do not intend to follow the line taken in the Edenside decision for the reasons set out above related to the objectives of national policy as expressed in the Framework. It is also relevant that the Council's evidence and submissions on the issue were not robustly challenged in the Edenside case. The inspector did not have the benefit of detailed evidence and submissions putting an opposing view for consideration, very different to the position in this appeal.
40. The preparation of the emerging Local Plan is a separate process with a distinct methodology and considerations in deriving a housing requirement. The Inspector concluded in June 2018 that the housing requirement of 550 dpa was soundly based but he reserved the right to modify this view in light of any further evidence that may come forward before the examination ends. Consequently the Local Plan housing requirement remains uncertain. The findings to date do not lead me to change my conclusions on the local housing need for the purposes of this appeal.
41. The Inspectors' conclusions on local housing need in appeal decisions, which pre-dated the recent clarifications to the Framework, were based on the facts and evidence presented at that time. They are of limited assistance now because the policy context and the scope for interpretation of policy application has changed significantly.

Business case, local economy and employment

42. The Lifehouse hotel and spa opened in December 2010 under different ownership. After a difficult initial trading period the business was placed into receivership within a year of opening. The appellant acquired the property from the receivers in March 2012 with an inherent capital debt of £8.5 million and with debt repayments of approximately £350,000 per year. The business strategy has led to an increase in visitors and by 2017 the performance was stable. The facility is now operating at near capacity and facilities are under strain.
43. The appellant submitted that the proposal is central to the ongoing financial security of the Lifehouse hotel and spa, which is also a major local employer, a tourist facility and the steward of the registered park and garden. According to the appellant Lifehouse employs about 200 people, relies on roughly 70 local

⁸ Ref APP/P1560/W/18/3196412 dated 3 April 2019

suppliers in Tendring District and local contractors are employed to carry out repairs and maintenance. In total the economic contribution of Lifehouse is around £4.2 million a year. Without a capital injection Lifehouse is highly likely to become insolvent in the next five years, with all the adverse consequences for its employees and the local economy.

44. The appellant has explored various funding options. The stated intention is that the sale of the land would raise capital to pay down the debt and provide for capital investment in upgrading facilities at the hotel and spa. Initial projects would include reconfiguration and extension of the spa, refurbishment of the restaurant and a light refresh of the bedroom accommodation. The appellant confirmed by letter that it is a condition of the Term Loan provided by Clydesdale Bank that money raised through any asset sale must be used for the purpose of repaying debt. Nevertheless, the Bank has agreed that an element of the proceeds from the sale can be spent on improvements to the Spa facilities. The appellant distinguishes the proposal from other edge of settlement housing proposals because it is so closely connected with the longevity of the hotel.
45. The Local Plan encourages proposals for new or improved tourist attractions which enhance the District's ability to attract and cater for visitors, increase local employment opportunities and which do not conflict with other important economic or environmental objectives of the plan. The Framework expects planning policies and decisions to help create the conditions in which businesses can invest, expand and adapt. In rural areas the aim should be to enable sustainable rural tourism and leisure developments which respect the character of the countryside. However, the development for which planning permission is sought, and is required, is new housing. The proposal is not put forward as an enabling development and no planning mechanism is proposed to link the proposed development of the land to investment in the hotel and spa. The conditions to which the Framework refers include development plan strategies and policies, allocation of land and overcoming barriers to investment by provision of adequate infrastructure and improving the environment. There is no indication that planning decisions should accommodate or be justified by a scenario of the type relied on by the appellant.
46. The appellant drew attention to an example of cross funding supported by the Council. A proposal for three dwellings on land outside the settlement boundary, which would result in the loss of a community facility, was granted permission. The officer report confirmed that proceeds from the sale of the housing site would contribute to the funding of a new village hall that previously had been granted planning permission⁹. The circumstances in this example are not comparable and hence the case provides no support for the current proposal.
47. A major housing development would be a permanent change to the local environment. By contrast the financial circumstances, business and decision-making environment would be open to a number of external influences, risks and uncertainties and potential changes in the short term. The history of the hotel and spa over the last ten years or so has not been stable, with the current owners purchasing the business from administration in 2012. The

⁹ Appendix ARC1 is the officer report on the proposal.

current financial position is fragile. Even with the proposed capital investment in the business there is no certainty that its future will be safeguarded. There is a stated need for further major capital investment within the next five years or so. All in all there is no reliable evidence to demonstrate that the long term future of the Lifehouse will be secured by the realisation of capital from the sale of the land.

48. In conclusion, the Lifehouse hotel and spa is an important local business and employer and positively contributes to tourism in the area. The need for investment in improved accommodation and facilities to maintain its position in a competitive market has been demonstrated. An injection of funding may well reduce the risk to the business, provide opportunities for its development and safeguard employment in the short term. However, the business justification for release of the land to large scale housing development has limited weight when placed in a broader planning policy and economic context.

Settlement form, character and appearance

49. Strategic objectives of the Local Plan promote new sustainable patterns of development. An element of this strategy is to define settlement development boundaries tightly around selected villages to allow for some infill and small additions to the built-up area. The land outside the settlement development boundaries is countryside. The aims are to protect the countryside setting of the villages, protect non-renewable natural resources, to prevent sporadic and ribbon development, and to protect and enhance the countryside for its own sake. Consequently, in the countryside planning permission will only be given for development that does not detract from the appearance or character of the area. The principal policies giving effect to these objectives are Policies QL1, RA4 and EN1. Alongside these policies the Local Plan encourages regeneration, strengthening of the rural economy and the development of new employment opportunities. An example is at Thorpe-le-Soken Maltings, where Policy RA2 encourages new development that would also support conservation objectives through restoration of one of the district's most recognisable historic landmarks.
50. The development plan's spatial strategy promotes a number of social, economic and environmental objectives. With particular relevance to the appeal proposal, the strategy is consistent with policies in the Framework for rural housing, supporting a prosperous rural economy, making effective use of land, achieving well-designed new places and enhancing the natural environment. Defining settlement boundaries continues to be an acceptable approach. For current purposes the essential and important context is that Thorpe-le-Soken is a village within a rural countryside setting.
51. Towards the eastern end of the village the settlement development boundary of Thorpe-le-Soken is drawn tightly along the edge of the built development fronting Station Road and the B1033 and with an additional separate pocket of built development further to the east¹⁰. The Lifehouse hotel, spa and surrounding grounds are located in the countryside outside the settlement boundary, except for the entrance and a very short length of the drive off Station Road. It follows that the housing site is also in the countryside, quite separate from the built-up area of the village. Functional and spatial relationships with Thorpe-le-Soken and the Thorpe Maltings are weak.

¹⁰ Proposals Map Inset 21 Thorpe-le-Soken

52. The proposal would result in the loss of an area of land in the countryside to a major residential development of up to 200 homes. The scheme would take the form of a comparatively large scale housing estate, served by a new highway network with a single vehicular access onto Station Road. The main area of housing would be physically separated from the village by the RPG and the Lifehouse hotel and spa and because of its position to the south it would not form a logical residential extension. New functional relationships would be created with the village but without clear policy support.
53. Therefore the proposal does not fall within the category of limited development consistent with local community needs and it would not be within the settlement development boundary. For these reasons it is contrary to Policy QL1. Policy RA4 allows for proposals for 6 or more dwellings within the village, which highlights how large a scale the development would be within its context. The appellant's concept of a significant extension to the settlement has no support from the development plan and particularly Policy QL1. There is little evidence of support from the local community.
54. Nevertheless, the Council has granted planning permission for major housing development on sites adjacent to but outside the settlement boundary, off Landermere Road and Abbey Street. Development has also been granted permission on appeal, such as on land south of Frinton Road. These permissions and the lack of a five year housing land supply point to the settlement boundary being out of date and in need of review. This matter is being addressed through the new Local Plan. In this respect the conflict identified above with the development plan is not conclusive, although it does not necessarily follow that an additional major residential development will accord with the objectives of the spatial strategy or other policies and be acceptable.

Landscape character

55. Policy EN1 is particularly concerned with the role of settlement and built development in the landscape. I find that the Tendring District Landscape Character Assessment (the TDLCA) is the most helpful and relevant assessment in view of its detail when compared to the Regional Landscape Character Assessment and National Character Area Profile referred to in the evidence. Significantly the TDLCA document informed the Local Plan and regard is to be had to its guidance in applying Policy EN1. The baseline report comprises Volume 1 of the TDLCA and guidance for built development in Tendring is set out in Volume 2. Given that the outline proposal is for major housing development in the countryside the Volume 2 guidance on built form should be taken into account.
56. The Local Plan policy is consistent with the Framework which requires decisions to ensure developments are sympathetic to local landscape and history, including the surrounding built environment and landscape setting. Recognising the intrinsic value and beauty of the countryside is one of the policy elements in conserving and enhancing the natural environment. Nevertheless, the housing site is not within a valued landscape designation for the purposes of paragraph 170(a) of the Framework.
57. The housing site is within two landscape character areas. The western and southern part is within 6D Holland Valley System and the higher north and

eastern part lies in 8B Clacton and the Sokens Clay Plateau¹¹. I take no issue with the assessment that the housing site is in an area where the landscape quality is in a moderate but declining condition and where landscape sensitivity is moderate.

58. Thorpe-le-Soken stands on a ridge of high ground, described in the TDLCA as a rural settlement that was important in medieval times. From the staggered crossroads near the historic centre the village has a predominantly linear form, aligned north west to south east. The later built development has tended to be to the north of High Street and either side of Landermere Road. To the south of the B1033 the larger mature plots, the informality of Mill Lane and, further to the east, the grounds of Thorpe Hall (now the Lifehouse) contribute considerably towards the rural setting of the village. The historical and cultural interest associated with the settlement location and pattern adds to the value of the landscape.
59. The cluster of buildings around Thorpe-le-Soken station is distinct and lies on lower ground in a different landscape character area, the Holland Valley System. The development, including the Maltings and the Rice Bridge industrial estate, is not typical of the valleys where settlement remains sparse.
60. A major development on the housing site would not accord with the strategy for built development set out in the TDLCA. The scheme would not maintain a sparse settlement pattern and rural character associated with the Holland Valleys. Mass produced housing designs are considered inappropriate in this rural environment. In the Clacton and the Sokens Clay Plateau landscape character area, the strategy relevant to Thorpe-le-Soken (as opposed to Clacton on Sea and nearby coastal and inland settlements) is to conserve the low density settlement pattern in rural areas and maintain the distinctive identity of individual settlements. Some opportunities for development are envisaged but the proposed housing site is not adjacent to the settlement and its position on an elevated slope just below the plateau edge increases its sensitivity to development.
61. The appellant has submitted a Landscape Strategy Plan to help demonstrate the landscape led approach that has contributed to the emerging master plan. The plan is said to comprise a number of elements that are intended to integrate the proposals with the landscape character and to respond to the landscape management strategy in the TDLCA Volume 1. Reliance is placed on the harm to the landscape being moderated by significant new planting that would contribute to a net gain of landscape features overall. Landscape character effects after 15 years are assessed as moderate to slight adverse for the Clacton and the Sokens Clay Plateau and slight to moderate beneficial for the Holland Valley System.
62. I have approached this Landscape Strategy Plan with caution. Landscaping is a reserved matter, as is layout. The master plan is illustrative. No planning conditions were proposed by the appellant that linked any future details of the housing scheme either to the principles shown in the master plan or the Landscape Strategy Plan. Whilst the likelihood is that the housing would be sited on the eastern side of the housing site and the western side of the site would be predominantly open space, it is not possible to conclude that the

¹¹ Landscape and Visual Impact Assessment Appendix A Figure 5

valley side would be kept 'entirely free from development'¹². For example, the main site access, spine road and bridge serving the development would be developed on this land. With reference to the unilateral undertaking and proposed planning conditions, provision is made for public open space designed as a recreational facility (a public park), potentially including a children's play area and dedicated 'dogs off lead' area(s) and incorporating a circular walking route. New landscape features may be introduced but there is no certainty that it would be possible to restore the ecological structure and landscape character of the native woodlands or enhance the wooded character of the valleys. It has not been demonstrated how management of the open space would be compatible with traditional land management.

63. The probable siting of the new dwellings would avoid creating ribbon development along the eastern side of Station Road. However, proposed highway works include bus stop improvements (including signs, shelters and flags), extension of footways and an assessment of lighting along the length of Station Road between the site access and War Memorial junction¹³. The objective, as described and acknowledged in the appellant's oral evidence, is to secure a significant village extension that would link the village, the Lifehouse hotel and the development at Thorpe-le-Soken Station and the Maltings. In my opinion, the proposed 'in depth' housing estate would lead to the spread of suburbanisation. Rather than the character of the village being strengthened the distinct identity of the settlement pattern would be seriously eroded.
64. In terms of the effect on the landscape management of the Clacton and the Sokens Clay Plateau element of the site, Hall Row woodland would be retained and managed by means of a planning obligation. The housing layout also would need to ensure through careful attention to the siting of dwellings no deterioration of the woodland habitat and adverse impacts on biodiversity. There would be the potential to strengthen and introduce new landscape features such as trees, hedgerows and ponds but at this outline stage it is not possible to conclude the extent to which the proposal would deliver on relevant guidelines. The development of up to 200 homes inevitably would impact on night skies even allowing for approval of a lighting scheme.

Visual impact

65. Policy EN1 emphasises the importance of protecting local distinctiveness and to this end identifies features that development management should seek to conserve, such as skylines and prominent views, including those of ridge tops and plateau edges. Policy QL9 also requires development to protect local character and to relate well to its surroundings. The Framework similarly requires proposals to be visually attractive, sympathetic to local character and to maintain a strong sense of place. Having said that, the Framework does not indicate support for the highly restrictive nature of Policies EN1 and QL9, which direct that 'development will not be permitted' or 'permission will only be granted if.'
66. I have visited the identified public view points, which are on the public rights of way network and public highways. The receptors most susceptible to change are likely to be users of the public rights of way.

¹² Proof of evidence Landscape and Visual Issues paragraph 3.3.3

¹³ Plan SK04 Rev C

67. In looking towards Thorpe-le-Soken from the higher ground to the south¹⁴ I found little of the built settlement is visible, primarily because of the intervening blocks of mature woodland, the topography and the open lands south of the village core. The village is within a pleasant rolling countryside setting. The value of the view is enhanced by the group of designated heritage assets - the open landscaped edge to Thorpe-le-Soken Conservation Area, St Andrew's church spire and the location of the Station and the Maltings Conservation Area.
68. The housing site is on a prominent, exposed slope framed by woodland, easily visible in views from public rights of way and Harwich Road¹⁵. The loss of the land to an estate of housing would bring about a marked visual change to the appearance of the countryside in views across the valley. The in-depth development over a sizeable area would be visually intrusive because of the sharp contrast to the open countryside surroundings. The illustrative visualisations indicate that the roofs would be a particularly visually dominant element. The most harmful visual impact would be confined to views from the higher ground but from there people would be more likely to linger to enjoy the extensive view.
69. In immediate and short distance views the most obvious visual change would be to the views directly across the housing site from the public right of way along the northern boundary. The open land would be replaced by a residential land use, dwellings, supporting infrastructure and related public open space, together with the attendant domestic and vehicular activity. The appearance of the land would be very different. The harmful impact would be increased because of its visual separation from the built-up area of the village to the north. I will cover the significance of the effect on views from the RPG under the heritage issue.
70. Views of the development from further east along the footpath would be effectively screened by Hall Row woodland. The mature vegetation along the western boundary of the housing site would be effective in softening the appearance of the urban form from Station Road, although the new site access and associated infrastructure would signal its presence.
71. The appellant argues that the limited visual effects would be reduced considerably over 15 years as a result of the establishment of new planting. However, there are several factors to weigh in the balance. Fifteen years is the period typically used to assess landscape and visual change but for the local community it would represent a relatively long length of time. Furthermore, the probability is that the development would be phased and there are no details of how long the phased development would be – it could be significant in view of the 200 or so dwellings proposed. The appellant also confirmed that year 1 assumes all the scheme, that is the 200 dwellings, has been built out. The assessment is based on the landscape strategy plan, which forms no part of the application. A future developer(s) may wish to adopt a different approach and seek to maximise views out from the scheme. Therefore the visual impact is likely to be greater than reflected in the visual assessment.
72. In the surrounding area there are various views of exposed settlement edges and block and linear patterns of residential development. I found the view from

¹⁴Notably Viewpoint v2 on Visualisation Location Plan

¹⁵ Viewpoint v1 on Visualisation Location Plan

the south towards Weeley demonstrates what should be avoided, rather than being an example of good practice and a positive reference. The views towards linear development, such as at Little Clacton, are quite different to those of the appeal scheme. The built development, with a mix of building forms and scale of different periods, has taken place along Harwich Road that is part of the pattern of historic settlement of the area. This settlement form and its appearance in the countryside is not directly comparable to the effect of the proposed housing and provides no justification for the proposal.

Conclusion

73. The proposed development would not protect but would significantly harm the quality of the landscape and its distinctive local character. There is potential for the layout to incorporate existing site features of landscape and amenity value but the development of the housing site would not respect local views, especially those enjoyed by the most sensitive receptors. The proposal is contrary to Policies EN1 and QL9. The proposal falls short of compliance with the policy requirements of the Framework summarised above.

Designated heritage assets

74. Thorpe-le-Soken Conservation Area and the RPG are designated heritage assets. The housing site is within their settings because it forms part of the surroundings in which the heritage assets are experienced. The evidence concentrated on considering its contribution to the significance of the heritage assets and how the proposal would affect significance, if at all. The consideration included views and more particularly the view southwards over the housing site.
75. Policy EN17 of the Local Plan includes direction that development located outside a conservation area will be refused where it would prejudice its setting and surroundings or harm the inward or outward views. The Local Plan has no specific policy for the RPG, although the text advises that it should be strongly protected from harmful development.
76. The Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (the more important the asset the greater the weight should be). Any harm to, or the loss of, the significance of a designated heritage asset (including harm from development within its setting), should require clear and convincing justification.
77. Policy EN17 is consistent with the Framework in so far as it emphasises the importance of conserving the character or appearance of conservation areas. However, it goes a step further that the statutory test of 'having special regard to' and makes no allowance for a balanced assessment envisaged in the Framework.

Contribution to and appreciation of significance of the assets

78. The appellant's case was that the contribution the housing site makes as part of the setting to the RPG and the conservation area is largely neutral because it is of limited importance to the understanding of what is special about the assets. The Council took a broader approach placing emphasis on aspects including topography, the shared historical associations, inter-visibility, the two areas being relatable in views from locations to the south and their group value

with other designated heritage assets in Thorpe-le-Soken. The housing site was said to make a positive contribution to the heritage significance of the RPG.

The RPG

79. As indicated by the Council's Conservation Area Review 2006 and headlined by the listing description, the significance of the RPG centres on the early 20th century shrub and water gardens developed by Lady Byng from 1913 onwards. The gardens and pleasure grounds are distinctive with the combination of broad paved terraces, a series of formal, intimate and enclosed garden compartments overlooked by summerhouses, lakes and water features and areas of woodland planting. The historical significance is able to be traced back much further through a succession of owners and tenants of the estate over the intervening centuries to the former extensive manorial land holding associated with Thorpe Hall and its related probable links to the development of Thorpe-le-Soken within its rural setting.
80. At the time of its designation the principal building was Thorpe Hall, a large country mansion built in the 1820s in the Georgian style with early 20th century additions. Thorpe Hall was not listed and was demolished in 2002. The Hall would have acted as a focal point as the home of the Byngs and being surrounded by the gardens and parkland. Historic records confirm the presence of a residence throughout the history of the estate and in the late 18th century the former Thorpe Hall was associated with orchards or ornamental planting and ornamental ponds. The current Lifehouse buildings were sited with reference to the recently demolished Thorpe Hall and denote the next chapter in the evolution of architectural history. In my opinion the loss of Thorpe Hall has not seriously detracted from the key attributes of the heritage asset.
81. Having regard to the desk based assessment the archaeological contribution to the significance of the RPG is likely to be minor.
82. The attributes of the housing site, which help to understand its contribution to significance are openness, land use and views. The interaction between the physical and human influences (described in detail by the Council) that have resulted in a distinct, recognisable pattern of landscape elements have a greater relevance to the understanding and appreciation of the landscape character near Thorpe-le-Soken.
83. Considering the attribute 'views' in more detail, the RPG listing description, notes that 'an open field to the south of the gardens gives views from the boundary across the landscape, where a railway line is sunk into a cutting'. In all probability the open field is the housing site. The reference is in relation to the park, rather than the shrub and water gardens which are the centrepiece of the RPG. Nevertheless, the park is within and integral to the RPG designation.
84. The site visit demonstrated that views and vistas within the formal gardens are well contained and generally do not extend beyond the parkland. An exception is on the western side of the gardens (viewpoint 3), where the housing site, and Hall Row woodland, provide a soft, rural backdrop in views out of the formal gardens and associated parkland. The historic map documents indicate a lack of planting along the southern boundary of the RPG in contrast to the tree planting enclosing the western boundary round to the north. The indication is that the open view to the south was deliberately maintained to enhance the garden and parkland and how their qualities may be appreciated. To this extent

the open land now comprising the housing site makes a positive contribution to the significance of the RPG.

Thorpe-le-Soken Conservation Area

85. The conservation area extends along the main street through the village. It is of limited depth to the north of the highway in contrast to the south where it takes in larger land parcels and includes the parkland and gardens that surrounded the former Thorpe Hall.
86. As stated in the Conservation Area Review the special quality of the conservation area is derived 'ultimately from its importance in medieval times, indicated by the wealth of the historic buildings lining a sinuous main street'. Neighbouring parts of the village that relate to the medieval core in plan form and in the intrinsic interest of the buildings have a supporting role. A wealth of mature trees which frame buildings and spaces contribute to its character and appearance.
87. The former Thorpe Hall is one of the seven identified character areas. The Conservation Area Review notes that while Thorpe Hall has been lost the attractive gardens remain and are entirely screened from outside view. The RPG is regarded as providing a setting for this part of the village, in a low key and unostentatious manner. In tracing the development of the village, the Review refers to the extensive private grounds of Thorpe Hall that were prominent on early maps of 1772 and 1805. The Council's evidence for this appeal identifies Thorpe Hall as the manorial centre in the medieval period from where Thorpe-le-Soken's agricultural, economic and political systems would have been administered.
88. The evidence demonstrates that the manorial estate associated with Thorpe Hall is important to the understanding of the development of Thorpe-le-Soken, going back to medieval times. The proposed housing site was within the historic land holding, possibly as part of an historic original deer park and later as farmland. This historical association is an important contribution to the significance of the conservation area. Within this context the openness and topography are the most relevant physical attributes of the housing site. Its landscape character, views and land use are attributes relevant to the experience of the asset.

Effects of the proposal

89. The proposed development would result in the suburbanisation of land immediately south of the RPG and the conservation area, which would be a substantial and permanent change to the setting of these designated assets.
90. The scale and massing of housing development on the southern margin of the RPG would result in the loss of an important visual association with its rural setting. The introduction of a considerable amount of movement and activity associated with the residential land use would intrude on the quiet environment enjoyed within the gardens and parkland. I do not consider this to be a positive element and hence I disagree with the appellant on this point. The strong degree of enclosure that was created on the village side indicates the gardens were intended to have privacy from activity focused on the village. The harmful distraction that would be experienced within the southern part of the RPG would be localised, therefore limiting the extent and severity of the harm.

91. Attention needs to be directed to a consideration of the effect on the conservation area as a whole. The proposed development would have no effect on the character or appearance of the main street where the historic buildings are concentrated. The effect would be on the character area of Thorpe Hall. The development of a suburban housing estate and public park would physically and visually divorce the historic landed estate from its essential rural setting to the south. The significance of the distinctive historical association in the development of the village would be much reduced.
92. For these reasons the change would have an adverse effect of the significance of the assets and the ability to appreciate them.

Proposed mitigation

93. The harm is associated with fundamental issues such as the proximity, land use and scale of the proposed residential development. There is no suggestion that harm may be reduced by design of the layout and a reduction in scale. The proposal is to strengthen the planting along the southern boundary of the park as a means of mitigating the negative impacts on the RPG and the conservation area.
94. Over a period of a number of years and dependent on the details of a planting scheme the dwellings may be effectively screened out of view, at least when the vegetation is in full leaf. However, the balance of the evidence supports the intention in the past to design in a view to the south, rather than design it out. On that understanding the mitigation planting would detract from the significance of the RPG. Also, with reference to Historic England's Good Practice Advice¹⁶, management measures secured by a planning obligation do not form part of the proposals, leading to uncertainty over any long term effect of the planting. Overall, based on the information available, the positive function of the proposed mitigation would be very limited.

Thorpe-le-Soken Station and Maltings Conservation Area

95. This conservation area lies to the south west of the housing site on the far side of Station Road. This heritage asset is tightly defined around a distinctive collection of buildings, notably a listed Maltings, related to the commercial and social changes consequent on the opening of the railway in the 19th century. The setting does not contribute to the significance of the asset. I agree with the Council and the appellant that the proposal would have no harmful effect on this conservation area.

Conclusion on effects

96. The development would not protect the RPG and so would be against advice in the Local Plan. The harm to the significance of this designated heritage asset would be less than substantial.
97. The proposal would prejudice the setting of Thorpe-le-Soken conservation area and harm outward views. As a result of the conflict with the requirements of Policy EN17 the policy direction is that the development should be refused. In the terms of the Framework, the proposal would lead to less than substantial harm to the significance of the designated heritage asset.

¹⁶ The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (2nd ed) 2017

Heritage: Balance of harm against public benefits

98. The Framework describes heritage assets as an irreplaceable resource that should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Having regard to the Framework, I attach great weight to the RPG's conservation and also great weight to the conservation of the conservation area.
99. Referring to the PPG, a public benefit can be anything that delivers economic, social or environmental progress. They should flow from the development and be of a nature and scale to be of benefit to the public at large. I have considered the public benefits put forward by the appellant in this context. Little quantified evidence was provided.
100. The primary social benefit would be the prospect of up to 200 new homes in an area where there is a strong requirement for housing land to meet the shortfall in the 5YHLS. The potential delivery of up to 60 affordable homes would contribute to meeting the high need in this regard. My planning merits assessment has identified several caveats about the actual contribution and timing in respect of these benefits. The village would gain a new public park for leisure and recreation, which in turn would encourage healthy lifestyles. In view of its proximity the open space is likely to be of most benefit to residents of the new housing rather than the existing areas of housing in the village.
101. As to economic benefits, construction employment and associated indirect spending would occur during the development period. At the Lifehouse hotel and spa the probability would be employment retention and possible expansion together with the indirect employment and economic contribution from improvements to facilities. The appellant acknowledges these outcomes would be short term. Any benefit from reduced traffic congestion would be slight at most, as I explain below.
102. Environmental benefits are based largely on reasonable expectations given the outline nature of the proposal. Benefits resulting from policy compliance reduces the weight I attach to them. New homes that achieve standards on energy and water efficiency and that are in a relatively accessible location would support a transition to a low carbon future in accordance with policy requirements. There would be the scope for protecting and enhancing local biodiversity on the housing and wider Lifehouse site and securing long term management of habitats and landscape features. Continued operation of the Lifehouse would be likely to encourage maintenance and enhancement of the RPG.
103. Overall I consider the weight of the public benefits has been overstated by the appellant.
104. If the harm is taken to be the cumulative harm to the heritage assets, as indicated by the balancing exercises carried out by the appellant and by the Council, the harm is not outweighed by the public benefits. However, the wording of the Framework indicates that a separate balancing exercise is required for each designated heritage asset. On that basis the outcome is not so clear but on balance I conclude that in each case the less than substantial harm is not outweighed by the public benefits.

Habitats and biodiversity

European nature conservation designations

105. The protection of species and habitats of European importance is subject to the procedure prescribed in the Habitats Directive, which has been transposed into domestic law by regulation 63 of The Conservation of Habitats and Species Regulations 2017.
106. In addition to the statutory duties to protect certain sites and species, there is a wider duty to have regard to the purpose of conserving biodiversity.
107. Local Plan Policy EN11a reflects the very high protection afforded to European sites and Policy EN6 protects local biodiversity and geodiversity. There is consistency with the Framework that expects planning decisions should contribute to and enhance the natural environment. The Framework also sets out the principles to apply when determining planning applications.
108. The site is located within the recreational zones of influence (ZOI) relating to the Essex Coast RAMS and associated European designations. The closest is Hamford Water SAC/SPA/RAMSAR site. The other sites within the ZOI are Colne Estuary SPA/RAMSAR, Stour and Orwell estuaries SPA/RAMSAR, Blackwater Estuary SPA/RAMSAR, Dengie SPA/RAMSAR and the Essex Estuaries SAC.
109. The purpose of these designations is to protect internationally important numbers of breeding and non-breeding birds, their coastal habitats and wetland areas. The citations and associated information for each designated area detail their characteristics, qualifying features and conservation objectives¹⁷. In summary the SPA/RAMSAR sites in question support internationally important species and populations of migratory wildfowl and waders, as well as nationally important bird species. More specifically Hamford Water SPA supports a breeding population of Little Tern. The qualifying feature of Hamford Water SAC is Fisher's Estuarine Moth. The Essex Estuaries SAC is important for its subtidal sandbanks, estuaries, intertidal mudflats and sandflats, Atlantic salt meadows, cord grass swards, glasswort and other annuals colonising mud and sand and Mediterranean saltmarsh scrub.
110. The Essex coastline is a major destination for recreational use, such as walking, dog walking, bird watching, sailing and jet skiing. Surveys have shown that the majority of this activity is by people who live in Essex. In preparing Local Plans recreational disturbance was identified as an issue for all the Coastal Habitats sites.
111. A strategic approach has been developed by 11 Essex Local Planning Authorities with the help of Natural England to deal with recreational disturbance impacts from residential development on coastal European sites (the Essex Coast RAMS). A draft Supplementary Planning Document (SPD) has been prepared that describes the mitigation necessary to protect the wildlife of the Essex coasts from increased visitor pressure associated with new residential development and how the mitigation will be funded¹⁸. The Council is expected

¹⁷ This information is found in inquiry Document 17 at Appendices 4752/HRA5 to 4752/HRA11

¹⁸ Core Document 73: Essex Coast Recreational disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document (SPD) 2019 (draft); Core Document 74: Habitats Regulations Assessment Strategy Document 2018-2038

to consider at committee in July 2019 the RAMS and the SPD with a view to carrying out public consultation and their use for development management purposes. The appellant advised that Maldon District Council, Chelmsford City Council and Colchester Borough Council had considered the documents favourably, with public consultation to follow.

112. In August 2018 Natural England provided revised interim advice to ensure any residential planning applications coming forward ahead of the Essex Coast RAMS which have the potential to impact on coastal European designated sites are compliant with the Habitats Regulations. In the interim period before the RAMS is adopted financial contributions should be directed to fund strategic off-site measures in and around the relevant European site(s). The measures should be targeted towards increasing the sites' resilience to recreational pressure. A suitable delivery mechanism must be agreed to ensure the measures are implemented from the first occupation of dwellings. An alternative that may be acceptable is to secure full adherence with the emerging Essex Coast RAMS at the reserved matters stage.

Consideration of the proposal: likely significant effect

113. The proposed residential development is not directly connected with or necessary to site management for nature conservation. Therefore it is necessary to consider whether the proposal is likely to have a significant effect on the internationally important interest features of the sites, alone or in combination with other plans and projects.
114. The appellant submitted a comprehensive report to inform a Habitats Regulations Assessment. The report included a consideration of potential effects in a stage 1 screening exercise in light of the interest features, conservation objectives and condition of the European sites. Taking account of the conservation objectives for the protected sites and the proposed land use, the scale of the development and the separation distances, I agree that recreational effects are the key factor. Likely significant effects from physical loss/damage, non-physical disturbance/noise, non-toxic contamination, air pollution and water quantity/quality can be screened out and require no further consideration.
115. Applying the precautionary approach, significant effects on Hamford Water SPA/RAMSAR site would be likely to arise from the appeal proposal alone, as well as in combination with other plans or projects by reason of increased recreational visits to the designated area. There is also a risk that significant effects on Hamford Water SAC and the other designated sites would be likely to arise as a result of the proposal in combination with other plans or projects. This conclusion is consistent with the direction in Natural England's interim advice.

Appropriate Assessment

116. Following on from these conclusions before deciding to give permission for the project I must, as the competent authority, make an appropriate assessment of the implications of the project for the European sites in view of their conservation objectives. The ultimate purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the site(s).

117. Circular 06/2005 advises that the onus is on the decision maker to consider the likely and reasonable foreseeable effects and to ascertain that the proposal will not adversely affect the integrity of the site before permission is granted. That would be the case if no reasonable scientific doubt remains as to the absence of such effects. The bar is set very high.
118. The conservation objectives for each European site are similar. In broad terms they focus on ensuring that the integrity of the site is maintained or restored as appropriate and on ensuring that the site contributes to achieving in the case of the SACs the Favourable Conservation Status of its qualifying features or for SPAs to achieving the aims of the Wild Birds Directive. To do so the requirement is to maintain or restore the habitats of qualifying species/features and the populations and distributions of qualifying species or qualifying features.
119. The adverse impacts for each European site, shown by the evidence, are summarised in the table below.

European Site	Adverse impacts: development alone
Hamford Water SPA/RAMSAR	Recreational pressure – direct disturbance of breeding and non-breeding birds
	Adverse impacts: development in combination
Hamford Water SPA/RAMSAR	Recreational pressure – direct disturbance of breeding and non-breeding birds
Hamford Water SAC	Recreational pressure – damage/degradation of habitat from walking/dog walking and associated nutrient enrichment
Colne Estuary, Stour and Orwell estuaries, Blackwater Estuary and Dengie SPAs/RAMSARs	Recreational pressure - direct disturbance of breeding and non-breeding birds
Essex Estuaries SAC	Recreational pressure – damage/degradation of habitat from walking/dog walking and associated nutrient enrichment

120. The next step is to determine whether the adverse effects are able to be overcome by measures intended to avoid or reduce the harmful effects on the site(s).
121. The appellant proposed mitigation measures in the form of (i) a strategy for the provision of suitable alternative natural green space (SANG) on the site and adjoining land, and (ii) funding towards strategic off-site measures in and around the European sites. Initially such mitigation measures were to be secured by planning conditions. When the inquiry adjourned in November 2018 I expressed concern about the proposed approach and in particular the wording

- of one of the proposed conditions. During the adjournment the Essex Coast RAMS document was submitted, together with the draft SPD, referred to above. A planning obligation and a planning condition were put forward to secure mitigation measures as part of the proposal.
122. The proposed SANG would consist of over 4 ha of greenspace and is directed towards the potential impact on Hamford Water SPA/RAMSAR from the proposal itself. The recreation space would include a circular walking route of 2.8 km, a section of which would go through Hall Row woodland. Provision is made in the obligation for a management plan(s) for the different types of open space, a management company and financial contributions to enable management obligations to be carried out. The planning condition sets out the expected different forms of open space, information and management as part of a strategy for the provision of SANG. In my view such a condition, appropriately worded, would not duplicate but complement the planning obligation and meet the six tests.
123. The proposed open spaces and circular walk in an inland countryside and woodland setting would be very different to the estuarine environment of Hamford Water SPA/RAMSAR. Nevertheless, there is evidence, cited in the Essex Coast RAMS, that people can be drawn away from visiting the coast by attractive open space near to their home. SANG would not deflect all trips to the coast and so a contribution to mitigation measures at the European sites is necessary. Importantly the planning obligation secures the completion of the SANG before first occupation of the housing, ensuring that the open spaces would be available for use from the outset.
124. The financial contribution, based on an amount per dwelling, is towards the funding of off-site visitor management measures in line with the emerging Essex Coast RAMS. This form of mitigation is to address potential impacts from the development alone at Hamford Water SPA/RAMSAR and the potential in combination impacts at the other identified European sites.
125. Natural England has confirmed that the approach followed in the Lifehouse scheme is consistent with the strategic approach adopted towards residential proposals to date. It is satisfied that the proposal may proceed¹⁹. I attach substantial weight to its advice because it is the national body charged with responsibility for advising in relation to such issues and it has been closely involved with the preparation of the Essex Coast RAMS and SPD. The Council confirmed in its closing submissions that in ecology and habitat terms the proposal could, following appropriate assessment, be granted without causing harm to any protected site. The Essex Wildlife Trust confirmed that it is satisfied that the proposals for open space and a circular dog walking route would provide sufficient mitigation for likely significant effects on European ecological designations²⁰. No third party has pursued an objection on this issue in light of the revised proposals. Therefore on the European sites issue the proposal is not challenged by any participant to the decision making process.
126. The policy of providing SANG and a financial contribution towards management of the protected sites is well established for a number of European sites (for example Thames Basin Heaths). There is no evidence to indicate this approach is not appropriate to the Essex coastal European Sites.

¹⁹ Consultation response 20 May 2019

²⁰ Document 33

127. The Essex Coast RAMS document is an interim strategy that has not been considered by the majority of 11 local authorities, including Tendring District Council. The SPD is in draft and has not been subject to public consultation. Having said that, each LPA partner made a commitment to developing a strategic solution and Natural England has supported its preparation. The documents have been received positively by the Councils which have considered them. The interim strategy and draft SPD have significant weight.
128. The proposed SANG at the Lifehouse site has the potential to deliver the standard minimum requirements, including high quality informal semi-natural areas, dogs off-lead areas and a circular walking route. The proposed measures are in accordance with the revised Interim Advice issued by Natural England in August 2018. It is normal practice to condition the submission of a detailed scheme(s), as currently proposed.
129. As decision maker, as opposed to a consultee, I have the responsibility of scrutinising the detailed wording of the final Deed with the benefit of the document. In the Fifth Schedule on ecological mitigation the covenants address two scenarios. In the event the RAMS has been formally adopted before the scheme begins, the financial contribution would be paid before the commencement of development, the sum being for works and improvements identified by the RAMS to mitigate any increased use as a result of the development. This is in accordance with Natural England's interim advice.
130. In the alternative, if the RAMS has not been formally adopted by the Council, the financial contribution would be paid before the commencement of development. However, the planning obligation falls short because it fails to identify the specific visitor management measures. Also, there is no requirement that first occupation of the dwellings does not occur before the additional resilience measures are implemented. When considered in detail the planning obligation does not accord with Natural England's interim advice. For this reason I have doubts as to the absence of adverse effects, more especially on Hamford Water SPA/RAMSAR.
131. Therefore I am unable to conclude that the proposal would not adversely affect the integrity of the European sites. A consequence is that the presumption in favour of sustainable development, the tilted balance, does not apply.
132. Moving onto the final stages of the process, there are likely to be alternative solutions that would have no (or a lesser) effect on the site's integrity. One alternative would be to have a greater commitment to mitigation through a more rigorous planning obligation. There are no imperative reasons of overriding public interest to justify the grant of permission despite a potentially negative effect on site integrity. In the light of these conclusions planning permission cannot be granted in accordance with the Habitats Regulations. The rigorous examination required by Policy EN11a shows that the development should not be permitted.

On-site biodiversity

133. The appellant's ecological appraisal and phase 1 habitat survey (October 2017) established that the development areas within the site are dominated by semi-improved grassland and previously cleared, recolonising habitats. Other habitats raising ecological value included a waterbody and stream, trees

hedgerows and scrub. Habitats of considerable ecological value were present on the wider Lifehouse site. The survey area supported several protected species, including dormice, water vole and great crested newt. Thorpe Hall, which includes Hall Row woodland, areas of parkland and grassland, is a potential local wildlife site.

134. The Essex Wildlife Trust maintained its objection in respect of on-site impacts to priority habitats and protected species. This objection was supported in individual representations.
135. Having reviewed all the evidence regarding the on-site effects, the probability is that the development of the housing site would be compatible with the statutory and policy requirements, subject to the compliance with planning conditions covering site layout, tree protection, landscaping, lighting and requiring a biodiversity management plan and a construction environmental management plan. The reserved matters and approved detailed schemes would be essential to ensuring local biodiversity is protected and enhanced. These conclusions must be read alongside the all important conclusion on the European nature conservation designated sites.

Capacity and safety of local highway network

136. Local Plan Policy TR1 states that where a transport assessment indicates the development will have materially adverse impacts on the transport system planning permission should be refused unless measures to reduce the impacts to acceptable levels are provided.
137. When assessing applications for development the Framework aims to ensure safe and suitable access can be achieved for all users and any significant impacts from the development on the transport network (in terms of capacity and congestion) or on highway safety can be cost effectively mitigated to an acceptable degree. Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
138. The proposed new priority junction to provide access to the housing site from Station Road would be capable of being designed to an appropriate standard incorporating required visibility splays. The details of the junction design and the timing of implementation of the works would be secured through a planning condition. I will now turn to the effect of the development on traffic and pedestrian conditions in the village centre and the proposed off-site highway works.

Capacity

139. Relevant national guidance on the capacity of existing urban roads is contained in TA 79/99 of the Design Manual for Roads and Bridges (DMRB), where capacity is defined as the maximum sustainable flow of traffic passing in 1 hour, under favourable road and traffic conditions. In summary, Table 1 in the document sets out the types of urban roads and the features that distinguish them. Table 2 gives the one-way hourly flow capacities for each type of two-way single carriageway urban road, broken down into carriageway widths. It follows that a reduction in carriageway width reduces the capacity of the road. A starting point is to identify the road type. The Transport

Assessment and the appellant's highway proof of evidence provide useful information about the local road network.

140. Thorpe-le-Soken lies at the crossroads of the B1033 and the B1414. The B1033 forms the main link between Colchester and the A133 to the west and Frinton-on-Sea and Walton-on-the-Naze to the east. The B1414 runs north to south between Harwich and Clacton. In the village the B1033 meets the B1414 Station Road at a triangular priority junction and some 75 metres to the west of the junction is a mini roundabout linking with Landermere Road (B1414) to the north.
141. The character of the B1033 varies through the village. In general terms, the eastern and western approaches are less built up, carriageway width is consistent and there are few constraints on vehicle flow. The High Street is the focus of activity. The evidence indicates the capacity of the High Street and the junctions of the B1033 and the B1414 are the critical considerations.

Link capacity

142. The High Street, west of the mini roundabout to the Rose and Crown Public House, is a single carriageway road of variable width. It is a bus route for scheduled services and school services. The speed limit is 30 mph. Parking restrictions apply in two locations, otherwise parking and loading is unrestricted. There is a zebra crossing near the primary school and bus stops are at kerbside. Side roads are few in number, notably New Town Road and Mill Lane that serve residential development. Buildings typically are sited close to the back edge of the footway and have narrow plot widths, resulting in a high degree of enclosure. Land use is mixed, reflecting the function as the village centre. Shops, pubs, businesses, a primary school, the GP surgery, the Church, other community buildings and associated car parks, all have access from the High Street.
143. The High Street is very busy with local and through traffic, even outside peak periods. I observed that the on-street parking in effect results in one-way vehicles flows, with queues forming as vehicles wait for a gap in the oncoming traffic so that they can pull out and pass. The queues can back up and hinder the free exit of movement from the mini roundabout. The operation of the highway is also adversely affected by the frequency of heavy goods vehicles (HGVs), especially on the narrower sections of the carriageway. Vehicles have difficulty manoeuvring and passing and as a result they come very close to the kerb or mount the footway. Footways are not generous in width and conditions for pedestrians are not pleasant. In the afternoon, at the end of the school day, difficulties increased when the school buses appeared to increase congestion.
144. My visits to the High Street represented snapshots in time but the conditions I observed were consistent with the descriptions of local residents. The appellant's evidence refers to the impact during the school drop-off period in the morning peak. Turn over from parking in nearby car parks was reported to have caused queuing back towards Landermere Road mini roundabout, although not sufficiently to interfere with its operation.
145. The features of the High Street suggest that this stretch of highway falls within the TA 79/99 Urban All Purpose road type 4 (UAP4). I agree with the appellant on this categorisation. The appellant, with reference to Table 2 of TA 79/99, derives a maximum one-way flow link capacity of somewhere between

900 vehicles per hour (UAP4 6.75 m width) and 1,320 vehicles per hour (UAP4 capacity at 9 m carriageway width). No adjustment was made for HGVs indicating these vehicles account for less than 15% of the flow. Typical observed peak flows for the High Street are given as 509 vehicles westbound in the morning peak and 559 eastbound in the evening peak. The appellant's conclusion is that the High Street link is within capacity.

146. However, the capacities given in TA 79/99 are a starting point and are theoretical capacities. They apply to links and take no account of junctions. The DMRB advice also acknowledges that the capacity of urban roads can be affected by a wide range of factors that may not be predicted accurately by the road features identified. For this reason capacity flows may be up to 10% more or less than the values stated in the document. More particularly the capacity of lower road widths will be significantly reduced by parking and temporary width restrictions.
147. The appellant's evidence states that the carriageway width of the High Street varies from 6.3 m close to the mini roundabout to 6.8 m near the Bell Inn to 7.3 m near the school, 9 m or so near the GP surgery then reducing down to 7.3 m beyond the surgery to Vicarage Road. Therefore the width of the carriageway is typically within the 6.75 m to 7.3 m range, with a theoretical capacity of 900 to 1,140 vehicles (one-way hourly flow). On the basis that lower widths over a short distance will effectively reduce capacity, the 1,320 vehicles per hour capacity cited in the appellant's evidence is improbable. The 6.3 m carriageway width acts as a constraint in vehicle flow, reducing the theoretical capacity. In addition, parked vehicles, bus stops and turning movements act as constraints to the maximum sustainable flow of traffic. The theoretical capacity should be adjusted downwards, consistent with the DMRB guidance. Therefore the High Street is likely to be operating closer to capacity than indicated by the appellant's evidence.
148. On the appellant's figures (agreed by the highway authority) the Lifehouse development is expected to add an additional 11 vehicles eastbound and 30 vehicles westbound in the morning peak to traffic on the High Street and 27 vehicles eastbound and 13 vehicles westbound in the evening peak hour. Account also was taken of committed development of 968 new dwellings in the local area in considering future traffic conditions on the local road network in 2023 (proposed future year of opening). The level of commitments was agreed with the local planning authority and highway authority for the Transport Assessment dated October 2017. The schedule of commitments was not updated subsequently and therefore did not include the 49 dwellings allowed on appeal on a site south of Frinton Road and immediately north of the site²¹. Whilst that development would be expected to generate less traffic than the appeal proposal, the 2023 peak flow without the appeal development is likely to be a conservative figure.
149. The appellant's figures show the future expected maximum peak hour traffic flow in 2023 with development on the High Street link would be 716 vehicles, compared to a link capacity of 900. Taking into account the considerations I have identified the link capacity is less than 900 vehicles per hour and the 2023 peak flow would be slightly greater. I conclude that the High Street would

²¹ Ref APP/P1560/W/17/3166985 dated 31 October 2017 at Appendix ARC 2

be very near to or at capacity under the 2023 peak flow with development conditions.

Junction capacity

150. At the mini roundabout queue surveys identified typical queues of 0 to 6 vehicles on each approach. Maximum queues in the morning peak of 14 vehicles occurred on Abbey Street and 12 vehicles on Landermere Road. No significant queues were observed in the evening peak. At the Station Road Memorial junction little queuing was observed during the peak periods with the exception of an 18 minute period in the morning peak when queues increased to a maximum of 28 vehicles.
151. The appellant has shown and has accepted that the committed development traffic would worsen traffic conditions in Thorpe-le-Soken and would lead to significant queues at junctions. The addition of the proposed Lifehouse development traffic would add to those queues and delays²².
152. The signalisation of the mini roundabout junction is proposed to mitigate the effect of the development traffic, as well as the impact of traffic from committed development. The introduction of signals is intended to manage queues across the junctions as a whole and to control more effectively the priority traffic flows. A reduction in queuing would be expected to occur because the signals would provide additional capacity compared to the mini roundabout junction. The details of the junction layout would be finalised in agreement with the highway authority and local planning authority. A planning condition is proposed that requires the improvement to be in place before occupation of development.
153. The modelled results show that with committed development and the Lifehouse proposal overall total queues in the morning peak would fall from 77 to 26 vehicles and in the evening peak from 100 to 25 vehicles. The highway authority has not disputed the results of the LINSIG modelling. In the absence of any contrary evidence, a signalisation scheme has been shown to adequately mitigate queuing at the junction. However, the appellant did not address satisfactorily the potential effect of the nearby pinch point (on the High Street) on the operation of the signalised junction.

Other matter: GP surgery

154. The proposal to relocate the GP surgery situated on the High Street onto the Lifehouse Spa site with access via Lifehouse Drive was to be progressed as a planning obligation by means of a land transfer. The development of a surgery through the erection of a new building and change of use of land formed no part of the planning application. The proposed relocation was not considered in the Transport Assessment but in the appellant's Highways proof of evidence where the benefits were identified as easing parking congestion on the High Street and possible easing of traffic flows. No significant difference was found on the operation of the junctions.
155. The removal of a potential land transfer from the executed unilateral undertaking does not alter my findings in relation to the effect of the traffic generated by the housing development on the capacity of the High Street.

²² Highways proof of evidence Table 7.3

A133/B1033 Colchester Road Roundabout

156. The 2016 baseline position shows that significant queuing of traffic occurs on the southern arm of the roundabout, one reason being the capacity of the roundabout. A second reason is the restricted single lane capacity of the A133 westbound, correctly distinguished as a strategic issue. The Lifehouse development would not increase the volume of traffic on the A133 southern arm but it would add traffic to other arms of the roundabout, which in turn would slightly lengthen forecast queues.
157. The proposal is to increase the entry width and flare length on the A133 southern arm by the removal of the central hatching markings adjacent to the central island. The traffic modelling shows that when viewed in isolation this improvement would significantly improve the performance of the junction by substantially reducing queue length from 104 vehicles to 4 vehicles. The appellant acknowledged that the strategic issue of link capacity to the west may well continue to hinder performance of the roundabout.
158. In view of the relatively slight increase in traffic and queuing attributable to the proposed Lifehouse development it would not be proportionate to require this scheme to resolve the strategic issue. That being so the benefit of the proposed improvement to the southern arm is questionable.

Conclusion

159. The development would have adverse impacts on the capacity of the local highway network. The proposed signalisation scheme has been shown to adequately mitigate queuing at the junction with Landermere Road but no measures are put forward to ease traffic flow on the High Street. There is not compliance with Policy TR1, although to refuse planning permission on capacity grounds alone would not be justified when applying the severity test in the Framework.

Safety

Proposed junction

160. Personal injury accident data over a five year period from May 2011 to April 2016 did not identify any particular pattern or highway reason for those accidents recorded. There were no recorded accidents at the two main junctions in the village. The development would bring about changes to the levels of traffic on the local road network, a new signalised junction and new pedestrian crossing facilities.
161. A stage 1 safety audit on the amended proposal for the junction identified problems related to conflict between turning heavy vehicles and pedestrians and restricted width of approach lanes. The detail of the scheme was amended to address the points raised and the highway authority has confirmed that the revised traffic signal layout on drawing SK14 Rev F is acceptable.
162. The existing mini-roundabout junction does not allow for any controls to provide dedicated pedestrian crossing times. Signalisation would provide the opportunity to do so, although such a feature is not included in the identified improvements for pedestrians. The original signalisation scheme would have

facilitated a new tactile crossing across Station Road for pedestrians²³. However, this improvement is not included on the revised proposal²⁴. Therefore proposed improvements to pedestrian crossing facilities would be limited at the staggered junction.

163. A small number of residential properties have driveway access onto the B1033 at the junction with Landermere Road. In the safety audit on the original junction layout, concerns were raised about a possible increase of driver confusion, the risk of collisions and rear end shunts. No problems were identified through the safety audit on the revised junction layout and the appellant considered the effect of signalisation would be neutral. This assessment was not accepted in resident representations.
164. The proposed signalised junction would be significantly different to the current layout arrangements with the mini roundabout, which relies primarily on traffic giving way rather than regulated control on vehicle movement through traffic signals. In practice the probability is that residents coming out of their driveways would continue to be reliant on gaps in traffic flow or drivers giving way to allow them to enter into the westbound traffic stream. The layout plan indicates that the primary and/or secondary traffic signal would be visible to a driver emerging from the driveways. However, in my view, residents would not be able to turn right into or out of their driveways without the increased risk of potential vehicle conflict, taking into account the position of the stop line, the dedicated forward and right turning lanes and traffic movement from Landermere Road. By comparison, the existing layout allows for a greater degree of flexibility in vehicle movement and the mini-roundabout assists certain right turning manoeuvres. The likelihood is that residents would be forced to avoid right turn movements and as result their journeys would be less convenient. To this extent the signalised junction would be less safe and less convenient for a small number of residents.

Safety and Accessibility

165. Local Plan Policy QL2 requires the development to be located and designed to avoid reliance on the use of the private car and to promote travel choice. Pedestrian needs have highest priority and those of car borne commuters, shoppers and visitors the least priority. Policies TR3a, TR5 and TR6 concern provision for walking, cycling and public transport. When assessing applications for development the Framework aims to ensure appropriate opportunities to promote sustainable transport modes can be taken up.
166. The Local Plan identifies Thorpe-le-Soken as a Principal Defined Village because of the range of facilities and services available in the village. These include a primary school, a convenience goods shop and community leisure and social facilities. Policy RL4 is designed to allow for larger scale housing development (6 or more dwellings) in this type of village.
167. The housing site is within walking distance of the village but I have reservations about the ease of pedestrian access, especially for those with reduced mobility and the older and younger members of the community. Moreover, the isochrones illustrating the distances are taken from the residential access on Station Road, with no allowance for walking from the

²³ Plan SK14 Rev A Appendix H Transport Assessment October 2017

²⁴ Plan SK14 rev F

- dwelling within the centre and on the eastern side of the housing site to the access and Station Road.
168. More particularly, pedestrians would need to cross Station Road to get to the footway on its western side. A new crossing point with tactile paving is proposed but otherwise there would be no assistance to give pedestrians any form of priority in crossing the road. The footway to the village is relatively narrow and lighting is minimal. Reference has been made to a lighting assessment but no specific proposals are put forward for consideration.
169. An alternative route may be via the proposed circular walking route through the public park but at this stage there is little by way of detail to assess its suitability for non-recreational use. As noted above no pedestrian crossing facilities are proposed at the War Memorial junction, even if access was made through the northern end of Station Road. The proposed improvements to encourage walking and to assist pedestrians are limited and fall short of an adequate standard given that Policy QL2 requires pedestrian needs to have the highest priority, the large number of dwellings proposed and access is not a reserved matter. There is a degree of conflict with Policy TR3a.
170. There are no dedicated cycle routes in the area and no improvements to cycle facilities are proposed off-site. The Facilities Plan²⁵ indicates short cycle rides between the housing site and the village but the safety of the route for cyclists is an important consideration. Station Road south of the village boundary is rural in nature and I consider that conditions on the High Street would not encourage use of a bicycle, taking account of the narrow carriageway width, parked vehicles, the number of heavy goods vehicles and manoeuvring of vehicles around parked cars or at access points to car parks.
171. The proposed improvements to bus stops on Station Road would be a positive step to encourage use of the bus in line with Policy TR6. The housing site has the advantage of being located near to a railway station with a reasonable level of services, although in my opinion the lack of step free access to the platforms is a significant drawback. The bridge, providing access to all platforms, has steep flights of steps and could be off-putting to a range of people.
172. Planning conditions would secure only the proposed highway improvements shown on the submitted plans. The aim of the proposed travel plan is to influence travel behaviour, primarily by raising awareness of residents of the infrastructure and transport services and travel options available. It would not resolve or mitigate the disincentives to use of alternative travel modes to the car.
173. In conclusion, the housing site is in a location that would enable use of alternative transport modes to the private car and for a rural area there is a good range of facilities and public transport opportunities available in the locality. Nevertheless, I disagree with the appellant that the housing site is 'highly sustainable' in terms of its location relative to community services and shops and public transport by reason of the shortcomings and restricted range of opportunities for certain sections of the community. The outline proposal does insufficient to address constraints on pedestrian and cycle facilities and to promote travel choice, resulting in a degree of conflict with Policy QL2.

²⁵ Figure 5.1 Highways proof of evidence

174. With reference to the Framework, the impact on highway safety would not be 'unacceptable' and so is not a constraint on development taking place.

Social and physical infrastructure

175. The proposed housing development of up to 200 homes could reasonably be expected to result in approximately 440 new residents²⁶. This would represent a very significant increase in the population of the village, as explained by interested parties at the inquiry.
176. The Local Plan aims to ensure that all forms of development are supported by an appropriate range of infrastructure and public services and that where justified planning obligations will be secured, as set out in Policy QL12. Planning obligations offered in connection with the appeal development must meet the statutory and policy tests in order that they may be taken into account as a reason for granting planning permission. The obligations must be 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.

Education

177. Essex County Council advised that the development is located in the Beaumont and Thorpe Ward and demonstrated that there would be insufficient full day care / free entitlement places to meet the demand from the proposal. The financial contribution secured through the Deed would go towards the additional places for early years and childcare in the Ward that the County Council would have to facilitate to meet its statutory duty. The sum would be related to the number and size of homes within the scheme and be in accordance with the formula established in the County Council's Developer's Guide to Infrastructure. The obligation meets the three tests.
178. The primary school in Thorpe-le-Soken is at capacity. The County Council's 10 Year Plan refers to two local expansion projects at the schools in Weeley and Little Clacton to meet demand. The financial contribution would fund additional places at these two schools to mitigate the proposal's impact on local primary school provision. The obligation is necessary and fairly and reasonably related in kind and scale to the development. In terms of both early years and primary education there is compliance with Policy COM26 that requires land and/or financial contributions to be made to provide the additional school places that will be necessary to serve the development.
179. The 10 Year Plan suggests up to 8 forms of entry will need to be added to the area's secondary schools between 2018 and 2021, potentially including Tendring Technical College. The County Council has not sought a contribution towards that expansion but a school transport contribution for secondary school pupils because of the distance between the housing site and the Tendring Technical College at Frinton. Given the information from the County Council the planning obligation is justified.

Open space

180. The planning obligation makes provision for some 4.8 ha of land to be used for a public open space recreational facility, including a children's play area.

²⁶ Consultation comment from NHS England dated 15 November 2017

This amount of land satisfies the requirement of Policy COM6 and the obligation overall meets the tests.

Health

181. Local residents described the existing difficulties in accessing health care. NHS England demonstrated that the main GP practice operating within the vicinity of the site does not have the capacity for the additional growth and demands on its services resulting from the development and cumulative growth in the area. Representations from NHS England considered that the proposal would give rise to a need to increase capacity by extension, reconfiguration, refurbishment or potential relocation of Thorpe-le-Soken surgery. A proportion of the cost of additional primary healthcare provision was sought.
182. The financial contribution committed in the Deed is the sum requested by NHS England (£69,391). However, the obligation provides for payment to be made prior to first occupation of a dwelling, not before commencement of development. This timing does not accord with NHS England's advice. Furthermore, the payment is dependent on requirements placed by the Deed on the Council and NHS England being met. One such condition is that the Council has to have received written confirmation and evidence from NHS England that a contract has been or will be let for the purposes of increasing the capacity of Thorpe-le-Soken surgery.
183. There is no evidence of any firm project plan or scheme in place to increase capacity at the surgery, whether by expansion on-site or by relocation. The surgery expressed the view in January 2017 that there is no opportunity for building or car park expansion at its current site on the High Street. There is no explanation as to whether the healthcare contribution and its stated purpose would assist the emerging estates strategy of the North East Essex Clinical Commissioning Group²⁷. Similarly there is no indication of a timescale when any such increase in capacity in the GP practice may be delivered. The wording of the clauses in the undertaking introduces uncertainty that the developer will commit to mitigating the impact of the development on health care facilities.
184. For these reasons it has not been demonstrated that the significant impact of the proposal on health care provision in the village would be adequately mitigated, resulting in harm to the social and community provision to meet the health needs of existing and future residents. In this respect objectives of Policy QL12 and the Framework are not met.

Other matters

185. The flood risk assessment and development drainage strategy demonstrated that surface water would be able to be controlled to avoid an increase in flood risk within the site boundary or elsewhere. The approval and implementation of detailed scheme(s) would be controlled by planning conditions. No objection arises under Local Plan Policy QL3. The incorporation of sustainable drainage systems for managing surface water run-off complies with Policy EN13.
186. No information has been produced to show Thorpe-le-Soken is within an air quality management area. No objection was made by the Council on air quality grounds. Residents' concerns were not supported by any technical evidence.

²⁷ Inquiry Document 30

Accordingly there are no grounds to consider air pollution is a factor weighing against the development.

Planning Balance and Conclusions

187. The overriding conclusion is that to ensure compliance with the Habitats Regulations planning permission cannot be granted.
188. The proposed development fails to comply with Local Plan Policies QL1, QL9, EN1, EN11a, and EN17, policies which in the main are directed at controlling the location of development and which apply to areas with statutory designations and enjoy a high level of protection. In terms of physical and social infrastructure, local biodiversity and accessibility there is a degree of conflict with Policies QL2, TR1, and TR3a and compliance with Policies TR6, COM6, COM26, EN6 and EN13 in so far as details have been submitted at this outline stage. My conclusion is that the proposal is not in accordance with the development plan when read as a whole.
189. Under the Framework there is a presumption in favour of sustainable development. Local Plan Policies HG1, HG4 and QL1 in respect of new housing provision in the District, including affordable homes, are out of date but the tilted balance in paragraph 11 does not apply in this case because policies in the Framework protecting areas of particular importance provide a clear reason for refusing the development. The proposal has strong support in so far as it contributes to the social objective of bringing forward land for new homes including affordable housing in the District. Limited economic benefits have been identified. Balanced against these positive aspects the unacceptable environmental consequences show that the proposal is not a sustainable solution. The inadequacy in health care facilities has not been satisfactorily addressed. Overall the proposed development is not acceptable when assessed against the policies in the Framework.
190. Even allowing for the inconsistencies between certain policy requirements in the Local Plan and national policy, the direction provided by the Local Plan is supported by the Framework.
191. The identified harm is not able to be overcome by the use of planning conditions. There are no other considerations that indicate the outcome should be other than in accordance with the development plan.
192. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be dismissed.

Diane Lewis
Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Josef Cannon of counsel	Instructed by Linda Trembath, in-house solicitor, Tendring District Council
He called	
Mr Neil McDonald BA	NMSS Ltd
Ms Cristina Howick MA MSc(Econ)	Director, Peter Brett Associates LLP
Mr Chris Morley	Associate Archaeology and Built Heritage Consultant, Pegasus
Mrs Alison Hutchinson BSc MRTPI	Director, Hutchinsons

FOR THE APPELLANT:

Mr Rupert Warren QC	Instructed by Mr Tony Collins, Collins & Coward Ltd
He called	
Mr Colin Robinson BA(Hons) MTP(Dist) MRTPI MIED	Planning Director, Lichfields
Mr Jonathan Edis BA MA PhD MCiFA IHBC	Managing Director, Heritage Collective UK Limited
Mr Mark Flatman CMLI DipLA(Hons) BA Hons	Director, Liz Lake Associates
Ms Carine Bonnejean MBA BSc(Hons)	Managing Director, Christie & Co
Mr Paul Silcock BSc MCIHT	Director, Fieldgate Consultants
Mr Tony Collins MRICS MRTPI MCIT MILT MEWI	Director, Collins & Coward Ltd

INTERESTED PERSONS:

Ms Tina Starling	Parish Councillor Thorpe-le-Soken
Ms Rosalie Pope	Resident
Mrs Kelly Coulter	Resident
Mr Kevin Marsden	Tendring Wildflower Survey Group
Ms Linda Green	Resident
Mr Richard Hawes	Parish Tree Warden, Thorpe-le-Soken
Mr David Walkden	Resident
Mr Martyn Cooper	Resident
Councillor Mike Brown	Ward Councillor for Weeley
Councillor Daniel Land	Ward Councillor for Thorpe, Beaumont and Great Holland, Chair of Parish Council
Councillor Jeff Bray	Ward Councillor for Little Clacton
Councillor Richard Everett	Speaking as a resident

DOCUMENTS submitted at the inquiry

- 1 Appellant's opening points
- 2 Opening statement on behalf of the local planning authority
- 3 Statement by Ms Starling

- 4 Statement by Ms Pope
- 5 Statement by Ms Coulter
- 6 Statement on behalf of Tendring Wildflower Survey Team
- 7 Statement by Ms Green
- 8 Statement by Mr Hawes
- 9 Statement by Mr Cooper
- 10 Statement by Cllr Land
- 11 Statement by Cllr Everett
- 12 Appeal decision Land south of Main Road, Alresford ref APP/P1560/W/18/3202993 dated 7 November 2018
- 13 Draft Minutes of the meeting of the Local Plan Committee 30 October 2018
- 14 Note on Tendring Unattributable Population Change
- 15 Bundle of documents submitted by Mr Silcock on Stage 1 Safety Audit for junction signalisation
- 16 Bundle of documents re *City and Country Limited v Secretary of State for Housing, Communities and Local Government & Tendring District Council* September 2018
- 17 Report to inform a Habitats Regulations Assessment November 2018 submitted by the appellant
- 18 CIL Compliance Regulation Statement dated 8 November 2018
- 19 Heritage at Risk East of England Register 2018
- 20 Aerial photograph of The Lifehouse hotel and spa
- 21 Calculation of revised local housing need for Tendring 14 November 2018 submitted by Mr McDonald
- 22 Report to inform a Habitats Regulations Assessment November 2018 submitted by the appellant
- 23 Email exchange between the appellant and Natural England November 2018
- 24 Draft unilateral undertaking
- 25 Summary of unilateral undertaking
- 26 Briefing note Completions v Household Growth for Tendring District 15 November 2018 submitted by Lichfields
- 27 Landscape strategy plan ref 1853A2 01
- 28 Housing statement of common ground table 4.1 amended 5 year housing land supply
- 29 Inquiry site visit itinerary
- 30 Email exchange between the Council and NHS North East Essex Clinical Commissioning Group 21 November 2018
- 31 Follow up statement on Transport Assessment by Mr Cooper
- 32 Consultation response by Essex Wildlife Trust 7 November 2017
- 33 Consultation response by Essex Wildlife Trust 28 March 2018 on the Report to inform the Habitats Regulations Assessment
- 34 Comments by Lichfields on appeal decision Land west of Edenside APP/P1560/W/18/3196412 dated 3 April 2019
- 35 CIL Regulation Compliance Statement April 2019
- 36 Unilateral undertaking dated 16 April 2019
- 37 Closing submissions on behalf of the local planning authority
- 38 Appellant's closing submissions