# Proof of Evidence of James Firth - Appendices

PINS reference: APP/A1530/W/22/3305697

LPA reference : 210965

Our reference: 615247

Site Address: Land at Broadfields, Wivenhoe, Colchester

Appellant: Taylor Wimpey UK Ltd

LPA: Colchester Borough Council

Inquiry Start Date: 13th December 2022

# Contents

# JF1: Development Areas plan (Drawing TW027-PL-20 Rev C), prepared by JCN

JCN DESIGN & PLANNING

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| | | |
|---|---|---|
| | Residential Development North | 1.08 ha |
| | Residential Development South | 2.66 ha |
| | Open Space | 4.96 ha |
| | Sports Pitches | 2.00 ha |
| | Local wildlife site | 4.32 ha |
| | Total | 15.02 ha |

ELMSTEAD ROAD
Football Ground
L Twrs
Tennis Court
Sports Facility
INDICATIVE SPORTS PITCH LOCATIONS COMPLETE AREA 2.003 Ha
DOG WALKING AREA
PLAY AREA L.E.A.P. INDICATIVE ARRANGEMENT
WILLIAM CL
KINGS MEWS
BROADFIELDS
HEREWARD CLOSE
ALEXANDRA DRIVE
CAROLINE CLOSE
RICHARD AVENUE
El Sub Sta
LB
Play Area
JAMES CLOSE
MEDE WAY
HENRIETTA CLOSE
CHARLES CT
PADDOCK WAY
ASH GROVE
Connection to Woodland

0 25 50 metre

Taylor Wimpey

Project:-
Wivenhoe, Land South of Elmstead Road, off Richard Avenue

Description:-
Development Areas Plan

Scale:- 1-500 @ A0
Date:- 27/10/2022
Drg no:- TW027-PL-20
Revision:- C

# JF2: Peel Investments v Secretary of State for Housing, Communities & Local Government [2020] EWCA Civ 1175

Neutral Citation Number: [2020] EWCA Civ 1175

Case No: C1/2019/2149 and 2151

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE PLANNING COURT IN THE ADMINISTRATIVE COURT**
**The Hon. Mr Justice Dove**
**CO/5073/2018**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 September 2020

**Before :**

**LORD JUSTICE LEWISON**
**LORD JUSTICE BAKER**
and
**SIR STEPHEN RICHARDS**

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**Between :**

| | |
|---|---|
| **PEEL INVESTMENTS (NORTH) LIMITED** | **Appellant** |
| **- and -** | |
| **SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT (1)**<br>**SALFORD CITY COUNCIL (2)** | **Respondent** |

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**Rupert Warren QC and James Corbet Burcher** (instructed by **Shoosmiths LLP**) for the **Appellant**
**Richard Honey** (instructed by **Government Legal Department**) for the **First Respondent**
**Christopher Katkowski QC and Matthew Fraser** (instructed by **Manchester City Council Legal Services**) for the **Second Respondent**

Hearing date: 1 July 2020

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# Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand down is deemed to be 10.30am on Thursday 3rd September 2020.

## LORD JUSTICE BAKER:

1. These proceedings concern two applications for outline planning permission by the appellant for the construction of up to 600 and 165 homes respectively on land in West Salford known as the Worsley Greenway which lies within the area of Salford City Council.

2. The first application was refused by the Council in November 2013 and the second application was refused by the Council in July 2017. Appeals against the refusals were dismissed by the Secretary of State for Housing, Communities and Local Government in November 2018. The appellant brought a claim under s.288 of the Town and Country Planning Act 1990 to quash the Secretary of State's decision. On 2 August 2019, Dove J, sitting in the Planning Court, dismissed the appellant's claim. The appellant now appeals against that dismissal, permission to appeal having been granted by Lewison LJ on 16 December 2019.

3. The two issues arising on the appeal, as summarised by the appellant, are (1) the correct interpretation of the term "out-of-date" in paragraph 11d of the National Planning Policy Framework ("NPPF"), and (2) the proper application of policies contained within development plan documents which are time-expired and/or lack policy in respect of the strategic issue of housing supply.

### Background

4. On 21 June 2006, the Council adopted the Salford Unitary Development Plan 2004-2016 ("SUDP"). The "Plan Strategy" included (in paragraph 2.1):

> "directing development to the most appropriate locations; encouraging new development, infrastructure and facilities where they are required; and protecting key environmental assets."

The aims of the Strategy included (under Aim 1) "to meet the city's housing needs" with "a particular emphasis on providing the type of accommodation and appropriate neighbourhood settings and facilities that will help to attract families to live in Salford" and (under Aim 6) "to protect and enhance natural and historic environmental assets".

5. Chapter 3 of the SUDP translated the Plan Strategy into a "Spatial Framework" which included an area known as "Urban Fringe and Countryside", which in turn included an area of 195 hectares within the Green Belt known as "the Worsley Greenway". Paragraph 3.14 provided:

> "the policies and proposals of the UDP are designed to secure the implementation of the vision and priorities set out in the Spatial Framework."

6. Within chapter 4, entitled "Strategic Policies", Policy ST2 "Housing Supply" set out the Council's proposal for housing land supply up to March 2016, stating:

> "an adequate supply of housing will be secured through the … achievement of an average annual rate of housing provision, net of clearance, of 530 dwellings per year during the period up to 2016."

7. In chapter 12, entitled "Environmental Protection and Improvement", Policy EN2 dealt with Worsley Greenway. The policy provided:

> "Development will not be permitted where it would fragment or detract from the openness and continuity of the Greenway, or would cause unacceptable harm to its character or its value as an amenity, wildlife, agricultural or open recreation resource."

The supporting text stated:

> "The Worsley Greenway is a strategically important 'green wedge' within the Worsley area …. The protection and enhancement of Worsley Greenway, in its entirety, is therefore of great strategic and local importance."

8. Within chapter 14, entitled "Recreation", Policy R4, headed "Key Recreation Areas", provided that planning permission would only be granted for development within, adjoining or directly affecting a key recreation area where it would be consistent with specified objectives, including *inter alia* the protection and enhancement of the existing and potential recreational use, and amenity, of the area and the protection of existing trees, woodland and other landscape features. The key recreation areas identified in the plan included the Worsley Greenway.

9. The effect of the Planning and Compulsory Purchase Act 2004 was that the policies of the SUDP expired in June 2009 unless saved by a direction under Schedule 8 of the Act. On 21 February 2009 the Secretary of State issued a direction under Schedule 8 saving various policies in the SUDP, including policies EN2 and R4 but not policy ST2. The latter policy has never been replaced by any other housing supply policy for the Council's area, although work on a new development plan document has been ongoing for a number of years.

10. On 9 April 2013, the appellant applied for outline planning permission for a development, later called Appeal A, for the construction within the Worsley Greenway of up to 600 dwellings, together with other facilities including a marina and other recreation provision and associated infrastructure and landscaping. On 14 November 2013, the application was refused by the Council on the grounds that:

> "the proposal will be contrary to the provision of saved policy EN2 of the SUDP in that the development would fragment the openness and continuity of the Greenway."

11. The appellant appealed against the decision. Following an inquiry by an inspector, the appeal was dismissed by the Secretary of State in March 2015. The appellant applied under s.288 of the Town and Country Planning Act 1990 to quash the decision and on 20 July 2016, the Secretary of State and the Council submitted to judgment on the application. The Secretary of State subsequently decided to reconvene an inquiry in respect of the appeal.

12. On 4 April 2017, the appellant submitted a second planning application (subsequently referred to as Appeal B) for a residential scheme for up to 165 dwellings with associated infrastructure and landscaping. In July 2017, the Council refused the application for permission stating *inter alia* that:

> "the proposal will be contrary to the provision of saved Policy EN2 of the SUDP in that the development would fragment the openness and continuity of the Worsley Greenway and would result in unacceptable harm to its character and its value as an amenity and open recreation resource. The proposal would be contrary to saved policy R4 of the SUDP in that the development would not result in the protection and enhancement of the existing and potential recreational use of the area, or the protection and improvement of the amenity of the area."

13. Appeals A and B were consolidated for determination at the same inquiry. A "Statement of Common Ground" between the appellant and the Council included an agreement that the Council did not have "an up-to-date policy on housing need" and that the SUDP did not contain any saved policies in respect of housing supply. It was further agreed, however, that the Council was able to demonstrate a mathematical housing land supply in excess of five years for the agreed period April 2017 to March 2022, although the supply consisted largely of apartments rather than houses and was principally concentrated in the centre of the city. It was further agreed that there was a demonstrable need for affordable housing within the Council's administrative area. It was the appellant's case that the agreed "mathematical" five-year housing supply did not comply with national planning policy on a "qualitative" basis in that the Council was unable to provide an adequate supply of affordable housing, or of housing suitable to meet the needs of families.

14. The inquiry took place before an inspector over a month in February/March 2018. On 11 July 2018, the inspector issued a report recommending that both appeals be dismissed. On 24 July 2018, the Secretary of State published a revised National Planning Policy Framework ("the 2018 NPPF"), replacing the earlier Framework published in March 2012 ("the 2012 NPPF"). On 12 November 2018, the Secretary of State issued his Decision Letter ("DL") dismissing the appeals, in accordance with the inspector's recommendations.

15. The appellant again applied under s.288 to quash the decision. On 11 February 2019, permission to apply was granted on five of the grounds advanced but refused on all other grounds. The appellant sought to renew the application for permission on three further grounds. The matter was listed for hearing before Dove J in May 2019. For reasons set out in a reserved judgment delivered on 2 August 2019, the judge dismissed the appellant's claim on the grounds for which permission had been granted and refused permission on the other grounds. On 23 August 2019, the appellant filed a notice of appeal under CPR 52.10 seeking permission to appeal to this court against the refusal of permission in respect of one of the other grounds ("ground 7"). On 27 August, the appellant filed a second notice of appeal under CPR 52.6 seeking permission to appeal against Dove J's judgment. On 16 December 2019, Lewison LJ granted permission to appeal.

## The Law

16. When determining an application for planning permission, a decision-maker must have regard to the material provisions of the local development plan and any other material consideration: s.70 of the 1990 Act. S.38(6) of the 2004 Act provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be

made in accordance with the plan unless material considerations indicate otherwise."

17. When preparing the development plan, the local authority must comply with the statutory provisions under the 2004 Act. S.19 of that Act (amended in 2017) provides *inter alia*:

> "(1B) Each local planning authority must identify the strategic priorities for the development and use of land in the authority's area.
>
> (1C) Policies to address those priorities must be set out in the local planning authority's development plan documents (taken as a whole)."

Under section 17(7)(za) of the 2004 Act, the Secretary of State has power to make regulations in relation to the form and content of local development documents. Regulation 5(1)(a) of the Town and Country Planning (Local Planning) (England) Regulations 2012, headed "Local development documents", provides *inter alia* that the categories of "local development documents" include *inter alia*:

> "any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities which contain statements regarding … (i) the development and use of land which the local planning authority wish to encourage during any specified period…."

18. The Government's policy for planning in England is set out in the NPPF. The first edition was published in March 2012, the second in July 2018. The NPPF is "a statement of policy, not a statutory text, and must be read in that light" (per Lord Carnwath JSC in *Hopkins Homes Ltd v Secretary of State for Communities and Local Government and another* [2017] UKSC 37 para 25). But, like any statement of planning policy, the interpretation of the terms of the policy is a question of law for the court: *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.

19. Chapter 2 of the 2018 NPPF is entitled "Achieving sustainable development". Paragraph 7 provides:

> "The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs."

Paragraph 11 contains "the presumption in favour of sustainable development" and provides:

> "Plans and decisions should apply a presumption in favour of sustainable development.
>
> For **plan-making** this means that
>
> (a) plans should positively seek opportunities to meet the development needs of the area, and be sufficiently flexible to adapt to rapid change;

(b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area, or

(ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For **decision-making** this means

(c) approving development proposals that accord with an up-to-date development plan without delay; or

(d) where there are no relevant development planning policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

A footnote, numbered 7, inserted after the word "out-of-date" in paragraph 11d provides *inter alia*:

"This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites …."

Section 3 of the Framework headed "Plan-making", includes, at paragraph 17:

"The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area."

Paragraph 20 provides:

"Strategic policies should set out an overall strategy for the pattern, scale and quality of development and make sufficient provision for

(a) housing (including affordable housing), employment, retail, leisure and other commercial development;

(b) infrastructure ….

(c) community facilities …. and

(d) conservation and enhancement of the natural, built and historic environment ….”

20. Section 13 of the 2018 NPPF is headed “Protecting Green Belt land”. Paragraph 133 provides:

> “The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”

21. Annex 1 of the 2018 NPPF, headed “Implementation”, includes the following provisions under paragraph 212 to 213:

> “212. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan.
>
> 213. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

22. In the 2012 edition of the NPPF, the presumption in favour of sustainable development was set out in paragraph 14. The corresponding provision to paragraph 11d in the 2018 edition provided that, for decision-taking, the presumption meant:

> “where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless
>
> > any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
> >
> > specific policies in this Framework indicate development should be restricted.”

The statement in footnote 7 to paragraph 11d of the 2018 NPPF was set out in Paragraph 49 of the 2012 NPPF:

> “Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

23. The provisions of that part of paragraph 14 of the 2012 NPPF which was subsequently replaced by paragraph 11d of the 2018 NPPF were considered by Lindblom J (as he

then was) in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and another* [2014] EWHC 754 (Admin) at paragraphs 44 to 46:

> "44. In the context of decision-taking paragraph 14 identifies three possible shortcomings in the development plan, any one of which would require the authority to grant planning permission unless it is clear in the light of the policies of the NPPF that the benefits of doing so would be "significantly and demonstrably" outweighed by "any adverse impacts", or there are specific policies in the NPPF indicating that "development should be restricted". The three possible shortcomings are the absence of the plan, its silence, and its relevant policies having become out-of-date.
>
> 45. These are three distinct concepts. A development plan will be "absent" if none has been adopted for the relevant area and the relevant period. If there is such a plan, it may be "silent" because it lacks policy relevant to the project under consideration. And if the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out-of-date". Absence will be a matter of fact. Silence will be either a matter of fact or a matter of construction, or both. And the question of whether relevant policies are no longer up to date will be either a matter of fact or perhaps a matter of both fact and judgment.
>
> 46. All of this, one has to remember, sits within the statutory framework for the making of decisions on applications for planning permission, in which those decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Government policy in the NPPF does not, and could not, modify that statutory framework, but operates within it – as paragraph 12 of the NPPF acknowledges. The Government has taken the opportunity in the NPPF to confirm its commitment to a system of development control decision-making that is "genuinely plan-led" (paragraph 17). But in any event, within the statutory framework, the status of policy in the NPPF, including the policy for decision-making in paragraph 14, is that of a material consideration outside the development plan. It is for the decision-maker to decide what weight should be given to the policy in paragraph 14 if it applies to the case in hand. Because it is government policy it is likely to command significant weight when it has to be taken into account. But the court will not intervene unless the weight given to it can be said to be unreasonable in the *Wednesbury* sense …"

24. In *Trustees of the Barker Mills Estates v Test Valley Borough Council* [2016] EWHC 3018 (Admin), Holgate J (at paragraph 105) agreed that the phrase "out-of-date" in the NPPF was concerned with whether relevant policies have been overtaken by events subsequent to the adoption of the plan and only involves matters of fact and/or judgment.

25. The interpretation of paragraph 14 of the 2012 NPPF was further considered by Lord Carnwath in *Hopkins Homes*. At paragraph 54 to 55 he observed:

> "54. The general effect is reasonably clear. In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are 'significantly and demonstrably' outweighed by the adverse effects or where 'specific policies' indicate otherwise. (See also the helpful discussion by Lindblom J in *Bloor Homes* ….).
>
> 55. It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgment, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgment, not dependent on issues of legal interpretation."

26. Later in his judgment in *Hopkins Homes*, when considering one of the specific appeals before the Court, Lord Carnwath made an observation at paragraph 63 on which the appellant in the appeal before us seeks to rely:

> "On any view, quite apart from paragraph 49, the current statutory development plan was out-of-date, in that its period extended only to 2011."

He then proceeded to decide, on the facts of that case, that the inspector had been entitled to conclude that the weight to be given to the specific policies under consideration in that case should be reduced to the extent that they reflected out-of-date housing requirements so that his final conclusion had properly reflected the language of the "tilted balance" in paragraph 14 of the 2012 NPPF.

27. We were referred to a number of other cases in which judges have made observations about the significance of a policy becoming "out-of-date".

28. In this Court, in *Gladman Developments Limited v Daventry District Council and SSCLG* [2016] EWCA Civ 1146, Sales LJ (as he then was) at paragraph 40 observed:

> "Since old policies of the kind illustrated by policies HS22 and HS24 in this case are part of the development plan, the starting point, for the purposes of decision-making, remains section 38(6) of the 2004 Act. This requires the decisions must be made in accordance with the development plan – and therefore, in accordance with those policies and any others contained in the plan – unless material considerations indicate otherwise. The mere age of a policy does not cause it to cease to be part of the development plan …. The fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the NPPF…."

29. Very recently in this court, in *Oxton Farm and another v D Noble Ltd* [2020] EWCA Civ 805, my Lord, Lewison LJ, made the following observations under the heading "When is the tilted balance engaged?"

> "31. Paragraph 11d of the NPPF provides that the tilted balance is engaged where (a) there are no relevant development planning policies, or (b) the policies which are most important for determining the application are out-of-date. The lack of a five year supply of housing land is a policy that is deemed to be out-of-date by virtue of footnote 7.
>
> 32. It is common ground that whether the tilted balance is engaged because of a shortfall in the supply of deliverable sites for housing is a binary question, to be answered yes or no. Either there is a five year supply of housing land, or there is not. If there is a five year supply then the tilted balance is not engaged on that basis ….
>
> 33. But the lack of a five year supply of housing land is not exhaustive of policies that may be out-of-date. Other policies which bear on the decision may also be out-of-date, with the consequence that the tilted balance is triggered on a different basis: *Hopkins Homes* …. A policy may be out-of-date because of a change in national policy or because of things that have happened on the ground, or for some other reasons: *Bloor Homes* …. Whether a policy is out-of-date is a matter of planning judgment: *Hopkins Homes* at [55]."

30. At first instance, in *Paul Newman New Homes Ltd v SSHCLG* [2019] EWHC 2367 (Admin), Sir Duncan Ouseley sitting as a High Court judge specifically considered the phrase "out-of-date" in paragraph 11d of the 2018 NPPF. At paragraph 34, he concluded:

> "In my judgment, the key part of the second trigger, the phrase 'where the policies which are most important for determining the application are out-of-date', is reasonably clear. A policy is not out-of-date simply because it is in a time-expired plan …. If the 2018 Framework had intended to treat as out-of-date all saved but time-expired policies, it would not have used the phrase 'out-of-date', which has different or wider connotations, and would have used instead the language of time-expired policies or policies in a time-expired plan. The inspector's comment in [the decision letter] is apposite in that context. Although the earlier jurisprudence in *Bloor Homes* … and *Hopkins Homes* … related to that same phrase in the 2012 Framework, I see no reason to discount it here where its role is not materially different."

**The inspector's report and the Secretary of State's decision letter**

31. In his report, the inspector at paragraph 29 to 32 identified the relevant development plan policies, including EN2 and R4. For the purposes of this appeal, the relevant section of his report is paragraph 366 to 372:

> "366. The appellant argues that the development plan is out-of-date for a number of reasons, specifically Policy EN 2. The SUDP was adopted in 2006 with a plan period expiring in 2016. It can certainly be said that it was produced in a different policy context and in light of different evidence and

circumstances to those existing today. However, this does not necessarily mean that the plan or any individual policy should be considered out-of-date as it may very well continue to be effective in delivering its original objectives and those relevant today. The fact that a policy is saved means that it remains part of the development plan and must be applied unless material considerations indicate otherwise. The question is not one of time but consistency with the Framework and, ultimately, results on the ground.

367. Policy EN 2 protects the Greenway for reasons that have already been identified. There is no reason to think that those reasons are any less relevant or important than they were within the plan period. Paragraph 157 of the Framework positively promotes that Local Plans should, amongst other things, identify land where development would be inappropriate, for instance because of its environmental or historic significance. That is exactly what Policy EN 2 seeks to do and there is nothing inconsistent with the Framework in that approach, even if the development plan does not currently fulfil all other requirements of the Framework. Whilst the first part of the policy seeks to prevent development in absolute terms this is unsurprising given its objective to protect openness and continuity and it does not alter the need to undertake a statutory balancing exercise against material considerations.

368. It was argued that the Greenway was only protected because the land was not needed to meet the housing requirement for the area at the time and that there was a greater emphasis on the use of, and availability of, brownfield land at that time. There is simply no evidence to support this proposition. To the contrary, the policy and reasoned justification are quite clear about the reasons for protection and these are not diminished by a greater need for housing.

369. The fact that part of the Greenway might be allocated for development in the emerging SLP is of little relevance given the size and peripheral location of the Lumber Lane site. Furthermore, the emerging SLP is yet to be tested at Examination, is subject to objections and might yet change. The document itself states that its policies currently attract very limited weight. In any case, there is nothing to suggest that the appeal sites might be allocated. The draft SLP in fact anticipates increased protection of the area. These are squarely matters for the Local Plan Examination. Any potential release of the Greenway envisaged as part of the Core Strategy is similarly of little relevance given that the CS was withdrawn many years ago. In addition, the fact that there is a recognised need to release greenfield land and/or Green Belt to meet future housing needs in the draft SLP and GMSF demonstrates an emerging strategy to deal with the issue. For the same reasons I have set out above, such recognition attracts little weight in the context of these proposals.

370. For all of these reasons I do not consider that Policy EN 2 is in any way out-of-date. It is an adopted development plan policy which has statutory force. I have found it to be consistent with the Framework and I attach the identified fundamental conflict with the policy full and substantial weight.

371. It is common ground that the development plan no longer contains any policies relating to the need for or distribution of housing in the area. At the previous inquiry, the Council accepted that these policies were out-of-date and this position of common ground between the parties was adopted by the Inspector and the SoS. The Council now argues, having reconsidered its position, that this cannot be so as the policies are not saved; they do not exist and therefore cannot be out-of-date. DT accepted in xx that the policies for the need and distribution of housing could not be out-of-date because they simply do not exist in the development plan.

372. In this case the development plan contains no policies for the need for and distribution of housing and the Council is not seeking to apply any such policies. Policy EN 2 relates specifically to the appeal sites in question and is unambiguous in restricting development of the type proposed. In these circumstances, it cannot be said that the development plan is absent, silent or relevant policies are out-of-date. Having regard to the cases of ***Bloor*** and ***Barker Mill Estates v SSCLG*** [2017] PTSR 408, there remains a plan in place and so it is not absent; there remains a policy for the land in question which is sufficient to establish that the developments are unacceptable in principle and so the plan is not silent; and given the forgoing, the fact that there are no policies for the need and distribution of housing bears little on the outcome where the development plan is continuing to deliver an appropriate quantity of housing, the relevant policies for these appeals are not out-of-date."

32. The inspector went on to consider the question of housing land supply.:

"373. There is clearly a higher housing need now than there was at the time the SUDP was adopted. Nevertheless, the Council can demonstrate a sufficient supply of housing to meet the latest need over the coming years. It is common ground that the Council can demonstrate a numerical five year housing land supply …."

He added, however,

"375. That is not to say that an identified deficiency in particular types of housing is not a material consideration. The appellant produced three housing-related witnesses and I heard a great deal about the need for family and aspirational housing in the area, the acute lack of affordable housing and the Council's poor record in meeting these needs, particularly in Worsley. It is also abundantly clear from the detailed evidence that the five year housing land supply will not address these needs, being largely concentrated in the city centre, given the very high proportion of apartments as opposed to houses and the limited number of affordable units anticipated in relation to the identified need ….

…

377. The Council's current housing land supply position represents a marked improvement since the time of the previous inquiry, when not even half of the required supply existed. This being the case, it cannot be said that

Policy EN 2 is impeding delivery or that the development plan as a whole is failing to deliver the necessary number of residential units.

378. Whilst this is so, the Council is clearly not meeting the needs of the housing market as a whole and there are significant deficiencies in the number of larger/aspirational family houses and wider issues in the area in respect of homelessness and affordability….

…

382. All of this is a material consideration to be weighed in the overall planning balance …."

33. The inspector's conclusion was expressed in these terms:

"414. Although there is compliance with most development plan policies in these cases, there is a clear and fundamental conflict with the development plan in respect of Policies EN 2 and R 4, policies which I do not consider to be out-of-date or inconsistent with the Framework. In these circumstances, the tilted balance of Framework paragraph 14 does not apply. I attach substantial weight to the harm that arises from conflict with these policies, which are fundamental to the plan taken as a whole.

415. There would be some benefits from the proposals, including a contribution towards meeting recognised needs for different types of housing, specifically larger family and affordable housing, though the contribution to the identified need would be relatively small. There would also be some benefit from the provision of school land, a marina, certain open space typologies, net gains in biodiversity, economic benefits, improved accessibility/sustainable transport provision, highway improvements and flood risk reduction. However, even cumulatively, the benefits or other material considerations to which I have been referred would not outweigh the harm that I have found or indicate a decision other than in accordance with the development plan."

34. He therefore recommended that the appeals be dismissed and planning permission refused in both cases. He added:

"417. If the Secretary of State disagrees with my conclusion that the tilted balance is not engaged for whatever reason, I nevertheless recommend that the appeals be dismissed and planning permission be refused in both cases. This is because the adverse impacts of the developments would be such as to significantly and demonstrably outweigh the benefits."

35. After completion of the inspector's report, but before it was placed in the public domain, the Secretary of State wrote to the appellant and the Council seeking submissions in relation to the effect of the publication of the 2018 edition of the NPPF on the cases made by the parties at the inquiry. Both the appellant and the Council responded to this request. For present purposes, it is relevant only to note that the appellant contended that there was no aspect of the new Framework to suggest that the SUDP or the provisions of policy EN2 should be afforded anything other than

very little weight; that the new Framework reaffirmed the importance of fully meeting housing needs; that it specifically required decisions to take account of the identified need for different types of houses; and that nothing in the new framework changed the importance of more family and affordable homes to the future regeneration, economic growth and sustainability of the city.

36. In the decision letter published on 12 November 2018, the Secretary of State indicated that he agreed with the inspector's conclusions and recommendations. Although he qualified this with the words "except where stated" there were in fact no exceptions identified in the letter. On the main issues, under the heading "Development plan", the letter stated:

> "15. The Secretary of State has gone on to consider whether policy EN 2 of the SUDP is out-of-date. For the reasons given at IR366-367, the Secretary of State agrees that the policy remains part of the development plan, and is not inconsistent with the Framework. For the reasons given by the Inspector at IR368-369, he concludes that the recognition of the need to release greenfield land and/or Green Belt to meet future housing needs attracts little weight in the context of these proposals.
>
> 16. For the reasons given at IR371-372, the Secretary of State agrees that even in the absence of policies for the need and distribution of housing, there remains a plan in place, and a policy for the land in question which is sufficient to establish that the developments are unacceptable in principle, and so the plan is in line the paragraph 11(d) of the Framework. He concludes, in agreement with the Inspector at IR370, that Policy EN 2 is not out-of-date."

37. Noting that the Council was able to demonstrate a housing land supply of over 13 years, the Secretary of State concluded (at paragraph 25 of the decision letter) that policy EN2 was not impeding delivery, nor was the development plan as a whole failing to deliver the necessary number of houses. He agreed that, in favour of the appeals, there were deficiencies in the number of large or aspirational family homes, and wider issues with homelessness and affordability. On the other hand, he took into account the impact on the character and appearance of the Greenway and afforded those "harms", and the resulting conflict with development plan policy, substantial weight. He therefore concluded that the appeal should be dismissed and planning permission refused.

## The judgment of the Planning Court

38. In support of the application before the judge, the appellant advanced the five grounds in respect of which permission had been granted. First, it was argued that EN2 was a constituent policy within the development plan document which, as a whole, had passed its expiry date and was therefore automatically out-of-date so that the "tilted balance" should apply. In support of this submission, the appellant relied on the statement of Lord Carnwath in paragraph 63 of his judgment in ***Hopkins Homes***, that "on any view" the development plan under consideration in that case was "out-of-date, in that its period extended only to 2011". In rejecting this argument, the judge observed, at paragraph 58 of his judgment:

> "… the notion of a policy being out-of-date is one which exists within the structure of the Framework and which exists for particular purposes, namely the question of whether or not the tilted balance should apply and the weight which should be attached to the policy in the decision-taking process. In my judgment it is critical to note that there is nothing in the relevant provisions of the Framework to suggest that the expiration of a plan period requires that its policies should be treated as out-of-date. Indeed, to the contrary, the provisions of paragraph 213 specifically contemplate that older policies which are consistent with the Framework should be afforded continuing weight. Furthermore, I would entirely accept and adopt the formulation of the approach to the question of whether a policy is out-of-date given by Lindblom J in ***Bloor Homes***. It will be a question of fact or in some cases fact and judgment. The expiration of the end date of the plan may be relevant to that exercise but it is not dispositive of it, nor did Lindblom J suggest that was the case. In so far as reliance is placed by the Claimant on the observation of Lord Carnwath in paragraph 63 of ***Hopkins Homes***, I accept the submissions made by the First and Second Defendants that it is an obiter remark which does not lay down any legal principle, or provide a gloss on Lindblom J's approach. It is important to note that Lord Carnwath had endorsed Lindblom J's views at an earlier part of the judgment and it would be inconsistent with that endorsement to read the sentence in paragraph 63 as a further gloss on Lindblom J's conclusions. In short, this sentence from the judgment is quite incapable of bearing the forensic weight which the Claimant seeks to ascribe to it. Lord Carnwath was not identifying a legal principle that when a plan's end date has been passed its policies are out-of-date in the terms of the policy of the Framework."

39. Secondly, the appellant argued that policy EN2 has been significantly overtaken by events since adoption, having been based on a plan grounded in development needs which have long been superseded. The judge observed it was "perfectly clear" from paragraph 366 of the inspector's report that he was "very clearly mindful" of the contentions that policy EN2 had been "shorn of its strategic policy context". It was equally clear from paragraphs 371-2 that he was alive to the fact that the development plan no longer contained policies for the needs and distribution of housing since those policies have not been saved in 2009. The judge held that the inspector had been entitled to conclude that policy EN2 "continues to be effective in delivering its original objectives", adding that this was a planning judgment which he was entitled to reach and portrayed no error of law in the approach as to whether or not the policy was out-of-date.

40. The judge observed (at paragraph 66) that the conclusions in respect of these first two grounds of appeal were

> "not especially surprising. It is very far from uncommon to have policies in a plan related to environmental protection whose objectives will, and are intended to, continue well beyond the end of a plan period. Whilst, of course, when a local development document is formulated it is formulated as a whole, and is intended to present as a coherent suite of policies, that objective is not inconsistent with the inclusion of some environmental policies being intended and designed to operate on a longer time scale than that which may be contemplated by the plan period. The kind of policies to which this might apply are policies such as Green Belt

> (one of the characteristics of which is its "permanence"), or policies pertaining to environmental assets such as those relating to heritage assets or internationally protected and irreplaceable habitats. It would be both counter-intuitive, and contrary to long standing provisions of national policy, if policies in a development plan protecting these interests were deemed out-of-date at the expiration of a plan period."

41. Thirdly, it was argued that the Secretary of State had failed properly to interpret paragraphs 11d and 213 by equating the task of identifying whether the policy was out-of-date with an assessment of consistency with the Framework, thereby leaving out of account other relevant factors. In rejecting this argument, the judge stated (at paragraph 65):

> "in my view the observation of the Inspector and the question of whether or not the policy was "not one of time but consistency with the Framework" was one which was a fair reflection of the requirements both of paragraph 213 of the Framework and Lindblom J in ***Bloor Homes***. As the Inspector observes in the preceding sentences, a policy may continue to be effective in delivering its original objectives and, moreover, may have been saved as the present policy was, and thus remain part of the development plan to be applied in accordance with the statutory Framework. Thus, the exercise required by paragraph 213 of the Framework and the ***Bloor Homes*** test is not one which is dictated simply by the passage of time, but rather an assessment of consistency of the Framework, and the factual circumstances in which the policy is being applied including, amongst other things, what the Inspector characterised as "results on the ground". In the particular circumstances of this case that was, as he reflected in paragraph 372 of the report, whether or not an appropriate quantity of housing was continuing to be delivered through the application of the remaining elements of the development plan which had not been saved. He concluded that in the light of the findings in relation to the five year supply of deliverable housing that it was."

He returned to this point at paragraph 68:

> "the difficulty with the Claimant's submission in relation to ground 3 is that it seeks to take what the First Defendant said in paragraph 15 of the decision letter in isolation. This paragraph needs to be read along with the whole of the decision letter including, in particular, paragraph 16. Both paragraphs 15 and 16 cross-refer to the relevant paragraphs in the Inspector's report. In my view it is clear from those paragraphs to which the First Defendant cross-refers that the appropriate interpretation of the Framework in relation to whether or not a policy is out-of-date has been applied. The assessment of the Inspector, adopted and acknowledged by the First Defendant, addressed both the issue of consistency with the Framework (and therefore the policy's continuing validity as a proper reflection of national planning policy) but also whether or not, as the Claimant contended, the policy had been overtaken by the demise of the policies relating to the need and distribution of housing and the current evidence in relation to housing need and supply. Both the Inspector's conclusions and paragraphs 15 and 16 of the decision letter deal directly with the question of whether or not the policy is consistent with the Framework and also whether it has been overtaken by events, and in particular the absence of policies for the need and distribution of

housing and the current position in relation to the evidence of housing need and supply."

42. Fourth, it was said that the Secretary of State had failed to identify any policy provisions within the 2018 NPPF with which policy EN2 was actually in conformity so as to justify the conclusion that it was not out-of-date. In rejecting this ground of appeal, the judge observed that the appellant had not identified any material difference between the substance of the two editions of the Framework. The only feature of the 2018 NPPF on which the appellant had relied were those policies relating to the qualitative features of the available supply of housing. The judge observed that this element of national policy in relation to qualitative requirements was debated before the inspector in the context of the 2012 NPPF. Accordingly, the Secretary of State had been entitled to rely on the reasons provided by the inspector.

43. The fifth ground of challenge before the Planning Court was that the decision letter failed to recognise that policy EN2 was in fact inconsistent with the housing policies of the Framework which, in particular, addressed the need for a balanced supply of housing including family housing and affordable housing within the available supply. The judge observed that it had been an important part of the appellant's case before the inspector that significant weight should be attached to the Council's failure to secure a balanced supply of housing in qualitative terms and an adequate supply of affordable homes. The absence of policies concerning such matters was clearly before the inspector and taken into account in his assessment of whether or not policy EN2 was out-of-date. The Secretary of State had therefore been entitled to refer to the inspector's detailed analysis in reaching a conclusion.

44. In addition to pursuing the grounds in respect of which permission had been granted, the appellant also renewed its application for permission to apply on grounds which had been refused on paper. For the purposes of this judgment, it is only necessary to consider the argument in respect of the one ground ("ground 7") which is pursued in this Court. It was contended that the inspector and the Secretary of State failed to identify that policy EN2 was in fact "impeding delivery". In refusing permission, the judge observed that the references in the inspector's report and in the decision letter to the policy "not impeding delivery" were references to the quantitative housing supply which the Council was able to demonstrate, namely over 13 years.

**Submissions to this Court**

45. In presenting the appeal to this Court on behalf of appellant, Mr Rupert Warren QC leading Mr James Corbet Burcher, advanced four grounds of appeal.

46. First, it was contended that the judge erred in law in determining that a development plan document having exceeded its end-date does not render that document and its constituent policies out-of-date for the purposes of paragraph 11d of the NPPF. In particular, the judge wrongly identified the dicta of Lord Carnwath in paragraph 63 of *Hopkins Homes* as obiter. It was submitted that Lord Carnwath was correct in saying that a plan which is past its expiry date is, in every case, a plan that is out-of-date. This is the correct reflection of the NPPF, construed as a whole, and the legislative framework, in particular regulation 5(1)(a)(i) of the 2012 Regulations.

47. Secondly, it was submitted that a plan without strategic policies such as policies for housing supply should be regarded as out-of-date for the purposes of paragraph 11d and the tilted balance. Section 19(1B) and (1C) of the 2004 Act require a development plan document to have strategic policies, and paragraphs 17 and 20 of the NPPF specify what the strategic policies should encompass. The judge therefore erred in law in determining that the fact that the development plan document contained no strategic policies in respect of housing did not render it out-of-date.

48. The appellant relied on Lord Carnwath's observation at paragraph 54 of ***Hopkins Homes***:

> "in the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission."

The appellant submitted that policy EN2 was inextricably linked to the policies that had not been saved. It is impossible to treat such a policy as freestanding. Shorn of the policies that were not saved, EN2 is out-of-date. A plan that contained no policy covering housing supply could not be an up-to-date development plan. Policy EN2 had plainly been overtaken by events because the circumstances in the protected area had radically changed.

49. The appellant also challenged the judge's observation at paragraph 66 that it would be "counter-intuitive and contrary to long-standing provisions of national policy" for policies in a development plan relating to environmental protection to be deemed out-of-date at the expiration of the plan period. It was pointed out that even a Green Belt designation can be out-of-date.

50. In its third ground of appeal, the appellant asserted that the judge erred in law in concluding that the Secretary of State correctly interpreted paragraph 11d by reference to paragraph 213 of the NPPF. At paragraph 15 of the decision letter, he erroneously equated the task of identification of whether a policy was out-of-date as solely covered by an assessment of consistency under paragraph 213. As result, he incorrectly interpreted his role for the purposes of paragraph 11d as limited to carrying out an assessment of consistency. Mr Warren submitted that, on the judge's interpretation, paragraph 213 was being made to do more work than it actually does. It is intended merely to relate to the weight to be attached to existing policies when the Framework comes into effect. It does not deal with policies that are "survivors" from out-of-date plans.

51. Although the judge at paragraph 68 of the judgment stated that paragraph 15 of the decision letter must be read alongside paragraph 16 and the inspector's conclusions, the Secretary of State's findings at paragraph 15 were premised solely upon the plan being in force and consistent. It was submitted that he therefore applied too narrow an approach when determining whether the policy was out-of-date. Furthermore, the judge wrongly referred at paragraph 68 to "the current position in relation to the evidence of housing need and supply". The fact that certain events are occurring cannot on a correct construction of the NPPF render a policy up-to-date, or protect it from being out-of-date. At best, such events are capable of being a material consideration in favour of a grant or refusal of permission, but only in the context of the inspector having correctly identified that paragraph 11d and the "tilted balance" are engaged. Equally, the housing supply figure was not capable of determining

whether policy EN2 and the plan as a whole were out-of-date. That factor can only be considered in the overall balance having first identified that paragraph 11d was engaged.

52. In the fourth ground of appeal, reiterating "ground 7" before the Planning Court, the appellant asserted that the judge erred in basing his decision on the inspector's erroneous and inconsistent findings as to the impact of policy EN2 on the provision of housing. It was submitted that, in paragraph 25 of the decision letter, the Secretary of State wrongly followed the inspector in paragraph 377 of his report in stating that policy EN2 was "not impeding delivery". That statement in the decision letter was, however, expressly placed in the alternative to "to deliver the necessary number of houses needed". The appellant submitted that this amounted to a statement that the policy was not restricting delivery of houses of any type. This was factually wrong. Neither the Secretary of State nor the inspector conducted any assessment of the specific effect of the policy restricting the supply of houses of the required type. The appellant's case was that the specific geographical nature of policy EN2 meant that this was one of the only locations in the area in which to provide housing of the required type. This was therefore an important consideration when determining whether the policy was out-of-date for the purposes of paragraph 11d.

53. On behalf of the Secretary of State, Mr Richard Honey relied on the proposition, emphasised in a number of authorities, including *Hopkins Homes*, that the NPPF is a statement of policy not a statutory text. It does not have the force of statute and should not be treated as if it did. It does not have the same status in the statutory scheme as the development plan. As a result, the duty under s.38(6) of the 2004 Act is not displaced or modified by the Framework policy. The presumption in favour of sustainable development in paragraph 11 of the NPPF is not intended to alter the statutory presumption in favour of the development plan. Instead, paragraph 11d is intended to add an additional factor into the s.38(6) balance in particular circumstances, including "where the policies which are most important for determining the application are out-of-date".

54. Mr Honey submitted that the correct approach as to whether a policy is out-of-date is as expressed by Lindblom J in *Bloor Homes*, namely whether the policy has been overtaken by events that have occurred since it was adopted, including a change of national policy. It is therefore a question related to the substance of the policy and not merely a function of time passing. The appropriate way to consider whether a policy has been overtaken by a change in national policy is to consider, in line with paragraph 213, the policy's degree of consistency with the NPPF.

55. The terms of paragraph 11d demonstrate that it concerns *policies* which are out-of-date, not *plans*. Mr Honey submitted that the concept of a whole plan being out-of-date does not feature in the NPPF at all. There is nothing in the Framework requiring a policy to be treated as out-of-date for the purposes of paragraph 11d simply because the plan period has expired. The appellant's argument that, after the end of the plan period, all policies in the plan must be regarded as out-of-date is contrary to this Court's decision in *Gladman v Daventry* and to the decision of Sir Duncan Ouseley in *Paul Newman New Homes*.

56. Mr Honey pointed out that most policies will not be set by reference to a period of time. Instead, they will continue to be relevant when the plan period has passed

because the interest to which they relate is not tied to a particular period. It was submitted that the judge was right to observe, in paragraph 66 of his judgment, that it was very far from uncommon to have policies intended to continue well beyond the end of the plan period.

57. The first ground of appeal rests primarily on the single sentence in paragraph 63 of Lord Carnwath's judgment in ***Hopkins Homes***. Mr Honey submitted that the sentence does not have the effect of establishing a point of principle about the interpretation of paragraph 11d, and made a number of points in support of this submission. First, the comment was made about the plan being out-of-date in a general sense, not in terms of the presumption in favour of sustainable development in the NPPF. Secondly, the comment was *obiter* as it was not part of the Court's reasoning. Thirdly, a blanket approach to outdatedness based on the plan period would be incompatible with the more sophisticated approach set out by Lindblom J in ***Bloor Homes*** in a passage described by Lord Carnwath in ***Hopkins Homes*** as "helpful". Fourth, the changes in the language used to describe the presumption of sustainable development in the 2018 NPPF, which occurred after the Supreme Court's decision in the ***Hopkins Homes*** case - replacing the reference to "relevant" policies with "policies which are most important for determining the application" – makes it even clearer that the focus is on specific policies as opposed to the plan. Finally, it was submitted that a single sentence in a judgment should not be regarded as establishing any point of legal principle. It is, as the judge put it, incapable of bearing the forensic weight which the appellant seeks to ascribe to it.

58. With regard to the second ground, Mr Honey submitted that it would be perverse to determine whether the policies were out-of-date by asking whether the whole plan would retrospectively pass the current statutory and policy tests for the adoption of a new plan. Section 19 of the 2004 Act is headed "preparation of local development documents" and contains provisions governing that process. The subsections cited by the appellant – S.19(1B) and (1C) – were inserted by statute in 2017 and applied to the preparation of plans from 2018 onwards. The policy provisions on which the appellant relies in chapter 3 of the 2018 NPPF, headed "Plan-making", including paragraphs 17 and 20, apply to the making of new plans after the introduction of the NPPF. Mr Honey submitted that it would undermine the plan-led system if implementation of a new framework policy about adoption of plans automatically rendered pre-existing plans out-of-date.

59. In this particular case, the Secretary of State had decided in 2009 to save 104 out of 125 policies in the SUDP, including 13 of the 17 strategic policies, one of which was a strategic housing policy on sustainable urban neighbourhoods. It was submitted that the retained policies reflected the Secretary of State's view as to what policies the SUDP should contain to provide an appropriate planning framework.

60. In respect of the third ground of appeal, Mr Honey submitted that considering consistency pursuant to paragraph 213 of the NPPF was properly part of the overall consideration of whether policy EN2 was out-of-date, in accordance with the approach outlined in ***Bloor Homes*** of considering whether a policy had been overtaken by changes in events, including national policy. In any event, it was wrong to contend that the Secretary of State equated the task of identifying whether a policy was out-of-date as merely relating to consideration of consistency. Paragraphs 366 to 372 of the inspector's report, which were endorsed in paragraphs 15 and 16 of the

decision letter, referred to a wide range of considerations, all of which were taken into account.

61. As for the fourth ground of appeal, Mr Honey pointed out that, in paragraph 25 of the decision letter, the Secretary of State concluded that neither policy EN2 nor the development plan as a whole was impeding housing delivery. Paragraph 25 was addressing the quantity of housing, as opposed to the qualitative points which were addressed and taken into account separately. There was nothing inconsistent in the inspector finding that the numbers of houses being built was exceeding the five-year supply whilst noting, and taking into consideration, deficiencies in the quality of the houses being constructed. It was submitted that the inspector was entitled to conclude that the policy was not impeding the delivery of homes, given that the Council was comfortably meeting its five-year housing land supply. This was a matter for planning judgment for the inspector and, in turn, the Secretary of State.

62. In oral submissions, Mr Honey added that the appeal was academic because the inspector had indicated at the conclusion of his report, which was accepted in its entirety by the Secretary of State, that, even if the tilted balance was applied, he would nevertheless recommend that the appeals be dismissed and planning permission be refused on the grounds that the adverse impacts of the developments would be such as to significantly and demonstrably outweigh the benefits.

63. The arguments put forward on behalf of the Secretary of State were substantially reiterated by Mr Christopher Katkowski QC and Mr Matthew Fraser on behalf of the Council. They stressed that the obligation imposed on the decision-maker by paragraph 11d of the 2018 NPPF is to ascertain whether a particular set of policies – those which are "most important for determining the application" – are out-of-date. That is a policy-specific enquiry, rather than one which can be undertaken simply by checking whether the development plan as a whole has gone past the specified plan period. The observation of Lord Carnwath at paragraph 63 of his judgment in ***Hopkins Homes*** was not central to the decision on the facts in that case in which the Supreme Court did not rely on the plan period having expired as part of its reasoning for the policies being out-of-date. The appellant's arguments, in particular the first and second grounds of appeal, overcomplicate and overanalyse what are simply a series of planning judgments to be made when applying paragraph 11d. The terms of policy EN2, and the reasoned justification for the policy in the SUDP, demonstrate that it is intended to go beyond the plan period.

## Conclusion

64. In my judgment, the arguments advanced on behalf of the Secretary of State and the Council are plainly correct.

65. There is nothing in paragraph 11d of the 2018 NPPF, or its predecessor paragraph 14 of the 2012 Framework, to suggest that the expiry of the period of the plan automatically renders the policies in the plan out-of-date. I agree with Sir Duncan Ouseley's observations in ***Paul Newman New Homes*** that a policy is not out-of-date simply because it is in a time-expired plan and that, if the Framework had intended to treat as out-of-date all saved but time-expired policies, it would not have used the phrase "out-of-date" but rather the language of time-expired policies or policies in a

time-expired plan. As a matter of construction of the terms of the NPPF, the appellant's argument on ground one is unsustainable.

66. I endorse and adopt the careful and precise analysis of paragraph 14 of the 2012 NPPF carried out by Lindblom J in ***Bloor Homes***. His analysis plainly applies to the revised terms of the presumption in favour of sustainable development in paragraph 11d of the 2018 Framework. If the policies which are most important for determining the planning application have been overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date, the decision-makers must apply the tilted balance expressed in the presumption in favour of sustainable development.

67. The appellant's case on the first ground of appeal rests almost exclusively on a single sentence in paragraph 63 of Lord Carnwath's judgment in the ***Hopkins Homes*** case cited at paragraph 26 above. I agree with Dove J that it was an *obiter* remark which does not lay down any legal principle and which is quite incapable of bearing the forensic weight which the appellant seeks to ascribe to it. I do not accept the appellant's submission that the contention that the policies in a plan which is past its expiry date are in every case out-of-date is a correct reflection either of the NPPF as a whole or of regulation 5(1)(a)(i).

68. With regard to the second ground of appeal, I do not accept the appellant's submission that a plan without strategic housing policies is automatically out-of-date for the purposes of paragraph 11d so as to engage the tilted balance. The Secretary of State decided in 2009 to save a significant number of the policies in the SUDP, including the majority of the strategic policies. It is, therefore, incorrect to characterise policy EN2 as a "freestanding" policy but rather one of a hundred and four policies in the SUDP saved by the Secretary of State. Furthermore, it is obvious that many policies will not expire with the plan but, rather, will survive beyond the plan period. The policy under consideration here, which addresses environmental protection, clearly has a life beyond the expiry of the plan. I agree with the judge's observation at paragraph 66 of his judgment that although a local development document is intended to present as a coherent suite of policies, that objective is not inconsistent with the inclusion of some environmental policies being intended and designed to operate on a longer time scale than that which may be contemplated by the plan period. Paragraph 133 of the 2018 NPPF describes the "fundamental aim" of Green Belt policy as being "to prevent urban sprawl by keeping land permanently open", adding that "the essential characteristics of Green Belts are their openness and their permanence". This characterisation of Green Belt policy in the NPPF is wholly inconsistent with the notion that environmental policies lapse automatically when the plan period comes to an end or when there are no strategic housing policies in the plan. The provisions in s.19(1B) and (1C) of the 2004 Act and paragraphs 17 and 20 of the 2018 NPPF do not, in my judgment, provide support for the appellant's case on the second ground of appeal. They relate to the preparation of future plans, not the question whether existing policies are out-of-date.

69. Turning to the third ground of appeal, the suggestion that the Secretary of State in this case approached the question whether the policy was out-of-date solely by reference to its consistency with the NPPF overlooks the fact that the inspector took into account (at paragraphs 366 to 372 of his report) a wide range of factors, including those raised on behalf of the appellant. His analysis was accepted by the Secretary of

State at paragraphs 15 and 16 of the decision letter. As Dove J noted at paragraph 68 of his judgment, the assessment of the inspector, adopted and acknowledged by the Secretary of State, addressed the issue of consistency with the Framework and the question raised by the appellant whether the policy had been overtaken by the demise of the policies relating to housing supply, together with the current evidence in relation to housing need.

70. As for the fourth ground of appeal, the reference to "not impeding delivery" is manifestly a reference to the issue of the number of houses being built to ensure a five-year supply, in respect of which there had been, as the inspector observed at paragraph 377 of his report, a marked improvement. The inspector and the Secretary of State were plainly aware of, and took into account, the separate point that the Council was not meeting the needs for certain types of housing (see paragraph 378 of the inspector's report). As Mr Honey submitted, there was nothing inconsistent in the inspector finding that the numbers of houses being built was exceeding the five-year supply whilst noting, and taking into consideration, deficiencies in the quality of the houses being constructed.

71. It seems to me that the key to interpreting paragraph 11d lies not in paragraph 63 of Lord Carnwath's judgment in *Hopkins Homes* but, rather, in paragraph 55, where he observed that, whether a policy becomes out-of-date and, if so, with what consequences are matters of pure planning judgment, not dependent on issues of legal interpretation.

72. For these reasons, I conclude that there was no error of law in the judgment at first instance. I would dismiss these appeals.

**SIR STEPHEN RICHARDS**

73. I agree.

**LORD JUSTICE LEWISON**

74. I also agree.

# JF3: Wavendon Properties Ltd v Secretary of State for Housing Communities and Local Government and another [2019] EWHC 1524 (Admin), [2019] PTSR 2077

Neutral Citation Number: [2019] EWHC 1524 (Admin)

Case No: CO/200/2019

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/06/2019

**Before** :

**MR JUSTICE DOVE**

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**Between :**

| | |
|---|---|
| **Wavendon Properties Limited** | **Claimant** |
| **- and -** | |
| **Secretary of State of Housing Communities and Local Government** | **1st Defendant** |
| **- and -** | **2nd Defendant** |
| **Milton Keynes Council** | |

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**Peter Goatley and James Corbet Burcher** (instructed by **Clyde & Co**) for the **Claimant**
**Richard Honey** (instructed by **Government Legal Department**) for the **1st Defendant**
**Daniel Stedman Jones** (instructed by **Milton Keynes Legal Department**) for the **2nd Defendant**

Hearing dates: 7th & 9th May 2019

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# Approved Judgment

**Mr Justice Dove :**

The Facts

1. On the 20th July 2016 the Claimant submitted an application in outline for development of up to 203 dwellings together with other ancillary infrastructure. The application was reported to the Second Defendant's planning committee and, contrary to the officer's recommendation that development should be approved, it was refused on the 5th December 2016. The reasons for refusal were as follows:

> "1. The Committee resolved to refuse planning permission on the basis that any such development of this site would result in the loss of future development and infrastructure options, causing significant and demonstrable harm and is therefore not sustainable development in accordance with Resolution 24/187 of the United Nations General Assembly definition of sustainable development and the National Planning Policy Framework (NPPF) in respect of future generations. The development would also therefore be contrary to paragraphs 14 and 19 of the National Planning Policy Framework, Saved Policy D1 of the adopted Milton Keynes Local Plan 2001-2011 (adopted 2005) and policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 14 of the National Planning Policy Framework.
>
> 2. Furthermore the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically."

Subsequently, by way of the Second Defendant's Statement of Case the first reason for refusal was effectively amended to read:

> "1. The development would be contrary to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2016 ([sic] adopted 2014). This does not constitute sustainable development in terms of paragraph 14 of the National Planning Policy Framework."

2. The Claimant appealed and a public inquiry was held in July 2017. Following the close of the inquiry requests were made to the First Defendant that the appeal should be recovered for his own determination in August 2017 which were declined. Subsequently further representations were made in September 2017 by the local Member of Parliament following which, on the 31st October 2017, the First Defendant recovered the appeal for his own determination.

3. The Inspector's Report to the First Defendant in relation to the appeal was produced on the 2nd February 2018. It remained confidential until it was published alongside the First Defendant's decision on the 5th December 2018. In between the receipt of the

Inspector's Report and the First Defendant's decision there were a number of further representations submitted to the First Defendant.

4. Firstly, on the 6th April 2018, the Claimant's planning consultant wrote to the First Defendant pointing out that in two recent appeal decisions within the Second Defendant's administrative area the conclusion had been reached that the Second Defendant could not demonstrate a five year housing land supply. On the 23rd July, the Claimant's solicitors wrote to the First Defendant expressing their concern at the amount of time that had passed since the close of the inquiry, and including a recent briefing note which had been issued by the Second Defendant's Chief Planning Officer to its relevant cabinet member confirming that the council could not demonstrate a five year housing land supply, whether applying the (then current) Liverpool or the Sedgefield method of addressing undersupply in previous years. The briefing note confirmed that if the Liverpool method was used (which was the Second Defendant's preferred position) a land supply of 4.66 years arose, and if the Sedgefield method was deployed the land supply was 4.16 years. In the papers before the court a copy of a document produced by the Second Defendant in July 2018 which underpinned the observations in the briefing note has been produced in which the following table sets out the figures leading to these overall calculations as follows:

| | Liverpool Method Total | Sedgefield Method total |
|---|---|---|
| Overall requirement 2016-2021 | 13,096 | 14,653 |
| Overall supply of deliverable sites | 12,920 | 12,920 |
| Overall supply with 10% discount to applicable sites | 12,195 | 12,195 |
| Overall supply compared to requirement | -901 | -2458 |
| Overall years supply | 4.66 years | 4.16 years |

5. As part of this document (albeit not before the First Defendant) a housing supply trajectory was produced setting out in the form of a schedule each of the sites relied upon by the Second Defendant as forming part of the supply taken into account for the coming five years. In response to the Claimant's letter of the 29th April 2018 the First Defendant wrote to the Second Defendant seeking observations upon the letter referring to other appeal decisions. In response the Second Defendant sent in a briefing note detailing five recent appeal decisions, and in the four which had been decided it was concluded that the Second Defendant did not have a five year housing land supply, albeit that in two cases the appeals were dismissed.

6. On the 26th July 2018 the First Defendant wrote to the Claimant and the Second Defendant seeking observations in relation to the newly published revised National Planning Policy Framework ("the Framework", which unless it appears otherwise, is the version published in July 2018), and the emergence of the Milton Keynes Site Allocations Plan. The Second Defendant responded on the 1st August 2018 noting that the Milton Keynes Site Allocation Plan had been adopted to address any shortfall in five year housing land supply and that the site concerned in the appeal had not been allocated. The objections to the appeal were maintained. The Claimant's solicitors responded by contending that there was nothing in the new Framework which was

adverse to the Claimant's case put at the inquiry, and that there remained a shortfall in the Second Defendant's five year housing land supply.

7. On the 27th September 2018 the First Defendant wrote to the Claimant and the Second Defendant seeking views in relation to a number of further developments since the previous correspondence. First, on the 13th September 2018, revised guidance had been issued in relation to how local planning authorities should assess their housing needs. Secondly, new household projections for England had been published by the Office of National Statistics on the 20th September 2018 and, thirdly, interim findings had been issued in relation to the emerging Milton Keynes Local Plan.

8. At paragraph 5 of the letter the First Defendant sought views on the following issue:

> "5. The Secretary of State particularly seeks parties' views on the applicability of paragraph 73 of the new Framework to this case, and if applicable, any implications for housing land supply. He further seeks views on the consistency of Local Plan Policy H8 (Housing Density) with the new Framework."

9. On the 5th October 2018 the Claimant responded to the letter of the 27th September from the First Defendant. In the letter the Claimant's planning consultant addressed issues in relation to the consistency of policy H8 with the new Framework. He contended that policy H8 remained consistent with the Framework in particular in seeking a flexible approach to the density of new residential development which responded to the character and appearance of the surrounding area. Accompanying the letter was material from the Strategic Planning Research Unit of DLP Planning, addressing issues associated with the five year housing land supply (the "SPRU Report"). The SPRU Report noted that the most recent document published by the Second Defendant on housing land supply issues accepted that the Second Defendant could not demonstrate a five year housing land supply. The SPRU Report then went on to address issues arising from the new policy contained within the revised Framework. The SPRU report noted that as the housing requirement in the Second Defendant's development plan was more than five years old paragraph 73 of the Framework required the decision-taker to undertake a calculation of local housing need using the standard methodology. That calculation produced a figure for the housing requirement of 1,604 dwellings per annum.

10. Having reached conclusions as to the appropriate requirement the SPRU Report then went on to consider the calculation of the available housing land supply, applying the definition of "deliverable" provided in the Framework, and using the housing land trajectory which had been published alongside the Second Defendant's most recent assessment of their housing land supply. The SPRU Report contained some key tables which are appended to this judgment and which contain the following information. Table 10 was an analysis of extant housing allocations which the SPRU Report contended should not be counted within the housing land supply for the purposes of calculating the five year housing land supply. As a consequence of the analysis in Table 10, 1,156 units were removed from the supply. Table 11 in the SPRU Report addressed sites which had outline planning permission only, and identified from that category of site those which should not be counted as deliverable for the purposes of the five year housing land supply calculation. This analysis led to a reduction of 4,101 from the housing land supply. Table 12 contained an analysis of sites which had

detailed planning permission, and provided for an adjustment in the applicable build out rates leading to a further reduction in the deliverable supply for the purposes of calculating the five year housing land requirement. Finally, Tables 13 and 14 provided two alternative calculations of five year housing land supply incorporating the adjustments to the supply from the Second Defendant's figure to reflect the SPRU Report's analysis of whether or not that supply was deliverable, coupled with the alternative requirements of the local housing needs requirement calculated using the standard methodology and a calculation using the housing requirement from the emerging local plan. All of this analysis demonstrated that, in addition to the Second Defendant's most recent published analysis showing there was no five year land supply there was, equally, a failure to demonstrate the existence of a five year housing land supply on the basis of the SPRU Report's analysis.

11. The Second Defendant did not provide any response either to the correspondence from the First Defendant or the SPRU Report and its analysis. All of this material, alongside the Inspector's report and the documentation accompanying the inquiry, was before the First Defendant for the purposes of reaching a decision. It should be noted that the appeal was supported by an obligation under section 106 of the Town and Country Planning Act 1990 providing covenants as follows:

> "The Owners covenant as follows:
>
> 1. That, subject to paragraph 2 below, the Owners will use Reasonable Endeavours to build out the Development with 5 (five) years of the Council approving the last Reserved Matters application.
>
> 2. In the event that, prior to the Development being built out, there are more than 4 (four) successive quarters of negative growth in GDP paragraph 1 shall not apply and the Owners will issue a revised date to the Council by reference to the date that the Council approves the last Reserved Matters application and use Reasonable Endeavours to build out the Development by that date."

Planning Policy

12. There were a number of development plan and national policies which were considered in the decision-taking process. Starting with the development plan, policies from the Milton Keynes Core Strategy (the "Core Strategy") adopted in July 2013 which particularly featured in the decision were policies S10 and H8. Policy S10 provided as follows:

> "The open countryside is defined as all land outside the development boundaries defined on the Proposals Map. In the open countryside, planning permission will only be given for development that is essential for agriculture, forestry, countryside recreation or other development which is wholly appropriate to a rural area and cannot be located within a settlement."

13. Policy H8 and relevant parts of its explanatory text provided as follows:

> "Housing density
>
> Objectives of policy:
>
> - To encourage high densities in locations well served by pubic transport
>
> - To ensure land for housing is used efficiently
>
> …
>
> 9.53 PPG3 advocates that low density development (at less than 30 dwellings per hectare) should be avoided and puts forward minimum densities of 30-50 dwellings per hectare. However, while aiming to secure higher densities in future, Policy H8 recognises the unique character of the Borough- particularly its diverse character- and seeks realistic increases in density in the appropriate locations. Well designed development can facilitate higher densities and will be crucial in ensuring the new development is successfully integrated into the Borough.
>
> 9.54 The policy promotes lower densities in the smaller rural settlements outside the City so that new development will be more compatible with their character and also to allow choice and diversity in the type of residential development that is available within the Borough.
>
> HOUSING DENSITY
>
> POLICY H8
>
> The density of new housing development should be well related to the character and appearance of development in the surrounding area.
>
> The Council will seek the average new densities set out below for development within each zone as defined on the accompanying plan:
>
> Zone 1: CMK (including Campbell Park) 100 dws/ha
>
> Zone 2: Adjoining grid squares north and south of CMK, Bletchley, Kingston, Stony Stratford, Westcroft and Wolverton: 40 dws/ ha
>
> Zone 3: The rest of the City, City Expansion Areas, Newport Pagnell, Olney and Woburn Sands 35 dws/ha
>
> Zone 4: The rest of the Borough 30 dws/ha

> Developments with an average net density of less than 30 dwellings per hectare will not be permitted."

14. The development plan also included the Woburn Sands Neighbourhood Plan 2014-2026 (the "Neighbourhood Plan") which contained policy WS5. That policy and the relevant explanatory text provides as follows:

> "Development Boundary
>
> 6.5 The attractiveness of the wider Woburn Sands area depends to a very significant extent upon the preservation of the existing countryside both within the Woburn Sands parish and neighbouring parishes. It is essential for the health and wellbeing of the population that the current network of public footpaths and links through the wider area be maintained and this would not be possible if development encroaches on the countryside around Woburn Sands. This is the unanimous view of all the Parish Councils and residents in the area.
>
> …
>
> 6.14 There is therefore no support for the extension of the current development boundary. However it is recognised that the future work on the preparation of the Core Strategy Review (PlanMK) may propose that the boundaries be amended in the future.
>
> Policy WS5 The preservation of the countryside setting, existing woodland and footpath links into the countryside is key to the future of Woburn Sands. Accordingly no extension to the current Woburn Sands Development Boundary will be permitted other than in the following exceptional circumstances:
>
> - Plan MK identified a specific need for an amendment to the Development Boundary, and
>
> - Any proposed amendment is brought forward following full consultation with, and agreement by, Woburn Sands Town Council and
>
> - The implications of any revised Development Boundary has been assessed in terms of the need to protect and maintain the character of the countryside setting of Woburn Sands."

15. A feature of both the superceded 2012 and 2018 editions of the Framework is the presumption in favour of sustainable development. As articulated in the 2012 edition of the Framework the presumption was set out in paragraph 14 in relation to decision taking as follows:

> "14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> …
>
> For decision-taking this means:
>
> - Approving development proposals that accord with the development plan without delay; and
>
> - Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole or;
>
> ii) specific policies in this Framework indicate development should be restricted"

16. The revised text of the presumption in favour of sustainable development contained in the 2018 Framework provided as follows in decision taking:

> "11. Plans and decisions should apply a presumption in favour of sustainable development.
>
> …
>
> For **decision-taking** this means:
>
> c) approving development proposals that accord with an up-to-date development plan without delay; or
>
> d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date7, granting permission unless:
>
> i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed6; or
>
> ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. "

17. Footnote 7 pertaining to paragraph 11 of the 2018 Framework provides as follows:

> " [7] This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or

> where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1."

18. Footnote 7 cross-refers to the requirement to demonstrate a five year supply of deliverable housing sites (together with an appropriate buffer) from paragraph 73 of the Framework. Paragraph 73 provides as follows:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
>
> a) 5% to ensure choice and competition in the market for land; or 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
>
> b) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply"

19. Paragraphs 212 and 213 of the 2018 Framework address the question of the assessment of whether or not existing policies should be considered to be out-of-date. The paragraphs provide as follows:

> "212. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan.
>
> 213. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the

> publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

20. The 2018 Framework contains a glossary identifying the definition of various terms which are used during the course of its text. In particular so far as is pertinent to the present case it contains a definition of the term "deliverable" which is used in the context of paragraph 73. The definition provides as follows:

> "Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

21. The Claimant notes that further assistance is provided in relation to the concept of a deliverable site, and the evidence required in relation to it, in the following material from paragraph 3-063-20180913 of the Planning Practice Guidance (the "PPG") and paragraph 3-047-20180913 in relation to the annual review of the five year land supply:

> "What constitutes as a deliverable site in the context of housing policy?
>
> Annex 2 of the National Planning Policy Framework defines a deliverable site in terms of an assessment of the timescale for delivery and the planning status of the site. For sites with outline planning permission, permission in principle, allocated in a development plan or identified on a brownfield register, where clear evidence is required to demonstrate that housing completions will begin on site within 5 years, this evidence may include:
>
> - Any progress being made towards the submission of an application;
>
> - Any progress with site assessment work; and
>
> - Any relevant information about site viability, ownership constraints or infrastructure provision

> For example:
>
> - A statement of common ground between the local planning authority and that site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates.
>
> - A hybrid planning permission for large sites which links to a planning performance agreement that sets out the timetable for conclusion of reserved matters applications and discharge of conditions."

22. The 2018 Framework provides policies in relation to achieving appropriate densities in paragraphs 122 and 123. These paragraphs provide as follows on this topic:

> "122. Planning policies and decisions should support development that makes efficient use of land, taking into account:
>
> a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
>
> b) local market conditions and viability;
>
> c) the availability and capacity of infrastructure and services both existing and proposed as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
>
> d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
>
> e) the importance of securing well-designed, attractive and healthy places.
>
> 123. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:
>
> a) plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within

> these areas, unless it can be shown that there are strong reasons why this would be inappropriate;
>
> b) the use of minimum density standards should also be considered for other parts of the plan area. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range;
>
> and
>
> c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards). "

23. The earlier provisions of the 2012 Framework required local planning authorities to "set out their own approach to housing density to reflect local circumstances" as recorded by the Inspector in paragraph 9.43 of his report (see below).

The decision

24. The essential backdrop to the decision reached by the First Defendant was the report provided to him by the Inspector following the public inquiry into the appeal. At the public inquiry the Second Defendant had contended that it was able to demonstrate an almost 5.2 year supply of deliverable housing sites. The Claimant's case was that in truth the supply was barely 3 years. One of the key issues which the Inspector had to resolve, therefore, was the question of whether or not the Second Defendant was able to demonstrate a five year supply of housing. In his conclusions the Inspector identified a number of key issues governing the difference between the alternative analyses of the five year housing land supply position. He set out these key distinctions and disagreements as follows:

> "9.5 So, how do the Council now convince themselves that a 5-year supply of housing land can be demonstrated? First, the shortfall is distributed over the rest of the Plan period rather than just over the next 5 years (the Liverpool rather than the Sedgefield approach); using the latter in place of the former would be enough to reduce the provision to well below 5 years. Second, an odd optimism is imputed to the delivery of dwellings so that everything forecast to be built within the first 4 years is deemed to materialise and a 10% non-implementation allowance only applied to dwellings expected to materialise later; numerically this amounts to a 5% reduction (roughly) to reflect the uncertainties inherent in forecasts of

> housing delivery which, even if it captures the effects of non-implementation may not allow for 'slippage'. This contrasts with a 10% reduction (quite common elsewhere) that would be sufficient on its own to reduce the provision available to below 5 years in any of the methods outlined in table 2. Third, the imputed cumulative rate of delivery and the delivery implied on some sites, appears to become unrealistically high. For example, the current trajectory (in the 2017 monitoring report) anticipates a rate of delivery increasing to over 3,500 dwellings per annum, a figure not even achieved within the last decade of the Development Corporation, about twice the average annualised requirement of the Core Strategy and close to 3 times the level recently achieved. Doubts about this inform the scale of adjustments applied to the estimates of provision; a reduction of about 670-700 dwellings for the Council and a reduction of nearly 5,000 units for the appellants (see table 2). I examine each of those disagreements below."

25. In respect of the first of the issues the Inspector concluded that there was no reason why the Sedgefield approach should not be applied in the present case. He then went on to deal with the issues in relation to uncertainty slippage and failure in forecasts of housing delivery and reached the following conclusion at paragraph 9.9 of his report:

> "9.9 An odd optimism inflates the forecasts of housing delivery. One expression of this is that past forecasts of housing delivery over successive 5-year periods from 2007/8 to 2012/13 have (apart from one year in the era of the Milton Keynes Partnership Committee) always over-estimated the delivery anticipated. That is in spite of the forecasts being based on surveys of builders and developers, thereby asking those directly involved in the industry how they anticipate development proceeding. On average, the delivery achieved has been about 25% below the delivery forecast, though the 'failure' varies from roughly 20% to 37%. It may be that these flawed forecasts have served to provide a false sense of security masking the real need to take appropriate action. But, whether or not that is so, the result is that the Core Strategy trajectory has simply not been met and subsequent monitoring has not galvanised effective measures to get the trajectory 'back on track', a good reason not to adhere to it now. Moreover, these results demonstrate that the current effective 5% reduction to reflect uncertainty is well wide of the mark. Indeed, even a reduction of 10% (common elsewhere) might not be sufficient, albeit that it would reduce the estimated supply closer to 4 years rather than 5. And, although I think that the 'windfall' allowance estimated by the Council is legitimate, the difference between the parties (less than 0.3% of the 5-year housing requirement) is too small to make any material difference. In my view, therefore, the current method of factoring in uncertainty, slippage or failure in the forecasts of housing

> delivery fails to adequately reflect reality; reasonable adjustments would clearly reduce the result to less than 5 years."

26. Having made this assessment of this area of disagreement, he moved to consider the rival contentions in relation to delivery on large sites, and sites in the Site Allocations Plan. His conclusions were as follows:

> "9.11 It is hard to see what special circumstance might occur because, although delivery on some sites in Milton Keynes has been spectacular in the past, the current forecasts entail even greater feats in the future. As an example, the 'eastern expansion area' (consisting of sites at Broughton Gate and Brooklands) achieved the second highest average delivery rate in the country recorded in the NLP research into the delivery of dwellings on 'large' sites; an average of 268 dwellings were delivered annually over the 5 year period between 2008/9 to 2013/14. That was achieved because serviced parcels of land were delivered to the market, allowing several builders to commence building houses almost immediately; and, it partly occurred before the MK Partnership Committee was disbanded in 2011. But the current forecasts for the remaining sites at Brooklands are about 16% higher, entailing an average of about 310 dwellings per annum over the 5 years from 2017/18 to 2021/22 with peaks of around 400 dwellings delivered within 2 of those years. Moreover, the forecast delivery on 4 of the 'outlets' on the parcels that make up this site are substantially higher than might be expected from much of the research undertaken, including that by Savills, the HBF and NLP. Similar findings apply to several, though not all, of the other strategic sites. The implication is clear. The delivery rates implied by the forecasts used to demonstrate a 5-year provision of housing land seem unlikely to be achievable.
>
> …
>
> 9.13 There is some agreement that not all the dwellings on sites identified in the Site Allocations Plan are likely to materialise, due to outstanding objections to the Plan and other reasons outlined by the parties. However, all the doubtful sites identified by the appellants would accommodate only some 236 dwellings (about 3% of the 5- year requirement), so that the contribution from these sites would be insufficient to affect the existence, or otherwise, of the 5-year housing land supply."

27. The Inspector's overall conclusions in relation to the housing land supply issues were set out in paragraph 9.18 of his report as follows:

> "9.18 Applying any one of the indicated 'corrections' to the estimation of the housing land supply would be sufficient to reduce it to less than 5 years. Applying them all (the

> 'Sedgefield' approach, a reasonable reduction to reflect non-implementation and slippage and realistic estimates of delivery on some of the strategic sites) would reduce the estimated supply of housing land to 4 years or less. Allowing for sites that might not materialise at all, including those in the Site Allocations Plan subject to objections or still in some other productive use, would reduce the provision still further. Hence, I consider that a 5-year supply of housing land cannot be demonstrated now and, worse still, that the mechanisms specifically intended to boost the supply of housing significantly here are not in place. In those circumstances it is necessary to set the statutory requirements of the Development Plan against the important material consideration (as espoused in the Framework) derived from the absence of a 5-year supply of housing."

28. A further issue which the Inspector had to address was the question of whether or not the scheme was at an unsustainably low density. His conclusions in that connection were as follows:

> "9.43 'Saved' policy H8 seeks an average net density of 35dph here, over twice the 16dph actually proposed, and it insists that projects achieving less than 30dph should be prevented. But the guidance advocating such minimum densities has long since been revoked and the Framework now advises that Local Planning Authorities should devise their own approach to density in order to reflect local circumstances, taking account of neighbouring buildings and the local area. The Core Strategy is consistent with that approach for, although it does not contain a specific density policy, it does require that a scheme should be of an 'appropriate density for the area in which it is located', a theme echoed in the Residential Design Guide SPD and policy WS1 in the Neighbourhood Plan requiring all new development to 'respect the existing distinct vernacular character of the settlement'. The proposal is intended to be a direct response to the constraints of the site and to reflect the characteristics of the surrounding housing. It also responds to comments received at the public consultation event, at which local people repeatedly referred to a recent scheme as incorporating too high a density. Indeed, as the Framework indicates, a measure of good design (a key aspect of achieving sustainable development) entails responding 'to local character and history, and reflecting the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation'. The low density of the appeal proposal is commensurate with the low density of the nearby housing.
>
> …
>
> 9.46 In order to explore the consequences of building a scheme at a higher density, a subsequent planning application for up to

> 303 dwellings, at a net density of 26dph, was submitted to the Council. This entailed the loss of several pieces of public open space, more development towards the settlement edge and closer to the boundaries, providing smaller back-to-back distances and smaller gardens, reducing the landscape and planting and increasing the number of flats and car parking courts. This is not a scheme that the appellants wish to pursue and it would not reflect the character and appearance of the rural surroundings or nearby dwellings to the same extent as the appeal scheme.
>
> 9.47 For all those reasons, although the proposed development would be a relatively low density scheme, I do not consider that it would be unsustainable nor contrary to the tests advocated in Government guidance or operative planning policy."

29. The ultimate conclusions leading the Inspector to recommend to the First Defendant that planning permission should be granted were set out in the following paragraphs in which the Inspector struck the planning balance:

> "9.48 A 5-year supply of housing land cannot be demonstrated and, worse still, the mechanisms intended to boost the supply of housing significantly here are not in place. In those circumstances it is necessary to set the statutory requirements of the Development Plan against the important material consideration that a 5-year supply of housing land does not exist. The Development Plan pulls both ways. The scheme would be contrary to 'saved' policy S10 and policy WS5, although both would undermine the aim to boost significantly the supply of housing and frustrate the provision of further housing land to address the shortfall identified. However, the scheme would accord with the aims and some specific policies of the Core Strategy and, given the characteristics and explicit designation of Woburn Sands as a 'key settlement', be in a sustainable location.
>
> 9.49 Are there material considerations that would constitute serious impediments to the grant of planning permission? The proposal would radically alter the character and appearance of the site and one or two adjoining fields. But, the significant visual and landscape effects would be largely confined to that area alone. Beyond those immediate surroundings, the effects would be very limited, the scheme being contained behind existing housing and topography to the west and south and filtered through existing and proposed vegetation to the north and east. The new homes would marginally affect the setting of the Listed farmhouse, but the minimal harm identified would not warrant preventing a scheme to provide much needed market and affordable housing. The scheme would provide safe and convenient highway arrangements and offer a benefit in reducing the potential use of an awkward junction. It would not

interfere with the eventual construction of the east-west expressway nor, in the absence of evidence to the contrary, unacceptably increase the competition for parking spaces in the town. Provision would also be made for any additional educational and medical facilities required. Although the proposal would entail building at a relatively low density, it would reflect the character of the surroundings and safeguard the amenities of those nearby; the density could not be regarded as unsustainable, as it would reflect the tests advocated in Government guidance and operative planning policy. Adequate measures would be in place to appropriately attenuate surface water run-off from the site and although the development would affect the local flora and fauna, mitigation measures would prevent damage and, potentially, contribute to some enhancement.

9.50 Hence, the potential impediments identified here would not be sufficient to prevent a sustainable housing development from proceeding, especially in the absence of a 5- year supply of housing land. As the Framework advises, housing applications should be considered in the context of the presumption in favour of sustainable development and, in the absence of an up-to-date Development Plan, receive planning permission unless adverse impacts of the scheme significantly and demonstrably outweigh the benefits (as assessed against the Framework as a whole), or specific policies in the Framework indicate otherwise. No specific policies in the Framework have been identified that would indicate that the scheme should be prevented.

9.51 In this case, there would be other benefits associated with the scheme. It is recognised (in the Ministerial Statement of November 2014 and in the White Paper) that the supply of housing can be 'boosted' by involving a greater range of developers in local housing markets and encouraging smaller house builders, thereby utilising sites of differing sizes, appealing to different sub-markets and offering distinct products. This scheme could potentially provide a product not typically available elsewhere, due to the low density proposed and the intention to create an 'outstanding development of exceptional quality'. Moreover, the aim is to deliver the scheme within 5 years, an aim backed by a legal commitment to do so. And, although that cannot be guaranteed, for the reasons already outlined, it reflects one suggestion made in the recent White Paper.

9.52 Of course, this development would entail economic benefits. There would be temporary construction employment, both on and off-site: the range of homes to be provided would be suitable for a wide cross-section of working people:

> secondary employment would be generated through increased spending in the local area by prospective residents (estimated to amount to some £5m, with £3.9m spent within the Borough): a 'new homes bonus' would be paid and additional Council Tax would accrue.
>
> 9.53 The scheme would also offer social benefits. Most importantly, it would provide 60 (or possibly 63) affordable dwellings in accordance with Council policy. This would contribute to meeting a substantial current need for such accommodation (estimated as almost 1,600 households in need of an affordable home) and meet a proportion (albeit modest) of the estimated annual future requirement for some 540 affordable dwellings. And, in providing some of the market housing needed, the scheme could contribute to improving the balance between employment and housing, reducing the need to live beyond the Borough and commute for work. Provision would also be made for any additional educational and medical facilities required.
>
> 9.54 Environmentally, the proposal would result in the loss of greenfield land. But, the visual effects would be confined and the landscape, although pleasant, is not protected or obviously 'special'. Sufficient space could be made available to mitigate the impact of the new homes on the Listed farmhouse. The new road through the site could reduce the potential use of an awkward junction. The low density would reflect the character of the surroundings and safeguard the amenities of those nearby. Adequate measures would be in place to appropriately attenuate surface water run-off and overcome some inadequacies in existing drainage arrangements. And, although the development would affect the local flora and fauna, mitigation measures would prevent damage and, potentially, contribute to some enhancement.
>
> 9.55 Taking all those matters into account, I consider that the planning balance in this case is firmly in favour of the scheme. The benefits of this sustainable housing proposal would significantly and demonstrably outweigh the adverse impacts elicited."

30. The decision reached by the First Defendant was to disagree with the Inspector's recommendation. The First Defendant commenced by addressing the contents of the development plan, which he noted were as follows:

> "10. In this case the development plan consists of the saved policies of the Milton Keynes Local Plan (LP) 2001-2011 (adopted in 2005), the Core Strategy (CS) 2010-2026 (adopted in 2013), the Milton Keynes Site Allocations Plan (SAP) (adopted on 18 July 2018) and the Woburn Sands Neighbourhood Plan (NP) 2014-2026 (made in 2014). The

> Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.2-4.9. The appeal site is not allocated as one of the non- strategic sites in the SAP."

The policies quoted in paragraph 4.2-4.9 of the Inspector's report were policies CS1 and CS9 of the Core Strategy; policies S10 and D1 of the Local Plan and policy WS5 of the Neighbourhood plan.

31. The First Defendant's conclusions in relation to the five year housing land supply, the relationship between the proposals and policies S10 and WS5, and the issues associated with housing density were addressed in the following paragraphs of the decision letter:

> "15. The Secretary of State has considered the Inspector's assessment of housing land supply at IR9.4-9.18, and has also taken into account the revised Framework, and material put forward by parties as part of the reference back processes.
>
> 16. As the Core Strategy was adopted in July 2013, the adopted housing requirement figure is more than 5 years old. Paragraph 73 of the Framework indicates that in that scenario, unless these strategic policies have been reviewed and found not to require updating, local housing need should be applied. The Secretary of State has therefore calculated the local housing need figure, using the standard method. He considers that local housing need is 1,604. The agent in their representation of 5 October 2018 has considered the question of the buffer to be added at paragraph 4.12-4.15. The Secretary of State considers that their proposed approach is appropriate, and agrees that for the purposes of this decision, a 5% buffer should be added. This gives a figure of 1,684.
>
> 17. The Secretary of State has also considered the deliverable supply and has taken into account both the Inspector's analysis and the material put forward by the agent in their representation of 5 October 2018 which deals with local market evidence on past delivery, and potential delivery rates. For the reasons given at IR9.9 he agrees with the Inspector that the current method of factoring in uncertainty, slippage or failure in the forecasts of housing delivery fails to adequately reflect reality. For the reasons given in IR9.10-9.13, he further agrees with the Inspector that the delivery rates implied by the forecasts used by the Council to demonstrate a 5-year provision of housing land seem unlikely to be achievable (IR9.11).
>
> 18. The Secretary of State has further taken into account the change to the definition of 'deliverable' in the revised Framework, the Council's position put forward in their

Updated Housing Land Supply Position 2018-19 (referred to in paragraph 7.2 of the agent's representation of 5 October), and the evidence on progress which is set out in the summary of site assessments put forward by the agent in that representation. Taking all these factors into consideration, he considers that on the basis of the evidence put forward at this inquiry, estimated deliverable supply is roughly in the region of 10,000– 10,500. The Secretary of State therefore considers that the housing land supply is approximately 5.9–6.2 years. He notes that on this basis, even if the emerging plan figure of 1,766 were used (1,854 with a 5% buffer added), as the agent proposes, there would still be an estimated deliverable housing land supply of over 5 years.

*Location of site*

19. The Secretary of State agrees with the Inspector at IR9.19 and IR9.20 that as the appeal site is beyond the development boundary of Woburn Sands and is in open countryside, it is contrary to saved LP policy S10 and NP policy WS5. He further agrees that the boundary is tightly drawn, and is defined in a Local Plan intended to guide development only up to 2011. For these reasons the Secretary of State considers that policies S10 and WS5 are out of date, and that only moderate weight attaches to them.

…

22. The Secretary of State agrees with the Inspector's analysis at IR9.21-9.22 and with his conclusion at IR9.48 that the scheme would accord with the aims and some specific policies of the Core Strategy, and given the characteristics and explicit designation of Woburn Sands as a 'key settlement', would be in a sustainable location.

23. Overall the Secretary of State considers that the conflicts with current and emerging policy arising from the appeal site's location in unallocated open countryside outside the development boundary of Woburn Sands carry moderate weight.

*Housing density*

24. The Secretary of State has carefully considered the Inspector's assessment of the density of the appeal scheme (IR9.42-9.47). He has also taken into account paragraphs 122-123 of the revised Framework and the agent's representation of 5 October 2018. He considers that policy H8 is consistent with the revised Framework, both in its requirement that the density of new housing development should be well related to the

> character and appearance of development in the surrounding area, and in its use of a range of average net densities. His conclusion on this is not altered by the fact, as pointed out by the agent in their representation of 5 October, that the policies of the 2005 Local Plan 'were required to accord with government policy of the time…[and] PPG3 set out a requirement for a minimum density of 30 dwellings per hectare'.
>
> 25. He has taken into account that policy H8 also requires the density of new housing development to be well related to the character and appearance of development in the surrounding area, and that the Core Strategy and NP echo these themes (IR9.43). He has also taken into account, as set out in the agent's representation of 5 October 2018, that the draft Plan:MK does not contain a policy which sets out a minimum density, and that a higher-density scheme was put forward by the appellant (IR9.46).
>
> 26. The Secretary of State notes that policy H8 seeks an average net density of 35dph in this location, and that this is over twice the density of 16dph actually proposed (IR9.43). He considers that the proposed density is a very significant departure from policy. Even taking into account the matters set out above, the desirability of maintaining the area's prevailing character and setting, and the rest of the factors set out at paragraph 122 of the Framework, he does not consider that such a significant departure from policy is justified. He therefore considers that the proposed development is in conflict with policy H8, and he gives this conflict significant weight."

32. In contrast to the approach of the Inspector, the First Defendant did not consider that the section 106 obligation pertaining to the building out of the site within five years could properly amount to a material consideration. His conclusion in respect of the materiality of the obligation was as follows:

> "33. … The Obligation sets out that 'the owners will use reasonable endeavours to build out the development within 5 years of the Council approving the last reserved matters application'. The Secretary of State considers that in the circumstances of the case there has not been an adequate demonstration of the planning harm which this Obligation addresses, and there has not been an adequate demonstration that the Obligation is necessary to make the development acceptable in planning terms. It therefore does not pass the tests set out in the Framework and the CIL Regulations and the Secretary of State has not taken it into account in reaching his conclusion on this case."

33. The planning balance and overall conclusion of the First Defendant was articulated as follows:

> "34. For the reasons given above, the Secretary of State considers that the appeal scheme conflicts with development plan policies relating to development outside settlement boundaries and density. He further considers that it is in conflict with the development plan as a whole. The Secretary of State has gone on to consider whether there are material considerations which indicate that the proposal should be determined other in accordance with the development plan.
>
> 35. The Secretary of State considers that the housing benefits of the scheme carry significant weight and the economic benefits carry moderate weight in favour of the proposal.
>
> 36. The Secretary of State considers that the low density of the appeal proposal carries significant weight against the proposal, while the location in unallocated open countryside outside the development boundary of Woburn Sands carries moderate weight, and the impact on the character of the area carries limited weight. He further considers that the minimal harm to the listed building carries little weight and that the public benefits of the scheme outbalance this 'less than substantial' harm. The heritage test under paragraph 196 of the Framework is therefore favourable to the proposal.
>
> 37. The Secretary of State considers that there are no material considerations which indicate the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed, and planning permission should be refused."

34. As a consequence of these conclusions the First Defendant dismissed the Claimant's appeal and thereafter the Claimant brought this challenge pursuant to section 288 of the 1990 Act.

The Grounds

35. The Claimant pursues this application on the basis of five grounds for which permission was granted on the 18th February 2019. The sixth ground was refused permission and permission to apply was renewed at the substantive hearing.

36. Ground 1 of the claim is that the First Defendant failed to recognise that the presumption in favour of sustainable development applied to the appeal by virtue of the conclusion which he had reached at paragraph 19 of the decision letter that policy S10 of the Local Plan and policy WS5 of the Neighbourhood Plan were out-of-date. Having reached that conclusion in respect of the policies which were the "most important for determining the application", paragraph 11(d) of the Framework and the tilted balance for decision taking ought to have been applied to reach the decision in this case. On behalf of the Claimant, Mr Peter Goatley submitted that the proper interpretation of the Framework required that once a policy which was important for determining the application had been found to be out-of-date then the tilted balance under paragraph 11(d)(ii) was engaged. It followed that the First Defendant had erred

in law in interpreting his own policy in failing to apply the tilted balance when reaching his overall conclusions in respect of the merits of the appeal. Alternatively, there was a failure to provide any reasons in relation to why paragraph 11(d)(ii) did not apply, in circumstances where the conclusion had been reached in paragraph 19 of the decision letter that two of the policies bearing upon the determination of the appeal were out-of-date.

37. Grounds 2 and 3 relate to the first Defendant's conclusion on housing land supply that it was "in the region of 10,000-10,500". The Claimant's contentions in respect of this conclusion are, firstly, that the First Defendant failed to correctly interpret paragraph 73 of the Framework and the glossary definition of deliverable and the relevant provisions of the PPG.

38. The Claimant contends that the First Defendant failed to properly interpret this policy material in that he failed to identify any findings on deliverability in relation to the specific sites review in the analysis of the SPRU Report (which had not been gainsaid by anything submitted by the Second Defendant). Given the requirement in the policy material for clear evidence on deliverability, the First Defendant had signally failed to correctly interpret the policy and identify any findings in respect of deliverability. Alternatively, the Claimant contends that the finding in relation to housing land supply standing at 10,000-10,500 dwellings is entirely unexplained and no reasons are provided as to why, bearing in mind the acceptance of the Inspector's conclusions in respect of the factors over which there was disagreement at the inquiry, and the appearance that the First Defendant had taken account of the evidence on progress put forward in the SPRU report, his figure for supply had been arrived at.

39. Ground 4 relates to the issue concerning density. Again, the Claimant contends that the First Defendant failed to properly interpret policy H8 in that he interpreted it as requiring a strict application of the numerical thresholds contained within it. The Claimant draws attention to the reference in the policy to the need for density to be "well related to the character and appearance of the area" and the Inspector's findings that the proposal was appropriate to the character of its surroundings. It is contended by the Claimant that the question of whether the density was well related to the character and appearance of the area was simply never addressed by the First Defendant, and no adequate reasons were provided for the departure from the approach of the Inspector. Furthermore, there were no adequate reasons to explain this beyond a bare assertion that the policy was inconsistent with the 2012 Framework but consistent with the 2018 Framework.

40. Ground 5 relates to regulation 17(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. The statutory framework is addressed in detail below, but the essence of Ground 5 is that the Claimant contends that the First Defendant differed from the Inspector in relation to three matters of fact which required the First Defendant to afford the Claimant the opportunity to make further representations pursuant to regulation 17(5). Those matters are, firstly, the specific sites that were considered deliverable by the First Defendant; secondly the factual basis for finding that a numerical threshold only should apply for the purposes of applying policy H8; and thirdly the basis for concluding that the presumption in favour of sustainable development under paragraph 11(d)(ii) did not apply to the decision-taking process.

41. Ground 6, for which permission does not exist, but which the Claimant contends its arguable, is the contention that the First Defendant left out of account a material consideration when he refused to take account of the planning benefits secured by the section 106 obligation. The obligation was compliant with the provisions of regulation 122 of the Community Infrastructure Regulations 2010 and should have been taken into account in reaching the First Defendant's conclusions.

The Law

42. When determining an application for planning permission the decision-taker is required by section 70(2) of the 1990 Act to have regard to the provisions of the development plan so far as the material to that application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that a determination "must be in accordance with the plan unless material considerations indicate otherwise". The Framework (which was current at the time of the present decision and which has been subsequently superseded by a 2019 version of the Framework) is a material consideration to which regard must be had within the statutory decision-taking regime.

43. The jurisdiction of the court in relation to a statutory challenge under section 288 of the 1990 Act is an error of law jurisdiction. Since the decision in Tesco Stores Limited v Dundee City Council [2012] UKSC 13; [2012] PTSR 983 the question of the textual interpretation of planning policy is a question of law for the court to determine. As I observed in the case of Canterbury City Council v SSCLG and Gladman Developments Limited [2018] EWHC 1611 (Admin) questions of interpretations of planning policy are to be resolved applying the following principles which emerge from the authorities:

> "i) The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purposes of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.
>
> ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see Tesco Stores at paragraph 19 and Hopkins Homes at paragraph 25). Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

> iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: (see Tesco Stores at paragraphs 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.
>
> iv) As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken (see Tesco Stores at paragraphs 19 and 21). It is of vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker (see Hopkins Homes at paragraph 26)."

44. The decision in relation to the determination of appeals or applications which are called in for the First Defendant's determination are governed by the Town and County Planning (Inquiries Procedure) (England) Rules 2000. Rule 17 has the following relevant provisions for the purposes of the present case:

> "17. Procedure after inquiry
>
> (1) After the close of an inquiry, the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.
>
> (5) If, after the close of an inquiry, the Secretary of State-
>
> (a) differs from the inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
>
> (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),
>
> and is for that reason disposed to disagree with a recommendation made by the inspector, he shall not come to a decision which is at variance with the recommendation without first notifying in writing the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it; and affording them an opportunity of making written representations to him or (if the Secretary of State has taken into consideration any new evidence or matter or fact, not being

> a matter of government policy) of asking for the reopening of the inquiry."

45. In addition, rule 18 provides as follows:

> "Notification of decision
>
> 18(1) The Secretary of State shall, as soon as practicable, notify his decision on an application or appeal, and his reasons for it in writing to- (a) all persons entitled to appear at the inquiry who did appear, and (b) any other person who, having appeal at the inquiry, has asked to be notified of the decision."

46. It follows from Rule 18 of the 2000 Rules that in reaching his decision the First Defendant is under a duty to provide reasons for the decision. The question which arises is as to whether or not those reasons are legally adequate. There are two dimensions to the consideration of that issue, and I am grateful to all counsel in the case who helpfully identified agreed legal propositions which assist both as to the correct approach to section 288 challenges, and also the allied question of whether or not the reasons provided in the decision are legally adequate. So far as the approach to challenges under section 288 of the 1990 Act is concerned, Lindblom LJ in St Modwen v SSCLG [2017] EWCA Civ 1643 summarised 7 principles to be applied in considering such cases, at paragraph 19 of his judgment as follows:

> "19. The relevant law is not controversial. It comprises seven familiar principles:
>
> 1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parities who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph"
>
> 2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principle important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issue in the dispute, not to every material consideration.
>
> 3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for

> planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all"
>
> 4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure to properly understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration.
>
> 5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question.
>
> 6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored.
>
> 7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises. "

47. So far as the test for the adequacy for reasons is concerned it is an agreed proposition that the principles are set out (albeit not necessarily exhaustively) in the speech of Lord Brown in South Bucks v Porter (No.2) [2004] 1 WLR 1953 at paragraph 36 (which cross refers to the second principle from St Modwen) in which he provided as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principle important controversial issues, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily

> be drawn. The reasons need refer not to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon such future application. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

48. The question of the meaning of "out-of-date" in the context of paragraph 14 of the 2012 Framework was considered by Lindblom J (as he then was) in the case of Bloor Homes Limited v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin); [2017] PTSR 1283 at paragraph 45 of the judgment as follows:

> "45 These ["absence", "silence" and "out-of-date"] are three distinct concepts. A development plan will be "absent" if none has been adopted for the relevant area and the relevant period. If there is such a plan, it may be "silent" because it lacks policy relevant to the project under consideration. And if the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out-of-date". Absence will be a matter of fact. Silence will be either a matter of fact or a matter of construction, or both. And the question of whether relevant policies are no longer up-to-date will be either a matter of fact or perhaps a matter of both fact and judgment."

49. It was uncontroversial that the approach taken by the court in Bloor was of equal application to the phrase "out-of-date" in paragraph 11 of the version of the Framework pertinent to the present case and published in 2018.

50. The Court of Appeal have relatively recently considered the provisions of the 2012 Framework in relation to the five year housing land supply in Hallam Land Management Limited v SSCLG & Eastleigh Borough Council [2018] EWCA Civ 1808; [2019] JPL 63. The facts of that case were that the appeal in question had been recovered by the First Defendant for his own consideration. There was a dispute as to the extent of the five year housing land supply. At the inquiry the Appellant contended that it was 2.9 years or 1.78 years, and the local planning authority conceded that it could not demonstrate a five year housing land supply. Further representations were made after the close of the inquiry, in particular by the local planning authority, who contended they had a 4.93 year supply. This was contested by the Appellant. Prior to the determination of the appeal under challenge, two further appeal decisions were issued, one at Bubb Lane where the Inspector found there to be a significant shortfall in housing supply, and another at Botley Road in which, again, an Inspector concluded there was a significant shortfall of housing in the local

planning authority's area. In giving the principal judgment of the Court of Appeal, Lindblom LJ characterised the issue in the appeal in the following terms:

> "1. In deciding an appeal against the refusal of planning permission for housing development, how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land? That is the central question in this appeal."

51. Having considered a variety of first instance decisions Lindblom LJ concluded that there were three main points to emerge from the extant authority and they were as follows:

> "50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in paragraphs 47 and 49 of the NPPF and the corresponding guidance in the Planning Practice Guidance ("the PPG"). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definitions or footnotes, sometimes not (see *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33; *Jelson Ltd.*, at paragraphs 24 and 25; and *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraphs 36 and 37). It is not the role of the court to add to or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.
>
> 51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.

> 52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant "non-housing policies" in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd.*. It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.
>
> 53. With those three points in mind, I do not think that in this case the Secretary of State could fairly be criticized, in principle, for not having expressed a conclusion on the shortfall in the supply of housing land with great arithmetical precision. He was entitled to confine himself to an approximate figure or range – if that is what he did. Government policy in the NPPF did not require him to do more than that. There was nothing in the circumstances of this case that made it unreasonable for him in the "Wednesbury" sense, or otherwise unlawful, not to establish a mathematically exact figure for the shortfall. It would not have been an error of law or inappropriate for him to do so, but if, as a matter of planning judgment, he chose not to do it there was nothing legally wrong with that."

52. Lindblom LJ went on to conclude that whilst it was lawful for the Secretary of State to have concluded that the level of housing land supply fell "within a clearly identified range below the requisite five years" there was a fatal defect in the decision in the First Defendant's failure to deal with the recent decision at Bubb Lane and Botley Road. He expressed his conclusions in this connection as follows:

> "61. At least by the time the parties in this appeal were given the opportunity to make further representations, an important

issue between them, and arguably the focal issue, was the extent of the shortfall in housing land supply. This was, or at least had now become, a "principal controversial issue" in the sense to which Lord Brown of Eaton-under-Heywood referred in *South Bucks District Council v Porter* (at paragraph 36 of his speech). A related issue was the weight to be given to restrictive policies in the local plan – in particular, policy 3.CO. These were, in my view, clearly issues that required to be properly dealt with in the Secretary of State's decision letter, in the light of the representations the parties had made about them, so as to leave no room for doubt that the substance of those representations had been understood and properly dealt with. This being so, it was in my view incumbent on the Secretary of State to provide intelligible and adequate reasons to explain the conclusions he had reached on those issues, having regard to the parties' representations.

62. There is no explicit consideration of the inspectors' decisions in the Bubb Lane and Botley Road appeals in the Secretary of State's decision letter, nor any reference to them at all, despite the fact that they had been brought to his attention and their implications addressed in the further representations made to him after the inquiry. The inspectors' conclusions on housing land supply in those two decisions, and the consequences of those conclusions for the weight to be given to local plan policies, clearly were material considerations in this appeal. They would, in my view, qualify as material considerations on the basis of the case law relating to consistency in decision-making (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137, at p.145, most recently followed by this court in *DLA Delivery Ltd. v Baroness Cumberlege of Newick and Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305, at paragraphs 29, and 42 to 56). But leaving aside the principle of consistency, they would have been, it seems to me, material considerations if only on the basis that they represented an up to date independent assessment of housing land supply in the council's area, which had been squarely put before the Secretary of State. Yet he said nothing at all about them. Nor is there any explicit reference to the relevant content of the representations the parties had made. It is clear that the reference in paragraph 19 of the decision letter to the council's view that it was now able to demonstrate 4.86 years' supply of housing land was taken from the "Update on Housing Land Supply" that it produced on 23 June 2016. But he did not refer to the very firm and thoroughly reasoned conclusions of the inspector in the Botley Road appeal, which were reached in the light of that evidence.

> 63. So it is not clear whether the Secretary of State confronted the conclusions of the inspectors in the Bubb Lane and Botley Road appeals, and in particular the latter. Had he done so, he would have appreciated that the conclusions they had reached on the scale of the shortfall in housing land supply could not reasonably be reconciled with his description of that shortfall, in paragraph 17 of his decision letter, as "limited". The language used by those two inspectors was distinctly different from that expression, and incompatible with it unless some cogent explanation were given. No such explanation was given. In both decision letters the shortfall was characterized as "significant", which plainly it was. This was more akin to saying that it was a "material shortfall", as the inspector in Hallam Land's appeal had himself described it in paragraph 108 of his decision letter. Neither description – a "significant" shortfall or a "material" one – can be squared with the Secretary of State's use of the adjective "limited". They are, on any view, quite different concepts.
>
> 64. Quite apart from the language they used to describe it, the inspectors' findings and conclusions as to the extent of the shortfall – only "something in the order of four year supply" in the Bubb Lane appeal and only "4.25 years' supply" in the Botley Road appeal – were also substantially different from the extent of the shortfall apparently accepted or assumed by the Secretary of State in his decision in this case, which was as high as 4.86 years' supply on the basis of evidence from the council that had been before the inspector in the Botley Road appeal and rejected by him.
>
> 65. One is left with genuine – not merely forensic – confusion on this important point, and the uncomfortable impression that the Secretary of State did not come to grips with the inspectors' conclusions on housing land supply in those two very recent appeal decisions. This impression is not dispelled by his statement in paragraph 7 of the decision letter that he had given "careful consideration" to the relevant representations."

53. Lindblom LJ thus concluded that the First Defendant's reasons in that case failed to measure up to the requirements contained in the South Buckinghamshire case. In a concurring judgment Davis LJ offered further views in respect of the need where appropriate to identify the extent of the shortfall in housing land supply as follows:

> "82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficulty in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that is itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will

> be a relevant and material consideration, requiring to be evaluated.
>
> 83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of *Hopkins Homes*. I agree also with the observations of Lang J in paragraphs 27 and 28 of her judgment in the *Shropshire Council* case and in particular with her statements that "…Inspectors generally will be required to make judgments about housing need and supply. However these will not involve the kind of detailed analysis which would be appropriate at a "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14." I do not regard the decisions of Gilbart J, cited above, when properly analysed, as contrary to this approach."

Submissions and conclusions

54. As set out above, in respect of ground 1 Mr Goatley submits that in the light of the First Defendant's conclusions in paragraph 10 and 19 of the decision letter the First Defendant misinterpreted paragraph 11(d) of the 2018 Framework in that he failed to recognise that the consequence of these findings was that the tilted balance should apply. It has to be recognised, as Mr Goatley did, that this ground depends upon the examination of the correct interpretation of paragraph 11(d) of the Framework. Mr Goatley drew attention to the change in the wording of paragraph 11(d) when compared with the 2012 Framework. The 2012 Framework at paragraph 14 simply referred to "relevant policies are out-of-date" as a trigger to the application of the tilted balance. By contrast, the 2018 version of the Framework uses the language "or the policies which are most important for determining the application are out-of-date". Mr Goatley submitted that it was significant that the drafting did not say that "all" the most important policies must be out-of-date before the tilted balance would arise, and since there may be only one policy which might be the most important for determining the application the policy ought to be approached as if both the plural included the singular and, furthermore, that once one of the most important policies for determining the application had been concluded to be out-of-date the tilted balance would apply. On the basis of this interpretation the First Defendant's conclusions that policy S10 and WS5 were out-of-date and, as listed in the Inspector's report at paragraph 4.2 and 4.9 of "most relevance" (and therefore uncontroversially of most importance) to the decision, the tilted balance ought to have applied.

55. By contrast Mr Richard Honey on behalf of the First Defendant, supported by Mr Daniel Stedman Jones on behalf of the Second Defendant, submitted that the correct interpretation of paragraph 11(d) had been applied by the First Defendant. Mr Honey submitted that the correct interpretation is that the exercise required by paragraph 11(d) in relation to the assessment of the question as to whether or not the policies which were of most importance for determining the application were out-of-date is as follows. Akin with Mr Goatley, he contended that the first step was to identify which

were the policies which were most important for determining the application. Having done so, it is then necessary for the decision-taker to examine each of those policies, applying the Framework and the approach in the Bloor case, to see whether they are out-of-date. Having done so, the next step required by paragraph 11(d) is an assessment of all the basket of policies most important to the decision in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. If they were out-of-date then the presumption would be triggered.

56. Mr Honey contended that there was no warrant for the interpretation that once one of the most important policies for determining the application had been found out-of-date the tilted balance would apply. He observed that the policy specifically does not say that the tilted balance would apply when "one of" or "any of" the important policies for determining the application has been found to be out-of-date. To answer the question posed by paragraph 11(d) it is necessary, having identified those policies which are most important for the determination of the application, to examine them individually and then consider whether taken in the round, bearing in mind some may be consistent and some in-consistent with the Framework, and some may have been overtaken by events and others not, whether the overall assessment is that the basket of policies is rightly to be considered out-of-date. That will, of course, be a planning judgment dependent upon the evaluation of the policies for consistency with the Framework (see paragraph 212 and 213) taken together with the relevant facts of the particular decision at the time it is being examined.

57. Mr Honey submitted that the First Defendant's decision was consistent with that approach. He drew attention to the fact that the policies referred to in paragraph 10 of the decision letter by reference to the Inspector's report ranged wider than simply policy S10 and WS5. Bearing in mind a larger basket of policies was involved in considering the application of paragraph 11(d) there was nothing in the First Defendant's decision to suggest that paragraph 11(d) had been overlooked or misinterpreted. The First Defendant could be taken to be familiar with the provisions of his own policy, and the fact that he did not apply the tilted balance to the decision in the present case carries the clear inference that his evaluation of all of the policies that were of most importance in determining the application when examined individually and then taken as a whole and in the round were not properly to be considered to be out-of-date.

58. I am satisfied that Mr Honey's interpretation of the Framework in this connection is correct. It needs to be remembered, in accordance with the principles of interpretation set out above, that this is a policy designed to shape and direct the exercise of planning judgment. It is neither a rule nor a tick box instruction. The language does not warrant the conclusion that it requires every one of the most important policies to be up-of-date before the tilted balance is not to be engaged. In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current Framework and the approach set out in the Bloor case, an overall judgment must be formed as to whether or not taken as a whole these policies are to regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-

taking process should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose.

59. Bearing in mind that the list of policies in the present case ranged beyond policies S10 and WS5, it is in my view not possible to contend either that the First Defendant did not undertake the assessment required by what is effectively the centre piece of his policy or, alternatively, that he misinterpreted that policy in his application of it. It is true to observe, as Mr Goatley does in his submissions, that these issues are not matters which are directly addressed in the First Defendant's decision letter. The conclusion that the First Defendant correctly applied the policy arises from, in effect, an inference that he properly interpreted and applied his policy in circumstances where it is entirely reasonable to infer without specific reference that he would have applied his policy, and there is no evidence to support any suggestion that he misinterpreted it. Again, I am satisfied that Mr Honey's submissions in relation to the reasons dimension of ground 1 are sound for the following reasons.

60. Mr Honey submitted that there was no need for the First Defendant to provide particular reasons for his conclusion in relation to the application of paragraph 11(d) on the basis of the most important policies for the decision being out-of-date in circumstances where it was not a principal or main controversial issue in the decision which he was reaching. Neither before the Inspector, nor in their submissions to the First Defendant, had the Claimant contended that there was any alternative justification for the application of the tilted balance apart from the shortfall in housing land supply. The contentions made in the context of this challenge have been made solely as part of the grounds of the challenge itself. As is clear on the authorities, and in particular the South Buckinghamshire case (as applied in Hallam Land), it is incumbent upon the decision-taker to provide reasons in relation to the principal or main controversial issues, but not every dimension of the basis upon which the decision has been reached. In that this alternative argument for the application of the tilted balance was not a matter which had ever been relied upon by the Claimant prior to this challenge there was in my view no necessity for the First Defendant to provide reasons in relation to his conclusions on paragraph 11(d), and whether or not the most important policies for determining the application were out-of-date, when it had not been raised as a basis for applying the tilted balance by the Claimant during the decision-taking process. For all of these reasons I am not satisfied that there is substance in the Claimant's ground 1.

61. As set out above grounds 2 and 3 fall to be considered together. They relate to the conclusion reached in paragraphs 15-18 of the decision letter that the "estimated deliverable supply" of housing is roughly in the region of 10,000-10,500 homes. It will be recalled that these grounds proceed upon two bases. The first is that the First Defendant must have misinterpreted his policy, since the requirements of the policy in relation to whether or not a site is to be counted as deliverable, and therefore within

the available supply of housing, requires (in terms of the definition in the Framework's glossary) in relation to sites with outline planning permission or allocated in a development plan, that there should be "clear evidence that housing completions will begin on site within five years". This requirement for specific evidence is, it is submitted, reinforced by the further guidance contained in the PPG, which reiterates this language and provides potential sources or kinds of evidence which might support this conclusion. Evidence of this nature was contained in the SPRU Report and the tables which it contained. Mr Goatley submits that the simple assertion that there was a supply of 10,000-10,500 units was one which must have been based upon a misinterpretation of the policy since no evidence, let alone clear evidence, was anywhere identified in the decision letter to support the First Defendant's conclusions.

62. In the alternative Mr Goatley contends that the reasons provided by the First Defendant were inadequate and failed the South Buckinghamshire test. The question of what was the deliverable housing land supply was one of the main controversial issues and it is entirely unclear, he submits, how the First Defendant arrived at the figure of 10,000-10,500 units. There is no means of understanding how this issue was resolved by the First Defendant and why the Claimant's figures as advanced in the material in the SPRU Report had been rejected. Furthermore, the absence of reasons for the conclusion about the housing land supply left the parties in the dark as to how to approach future consideration of the issue.

63. In response to these submissions Mr Honey relied upon the Hallam Land case and contended that the conclusions of that case supported the approach of the First Defendant, in the sense that it was observed in the Hallam Land case that a definitive conclusion as to the housing land supply would not be required in every case, and it was not necessary for the First Defendant to set out all of the workings or details of his analysis of the housing land supply for his reasons to be adequate. He further submitted that there was no evidence that the Framework had been misinterpreted. The decision letter at paragraph 18 specifically referred to the change in the definition of "deliverable" in the revised Framework and there was no evidence that the First Defendant failed to properly apply it. He submitted that there was no basis for the contention that the First Defendant had to provide specific findings in relation to each of the sites concerned.

64. Mr Honey responded to the Claimant's contention that the figure of 10,000-10,500 was simply inexplicable by observing in his submissions that firstly, the figure of 10,000-10,500 fell in the range between the Council's figure for supply of 12,920 and the SPRU Report's figure for supply of 7,108. He further observed that, for instance, in relation to Table 11 there were three different types of comment in relation to sites which had outline planning consent only, namely sites where conditions were discharged, sites where reserved matters were pending and one site where an alternative application had been approved. He submitted that each of these characterisations was a form of evidence on progress of the type referred to in the PPG. He further submitted that it was open to the First Defendant to have taken into account some of these sites depending on their characteristics, and that there were permutations of that exercise which would explain how the First Defendant had come to the conclusion that the housing supply was in the range of 10,000-10,500. Thus, the

First Defendant's figure was explicable on the evidence before him and there was no need for him to provide further reasons on this aspect of his decision.

65. In my view it in important when evaluating these submissions to observe, firstly, that the measure of whether reasons are adequate will depend on the facts of the case. Whether reasons are legally adequate is a fact-sensitive exercise and falls to be considered against the particular facts of a case, and the principles must be applied on a case by case basis. In the present case the following factual matters are of significance.

66. Firstly, at the time when the First Defendant came to address the issue of the five year housing land supply, which was undoubtedly one of the principle important controversial issues in the case, the position in the evidence before him from both the Claimant and the Second Defendant was that a five year housing land supply could not be demonstrated. That, moreover, was the position of the Inspector in the conclusions of his report. The First Defendant was, therefore, for the first time in the decision-taking process concluding that a five year housing land supply was available to the Second Defendant. That was a decision that was open to him, obviously, but equally obviously, and in particular where the First Defendant was alighting upon a figure for housing land supply which had not featured anywhere in the material presented to him by either of the main parties or the Inspector, it called for explanation. Secondly, it is important to observe that in paragraph 17 of the decision letter the First Defendant had accepted and adopted conclusions of the Inspector in relation to uncertainty, slippage or failure in forecasting housing delivery, as well as the conclusions in relation to the delivery rates on sites being unlikely to be achievable. The Inspector had taken account of these matters generally rather than to arrive at a specific figure because, as set out in his conclusions, taking any one of the contentious consumptions against the Second Defendant would amount to a failure to demonstrate the five year supply. The First Defendant, by clear contrast, arrived at a specific and entirely new figure purporting to have taken account of the Inspector's conclusion on these issues. Thirdly, as is clear from paragraph 18 of the decision letter, the First Defendant took account of the site assessments set out in the SPRU Report in arriving at his figures for supply, figures which are clearly inconsistent with his overall assessment.

67. All of these factors lead me to the conclusion that the reasons provided by the First Defendant in relation to the figure were not adequate in the particular and perhaps unusual circumstances of this case. By simply asserting the figures as his conclusion, the First Defendant has failed to provide any explanation as to what he has done with the materials before him in order to arrive at that conclusion, bearing in mind that it would have been self-evident that it was a contentious conclusion. Simply asserting the figures does not enable any understanding of what the First Defendant made of the Inspector's conclusions which he accepted in paragraph 17 of the decision letter, and how they were taken into account in arriving at the final figures in his range. Whilst Mr Honey was in my view correct to point out in his submissions that arriving at the range of 10,000-10,500 was not inexplicable, in the sense that the First Defendant had the materials before him to alight upon those figures, nonetheless the exercise which Mr Honey undertook in his submissions set out above demonstrated the difficulty with the absence of reasons in this case. There were, no doubt, any number of adjustments or permutations which might have been taken to the figures in the SPRU

Report to arrive at the First Defendant's conclusion. However, by simply asserting the figures in a range makes it a matter of pure speculation as to how the First Defendant arrived at the figures which he did. How he arrived at the range and had resolved the issues in relation to the deliverable supply on the evidence before him is entirely undisclosed.

68. Having failed to disclose how the First Defendant arrived at the range which he did, the Claimant is entitled to contend that it is left without any understanding of the treatment of the evidence (including the SPRU Report) so as to arrive at the range stated, and unable to evaluate, therefore, how the relevant policy on deliverability was applied and how the conclusion was reached. I accept the Claimant's submission that the need for the range to be in some way explained is not requiring reasons for reasons, it is simply requiring reasons for a conclusion which was pivotal in relation to the application of the tilted balance in this case, and which derived from figures which had not been canvassed as an answer to the question of what the Second Defendant's housing land supply was anywhere in any of the material before the First Defendant prior to the decision letter. In terms of the South Buckinghamshire test, it also left both the Claimant and the Second Defendant unable to assess how future evaluation of housing deliverability should be undertaken. Indeed, in the Second Defendant's five year housing land supply position statement published in January 2019, after the decision, they noted, having observed that the First Defendant felt the Second Defendant could demonstrate a supply of between 10,000-10,500 dwellings, that "no detailed explanation has however been provided by the SoS as to how this figure has been calculated."

69. Turning to Mr Honey's reliance upon Hallam Land, in my view the issue which arises in the present case differs from the question which was being evaluated in that case. Firstly, the question in the present case was not how far the First Defendant had to go in calculating the extent of any shortfall in the five year housing land supply. In fact, the First Defendant provided an answer as to what was considered to be the five year supply of land. The issue here is whether or not having arrived at wholly new figures for the housing land supply, and taken account of various conclusions both the Inspector and the SPRU Report, the First Defendant was required to give some reasons for having arrived at the figures he did, those figures for the first time suggesting that the Second Defendant could demonstrate a five year housing land supply. I am in no doubt that the First Defendant was required to provide some reasoning to explain how he had treated the material before him so as to arrive at his conclusion as to the range of the supply of deliverable land available to the Second Defendant. Further, I am satisfied that the Claimant has been prejudiced by the absence of those reasons since without them the Claimant is unable to understand why the conclusions of the SPRU Report have not been accepted, and what was done in relation to either the Inspector's conclusions or the material in that report so as to arrive at the conclusion which had the significant effect upon their case of depriving them of the tilted balance when the decision came to be forged. In my view the Claimant's case in relation to grounds 2 and 3 is made out.

70. I turn to ground 4 which, it will be recalled, relates to policy H8 and the objections to the Claimant's proposals based upon their low density. The Claimant contends that the First Defendant has illegitimately prioritised the numerical assessment of density without having proper regard for the need for density to relate to the character and

appearance of the surrounding area, and the Inspector's conclusions that the lower density proposed properly reflected the surrounding area. In response Mr Honey on behalf of the First Defendant contends that paragraphs 24-26 of the decision letter properly explained, firstly, the conclusion of the First Defendant that policy H8 was consistent with the 2018 Framework which contained a more specific policy in paragraph 122-123 than the treatment which density had received in the 2012 Framework used by the Inspector, where density was treated as part of design, and a local planning authority had a broader discretion to set its own approach to density. Mr Honey further submits that it is clear that the First Defendant had regard to the points in relation to the character of the area but concluded in paragraph 26 that the scale of departure from policy H8 which had been found to be consistent with the 2018 Framework could not be justified.

71. Having considered Mr Goatley's submissions I am satisfied that the decision which the First Defendant reached was one which was, in the circumstances, lawful. Firstly, it is clear that the content of national policy had changed between the policy which the Inspector needed to apply to that which fell to be applied by the First Defendant. The question of whether or not policy H8 was consistent with the 2018 Framework was a matter of planning judgment for the First Defendant to evaluate. I can see no error of law in the judgment reached that policy H8 was consistent with the revised Framework both in relation to the reference to density being well related to the character and appearance of the surrounding area, and also the use of a range of average net densities. Having reached that conclusion, the reasoning in paragraphs 25 and 28 demonstrates that the First Defendant was alive to, and took account of, the Inspector's conclusions in relation to the relationship of the density of the proposal to its surroundings. Nevertheless, the First Defendant was entitled to reach the conclusion which he did that the scale of the departure from the policy requirement of H8 was a matter which amounted to a conflict with policy H8 to which significant weight should be ascribed. I am unable to read these paragraphs as founding in Mr Goatley's contention that the First Defendant had illegitimately overemphasised the numerical requirements as compared to the analysis of the proposals suitability by reference to the surrounding area. All of these factors are clearly taken into account in the assessment undertaken in paragraphs 24-26 of the decision and the First Defendant's view is clear and properly reasoned. In my view there is no substance in the Claimant's ground 4.

72. Turning to ground 5 there are three factors relied upon by Mr Goatley as being differences on matters of fact between the Inspector and the First Defendant which called for a reference back to the parties pursuant to rule 17(5) of the 2000 rules. Those matters were the decisions in relation to deliverable sites forming part of the housing land supply, the numerical basis of policy H8 and its application and the application of paragraph 11(d) of the Framework.

73. In my view the difficulty with Mr Goatley's contentions in respect of these issues is that they are all, in truth, matters of opinion and not questions of fact. The evaluation of whether or not sites were deliverable was a question of judgement for the First Defendant to consider. "Deliverability" is obviously an exercise of judgement based upon what is known about the site or sites which are under consideration. The assessment of H8 and the application of its numerical requirements was again not a question of fact (the facts as to the density of the proposed development and its

relationship to the numerical requirements of H8 being known and uncontentious). The issue which arose was a question of planning judgment as to the relationship between the proposed density and the application of policy H8 and lastly, the question of whether or not policies were out-of-date and whether or not that provided a trigger for the application of the tilted balance under paragraph 11(d) of the 2018 Framework was again a matter for the judgment of the decision-taker. Thus, whilst there were undoubtedly differences on these topics between the findings of the Inspector and the conclusions of the First Defendant none of them amounted to questions of fact which engaged rule 17(5) of the 2000 Rules.

74. I turn finally to ground 6 and the challenge to the conclusion of the First Defendant that the obligation to use reasonable endeavours to complete the development within five years was not addressed to any demonstrated planning harm and was not necessary to make the development acceptable in planning terms. As such the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 precluded the obligation from being a material consideration. I am not satisfied that this ground is properly arguable for a number of reasons. Firstly, in circumstances where the Second Defendant could demonstrate that it had a five year supply of housing there was no harm which this obligation was addressing. Mr Goatley's response that there remains a requirement in the Framework to boost the supply of housing does not substantiate the suggestion that the obligation addressed any harm or was necessary to properly regulate the development but, rather suggests that in circumstances where there was a five year land supply, the obligation was affording a benefit and not securing a matter which was required to make the development acceptable. In the circumstances ground 6 is not arguable and must be dismissed.

Conclusions

75. I am satisfied that the Claimant must succeed under grounds 2 and 3, in particular in relation to the inadequacy of the First Defendant's reasons and that permission must be refused for ground 6 and substantive relief declined in respects of grounds 1, 4 and 5. Given the conclusions which I have reached there is no need to determine the Claimant's application for specific disclosure which was made at the hearing: such disclosure was at the very least not required to enable the court to determine the matters arising in this case. I am satisfied that for the reasons set out above the First Defendant's decision must be quashed.

Appendix:

Annex 1

**Table 10 Sites which are extant housing allocations**

| Site Address | Status | MKC Supply (2018-2023) | SPRU Supply (2018-2023) | Difference | SPRU Comments |
|---|---|---|---|---|---|
| Campbell Park Remainder (Northside) | Allocated in 2005 Local Plan | 300 | 0 | -300 | No planning application submitted or approved. |
| Land off Hampstead Gate (SAP7) | SAP Allocation | 16 | 0 | -16 | No planning application submitted or approved. |
| Land off Harrowden (SAP8) | SAP Allocation | 25 | 0 | -25 | No planning application submitted or approved. |
| Reserve Site off Hendrix Drive | Reserve Site in 2005 Local Plan | 10 | 0 | -10 | No planning application submitted or approved. |
| Land off Singleton Drive (SAP1) | SAP Allocation | 22 | 0 | -22 | No planning application submitted or approved. |
| Land north of Vernier Crescent (SAP3) | SAP Allocation | 14 | 0 | -14 | No planning application submitted or approved. |
| Site 4 Vernier Crescent | Reserve site in the 2005 Local Plan | 10 | 0 | -10 | No planning application submitted or approved. |
| Manifold Lane (SAP10) | SAP Allocation | 18 | 0 | -18 | No planning application submitted or approved. |
| Land at Daubeney Gate (SAP6) | SAP Allocation | 60 | 0 | -60 | No planning application submitted or approved. |
| Lakes Estate Neighbourhood Plan Sites | NP Allocation | 130 | 0 | -130 | No planning applications submitted or approved on any of the sites in the NP. |
| Reserve Site Hindhead Knoll | Reserve site in 2005 Local Plan | 30 | 0 | -30 | No planning application submitted or approved. |
| Reserve Site Lichfield Down | Reserve site in 2005 Local Plan | 50 | 0 | -50 | No planning application submitted or approved. |
| Land at Walton Manor, Groveway/Simpson Road (SAP13) | SAP Allocation | 110 | 0 | -110 | No planning application submitted or approved. |
| Reserve Site 3, East of Snehsall Street (SAP11) | SAP Allocation | 22 | 0 | -22 | No planning application submitted or approved. |
| Tickford Fields | NP Allocation | 325 | 0 | -325 | No planning application submitted or approved. |

| | | | | | |
|---|---|---|---|---|---|
| Police Station Houses, High Street | NP Allocation/ 2005 LP Allocation | 14 | 0 | -14 | No planning application submitted or approved. |
| **Total** | | **1,156** | **0** | **-1,156** | |

Annex 2

**Table 11 Sites with Outline Planning Consent only**

| Site Address | Outline | MKC Supply (2018-2023) | SPRU Supply (2018-2023) | Difference | SPRU Comments |
|---|---|---|---|---|---|
| Land at Brooklands 2,501 Units Outline | 06/00220/MKPCO | 291 | 0 | -291 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. |
| Tattenhoe Park 2 | 06/00856/MKPCO | 82 | 0 | -82 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. |
| Tattenhoe Park 3 | 06/00856/MKPCO | 120 | 0 | -120 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. |
| Tattenhoe Park 4 | 06/00856/MKPCO | 70 | 0 | -70 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. |
| Tattenhoe Park 5 | 06/00856/MKPCO | 20 | 0 | -20 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. |
| WEA AREA 10.1 - 10.3 REMAINDER | 05/00291/MKPCO | 912 | 0 | -912 | Outline Permission only. Only change since publication of data is there is now a RM Pending for 129 dwellings under 18/01724/REM submitted by Bovis Homes. |
| WEA Area 11 Remainder | 06/00123/MKPCO | 550 | 0 | -550 | Outline permission only. Only change since publication of data is there is now a RM pending for 347 dwellings under reference 18/02142/REM submitted by Barratt/David Wilson Homes. |
| Ripper Land | 17/00303/OUT | 120 | 0 | -120 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Outline application submitted by Minton Wavendon. |
| Haynes Land | 14/02167/OUTEIS | 164 | 0 | -164 | 164 Dwellings in the supply comprises the element of land remaining with outline permission only.<br>RM now pending under 18/02183/REM submitted by Barratt/David Wilson Homes for 174 dwellings on Phase 3, Parcel B3. |
| Eagle Farm | 13/02381/OUTEIS | 125 | 0 | -125 | 125 dwellings comprises element of land remaining with outline permission only. No RM applications have yet been submitted. |
| Golf Course Land | 14/00350/OUTEIS | 100 | 0 | -100 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Application was submitted by Merton College, University of Oxford and |

| | | | | | |
|---|---|---|---|---|---|
| | | | | | Wavendon Residential Properties LLP. |
| Church Farm (Connolly Homes) | 14/01610/OUT | 100 | 0 | -100 | Outline Permission only. No change since publication of Council's data. One condition discharged in March 2018. Application was submitted by Connolly Homes. |
| Newton Leys | 02/01337/OUT | 62 | 0 | -62 | Outline Permission only. No change since publication of Council's data. Various conditions discharged. Conditions are being discharged by Taylor Wimpey. |
| Eaton Leys | 15/01533/OUTEIS | 270 | 0 | -270 | Outline Permission only. No change since publication of Council's data. Various conditions discharged by Gallagher Estates. |
| Land at Skew Bridge Cottage, Drayton Road | 16/02174/OUT | 10 | 0 | -10 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Application submitted by the landowner, not a housebuilder. |
| Broughton Atterbury (SAP14) Self Build Plots | SAP Allocation/ 17/00736/OUT | 15 | 0 | -15 | Outline application approved in August 2018 and was submitted by Morris Homes for 15 self-build units. No RM or conditions discharged. |
| 76-83 Shearmans | 15/00268/OUT | 14 | 0 | -14 | No reserved matters application submitted, and no conditions discharged. Application was submitted by the landowner not a housebuilder. |
| Land At Towergate, Groveway (SAP12) | 17/03205/OUT | 105 | 0 | -105 | Outline Permitted September 2018. Submitted by HCA. One Condition discharged. |
| Railcare Maintenance Depot, Stratford Road | 15/02030/OUTEIS | 75 | 0 | -75 | Outline planning permission only. No reserved matters application or conditions discharged. Application submitted by St Modwen. |
| SW of BWMC, Duncombe Street | 16/01430/OUT | 12 | 0 | -12 | Outline application is still pending, and therefore does not yet have planning permission. Went to committee in December 2016 recommend for approval. Committee minutes not available online, but presumption is approved subject to S106. Application was submitted by the landowner not a housebuilder. |
| Timbold Drive (SAP9) | 17/02616/OUT | 130 | 0 | -130 | Hybrid application: outline for 148 dwellings, details for 47 bed hospital. No conditions discharged. No change since publication of Council's data. Application was submitted by MKDP and Spire Healthcare, not a housebuilder. |
| Land east of Tillbrook Farm | 16/00762/OUT | 36 | 0 | -36 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Application was submitted by Paliser Investments Ltd. who are t a housebuilder |
| Maltings Field | 17/01536/OUT | 32 | 0 | -32 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Application was submitted by The Trustees of Lord Carrington's 1963 Settlement (1 & 2) Funds. who are not a housebuilder |

| | | | | | |
|---|---|---|---|---|---|
| Off Long Street Road | 16/02937/OUT | 101 | 0 | -101 | Outline permission only. RM pending under 18/01608/REM for 141 dwellings submitted by Davidson Developments. Various applications to discharge conditions are pending. |
| Land off Olney Road, Lavendon | 17/00165/OUT | 65 | 0 | -65 | Outline Permission only. No change since publication of Council's data. No conditions discharged. Application was submitted by Gladman Developments who are a lead developer but not a housebuilder. |
| Former Employment Allocation Phase 2 | 14/02060/OUT | 33 | 0 | -33 | RM Pending for 33 dwellings under reference 18/00799/REM by Lioncourt Homes. No conditions discharged. |
| Land West of Yardley Road and West of Aspreys Olney | 17/00939/OUT | 250 | 0 | -250 | Only permitted in July 2018. No RM and no conditions discharged. Application submitted by Providence Land who arenot a housebuilder?] |
| Land south of Lavendon Road Farm | 16/00688/OUT | 50 | 0 | -50 | No RM and no conditions have been discharged. Submitted by Francis Jackson Homes. |
| Frosts Garden Centre, Wain Close | 14/00703/OUT | 53 | 0 | -53 | Application to vary approved plans was approved in June 2018 by Careys New Homes. |
| Land North of Wavendon Business Park | 15/02337/OUT | 134 | 0 | -134 | Outline only. No RM. Various conditions have been discharged by Abbey Development. |
| Total | | 4,101 | 0 | -4,101 | |

Annex 3:

**Table 12 Adjusted Trajectory of Sites with Detailed Planning Permission**

| Site | MKC Supply (2018-2023) | SPRU Supply (2018-2023) (RGB Proof) | Adjusted to be 2018 Framework Compliant (Removal of outline and allocation with no clear evidence of delivery) | Adjusted to be 2018 Framework Compliant incl. Build Out Rates for Sites with FUL/RM Consent as per RGB Proof | Difference |
|---|---|---|---|---|---|
| WEA | 2,820 | 1,600 | 1,358 | 1,358 | -1,462 |
| Brooklands | 1,307 | 800 | 1,016 | 800 | -507 |
| Strategic Reserve | 1,888 | 940 | 1,279 | 940 | -948 |
| Tattenhoe Park | 292 | 300 | 0 | 0 | -292 |
| **Total** | **6,307** | **3,640** | **3,653** | **3,098** | **-3,209** |

Annex 4:

**Table 13 Five-year Supply Calculation using Standard Methodology**

| | MKC (No Adjustments) | SPRU (with adjustments to be 2018 Framework Compliant) | SPRU (with adjustments to be 2018 Framework Compliant and adjustments to delivery rates on sites with FUL/RM Consent) |
|---|---|---|---|
| **Standard Methodology** | **1,604** | **1,604** | **1,604** |
| **5 year supply requirement (1,604x5)** | **8,020** | **8,020** | **8,020** |

| | | | |
|---|---|---|---|
| **5 year supply requirement (2018-2023) including 5% buffer** | **8,421** | **8,421** | **8,421** |
| **Annual supply required** | **1,684** | **1,684** | **1,684** |
| **Supply** | **12,920** | **7,663** | **7,108** |
| **Difference** | **+4,499** | **-758** | **-1,313** |
| **5 year housing land supply position** | **7.67 years** | **4.55 years** | **4.22 years** |

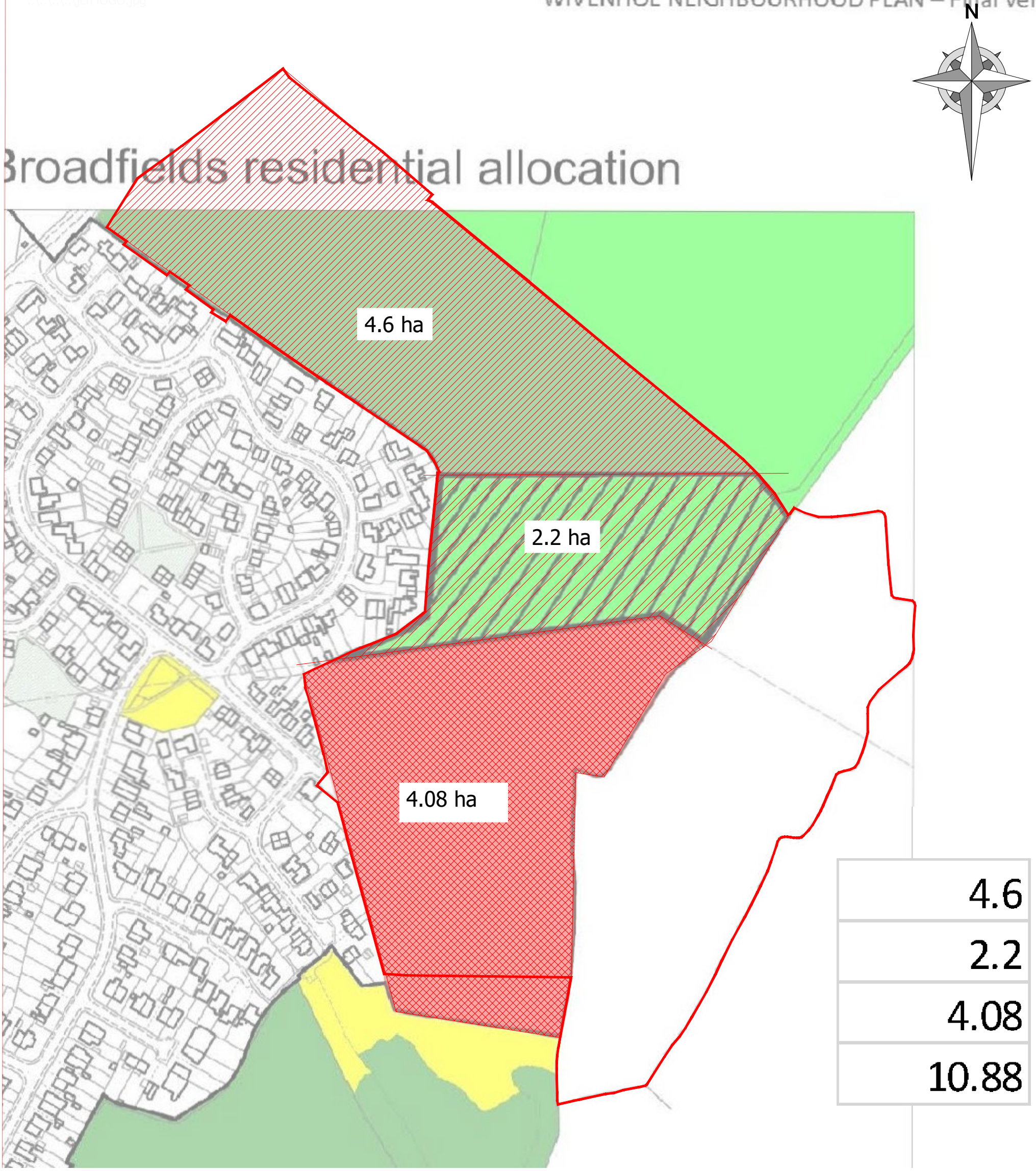
Annex 5:

**Table 14 Five-year Supply Calculation using Inspector's Housing Requirement from LP Examination**

| | MKC (No Adjustments) | SPRU (with adjustments to be 2018 Framework Compliant) | SPRU (with adjustments to be 2018 Framework Compliant and adjustments to delivery rates on sites with FUL/RM Consent) |
|---|---|---|---|
| **Local Plan** | **1,766** | **1,766** | **1,766** |
| **5 year supply requirement (1,766x5)** | **8,830** | **8,830** | **8,830** |
| **5 year supply requirement (2018-2023) including 5% buffer** | **9,272** | **9,272** | **9,272** |
| **Annual supply required** | **1,854** | **1,854** | **1,854** |
| **Supply** | **12,920** | **7,663** | **7,108** |
| **Difference** | **+3,649** | **-1,609** | **-2,164** |
| **5 year housing land supply position** | **6.97 years** | **4.13 years** | **3.83 years** |

# JF4: Wivenhoe Neighbourhood Plan – Figure 35, JCN Mark up

# Broadfields residential allocation




| |
|---|
| 4.6 |
| 2.2 |
| 4.08 |
| 10.88 |

# JF5: Standard Methodology, prepared by Savills Research Department

| | 1 | 2 | 5 | 7.00 | 8.00 | 9.00 | 11.00 | 12.00 | 13.00 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Code | Local Authority | *01/04/2022* **2014 hh proj (10yr ave 2021-31)** | HP-I | Uplift | **2014 Uncapped** | *No adopted plan n* Published Target | *01/04/2017* Published date | Over 5 years old sap | **Savills calc (capped) 2014** | **SM1.1 uplift?** | **Savills final** |
| E07000071 | Colchester | **787** | 10.38 | 1.399 | **1100** | 920 | Feb-21 | 920 | **1,100** | **No** | **1,100** |
| | | | | | | | | England Total: | **262,889** | **0** | **296,417** |

# JF6: WEM Appeal Decision (APP/L3245/W/20/3263642)

The Planning Inspectorate

# Appeal Decision

Site Visit made on 2 November 2021

**by Martin Chandler BSc, MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 January 2022**

**Appeal Ref: APP/L3245/W/20/3263642**
**Land off Lowe Hill Road, Wem SY4 5UR**

- 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 Mr John Tootell on behalf of Metacre Limited against the decision of Shropshire Council.
- The application Ref 20/01054/OUT, dated 4 March 2020, was refused by notice dated 12 June 2020.
- The development proposed is Outline planning application for the erection of up to 100 dwellings (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved.

## Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 100 dwellings (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works. All matters except for access reserved, at Land off Lowe Hill Road, Wem SY4 5UR, in accordance with application Ref: 20/01054/OUT, dated 4 March 2020, and subject to the conditions in the attached schedule as well as the provisions within the completed Section 106 legal agreement.

## Applications for Costs

2. Applications for costs have been made by Metacre Limited against Shropshire Council, as well as by Shropshire Council against Metacre Limited. These applications are subject to a separate decision.

## Preliminary Matter

3. Following the submission of the appeal, a revised National Planning Policy Framework (the Framework) was published. The main parties were consulted in relation to this matter, and any comments received have been factored into my assessment of the appeal.

## Procedural Matters and Main Issue

4. When first lodged, the appellant requested that the appeal be heard by way of an Inquiry. However, due to the issues under consideration, a Hearing was eventually scheduled for 2 November 2021.

5. The original planning application was refused on the basis of two reasons. The first refusal reason related to landscape and visual harm, as well as harm to local biodiversity. However, in support of their appeal, evidence has been provided by the appellant to overcome these matters. The Council, as well as

other interested parties, have had the opportunity to fully appraise this information, and in preparation for the planned Hearing, the agreed Statement of Common Ground confirmed that the Council no longer wanted to rely on the first refusal reason.

6. I note that there has been objection to the proposal by third parties, as well as Wem Town Council, however, these parties have also had the opportunity to comment on the additional evidence. Accordingly, I am satisfied that the additional evidence provided by the appellant should be accepted to aid my assessment of the appeal, and that in taking this course of action, interested parties have not been compromised.

7. The additional information is thorough and has been suitably scrutinised, including by a qualified Ecologist on behalf of the Council. I note the ongoing concerns presented by Wem Town Council, however, no substantive or compelling evidence to challenge the agreed findings of the Appellant and Council has been provided. Accordingly, on the basis of the evidence before me, I have no reason to disagree with the revised stance of the Council.

8. The second reason for refusal related to insufficient justification and information being provided for the development of land that is located beyond the housing allocation. Accordingly, the outstanding main issue is whether the location of the appeal site is suitable for the development proposed, having regard to the requirements of local and national policy.

**Reasons**

9. The majority of the appeal site is allocated for housing through the Shropshire Council Site Allocations and Management of Development Plan (2015) (SAMDev). The allocation, WEM003, is referred to as Land off Pyms Road and makes provision for 100 houses. The SAMDev also states that the design of the site may include additional land for community facilities. Despite this allocation, the western-most portion of the appeal site is located beyond the land identified within the SAMDev.

10. As identified above, based on the additional information provided by the appellant, the Council is satisfied that the proposal would not give rise to any unacceptable landscape or biodiversity harm. The proposal seeks outline planning permission so specific details regarding these matters can be suitably controlled at the Reserved Matters stage. Accordingly, the Council's concerns now only manifest themselves in the additional land located to the west of the appeal site. This land is not allocated and is not located within a defined settlement boundary. As a consequence, for the purposes of local policy, this portion of land is located within the countryside.

11. Policy CS3 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (CS) relates to the Market Towns and Other Key Centres in the district. Wem is identified within the policy, and amongst other things, the Policy confirms that balanced housing and employment, of an appropriate scale and design that respects each town's distinctive character and is supported by improvements in infrastructure, will take place within the towns' development boundaries and on sites allocated for development.

12. In refusing planning permission, the Council have also referred to Policy CS5 of the CS and Policies MD2 and MD7a of the SAMDev. Policy CS5 of the CS

requires that new development will be strictly controlled in accordance with national planning policies protecting the countryside. Policy MD2 of the SAMDev requires amongst other things new development to consider design of landscaping and open space holistically as part of the whole development, including natural and semi-natural features. Policy MD7a relates to the managing of housing development in the countryside and states that new market housing will be strictly controlled outside of Shrewsbury, the Market Towns, Key Centres and Community Hubs and Community Clusters.

13. I note the wording of Policy CS3 of the CS, however, in my judgement, when read as a whole, local policy is consistent with the Framework. That is to say it promotes development within settlement boundaries and on allocated sites but does not specifically preclude other development. Indeed, the housing allocation itself acknowledges that additional land may be included, albeit for community facilities. As a consequence, the local policy framework is such that development in the countryside should be strictly controlled, having due regard to the environment in which it would be located. It is therefore in this context that the appeal should be assessed.

14. Based on the evidence before me, following the allocation of WEM003, a major gas pipe was identified as crossing the site. The size of the pipeline brings with it an easement requirement of 15 metres to either side, and therefore introduces a substantial no-build zone within the allocated parcel of land. The Council recognise this gas main as a constraint on the site, and on the basis of the evidence before me, I have no reason to disagree.

15. The size of the no-build zone across the site has a demonstrable impact on the developable space within the allocated land. As a consequence, rather than designing the proposal at a higher density, the additional land would be utilised to enable open space and landscaping within the development, in a manner that would be sensitive to its edge-of-settlement location. Due to the Council's reservations regarding this point, the landscape impact of the proposal has been thoroughly considered and the evidence before me confirms that it has been demonstrably scrutinised. As identified above, this additional scrutiny has enabled the Council to withdraw their concerns regarding landscape and visual impact.

16. The proposal is in outline form, with all matters reserved for future consideration, other than access, and it has been supplemented with thorough evidence regarding landscape impact. The development would result in an obvious visual change to the existing surroundings, but as an allocated site, this could not be avoided. I have no evidence before me that distinguishes the visual impact between the allocated land and the unallocated land. The reports consider the site as a whole and the unallocated land would be experienced as part of the broader development. In this regard, it would be integrated with the allocated land. The proposal would not result in any isolated form of development and there is nothing compelling in the evidence before me to confirm that the visual impact of developing the unallocated land would be demonstrably more harmful than just the allocation

17. The inclusion of the additional land has been suitably articulated by the appellant. Moreover, the additional landscape and biodiversity evidence ably demonstrates that the development on this part of the site has been sensitively considered. Accordingly, in my judgement, when assessed against the strict

controls of local policy, and having due regard to the environment in which the development would be located, I am satisfied that there is nothing in the evidence before me to confirm that the inclusion of the westernmost parcel of land would be contrary to local policy, when taken as a whole.

18. Consequently, having regard to local and national policy, I conclude that the appeal site would be suitable for the development proposed. It would therefore comply with Policies CS3 and CS5 of the CS and Policies MD2 and MD7a of the SAMDev, the requirements of which are set out above.

**Other Matters**

19. The appeal site is located within the catchment area of the Midland Meres and Mosses Phase 2 Ramsar Site. Paragraph 181 of the Framework requires that this be given the same protection as habitats sites, which the Framework defines as any site which would be included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (the Regulations). Accordingly, due to the location of the site, the requirements of the Regulations are applicable to my assessment of the appeal.

20. This requires that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the Ramsar. The Ramsar is susceptible to disturbance of habitats through trampling, as well as interference with habitat management, and also increased nitrification of habitats, primarily due to dog fouling. As a consequence, taking a precautionary approach, and when combined with other development within the area, I am satisfied that the proposal would result in an increase in such activity which would lead to a likely significant adverse effect on the integrity of the Ramsar.

21. Due to this effect, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. On this basis, a management plan is being prepared to ensure that recreational pressure can be suitably managed so as to protect the integrity of the Ramsar. Although this report remains in draft form, the parties have agreed that a contribution of £7,500 would assist in implementing visitor management measures to protect the Ramsar. The contribution forms part of the completed Section 106 Legal Agreement.

22. Based on the evidence before me, I am satisfied that this contribution is necessary to provide the delivery of suitable mitigation that would address the level of harm likely to be caused by the development. Accordingly, it would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). As a consequence, subject to the necessary mitigation, I am satisfied that the proposal would not result in a significant harmful effect on the integrity of the Ramsar.

23. The legal agreement also includes provisions in relation to affordable housing, as well as public open space, including maintenance. The evidence before me confirms the need for these matters and consequently, I am satisfied that the contents of the agreement comply with the requirements of the CIL Regulations. Accordingly, the submitted legal agreement is a valid document that is fit for purpose and therefore weighs in favour of the proposal.

24. I note the comments regarding flooding and drainage, however, I have no substantive evidence to demonstrate that this matter is of specific concern. No objection was raised to this matter by the Council and subject to a suitably worded planning condition, I am satisfied that flooding and drainage need not cause harm following development. I also note the concerns regarding highway safety and volume of traffic. Nevertheless, again, the evidence before me does not present a compelling case that the proposal would give rise to harm in relation to these matters. The proposal has been suitably scrutinised by the Highway Authority and no objection has been raised subject to the imposition of certain conditions. On the basis of the evidence before me, I have no reason to disagree with this approach.

25. In relation to the effect of the proposal on infrastructure such as schools, doctors and dentist practices, I have no substantive evidence before me to demonstrate that the proposal would have an adverse effect. They are not matters for which the Council have sought contributions or to which concerns have been raised. Accordingly, based on the evidence before me, I have no reason to consider that the proposal would cause demonstrable harm in these areas.

**Conditions**

26. Due to my findings set out above, conditions 1 – 4 are necessary in the interests of precision and clarity. In addition, conditions 5 – 9 are necessary in the interests of highway safety. Condition 10 is necessary to ensure satisfactory drainage of the site, and condition 11 is necessary due to the archaeological interest of the site. Condition 12 is necessary to protect the ecological interest of the site, and condition 13 is necessary to ensure that a suitably robust landscaping scheme accompanies the reserved matters submission. Condition 14 is necessary to ensure suitable living conditions are provided for future occupants, and condition 15 is necessary to promote sustainable travel opportunities.

27. The conditions have been taken from the agreed Statement of Common Ground and as a consequence, where conditions require information to be submitted prior to the commencement of development, the appellant has confirmed their acceptance.

28. An additional condition was suggested to establish the upper limit for development on the site, but because this matter is explicitly stated within the description of development, a condition to duplicate this matter would be unnecessary.

**Conclusion**

29. For the reasons identified above, the appeal should be allowed.

*Martin Chandler*

INSPECTOR

SCHEDULE OF CONDITIONS

1) Approval of the details of the appearance of the development, access arrangements, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

4) The development shall be carried out strictly in accordance with the following approved plans and drawings: 18-14-LP01; 68591-CUR-00-XX-DR-TP-75001-P04 (Proposed Access Option 1); S18-412; and WD18-13-MP01-G.

5) Notwithstanding the access details as shown on Drawing No.68591-CUR-00-XX-DR-TP-75001-P04 and prior to the commencement of development full engineering details of the access layout, visibility splays and raised table shall be submitted to and approved in writing by the Local Planning Authority; the access scheme and raised table shall be implemented in accordance with the approved details and a phasing programme to be first submitted to and approved in writing by the Local Planning Authority.

6) No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water and phasing programme have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented in accordance with the approved details.

7) Prior to the commencement of development a scheme for the provision of a mini-roundabout at the junction of Lowe Hill Road and B5063 shall be submitted to approved in writing by the Local Planning Authority: the mini-roundabout scheme shall be fully implemented in accordance with the approved scheme following the occupation of the 50th dwelling within the site.

8) No development shall take place until details for the parking and turning of vehicles have been submitted to and approved by the Local Planning Authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the development and thereafter be kept clear and maintained at all times for that purpose.

9) No development shall take place, including any works of demolition, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority, to include a community

communication protocol. The CTMP shall be fully implemented is accordance with the approved details for the duration of the construction period.

10) No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).

11) No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a phased programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

12) No development shall take place until a European Protected Species (EPS) Mitigation Licence with respect to great crested newts has been obtained from Natural England and submitted to the Local Planning Authority.

13) The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include:

1) Planting plans showing creation of wildlife habitats including species-rich grassland, permanent aquatic habitats and hedgerow / tree planting,
2) Written specifications (including cultivation and other operations associated with wildlife habitat establishment);
3) Schedules of plants, noting species (including scientific names, seed mix compositions, planting sizes and proposed numbers/densities where appropriate;
4) Native species used are to be of local provenance (Shropshire or surrounding counties);
5) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works;
6) Detail of boundary treatment which will include provision for hedges.
7) Implementation timetables.
8) Recreational space and landscaping/plantings in relation to this.

The plan shall be carried out as approved. Any trees or shrubs which die or become seriously damaged or diseased within five years of completion of the development shall be replaced within 12 calendar months with trees of the same size and species.

14) Any subsequent planning application/reserve matters for development on site will include reference to a scheme for protecting the occupants of the proposed development from the traffic noise on Lowe Hill Road, to be submitted to, and approved in writing by the Local Planning Authority. The scheme shall ensure that all properties have been designed so that the following good noise standards can be achieved: 35dBA LAeq in habitable rooms in the day, 30dB LAeq in bedrooms at night, 45dB LAmax in bedrooms at night and 50dB LAeq in external amenity areas. Acoustic

glazing which requires windows to be kept shut should only be used where it is not possible to resolve the issues by other design measures and where there is a clear planning need for the proposed design. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

15) The interim travel plan shall be implemented in accordance with the Action Plan set out in the approved details.

# JF7 - DLUPH&C: Table 1011C Additional Affordable Housing Supply

| | |
|---|---|
| Region name | (All) |
| District name | (All) |
| Metropolitan name | (All) |
| LA name | Colchester |
| LA name 202021 | (All) |
| Type | (All) |

**Please select the geography** you require from the drop down menu.
- LA name = local authority borders at the time data was reported
- LA name 202021 = 2020-21 local authority borders

**Please select whether you want NB, Acquisition or Unknown**.

**Footnotes:**
See Notes tab

| **Sum of Units** | **Column Labels** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Row Labels** | **1991-92** | **1992-93** | **1993-94** | **1994-95** | **1995-96** | **1996-97** | **1997-98** | **1998-99** | **1999-00** | **2000-01** | **2001-02** | **2002-03** | **2003-04** | **2004-05** | **2005-06** | **2006-07** | **2007-08** | **2008-09** | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** | **2015-16** | **2016-17** | **2017-18** | **2018-19** | **2019-20** | **2020-21** |
| **Social Rent** | **103** | **227** | **212** | **246** | **184** | **125** | **49** | **197** | **107** | **39** | **78** | **132** | **49** | **146** | **29** | **99** | **232** | **93** | **176** | **123** | **282** | **61** | | **3** | **35** | | **1** | **8** | **35** | **60** |
| Private Registered Provider HE/GLA funded | 86 | 227 | 212 | 246 | 184 | 125 | 49 | 197 | 107 | 39 | 78 | 132 | 35 | 146 | 20 | 49 | 137 | 72 | 82 | 117 | 260 | 61 | | | 4 | | | | | |
| Local Authority HE/GLA funded | 17 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Local Authority other funding | | | | | | | | | | | | | | | | | | | | | | | | 3 | 31 | | 1 | 8 | 35 | 60 |
| Permanent Affordable Traveller Pitches | | | | | | | | | | | | | | | | | | | | | 11 | | | | | | | | | |
| s106 nil grant | | | | | | | | | | | | | 14 | | 9 | 50 | 95 | 21 | 94 | 6 | 11 | | | | | | | | | |
| **Affordable Rent** | | | | | | | | | | | | | | | | | | | | | | **6** | **39** | **227** | **66** | **36** | **65** | **120** | **329** | **45** |
| Private Registered Provider HE/GLA funded | | | | | | | | | | | | | | | | | | | | | | 4 | | 165 | 11 | 2 | | | | |
| Private Registered Provider other funding | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 9 | |
| Affordable Homes Guarantees | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 194 | |
| s106 nil grant | | | | | | | | | | | | | | | | | | | | | | 2 | 39 | 62 | 55 | 34 | 64 | 113 | 126 | 45 |
| Other | | | | | | | | | | | | | | | | | | | | | | | | | | | | 7 | | |
| **Intermediate Rent** | | | | | | | | | | | | | | | | | | **7** | **26** | **4** | **62** | **11** | **16** | | **22** | | **43** | | **64** | |
| Private Registered Provider HE/GLA funded | | | | | | | | | | | | | | | | | | 7 | 26 | 4 | 62 | 11 | | | 2 | | | | | |
| Private Registered Provider other funding | | | | | | | | | | | | | | | | | | | | | | | | | | | 43 | | | |
| s106 nil grant | | | | | | | | | | | | | | | | | | | | | | | 16 | | 20 | | | | 64 | |
| **Shared Ownership** | | | | | | | | | | | | | | | | | | | | | | | | **11** | **22** | **8** | **21** | **46** | **54** | **7** |
| Private Registered Provider HE/GLA funded | | | | | | | | | | | | | | | | | | | | | | | | 7 | 8 | | 1 | 1 | | 1 |
| Non-Registered Provider HE funded | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 |
| s106 nil grant | | | | | | | | | | | | | | | | | | | | | | | | 4 | 14 | 8 | 20 | 45 | 54 | 5 |
| **Affordable Home Ownership** | | **6** | **38** | **44** | **64** | **37** | **35** | **18** | **4** | **5** | **3** | **41** | **15** | **12** | **81** | **58** | **58** | **36** | **53** | **58** | **35** | **55** | **17** | **4** | **4** | | | | **56** | |
| Private Registered Provider HE/GLA funded | | 6 | 38 | 44 | 64 | 36 | 35 | 18 | 4 | 5 | 3 | 8 | 15 | 12 | 31 | 24 | 28 | 30 | 48 | 58 | 35 | 49 | 9 | 2 | | | | | | |
| Affordable Homes Guarantees | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 56 | |
| s106 nil grant | | | | | | | | | | | | 33 | | | 50 | 33 | 30 | 5 | 5 | | | 6 | 7 | 2 | | | | | | |
| Other | | | | | | 1 | | | | | | | | | | 1 | | 1 | | | | | 1 | | 4 | | | | | | |
| **Grand Total** | **103** | **233** | **250** | **290** | **248** | **162** | **84** | **215** | **111** | **44** | **81** | **173** | **64** | **158** | **110** | **157** | **290** | **136** | **255** | **185** | **379** | **133** | **72** | **245** | **149** | **44** | **130** | **174** | **538** | **112** |

# JF8 - Local Services Map prepared by Savills


| Key | |
|---|---|
| Site Market | Description |
| Red Line | Appeal Site |
| | Local Play Space |
| | Local Sports Pitches |
| | Local Convenience Store and Shops |
| | Local Services Post Office and Fire Station |
| | Veterinary Practice |
| | Allotments |
| | Local Pub |
| | Local School |
| | Bus Stop |

# JF9: Constraints Map (Drawing TN027-AP-PL07 Rev A) prepared by JCN

JCN DESIGN & PLANNING

N

Overhead cable 'No Build' Zone
0.2028 ha

Eastern Easement & North Western corner
0.4009 ha

Western Drainage easement
0.1818 ha

Land outside applicants Ownership
0.3527 ha

Remaining Developable Area
2.9807 ha

0 50 100 metre

Taylor Wimpey

Project:-

Wivenhoe, Land South of Elmstead Road, off Richard Avenue

Description:-

Constraints Areas Plan

Scale:-
1-500 @ A0

Date:-
Nov 2022

Drg no:-
TW027-AP-PL07

Revision:-
A

# JF10: JCN Comments on Wivenhoe Town Councils' Alternative Layout Maps (Options 1 and 2)

JCN DESIGN & PLANNING

# Option 1 - Area - 4 hectares - Density - 30 dph

Road and dwellings within no build zone of overhead cables

Cross roads as site entrance not seen favorable by Essex country highways

Maintenance access required to existing drainage ditch

Land outside of applicants ownership

SUDs outside of land ownership

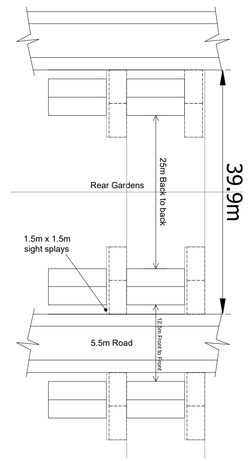
Existing Trees would need to be removed to accommodate

Existing Trees would need to be removed to accommodate

Actual road widths overlaid on the option 1 concept



Illustrative back to back - front to front distances figure scaled plan




Scaled building & parking spaces

## Site boundary considerations

**North edge** - Overhead cables requiring a 'No Build' zone either side of outside edge of high voltage cables

**Eastern edge** - Existing established tree line boundary with tree protection areas indicated

**South edge** - Land outside of applicants ownership. Possible links to existing footpaths

**Western edge** - Existing drainage ditch requiring maintenance access. Existing dwellings backing onto the development boundary

## Essex Parking Standards

Document reference - Parking Standards - Design and Good Practice - Sept 2009

1 bed house - 1 space
2+ bed house -2 spaces
25% of total number of dwellings for visitor parking
Parking spaces size - 2.9m x 5.5m
Perpendicular size - 6.0m x 2.9m
Garages - internal clear dim's 3m x 7m
( Smaller will not be counted as parking space)
1.5m x 1.5m viability to all parking spaces backing onto adoptable highway

## Sustainable drainage systems

Sustainable drainage systems (SuDS) are designed to manage stormwater locally (as close its source as possible), to mimic natural drainage and encourage its infiltration, attenuation and passive treatment.

## Essex Design Guide 1997

Adopted by Colchester council

Rear Privacy page 69
Min 25m back to back from exiting dwellings with a min of 15m from the site boundary to new development. min 25m back to back / min 35m for 3 storey dwellings
Garden sizes
1 bed 25m²
2 bed 50m²
3 bed 60m²
4+ beds 100m²

## National Planning Policy Framework

Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions **should ensure that new streets are tree-lined**

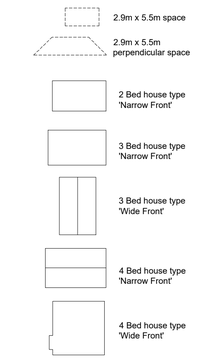
## Essex County Highways

Document reference - Development Construction Manual - July 2022

| | | | | |
|---|---|---|---|---|
| **Type E** | **Access Road**   | 400 units on a loop, or 200 for a cul de sac | 5.5m with 2 x 2m footways or 1 x 2m footway if fewer than 25 dwellings are served. | No access restrictions. Priority for cyclists. To provide appropriate visibility at junctions a straight section of carriageway will be provided from the entrance junction for 15 metres. |

## Development area

Given the site constraints the actual development is reduced to **3.0ha**




Taylor Wimpey

Project:-
Wivenhoe, Land South of Elmstead Road, off Richard Avenue

Description:-
Option 1
Design Notes

Scale:- 1-500 @ A0
Date:- Nov 2022
Drg no:- TW027-AP-PL05
Revision:- A

0 50 100 metre

JCN DESIGN & PLANNING

# Option 2 - Area - 4.43 hectares - Density - 27 dph

Road and dwellings within no build zone of overhead cables

Cross roads as site entrance not seen favorable by Essex country highways

Maintenance access required to existing drainage ditch

Land outside of applicants ownership

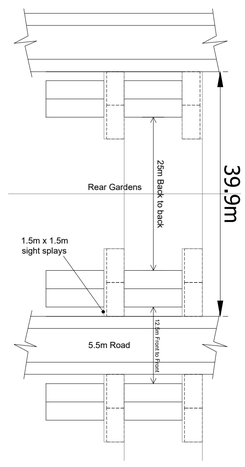
SUDs outside of land ownership

Existing Trees would need to be removed to accommodate

Existing Trees would need to be removed to accommodate


Actual road widths overlaid on the option 1 concept

Illustrative back to back - front to front distances figure scaled plan




Scaled building & parking spaces

## Site boundary considerations

**North edge** - Overhead cables requiring a 'No Build' zone either side of outside edge of high voltage cables

**Eastern edge** - Existing established tree line boundary with tree protection areas indicated

**South edge** - Land outside of applicants ownership. Possible links to existing footpaths

**Western edge** - Existing drainage ditch requiring maintenance access. Existing dwellings backing onto the development boundary

## Essex Parking Standards

Document reference - Parking Standards - Design and Good Practice - Sept 2009

1 bed house - 1 space
2+ bed house -2 spaces
25% of total number of dwellings for visitor parking
Parking spaces size - 2.9m x 5.5m
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( Smaller will not be counted as parking space)
1.5m x 1.5m viability to all parking spaces backing onto adoptable highway

## Sustainable drainage systems

Sustainable drainage systems (SuDS) are designed to manage stormwater locally (as close its source as possible), to mimic natural drainage and encourage its infiltration, attenuation and passive treatment.

## Essex Design Guide 1997

Adopted by Colchester council

Rear Privacy page 69
Min 25m back to back from exiting dwellings with a min of 15m from the site boundary to new development. min 25m back to back / min 35m for 3 storey dwellings
Garden sizes
1 bed 25m²
2 bed 50m²
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4+ beds 100m²

## National Planning Policy Framework

Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions **should ensure that new streets are tree-lined**

## Essex County Highways

Document reference - Development Construction Manual - July 2022

| | | | | |
|---|---|---|---|---|
| **Type E** | **Access Road**   | 400 units on a loop, or 200 for a cul de sac | 5.5m with 2 x 2m footways or 1 x 2m footway if fewer than 25 dwellings are served. | No access restrictions. Priority for cyclists. To provide appropriate visibility at junctions a straight section of carriageway will be provided from the entrance junction for 15 metres. |

## Development area

Given the site constraints the actual development is reduced to **3.0ha**

0 50 100 metre

Taylor Wimpey

Project:-
Wivenhoe, Land South of Elmstead Road, off Richard Avenue

Description:-
Option 2
Design Notes

Scale:- 1-500 @ A0
Date:- Nov 2022
Drg no:- TW027-AP-PL06
Revision:- A

# JF11: Haydens Comments on Wivenhoe Town Councils' layout options

HAYDEN'S
Arboricultural Consultants

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Bury St Edmunds
Suffolk IP28 6JY
**T:** 01284 765391
**E:** info@treesurveys.co.uk
www.treesurveys.co.uk

Taylor Wimpey East London
Ground Floor, East Wing
BT Brentwood, 1 London Road
Brentwood
Essex
CM14 4QP

11th November 2022

Dear Samuel Caslin

**Re: Proposed design change at Land off Richard Avenue, Wivenhoe, CO7 9JF and implications of gardens in trees**

Per our discussion earlier this week, I am writing with regard to potential implications for retained trees post-development if proposed gardens were to abut with the current site boundary.

The boundaries are populated with mostly good quality trees and I understand that there are concerns that future residents may not respect or wish to take on the stewardship of these landscape features and possibly cut them down to avoid having them in their gardens. The trees are not subject to tree preservation orders so it is feasible that homeowners could fell the trees that are located within their ownership. The boundary landscape features are typically only one tree deep and so any felling may negatively impact and create gaps in these cohesive groups and areas.

Any design proposal that may result in gardens enclosing or adopting these retained trees should consider the boundary of ownership or extent of garden to prevent diluting the possession of the trees to benefit long-term retention. The Taylor Wimpey design layout no.TW027-OP9-WL-01 Rev I ensured a singular ownership for the boundary trees and it would be advisable that this element of the design is continued.

In the event that gardens must back on to these boundary trees then it may be prudent to confirm which of the trees definitively fall within the red line boundary to establish ownership and then include measures within the design to separate the dwellings from the trees. These measures could include a buffer zone between gardens and trees. There may be the potential for reducing the lengths of gardens and erecting fencing to exclude the trees. Alternatively, a softer separation could include a vegetative belt of planted shrubs and trees.

A secondary element to consider would be the shade cast by retained trees. A layout that moves dwellings closer to the trees will inevitably increase the

potential for undesirable shading on living spaces. Again, the Taylor Wimpey design layout no.TW027-OP9-WL-01 Rev I was working within more agreeable levels of shading due to the distance between dwellings and the trees.

It must also be considered that the continued presence of trees in a garden will be down to the personal taste of prospective house buyers. There will be people that would welcome good quality trees at the end of their garden and would not seek to remove them. No single piece of advice will meet the needs of all future buyers on an issue as subjective and emotive as trees. With this in mind, excluding individual ownership of trees on a house-by-house basis and keeping maintenance and management to a centralised figure could be the solution for long-term retention of existing trees.

It is understood that alternative proposals to the submitted Taylor Wimpey design layout no.TW027-OP9-WL-01 Rev I would seek to position new dwellings close to or within the root protection areas (RPA) of boundary trees. The Taylor Wimpey layout does not intrude into RPAs. It is standard advice to avoid building inside RPAs where possible as this affords the trees with the highest form of protection: prevention of opportunity for damage. While it is recognised that there are specialist foundation methods that permit construction within and around rooting zones, this is an option for when an alternate solution is not available. The submitted Taylor Wimpey design layout no.TW027-OP9-WL-01 Rev I is a proposal that would avoid conflicts with the trees far better than a scheme that would rely on needing to build inside RPAs of boundary trees and invoking these specialist foundations as the norm rather than as exceptions. The boundary trees are significant, category A and B landscape features and assets that should be celebrated and maintained; building in close proximity to these trees would be ill-advised when there is already a scenario that meets the development needs and minimises impact on trees. The perspective of the trees officer being in favour of building closer to these good quality trees when it could be avoided would be welcome.

I trust this is to your satisfaction. Should you require any further information or have any queries please do not hesitate to contact me.

Yours sincerely

**Alex Turner**
Arboricultural Consultant

# JF12: SES Opinion on Wivenhoe Town Councils' Drainage Solutions

| | |
|---|---|
| Date Issued | 04/11/2022 |
| Client | Taylor Wimpey |
| Site | Land behind Broadfields, Wivenhoe Essex |
| Author | Sarah Wiltshire BSc (Hons) MSc ACIEEM |
| Review | Sean Crossland CEcol MCIEEM |
| Title | Review of off-site attenuation basin option as suggested by Wivenhoe Town Council |

**Purpose**

Southern Ecological Solutions (SES) were requested by Taylor Wimpey to prepare a technical note response considering ecological factors in relation to Wivenhoe Town Council's Appeal Statement relating to Land behind Broadfields, Wivenhoe Essex (Ref: APP/A1530/W/22/3305697), with particular reference to the following statement:

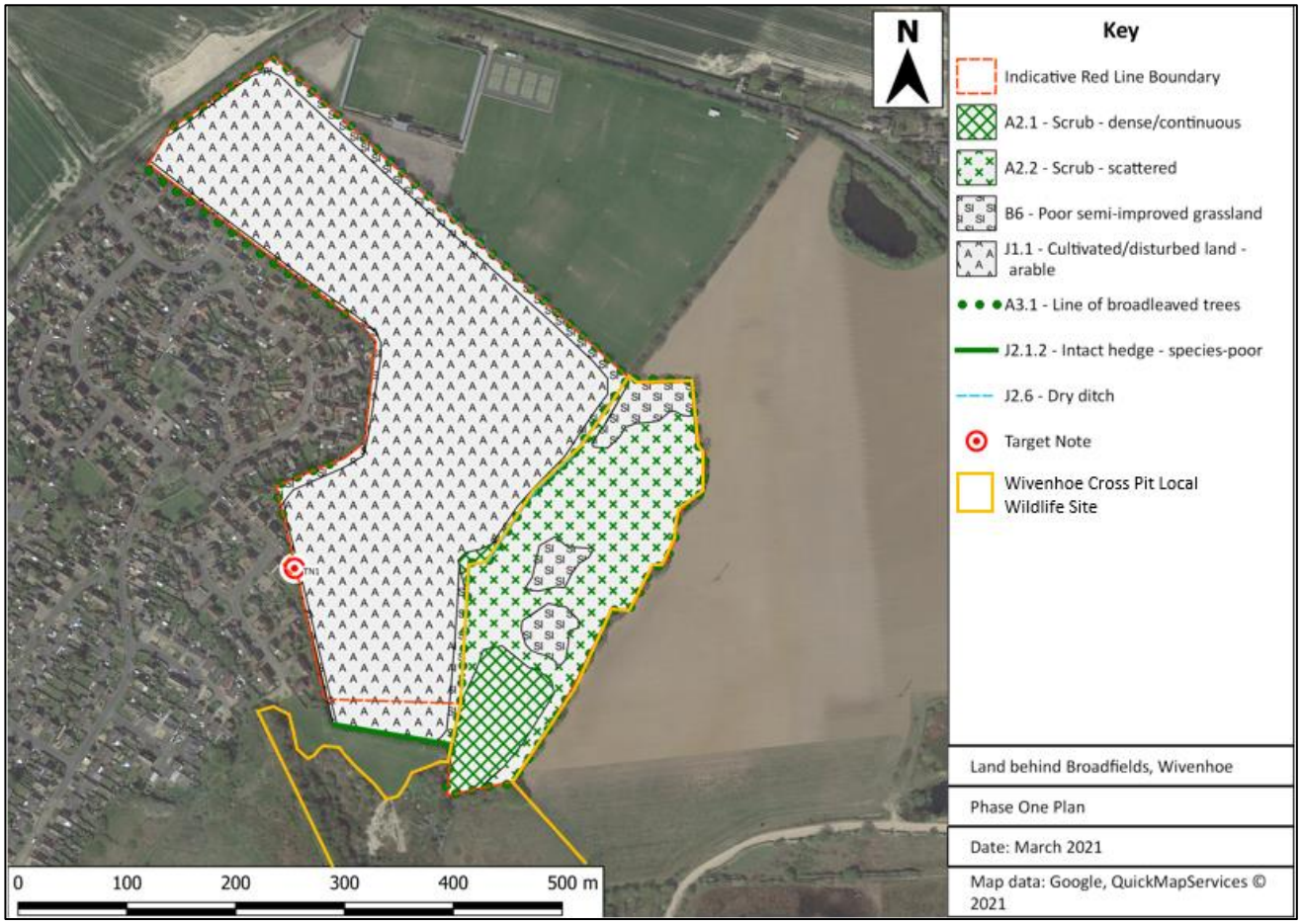
> *'Taylor Wimpey overemphasises the constraints on the land to the south of the pylons in arguing that there should be building to the north, which conflicts with the settlement boundary specified in the Wivenhoe Neighbourhood Plan. One constraint, they argued is that some land is lost to the west because of water attenuation for Broadfields. The water attenuation basin is a constraint of Taylor Wimpey's own making. There are alternatives to putting the water attenuation basin on land allocated for housing [including] to locate a water attenuation on the Wildlife site. A water source for wildlife being a positive addition to a wildlife rich area.'*

This technical note reviews the ecological baseline and assesses the likely impacts of the suggested approach set out above, considering previous ecological survey work and assessments (SES, 2021).

**Background & Ecological Baseline**

The proposed development site is comprised of two fields. The field to the west includes the proposed development area and was until 2020 in arable use; grasses and ruderals have since established but maintenance has been undertaken since the cessation of arable activities on the land. To the east beyond an established oak tree line is a further ex-arable field that having been left unmanaged over est. approximately the last 10-15 years has now 're-wilded' into an early-successional mosaic of scrub and grassland habitats. The eastern field comprises part of the non-statutory designated Wivenhoe Cross Pits Local Wildlife Site and is designated for its flower rich ruderal community and small component mosaic. The eastern field was as such considered to hold **local** ecological importance. The Phase I Plan for the Site is shown in Figure 1 below, with the Wildlife Site highlighted.

**Figure 1: Phase I Plan**




Surveys undertaken to support the planning application established use of the site by a variety of protected and priority fauna. Most notably:

- The boundary treeline between the development area and Local Wildlife Site was established as an important movement corridor for a variety of bat species. Regular use of this feature by barbastelle bat, a relatively rare species listed on Annex II of the Conservation of Species and Habitats Regulations (2017, as amended) was recorded. Bat foraging activity was also particularly concentrated along this treeline and adjoining scrub/grassland mosaic habitats within the Local Wildlife Site, with the continuous feature acting as a sheltering windbreak attractive to invertebrates and thereby enhancing the value of adjacent areas.
- The site supported a relatively high density and diversity of breeding Birds of Conservation Concern (BoCC) red and amber list species given its scale; this was considered to be driven by the favourable wider local mosaic of habitats extending to the south and east. Within the boundary treelines of the development field and to a greater extent within the Local Wildlife Site to the east, breeding territories of yellowhammer, linnet, cuckoo, song thrush, dunnock and nightingale were identified. These are all species that favour hedgerow and scrub habitats for breeding.
- A low population of grass snake was also recorded, and a sighting of hedgehog. The mix of foraging and sheltering opportunities offered by the grassland and scrub habitats over the site was considered particularly attractive for these species.

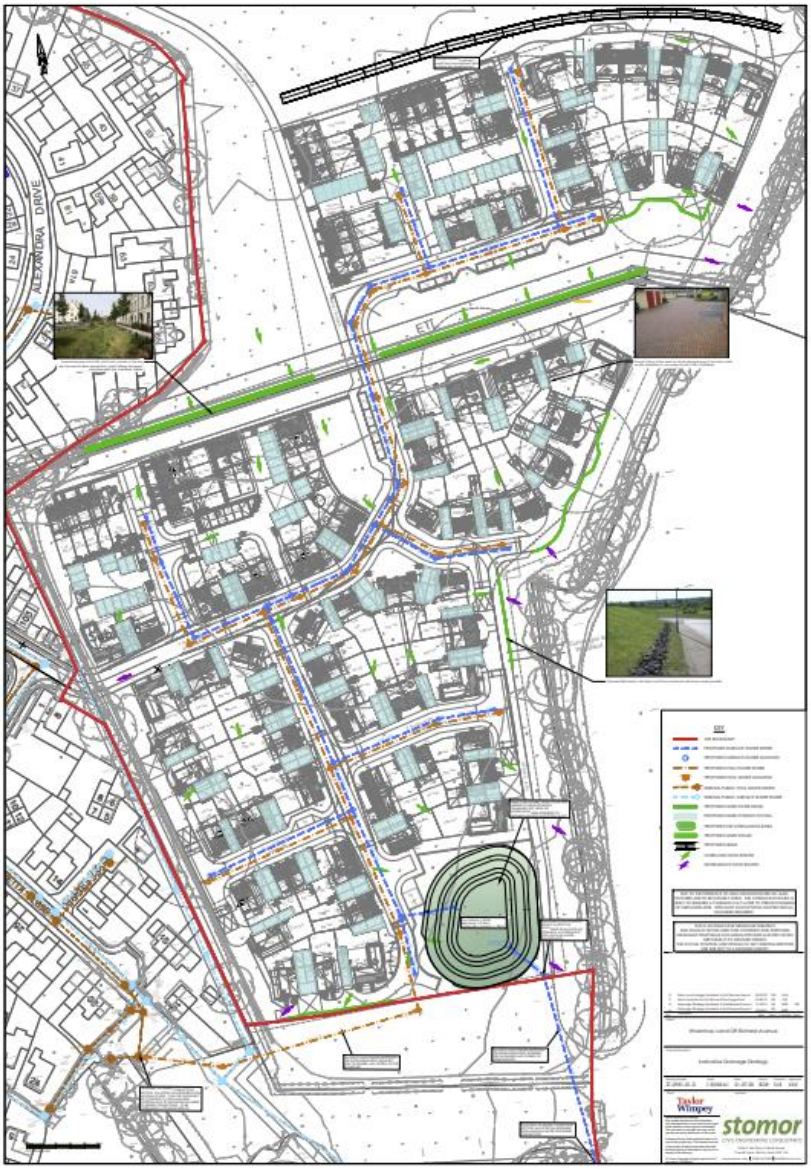
As detailed within the Ecological Impact Assessment and shadow Habitat Regulations Assessment (SES, 2021a, 2021b), the current proposals are to retain and enhance the existing Local Wildlife Site habitats and the boundary treeline dividing the two site land parcels, which are considered the most important areas for wildlife associated with the site. Sensitive ongoing management is recommended to be secured by means of an appropriately worded planning condition applied to any future consent.

**Impact Assessment**

The current proposed location of the attenuation basin is in the south of the development area allocated for housing within the Wivenhoe Neighbourhood Plan on land which has a relatively low baseline ecological value. The proposed location of the basin, and extent of the current basin broadly transposed onto the Wivenhoe Cross Pit Local Wildlife Site is shown on Figure 2 below, to broadly illustrate the footprint that would be occupied. The proposed basin occupies an area of approximately 0.14ha.

**Figure 2: Attenuation basin – Proposed location (a) and transposed to Local Wildlife Site (b)**

**a) Proposed location**



**b) Transposed onto Local Wildlife Site**


If the basin were moved to the Local Wildlife Site as per Figure 2b this would result in loss of existing scrub/grassland mosaic within the designated area that is valued at the **local** level. The extent of this loss would not just be limited to the 0.14ha occupied by the basin footprint, as a larger surrounding area would require clearance to provide access and working room for large plant to construct the basin. As an estimate in lieu of any detailed designs being available, to allow for 6m working room around the basin footprint and a 5m width access, approximately 0.25ha of the existing habitat could require clearance. Furthermore, as there is no existing access suitable for large plant from the main proposed construction area to the west, established oak within the treeline dividing the two fields would need to be felled. Taylor Wimpey have advised that at least one, or more likely two trees would require removal to allow access to construct the basin. Hayden's Arboricultural Consultants (2020) have categorised the boundary treeline as conforming to BS category A2 and state *'Overall the trees are of excellent form and condition and form a tall, principal arboricultural feature of high amenity value.'* Figure 3 below shows an estimate of the area that would likely be impacted under the approach suggested by Wivenhoe Town Council. Figure 4 provides photographs of the likely impacted habitats.

**Figure 3: Area that would likely be impacted to allow for construction of the basin. Working room is identified in yellow and access route in purple.**

**Figure 4: Photographs of the impacted habitats.**

In regard to the boundary treeline, ecological surveys have demonstrated its importance in particular for bats as a commuting route. It is considered that disrupting the continuity of the treeline to create new access has potential to negatively impact the bat assemblage utilising this feature, which includes the rare/Annex II listed barbastelle bat. Though the impact would be limited in scale and new trees could be replanted to in time re-instate its continuity following construction of the basin, any new planting would take many years to mature. Considering the mitigation hierarchy (avoid, minimise, mitigate, compensate), which seeks to limit as far as possible the negative impacts on biodiversity from development projects, if situating the basin in the Local Wildlife Site (as shown in Figure 3) was strictly necessary to deliver a suitable sustainable drainage strategy for the development, then compensatory tree planting could be argued as a suitable means to address any impacts. However, as it has been demonstrated to be possible to site the basin in land to the west (Figure 2a), thereby avoiding any impact to this ecological feature, this approach is not considered to adhere to ecological best practice.

In regard to habitats that would be impacted within the wildlife site itself if following the approach shown in Figure 3, the existing scrub within this area has been demonstrated to provide breeding habitat for a variety of red and amber list BoCC. The grassland/scrub mosaic also provides suitable habitat for grass snake and hedgehog. Clearance of the existing habitats to construct the basin could therefore potentially impact these species through risk of death/injury, reduction in available habitat area, and noise disturbance during the construction period.

Sensitive clearance methods and timings would minimise these risks (e.g. clearance outside bird breeding season/reptile and hedgehog hibernation season, under ecologist supervision). It is also agreed that the addition of water features to the site would deliver benefits for wildlife. However, again following the mitigation hierarchy, it has been demonstrated that it is possible to site the basin on land to the west (Figure 2a), that is of considerably lower existing value/suitability for the species associated with the site. This approach further minimises the risk to existing wildlife and avoids the loss of existing habitat of higher value; hence is considered to better adhere to ecological best practice. The location of the basin as proposed (Figure 2a), situated close to these more valuable habitats, but not within their footprints, will serve to extend the area of the site comprising higher-value wildlife habitats. This is rather than resulting in loss of existing higher-

value habitat to create new, as would be the case following the approach shown in Figure 3. Thereby, the approach proposed (Figure 2a), will deliver greater biodiversity enhancement for the site as a whole.

**Conclusion**

In conclusion, the approach of siting the basin within the Local Wildlife Site adjacent to the development area (Figure 3) is not considered to adhere to ecological best practice and the mitigation hierarchy, as this approach is not required to deliver a suitable sustainable drainage strategy to support the development. It would therefore result in unnecessary loss of existing habitats of higher ecological value and a greater likelihood of disruption and negative impact to the protected and priority species associated with the site, which include rare bat species (barbastelle), a variety of red and amber list breeding BoCC, grass snake and hedgehog. It is agreed that the provision of water habitats on site will benefit the associated wildlife assemblage. However, the proposed location of the basin (Figure 2a), rather than requiring loss of existing higher value habitat to create new (as would be the case following the approach shown in Figure 3), is considered to extend the overall area of higher-value habitat. The approach shown at Figure 2a is hence considered to be well situated to deliver greater biodiversity benefit, being close to the existing higher value areas but not within their footprint.

**References**

Haydens Arboricultural Consultants (2020). *TREE SURVEY & CONSTRAINTS PLAN IN ACCORDANCE WITH BS 5837:2012.* Land behind Broadfields, Wivenhoe, Essex, CO7 9JF. July 2020.

Southern Ecological Solutions (2021a). *Ecological Impact Assessment: Land behind Broadfields, Wivenhoe.*

Southern Ecological Solutions (2021b). *Information to Support Habitat Regulations Assessment: Land behind Broadfields, Wivenhoe.*

*Wivenhoe Neighbourhood Plan 2019 - 2033 – Final version*. [Online]. Available at: https://cbccrmdata.blob.core.windows.net/noteattachment/Wivenhoe%20Neighbourhood%20Plan.pdf

# JF13: Stormor Opinion on Wivenhoe Town Councils' Drainage Solutions

Reference: ST-2981/221103-TC Response

Response to Wivenhoe Town Council comments to
Planning Application 210965

This document is prepared in support of a planning application for a proposed residential development on Land Behind Broadfields, Wivenhoe, Essex. The document seeks to provide further information relating to the Wivenhoe Town Council (WTC) comments regarding the use of an attenuation basin.

The following information has been provided in support of this document:

- **Appendix A:** AWS Sewer Records
- **Appendix B:** AWS Pre-Development Response

The comments raised by the WTC and Stomor's related replies are as follows:

*"There are alternatives to putting the water attenuation basin on land allocated for housing*

*1: to provide underground water storage tanks both for individual properties and under the roads."*

**Essex County Council (ECC) as Lead Local Flood Authority (LLFA) have a hierarchy of preference when it comes to Sustainable Drainage Systems (SuDS), which are a requirement on all new developments as part of the National Planning Policy Framework (NPPF). Attenuation basins are at the top of this hierarchy and are the LLFA's preferred method of storage. Attenuation crates are at the bottom of the hierarchy, with the LLFA requiring evidence of why their use is provided instead of other features (basins, etc). In addition, the basin provides water quality treatment benefits, which is an LLFA criteria, where the crates provide no benefit.**

**Policy WIV 26 of the Wivenhoe Neighbourhood Plan also states, under (ii), that when providing SuDS "this should be designed using above ground features".**

**POLICY WIV 26:**

**Flooding risk and climate resilience**

**New development should:**

**(i)** be located to minimise the risk of fluvial and surface water flooding; and

**(ii)** provide, wherever possible and appropriate to do so, sustainable drainage, as outlined in the Essex County Council SuDs Guide (or any successor document). Wherever possible this should be designed using above ground drainage features to help ensure robust treatment to improve the quality of water entering into local water bodies. The system should also promote wildlife habitats as well as green and blue corridors; and

**(iii)** maximise the use of permeable surfaces wherever possible; and

**(iv)** is encouraged to incorporate, at the build stage, technologies such as solar panels, which reduce reliance on fossil fuels.

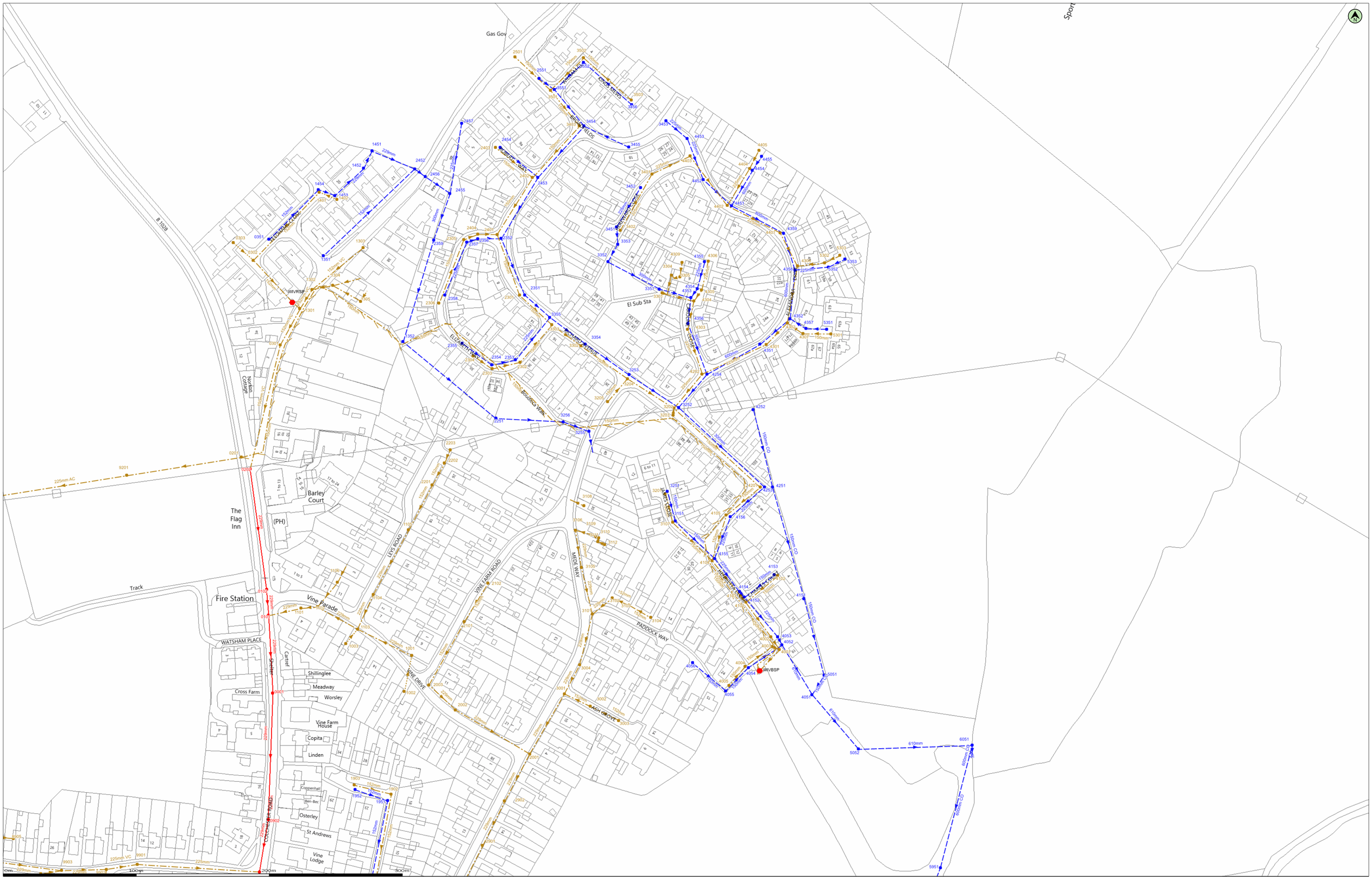
**Regarding geocellular tanks under individual plots, this is unlikely to provide any significant benefit from an attenuation perspective as storage is required immediately upstream of the flow control. Therefore, providing the storage at individual properties would unlikely reduce the storage needed at the outfall.**

*"2: to run surface water drains to the sink hole located to the south east. This appears to be how the Broadfields surface water is dealt with."*

**Anglian Water Services (AWS) sewer records, provided in Appendix A, shows the Broadfields area is drained by the public surface water sewer network which runs to the south east. However, the records provided do not show where the public sewer ultimately discharges to. The proposals for the site would connect to the same sewer, so would be discharging in a similar manner to the adjacent residential area.**

*"Note:- We are still unsure if Anglian water have concerns with the proposals as the original planning submission would have caused flooding lower in the village."*

**The Pre-development Enquiry response from AWS (provided in Appendix B) confirms that they have no issues with a proposed connection to their foul or surface water sewers.**




(c) Crown copyright and database rights 2020 Ordnance Survey 100022432 | Date: 17/06/20 | Scale: 1:1250 | Map Centre: 604404,223347 | Data updated: 01/06/20 | Our Ref: 397533 - 1 | Wastewater Plan A1



| | | | |
|---|---|---|---|
| Foul Sewer | Outfall* | Sewage Treatment Works | |
| Surface Sewer | | | |
| Combined Sewer | | | |
| Final Effluent | Inlet* | Public Pumping Station | |
| Rising Main* | | | |
| Private Sewer* | Manhole* | Decommissioned Pumping Station | |
| Decommissioned Sewer* | | *(Colour denotes effluent type) | |

nicola@stomor.com

Wivenhoe

love every drop anglianwater

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|
| 0001 | 604093 | 223057 | C | 32.01 | 30.3 | 1.71 |
| 0101 | 604090 | 223115 | C | - | - | - |
| 0102 | 604089 | 223134 | C | 32.43 | 30.72 | 1.71 |
| 0202 | 604076 | 223225 | C | 33.45 | 31.18 | 2.27 |
| 0901 | 604084 | 222922 | C | 31.67 | 29.4 | 2.27 |
| 0902 | 604090 | 222962 | C | 31.91 | 29.9 | 2.01 |
| 0201 | 604070 | 223234 | F | 32.94 | 30.31 | 2.63 |
| 0301 | 604099 | 223318 | F | - | - | 1.36 |
| 0302 | 604079 | 223382 | F | - | - | 2.28 |
| 0303 | 604064 | 223395 | F | - | - | 0.96 |
| 1001 | 604198 | 223085 | F | - | - | 1.15 |
| 1002 | 604192 | 223058 | F | - | - | 1.02 |
| 1003 | 604148 | 223094 | F | - | - | 0.85 |
| 1101 | 604115 | 223120 | F | - | - | 1.45 |
| 1102 | 604127 | 223121 | F | - | - | 1.4 |
| 1103 | 604157 | 223105 | F | - | - | 1.24 |
| 1104 | 604169 | 223131 | F | - | - | 1.24 |
| 1105 | 604196 | 223179 | F | - | - | 1.11 |
| 1106 | 604142 | 223140 | F | - | - | - |
| 1301 | 604114 | 223345 | F | - | - | 0.96 |
| 1302 | 604123 | 223360 | F | - | - | 0.88 |
| 1303 | 604161 | 223391 | F | - | - | 0.55 |
| 1304 | 604139 | 223363 | F | - | - | - |
| 1305 | 604160 | 223351 | F | - | - | - |
| 1401 | 604128 | 223433 | F | - | - | 1.5 |
| 1402 | 604142 | 223428 | F | - | - | 1.1 |
| 1902 | 604182 | 222981 | F | 30.57 | 29.16 | 1.41 |
| 1903 | 604155 | 222988 | F | 30.462 | 29.432 | 1.03 |
| 2001 | 604286 | 223011 | F | 31.76 | 29.71 | 2.05 |
| 2002 | 604231 | 223044 | F | - | - | 2.03 |
| 2003 | 604211 | 223063 | F | 32 | 30 | 2 |
| 2101 | 604237 | 223110 | F | 31.66 | 30.19 | 1.47 |
| 2102 | 604255 | 223139 | F | 31.44 | 30.3 | 1.14 |
| 2201 | 604213 | 223213 | F | - | - | 0.86 |
| 2202 | 604222 | 223229 | F | - | - | 0.72 |
| 2203 | 604227 | 223239 | F | - | - | 0.65 |
| 2301 | 604279 | 223356 | F | - | - | - |
| 2302 | 604279 | 223305 | F | 31.76 | 29.7 | 2.06 |
| 2303 | 604258 | 223300 | F | 31.9 | 29.9 | 2 |
| 2304 | 604244 | 223310 | F | 31.98 | 30.08 | 1.9 |
| 2305 | 604237 | 223397 | F | 31.07 | 29.21 | 1.86 |
| 2306 | 604218 | 223350 | F | 32.24 | 30.72 | 1.52 |
| 2401 | 604262 | 223401 | F | - | 29.4 | - |
| 2402 | 604289 | 223444 | F | - | - | - |
| 2403 | 604261 | 223467 | F | - | - | - |
| 2404 | 604247 | 223401 | F | 32.12 | 29.92 | 2.2 |
| 2501 | 604275 | 223535 | F | - | - | - |
| 2901 | 604251 | 222942 | F | 30.555 | 28.325 | 2.23 |
| 2902 | 604268 | 222975 | F | - | 29.57 | - |
| 3001 | 604313 | 223056 | F | 31.56 | 29.86 | 1.7 |
| 3002 | 604332 | 223047 | F | - | - | 1.51 |
| 3003 | 604353 | 223036 | F | - | - | 1.2 |
| 3004 | 604324 | 223078 | F | - | - | 1.53 |
| 3101 | 604334 | 223116 | F | 31.15 | 30.05 | 1.1 |
| 3102 | 604348 | 223128 | F | 32.92 | 31.15 | 1.77 |
| 3103 | 604361 | 223123 | F | - | - | 0.55 |
| 3104 | 604377 | 223114 | F | - | - | 0.4 |
| 3105 | 604325 | 223151 | F | 31.5 | 30.38 | 1.12 |
| 3106 | 604321 | 223179 | F | 32.89 | 31.84 | 1.05 |
| 3107 | 604394 | 223185 | F | 30.48 | 28.54 | 1.94 |
| 3108 | 604327 | 223197 | F | - | - | - |
| 3109 | 604332 | 223176 | F | - | - | - |
| 3110 | 604339 | 223173 | F | - | - | - |
| 3111 | 604338 | 223170 | F | - | - | - |
| 3112 | 604343 | 223168 | F | - | - | - |
| 3201 | 604388 | 223206 | F | 30.57 | 28.78 | 1.79 |
| 3202 | 604395 | 223271 | F | - | - | - |
| 3203 | 604394 | 223266 | F | - | - | - |
| 3204 | 604360 | 223293 | F | - | 29.63 | - |
| 3205 | 604345 | 223276 | F | 31.76 | 30.01 | 1.75 |
| 3301 | 604386 | 223357 | F | 31.97 | 29.55 | 2.42 |
| 3302 | 604325 | 223317 | F | - | - | - |
| 3303 | 604303 | 223333 | F | - | 29.14 | - |
| 3304 | 604393 | 223371 | F | - | - | - |
| 3305 | 604399 | 223369 | F | - | - | - |
| 3401 | 604378 | 223447 | F | 32.36 | 30.21 | 2.15 |
| 3402 | 604355 | 223404 | F | 32.03 | 30.77 | 1.26 |
| 3403 | 604324 | 223483 | F | - | - | - |
| 3501 | 604302 | 223510 | F | - | - | - |
| 3502 | 604327 | 223534 | F | - | - | - |
| 3503 | 604363 | 223502 | F | - | - | - |
| 4001 | 604474 | 223089 | F | 28.85 | 26.4 | 2.45 |
| 4002 | 604468 | 223099 | F | - | - | - |
| 4003 | 604469 | 223092 | F | 29.4 | 27.2 | 2.2 |
| 4004 | 604448 | 223077 | F | 29.4 | 27.59 | 1.81 |
| 4005 | 604436 | 223062 | F | 29.501 | 27.921 | 1.58 |
| 4101 | 604449 | 223125 | F | - | 27.66 | - |
| 4102 | 604473 | 223145 | F | 29.86 | 28.22 | 1.64 |
| 4103 | 604445 | 223130 | F | 29.7 | 27.66 | 2.04 |
| 4104 | 604423 | 223156 | F | 30.43 | 27.86 | 2.57 |
| 4105 | 604434 | 223190 | F | 30.795 | 27.905 | 2.89 |
| 4201 | 604460 | 223211 | F | 30.742 | 28.002 | 2.74 |
| 4202 | 604416 | 223296 | F | 31.31 | 28.49 | 2.82 |
| 4301 | 604464 | 223319 | F | 31.6 | 28.7 | 2.9 |
| 4302 | 604480 | 223335 | F | 31.84 | 28.92 | 2.92 |
| 4303 | 604405 | 223330 | F | 31.49 | 29.01 | 2.48 |
| 4304 | 604410 | 223351 | F | 31.66 | 29.36 | 2.3 |
| 4305 | 604416 | 223359 | F | 31.68 | 29.61 | 2.07 |
| 4306 | 604421 | 223381 | F | 32.04 | 30 | 2.04 |
| 4307 | 604492 | 223327 | F | 32.08 | 29.13 | 2.95 |
| 4308 | 604488 | 223378 | F | 32.1 | 29.2 | 2.9 |
| 4309 | 604401 | 223380 | F | - | - | - |
| 4401 | 604475 | 223403 | F | 32.31 | 29.36 | 2.95 |
| 4402 | 604435 | 223423 | F | 32.48 | 29.61 | 2.87 |
| 4403 | 604407 | 223460 | F | 32.58 | 29.85 | 2.73 |
| 4404 | 604452 | 223451 | F | 32.29 | 29.79 | 2.5 |
| 4405 | 604459 | 223464 | F | 32.4 | 29.88 | 2.52 |
| 5301 | 604513 | 223327 | F | 31.95 | 29.25 | 2.7 |
| 5302 | 604508 | 223380 | F | 31.98 | 29.58 | 2.4 |
| 5303 | 604520 | 223386 | F | 31.87 | 30.37 | 1.5 |
| 8905 | 603899 | 222947 | F | - | - | - |
| 9201 | 603984 | 223220 | F | 32.75 | 29.86 | 2.89 |
| 9901 | 603992 | 222928 | F | 31.42 | 29.67 | 1.75 |
| 9902 | 603968 | 222924 | F | - | - | 1.68 |
| 9903 | 603935 | 222923 | F | 30.6 | 29.2 | 1.4 |
| 9904 | 603919 | 222921 | F | - | - | - |
| 0351 | 604091 | 223397 | S | - | - | 0.58 |
| 1351 | 604131 | 223385 | S | - | - | 0.7 |
| 1352 | 604191 | 223321 | S | - | - | - |
| 1451 | 604168 | 223464 | S | - | - | - |
| 1452 | 604162 | 223451 | S | - | - | - |
| 1453 | 604140 | 223430 | S | - | - | - |
| 1454 | 604128 | 223435 | S | - | - | 0.8 |
| 1951 | 604180 | 222976 | S | - | - | - |
| 1952 | 604155 | 222984 | S | - | - | - |
| 2251 | 604261 | 223263 | S | - | - | - |
| 2351 | 604283 | 223356 | S | - | - | - |
| 2352 | 604265 | 223398 | S | - | 30.14 | - |
| 2353 | 604276 | 223307 | S | 31.71 | 30.11 | 1.6 |
| 2354 | 604258 | 223303 | S | 31.9 | 30.25 | 1.65 |
| 2355 | 604236 | 223320 | S | 32.11 | 30.41 | 1.7 |
| 2356 | 604247 | 223398 | S | 32.09 | 30.29 | 1.8 |
| 2357 | 604239 | 223395 | S | 31.99 | 30.53 | 1.46 |
| 2358 | 604223 | 223356 | S | 32.18 | 30.83 | 1.35 |
| 2359 | 604214 | 223397 | S | - | - | - |
| 2452 | 604200 | 223450 | S | - | - | 1.13 |
| 2453 | 604293 | 223444 | S | - | - | - |
| 2454 | 604264 | 223467 | S | - | - | - |
| 2455 | 604227 | 223432 | S | - | - | - |
| 2456 | 604208 | 223445 | S | - | - | - |
| 2457 | 604235 | 223485 | S | - | - | - |
| 2551 | 604294 | 223518 | S | - | - | - |
| 3151 | 604396 | 223186 | S | 30.43 | 29.06 | 1.37 |
| 3251 | 604390 | 223208 | S | 30.69 | 29.29 | 1.4 |
| 3252 | 604398 | 223271 | S | - | 29.2 | - |
| 3253 | 604361 | 223296 | S | - | - | - |
| 3255 | 604331 | 223253 | S | - | - | - |
| 3256 | 604312 | 223260 | S | - | - | - |
| 3351 | 604384 | 223360 | S | 32 | 30.1 | 1.9 |
| 3352 | 604345 | 223381 | S | 32.07 | 30.24 | 1.83 |
| 3353 | 604353 | 223394 | S | 32.19 | 30.28 | 1.91 |
| 3354 | 604328 | 223319 | S | - | - | - |
| 3355 | 604302 | 223339 | S | - | 29.95 | - |
| 3451 | 604352 | 223407 | S | 32.07 | 30.37 | 1.7 |
| 3452 | 604370 | 223437 | S | 32.31 | 30.65 | 1.66 |
| 3453 | 604389 | 223487 | S | 32.38 | 30.83 | 1.55 |
| 3454 | 604327 | 223483 | S | - | - | 30.66 |
| 3455 | 604361 | 223467 | S | 32.32 | 30.77 | 1.55 |
| 3456 | 604363 | 223499 | S | - | - | - |
| 3551 | 604305 | 223510 | S | - | - | - |
| 3552 | 604327 | 223531 | S | - | - | - |
| 4051 | 604499 | 223056 | S | - | - | - |
| 4052 | 604476 | 223093 | S | - | - | - |
| 4053 | 604473 | 223099 | S | 29.25 | 27.9 | 1.35 |
| 4054 | 604451 | 223076 | S | 29.798 | 28.308 | 1.49 |
| 4055 | 604434 | 223058 | S | 29.996 | 28.596 | 1.4 |
| 4056 | 604409 | 223079 | S | 29.698 | 28.918 | 0.78 |
| 4151 | 604493 | 223128 | S | 30 | 29.11 | 0.89 |
| 4152 | 604448 | 223129 | S | - | 28.55 | - |
| 4153 | 604470 | 223145 | S | 29.84 | 28.69 | 1.15 |
| 4154 | 604444 | 223133 | S | - | - | - |
| 4155 | 604425 | 223158 | S | - | 28.72 | - |
| 4156 | 604437 | 223189 | S | - | - | - |
| 4251 | 604469 | 223212 | S | 31 | 29.8 | 1.2 |
| 4252 | 604454 | 223270 | S | 31.65 | 30.64 | 1.01 |
| 4253 | 604463 | 223212 | S | - | - | - |
| 4254 | 604420 | 223296 | S | 31.36 | 29.21 | 2.15 |
| 4351 | 604460 | 223319 | S | 31.55 | 29.54 | 2.01 |
| 4352 | 604482 | 223338 | S | 31.87 | 29.63 | 2.24 |
| 4353 | 604408 | 223354 | S | 31.71 | 30.01 | 1.7 |
| 4354 | 604412 | 223360 | S | 31.72 | 30.17 | 1.55 |
| 4355 | 604418 | 223381 | S | 32 | 30.4 | 1.6 |
| 4356 | 604405 | 223334 | S | 31.55 | 29.95 | 1.6 |
| 4357 | 604494 | 223330 | S | 32.07 | 30.13 | 1.94 |
| 4358 | 604486 | 223374 | S | 32.12 | 29.72 | 2.4 |
| 4359 | 604477 | 223402 | S | 32.28 | 30.83 | 1.45 |
| 4451 | 604438 | 223423 | S | 32.43 | 29.93 | 2.5 |
| 4452 | 604417 | 223443 | S | 32.63 | 30.49 | 2.14 |
| 4453 | 604405 | 223473 | S | 32.57 | 30.72 | 1.85 |
| 4454 | 604454 | 223449 | S | 32.24 | 30.01 | 2.23 |
| 4455 | 604461 | 223460 | S | 32.2 | 30.06 | 2.14 |
| 5051 | 604508 | 223070 | S | 29.7 | 28.6 | 1.1 |
| 5052 | 604534 | 223015 | S | - | - | - |
| 5351 | 604510 | 223330 | S | 31.97 | 30.54 | 1.43 |
| 5352 | 604511 | 223377 | S | 31.98 | 30.42 | 1.56 |
| 5353 | 604523 | 223383 | S | 31.85 | 30.75 | 1.1 |
| 5951 | 604595 | 222925 | S | 29.18 | 26.1 | 3.08 |
| 6051 | 604619 | 223018 | S | - | - | - |

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|

# Pre-planning Assessment Report

**WIVENHOE, LAND SOUTH OR RICHARD AVENUE**

**InFlow Reference:** **PPE- 0072760**

**Assessment Type:** **Used Water**

**Report published:** **04/06/2020**

**This report supersedes the previous version published on 25/11/2019**

Thank you for submitting a pre-planning enquiry.

This report has been produced for Taylor Wimpey East London

Your InFlow reference number is PPE- 0072760

If you have any questions upon receipt of this report, please contact the Pre-development team on **03456 066 087** or email planningliaison@anglianwater.co.uk.

## Section 1

### Proposed Development

The response within this report has been based on the following information which was submitted as part of your application:

| List of planned developments | |
|---|---|
| **Type of development** | **No. Of units** |
| Dwellings | 120 |

The anticipated build rate is:

| Year | Y1 | Y2 | Y3 |
|---|---|---|---|
| Build rate | 50 | 50 | 20 |

Development type: Greenfield

Planning application status: Pending Consideration

Site grid reference number: TM0459123178

The comments contained within this report relate to the public water mains and sewers indicated on our records.

Your attention is drawn to the disclaimer in the useful information section of this report.

## Section 2 Assets affected

Our records indicate that there are no public water mains/public sewers or other assets owned by Anglian Water within the boundary of your development site. However, it is highly recommended that you carry out a thorough investigation of your proposed working area to establish whether any unmapped public or private sewers and lateral drains are in existence.

Due to the private sewer transfer in October 2011 many newly adopted public used water assets and their history are not indicated on our records. You also need to be aware that your development site may contain private water mains, drains or other assets not shown on our records. These are private assets and not the responsibility of Anglian Water but that of the landowner.

## Section 3 Water recycling services

In examining the used water system we assess the ability for your site to connect to the public sewerage network without causing a detriment to the operation of the system. We also assess the receiving water recycling centre and determine whether the water recycling centre can cope with the increased flow and influent quality arising from your development.

**Water recycling centre**

The foul drainage from the proposed development is in the catchment of Colchester Water Recycling Centre, which currently has capacity to treat the flows from your development site. Anglian Water cannot reserve capacity and the available capacity at the water recycling centre can be reduced at any time due to growth, environmental and regulation driven changes

**Used water network**

Our assessment has been based on development flows connecting to the nearest foul water sewer of the same size or greater pipe diameter to that required to drain the site. The infrastructure to convey foul water flows to the receiving sewerage network is assumed to be the responsibility of the developer. Conveyance to the connection point is considered as Onsite Work and includes all work carried out upstream from of the point of connection, including making the connection to our existing network. This connection point has been determined in reference to the calculated discharge flow and on this basis, a 150mm internal diameter pipe is required to drain the development site.

The nearest practicable connection is to the 150mm diameter sewer at manhole 4201 in Henrietta Close at National Grid Reference NGR TM 04458 23211. Anglian water has assessed the impact of gravity flows from the planned development to this point and unfortunately there is insufficient capacity in this sewer to accommodate your site.

We have therefore considered an alternative connection point and can confirm that there is sufficient capacity for a connection at or downstream of manhole TM0423 4001, located in Henrietta Close, at National Grid Reference TM 04474 23089.

This is the recommended connection point. Anglian Water will reimburse reasonable costs incurred in connecting to the recommended connection point, over and above those required to connect to the nearest point of connection. Please note that Anglian Water will request a suitably worded condition at planning application stage to ensure this strategy is implemented to mitigate the risk of flooding.

It is assumed that the developer will provide the necessary infrastructure to convey flows from the site to the network. Consequently, this report does not include any costs for the conveyance of flows

**Surface water disposal**

In principle, your proposed method of surface water disposal is acceptable to Anglian Water. It is our understanding that the evidence to confirm compliance with the surface water hierarchy is not yet available. Once the evidence has been confirmed, then a connection point may be made at or downstream of manhole TM0423 4051, located in land south of the development site, at a rate of 15l/s.

It is your responsibility to provide the evidence to confirm that all alternative methods of surface water disposal have been explored and these will be required before your connection can be agreed.

This is subject to satisfactory evidence which shows the surface water management hierarchy as outlined in Building Regulations Part H has been explored. This would encompass the results from the site specific infiltration testing and/or confirmation that the flows cannot be discharged to a watercourse.

**Trade Effluent**

We note that you do not have any trade effluent requirements. Should this be required in the future you will need our written formal consent. This is in accordance with Section 118 of the Water Industry Act (1991).

**Used Water Budget Costs**

Your development site will be required to pay an infrastructure charge for each new property connecting to the public sewer that benefits from Full planning permission.

You will be required to pay an infrastructure charge upon connection for each new plot on your development site. The infrastructure charge are types of charges set out in Section 146(2) of the Water Industry Act 1991

The charge should be paid by anyone who wishes to build or develop a property and is payable upon request of connection.

Payment of the infrastructure charge must be made before premises are connected to the public sewer.

Infrastructure charge for water recycling: **£570.00**

The total infrastructure charge payable for your site for water is:

| Infrastructure charge | Number of units | Total |
|---|---|---|
| £570.00 | 120 | £ 68,400.00 |

Infrastructure charges are raised on a standard basis of one charge per new connection (one for water and one for sewerage). However, if the new connection is to non- household premises, the fixed element is calculated according to the number and type of water fittings in the premises. This is called the "relevant multiplier" method of calculating the charge.

Details of the relevant multiplier for each fitting can be found at our website.

It has been assumed that the onsite used water network will be provided under Section 104 of the Water Industry Act

It is recommended that you also budget for connection costs.

Please note that we offer alternative types of connections depending on your needs and these costs are available at our website.

## Section 4 Map of proposed connection points

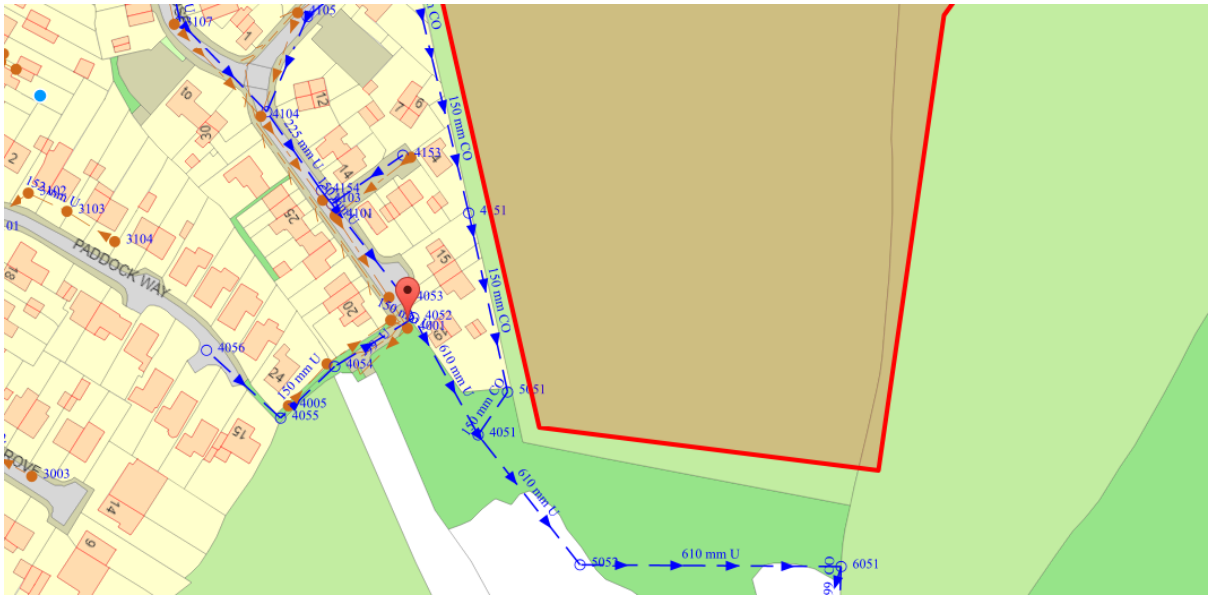



**Figure 1: Your used water point of connection**


**Figure 2: Surface water point of connection**

## Section 5 Useful information

**Water Industry Act – Key Used Water Sections:**

**Section 98:**

This provides you with the right to requisition a new public sewer. The new public sewer can be constructed by Anglian Water on your behalf. Alternatively, you can construct the sewer yourself under section 30 of the Anglian Water Authority Act 1977.

**Section 102:**

This provides you with the right to have an existing sewerage asset vested by us. It is your responsibility to bring the infrastructure to an adoptable condition ahead of the asset being vested.

**Section 104**

This provides you with the right to have a design technically vetted and an agreement reached that will see us adopt your assets following their satisfactory construction and connection to the public sewer.

**Section 106**

This provides you with the right to have your constructed sewer connected to the public sewer.

**Section 185**

This provides you with the right to have a public sewerage asset diverted.

Details on how to make a formal application for a new sewer, new connection or diversion are available on our website or our Development Services team on 03456 066 087.

**Sustainable drainage systems**

Many existing urban drainage systems can cause problems of flooding, pollution or damage to the environment and are not resilient to climate change in the long term.

Our preferred method of surface water disposal is through the use of Sustainable Drainage Systems or SuDS.

SuDS are a range of techniques that aim to mimic the way surface water drains in natural systems within urban areas. For more information on SuDS, please visit our website

We recommend that you contact the Local Authority and Lead Local Flood Authority (LLFA) for your site to discuss your application.

**Private sewer transfer**

Sewers and lateral drains connected to the public sewer on the 1 July 2011 transferred into Water Company ownership on the 1 October 2011. This follows the implementation of the Floods and Water Management Act (FWMA). This included sewers and lateral drains that were subject to an existing Section 104 Adoption Agreement and those that were not. There were exemptions and the main non-transferable assets were as follows:

Surface water sewers and lateral drains that do not discharge to the public sewer, e.g. those that discharged to a watercourse.

Foul sewers and lateral drains that discharge to a privately owned sewage treatment/collection facility.

Pumping stations and rising mains will transfer between 1 October 2011 and 1 October 2016.

The implementation of Section 42 of the FWMA will ensure that future private sewers will not be created.

It is anticipated that all new sewer applications will need to have an approved Section104 application ahead of a Section 106 connection.

**Encroachment**

Anglian Water operates a risk based approach to development encroaching close to our used water infrastructure. We assess the issue of encroachment if you are planning to build within 400 metres of a water recycling centre or, within 15 metres to 100 metres of a pumping station. We have more information available on our website at http://anglianwater.co.uk/developers/encroachment.aspx

**Locating our assets**

Maps detailing the location of our water and used water infrastructure including both underground assets and above ground assets such as pumping stations and recycling centres are available from digdat.

All requests from members of the public or non-statutory bodies for maps showing the location of our assets will be subject to an appropriate administrative charge.

We have more information on our website

**Charging Arrangements**

Our charging arrangements and summary for this year's water and used water connection and infrastructure charges can be found on our website.

## Section 6 Disclaimer

The information provided in this report is based on data currently held by Anglian Water Services Limited ('Anglian Water') or provided by a third party. Accordingly, the information in this report is provided with no guarantee of accuracy, timeliness, completeness and is without indemnity or warranty of any kind (express or implied).

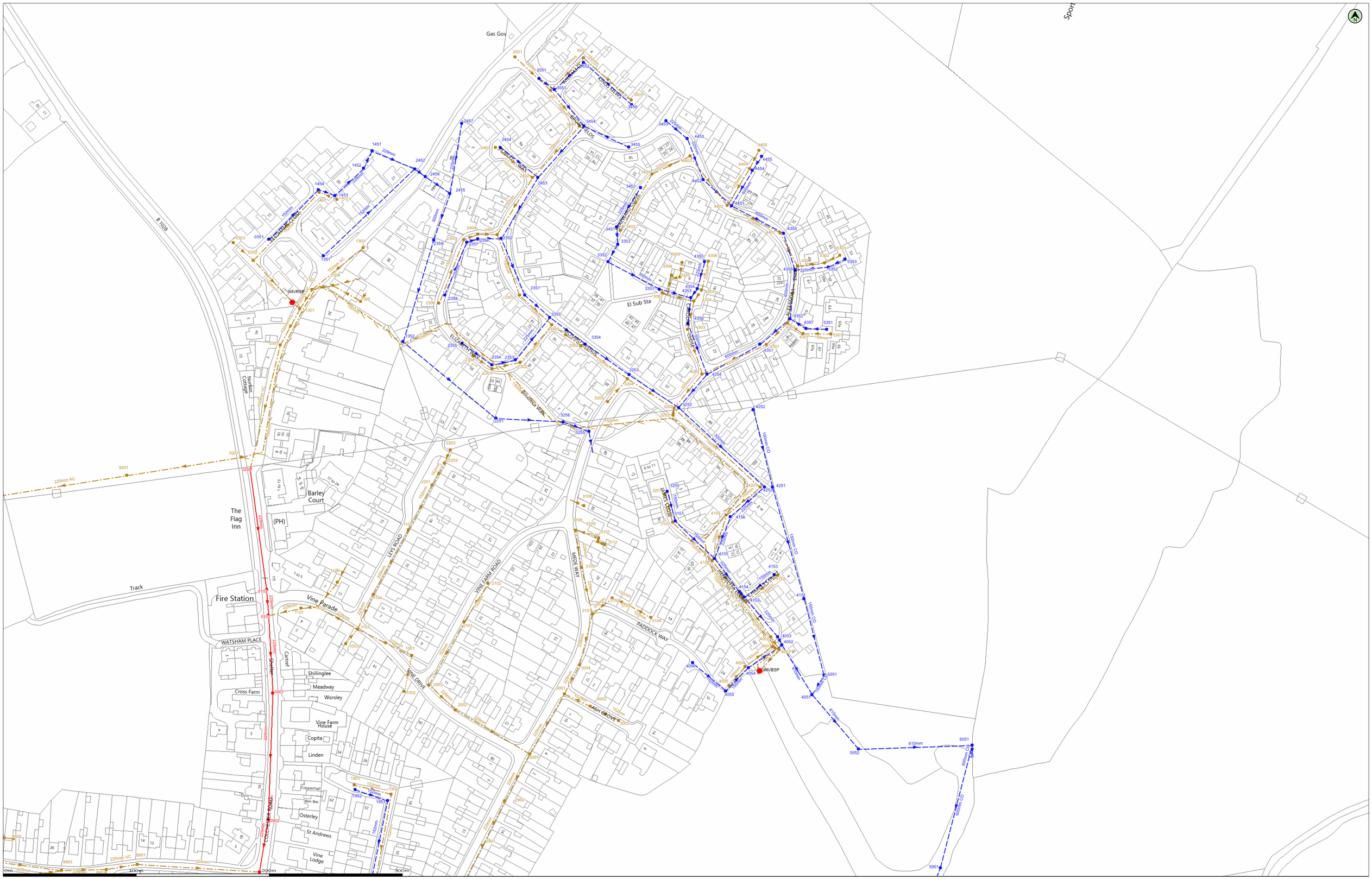
This report should not be considered in isolation and does not nullify the need for the enquirer to make additional appropriate searches, inspections and enquiries. Anglian Water supports the plan led approach to sustainable development that is set out in the National Planning Policy Framework ('NPPF') and any infrastructure needs identified in this report must be considered in the context of current, adopted and/or emerging local plans. Where local plans are absent, silent or have expired these needs should be considered against the definition of sustainability holistically as set out in the NPPF.

Whilst the information in this report is based on the presumption that proposed development obtains planning permission, nothing in this report confirms that planning permission will be granted or that Anglian Water will be bound to carry out the works/proposals contained within this report.

No liability whatsoever, including liability for negligence is accepted by Anglian Water or its partners, employees or agents, for any error or omission, or for the results obtained from the use of this report and/or its content. Furthermore in no event will any of those parties be liable to the applicant or any third party for any decision made or action taken as a result of reliance on this report.

**This report is valid for the date printed and the enquirer is advised to resubmit their request for an up to date report should there be a delay in submitting any subsequent application for water supply/sewer connection(s).**

# JF14: Sewer Records, prepared by Anglian Water




(c) Crown copyright and database rights 2020 Ordnance Survey 100022432 | Date: 17/06/20 | Scale: 1:1250 | Map Centre: 604404,223347 | Data updated: 01/06/20 | Our Ref: 397533 - 1 | Wastewater Plan A1



| | | | |
|---|---|---|---|
| Foul Sewer | Outfall* | Sewage Treatment Works | |
| Surface Sewer | | | |
| Combined Sewer | | | |
| Final Effluent | Inlet* | Public Pumping Station | |
| Rising Main* | | | |
| Private Sewer* | Manhole* | Decommissioned Pumping Station | |
| Decommissioned Sewer* | | *(Colour denotes effluent type) | |

nicola@stomor.com

Wivenhoe

love every drop anglianwater

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|
| 0001 | 604093 | 223057 | C | 32.01 | 30.3 | 1.71 |
| 0101 | 604090 | 223115 | C | - | - | - |
| 0102 | 604089 | 223134 | C | 32.43 | 30.72 | 1.71 |
| 0202 | 604076 | 223225 | C | 33.45 | 31.18 | 2.27 |
| 0901 | 604084 | 222922 | C | 31.67 | 29.4 | 2.27 |
| 0902 | 604090 | 222962 | C | 31.91 | 29.9 | 2.01 |
| 0201 | 604070 | 223234 | F | 32.94 | 30.31 | 2.63 |
| 0301 | 604099 | 223318 | F | - | - | 1.36 |
| 0302 | 604079 | 223382 | F | - | - | 2.28 |
| 0303 | 604064 | 223395 | F | - | - | 0.96 |
| 1001 | 604198 | 223085 | F | - | - | 1.15 |
| 1002 | 604192 | 223058 | F | - | - | 1.02 |
| 1003 | 604148 | 223094 | F | - | - | 0.85 |
| 1101 | 604115 | 223120 | F | - | - | 1.45 |
| 1102 | 604127 | 223121 | F | - | - | 1.4 |
| 1103 | 604157 | 223105 | F | - | - | 1.24 |
| 1104 | 604169 | 223131 | F | - | - | 1.24 |
| 1105 | 604196 | 223179 | F | - | - | 1.11 |
| 1106 | 604142 | 223140 | F | - | - | - |
| 1301 | 604114 | 223345 | F | - | - | 0.96 |
| 1302 | 604123 | 223360 | F | - | - | 0.88 |
| 1303 | 604161 | 223391 | F | - | - | 0.55 |
| 1304 | 604139 | 223363 | F | - | - | - |
| 1305 | 604160 | 223351 | F | - | - | - |
| 1401 | 604128 | 223433 | F | - | - | 1.5 |
| 1402 | 604142 | 223428 | F | - | - | 1.1 |
| 1902 | 604182 | 222981 | F | 30.57 | 29.16 | 1.41 |
| 1903 | 604155 | 222988 | F | 30.462 | 29.432 | 1.03 |
| 2001 | 604286 | 223011 | F | 31.76 | 29.71 | 2.05 |
| 2002 | 604231 | 223044 | F | - | - | 2.03 |
| 2003 | 604211 | 223063 | F | 32 | 30 | 2 |
| 2101 | 604237 | 223110 | F | 31.66 | 30.19 | 1.47 |
| 2102 | 604255 | 223139 | F | 31.44 | 30.3 | 1.14 |
| 2201 | 604213 | 223213 | F | - | - | 0.86 |
| 2202 | 604222 | 223229 | F | - | - | 0.72 |
| 2203 | 604227 | 223239 | F | - | - | 0.65 |
| 2301 | 604279 | 223356 | F | - | - | - |
| 2302 | 604279 | 223305 | F | 31.76 | 29.7 | 2.06 |
| 2303 | 604258 | 223300 | F | 31.9 | 29.9 | 2 |
| 2304 | 604244 | 223310 | F | 31.98 | 30.08 | 1.9 |
| 2305 | 604237 | 223397 | F | 31.07 | 29.21 | 1.86 |
| 2306 | 604218 | 223350 | F | 32.24 | 30.72 | 1.52 |
| 2401 | 604262 | 223401 | F | - | 29.4 | - |
| 2402 | 604289 | 223444 | F | - | - | - |
| 2403 | 604261 | 223467 | F | - | - | - |
| 2404 | 604247 | 223401 | F | 32.12 | 29.92 | 2.2 |
| 2501 | 604275 | 223535 | F | - | - | - |
| 2901 | 604251 | 222942 | F | 30.555 | 28.325 | 2.23 |
| 2902 | 604268 | 222975 | F | - | 29.57 | - |
| 3001 | 604313 | 223056 | F | 31.56 | 29.86 | 1.7 |
| 3002 | 604332 | 223047 | F | - | - | 1.51 |
| 3003 | 604353 | 223036 | F | - | - | 1.2 |
| 3004 | 604324 | 223078 | F | - | - | 1.53 |
| 3101 | 604334 | 223116 | F | 31.15 | 30.05 | 1.1 |
| 3102 | 604348 | 223128 | F | 32.92 | 31.15 | 1.77 |
| 3103 | 604361 | 223123 | F | - | - | 0.55 |
| 3104 | 604377 | 223114 | F | - | - | 0.4 |
| 3105 | 604325 | 223151 | F | 31.5 | 30.38 | 1.12 |
| 3106 | 604321 | 223179 | F | 32.89 | 31.84 | 1.05 |
| 3107 | 604394 | 223185 | F | 30.48 | 28.54 | 1.94 |
| 3108 | 604327 | 223197 | F | - | - | - |
| 3109 | 604332 | 223176 | F | - | - | - |
| 3110 | 604339 | 223173 | F | - | - | - |
| 3111 | 604338 | 223170 | F | - | - | - |
| 3112 | 604343 | 223168 | F | - | - | - |
| 3201 | 604388 | 223206 | F | 30.57 | 28.78 | 1.79 |
| 3202 | 604395 | 223271 | F | - | - | - |
| 3203 | 604394 | 223266 | F | - | - | - |
| 3204 | 604360 | 223293 | F | - | 29.63 | - |
| 3205 | 604345 | 223276 | F | 31.76 | 30.01 | 1.75 |
| 3301 | 604386 | 223357 | F | 31.97 | 29.55 | 2.42 |
| 3302 | 604325 | 223317 | F | - | - | - |
| 3303 | 604303 | 223333 | F | - | 29.14 | - |
| 3304 | 604393 | 223371 | F | - | - | - |
| 3305 | 604399 | 223369 | F | - | - | - |
| 3401 | 604378 | 223447 | F | 32.36 | 30.21 | 2.15 |
| 3402 | 604355 | 223404 | F | 32.03 | 30.77 | 1.26 |
| 3403 | 604324 | 223483 | F | - | - | - |
| 3501 | 604302 | 223510 | F | - | - | - |
| 3502 | 604327 | 223534 | F | - | - | - |
| 3503 | 604363 | 223502 | F | - | - | - |
| 4001 | 604474 | 223089 | F | 28.85 | 26.4 | 2.45 |
| 4002 | 604468 | 223099 | F | - | - | - |
| 4003 | 604469 | 223092 | F | 29.4 | 27.2 | 2.2 |
| 4004 | 604448 | 223077 | F | 29.4 | 27.59 | 1.81 |
| 4005 | 604436 | 223062 | F | 29.501 | 27.921 | 1.58 |
| 4101 | 604449 | 223125 | F | - | 27.66 | - |
| 4102 | 604473 | 223145 | F | 29.86 | 28.22 | 1.64 |
| 4103 | 604445 | 223130 | F | 29.7 | 27.66 | 2.04 |
| 4104 | 604423 | 223156 | F | 30.43 | 27.86 | 2.57 |
| 4105 | 604434 | 223190 | F | 30.795 | 27.905 | 2.89 |
| 4201 | 604460 | 223211 | F | 30.742 | 28.002 | 2.74 |
| 4202 | 604416 | 223296 | F | 31.31 | 28.49 | 2.82 |
| 4301 | 604464 | 223319 | F | 31.6 | 28.7 | 2.9 |
| 4302 | 604480 | 223335 | F | 31.84 | 28.92 | 2.92 |
| 4303 | 604405 | 223330 | F | 31.49 | 29.01 | 2.48 |
| 4304 | 604410 | 223351 | F | 31.66 | 29.36 | 2.3 |
| 4305 | 604416 | 223359 | F | 31.68 | 29.61 | 2.07 |
| 4306 | 604421 | 223381 | F | 32.04 | 30 | 2.04 |
| 4307 | 604492 | 223327 | F | 32.08 | 29.13 | 2.95 |
| 4308 | 604488 | 223378 | F | 32.1 | 29.2 | 2.9 |
| 4309 | 604401 | 223380 | F | - | - | - |
| 4401 | 604475 | 223403 | F | 32.31 | 29.36 | 2.95 |
| 4402 | 604435 | 223423 | F | 32.48 | 29.61 | 2.87 |
| 4403 | 604407 | 223460 | F | 32.58 | 29.85 | 2.73 |
| 4404 | 604452 | 223451 | F | 32.29 | 29.79 | 2.5 |
| 4405 | 604459 | 223464 | F | 32.4 | 29.88 | 2.52 |
| 5301 | 604513 | 223327 | F | 31.95 | 29.25 | 2.7 |
| 5302 | 604508 | 223380 | F | 31.98 | 29.58 | 2.4 |
| 5303 | 604520 | 223386 | F | 31.87 | 30.37 | 1.5 |
| 8905 | 603899 | 222947 | F | - | - | - |
| 9201 | 603984 | 223220 | F | 32.75 | 29.86 | 2.89 |
| 9901 | 603992 | 222928 | F | 31.42 | 29.67 | 1.75 |
| 9902 | 603968 | 222924 | F | - | - | 1.68 |
| 9903 | 603935 | 222923 | F | 30.6 | 29.2 | 1.4 |
| 9904 | 603919 | 222921 | F | - | - | - |
| 0351 | 604091 | 223397 | S | - | - | 0.58 |
| 1351 | 604131 | 223385 | S | - | - | 0.7 |
| 1352 | 604191 | 223321 | S | - | - | - |
| 1451 | 604168 | 223464 | S | - | - | - |
| 1452 | 604162 | 223451 | S | - | - | - |
| 1453 | 604140 | 223430 | S | - | - | - |
| 1454 | 604128 | 223435 | S | - | - | 0.8 |
| 1951 | 604180 | 222976 | S | - | - | - |
| 1952 | 604155 | 222984 | S | - | - | - |
| 2251 | 604261 | 223263 | S | - | - | - |
| 2351 | 604283 | 223356 | S | - | - | - |
| 2352 | 604265 | 223398 | S | - | 30.14 | - |
| 2353 | 604276 | 223307 | S | 31.71 | 30.11 | 1.6 |
| 2354 | 604258 | 223303 | S | 31.9 | 30.25 | 1.65 |
| 2355 | 604236 | 223320 | S | 32.11 | 30.41 | 1.7 |
| 2356 | 604247 | 223398 | S | 32.09 | 30.29 | 1.8 |
| 2357 | 604239 | 223395 | S | 31.99 | 30.53 | 1.46 |
| 2358 | 604223 | 223356 | S | 32.18 | 30.83 | 1.35 |
| 2359 | 604214 | 223397 | S | - | - | - |
| 2452 | 604200 | 223450 | S | - | - | 1.13 |
| 2453 | 604293 | 223444 | S | - | - | - |
| 2454 | 604264 | 223467 | S | - | - | - |
| 2455 | 604227 | 223432 | S | - | - | - |
| 2456 | 604208 | 223445 | S | - | - | - |
| 2457 | 604235 | 223485 | S | - | - | - |
| 2551 | 604294 | 223518 | S | - | - | - |
| 3151 | 604396 | 223186 | S | 30.43 | 29.06 | 1.37 |
| 3251 | 604390 | 223208 | S | 30.69 | 29.29 | 1.4 |
| 3252 | 604398 | 223271 | S | - | 29.2 | - |
| 3253 | 604361 | 223296 | S | - | - | - |
| 3255 | 604331 | 223253 | S | - | - | - |
| 3256 | 604312 | 223260 | S | - | - | - |
| 3351 | 604384 | 223360 | S | 32 | 30.1 | 1.9 |
| 3352 | 604345 | 223381 | S | 32.07 | 30.24 | 1.83 |
| 3353 | 604353 | 223394 | S | 32.19 | 30.28 | 1.91 |
| 3354 | 604328 | 223319 | S | - | - | - |
| 3355 | 604302 | 223339 | S | - | 29.95 | - |
| 3451 | 604352 | 223407 | S | 32.07 | 30.37 | 1.7 |
| 3452 | 604370 | 223437 | S | 32.31 | 30.65 | 1.66 |
| 3453 | 604389 | 223487 | S | 32.38 | 30.83 | 1.55 |
| 3454 | 604327 | 223483 | S | - | - | 30.66 |
| 3455 | 604361 | 223467 | S | 32.32 | 30.77 | 1.55 |
| 3456 | 604363 | 223499 | S | - | - | - |
| 3551 | 604305 | 223510 | S | - | - | - |
| 3552 | 604327 | 223531 | S | - | - | - |
| 4051 | 604499 | 223056 | S | - | - | - |
| 4052 | 604476 | 223093 | S | - | - | - |
| 4053 | 604473 | 223099 | S | 29.25 | 27.9 | 1.35 |
| 4054 | 604451 | 223076 | S | 29.798 | 28.308 | 1.49 |
| 4055 | 604434 | 223058 | S | 29.996 | 28.596 | 1.4 |
| 4056 | 604409 | 223079 | S | 29.698 | 28.918 | 0.78 |
| 4151 | 604493 | 223128 | S | 30 | 29.11 | 0.89 |
| 4152 | 604448 | 223129 | S | - | 28.55 | - |
| 4153 | 604470 | 223145 | S | 29.84 | 28.69 | 1.15 |
| 4154 | 604444 | 223133 | S | - | - | - |
| 4155 | 604425 | 223158 | S | - | 28.72 | - |
| 4156 | 604437 | 223189 | S | - | - | - |
| 4251 | 604469 | 223212 | S | 31 | 29.8 | 1.2 |
| 4252 | 604454 | 223270 | S | 31.65 | 30.64 | 1.01 |
| 4253 | 604463 | 223212 | S | - | - | - |
| 4254 | 604420 | 223296 | S | 31.36 | 29.21 | 2.15 |
| 4351 | 604460 | 223319 | S | 31.55 | 29.54 | 2.01 |
| 4352 | 604482 | 223338 | S | 31.87 | 29.63 | 2.24 |
| 4353 | 604408 | 223354 | S | 31.71 | 30.01 | 1.7 |
| 4354 | 604412 | 223360 | S | 31.72 | 30.17 | 1.55 |
| 4355 | 604418 | 223381 | S | 32 | 30.4 | 1.6 |
| 4356 | 604405 | 223334 | S | 31.55 | 29.95 | 1.6 |
| 4357 | 604494 | 223330 | S | 32.07 | 30.13 | 1.94 |
| 4358 | 604486 | 223374 | S | 32.12 | 29.72 | 2.4 |
| 4359 | 604477 | 223402 | S | 32.28 | 30.83 | 1.45 |
| 4451 | 604438 | 223423 | S | 32.43 | 29.93 | 2.5 |
| 4452 | 604417 | 223443 | S | 32.63 | 30.49 | 2.14 |
| 4453 | 604405 | 223473 | S | 32.57 | 30.72 | 1.85 |
| 4454 | 604454 | 223449 | S | 32.24 | 30.01 | 2.23 |
| 4455 | 604461 | 223460 | S | 32.2 | 30.06 | 2.14 |
| 5051 | 604508 | 223070 | S | 29.7 | 28.6 | 1.1 |
| 5052 | 604534 | 223015 | S | - | - | - |
| 5351 | 604510 | 223330 | S | 31.97 | 30.54 | 1.43 |
| 5352 | 604511 | 223377 | S | 31.98 | 30.42 | 1.56 |
| 5353 | 604523 | 223383 | S | 31.85 | 30.75 | 1.1 |
| 5951 | 604595 | 222925 | S | 29.18 | 26.1 | 3.08 |
| 6051 | 604619 | 223018 | S | - | - | - |

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|

| Manhole Reference | Easting | Northing | Liquid Type | Cover Level | Invert Level | Depth to Invert |
|---|---|---|---|---|---|---|

# JF15: Pre-Development Enquiry from Anglian Water

# Pre-planning Assessment Report

**WIVENHOE, LAND SOUTH OR RICHARD AVENUE**

**InFlow Reference:** **PPE- 0072760**

**Assessment Type:** **Used Water**

**Report published:** **04/06/2020**

**This report supersedes the previous version published on 25/11/2019**

Thank you for submitting a pre-planning enquiry.

This report has been produced for Taylor Wimpey East London

Your InFlow reference number is PPE- 0072760

If you have any questions upon receipt of this report, please contact the Pre-development team on **03456 066 087** or email planningliaison@anglianwater.co.uk.

## Section 1

### Proposed Development

The response within this report has been based on the following information which was submitted as part of your application:

| List of planned developments | |
|---|---|
| **Type of development** | **No. Of units** |
| Dwellings | 120 |

The anticipated build rate is:

| Year | Y1 | Y2 | Y3 |
|---|---|---|---|
| Build rate | 50 | 50 | 20 |

Development type: Greenfield

Planning application status: Pending Consideration

Site grid reference number: TM0459123178

The comments contained within this report relate to the public water mains and sewers indicated on our records.

Your attention is drawn to the disclaimer in the useful information section of this report.

## Section 2 Assets affected

Our records indicate that there are no public water mains/public sewers or other assets owned by Anglian Water within the boundary of your development site. However, it is highly recommended that you carry out a thorough investigation of your proposed working area to establish whether any unmapped public or private sewers and lateral drains are in existence.

Due to the private sewer transfer in October 2011 many newly adopted public used water assets and their history are not indicated on our records. You also need to be aware that your development site may contain private water mains, drains or other assets not shown on our records. These are private assets and not the responsibility of Anglian Water but that of the landowner.

## Section 3 Water recycling services

In examining the used water system we assess the ability for your site to connect to the public sewerage network without causing a detriment to the operation of the system. We also assess the receiving water recycling centre and determine whether the water recycling centre can cope with the increased flow and influent quality arising from your development.

**Water recycling centre**

The foul drainage from the proposed development is in the catchment of Colchester Water Recycling Centre, which currently has capacity to treat the flows from your development site. Anglian Water cannot reserve capacity and the available capacity at the water recycling centre can be reduced at any time due to growth, environmental and regulation driven changes

**Used water network**

Our assessment has been based on development flows connecting to the nearest foul water sewer of the same size or greater pipe diameter to that required to drain the site. The infrastructure to convey foul water flows to the receiving sewerage network is assumed to be the responsibility of the developer. Conveyance to the connection point is considered as Onsite Work and includes all work carried out upstream from of the point of connection, including making the connection to our existing network. This connection point has been determined in reference to the calculated discharge flow and on this basis, a 150mm internal diameter pipe is required to drain the development site.

The nearest practicable connection is to the 150mm diameter sewer at manhole 4201 in Henrietta Close at National Grid Reference NGR TM 04458 23211. Anglian water has assessed the impact of gravity flows from the planned development to this point and unfortunately there is insufficient capacity in this sewer to accommodate your site.

We have therefore considered an alternative connection point and can confirm that there is sufficient capacity for a connection at or downstream of manhole TM0423 4001, located in Henrietta Close, at National Grid Reference TM 04474 23089.

This is the recommended connection point. Anglian Water will reimburse reasonable costs incurred in connecting to the recommended connection point, over and above those required to connect to the nearest point of connection. Please note that Anglian Water will request a suitably worded condition at planning application stage to ensure this strategy is implemented to mitigate the risk of flooding.

It is assumed that the developer will provide the necessary infrastructure to convey flows from the site to the network. Consequently, this report does not include any costs for the conveyance of flows

**Surface water disposal**

In principle, your proposed method of surface water disposal is acceptable to Anglian Water. It is our understanding that the evidence to confirm compliance with the surface water hierarchy is not yet available. Once the evidence has been confirmed, then a connection point may be made at or downstream of manhole TM0423 4051, located in land south of the development site, at a rate of 15l/s.

It is your responsibility to provide the evidence to confirm that all alternative methods of surface water disposal have been explored and these will be required before your connection can be agreed.

This is subject to satisfactory evidence which shows the surface water management hierarchy as outlined in Building Regulations Part H has been explored. This would encompass the results from the site specific infiltration testing and/or confirmation that the flows cannot be discharged to a watercourse.

**Trade Effluent**

We note that you do not have any trade effluent requirements. Should this be required in the future you will need our written formal consent. This is in accordance with Section 118 of the Water Industry Act (1991).

**Used Water Budget Costs**

Your development site will be required to pay an infrastructure charge for each new property connecting to the public sewer that benefits from Full planning permission.

You will be required to pay an infrastructure charge upon connection for each new plot on your development site. The infrastructure charge are types of charges set out in Section 146(2) of the Water Industry Act 1991

The charge should be paid by anyone who wishes to build or develop a property and is payable upon request of connection.

Payment of the infrastructure charge must be made before premises are connected to the public sewer.

Infrastructure charge for water recycling: **£570.00**

The total infrastructure charge payable for your site for water is:

| Infrastructure charge | Number of units | Total |
|---|---|---|
| £570.00 | 120 | £ 68,400.00 |

Infrastructure charges are raised on a standard basis of one charge per new connection (one for water and one for sewerage). However, if the new connection is to non- household premises, the fixed element is calculated according to the number and type of water fittings in the premises. This is called the "relevant multiplier" method of calculating the charge.

Details of the relevant multiplier for each fitting can be found at our website.

It has been assumed that the onsite used water network will be provided under Section 104 of the Water Industry Act

It is recommended that you also budget for connection costs.

Please note that we offer alternative types of connections depending on your needs and these costs are available at our website.

## Section 4 Map of proposed connection points

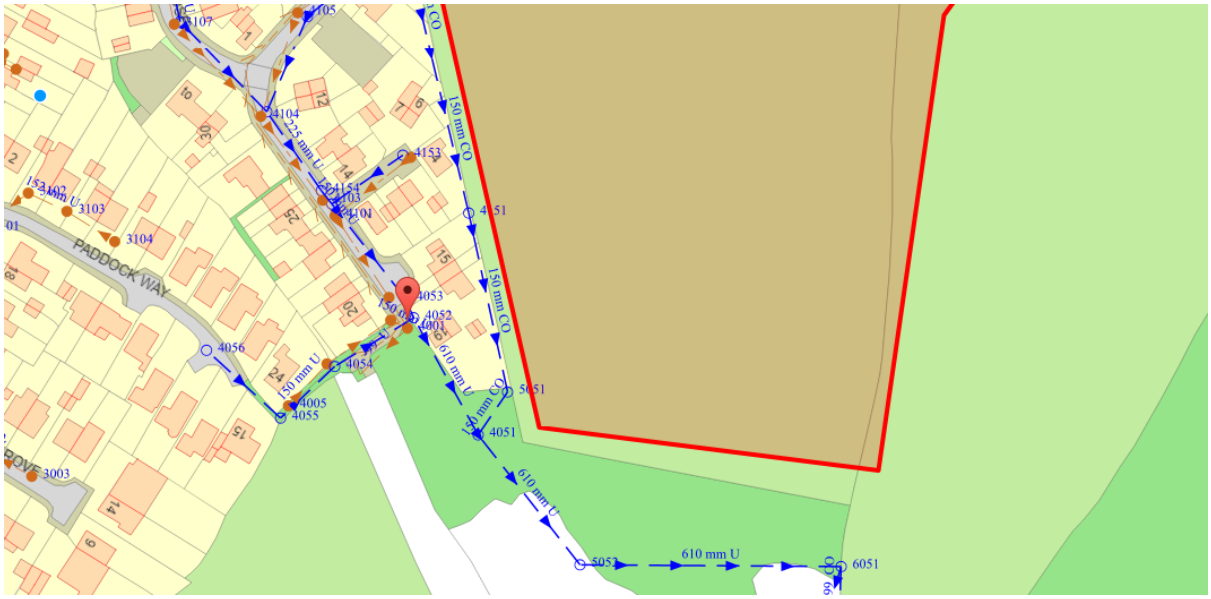



**Figure 1: Your used water point of connection**


**Figure 2: Surface water point of connection**

## Section 5 Useful information

**Water Industry Act – Key Used Water Sections:**

**Section 98:**

This provides you with the right to requisition a new public sewer. The new public sewer can be constructed by Anglian Water on your behalf. Alternatively, you can construct the sewer yourself under section 30 of the Anglian Water Authority Act 1977.

**Section 102:**

This provides you with the right to have an existing sewerage asset vested by us. It is your responsibility to bring the infrastructure to an adoptable condition ahead of the asset being vested.

**Section 104**

This provides you with the right to have a design technically vetted and an agreement reached that will see us adopt your assets following their satisfactory construction and connection to the public sewer.

**Section 106**

This provides you with the right to have your constructed sewer connected to the public sewer.

**Section 185**

This provides you with the right to have a public sewerage asset diverted.

Details on how to make a formal application for a new sewer, new connection or diversion are available on our website or our Development Services team on 03456 066 087.

**Sustainable drainage systems**

Many existing urban drainage systems can cause problems of flooding, pollution or damage to the environment and are not resilient to climate change in the long term.

Our preferred method of surface water disposal is through the use of Sustainable Drainage Systems or SuDS.

SuDS are a range of techniques that aim to mimic the way surface water drains in natural systems within urban areas. For more information on SuDS, please visit our website

We recommend that you contact the Local Authority and Lead Local Flood Authority (LLFA) for your site to discuss your application.

**Private sewer transfer**

Sewers and lateral drains connected to the public sewer on the 1 July 2011 transferred into Water Company ownership on the 1 October 2011. This follows the implementation of the Floods and Water Management Act (FWMA). This included sewers and lateral drains that were subject to an existing Section 104 Adoption Agreement and those that were not. There were exemptions and the main non-transferable assets were as follows:

Surface water sewers and lateral drains that do not discharge to the public sewer, e.g. those that discharged to a watercourse.

Foul sewers and lateral drains that discharge to a privately owned sewage treatment/collection facility.

Pumping stations and rising mains will transfer between 1 October 2011 and 1 October 2016.

The implementation of Section 42 of the FWMA will ensure that future private sewers will not be created.

It is anticipated that all new sewer applications will need to have an approved Section104 application ahead of a Section 106 connection.

**Encroachment**

Anglian Water operates a risk based approach to development encroaching close to our used water infrastructure. We assess the issue of encroachment if you are planning to build within 400 metres of a water recycling centre or, within 15 metres to 100 metres of a pumping station. We have more information available on our website at http://anglianwater.co.uk/developers/encroachment.aspx

**Locating our assets**

Maps detailing the location of our water and used water infrastructure including both underground assets and above ground assets such as pumping stations and recycling centres are available from digdat.

All requests from members of the public or non-statutory bodies for maps showing the location of our assets will be subject to an appropriate administrative charge.

We have more information on our website

**Charging Arrangements**

Our charging arrangements and summary for this year's water and used water connection and infrastructure charges can be found on our website.

## Section 6 Disclaimer

The information provided in this report is based on data currently held by Anglian Water Services Limited ('Anglian Water') or provided by a third party. Accordingly, the information in this report is provided with no guarantee of accuracy, timeliness, completeness and is without indemnity or warranty of any kind (express or implied).

This report should not be considered in isolation and does not nullify the need for the enquirer to make additional appropriate searches, inspections and enquiries. Anglian Water supports the plan led approach to sustainable development that is set out in the National Planning Policy Framework ('NPPF') and any infrastructure needs identified in this report must be considered in the context of current, adopted and/or emerging local plans. Where local plans are absent, silent or have expired these needs should be considered against the definition of sustainability holistically as set out in the NPPF.

Whilst the information in this report is based on the presumption that proposed development obtains planning permission, nothing in this report confirms that planning permission will be granted or that Anglian Water will be bound to carry out the works/proposals contained within this report.

No liability whatsoever, including liability for negligence is accepted by Anglian Water or its partners, employees or agents, for any error or omission, or for the results obtained from the use of this report and/or its content. Furthermore in no event will any of those parties be liable to the applicant or any third party for any decision made or action taken as a result of reliance on this report.

**This report is valid for the date printed and the enquirer is advised to resubmit their request for an up to date report should there be a delay in submitting any subsequent application for water supply/sewer connection(s).**

# JF16: Economic Benefits Infographic prepared by Taylor Wimpey

# ECONOMIC BENEFITS

TAYLORWIMPEY.CO.UK/WIVENHOE

Taylor Wimpey

## *What will our development bring to the area?*

We are proposing a residential development of 120 new homes on land off Richard Avenue, Wivenhoe. The development will include a range of property styles and sizes, and a proportion of the new homes will be affordable housing. New development can bring a number of economic benefits to the local area and we have estimated these using UK-wide statistical data.

## *Building the homes*

272 jobs

***Direct employment***

Estimated to create 91 temporary construction jobs per year of build.

137 jobs

***Indirect/Induced employment***

137 jobs could be supported in the supply chain per year of build.

£15.6m

***Economic output***

Expected additional Gross Value Added (GVA) per year from direct and indirect jobs.

## *Once people move in*

£660,000

***First occupation expenditure***

Total anticipated spend on goods and services by people as they move into the new houses, to make them feel like home.

£3.1m

***Total spend by residents***

The amount the residents of the new development are expected to spend per year.


## *Additional local authority income*

£159,240

***Additional Council Tax revenues per year***

Estimated additional Council Tax per year based on the proposed number of new homes.

£873,600

***New Homes Bonus payments***

A grant paid, over six years, by central government to local councils.