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## Appeal Decision

Inquiry Held on 14-17 and 21 May 2019

Site visit made on 22 May 2019

**by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

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

**Decision date: 19<sup>th</sup> August 2019**

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### **Appeal Ref: APP/A1530/W/18/3207626**

#### **Land off Colchester Road, West Bergholt, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Colchester Borough Council (CBC).
  - The application Ref:173127, is dated 28 November 2017.
  - The development proposed is the erection of up to 97 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Colchester Road.
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### **Decision**

1. The appeal is dismissed, and the grant of outline planning permission refused for the erection of up to 97 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Colchester Road.

### **Preliminary matters**

2. The appeal application is in outline, but with access to be determined as part of the application. Site access is proposed off Colchester Road via a priority-controlled junction. I have had regard to other details shown on the Development Framework Plan (Drawing No.CSA/3447/103F) as illustrative material not forming part of the application.
3. CBC failed to make a decision on the planning application in the required amount of time. However, had it been able to do so, CBC would have refused the application. The reasons for refusal would have made reference to: 1. The site being located outside the settlement boundary and unallocated, and therefore contrary to Core Strategy Policies SD1, ENV1 and H1, and premature given the emerging Local Plan and West Bergholt Neighbourhood Plan. 2. The effect on the character and setting of the settlement, and resultant conflict with Core Strategy Policy ENV1 and Development Policy DP1. 3. New build development in the open countryside in the scale and manner proposed resulting in a loss of the open rural aspect to the south of the listed Malthouse, the visual separation between West Bergholt and the listed Barn at Hill House, along with concern about views of the listed main Truman buildings from the application site, contrary to Core Strategy Policy ENV1 and Development Policy 14 and the NPPF. 4. Failure to secure a range of planning obligations, contrary to Core Strategy Policies SD2, H4 and Development Policy DP3, the

NPPF and supplementary planning documents and guidance.

4. An amended access scheme was submitted at the appeal stage.<sup>1</sup> This proposes siting the proposed access onto Colchester Road to the north-west of the location shown on the original drawing. It also proposes visibility splays of 2.4 m x 80 m instead of 2.4 m x 43 m. Road markings and carriageway alignment would be altered to remove the existing right turn arrangement for Maltings Park Road. The proposed amended scheme would also remove the initially proposed ghost island right turn lane arrangement for the access to the appeal site.
5. I consider that the proposed alterations, insofar as they would affect access to the appeal site for the determination of this appeal, would be minor alterations that would not substantially alter the proposal. CBC has no objection to these alterations. Local residents and representatives of the Parish Council who attended the Inquiry were given the opportunity to consider, and to comment on, the proposed revised access. Concern was expressed about available space within the highway for the proposed revisions for the Maltings Park Road junction.<sup>2</sup> But this would be a matter for consideration in discharging the suggested planning conditions.<sup>3</sup> I do not consider that determining the appeal on the basis of the amended scheme would be prejudicial to the interests of any other party. I have, therefore, determined the appeal on the basis of the amended scheme as shown on Site Access Plan Drawing Ref 1879-F04 Rev A.
6. A petition with 180 signatures, along with 174 emails supporting the petition, was submitted at the Inquiry opposing the application and supporting the rejection of the appeal as contrary to West Bergholt's Neighbourhood Plan (WBNP) and the Borough's current and emerging Local Plan.<sup>4</sup>
7. The Examiner's Report into the WBNP was submitted to the Qualifying Body for fact checking during the Inquiry. Time was therefore made available for the parties to make written submissions about the Report once it was made public. The Inquiry was closed in writing on 1 July 2019.
8. A unilateral planning obligation, dated 17 June 2019, provides for affordable housing on commencement of the development that is the subject of this appeal.<sup>5</sup> It also provides for an off-site open space contribution, along with contributions towards education, healthcare, archaeology, community facilities and Natura 2000. At the Inquiry CBC did not pursue its fourth putative reason for refusal.
9. CBC and the appellant submitted a Statement of Common Ground dated 18 and 23 April 2019 (SoCG1). A separate SoCG concerning a Habitat Regulations Assessment is dated 11 and 16 April 2019 (SoCG2). A SoCG in relation to the frontage hedgerow along Colchester Road is dated 21 May 2019 (SoCG3).<sup>6</sup>

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<sup>1</sup> The Council's determination of its putative reasons for refusal considered the access arrangement shown on Site Access Plan Drawing Ref 1879-F01.

<sup>2</sup> ID32c.

<sup>3</sup> ID27 Suggested planning Condition 16.

<sup>4</sup> ID6.

<sup>5</sup> ID4.

<sup>6</sup> ID31.

## **Main issues**

10. The main issues in this appeal are the effects of the proposed development on:
- (a) The character and appearance of the area.
  - (b) Heritage assets.
  - (c) The supply of housing.

## **Planning policy**

11. The development plan for the area includes the Colchester Borough Core Strategy, which was adopted in 2008 and updated in 2014 (CS), and the Colchester Borough Development Policies, which was adopted in 2010 and amended in 2014 (DP), along with the Site Allocations DPD 2010. I consider that the following policies are most relevant to the main issues in this appeal.
12. Policy SD1 of the CS states that the Borough will deliver at least 19,000 homes between 2001 and 2023 and that growth would be located at the most accessible locations in accordance with the settlement hierarchy. This housing growth was derived from the now revoked East of England Plan. West Bergholt is designated as a rural community in the settlement strategy. Policy SD1 expects development to achieve compatibility with local character. The 2014 update to the CS added a provision to this policy to reflect the 2012 NPPF's position about taking account of whether any adverse impacts would significantly and demonstrably outweigh the benefits. CS Policy H1, concerning housing delivery, reflects the strategy in Policy SD1.
13. CS Policy ENV1 states that the natural and historic environment, along with the countryside, will be conserved and enhanced. It adds that unallocated greenfield land outside of settlement boundaries, such as the appeal site, will be protected and where possible enhanced, with any development strictly controlled to conserve the environmental assets and open character.
14. Policy DP1 provides, amongst other things, that proposals respect or enhance the landscape that contributes positively to the site and the surrounding area. Policy DP14 states that development will not be permitted that will adversely affect a listed building. It adds that development affecting the historic environment should seek to preserve or enhance the heritage asset.
15. CBC has been working jointly with Tendring and Braintree District Councils to bring forward local plans with a common section setting out strategic growth policies, including overall housing requirements and the provision of three cross-border garden communities. The Draft Colchester Borough Local Plan 2017-2033 (eLP) was submitted for examination in 2017 and hearing sessions began in 2018. The examination is currently paused whilst further work is undertaken.
16. The West Bergholt Neighbourhood Area was designated in 2013 and the draft WBNP was subject to Regulation 14 consultation in 2018. Regulation 16 consultation on the submitted WBNP took place earlier this year and independent examination commenced in April. I have taken into account the Examiner's Report and the respective comments from the parties.<sup>7</sup> CBC advised by email dated 12 June 2019 that the referendum for the WBNP is scheduled for 19 September 2019. The WBNP proposes that the minimum

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<sup>7</sup> ID33 and ID35-37.

number of dwellings to be provided over the plan period of 2018-2033 will be 120, with these dwellings provided on two sites identified to the north of the existing settlement. The appeal site lies outside the proposed WBNP settlement boundary, and in an area identified to avoid coalescence with Colchester.

17. I have taken into account the *National Planning Policy Framework* (hereinafter the *Framework*) and the *Planning Practice Guidance* (hereinafter the *Guidance*). The *Guidance* was revised after the close of the Inquiry and the parties were invited to comment on any relevant changes.<sup>8</sup>

## Reasons

### *Character and appearance*

18. The appeal site has an area of 4.13 ha and is located on the south-eastern edge of West Bergholt, some 4 km to the north-west of Colchester. It comprises two grassland fields, an eastern field and a western field, that are separated by a central belt of trees and vegetation. The eastern field has a frontage onto Colchester Road, which is marked by a hedgerow described by the parties as a failing elm hedge.
19. In the 2003 Essex Landscape Character Assessment the appeal site lies within the Colne Valley (C7) LCA, with a landscape sensitivity level of Moderate, where development may be capable of being absorbed. In CBC's 2005 Landscape Character Assessment the site lies predominantly in the A5 Colne River Valley Slopes LCA. The key characteristics of LCA A5 include a mosaic of medium to large-sized predominantly arable fields with hedgerows, and concentrations of smaller fields with intact hedge boundaries adjacent to settlements. A part of the appeal site lies within LCA B6 Great Horkelesley Farmland Plateau, which is located on an area of gently rolling plateau to the north of the Colne River valley. It adds that West Bergholt is a large nucleated village. The landscape planning guidelines refer to the conservation of the landscape setting of existing settlements such as West Bergholt. I have also had regard to the 2005 Landscape Capacity of Settlement Fringes and the 2009 Assessment of Open Countryside. However, I give more weight to the 2003 and 2005 landscape character assessments cited above as particularly relevant to the issues which need to be addressed in determining this appeal.
20. It was evident from my site visit that both the eastern and western fields of the appeal site have a rural feel that relates much more to the wider agricultural area than to the nearby development within the settlement. The appeal site adjoins the settlement, and its fields are small with largely intact hedgerow boundaries; attributes which reflect the key characteristics of LCA A5. This is an area of landscape transition, which is sensitive to change. The appeal site forms an important part of the rural setting for the village, notwithstanding the agreement of the landscape experts that it is not a valued landscape for the purposes of the *Framework*. Its redevelopment for up to 97 dwellings would result in a change of major magnitude that would have a significant adverse impact on the landscape resource. In my judgement, the proposed development would have an adverse effect on the landscape character of the area of substantial significance. I turn next to consider the visual effects of the proposal.

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<sup>8</sup> ID38 and ID39.

21. The western field is bounded by the rear of residential development that fronts onto Albany Road and Colchester Road, to the east by the belt of trees between the eastern and western fields, and by the wooded curtilage of a dwelling to the south. With appropriate siting, design and landscaping residential development of the western field could be largely visually contained so that it was not prominent from public vantage points. However, some filtered views would be likely from Albany Road and for some residential receptors, where the change from an open field to housing would, where apparent, result in an adverse visual impact of moderate significance.
22. Some 40 m of the existing roadside hedgerow would be required to be removed to facilitate the proposed access. A further 8 m would need to be removed for a visibility splay. A new mixed native hedgerow with hedgerow trees would be planted behind the existing elm hedge to the west of the proposed access and behind the visibility splay of the removed sections of hedge. A proposed landscape management plan would require the existing remaining elm hedge to be maintained no higher than 2.5 m.<sup>9</sup>
23. Development within the eastern field would be visible from Colchester Road while the replacement roadside hedgerow matured, and at all times through the proposed new access. In this location dwellings and residential paraphernalia would appear as an intrusive feature in the countryside surrounding the settlement, which I consider in more detail in the following paragraphs. In this context, the proposed development would have an adverse effect on the visual amenity of the area of substantial significance.
24. It was evident at my site visit that the dwellings off Maltings Park Road mark a sharp transition between the settlement and the surrounding countryside. The scattered dwellings along, and sited off, Colchester Road, including the buildings in the vicinity of Hill House, to the east of the Maltings development, are perceived as being contained within the countryside that lies between West Bergholt village and Braiswick. This perception is not significantly altered by the existence of street lighting and signage on the approach to West Bergholt. I concur with the Parish Council's assessment of where the village starts.<sup>10</sup>
25. The development of the eastern field would project built form and suburban type activity beyond what is currently perceived to be the confines of the settlement. Although siting is a reserved matter it would be likely that the proposed dwellings would extend across this field, as is indicated in the illustrative Development Framework Plan. The apparent depth of the residential development, given that the land slopes to the south, would be apparent from Colchester Road. An expansion of the settlement of this scale and prominence, in this location, would significantly detract from the sense of separation between West Bergholt and Braiswick.
26. Given the relationship between these settlements in terms of separation distance, topography, highways and other infrastructure, the existing intervening countryside between West Bergholt and Braiswick is particularly vulnerable to the harm that would result from creeping coalescence blurring their separate identities. I find that the proposal would conflict with emerging WBNP Policy PP22, which provides that development will not be supported in the area shown on Map PP22, which includes the appeal site, if individually or cumulatively it would result in increasing the coalescence between West

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<sup>9</sup> ID31.

<sup>10</sup> ID9a.

Bergholt village and Braiswick, reducing their separate identity by reducing the separation between these two settlements.

27. On the first main issue, I find that the proposal would have a substantial adverse effect on the character and appearance of the area, and so would conflict with CS Policy ENV1. It would also conflict with that part of CS Policy SD1 that expects development to achieve compatibility with local character. In addition, the scheme would be at odds with the requirement in CS Policy DP1 that proposals respect or enhance the landscape that contributes positively to the site and the surrounding area.

#### *Heritage assets*

28. There are four Grade II listed buildings associated with the former Truman's Brewery in the vicinity of the appeal site. These comprise a main building, a brewery house and hophouse which are located on the northern side of Colchester Road, along with a malthouse on the southern side of Colchester Road. The malthouse has been relocated from a site further to the east, but its listing description does not mention its rebuilding with the addition of skylights and dormer windows. The converted barn near Hill House, which lies to the east of the appeal site, is also a Grade II listed building.
29. I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building. The parties agree that the appeal scheme would result in some harm to designated heritage assets, which as less than substantial harm for the purposes of the *Framework* must be weighed against the public benefits of the proposed development. But to properly weigh heritage considerations in the planning balance it is necessary to assess the extent of the harm to the listed buildings affected in this case.
30. The former brewery buildings north of Colchester Road were originally set within the countryside outside the settlement but have now been incorporated within the village and redeveloped for housing/offices. The modern housing estate to the north of the former brewery buildings has fundamentally altered the rural setting of the listed buildings. However, parts of the brewery are four storeys with a distinctive roofscape that is a prominent feature in views from the wider area. There is no documented functional relationship between the brewery and the appeal site. Nevertheless, the appeal site forms part of the remaining rural context for these distinctive buildings. The proposed development would remove one of the last links between the brewery and its original rural context, and this harm to the setting of the listed buildings would diminish their historic significance. The appellant's assessment of a very minor impact underrates the importance of the appeal site in providing some rural setting for these important buildings. I consider that the extent of the harm here would be of slight/moderate significance.
31. The malthouse has lost its original setting with its relocation. Its setting is now largely confined to its immediate context, which does include some of the open land within the western field. The proposed development would abut the south-western boundary of the dwellings in the malthouse. Nevertheless, given the altered context for this listed building, I consider that the proposed development would have only a slight effect on the setting of the former malthouse and the overall significance of this heritage asset.

32. The converted barn at Hill House is now sited within the residential curtilage of the property. However, its western façade facing towards the appeal site retains many features of its original agricultural design and function. Notwithstanding the intervening domestic paraphernalia, including a swimming pool, the barn retains a visual association with the agricultural land that comprises the eastern field of the appeal site. This link with adjoining open rural land is important even though there is no evidence to suggest that the appeal site was farmed by the owners/users of the barn. The barn does derive some of its significance from its setting, which includes part of the eastern field within the appeal site.
33. There would be some scope within the design of the proposed residential development to set back development from this eastern boundary of the appeal site and to retain an open area in the vicinity of the barn. But I am not convinced, even if a significant open area could be so retained whilst achieving up to 97 dwellings on site, that the proposed development would not still result in harm to the setting of the barn. Open space as part of a residential scheme would be significantly different in terms of its character and appearance from an agricultural/rural context for the barn. I find that the proposal would be likely to have an adverse impact on the setting of the listed barn and that this would affect its historic significance. In the absence of a detailed scheme showing siting and design for this part of the proposed development, I consider that the proposal would have an adverse impact of moderate significance on this heritage asset. The appellant's assessment of a very minor effect on the significance of the listed barn understates the likely harm.
34. On the evidence submitted, I am satisfied that archaeological considerations could be dealt with by the imposition of appropriate planning conditions. For each of the nearby listed buildings I have found that the harm would, for the purposes of applying the *Framework*, be less than substantial to the significance of the designated heritage assets, and so should be weighed against the public benefits of the proposal. The *Framework* also provides that great weight should be given to the conservation of designated heritage assets, and that any harm to their significance should require clear and convincing justification.

#### *Supply of housing*

35. The parties disagree about the housing requirement to be applied in assessing whether a five-year Housing Land Supply (5YHLS) can be demonstrated. With an agreed 5% buffer, the appellant considers that there is a five-year requirement of 5,701 based on the standard method, whereas CBC considers that the five-year requirement against the objectively assessed need is 4,830. Further work on the Joint Strategic Plan is progressing, but the examining Inspector has provisionally endorsed an annual requirement of 920 dwellings as representing the objectively-assessed housing need (OAHN) for Colchester.<sup>11</sup>
36. CBC argues that the circumstances here, where its OAHN has secured the agreement of the examining Inspector, are truly exceptional. However, CBC acknowledges that the examining Inspector will need to consider the extent to which projections and other evidence published since his agreement should, or should not, alter the OAHN for the Borough. New projections do not

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<sup>11</sup> ID7a.

automatically mean that previous housing assessments are rendered outdated, but the issue will not be resolved until resumption of the examination. This appeal falls to be determined on the basis of the circumstances that currently apply. The adopted housing requirement was adopted in 2008 and so is more than five years old. The *Framework* states that where strategic policies are more than five years old the 5YHLS should be assessed against local housing need, which footnote 37 specifies should be calculated using the standard method set out in national planning guidance. I find no grounds here for an exception to paragraph 73 of the *Framework* and agree with the appellant that the standard method should apply.

37. In terms of housing supply at 1 April 2019, CBC found at the Inquiry that it was 6,035 dwellings; whereas the appellant found 4,613. With a five-year requirement against the standard method CBC considered that there was a surplus of 334 dwellings (5.3 years supply), and the appellant considered that there was a shortfall of 1,088 dwellings (4.05 years supply). The difference derived from interpretation of the threshold for inclusion of a site within the 5YHLS, the nature of the evidence required to demonstrate that sites fall within this threshold, and the categories of sites that may do so.
38. The glossary to the *Framework* defines 'deliverable' sites for housing. Sites 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. The definition adds that: In particular: (a) sites which do not involve major development and have planning permission, and all 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; (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
39. There was a dispute at the Inquiry about whether (a) and (b) above are closed lists. Appeal decisions were submitted which appear to take different approaches to this question, possibly because they reflected the policy and guidance that applied at that time. The judgment in *St Modwen* supports in principle the inclusion within 5YHLS of sites without the benefit of planning permission in accordance with the former version of the *Framework*. Whether such sites, including emerging allocations, should be included was considered to be fact-sensitive. The appellant argues that it would be misguided now to rely on *St Modwen* given more recent changes to the *Framework* and *Guidance*.
40. The July 2019 revisions to the *Guidance* do not change the provisions of the *Framework*, but it seems to me that the revisions clarify that the list (a) sites are considered to be deliverable in principle, whereas list (b) sites require further evidence. The *Guidance* now states that the evidence to demonstrate deliverability may include; current planning status, firm progress towards the submission of an application or with site assessment work, or clear relevant information about site viability, ownership constraints or infrastructure provision.
41. I concur with the agreed position of the parties that where planning permission is granted after the base date for a site not already included in the deliverable supply it cannot subsequently be added until the next Annual Position

Statement is published.<sup>12</sup> The appellant is concerned that reliance on sites without planning permission would involve the pre-determination of applications. However, a finding for the purposes of a 5YHLS assessment that a site was available now, offered a suitable location for development now, and with a realistic prospect that housing will be delivered on the site within five years, would in no way fetter the local planning authority's discretion in determining an application on its merits.

42. With these observations in mind, I turn next to consider the sites where policy compliance was disputed by the parties, which were discussed at a round-table session of the Inquiry.<sup>13</sup>
43. For Avon Way House (CBC 152 units/appellant 62 units) each unit would have an en suite bathroom and kitchenette, with a large kitchen on each floor shared by 12 units. A large communal kitchen would not be necessary if the units provided all the facilities that would be required by students. The available evidence does not demonstrate that the units would fully function as an independent dwelling. I prefer the appellant's evidence and find that this site should only contribute 62 units towards the 5YHLS assessment.
44. The Land north of Magdalen Street site (60/0) is the subject of an application to increase the number of dwellings from that permitted by the extant hybrid permission. There does not appear to be any infrastructure or ownership constraints. I am satisfied that CBC has submitted clear evidence that the site is available, in a suitable location, and achievable within five years. There is also sufficient evidence to demonstrate that the site at Land east of Hawkins Road (113/0) meets the *Framework* definition of 'deliverable'.
45. There is evidence that the development of the University of Essex site (500/0) will be achievable with a realistic prospect that dwellings that make a contribution to the supply will be delivered on the site within five years. But it is not clear what the appropriate conversion rate would be for student accommodation. In the absence of more details it is not possible to determine the likely precise contribution from this development. For the purposes of this 5YHLS assessment I have therefore applied a range from 0-500 units.
46. On the evidence adduced, I do not consider that the following sites satisfy the *Framework* definition of 'deliverable'; Wyvern Farm Phase 2 (100/0), Garrison Development K1 (26/0), Military Road (12/0), Creffield Road (10/0), Chitts Hill (100/0), Mill Road/Northern Gateway (150/0), Gosbecks Phase 2 (150/0) and Eight Ash Green (100/0). The appellant has some reservations about CBC's windfall allowance, but on the available evidence I am satisfied that this is a reasonable estimate.
47. It is not possible to be precise about the likely shortfall, but from the information currently available it would appear to be between 400 and 900 dwellings, depending upon the contribution from the University of Essex site. Taking all the above into account, I find that CBC cannot demonstrate a five-year supply of deliverable housing sites, and that the shortfall is significant. The appeal scheme would make an important contribution to boosting housing supply in the Borough, and provision of 30% affordable housing would be particularly beneficial where there is a demonstrated need.<sup>14</sup>

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<sup>12</sup> ID7a paragraph 4.12.

<sup>13</sup> ID10 and ID12.

<sup>14</sup> CS Policy H4 seeks to secure 20% affordable housing. The 30% provision proposed would accord with the requirement in the eLP.

*Other matters*

48. There is local concern about the likely traffic impact of the proposal. However, I am satisfied that the technical evidence submitted indicates that with the imposition of appropriate planning conditions the scheme would not have an unacceptable adverse effect on highway safety.
49. I have taken into account the Transport Assessment and Travel Plan. Given the local services and facilities available in the village, and subject to the provision of appropriate pedestrian and cycle links, I do not consider that the proposed development would be an unsustainable location for up to 97 dwellings. The scheme would not result in an unacceptable reliance on the private car.
50. The construction of up to 97 dwellings would provide employment and so benefit the economy.<sup>15</sup> Future residents would also make a significant contribution to the local economy of the village.
51. The scheme would provide 1.35 ha of on-site open space, which would be beneficial for the village. The parties agree, and I concur, that in combination with other projects and plans, the appeal scheme could result in a likely significant effect upon a designated European site, but subject to on-site mitigation and a Natura 2000 financial contribution, I am satisfied that the proposal would not have an adverse effect on the integrity of any European site.<sup>16</sup>
52. The appellant considers that the proposal would provide an opportunity to secure a net gain in biodiversity. However, on-site provision for nature conservation would be primarily necessary mitigation, and at this outline stage it is not possible to quantify any net gain.<sup>17</sup> In the absence of measures which would secure nature conservation benefits, I find that the planning balance here should record that the development would, overall, have a neutral or marginal effect on biodiversity.
53. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusion.

*Planning balance and policy*

54. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The appellant accepts that the proposed development does not accord with the development plan. However, the weight to be given to this conflict is affected by the consistency of relevant policies with the *Framework*.
55. Policy SD1 of the CS contains some provisions which are generally consistent with the *Framework*, but the housing requirement, which forms the basis for the housing delivery strategy, is outdated. CS Policy ENV1 is a dominant policy here because it deals with unallocated land outside the settlement boundary. Its provisions concerning the protection and enhancement of the countryside and strict control of development go beyond the balanced approach set out in the *Framework*. This balance requires decisions to contribute to and enhance

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<sup>15</sup> The appellant states that construction spend of £9.5 million would produce 82 FTE over a three-year build period and an additional 87 FTE in indirect jobs.

<sup>16</sup> SoCG2.

<sup>17</sup> SoCG1 states that new planting could assist in delivering an overall enhancement in the arboricultural resource of the site, and that wooded belts and an off-site stream would be retained and protected, with some compensatory and additional planting proposed to provide a net gain of their habitats.

- the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside, but in the overall context of the *Framework*, which includes the importance of a sufficient amount and variety of housing land coming forward where it is needed. Policy DP14 is also inconsistent with the *Framework's* provisions for balancing harm to heritage assets against benefits. I find that relevant policies here are out of date.
56. *Framework* paragraph 11(d) is engaged here by virtue of both the absence of a demonstrated 5YHLS and because the policies which are most important for determining the appeal are out-of-date. CBC argues that the proper application of *Framework* policies protecting designated heritage assets provides a clear reason for refusal in accordance with paragraph 11(d)i. I have given considerable importance and weight to the likely harm to the nearby listed buildings. However, in my judgement, the public benefits of the proposed development in terms of its contribution to housing provision, especially affordable housing, and to the local economy, along with a minor benefit in terms of open space provision, would be sufficient to outweigh the harm I have identified to heritage assets. The application of *Framework* policies concerning designated heritage assets does not, therefore, provide a clear reason for refusing the development proposed.
57. *Framework* paragraph 11(d)ii. applies here. This requires all the adverse impacts, including the harm to heritage assets, to be weighed against all the benefits of the proposal in a tilted balance. Given the size of the housing shortfall the contribution of up to 97 dwellings would be a significant benefit to local housing provision. The provision of 30% affordable housing in accordance with the eLP would be especially beneficial given the need. In this case these housing benefits attract significant weight. To this must be added the contribution of the scheme to the local economy and the minor benefit from additional open space available to the village. Any nature conservation enhancement on-site would be primarily required mitigation for the overall effects of the proposal on biodiversity and is at this stage unquantified. Potential wildlife benefits cannot be given much weight in the planning balance.
58. The appellant has understated the adverse impact to the character and appearance of the area, especially so regarding the harm that would result from increasing the sense of coalescence between West Bergholt village and Braiswick. The scheme would, for the reasons set out above, significantly reduce the apparent separation between these two settlements, impairing their separate identities and resulting in substantial harm to the local landscape. This is a consideration which weighs heavily against the proposal. Considerable importance and weight should be given to the harm I have identified to heritage assets in this balancing exercise. Taking all these considerations into account, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole.
59. The emerging WBNP is a material consideration in this case, although it cannot at this stage be given full weight. The proposal would be at odds with the aims of the WBNP concerning protection of the separate identity of the settlement. Furthermore, I have no reason to doubt that the allocated housing sites in the WBNP would be likely to come forward for development, and so the further addition of up to 97 dwellings from the appeal scheme would far exceed the minimum 120 dwellings set out in the WBNP as indicative of the appropriate scale of growth here. The WBNP has been examined and is to be the subject of

a referendum in the near future. Permitting a scheme that would be in direct conflict with what are key elements of the strategy underlying the emerging WBNP would undermine confidence in the planning process. This also weighs against the proposal and tips the balance even further against allowing the appeal.

60. The eLP cannot be regarded to be at an advanced stage given the issues involved in the further work to be undertaken before the resumption of the examination.<sup>18</sup> I find no justification for dismissing the appeal on the grounds of prematurity in respect of the eLP.

### **Conditions**

61. This is an outline application with all details except for access reserved. I have taken into account the suggested planning conditions and the obligations. However, I am not satisfied that if outline planning permission were to be granted there would be a reasonable prospect of designing a policy-compliant scheme for up to 97 dwellings on the appeal site.

### **Conclusion**

62. The proposal would conflict with the development plan. The planning balance which applies here falls significantly and demonstrably against the proposal. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed, and outline planning permission refused.

*John Woolcock*  
Inspector

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<sup>18</sup> CD9.10.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles  
of counsel

Instructed by Karen Syrett  
Place and Housing Manager CBC

He called

Catherine Bailey BSc (Hons) MPhil  
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### FOR THE APPELLANT:

John Barrett  
of counsel

Instructed by Christopher Ball

He called

Silke Gruner BHons Landscape  
Architecture CMLI

Associate Landscape Architect and Urban  
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Gail Stoten BA (Hons) MCIfA FSA

Heritage Director Pegasus Planning Group

Neil Tiley Assoc RTPI

Director Pegasus Group

Christopher Ball BSc (Joint Hons)  
MURP MTP MRTPI

Planning Director Gladman Developments Ltd

### INTERESTED PERSONS:

Bob Tyrell  
Brian Butcher

West Bergholt Parish Council  
West Bergholt Parish Council

### DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1	<i>St Modwen Developments Ltd and SSCLG Case</i> No:C1/2016/2001
Document 2	Opening on behalf of the appellant
Document 3	Notes for opening on behalf of CBC
Document 4	Unilateral planning obligation dated 17 June 2019
Document 5	Statement by West Bergholt Parish Council including Appendices A-D
Document 6	Petition for the rejection of Gladman Homes Appeal
Document 7a	Statement of Common Ground on Housing Land Supply dated 14 May 2019
	7b Floor plans student accommodation Avon Way
Document 8	<i>Jones and Howe v North Warwickshire BC</i> [2001] EWCA Civ 315
Document 9a	West Bergholt Parish Council's view 'Where the village starts'
	9b Views from Truman's Brewery into appeal site
	9c Letters from owners of WBNP sites A and B

Document	10	CBC's position on sites 1-13 and windfalls not agreed with attachments for Avon Way Magdalen Street Garrison K1 Creffield Road Military Road Wyvern Farm University of Essex Great Wigborough Northern Gateway/Mill Road Gosbecks Chitts Hill
Document	11a	Draft text for consultation National Planning Policy Framework
	11b	Government response July 2018
Document	12	Schedule on Deliverable Sites with attachments 1-8
Document	13	Revisions to the NPPG 09/05/19 – Neighbourhood Planning Guidance
Document	14	Email dated 14 May 2019 concerning time estimates for Creffield Rd and Military Rd sites
Document	15	Plan showing University site
Document	16	Colchester Northern Gateway Master Plan Vision Review
Document	17	CBC 2019 Housing Land Supply Annual Position Statement
Document	18	Note on Heritage and Archaeology assessments of the Neighbourhood Plan sites proposed for allocation
Document	19	Report for revised application for conversion of part of former Maltings to 13 flats
Document	20a	Appeal form APP/A1530/W/18/3209603
	20b	Appeal form APP/A1530/W/18/3211685
Document	21a	CIL Compliance Schedule
	21b	Email dated 17 May 2019 from Essex CC confirming education contribution
Document	22	Note from CBC about permitted development and windfalls
Document	23	Officer Report for application for 26 dwellings adjacent to Armoury Road
Document	24	Note on University of Essex 1250 bed spaces of student accommodation with email dated 9 May 2019 concerning pre-application request and preparation of a Transport Statement
Document	25	Note from Mr Tiley in response to additional evidence on pd rights
Document	26	Drawing 1879-F05 Proposed access arrangement with loss of current hedgerow illustrated
Document	27	Suggested planning conditions
Document	28a	Closing statement of West Bergholt Parish Council
	28b	Proposed amendments by WBPC to suggested conditions
Document	29	Closing submissions on behalf of CBC
Document	30	Closing on behalf of the appellant
Document	31	SoCG in relation to frontage hedgerow along Colchester Road dated 21 May 2019
Document	32a	West Bergholt Parish Council comment on ID31
	32b	West Bergholt Parish Council comment on section 106 obligation
	32c	West Bergholt Parish Council note on error on access Drawing 1879-F05
Document	33	Examination Report West Bergholt Neighbourhood Plan dated 26 May 2019
Document	34a	Frinton-on-Sea appeal decision APP/P1560/W/18/3196412
	34b	Comment on Frinton-on-Sea appeal by appellant dated 24 June 2019
Document	35	West Bergholt Parish Council comment on WBNP Examiner's Report

Document	36	CBC submissions on the implications of the WBNP Examiner's Report including Decision Statement
Document	37	Appellant's comments on WBNP Examiner's Report
Document	38	Note on revisions to NPPG July 2019 CBC submitted 8 August and 15 August email
Document	39a	Update note to reflect revisions to the PPG on the historic environment by appellant
	39b	Update note to reflect the revisions to the PPG by appellant

## PLANS

Plan	A	Site Location Plan Drawing Ref CSA/3447/107
Plan	B	Proposed Site Access Junction with Ghost Island Right Turn Lane Arrangement Drawing Ref 1879-F01
Plan	C	Proposed Access Arrangement Drawing Ref 1879-F04 Rev A

## CORE DOCUMENTS

CD1	Application Documents	
	1.01	Application Covering Letter, Application Form and Certificates
	1.02	Location Plan
	1.03	Development Framework Plan
	1.04	Planning Statement
	1.05	Design and Access Statement
	1.06	Landscape and Visual Impact Assessment
	1.07	Transport Assessment
	1.08	Travel Plan
	1.09	Ecological Impact Assessment
	1.10	Arboricultural Assessment
	1.11	Flood Risk Assessment
	1.12	Phase 1 Environmental Report
	1.13	Air Quality Assessment
	1.14	Noise Assessment
	1.15	Heritage and Archaeological Statement
	1.16	Foul Drainage Analysis
	1.17	Utilities Appraisal
	1.18	Socio-Economic Sustainability Statement
	1.19	Statement of Community Involvement (SCI)
	1.20	Topographical Survey
	1.21	Health Impact Assessment
	1.22	Affordable Housing Statement
CD2	Additional & amended Reports submitted after validation	
	2.01	CSA Environmental's Landscape Rebuttal (25/01/2018)
	2.02	Geophysical Survey Report (01/03/2018)
	2.03	Zone of Theoretical Visibility Study (16/05/2018)
CD3	Correspondence with Local Planning Authority	
	3.01	GDL Chasing update on application

	3.02	Extension of Time
	3.03	GDL Update letter (27/6/18)
	3.04	SuD's email chain
	3.05	ZTV email chain
	3.06	GDL Update
	3.07	GDL requested update meeting to discuss Braiswick decision
	3.08	Education email chain
	3.09	GDL respond to Landscape officer's comments
	3.10	GDL confirmation of Noise mitigation
	3.11	CBC confirmation Trail Trenching to take place post determination
	3.12	Application Receipt: Form 5 Collect proposal PP-06552009v1
	3.13	Pre App correspondence
	3.14	Pre App - Case Officer comments
	3.15	Pre App - Landscape comments
	3.16	Pre App - Archaeology comments
	3.17	Pre App - Spatial policy comments
	3.18	GDL forward Public consultation leaflet to CBC
CD4	Consultation Responses	
	4.01	Contamination Land Officer - 5.12.17
	4.02	CBC Archaeologist - 7.12.17
	4.03	Natural England - 7.12.17
	4.04	Environment Agency - 8.12.17
	4.05	Environmental Protection: Air Quality & Noise - 18.12.17
	4.06	Anglian Water - 8.1.18
	4.07	Essex CC (Education) - 30.1.18
	4.08	West Bergholt PC - 31.1.18
	4.09	Essex CC (Education) Update - 1.5.18
	4.10	Essex CC SuDs - 14.5.18
	4.11	Landscape - 22.5.18
	4.12	CBC Policy - 24.5.18
	4.13	Archaeology - 16.3.18
CD5	Validation, Committee Report and Decision Notice	
	5.1	Validation Letter
CD6	Additional Consultation Responses	
CD7	Post Appeal Correspondence	
CD8	Development Plan	
	8.01	Colchester Core Strategy 2008, updated 2014
	8.02	Development Policies DPD 2010, updated 2014
	8.03	Site Allocations DPD 2010
	8.04	West Bergholt Inset Map (2010)
	8.05	Colchester Core Strategy 2008 - Inspector's Report (October 2008)

	8.06	Colchester Core Strategy 2008 - Focussed Review Inspector's Report (May 2014)
CD9	Emerging Development Plan	
	9.01	Publication Draft of the Colchester Borough Local Plan 2017-2033
	9.02	Emerging Policies Map - West Bergholt
	9.03	Inspector's Section 1 Supplementary Post Hearing Letter to NEAs (8th June 2018)
	9.04	Inspector's Section 1 Housing Requirement Letter to NEAs (27 June 2018)
	9.05	NEAs Letter to Inspector (19 October 2018)
	9.06	Inspector's Section 1 Response to NEAs (21 November 2018)
	9.07	NEAs Clarification & Timetable letter to Inspector (30 November 2018)
	9.08	Inspector's response to NEAs - Pausing the Examination (10 December 2018)
	9.09	Emerging Colchester Local Plan - Draft West Bergholt Inset Map
	9.10	Inspector's letter to the NEAs on 2 August 2018 clarifying his interpretation of the three Options
	9.11	West Bergholt Neighbourhood Plan Final Submission Draft Dec 18 (Regulation 16)
	9.12	West Bergholt Neighbourhood Plan Consultation Statement V2
	9.13	Appendix 1 Map PP13/1 Settlement Boundary
	9.14	Appendix 1 Map PP13/2 Proposed Development Allocations
	9.15	Appendix 1 Map PP22 Coalescence
	9.16	Appendix 2 Consultation Report on Surveys carried out at key stages of WBNP
	9.17	Appendix 2 West Bergholt Village Design Statement 2011
	9.18	Summary and response to WBNP Regulation 16 Consultation
	9.19	West Bergholt Neighbourhood Plan Basic Conditions Statement December 2018
	9.20	Representation Received to DM16 publication draft Colchester Local Plan 2017-2033
CD10	Evidence Base	
	10.01	CBC Landscape Character Assessment
	10.02	Colchester Historic Characterisation Report 2009
	10.03	Landscape Capacity of Settlement Fringes (Report and Figures)
	10.04	Review of Countryside Conservation Areas Final Report and Figs 2005
	10.05	CBC Five-Year Housing Land Supply Statement (July 2018)
CD11	Relevant Appeal Decisions	

	11.01	Land on east side of Green Road, Woolpit, Suffolk
	11.02	Land at Pulley Lane, Newland Road and Primsland Way
	11.03	Land south of Greenhill Road, Coalville
	11.04	Land off Bakers Lane, Braiswick
	11.05	Land to the south of Bromley Road, Ardleigh
	11.06	Land between Iron Acton Way and North Road, Engine Common
	11.07	Land south of Filands, Malmesbury
	11.08	Entech House, London Road, Woolmer Green
	11.09	Land off Langaller Lane, Creech St Michael
	11.10	Land to the rear of the Old Red Lion, High Street, Great Missenden
	11.11	Land off Luton Road, Offley, Hitchin
	11.12	Land at Melton Road, Rearsby, Leicestershire
	11.13	Land off Colchester Road, Bures
	11.14	Virley Cottage, Colchester Road, Wakes Colne
CD12	Relevant Judgments	
	12.01	Wainhomes (South West) Holdings Limited vs the Secretary of State [2013] EWHC 597 (Admin)
	12.02	East Northamptonshire District Council v SSCLG (2015) EWCA Civ 137
	12.03	Jones v Mordue Anor (2015) EWCA Civ 1243
	12.04	Catesby Estates Ltd v. Steer, EWCA Civ 1697, 2018
	12.05	EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council
	12.06	South Lakeland District Council Appellants v Secretary of State for the Environment and Another Respondents, [1992] 2 A.C. 14
	12.07	EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle
	12.08	Crane v SSCLG [2015] EWHC 425 (Admin)
	12.09	Whitby v Secretaries of State for Transport and Communities
	12.10	Local Government and Network Rail Infrastructure Limited [2016] EWCA Civ 444
CD13	Other	
	13.01	Pre-application advice received from Colchester BC (15/11/2017)
	13.02	Appellant's letter to Case Officer (27/06/2018)
	13.03	Appellant's submission to the West Bergholt Neighbourhood Plan Reg 14 consultation
	13.04	PPG 'Conserving and enhancing the historic environment'
	13.05	Historic England, 2015, Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment.

	13.06	Historic England, 2017, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets
	13.07	English Heritage 2008 Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment
	13.08	Appellant's submission to the West Bergholt Neighbourhood Plan Reg 16 consultation
	13.09	BLANK
	13.10	Appellant email response to the Case Officer (11/07/2018)
	13.11	Appellant letter to the Case Officer (24/07/2018)
	13.12	Essex CC Highways - Email (14 August 2018)
	13.13	Essex CC Highways - Consultee response (17 September 2018)
	13.14	BLANK
	13.15	Appellant's representations on Regulation 19 version of the emerging Colchester Local Plan