



Appeal Decision

Hearing held on 5 July 2016

Site visit made on 6 July 2016

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 1st August 2016

Appeal Ref: APP/X1545/W/15/3132936

Fields at Theedhams Farm, Southminster, Essex CMO 7BD

- 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 L.A. Sibley Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/14/00613, dated 10 June 2014, was refused by notice dated 8 May 2015.
 - The development proposed is creation of a new northern bypass/link road. Conversion of Steeple Road to a cul-de-sac. Residential development of approximately 3 hectares, for 94 houses in total, including 28 affordable houses and all associated works. The provision of new public open space. The allocation of 0.275 hectares of land reserved for the provision of a medical centre.
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Decision

1. The appeal is allowed and outline planning permission is granted for 'creation of a new northern bypass/link road. Conversion of Steeple Road to a cul-de-sac. Residential development of approximately 3 hectares, for 94 houses in total, including 28 affordable houses and all associated works. The provision of new public open space. The allocation of 0.275 hectares of land reserved for the provision of a medical centre,' at Fields at Theedhams Farm, Southminster, Essex CMO 7BD, in accordance with planning application Ref OUT/MAL/14/00613, dated 10 June 2014, subject to the conditions set out in Annex A to my Decision.

Procedural Matters

2. I have used the Council's description of development, as agreed by the two main parties at the Hearing, as this more accurately describes the appeal development.
 3. The submitted section 106 agreement was not complete at the Hearing. Further, the Council's housing officer's comments were not fully reflected in it. In agreement with the two main parties I therefore adjourned the Hearing on the day and allowed one week for the submission of a revised and completed section 106 agreement. On receipt, the Hearing was closed in writing.
 4. The Council confirmed that the indicative masterplan attached to the Landscape and Visual Impact Assessment (LVIA) as appendix SJN 05 was not before the Council when it made its decision. However, it was before the Hearing and therefore I have taken it into account in making my decision. It was confirmed that it was for illustrative purposes only and I have made my decision accordingly.
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5. A proposed road layout is set out on plan 3a, which forms part of the appeal application. It was agreed at the Hearing that this was also for illustrative purposes only and I have made my decision in light of this.

Application for costs

6. At the Hearing an application for costs was made by L.A. Sibley Ltd against Maldon District Council. This application is the subject of a separate Decision.

Main Issues

7. Reasons for refusal relating to the provision of a sustainable urban drainage system, affordable housing and other measures to overcome the consequential effects of development, along with educational provision in primary schools in the area have been withdrawn by the Council. In light of this, my main issues are the effect of the appeal proposal on the character and appearance of the locality and in light of this whether it would constitute a sustainable form of development as defined throughout the National Planning Policy Framework (the Framework).

Reasons

Background and Emerging Planning Policy

8. Policies S8 and D1 of the emerging Maldon District Local Plan (eLP) support sustainable development within settlement boundaries and aim for new development to respect and enhance the character and local context. The eLP went through examination last year and that Inspector found it unsound, on the basis of eLP Policy H6, relating to provision for travellers. However, a new Inspector has now been appointed. Even though the policies identified were the subject of Hearings as part of the initial examination, the new Inspector, in a letter dated 7 April 2016, confirmed his intention to explore further some of the issues debated in the previous Hearings, including those relating to housing. Further, the Rural Sites Allocations Document is still under preparation. Even though the Council has the view that there were no outstanding objections to eLP Policies S8 and D1, for the above reasons, there is still some uncertainty surrounding those policies. Having regard to the advice set out in paragraph 216 of the Framework, little weight can be accorded to them. In coming to this judgement, I have taken into account the views of a Colleague in addressing the weight to be attached to the policies of the eLP and I have generally concurred with his findings. (Ref APP/X1545/W/16/3144899).

Character and Appearance

9. The appeal site does not fall within any formal landscape designation. However, a number of landscape character assessments were referred to in the evidence¹. On the basis of those, in addition to my own observations, I consider that the character and appearance of the locality is generally semi-rural comprising open fields with development close by, much of which is residential. The landscape is undulating and has a contained feel due to this, with small to medium sized fields and hedged boundaries that, together with the roads, generally follow a co-axial pattern; a pattern that relates to its Saxon origins. The appeal site is an undeveloped field with hedged boundaries.

¹ Proof of Mr Neesam

Its undeveloped appearance and straight edged borders contribute to the character and appearance of the locality that I have identified.

10. The development of the appeal site, in the manner envisaged, would result in housing development on an undeveloped field. Some harm to the semi-rural character and appearance of the locality would result therefore. However, the harm identified would be limited by a number of factors that I will go on to identify.
11. It is common ground between the two main parties that it is located on the edge of Southminster and forms a part of the transition from urban to rural landscape. However, it is enclosed on some sides by existing development. This includes the houses on Steeple Road, frontage development on Scotts Hill Road and the more substantial development on the opposite side of that road and the barns and other development at Witchards Farm. The appeal site is well related to existing development therefore.
12. Further, whilst the appeal site land does rise to the north, it is generally set within an undulating landscape and therefore, long distance views of the appeal development would be limited. Moreover, due to frontage development on Scotts Hill Road, it would have limited impact on the character or appearance of that road or the entry experience into Southminster at that point. Whilst I accept that the edge of Southminster at this point is defined by the generally spacious development on Steeple Road, development on Scotts Hill Road is more urban and not sporadic as described by the Council. Rather, on the opposite side of Scotts Hill Road, referred to at the Hearing as Southfields, development has a more urban character and appearance and extends the developed part of Southminster further west. The appeal development would respect that westward edge and would neatly redefine the settlement edge.
13. However, notwithstanding that the appeal development would be mostly contained within the existing field boundaries, the proposed road at its northern point, would cut through the hedge line and would distort the co-axial field pattern, which is a tradition of this landscape. This would be reinforced by the proposed curved alignment of the by-pass road as indicated on plan 3a. However, the appeal development indicates that existing hedges are to be retained and reinforced, the details of which could be dealt with at a later stage. With substantial planting and hedgerow reinforcement, the effects identified would be significantly reduced. Whilst openings in some retained hedges would be inevitable if a single access development were to be avoided, as indicated in the indicative masterplan², detailed design could ensure that the hedges remained as landscape features, even if they had breaks in them.
14. As the proposed development could be partially screened by planting and would be close to existing development, the additional activity that would result would not be out of place. On the basis of that existing development, the levels of activity that would be likely to result would not adversely affect the tranquillity of the locality.
15. The appellant has carried out an LVIA, which it was confirmed at the Hearing took account, in its conclusions, of all Landscape Character Assessments it refers to. Generally, it supports the development proposed, concluding that when planting has matured in year 10, the effects on landscape character

² LVIA as appendix SJN 05

would reduce to moderate. In terms of visual impact, significant residual effects would be limited to views experienced from upper floor windows in properties on Steeple Road in year 10. Whilst the Council at the Hearing questioned some of the formal assessments made, no substantive evidence to the contrary was produced. All in all, for the reasons stated above, I generally concur with those findings.

16. It was suggested that mitigation rests on planting and no assurance is provided of the effect that would result from it. However, the appeal application is submitted in outline. Further, taking account of the existing landscape features, the characteristics of the appeal site and the locality generally, I see no reason why the adverse impacts on the character and appearance of the locality, of an appropriately designed scheme could not be mitigated through landscaping. The indicative masterplan gives me some assurance on this point. It demonstrates that development of the scale envisaged could be accommodated on the appeal site and could include a number of different accesses. I have no substantive evidence before me to suggest that the proposed solution would be a poor design, inward looking or a contrived and restricted layout.
17. In coming to the above judgement I have had regard to the views of my Colleagues in deciding appeals on land nearby. The Gladmans appeal (Ref APP/X1545/A/14/2224678) is in a different location and on higher ground. Long distance views of that appeal development would have been possible therefore and that site is crossed by a number of public Rights of Way. These matters differentiate it from this appeal.
18. In relation to the appeal on a nearby site which fronts Scotts Hill Road (Ref APP/X1545/A/05/1190945), that does not form part of this appeal site. It fronts onto Scotts Hill Road and includes the removal of farm buildings, the form and character of which it was considered contributed to the rural setting of Southminster. That decision was made prior to the publication of the Framework. Together, these matters differentiate that appeal from the one before me.
19. All in all, notwithstanding the matters addressed above, there would be some limited harm to the character and appearance of the locality. For this reason, it would fail to accord with Maldon District Replacement Plan (2005) (LP) saved Policies S2, H1, CC6 and BE1. These, together, seek, to protect the countryside, amongst other things, outside development boundaries, for its own sake, particularly the landscape, natural resources and areas of ecological, historical, agricultural and recreational value and restrict housing outside development boundaries, unless it complies with the other policies in the LP. They also aim for development to be compatible with its surroundings and in particular, outside defined development boundaries, to make a positive contribution to the landscape and open countryside and protect, conserve and enhance the natural beauty, tranquillity, amenity and traditional quality of the District's landscape. It would also fail to accord with eLP Policies S8 and D1.

Planning Obligation

20. A completed planning obligation is before me. The obligation relates to the provision of affordable housing; highway works; residential travel packs; open space; health care; provision of a site for a medical centre; and, education. I have no substantive evidence before me to demonstrate that a site for a

medical centre would relate in scale and kind to the development proposed and therefore this does not weigh in my decision. Notwithstanding this, from the evidence before me and that which I heard at the Hearing, I am satisfied that the other measures and contributions proposed are necessary to make the development acceptable in planning terms, are directly related to the proposed development and fairly and reasonably related in scale and kind to the appeal proposal. I have therefore found that they would satisfy the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (CIL Regs) and paragraph 204 of the Framework. It was also confirmed at the Hearing that, where relevant, they would accord with Regulation 123 of the CIL Regs. They have therefore been taken into account in the determination of this appeal.

Other Matters

21. A Transport Plan was submitted with the appeal application, which was assessed by the Highway Authority. It was found that the traffic impact and highway safety effects of the proposed development were acceptable. On the basis of the proposed road network and the traffic conditions that I observed in the locality, I have no reason to take a different view on this matter.
22. The proposed by-pass would be likely to result in some reduction in the amount of traffic travelling through Southminster and would impact on passing trade to shops and those selling goods in Steeple Road. However, the contribution to reducing congestion and increasing highway safety outweigh the concerns regarding loss of trade. I consider that there would still be a net advantage in its introduction. Even though it would not address other highway safety issues brought to my attention, including those due to the alignment of Steeple Road, this would still be the case.
23. Improvements to the existing sewerage network may be required. However, this could be dealt with at a later stage, controlled through a suitable planning condition. On the basis of the proposed attenuation basins as part of a drainage strategy, the details of which could be controlled through conditions, I agree with the Council on the matter of drainage. As the Environment Agency has not raised concern regarding flooding impact, on the basis of the evidence before me, I have no reason to take an alternative view.
24. There are concerns regarding inadequacy of application plans and inaccurate information regarding the appeal site's existing use and other matters. However, the appeal application is in outline, with all matters reserved and I find the submitted plans and information, together with the appeal evidence, both written and oral, and my observations on my appeal site visit, adequate to determine the matters under consideration at this stage. It is suggested that the consultation that took place as part of the appeal application was inadequate. However, the Council carried out consultations, which it is demonstrated in its Officer's report to committee dated April 2015, informed the Council's decision. The closure of Steeple Road may result in a reduction in passing traffic which may have an effect on the sale of merchandise sold for charity in one of the properties on that road and on the passing trade for shops in Southminster. However, this matter would be outweighed by its benefits.

Benefits of the Scheme

25. The proposed development would not be in accordance with saved LP Policies S2, H1, CC6 and BE1 as I have identified some limited harm to the character and appearance of the locality. Conflict with eLP policies identified, I have attached little weight to for the reasons set out in paragraph 8 to this Decision. In these circumstances, I will go on to consider whether there are other material considerations that outweigh the conflict with DP policy identified.
26. The provision of additional dwellings, some of which would be affordable dwellings, in a location that it is agreed between the two main parties, would both reduce the need to travel and facilitate the use of more sustainable modes of transport than the private car, is a material consideration, to which I attach significant weight in favour of the appeal. This is still the case even though the appeal site is located outside the development boundary of Southminster and the Council can demonstrate a five year supply of deliverable housing sites, in light of the objective of paragraph 47 of the Framework, to boost significantly the supply of housing.
27. The open space proposed would be a benefit to the wider community as well as prospective residents of the appeal development, even if it flooded at times. The appeal proposal would also provide short term jobs in the construction industry and longer term support for the local economy, events and local governance from the additional residents. To these matters, I attach moderate weight.
28. Turning to its environmental role, it would provide additional landscaping and would reinforce the existing hedges which would help to reinforce the edge to the settlement. I attach some weight to this benefit. It would provide a by-pass which would reduce traffic travelling through Southminster. Even though traffic would need to negotiate a tight bend, still there would be some benefit in highway safety terms of large vehicles avoiding the tight turn into Steeple Road from Scotts Hill. Whilst the proposed stopping up of Steeple Road would require a Stopping Up Order, such arrangements would be necessary for the proposed development to be carried out, which, if given the benefit of planning permission, is one of the considerations in making such an Order. On this basis, the uncertainty surrounding that issue is somewhat reduced. All in all, factoring in a little uncertainty to this benefit, I attach moderate weight.

The Planning Balance

29. At the heart of the Framework is a presumption in favour of sustainable development, which should be seen as the golden thread running through both plan making and decision taking.
30. I have set out the benefits of the appeal proposal against which the harm that I have found needs to be weighed. In this regard, I have identified that harm would result due to the loss of open space on the edge of the settlement. However, any harm to the character and appearance of the locality in this regard would be significantly reduced by a number of factors outlined earlier in my decision. I have accorded this matter limited weight.
31. In conclusion, the totality of the benefits that I have identified, to which I accord more than significant weight, would outweigh the limited harm to the character and appearance of the locality that I have identified. As a

consequence, I find that the appeal proposal would be sustainable development. For these reasons, material considerations indicate that planning permission should be granted for development that is not in accordance with the DP.

32. The appellant sets out that reduced weight should be accorded to Saved LP Policy S2 as it does not fully accord with the Framework. However, on the basis of my overall findings, I have no reason to assess this matter further, as it would not change the outcome of this appeal. I take the same view of the arguments I heard at the Hearing concerning the engagement of paragraph 14 of the Framework, in the circumstances of this appeal.

Conclusion

33. For the above reasons and taking into account all other matters raised, including those of third parties, I conclude that the appeal should be allowed.

Conditions

34. I have considered the conditions suggested by the Council to ensure consistency with paragraphs 203 and 206 of the Framework and Planning Practice Guidance: Use of Planning Conditions. Subject to minor revisions and simplifications I have agreed to most. For clarity and in the interest of proper planning I have imposed the standard commencement, compliance with approved plans and submission of reserved matters conditions. A condition to control phasing is required to ensure that amelioration and enhancement benefits are delivered to an appropriate timescale. A condition to ensure that the housing mix accords with the most up to date evidence is necessary to ensure that it meets the identified local need. Conditions covering parking, layout with regard to flooding, materials, landscaping, means of enclosure, height of dwellings or levels are not necessary as they are covered by reserved matters. Details of trees to be retained and their protection are necessary to ensure that the proposed development blends in. Details of a foul water drainage system along with a single simplified condition requiring an approved sustainable urban drainage system (SuDS), its future management, modelling of Asheldham Brook and measures to prevent off-site flooding during construction are necessary to prevent water runoff and flooding, along with a condition to ensure development does not occur in areas of the site that fall within floodzone 2 and 3. A Flood Response Plan (FRP) will ensure that future occupiers are aware of FRP. Conditions to ensure archaeological assessment and investigation are carried out are necessary to protect any archaeology present.
35. Conditions to manage and maintain the ecology of the site are required to ensure that the proposed development protects flora and fauna. To avoid light pollution, a condition to control street lighting is necessary. A simplified condition to ensure highway works are carried out is necessary in the interest of highway safety. To ensure bus stops are provided, a simplified condition in this regard is necessary. A construction method statement will ensure that development minimises inconvenience to local residents. Conditions to ensure provision is made during construction for ducting for broadband and air quality is not harmfully affected by the proposed development are necessary in the interest of public health and convenience. *R Barrett* INSPECTOR

ANNEX A

- 1) Details of the access, appearance, landscaping, layout, and scale, (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 not later than 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 hereby permitted shall be carried out substantially in accordance with drawing number 3A received on 27.02.2015 (Site Plan) and 1475/9 (Access Arrangements).
- 5) Prior to the commencement of development, precise written details of the proposed phasing of development, supported by a phasing plan shall be submitted to and be approved in writing by the local planning authority. The development shall proceed in compliance with the agreed phasing schedule as approved.
- 6) The reserved matters should accord with the most up to date Strategic Housing Market Assessment housing mix for market housing requirements unless otherwise agreed in writing by the local planning authority.
- 7) No existing trees within the site or overhanging the site shall be felled, cut back, damaged or removed, unless otherwise first agreed in writing with the local planning authority. No development shall commence until information has been submitted and approved in writing by the local planning authority in accordance with the requirements of BS5837:2012 in relation to tree retention and protection as follows:
 - tree survey detailing works required;
 - trees to be retained;
 - tree retention protection plan;
 - tree constraints plan;
 - arboricultural implication assessment;
 - arboricultural method statement (including drainage service runs and construction of hard surfaces);
 - trees offsite
- 8) No development shall commence until fencing and ground protection to protect the trees shall be erected, details to be submitted and approved as per BS5837:2012, and ground protection has been erected details of which shall have been submitted to the local planning authority for written approval. The ground protection shall be laid in accordance with British Standard BS5837:2012 (Trees in relation to construction). The protective fencing and ground protection shall be erected before the commencement of any clearing, demolition and building operations and shall be retained until all equipment, machinery and surplus materials have been removed from the site. If within five years from the completion of the development an existing tree is removed, destroyed, dies, or becomes, in the opinion of

- the local planning authority, seriously damaged or defective, a replacement tree shall be planted within the site of such species and size and shall be planted at such time, as specified in writing by the local planning authority.
- 9) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved. The development shall be carried out in accordance with the approved details and shall be maintained and retained in that form thereafter.
 - 10) Details of a surface water drainage scheme, including means of attenuation and disposal of surface water from the site, the use of SuDS, an implementation time table and future management of the scheme, shall be submitted to and approved by the local planning authority before development is commenced and shall be carried out in accordance with the approved details.
 - 11) Modelling of the Asheldham Brook downstream of the existing on-site culvert must be carried out and submitted as part of any reserved matters planning application and before any work commences on site. It must be demonstrated through modelling that the proposed new on-site culvert should be sized accordingly to ensure that there is no negative on-site or off-site impact with regards to flood risk. The construction of the culvert must be agreed in writing with the local planning authority in consultation with the Environment Agency. Details shall include its future management and maintenance. The culvert shall only be constructed in accordance with the details as approved prior to the first occupation of the appeal development. It shall be managed and maintained at all times thereafter in accordance with agreed details.
 - 12) No works shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works has been submitted to, and approved in writing, by the local planning authority. The scheme shall be implemented as approved prior to development commencing.
 - 13) Prior to commencement of the development, a detailed Flood Response Plan shall be submitted to and approved in writing by the local planning authority. The approved Flood Response Plan shall be made available to all prospective occupiers prior to their first occupation of any dwelling.
 - 14) No development including any site clearance or groundworks shall take place within the site until an archaeological assessment by an accredited archaeological consultant has been submitted to and agreed in writing with the local planning authority. Such archaeological assessment shall inform the implementation of a programme of archaeological work (referenced in Condition 15 below). The development shall be carried out in a manner that accommodates such an approved programme of archaeological work.
 - 15) In the event that archaeological remains are identified in the assessment required by Condition 14, no development including any site clearance or groundworks of any kind shall take place within the site until the implementation of a programme of archaeological work from an accredited archaeological contractor is secured. The development shall be carried out

in a manner that accommodates the programme of archaeological work approved under Condition 14.

- 16) No development shall commence until an up to date detailed comprehensive ecological survey of the site has been undertaken with the results of the survey submitted to and approved in writing by the local planning authority along with details of the provision and implementation of ecological mitigation to protect any protected species if found to be present. The development shall be carried out and completed in accordance with the approved mitigation scheme.
- 17) With the exception of domestic garden/security lighting for each dwelling no development shall commence until a lighting strategy for the development to include the details of any street lights has been submitted to and approved in writing by the local planning authority. The approved arrangements shall be implemented prior to the first occupation of any dwelling and once implemented shall be retained in accordance with the approved scheme.
- 18) No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for the following all clear of the highway:
- safe access into the site;
 - parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - wheel and underbody washing facilities;
 - signing of footpaths.

The approved Statement shall be adhered to throughout the construction period.

- 19) Prior to first occupation of any dwelling details of the provision of highway works as shown on COTTEE drawing no.1475/9, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details prior to the first occupation of any dwelling and retained as such thereafter.
- 20) The scheme to be submitted pursuant to the reserved matters shall include details of the provision and location of two new bus stops on the link road, as shown in principle on COTTEE drawing no.1475/9, subject to a Stage 1 Road Safety Audit. The development shall be carried out in complete accordance with the approved details prior to the first occupation of any dwelling hereby permitted, and shall be retained as such thereafter.
- 21) Prior to the commencement of development, a written assessment to determine the effect of traffic generated by the proposed development on the Air Quality Objectives included in the Air Quality Regulations 2000 and the Air Quality (Amendment) Regulation 2002 for the purposes of Local Air Quality Management (LAQM) shall be submitted to and approved in writing by the local planning authority. The assessment should cover the local road network with specific reference to the B1018 through Latchingdon and offer mitigation of the effects of the development on air quality. The

development shall be carried out in complete accordance with the approved scheme and retained as such thereafter.

- 22) No development shall commence until a strategy to facilitate superfast broadband for future occupants of the site shall be submitted to and approved in writing by the local planning authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the local planning authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy.

Richborough Estates

ANNEX B

APPEARANCES

FOR THE APPELLANT:

Trevor Dodkins MRTPI	Director Phase 2 Planning
Simon Neesam Member of the Landscape Institute	The Landscape Partnership
Brian Cottam	

FOR THE LOCAL PLANNING AUTHORITY:

Debi Sherman BA (Hons) MA MRTPI MILM	Principal Planner
Catherine Bailey BSc (Hons) M Phil MA Chartered Member of Landscape Institute	Countryside and Coast Major Applications Officer
Tim Parton	Spatial Planning Team Leader

INTERESTED PERSONS:

Councillor Brian S Beale MBE	District and Parish Councillor
Councillor Adrian Fulker	District Councillor

DOCUMENTS HANDED IN AT THE HEARING

- 1 E mail in support from Councillor Brian Beale
- 2 Council's response to costs application
- 3 Letter of support from Councillor Fulker
- 4 Maldon District Local Development Plan 2014 Schedule of Main Modifications
- 5 Updated list of suggested conditions (i)
- 6 Updated list of suggested conditions (ii)
- 7 Council's suggested revisions to draft S. 106
- 8 Appeal decision (Ref APP/X1545/W/16/3144899)