



Appeal Decision

Inquiry opened on 5 July 2016

Site visit made on 8 July 2016

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 6 September 2016

Appeal Ref: APP/P1560/W/15/3140113

Land east of Halstead Road, Kirby Cross, Essex CO13 0LA

- 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 Welbeck Strategic Land II LLP & Elizabeth Clarke against the decision of Tendring District Council.
 - The application Ref 15/01234/OUT, dated 13 August 2015, was refused by notice dated 7 December 2015.
 - The development proposed is erection of up to 240 dwellings with a community hub including either a 40-bed space care home (Class C2) or a healthcare facility (Class D1) together with accesses from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancements; a sustainable drainage system including detention basin and swales and other related infrastructure and services provision.
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Preliminary matters

1. The application was made in outline with all matters reserved except for access. Indicative 'parameters' drawings have been provided showing how the proposed internal roads and dwellings could be arranged and I have considered the appeal on this basis.

Decision

2. The appeal is allowed and planning permission is granted for erection of up to 240 dwellings with a community hub including either a 40-bed space care home (Class C2) or a healthcare facility (Class D1) together with accesses from Halstead Road, Woburn Avenue and Buckfast Avenue; a parking area for up to 30 vehicles; green infrastructure provision including children's play area, kick-about area, footpaths, structural landscaping and biodiversity enhancements; a sustainable drainage system including detention basin and swales and other related infrastructure and services provision on land east of Halstead Road, Kirby Cross, Essex CO13 0LA in accordance with the terms of the application, Ref 15/01234/OUT, dated 13 August 2015, subject to the conditions in the attached schedule.

Main Issues

3. On 2 February 2016, the Council resolved to withdraw 5 of the 6 original reasons for refusal. Having regard to that and all the representations, I consider that the main issues are as follows:
 - The purpose and role of 'green gaps' in development plan policy;
 - The effect of the proposed development on the character and appearance of the area; and

- Whether the proposed development would be acceptable, having regard to the economic, social and environmental dimensions of sustainable development.

Reasons

4. The site consists of just under 19 hectares (ha) of generally level arable land north of the built up area of Kirby Cross, a settlement west of the coastal towns of Frinton-on-Sea and Walton-on-the-Naze. Kirby Cross lies within the parish of Frinton and Walton and forms a western extension of the built up area of Frinton. Halstead Road extends north of Kirby Cross and links it to Kirby-le-Soken, a much older village. The B1033 running east to west through Kirby Cross provides the most practical route from Frinton and Walton to Clacton and towns to the west including Colchester.

Policy background

5. The development plan for the area includes the saved policies of the Tendring District Local Plan 2007 (LP). Policy QL1 sets out the spatial strategy for Tendring, saying that most new development will be concentrated at the larger urban areas of Clacton and Harwich and that in the smaller towns and villages, limited development consistent with local community needs will be permitted, concentrated within the settlement boundaries. For the purposes of the policy, Kirby Cross lies within the town of Frinton/Walton.
6. The Council does not object to the proposal on grounds of landscape character, which policy EN1 seeks to protect. Policy EN2 advises that land within Local Green Gaps will be kept open and essentially free of development, saying *'This is to prevent the coalescence of settlements, and to protect their rural settings. Minor development proposals may be permitted if they do no harm, individually or collectively, to the purposes of a Local Green Gap or to its open character. These may include the improvement of existing leisure and recreational facilities, and development for agricultural purposes. In Local Green Gaps, where resources and opportunities permit, the Council will encourage the improvement of public rights of way'*. The main function of the identified Green Gap between Frinton/Walton/Kirby Cross/Great Holland/Kirby-le-Soken and Holland-on-Sea, insofar as relevant to the appeal proposal, is to safeguard the identity, character and rural setting of Kirby-le-Soken and Great Holland as free standing villages in the countryside; and protect the remaining village character of Kirby Cross and its rural setting.
7. An emerging replacement development plan began in the form of the Tendring District Local Plan Proposed Submission Draft of 2012. This has evolved into the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document (LPPOCD) which was published in July 2016. Emerging policy PPL6 says that within what will be called Strategic Green Gaps, the Council will not permit any development which would result in the joining of settlements or neighbourhoods, or which would erode their separate identities by virtue of their closer proximity. Planning permission may be granted where:
 - a) the applicant can demonstrate that there is a functional need for the development to be in that specific location and that it cannot be delivered on an alternative piece of land outside of the Strategic Green Gap;
 - b) the development would not compromise the open setting between settlements or neighbourhoods; and

c) the development would involve the creation of Green Infrastructure which would support the continuing function of the Strategic Green Gap.

On 5 July 2016, the Council resolved to approve the LPPOCD and commence a period of consultation. Independent examination is expected to take place starting in May 2017. There is considerable uncertainty over what the finally adopted policies may say. There is no dispute that Tendring currently has a supply of housing land of only 3.2 years (in the context of a shortfall in 11 out of the last 15 monitoring years). In view of this, the draft policies of the LPPOCD can carry only very limited weight. Moreover, the appeal site, having been recommended for housing in the October 2014 report to the Local Plan Committee to contribute to an identified requirement for 12120 dwellings in the period 2014-2031, has been omitted from the LPPOCD, along with 8 other sites, on the ground that it is subject to appeal.

8. Paragraph 49 of the National Planning Policy Framework (the Framework) says that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Where policies are out of date, paragraph 14 says that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies indicate development should be restricted. It is common ground that LP policies Q11 and EN2 are relevant policies for the supply of housing for the purposes of paragraph 49. However, policy EN2 includes the objectives of preventing the coalescence of settlements, and protecting their rural settings, aims that are carried forward into the emerging LPPOCD. Policy EN2 attracts statutory weight insofar as the maintenance of a green gap and preventing coalescence is concerned¹.

The green gap; and the effect on character and appearance

9. The gap in question consists of open farmland between Kirby-le-Soken, Kirby Cross, and the residential hinterland of Frinton which has amalgamated with Kirby Cross. 20th century housing in all these settlements has encroached upon the countryside creating a somewhat ragged and arbitrary edge consisting mainly of the rear boundaries of gardens to bungalows with varying degrees of greenery. The site itself consists of part of a large field, amalgamated from several smaller units in the last century and bordering on Halstead Road. The removal of field hedges has enabled occasional views across to Hamford Water and the Stour estuary. Where views are available, some local occupiers have kept garden vegetation low, exposing the rear elevations of dwellings. Kirby-le-Soken lies on distinctly lower land which slopes down to the north towards the Hamford Water National Nature Reserve. This change in the landscape is reflected by the designation of the local landscape character around the village as *Coastal Slopes* (in the Tendring District Landscape Character Assessment of 2001). The area around the ridge and south to Kirby Cross is designated as *Clay Plateaux* and the appeal site is very much on this higher ground. The slope to the north becomes apparent after crossing the first field on leaving Kirby Cross on the footpath between Village Way and Buckfast Avenue that crosses the gap.
10. Halstead Road links Kirby-le-Soken and Kirby Cross and incorporates a distinct dog-leg adjacent to Hill Farmhouse, an 18th century (though probably originating from an earlier date) Grade II listed building in its own grounds. This building together with other nearby dwellings accessed off Halstead Road, such as Parkside, tend to provide a visual link between the settlements in terms of built form.

¹ Having regard to the Court of Appeal judgment in *Suffolk Coastal and Hopkins Homes* 2016 [EWCA] Civ 168

Moreover, a ribbon of housing development extends along Halstead Road northwards out of Kirby Cross. On the eastern side of the road, houses and gardens back onto a field for about 170 metres (m) and on the western side, a long row of houses including Kirby Primary Academy extends for more than 200 m backing onto countryside, well beyond Willow Farm. The perception of the green gap seen from Halstead Road and nearby footpaths is already considerably lessened by the intermediate houses and the ribbon development. Halstead Road is the point at which the settlements come closest together- a distance of about 406 m. On the opposite eastern side of the appeal site, Buckfast Avenue also extends into the fields, reducing the width of the gap to Kirby-le-Soken at this point to around 483 m.

11. The gap is much wider at the centre of the appeal site, where the existing distance between dwellings in Kirby-le-Soken and Kirby Cross is about 712 m. The proposed new houses would be located in this area between the ribbon development on Halstead Road and the back gardens of houses in Buckfast Avenue. There would be only a slight further incursion beyond the end of Buckfast Avenue and the new houses would still be well behind the ribbon development on the west side of Halstead Road; the remaining comparable gap to Kirby-le-Soken, after construction, would be about 489 m. I conclude that, from any public vantage point, there would not be a significant difference in the perception of a significant gap between the settlements. Seen from the rear gardens of houses in Kirby-le-Soken, the rising ground and the ridge, combined with intervening hedges and trees, would make the new houses very difficult to see. From Halstead Road, some dwellings and the proposed care home or health centre would be seen together with the access road and the new car park intended for parents of pupils at Kirby Primary Academy, but the additional infill to existing ribbon development on one side of the road would amount to only about 64 m and would not compromise the minimum gap.
12. Moreover, the scheme would incorporate a substantial area of green infrastructure in the form of public open space and planting which would significantly soften the edge of the built development, compared to the existing situation. The houses would be well behind the ridge and would be at a relatively low density of about 25 dwellings per hectare, commensurate with most of Kirby Cross. Bungalows are proposed along the whole of the edge of the built area where it meets countryside, further reducing the impact of built form on perception of the green gap. The layout would incorporate 'green fingers' facilitating swales which would carry away surface water in an arrangement sympathetic to the existing landform; this would further tend to reduce its visual impact.
13. There would be a noticeable deterioration in perception of the existing gap where infill would occur between Willow Farm and the ribbon development on the eastern side of Halstead Road, but this would not reduce the minimum gap to Kirby-le-Soken. Overall, I conclude that the site would be a natural extension of the built up area of Kirby Cross and would occupy an area already surrounded by development on most of 3 sides. The additional green space and planting would enhance the setting of Kirby Cross and existing field boundaries would be reinforced. The character and appearance of the area generally would not be compromised. The proposed expansion of Kirby Cross northwards would not affect the existing sense of a substantial degree of separation between settlements and would fall far short of any sense of 'merging'. However, none of this can hide the fact that by virtue of taking up a large part of a field in the green gap, the development would represent a conflict with the fundamental purpose of policy EN2.

Sustainability

14. The Framework advises that the environmental aspect of sustainability includes contributing to protecting and enhancing our natural, built and historic environment; economic and social gains should be sought jointly and simultaneously with environmental improvement. The scheme would incorporate improvements to the natural environment by means of hedgerow enhancement and the provision of green infrastructure. The development would be close to rail and bus links as well local services. The provision of housing including much needed affordable housing provides social gain because of the improvements in the quality of life, health, and well-being for those accommodated. Economic gain stems from the activity of construction and the increased use of local services. The quality of the built environment can be controlled by means of conditions. There would be a slightly less rural setting to the listed building at Hill Farm but the harm to its heritage significance would be negligible and 'less than substantial' in terms of the Framework. Whilst this attracts considerable weight and importance in the balance, it does not approach outweighing the benefits of the scheme. Overall, the proposed development would be sustainable in social, economic and environmental terms.

Other matters

Transport and highway safety

15. The B1033 through Kirby Cross carries virtually all through traffic coming and going from Frinton, Walton and Kirby-le-Soken travelling to Clacton and Colchester and beyond. Transport studies carried out on behalf of the appellant show that it is near saturation point in the mornings in particular, where it crosses a double 'mini-roundabout' at the centre of the village. I observed that even in relatively quiet daytime periods, there is a more or less constant flow west and eastwards. Routine events not taken account of in the study such as a lollipop lady stopping traffic between the 2 mini-roundabouts, or traffic congestion outside the shops in Kirby Cross, can cause immediate hold-ups in this flow which can take some time to disperse. Unexpected events such as buses waiting for customers or conforming to a timetable, breakdowns and road maintenance can add substantially to these delays. However I saw nothing that would be unusual in many other comparable suburban areas.
16. The studies carried out recognise that the introduction of a flow of new vehicles belonging to the occupants of houses in the western portion of the proposed development onto Halstead Road is likely to lead to severe delays where traffic attempts to join the B1033, amounting to a wait of more than 6 minutes at peak times. The proposed solution, which is accepted by the Highway Authority, Essex County Council and the District Council, comprises the introduction of an 'intelligent' traffic signal system which would stop through traffic on the B1033 long enough to release traffic from Halstead Road. The effect would be to allow the extra vehicles to be absorbed into the flow more efficiently and also cope with the predicted future increase in traffic generally.
17. I understand the concern of local residents that the current unregulated smooth operation of the mini-roundabouts would be interrupted by such a system. They refer to the generally unobstructed journeys they experience travelling to and from work and the lack of any traffic lights between Frinton and Colchester. However traffic is inevitably interrupted from time to time, because the B1033 operates close to capacity. I was told that delays can be tediously long in the summer when tourist traffic adds to the mix. A combination of unanticipated events, such as

heavy school traffic, bad weather or an accident, is likely to lead to long queues. Those risks will remain, whether this scheme proceeds or not.

18. What is important is whether, with improvements, the existing road network is capable of absorbing the additional traffic generated by this scheme and future growth from other sources without imposing a severe impact. It is not necessary to show that traffic will continue to flow in an unobstructed way- that is not happening a lot of the time now- but to demonstrate that the significant impacts of development can be limited to ensure that they would not be unacceptable. I accept that without a new traffic control at the Frinton Road/Halstead Road junction, and junction improvements at Holland Road/Thorpe Road, unacceptably severe cumulative delays would be likely, conflicting with the aims of paragraph 32 of the Framework. The intention is to install traffic signalling that will increase the overall capacity of the junction, with the ability to be adjusted to adapt to changing circumstances. That is very different to the type of controls used for road works, referred to by many as causing delays currently.
19. An additional advantage is that pedestrians and schoolchildren will be able to cross Halstead Road and/or Frinton Road safely at an important junction, to reach the chemist, Baker Community Hall or Kirby Primary Academy. The proposed new crossing point could be used by the lollipop lady with potentially less impact on congestion than in the current location between the two mini-roundabouts. Some regular travellers will experience a delay when the lights controlling the B1033 show red, but I have no reason to doubt the evidence that that the overall impact is very likely to be beneficial, including and mitigating for anticipated traffic from the appeal scheme. That is what the studies show; the Highway Authority agrees. I conclude that the potential impact on traffic density and highway safety on the B1033 do not form a reason for refusing planning permission.
20. Turning to the difficulties referred to by local residents at school times in Halstead Road outside Kirby Primary Academy, obstruction of the highway is a matter for the police. Recognising the congestion currently experienced and the potential for additional residents of the appeal scheme to add to that, the appellant is proposing to provide a car park immediately off Halstead Road for the use of parents dropping off and picking up children. However this is managed, it is likely to be used and would alleviate to some extent the problems experienced by local residents and bus drivers.
21. I have taken account of the problems anticipated by occupiers of houses in Elm Grove, Buckfast Avenue and Willow Avenue. These roads would carry additional traffic from 28 more houses if the scheme goes ahead. This would not be enough to severely affect levels of traffic in those roads, but there would be additional queuing where drivers wish to join busy traffic flows westwards on the B1033. It is my observation that regular breaks occur in that traffic from time to time. The additional vehicles would increase waiting times, but not to the extent that the effect would be severe.
22. An effective Travel Plan is essential if future occupiers of the proposed development are to reduce their use of private cars. In an area such as this, relatively close to schools and public transport, there is a very real prospect of behaviour change, particularly if sufficient incentives are offered. Taking all of the transport and highway safety matters together, whilst there would be an effect on traffic density and movement resulting from the development, the residual impacts would not be severe and there would be improvements in pedestrian safety.

Flooding

23. The proposed sustainable surface water drainage scheme would incorporate swales, check dams and a detention basin which would provide sufficient run off capacity to avoid the risk of flooding elsewhere, with an allowance for future climate change. Foul drainage would be provided by means of a new connection to the existing foul sewer well away from existing drains in Kirby Cross which are at capacity. There is no reason to doubt assurances that the Walton-on-the-Naze Water Recycling Centre has the capacity to deal with new flows from the site. I give little weight to the idea that risks of the sea breaching walls protecting the Water Recycling Centre should restrict granting planning permission; the protection of infrastructure of this kind is vital for the whole community.
24. There is nothing to suggest that interests of biological diversity would not be enhanced by this scheme, given the hedgerow improvements and new areas of public space replacing typical agricultural monoculture. It is proposed to assist bats and birds by means of providing nesting boxes.
25. A S106 Agreement has been provided which is intended to facilitate the provision of affordable housing, contributions towards education and healthcare, the provision and maintenance of public open space; and a residential travel information pack including bus vouchers. The Travel Plan can be required by imposing a condition. I consider that the provisions of the Agreement are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in Paragraph 204 of the Framework and Regulation 122 of the CIL Regulations (2010). As such I give the Agreement significant weight.
26. Many local residents are concerned about other matters including loss of views and pressure on public services and schools. A change in outlook will occur for some but that does not, in itself, make a scheme unacceptable. Whilst I understand their concerns, there is no right to a particular view. There is nothing in the responses from local agencies and suppliers to support the suggestion that local services, surgeries or schools are actually likely to suffer unacceptable pressure as a result of the scheme.
27. The increase in dwelling numbers is likely to lead to an increase in artificial light glow generally, but conditions can be imposed to ensure that street lighting is designed to limit the throw of light upward and I heard that the County Council is taking steps to reduce power consumption generally. The proposed scheme would occupy only a small part of a mixed area that is already affected by large areas of housing. This matter does not indicate that permission should be refused.

Conclusion

28. The Council acknowledges that at 3.2 years, it falls well short of a 5 year housing supply as required by paragraph 47 of the Framework. The Council is taking steps to address this, but at the current time, there is nothing firm to suggest that the shortfall will actually be met. The Council agrees that schemes of this type will be necessary to meet the identified need. The scheme would also make a significant contribution to affordable housing in particular, on a site which the Council recognises is in a sustainable location near facilities and transport links. There is no dispute that the Council has failed over several years to provide sufficient affordable housing.
29. The layout of the proposal would respect the existing field pattern and the layout of Kirby Cross; and would provide a considerable area of new land for recreation purposes. There would be a net improvement in ecological terms by means of new

planting and hedgerow improvement. With improvements to the Halstead Road/Frinton Road junction, highway safety issues do not weigh against the scheme. The loss of green field land to development does not in itself count against it; the Council anticipates that some new housing will have to be built on green field land on the edges of existing settlements. Whilst the site lies outside the settlement area, the development would not affect the separate identities of Kirby Soken or Kirby Cross or significantly diminish the broad countryside setting of the village. The function of the green gap would be protected.

30. The scheme falls within an area recognised as capable of absorbing some development in Council studies leading up to the LPPOCD. There would be a change in the character and appearance of the area generally by virtue of introducing new dwellings and there would be an impact on landscape character and visual amenity that would conflict with adopted development plan policy EN2 to some extent. There would be no conflict with emerging policy PPL6.
31. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. The time expired and restrictive nature of policies QL1 and EN2 of the LP means that they are 'out of date' in terms of housing supply. The supply of housing is significantly less than 5 years. Whilst the proposal cannot be said to comply with policy EN2, these are material considerations that warrant a decision other than in accordance with the development plan. The harm identified falls far short of outweighing the significant benefits of the scheme. In accordance with paragraph 14, the proposal would represent sustainable development which should be granted planning permission.

Conditions

32. I have considered the suggested conditions in the light of paragraph 206 of the Framework, planning guidance and Appendix A to Circular 11/95 *The Use of Conditions in Planning Permission: Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances*. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable.
33. The usual conditions are imposed to control the submission of the reserved matters within a limited time. Details of a number of essential features are required to be submitted at that time including floor levels (to prevent development that might otherwise be too prominent and therefore unacceptably detrimental to the interests of maintaining visual separation between settlements) means of enclosure, street lighting, refuse facilities and bicycle parking. In view of the outline status of the application, the location and parameter layout drawings need to be specified at this stage to ensure the general arrangement adopted is that considered at the Inquiry, in the interests of the avoidance of doubt and in the interests of proper planning. The way in which phasing of the development takes place needs to be controlled in order to avoid a visually unacceptable piecemeal appearance. A restriction is placed on the total number of dwellings in the interests of maintaining a reasonable density similar to other parts of Kirby Cross. Improvements to junctions and the accesses from Halstead Road, Buckfast Avenue and Woburn Avenue need to be completed before any relevant occupation, along with the car park off Halstead Road.
34. The height of the ridges of the roofs of dwellings on the northern edge and abutting existing areas of bungalows is limited for the same reason. To ensure the development does not appear unacceptably bulky in this edge of settlement location, a limit of 2 storeys is imposed. A design code is to be submitted and agreed in order to ensure a high quality development. No contamination risks have

- been highlighted on the site and national legislation is sufficient to ensure safety risks are addressed if any arise.
35. Other conditions are necessary at this stage to control the risk of flooding, foul drainage and the discharge of surface water. Conditions are required to control landscaping (including an implementation programme), tree protection, management of open space and ecological improvements, improvements to green infrastructure and the protection of habitats during construction. A construction method statement needs to be submitted in the interests of the amenity of neighbouring occupiers and the community in general. The times during which the works may take place are controlled in the interests of nearby occupiers. Archaeological interest on the site requires a programme for investigation and assessment. No more than 28 dwellings are to be accessed via Woburn Avenue/Buckfast Avenue, in order to avoid an unacceptable increase in traffic on these narrow residential streets. A scheme encouraging local employment is suggested but is not necessary to make the scheme acceptable. The Travel Plan needs to be put in place and monitored if it is to achieve the possible sustainable travel benefits. The future management of the open space and car park is covered by the S106 Agreement.
36. For all the above reasons, the appeal should succeed.

Paul Jackson

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Robin Green	Of Counsel, instructed by the Solicitor to the Council
He called	
Alison Hutchinson BTP MRTPI	On behalf of Tendring District Council

FOR THE APPELLANT:

Andrew Tabachnik	Of Counsel, instructed by Andrew Hodgson of Welbeck Strategic Land II LLP
He called	
Julian Cooper BSc (Hons) Dip LD FLI AILA	SLR Consulting
Martin Ohrland MA BA (Hons) CMILT	Stuart Michael Associates
Robert Hewitt BSc (Hons) MICE MCIHT	Stuart Michael Associates
Dr Suzanne Mansfield PhD BSc (Hons) MCIEEM CMLI	FPCR Environment and Design Ltd
David Barnes MBA BSc (Hons) DipTP MRTPI	Star Planning & Development

INTERESTED PERSONS:

Ray Enever	Chairman, Kirby Cross Residents Association
Jeremy Shiers	Local resident
Cllr Nick Turner	District Councillor
Cllr Robert Bucke	District Councillor
Alan Eldret	Frinton Residents Association
Paul Martin	Local resident
Levi Rowe	Local resident
Bernadette West	Local resident
Christine Godfrey	Local resident
Cllr Mark Cossens	District Councillor

DOCUMENTS

- 1 Letter from the occupier of Kirby Hall
- 2 Submission from Alan Newman
- 3 Submission from Ray Enever
- 4 Submission from Jeremy Shiers
- 5 Submission from Cllr Nick Turner
- 6 Statement from Alan Eldret
- 7 Copy of comments on the Local Plan (Submission Draft 2012) from Frinton and Walton Town Council
- 8 Submission from District Councillor Cossens
- 9 Signed Statement of Common Ground (CD48)
- 10 Transport Statement of Common Ground
- 11 Copy of Tendring District Local Plan Preferred Options Consultation Report to Full Council, dated 9 June 2016, provided

- by the appellant (CD50)
- 12 Plans related to APP/C1055/W/15/3132386 (Spondon, Derby), Land off Harwich Road, Little Oakley, and Halstead Road, Kirby Cross, provided by the appellant (CD51)
- 13 Agreed measurements between Kirby Cross and Kirby-le-Soken (CD52)
- 14 1898 plan showing hedgerows (CD53)
- 15 Appellant's suggested layout showing areas proposed as single storey (CD54)
- 16 High Court Judgment ref [2015] EWHC 3459 (Admin) Daventry DC v SSCLG, Gladman
- 17 Signed and dated S106 Agreement

Schedule of 24 conditions

- 1) Details of the 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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The reserved matters details submitted pursuant to condition 1 shall, where relevant, include the following:
 - i. Ground levels and floor levels;
 - ii. External lighting including streetlights which shall not direct lighting upwards;
 - iii. Means of enclosure;
 - iv. Parking for bicycles for each dwelling;
 - v. Storage facilities for refuse and recycling containers including collection.
- 5) The development hereby permitted shall be carried out in general accordance with the following approved plans: Location Plan No. 04677.00007.16.017.3 dated July 2015, Drawing No. 437.001 dated July 2014 and Drawing No. 4937.005 dated July 2015.
- 6) The development hereby permitted shall be carried out substantially in accordance with the principles included on the Parameters Plan: Land Use – Drawing No. 04677.00007.16.014.2 dated July 2015 and in the Design

and Access Statement July 2015 and Drawing No. 04677.00006.16.021.0.

- 7) No more than 240 dwellings (Class C3) shall be erected.
- 8) No dwelling hereby permitted shall be first occupied until the improvements to the junction of Halstead Road/Frinton Road and Holland Road/Frinton Road identified on Drawing No. 4937.004 Rev A contained in the *Transport Assessment Including Draft Residential Travel Plan (July 2015)* have been completed including the relocation and upgrading of the bus stops along Frinton Road adjacent to the junctions and upgrading of the bus stops in Halstead Road adjacent to Kirby Primary Academy.
- 9) No dwelling shall be occupied until the required access from Halstead Road, Buckfast Avenue or Woburn Avenue has been completed in accordance with the approved Drawing No. 4937.001 Rev C dated July 2014 and Drawing No. 4937.005 dated July 2015 as may be relevant, including the new car park and a new section of footway and 2 no. dropped kerb/tactile paving crossing points in the vicinity of the Halstead Road site access.
- 10) No site clearance, preparatory work or development shall take place until the following details have been submitted to and approved in writing by planning authority:
 - a. A plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed;
 - i. a schedule in relation to every tree identified listing: information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and,
 - ii. any proposed pruning, felling or other work;
 - b. In relation to every existing tree identified to be retained on the plan referred to in (a) above, details of:
 - i. any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and,
 - ii. all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);
 - c. Areas of existing landscaping to be protected from construction operations and the method of protection.

The development shall be carried out in accordance with the approved details.

- 11) No development shall commence until a Phasing Plan and Programme for the application site has been submitted to and approved in writing by the local planning authority. The document shall identify the physical extent of each proposed phase of development, an indicative timescale for

implementation of each phase and which phases shall be served from which access. The Phasing Plan and Programme shall include the timing of the proposed construction of the car park off Halstead Road. Development shall be carried out in accordance with the approved Phasing Plan.

- 12) No development shall commence until a Green Infrastructure Management Plan has been submitted to and approved in writing by the local planning authority and shall include a scheme of landscaping for the hedges 1, 2 and 3 identified on the Illustrative Landscape Strategy (Drawing No. 416.04677.00007.16.013.2) contained in the evidenced of Julian Cooper (June 2016) ; details of the type and location of bat and bird boxes to be erected; the creation of habitats suitable for Great Crest Newts and long-term design objectives has been submitted to and approved, in writing, by the Local Planning Authority. Development shall be undertaken in accordance with the approved Management Plan.
- 13) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No buildings shall be occupied until the works have been carried out in accordance with the approved strategy.
- 14) No development shall commence until details of surface water drainage works shall have been submitted to and approved in writing by the local planning authority. The details shall accord with the principles contained in the Updated Flood Risk and Drainage Strategy (October 2015). The submitted details shall:
 - a. measures to minimise the risk of flooding during the construction works;
 - b. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - c. include a timetable for its implementation; and
 - d. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

No building shall be occupied until the works have been implemented in accordance with the approved details.

- 15) No development shall take place on the site until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) the programme, including phasing, and methodology of site investigation and recording;
 - b) the programme for post investigation assessment;
 - c) the provision to be made for analysis of the site investigation and recording;
 - d) the provision to be made for publication and dissemination of the analysis and records of the site investigation;

- e) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - f) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 16) No phase of development shall commence until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority for that particular phase. The statement shall include:
- i) Proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic;
 - ii) Details of routes that delivery vehicles serving the development will take;
 - iii) Measures to identify how construction traffic shall normally access the site from Halstead Road;
 - iv) Details of the on-site parking arrangements for contractors and other operatives
 - v) Details of measures to avoid dust and discharges into watercourses or ditches; and
 - vi) Details of a facility for the washing of the wheels of construction traffic entering and leaving the site.

The development shall be carried out in accordance with the approved Statement.

- 17) Construction works on the site shall only be carried out between 08.00 and 18.00 on Mondays to Fridays; 08.00 and 13.00 on Saturdays and at no time on Sundays and bank/public holidays.
- 18) No dwelling hereby approved shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall accord with the Residential Travel Plan (Framework) contained at Appendix M of the Transport Assessment including Draft Travel Residential Travel Plan (July 2015). The Travel Plan shall include a programme for its execution, details of its monitoring and any further actions that shall be taken to secure the objectives of the agreed Travel Plan for a period of 2 years after the occupation of the last dwelling. The approved Travel Plan shall be implemented in accordance with the agreed programme.
- 19) No more than 28 dwellings shall be included within any phase of residential development to be accessed by motorised vehicles via Woburn Avenue and/or Buckfast Avenue. There shall be no means of vehicular connection between any phases of development accessed via Woburn Avenue and/or Buckfast Avenue and any phase of development accessed separately via Halstead Road.
- 20) As part of the reserved matters submitted pursuant to condition 1 a document setting out the design principles (hereafter referred to as a 'Design Code') for the development hereby approved shall be submitted to the local planning authority for approval. The Design Code shall set out how the principles and objectives of the Design and Access Statement (July 2015) shall be met by the development hereby approved and shall include the following matters:

- (i) The principles for determining the design, form and general arrangement of external architectural features of buildings including the roofs, chimneys, porches and fenestration;
- (ii) The principles of the hierarchy for roads and public spaces;
- (iii) The principles for determining the colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;
- (iv) The principles for the design of the public realm to include the colour, texture and quality of surfacing of footpaths, cycleways, streets, parking areas, courtyards and other shared surfaces;
- (v) The principles for the design and layout of street furniture;

The development shall be carried out in accordance with the approved Design Code.

- 21) The landscaping details submitted to the local planning authority for reserved matters approval pursuant to condition 1 shall include an implementation programme. The landscaping works and planting shall be carried out with the approved implementation programme.
- 22) Any trees or plants planted pursuant to conditions 1 and 10 and which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 23) No dwelling shall be higher than 2 storeys.
- 24) No dwelling indicated as shaded pink on plan 04677.00007.16.009.B (Inquiry doc 15 and Core Document 54, also shown in general on plan 04677.00006.16.021.0) shall have more than a single storey or a ridge height of more than 7m above ground level.

Richborough Estates