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## Appeal Decision

Site visit made on 16 August 2016

**by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI**

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

**Decision date: 16 September 2016**

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**Appeal Ref: APP/J1535/W/16/3151651**

**Allotments, Rear of 8 to 22 Institute Road, Coopersale, Epping CM16 7QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Philip Wright (CALA Homes NHC) against the decision of Epping Forest District Council.
  - The application Ref EPF/2163/15, dated 28 August 2015, was refused by notice dated 10 February 2016.
  - The development proposed is the erection of 18 dwellings, including access, parking, amenity and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 18 dwellings, including access, parking, amenity and landscaping on Allotments, rear of 8 to 22 Institute Road, Coopersale, Epping CM16 7QY in accordance with the terms of the application, Ref EPF/2163/15, dated 28 August 2015, subject to the following conditions on the attached schedule.

### Procedural Matters

2. Due to an unforeseen circumstance, the appellant has had to renege on his intention on submitting a unilateral undertaking to secure affordable housing. Instead, the appellant proposes a planning condition to secure affordable housing on the site which the Council was notified of.
3. The appellant's original viability assessment of the scheme was carried out and updated during consideration of the application. This has been further updated in a report dated June 2016. The detail and conclusions of the report have not markedly changed and the Council has had an opportunity to comment upon it. For these reasons, the interests of the Council would not have been prejudiced.

### Main Issue

4. The main issue is the mix, number and appearance of the affordable housing units to be provided on the site, having regard to local and national planning policy.

### Reasons

*Mix, Number and Appearance of Affordable Housing Units*

5. The Strategic Housing Market Assessment for the West Essex and East Hertfordshire 2015 details an annual average affordable housing need of 143
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- between 2011 and 2033. For all types of accommodation (1 & 2 bed flats, 2 & 3 & 4+ bed houses), there is an identified need.
6. Housing Policy H4A of the Epping Forest District Local Plan 1998 and Alterations 2006 (LP) 2008 requires the provision of an appropriate range of dwellings, including an appropriate proportion of smaller dwellings, to meet identified housing needs on a site-by-site basis. LP Policy H4A further requires this mix to be reflected in both market housing and affordable housing. All the affordable housing units would be of the same type and therefore the proposal would conflict with this development plan policy.
  7. LP Housing Policy H5A states that the Council will seek an appropriate number and type of affordable dwellings on all suitable development sites, subject to a number of criteria. These criteria include the overall level, nature and distribution of housing need in the district; the size and characteristics of the site; the type of affordable housing required and the type of dwellings proposed on the site; and the dispersal of any affordable housing throughout the site. On a greenfield site as agreed here, LP Policy H6A states that the site threshold for affordable housing provision would be three or more dwellings and LP Policy H7A states a 50% level of affordable housing will be sought on applications of 4 or more dwellings. LP Policy H7A states that the level will apply unless it can be shown that it is inappropriate or that the scheme would be unfeasible.
  8. This appellant's viability appraisal<sup>1</sup> establishes the Gross Development Value (GDV) for the scheme (i.e. the total sales value) and measures it against the scheme's costs, including profit, to establish a Residential Land Value (RLV). This is then compared to the Benchmark Land Value (BLV) to establish viability. On this basis, the appellant proposes 33.3% (six 2 bed units) of the total housing to be affordable housing.
  9. However, the Council maintains that a higher 50% level of affordable housing (9 units) can be achieved based on advice from its consultants. The main reason for this is that the Council's evidence indicates that the BLV should reflect its existing use value as an allotment. In contrast, the appellant's evidence indicates that the BLV should reflect a residential use value which in this case equates to the purchase price of the site.
  10. Nevertheless Framework Policy<sup>2</sup> and PPG advice<sup>3</sup> states that land or site value should provide a competitive return to willing developers and land owners, as well as reflecting policy requirements and planning obligations, and be informed by comparable market-based evidence wherever possible. The RICS<sup>4</sup> also advises that the site value will be based on market value, which will be risk adjusted, and that the sales of comparable development sites may provide an indication of the land value that a landowner may expect.
  11. Whilst the Council has indicated its approach is correct based on advice from its consultants and a chartered valuer, the policy, advice and professional guidance before me does not support this. In the absence of policy documentation to support the Council's approach, I find the appellant's arguments to be more persuasive on this issue.

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<sup>1</sup> U.L.L. Property Economic Viability Appraisal Report June 2016.

<sup>2</sup> Paragraph 173 of the National Planning Policy Framework

<sup>3</sup> Paragraph 023 of section 10—023-21040306 of Planning Practice Guidance.

<sup>4</sup> Royal Institute of Chartered Surveyors (RICS) 2012 Guidance Note 'Financial Viability in Planning' (GN 94/2012),

12. Furthermore, the appellant has provided an analysis of comparator transactions, including two unconditional site purchases. For these two sites in Chigwell and Theydon Bois, the purchase price and subsequent planning permission were used to derive a price per sq ft and comparable land values to support the purchase price of the site and its BLV. No comparator site is the same and the appellant has acknowledged that the Chigwell site would have a higher value due to its superior location. However, there is no evidence to dispute that the appellant's comparator sites and its use of them in establishing BLV here and the purchase price paid for the site. It is therefore the best evidence available to establish the BLV.
13. During the determination of the planning application, the Council's consultants raised several concerns about assumptions underpinning the costs and income elements of the RLV of the Scheme. In respect of finance/interest costs and build costs, the appellant has adjusted RLV. For other assumptions on private residential sales pricing, affordable residential sales pricing, contingency and profit, the appellant has produced explanation and detail, including market evidence, to validate assumptions<sup>5</sup>. Such explanation and detail are persuasive in the absence of any evidence to the contrary.
14. The Council has argued that irrespective of how the BLV is considered, there are policy requirements requiring 50% affordable housing. There is a significant need for affordable housing and provision is affected by the coverage of Green Belt across the District. Additionally there is no requirement for affordable housing on sites below 10 dwellings and the % requirement for affordable housing on greenfield sites is higher than on previously developed sites due to differences in purchase and preparation costs.
15. However, the wording of LP Policy H7A is that the provision of 50% affordable housing will be sought which indicates the level is not fixed in all situations. Furthermore, the supporting text of paragraph 9.49a indicates a lower proportion of affordable housing may be acceptable based on the availability of Housing Corporation Agency (HCA) funding and the economics of site development. The appellant has indicated that as a rule grant funding from the HCA is no longer available for development such as this and that the majority of the District's recent affordable housing completions were provided with nil grant funding.
16. In summary, I am persuaded that six affordable housing units would be acceptable here on the basis of the appellant's evidence on funding and the economics of the site development. I have considered the Council's arguments that favouring the proposal on these grounds would set a precedent for other similar developments. However, each application and appeal must be determined on its individual merits, taking into account the balance of evidence. For this reason, this consideration would not justify withholding planning permission.
17. In respect of the detail of the scheme, the number of bedrooms for the affordable housing would represent only 21% of those of the overall scheme but the wording of the LP Policy H7A refers only to numbers of dwellings as a percentage being sought. The supporting text to LP Policy H5A indicates that

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<sup>5</sup> U.L.L. Property letter dated 21 December 2015 and U.L.L. Property Economic Viability Appraisal Report June 2016.

affordable housing should not be easily distinguishable from open market housing. The affordable housing would be designed in a similar style to other dwellings and some allowance has to be made for the flatted type of accommodation which inevitably would look different even if it was open market housing. Consequently, the appearance of the affordable housing would not be significantly at odds with the open market dwellings on the site.

18. In conclusion, the mix of affordable housing would conflict with LP Policy H4A. In terms of number of affordable units, the viability evidence establishes that more than six affordable units would not be viable and for the reasons indicated, the appearance of the affordable housing units would be acceptable. Therefore, the proposal would comply with LP Policies H5A, H6A and H7A.

*Other matters*

19. The loss of the allotments would conflict with Policy RST13 of LP because this policy only permits the development or the change of use of existing allotment sites if adequate replacement facilities are provided in close proximity.
20. The development would be adjacent to properties in 5 and 6 Chevely Close which have shallow rear gardens adjacent to the appeal site. However there would be no significant loss of light, privacy or outlook to these neighbouring residents by reason of the set back of the new dwellings from these properties. The overshadowing of these neighbour's gardens from landscaping would not be significant given that they enjoy sunlight and daylight from directions other than the development site. In respect of existing dwellings along Institute Road, the proposed dwellings would be sited significantly back from these properties to similarly avoid any harm to the living conditions of these residents.
21. The proposal provides car parking in accordance with the Essex County Council Vehicle Parking Standards and there have been no objections from the highway authority to the proposal including the access and its visibility. It has been acknowledged that the junction of Institute Road with Coopersale Common is heavily used. Nevertheless, there is no technical evidence to indicate that the traffic generation from this proposal would be significant and dangerous to all road users. From what I saw on my site visit and having assessed the proposals, I concur with the Council that the proposal would be acceptable in highway safety terms. In terms of the scale of the development, it would not be of sufficient size to dominate or affect the character of the village. Whilst there would be a greater demand for school places and doctors' appointments, there is no detailed evidence of capacity issues.
22. The development would not be within designated Flood Zone 2 or 3 which are vulnerable to flooding and a planning condition could implement measures to control surface water-run-off and flooding from the development once built. Whilst I note concerns about water pressure and electricity supply, these are matters for the relevant utility companies. The development would not cause significant additional noise disturbance and light pollution given the layout of the development and the lawful use of the site as allotments. There is no evidence that the occupiers of this development would exhibit anti-social behaviour.

### *Planning Balance*

23. There would be a loss of allotments without replacement but they are largely disused with only one active allotment in use whose occupier is indicated to be willing to move elsewhere. There are local allotments nearby according to the Council. Third parties have expressed interest in the use of the allotments but it is unclear how definite their interest is and the appellant has produced a marketing report detailing only limited interest in the use of the allotments. On this basis, I concur with the Council that the loss of the allotment land would not be harmful. There would also be lack of range of affordable housing units but for a development of this number, this would not be significant. The proposal would also still provide affordable accommodation of much needed type.
24. Indeed, the development would also provide homes for existing and future generations and would boost housing supply. There is a deficient 5 year housing land supply. The residential development would be in a reasonably sustainable location close to local village shops and facilities. Such benefits would be significant given the scheme proposes 18 dwellings. Additionally, the development would provide support to the local economy by reason of its construction and financial spend of future occupiers which would provide some small economic benefit.
25. The site would be set back from Institute Road and so as an urban green space it does not significantly contribute to the character and appearance of the surrounding area. The design and layout of the development, with landscaping would not be unattractive. On the basis of the appellant's ecological appraisal, there would be no significant loss of important habitat or species. On this basis, the environmental impact of the scheme would be limited. For these reasons, the proposal would represent sustainable development for which there is a presumption in favour.
26. In the balance, the shortcomings of the scheme and conflicts with the development plan policies would be significantly and demonstrably be outweighed by the benefits for the reasons indicated and the proposal would represent sustainable development. Accordingly, the appeal site would be suitable for the proposed residential development.

### **Conditions**

27. Suggested conditions have been considered in light of advice contained in Planning Practice Guidance; for clarity and to ensure compliance with the Guidance, I have amended some of the Council's suggested wording.
28. A condition requiring that the development is carried out in accordance with the approved plans is necessary in the interests of certainty. In the interests of safeguarding the character and appearance of the area, conditions controlling external materials, hard and soft landscaping and protective measures for retained trees is necessary. Given the findings of a Preliminary Ecological Survey submitted by Ethos Environmental Planning, conditions are necessary for further surveys on bats and reptiles to ascertain any mitigation measures, if necessary, in accordance with recommendations. In order to mitigate the impact of the development on wildlife and to enhance biodiversity, the implementation of the recommendations regarding enhancement measures is

also necessary in accordance with this survey. In the interests of preciseness and relevance, the conditions have been revised.

29. To secure affordable housing on site, a condition is necessary as supported by LP Policy H8A. To ensure safe and neighbourly construction activity on the site, conditions on the approval and implementation of a Construction Method Statement and restriction of construction hours are necessary. Although the site has been used as an allotment, there is reasonable justification for land contamination and remediation conditions, including monitoring, given the possible use of chemicals associated with such a use. In the interests of highway safety, conditions are necessary to ensure adequate access arrangements and visibility splays. A condition requiring a payment of money towards implementing a Traffic Regulation Order is not necessary as the development would provide its own parking within the appeal site. Where conditions require details to be approved before development commences, it is because of the need to consider the relevant issues early in the development process.

**Conclusion**

30. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jonathon Parsons*

INSPECTOR

Richborough Estates

### **Schedule of attached conditions**

1. The development hereby permitted shall begin not later than 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 200.05; 201.04; 202.01; 203.02; 204.03; 205.02; 206.02; 207.03; 208.02; 209.01 and 215.00 (in so far as it relates to the application site).
3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted and approved in writing by the local planning authority. Development thereafter shall be carried out in accordance with the approved details.
4. No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include, and in addition to details of existing features to be retained; proposed finished levels or contours; means of enclosure; car parking layouts, minor artefacts and structures, including signs and lighting; functional services above and below ground and an implementation programme. The details of soft landscape works shall include planting plans; written specifications including cultivation and other operations associated with plant and grass establishment; schedules of plants noting species, plant supply sizes and proposed numbers/densities.
5. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first brought into use in accordance with the agreed implementation programme. Any trees or plants 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.
6. No development shall take place until a Tree Protection Plan Arboricultural Method Statement and site monitoring schedule in accordance with BS 5837: 2012 (Trees in relation to design, demolition and construction-recommendations )(or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved documents.
7. No development shall take place until the findings of a bat survey, the extent and nature of which shall have been agreed beforehand, have been submitted and approved in writing by the local planning authority. Should the survey reveal the presence of bats or their breeding sites or resting places then mitigation and compensation measures must be submitted to and approved in writing by the local planning authority before development commences. The development shall be carried out in accordance with these approved measures.
8. No development shall take place until findings of a reptile survey, the extent and nature of which shall have been agreed beforehand, have been submitted and approved in writing by the local planning authority. Should the survey reveal the presence of reptiles, or their breeding sites or resting

places then mitigation and compensation measures must be submitted to and approved in writing by the local planning authority before development commences. The development shall be carried out in accordance with these approved measures.

9. The development shall be accrued out in strict accordance with the mitigation and enhancement recommendations at section 7.2 of the Ecological Survey, submitted by Ethos Environmental Planning.
10. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the provision of six shared ownership units comprising six 2 bedroom flats.
  - ii) the location of the affordable housing;
  - iii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iv) the arrangements for the transfer of the affordable housing to an affordable housing provider in the register kept by the Regulator of Social Housing as a provider in Chapter 3 of the Housing and regeneration Act 2008 (or any statutory re-enactment or modification thereof);
  - v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - vi) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

11. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing, by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i. the parking of vehicles for site operatives and visitors;
  - ii. the loading and unloading of plant and materials;
  - iii. storage of plant and materials used in the construction of the development;
  - iv. the erection and maintenance of security hoarding;
  - v. measures to control the emission of dust and dirt during construction, including wheel washing;
  - vi. a scheme for recycling/disposing of waste resulting from demolition and construction works.



12. Demolition or construction works shall not take place outside 0730 hours to 1830 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
13. A flood risk assessment, management and maintenance plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using WinDes or other similar best practice tools. The approved measures shall be carried out prior to the substantial completion of development and shall be adequately maintained in accordance with the plan. There shall be no discharge of surface water from the development onto the public highway.
14. No development shall take place until a Phase 1 Land Contamination investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the Local Planning Authority before commencement of the Phase 1 investigation. The completed Phase 1 report shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any necessary Phase 2 investigation. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.
15. Should the Phase 1 Land Contamination preliminary risk assessment carried out under the above condition identify the presence of potentially unacceptable risks, no development shall take place until a Phase 2 site investigation has been carried out. A protocol for the investigation shall be submitted to and approved by the Local Planning Authority before commencement of the Phase 2 investigation. The completed Phase 2 investigation report, together with any necessary outline remediation options, shall be submitted to and approved by the Local Planning Authority prior to any redevelopment or remediation works being carried out. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11", or any subsequent version or additional regulatory guidance.
16. Should Land Contamination Remediation Works be identified as necessary under the above condition, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long term maintenance

and monitoring programme. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 or any subsequent version, in relation to the intended use of the land after remediation.

17. Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
18. In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the approved Phase 2 report, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with a methodology previously approved by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the immediately above condition.
19. Prior to the first occupation of the development hereby permitted, the access arrangements and visibility splays, as shown on drawing no.201 Rev 04, shall be fully implemented and maintained as such in perpetuity.
20. The vehicular access for 22 Institute Road shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall be not less than 3 metres and shall be provided with a dropped kerb vehicular crossing of the footway.