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## Appeal Decision

Inquiry held on 4, 5, 6, 7, 11 and 19 October 2016

Site visits made on 3 and 12 October 2016

**by Jonathan Manning BSc (Hons) MA MRTPI**

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

**Decision date: 07 December 2016**

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**Appeal Ref: APP/X1545/W/15/3139154**

**Nipsells Farm Lodge, Nipsells Chase, Mayland, Essex**

- 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 Gladman Developments Ltd against the decision of Maldon District Council.
  - The application Ref OUT/MAL/15/00179, dated 2 March 2015, was refused by notice dated 18 September 2015.
  - The development proposed is residential development comprising up to 150 residential dwellings (including 40% affordable housing), structural planting and landscaping, informal public open space and children's play area, surface water attenuation and associated ancillary works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application has been made in outline, with full details in relation to access. Layout, scale, appearance and landscaping are to be considered at a later date, as reserved matters. However, an indicative masterplan and other visualisations are set out within the Design and Access Statement and the appellant's proof of evidence, in relation to landscape and visual impact matters, to which I have had regard.
  3. The Council's second reason for refusal set out within the decision notice relates to affordable housing, insofar that the appellant was seeking to provide 30% affordable housing on the site. This was reflected within the development description. However, since the refusal of the application, the appellant has agreed to provide 40% affordable housing as sought by the Council. The Council agreed in the Statement of Common Ground (the SOCG) that the second reason for refusal would be overcome if 40% affordable housing is secured. At the Inquiry a signed and dated Section 106 agreement was provided which suitably secures the sought affordable housing. I have therefore not considered this matter further in my decision. I have also altered the development description in the banner above, to reflect that the proposal would now deliver 40% affordable housing.
  4. The decision notice also includes a third reason for refusal in relation to the scheme not being supported by a comprehensive scheme for the future management and maintenance of the proposed Sustainable Drainage System
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over the lifetime of the development, demonstrating that the proposal would not result in flooding. However, the Council has since revised its position in relation to this reason for refusal and accepted in the SOCG that the matter could be overcome by a planning condition and it did not defend the reason for refusal at the Inquiry. Despite the concerns of local residents, there is no substantive evidence before me to suggest that I should take a different view and therefore I have not considered this matter further in my decision.

5. As set out above, a signed and dated Section 106 agreement was provided at the Inquiry that secures the provision of: a health care facilities contribution; affordable housing; education contributions; and the management and transfer of on-site open space. From the evidence before me, I consider that the requirement for these planning obligations meets the three tests set out in Paragraph 204 of the National Planning Policy Framework (the Framework) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) (2010). Further, I am satisfied that the sought contributions comply with CIL Regulation 123, where applicable. The appellant set out at the Inquiry that it shares this view. As a result of the above, there is no need for me to consider such matters further in my decision.
6. The appellant's evidence in relation to housing land supply and more specifically Objectively Assessed Need (OAN) relied on a supporting report prepared by Barton Willmore. During cross examination, the Council sought to question the appellant's housing land supply witness on detailed matters of the Barton Willmore report. It became apparent that the appellant's witness was not able to suitably answer such questions. After some discussion, it was agreed between the parties that the most suitable way forward, to allow a full and proper testing of the evidence, would be to adjourn on the matter of OAN until another day, to allow the appellant to call the author of the Barton Willmore report, Mr Donagh as a witness. The Inquiry was adjourned on 11 October 2016 and recommenced on 19 October for a single day to hear the evidence of Mr Donagh and to complete the remaining formalities. The Inquiry was closed at the end of the day on 19 October 2016.
7. The appellant's closing submissions suggest that as Mr Donagh was called as a witness and was cross examined, his evidence on OAN should carry more weight than the Council's, who did not call Mr Macdonald, whose work the Council rely on in relation to OAN. However, the above circumstance arose, because the appellant's witness for housing land supply could not answer the Council's questions. The appellant chose not to question in detail the Council's witness, Mr Parton, in relation to OAN matters and there is no reason for me to consider that Mr Parton would not have been able to answer such questions. It was up to the appellant to take the approach that it adopted. Consequently, I have afforded equal weight to the evidence of both parties on OAN.

### **Main Issues**

8. As a result of the evidence before me, having regard to the above preliminary matters and the discussions undertaken at the Inquiry, I consider that the main issues of the appeal are: the effect of the proposal on the character and appearance of the area; whether the Council can demonstrate a five year housing land supply; and whether the proposal constitutes sustainable development, having regard to the Council's adopted and emerging policies and my findings in relation to housing land supply.

## Reasons

### *Character and appearance*

9. The appeal site is located on the eastern side of Nipsells Chase and is an open agricultural field associated with Nipsells Farm Lodge. The settlement of Mayland lies to the south, open countryside leading to the Mayland Creek and Lawling Creek extends to the east and north, and an area of cleared woodland and an open field lie to the west, with existing housing beyond. I understand that the field to the west of the appeal site is the subject of a planning appeal for a housing development, although that appeal is yet to be determined. The appeal site does not have or fall within an area that is the subject of any landscape designation.
10. The appeal site lies just inside the D6 – Ramsay Drained Estuarine Marsh character area as set out in the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments (2006) (the LCA). The key characteristics of this area include: generally flat landform of drained salt marsh; mainly arable fields; regular, rectangular field patterns; scrubby often gappy hedgerows; and a sense of openness with panoramic views of sea and sky. The LCA was compiled by independent consultants and considers the D6 character area to have a high sensitivity to change. One of the key planning issues identified in this area is the potential for more visually intrusive expansion to settlement edges. The LCA also goes on to set out that planners should seek to 'ensure that new development responds to historic settlement pattern and scale' and 'conserve and enhance the mostly rural character of the area'.
11. It is also worthy to note that the appeal site falls immediately north of the E2 – Tillingham and Lachington Coastal Farmland character area. The characteristics listed for this area includes urban fringes that are visually intrusive in terms of density and architectural style. Further, future issues include the potential for more visually intrusive expansion to settlement edges.
12. The proposal would involve the construction of up to 150 dwellings, which would be accessed from a single point of entry to the south of the appeal site from Nipsells Chase. The illustrative masterplan provided in the Design and Access Statement shows that the proposed housing on the eastern boundary would be set behind an area of open space and an attenuation pond. It is anticipated that the houses would be 2 storey properties and would reflect the architectural style of the existing properties within Mayland.
13. The appeal site is observed from a network of public rights of way. These surround the appeal site and run along the flood defence wall adjoining Mayland Creek and Lawling Creek, before entering the settlement of Mayland and then run along the edge of the settlement towards the southern boundary of the appeal site, which it then passes, before exiting the village to the southeast. I observed on my site visit that due to mature vegetation along the southern and western boundaries of the appeal site that it has a sense of detachment from the existing built confines of Mayland. Indeed, Nipsell Chase changes from a public highway to what appears to be an unadopted track, at the point where the proposed access would be gained to the appeal site. I observed that with the existing dwellings behind you as you exit the mature vegetation to the south of the appeal site, there is a distinct sense that you are exiting the settlement. Views of Nipsells Farm Lodge and across the appeal

- site, with open countryside beyond are then gained and are very rural in character.
14. The appellant suggests that the appeal site has a settlement fringe character to it. Whilst it cannot be denied that there is existing built development visible both from the appeal site and when viewed from further to the east, such examples are, in my view, very limited. I accept that Nipsells Farm Lodge and its associated farmhouse and buildings have a close relationship with the appeal site. However, farms are rural in nature and are characteristic of the countryside. There are some examples of existing residential development immediately to the north and northwest of the appeal site, but these are limited. Given this, I consider that the appeal site is viewed as part of the open countryside to the north and east, which sweeps out towards the estuary and does not have a strong relationship with the settlement edge as suggested in the appellant's evidence. I observed that the scale of the rural landscape which the appeal site forms part of, affords medium distance views, with the flat nature of the area limiting long distance views. Notwithstanding this, the landscape character is attractive and should not in my view be considered as contained. Further, the network of footpaths in the area allow the attractive landscape to be appreciated. I agree with the LCA and the Council that the area has a high sensitivity to change and for the reasons given above, so does the appeal site.
15. The scheme would be for a large scheme of up to 150 dwellings, a significant development. Taking into account the appellant's evidence in relation to the historic settlement pattern of Mayland, the scheme, in my view, would have no natural or logical relationship with the existing built up area, as it would project beyond the existing settlement limits, largely on its own, out into the countryside. Only the southern boundary of the site would adjoin any significant built development and as set out above, due to the mature vegetation, the appeal site's relationship with the built up area in this location is, in my view, limited. The proposal would result in a largely detached projection of suburban development that would intrude into the open countryside. I consider that this can be seen most prominently from Viewpoints 2, 3, 4, 7 and 8.
16. Further, the visualisations from additional Viewpoints A to D illustrate that the existing views back towards Mayland from these locations, which at the present time have limited visible features of the urban settlement and therefore are very rural in context, would be replaced with a continuous wall of suburban housing, given the proposed scale and form of the scheme. I acknowledge that efforts have been made in the illustrative masterplan to set the houses back from the eastern boundary to allow the opportunity for a substantial landscaping scheme to be implemented and that existing environmental assets of the site would be retained.
17. The visualisations show the appearance of the development when viewed from the east in five years time and in fifteen years time, with additional planting. At five years the roof tops and first floors of the dwellings would be highly visible. After fifteen years the planting is shown to largely screen the dwellings. However, the visualisations clearly relate to summer views and this would not be the case in the winter, when the trees were not in leaf. In addition, I am mindful that such planting would take a significant period of time to establish. I consider that the extent of the proposed landscaping in the

visualisations and the illustrative landscape masterplan, which appears to try and entirely screen the proposed development on the eastern boundary, rather than to soften its integration with the wider landscape, illustrates the difficulty of trying to do so in this particular location. Consequently, I am not satisfied that any proposed mitigation would suitably overcome my concerns or would reduce the impact of the scheme to an acceptable degree.

18. I consider that the scheme would result in exactly the harm that the LCA is seeking to avoid. It was debated at the Inquiry whether the area constitutes a valued landscape in terms of Paragraph 109 of the Framework. I consider that the landscape is attractive and very pleasant, but I am not of the view that the landscape is out of the ordinary for the wider area. Therefore, although I consider that the landscape has some value, as accepted by the appellant and is clearly valued by the local people, I am not of the view that it benefits from the specific protection of Paragraph 109 of the Framework. Notwithstanding this, Paragraph 17 of the Framework sets out its core planning objectives, which includes recognising the intrinsic character and beauty of the countryside. The proposal would project a significant amount of built development out into the countryside that would have a demonstrable impact on the existing rural character and beauty of the countryside, to its detriment.
19. In addition, during my site visits, particularly when observing the site before the Inquiry began from the surrounding footpaths, it was clear that they are regularly used by walkers and hikers, who are sensitive receptors. It was evident when walking around the footpath network that the proposal would be highly noticeable for the reason set out above, particularly when viewed from the north and east. I accept to some degree that when walking along the footpaths the user's attention is drawn towards views of the estuary, but there are many points where there are opportunities to look back towards Mayland and appreciate the rural context in which the estuary is experienced. In my view, this would be diminished by the visible and significant suburban housing estate that would replace the currently open field. As a result, as well as landscape harm, I consider that there would also be demonstrable adverse visual impacts.
20. The development plan policies of most relevance to this matter are Saved Policies CC6 Landscape Protection and BE1 Design of New Development and Landscaping of the adopted Replacement Local Plan (2005) (the Local Plan). The Council accept that the Local Plan is time expired and is therefore out-of-date. However, weight can still be afforded to the policies of the Local Plan according to their degree of consistency with the Framework (Paragraph 215 of the Framework). Policies CC6 and BE1 of the Local Plan in summary both seek to protect the countryside, which does not reflect the in-built balance that is expected of post Framework policies. However, in broad terms such aims are to some degree consistent with Paragraph 17 of the Framework, which sets out that new development should recognise the intrinsic character and beauty of the countryside. As a result, I consider that a reasonable level of weight can be afforded to these policies. The appellant has referred me to an appeal decision (APP/R0660/W/15/3132073, dated 18 August 2016) with regard to the weight to be given to restrictive policies in relation to countryside protection and their compliance with the Framework. However, the Inspector's findings in that case relate to different development plan policies within another local authority (Cheshire East). I am not therefore of the view that this affects my above findings.

21. The Council has also referred to policies of the emerging Local Plan. However, this document is still going through its examination and therefore its policies could be subject to change. As a result, I afford them little weight at this time. However, given my findings above in relation to the Saved Policies of the Local Plan and the requirements of the Framework, I am not of the view that this matter has a significant bearing on my decision.
22. I conclude on this main issue that the proposal would cause significant harm to the character and appearance of the area and would fail to recognise the intrinsic character and beauty of the countryside. The proposal therefore runs contrary to Policies CC6 and BE1 of the Local Plan and Paragraph 17 of the Framework. This weighs heavily against the scheme.

#### *Housing land supply*

23. Paragraph 47 of the Framework sets out that local planning authorities should significantly boost the supply of housing. Further, Paragraph 49 identifies that housing applications should be considered in the context of the presumption in favour of sustainable development. The appellant contests that the Council can demonstrate a five year housing land supply and is of the view that it has 4.5 years of supply against its housing needs. In contrast the Council is of the view that it has 6.04 years of housing land supply. This difference is largely down to housing need rather than supply, indeed the appellant accepts that against the Council's preferred housing need figure that it has 5.6 years of housing land supply.
24. From the outset it is important to acknowledge that establishing the housing need of the Council is a role for the emerging Local Plan and its examination in public, where the matter can be explored in much greater detail than can be undertaken as part of a Section 78 appeal, with all relevant stakeholders present. My findings in this regard, should not therefore prejudice that process, where it can be considered fully. However, I must come to a view as to whether the Council has a five year housing land supply, which in this case also means coming to a view, from the evidence that has been placed before me, on the Council's housing need.
25. The Council is of the view that its OAN is 310 dwellings per annum (dpa), which is the figure that it is putting forward within the emerging Local Plan that is currently being examined. Whereas, the appellant suggests that the Council's OAN is actually 370 dpa. It is agreed between the parties that the Department of Communities and Local Government (DCLG) household projections are the starting point for establishing OAN, as advised in the Government's Planning Practice Guidance (the PPG). The 2014 DCLG household projections suggest a housing need for the District of 220 dpa.
26. Having considered the implications of the 2014 DCLG household projections, the Council are of the view that this figure should be uplifted to 260 dpa to take into account 10 year migration trends, although has retained the OAN of 310 dpa to take a conservative approach. The appellant has undertaken sensitivity testing on household formations rates, within the Barton Willmore report, which the PPG confirms can be undertaken. The results of these, including adjustments for migration trends, are: '2014 HFRs' (the 2014 based household formation rates (HFRs) as published) at 280 dpa; 'HFR Sensitivity – 2011' (maintains the household formation rates for males and females aged 25-34 and 35-44 at 2011 levels where the household formation rates are

projected to decline below this level by 2031) at 300 dpa; 'HFR Sensitivity: 50% return 25-44' (50% return to 2008-based household formation rates in the 25-44 age group applied over the next 20 years) at 300 dpa; and 'HFR Sensitivity – 2001' (gradually returns the household formation rates for males and females aged 25-34 and 35-44 years back to 2001 rates by 2031, only where the 2014 household formation rates are projected to decline below 2001 rates by 2031) at 310 dpa.

27. The highest of these figures at 310 dpa relates to a return to 2001 household formation rates for younger people. Mr Donagh accepted under cross examination that he was not urging me to adopt this figure and I am mindful that it relies on 15 year old data. Consequently, I give little weight to that scenario. Therefore, as a worst case scenario, as suggested by the appellant, the Council's demographically derived OAN taking into account migration trends would be 300 dpa. This is below the Council's suggested OAN figure of 310 dpa.
28. The biggest difference between the parties in relation to OAN relates to whether there should be an uplift for future job growth. The Council are of the view that its suggested OAN at 310 dpa is sufficient to support the anticipated future growth in the area of some 2,200 jobs, based on the East of England Forecasting Model (EEFM). In contrast, the appellant is of the view that there should be an uplift of some 70 dwellings per annum.
29. The appellant has come to this view by taking the average of three projections made by Cambridge Econometrics, Oxford Econometrics and Experian Econometrics. These three projections differ significantly in their forecasts from 3153 jobs to 934 jobs. To a large degree, this is likely to be because they apply different economic activity rates. The appellant has averaged these three forecasts and then applied a nationally derived Office of Budget Responsibility Rate (OBR) of economic activity. I agree with the Council that this approach appears to ignore the fact that the three forecasts above already contain views of the relationship between the number of people in an area and the number of jobs. The appellant's approach attempts to estimate the number of people needed to support a forecasted increase in jobs by applying assumptions about the relationship between jobs and population that are different to those used in the original forecasts. This does not seem a robust approach in my view, as it has the potential to over-inflate the projection of homes to meet future job growth.
30. This view is supported by Section 8 of the Planning Advisory Service (PAS) Technical Advice Note: Objectively Assessed Need and Housing Targets (July 2015)<sup>1</sup>. Whilst I accept that this document has no formal status, Mr Donagh did accept that it has been accepted and relied upon by a wide number of Inspectors, I therefore give it some weight. In addition, the Council has made me aware of a relatively recent appeal decision<sup>2</sup> for a development in the neighbouring local authority Chelmsford City Council. Whilst that appeal clearly had some different circumstances, the Inspector nonetheless considered very similar arguments on this particular matter, indeed from Mr Donagh himself. The Inspector in that case, endorsed the approach of the Council, who as in this case, relied on the EEFM rather than the use of the OBR activity rate and three separate job forecasting models. These matters add further weight to

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<sup>1</sup> Inquiry Document 20.

<sup>2</sup> APP/W1525/W/15/3129306, dated 20 July 2016.

my concerns. The appellant has set out that their approach has been supported elsewhere, but I have not been provided with any appeal decisions or specific details that confirm such a view.

31. It is also clear that a significant amount of analysis has been undertaken on the EEFM by the Council, as is evident from Appendix 3 of the Hardisty Jones Associates Report: Employment Evidence and Policy Update (July 2015) (the Hardisty Jones report). The Council has set out that the Adopted East Cambridgeshire Local Plan uses the EEFM for its jobs output and that the EEFM is also being used for employment trends in the joint OAN assessments of its neighbouring authority areas of Braintree, Chelmsford, Colchester and Tendring. The Hardisty Jones report concludes that the EEFM is a consistent basis for forecasting economic growth for the entire East of England region and parts of the Southeast and East Midlands region. The appellant has produced little evidence to dispute the findings of the Hardisty Jones report or in relation to why the Council's adoption of the EEFM is inappropriate in this case.
32. Given all of this, I am not persuaded by the appellant's evidence that an uplift for jobs is necessary beyond the Council's suggested OAN of 310 dpa or that the Council's approach is flawed in this regard.
33. Whether there should be an uplift for market signals is also disputed between the parties. The appellant maintains that a 20% increase should be applied, most notably due to affordability issues. Whereas the Council are of the view that no increase is necessary. The appellant has accepted that there is no historic failure to meet Maldon's housing needs and it is therefore a 5% buffer authority. On this basis, I agree that there is no justification for an uplift due to the Council's previous rate of development.
34. House prices in Maldon have gone up at a lower rate than most of its neighbouring authorities and are well below the average increase in the Housing Market Area (HMA). Maldon's rate of change in rents against median income is also lower than all but one of its neighbouring authorities. Further, Maldon has the lowest level of over-occupation amongst the other HMA authorities and its rate of concealed households is one of the lowest in the HMA. I am therefore not convinced that any uplift is required in the Council's OAN figure due to house prices, residential rents or overcrowding and concealed families.
35. The data provided in the Barton Willmore report illustrates that Maldon has the worst affordability out of all of the HMA authorities and is well above the national average. However, it can be seen that Maldon has moved in the same trend lines as the other HMA authorities. The Council has also set out that Maldon has a relatively high proportion of out-commuting, meaning that such people bring back higher purchasing power and that as a rural District, Maldon has a relatively high proportion of larger, more expensive homes and less 1-2 bedroom housing stock than is commonly the case in City Centres. The affordability ratios compare house prices with workplace based income. This would not have therefore been taken into account in the data.
36. I am not therefore satisfied that an upward projection for affordability is necessary and, in my view, the evidence certainly does not suggest an uplift of 20% in this regard as maintained by the appellant. However, as a worst case scenario and giving the appellant the benefit of the doubt, I have applied a 10% uplift on the Council's suggested OAN of 310 dpa, which is more reflective



- of the findings of most of the Inspector's recommendations in other authorities, such as those in Eastleigh and Uttlesford, as set out within the Barton Willmore report. This would give an OAN figure of 341 dpa.
37. The appellant has also provided an alternative calculation of OAN, based on the methodology put forward by the Local Plans Expert Group (the LPEG). However, as pointed out by the Council the LPEG report is a consultation document with no formal status and has had no formal response from the Government to date. The Barton Willmore report at Paragraph 7.4 accepts that the report holds no weight in the determination of OAN. I agree with this view and consequently afford the appellant's alternative OAN calculation based on the LPEG methodology, little, if any weight. I acknowledge that in the House of Commons Second Reading of the Neighbourhood Planning Bill on 10 October 2016, the Secretary of State confirmed that he broadly accepted the thrust of the LPEG report and would, if necessary, introduce legislation in this Bill to ensure that its recommendations are followed through. However, this does not confirm that the methodology for OAN calculation or the use of OBR rates set out in the LPEG would be adopted either in full or in part and therefore does not affect my findings.
38. Bringing my findings on OAN together, even at an annual housing need of 341 dpa, plus the associated back log of 365 dwellings and a 5% buffer, which has been agreed between the parties, this would lead to a total requirement of 2174 dwellings over the five year period. The appellant considers that the Council's overall supply is 2164 dwellings. Therefore, given the findings above and as a worst case scenario of accepting the appellant's evidence on supply in full, there would be a shortfall in the Council's housing land supply of just 10 dwellings.
39. Turning to matters of supply, the Council are of the view that 20 dwellings per annum can be expected from windfall development for each of the five years (100 dwellings in total). The appellant is of the view that 40 dwellings should be discounted as it is highly unlikely that any contribution from windfall development, in terms of gaining planning permission and being built, will be made within years one and two of the five year period. The appellant has referred to an appeal decision<sup>3</sup> where this approach was supported. Whilst noting this, I see no reason to see why windfall development could not come forward towards the end of year two of the five year period. The Council's latest housing land supply position is dated August 2016 and Mr Parton confirmed that this took into account all planning permissions leading up to this date. However, I consider that it is feasible that small housing schemes subject to planning applications made relatively shortly after August 2016, could be determined and completed by the end of March 2018 (year two of the five year period).
40. Further to this, the Council has referred to windfalls arising from changes of use that have been brought about by revisions to the General Permitted Development Order. I acknowledge the appellant's view that there is still a prior approval process, but this is likely to be much quicker than the determination of a planning application. This further supports my view that some windfall development could be delivered in year two of the Council's five year housing land supply period. Consequently, whilst I agree that windfall

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<sup>3</sup> APP/X1545/W/15/3032632, dated 25 January 2016.

development is highly unlikely to contribute to housing delivery in year one, it should not be ruled out for year two. Therefore, 20 dwellings should be discounted rather than the 40 dwellings suggested by the appellant.

41. Taking this into account and adopting all of the other appellant's views on supply in full, the Council is able to demonstrate a five year housing land supply. Further to this, the main dispute with regards to particular sites, relates to differences in lead-in times. The appellant has adopted a consistent lead-in time for all sites, small or large. I agree with the Council that smaller sites are likely to be delivered more quickly than larger more complex sites. However, I also agree that there are some examples for larger sites where the Council's timescales for delivery appear to be optimistic. Therefore, it is likely that the Council's actual supply is somewhere between the two figures suggested by the parties. This lends further support to my view that the Council can demonstrate a five year housing land supply.
42. In conclusion on this main issue, given all of the above, I consider that from the evidence that has been put before me and bearing in mind the limitations of trying to establish the Council's housing needs at a Section 78 appeal and that assessing housing needs is not an exact science, the Council in all probability, can demonstrate a five year housing land supply. This includes taking a very conservative approach, where the benefit of the doubt is given to the appellant in several instances.

*Sustainable development?*

43. The appeal site is located outside the settlement boundary of Mayland, although its southern boundary lies adjacent to it. Policies S2 and H1 of the adopted Local Plan both seek to deliver housing within settlement boundaries. Policy S2 states that '*Outside development boundaries defined in the Local Plan, the coast and countryside will be protected for their own sake, particularly for their landscape, natural resources and areas of ecological, historical, archaeological, agricultural and recreational value*'. Further, Policy H1 sets out that new housing will not be allowed outside development boundaries, unless it complies with the other policies in the adopted Local Plan, which in this case, the scheme does not.
44. I accept that the settlement boundaries were drawn up a significant period of time ago, before the Framework and during a time of policy restraint. However, it is clear that the main aim of these policies is to protect the open countryside, which is not dissimilar to that of the Framework, which, as set out earlier above, seeks to ensure that new development recognises the intrinsic character and beauty of the countryside. Further, I have found above that the Council can demonstrate a five year housing land supply and there is no pressing need to release sites outside of settlement boundaries to fulfil its needs over the next five years, particularly those that would cause harm to the character and appearance of the area. In addition, there is no reason for me to believe at this stage that the emerging Local Plan, the future Rural Allocation Development Plan Document (the Rural Allocations) and the emerging Neighbourhood Plan will not deliver suitable housing in the longer term to meet the Council's needs in a plan-led manner, as advocated by the Framework. As a consequence of all of this and whilst having regard to the Ashby-de-la-Zouch appeal decision<sup>4</sup>, I consider that a good level of weight can be afforded to

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<sup>4</sup> APP/G2435/A/14/222806, dated 15 February 2016).

Policies S2 and H1 of the adopted Local Plan. The scheme would therefore conflict with the development plan in this regard and this further weighs against the proposal.

45. The Council and the appellant have agreed in the SOCG that the adopted Local Plan is out-of-date and as a result, Paragraph 14 of the Framework is engaged. However, I am mindful that I have determined that the Council has a five year housing land supply and as a result, Paragraph 49 of the Framework is not triggered. I have also found that relevant policies, in terms of Paragraph 215 of the Framework, have a degree of consistency with the Framework and can be afforded reasonable weight. In addition, whilst the adopted Local Plan is time expired, it nonetheless remains part of the statutory development plan. Given the above, I am not of the view that the development plan is absent, silent or that relevant policies are out-of-date. Consequently, I consider that Paragraph 14 of the Framework and its presumption in favour is not engaged.
46. The emerging Local Plan is currently going through its examination in public. This began some time ago and was stalled for a lengthy period of time, due to the interim findings of the appointed Inspector. However, the Secretary of State (SoS) determined that the previous examining Inspector's findings that the whole plan could not proceed as drafted, was not proportionate. The main concern of the Inspector related to Policy 6 (Provision for Travellers), however, the SoS took the view that the rest of the plan could proceed to further examination and that is what is now taking place.
47. I am mindful that the emerging Local Plan is still going through the examination process and therefore its provisions and policies could quite possibly be subject to change. Indeed, I understand that in certain areas there are significant objections outstanding. For these reasons and having regard to Paragraph 216 of the Framework, I consider that at the present time, only limited weight can be afforded to the policies of the emerging Local Plan, including those that set out the Council's spatial strategy for the delivery of housing. I have been provided with several appeal decisions<sup>5</sup> that share this view, which adds weight to my findings in this regard.
48. The emerging Local Plan at Policy S7 'Prosperous Rural Communities' seeks to deliver a minimum of 420 dwellings in rural areas, via the Rural Allocations, which is yet to be drafted. The Policy sets out that this would comprise 75 dwellings at North Fambridge and 345 dwellings in other rural areas. Policy S8 'Settlement Boundaries and the Countryside' of the emerging Local Plan identifies Mayland as one of five 'larger villages' in the District. Mr Simpson, the Council's planning witness accepted at the Inquiry that it is currently unclear where the proposed dwellings in rural areas will go and that it could be said that the development plan is 'silent' on this matter.
49. Further to this, the Inquiry heard from a local resident who is part of the Mayland Neighbourhood Planning Committee that through its emerging Neighbourhood Plan, Mayland could be expected to deliver up to 200 new dwellings over the emerging Local Plan period. It was also set out that a search for sites has been undertaken to inform the emerging Neighbourhood Plan, which does not include the appeal site. However, it was revealed that 3 of the 5 identified sites were located outside the settlement boundary of

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<sup>5</sup> APP/X1545/W/15/3132936, dated 1 August 2016 (Inquiry Document 11), APP/X1545/W/15/3140800, dated 8 July 2016 & APP/X1545/W/15/3133309, dated 8 March 2015.

Mayland and are likely to be needed to meet such needs. It was also explained that there is a general preference for smaller sites than that proposed in this case.

50. I acknowledge that these factors do show some support to the scheme. However, I have determined that limited weight can be afforded to the emerging Local Plan and the emerging Neighbourhood Plan is at a very early stage of production and therefore also attracts little weight. I am also mindful that although not a ceiling to new sustainable development from coming forward, the Council can demonstrate a five year housing land supply. Further, as set out above, there is no reason for me to believe at this stage that the longer term housing needs of Maldon (beyond five years) will not be delivered in a plan-led approach, as advocated by the Framework.
51. Moving on to other matters, the Council clarified at the Inquiry that it was not seeking to argue that Mayland was not capable of accommodating 150 new dwellings in terms of the accessibility of the location and the level of local services and facilities that Mayland offers. However, I consider this to be a matter of neutral weight as it could be argued that this should be the case for all new development, particularly where the Council can demonstrate a five year housing land supply.
52. The Council's planning witness Mr Simpson acknowledged that there was a demonstrable need at the present time for affordable housing within Mayland itself and that the provision of 40% affordable housing would be a social benefit that weighs heavily in favour of the proposal. The appellant has also set out that the demographic evidence of Mayland shows that it has an unbalanced age profile, insofar that there has been a significant increase in the average age of the population in recent times, possibly down to affordability issues. The Council accepted at the Inquiry that the proposal, along with its provision of affordable housing would help to address this demographic balance and was a demonstrable social benefit, specific to this scheme. I also accept the appellant's view that the proposal would help to support the vitality of the rural community by providing more patronage to local schools and services and facilities, including local bus services. However, I am again mindful that other housing schemes that would come forward in Mayland in the future, through a plan-led approach would help to do the same, and it is highly likely that such developments would also be required to make provision for affordable housing. The same can also be said for the economic benefits of the scheme. I consider that this along with the presence of a five year housing land supply reduces the level of weight that can be afforded to the benefits of the housing. Given all of the above, I consider that the social and economic benefits of the scheme, including the provision of on-site open space, should collectively carry a moderate level of weight in favour of the scheme.
53. In conclusion on this main issue and drawing all of the above findings together, I have identified that the proposal would cause significant harm to the character and appearance of the area. Further, the appeal site is located outside of the existing settlement boundary, which further weighs against the scheme. The proposal would have social benefits through the provision of up to 150 new dwellings, including the provision of 40% affordable units. There would also be some associated economic benefits. I have found that the social and economic benefits of the proposed housing delivery should collectively carry a moderate level of weight in its favour.

54. On balance and weighing these factors against each other, I consider that the social and economic benefits of the scheme are not sufficient to outweigh the identified environmental harm and the associated development plan conflict. Overall, I conclude that the proposal does not comply with the development plan as a whole and does not constitute sustainable development in terms of the Framework.
55. For the avoidance of doubt, even if I was to accept that Paragraph 14 of the Framework is engaged as a result of the adopted Local Plan being out-of-date, given all of my findings above, I consider that the social and economic benefits of the scheme are significantly and demonstrably outweighed by the identified environmental harm and associated development plan conflict.

*Other matters*

56. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

**Overall Conclusion**

57. For the reasons set out above and having regard to all other matters raised, I conclude that the proposal does not comply with the development plan as a whole and does not represent sustainable development in terms of the Framework. Accordingly, there are no material considerations which would warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

*Jonathan Manning*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Zack Simons of Counsel                      Instructed by Maldon District Council

He called:

Tim Parton                                      Maldon District Council

Clive Simpson                                 Maldon District Council

### FOR THE APPELLANT:

Martin Edwards of Counsel                Instructed by Gladman Developments Ltd

He called:

Ben Wright                                    Aspect Landscape Planning

John Mackenzie                              Gladman Developments Ltd

James Donagh                                 Barton Willmore

### INTERESTED PERSONS

Barry Edwards                                Neighbourhood Planning Committee

John Oatham                                   Mayland Parish Councillor

Linda Haywood                                Mayland Action Group

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Opening Submissions, submitted by the appellant.
2. Opening Submissions, submitted by the Council.
3. Assessment of timescale of delivery of sites allocated in the Local Development Plan, submitted by the Council.
4. Savills Report: Urban Extensions – Assessment of Delivery Rates, provided by the Council.
5. Proof of Evidence Summary – Tim Parton, provided by the Council.
6. Letter from Dartmouth Park Estates Ltd, dated 14 September 2016, provided by the appellant.
7. Appeal Decision: APP/X1545/W/15/3003795, dated 6 November 2015, provided by the Council.

8. Appeal Decision: APP/X1545/W/15/3003529, dated 7 December 2015, provided by the Council.
9. Appeal Decision: APP/X1545/W/15/3133309, dated 8 March 2016, provided by the Council.
10. Appeal Decision: APP/X1545/W/15/3053104, dated 29 July 2016, provided by the Council.
11. Appeal Decision: APP/X1545/W/15/3132936, dated 1 August 2016, provided by the Council.
12. Emails in relation to WHN Site – OUT/MAL/15/01327, provided by the Council.
13. Bundle of maps, submitted by John Oatham.
14. Submissions of Linda Haywood.
15. CIL compliance statement, provided by the Council.
16. Signed and dated Statement of Common Ground, provided by both parties.
17. Extracts of Character Area D2 Ramsay Drained Estuarine Marsh and E2 Tillingham and Latchingdon Coastal Farmland, provided by the appellant.
18. A3 copies of viewpoint visualisations, provided by the appellant.
19. Planning Practice Guidance: Housing and economic development needs assessments, provided by the Council.
20. PAS Objectively Assessed Need and Housing Targets – Technical Advice Note, July 2015, submitted by the Council.
21. Article: Whither household projections, submitted by the Council.
22. High Court Judgement CO/978/2016 (Forest of Dean District Council vs Secretary of State for Communities and Local Government and Gladman Developments Ltd, provided by the appellant.
23. Javid: Speech to Conservative Party Conference 2016, provided by the appellant.
24. Essex County Council: Developers' Guide to Infrastructure Contributions 2010 Edition, provided by the Council.
25. Essex County Council: Education Contribution Guidelines Supplement, provided by the Council.
26. Signed and dated Section 106 Agreement, provided by the appellant.
27. Appeal Decision APP/W1525/W/15/3129306, dated 20 July 2016, submitted by the Council.
28. Council's closing submissions.
29. Letter from Gary Barwell MP: Neighbourhood Planning Bill, submitted by Barry Edwards.
30. Appellant's closing submissions.