



Appeal Decision

Inquiry held on 21 to 24 March 2017

Site visit made on 23 March 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 11 July 2017

Appeal Ref: APP/C1570/W/16/3156864

Land south of Braintree Road, Felsted

- 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 Catesby Estates Limited against the decision of Uttlesford District Council.
 - The application Ref UTT/16/0287/OP, dated 1 February 2016, was refused by notice dated 28 July 2016.
 - The development proposed is described as '*up to 55 dwellings, means of access and associated works, with all other matters (relating to appearance, landscaping, layout and scale) reserved*'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Catesby Estates Limited against Uttlesford District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposed scheme has been submitted in outline, with all matters reserved except for access. Upon my opening the Inquiry the main parties agreed that permission is sought in outline, as detailed in the above header. Most of the submitted plans are labelled as 'illustrative', even though some show matters such as landscaping or layout, for example. I have proceeded on the basis that these show possible schemes only, and would not bind the appellant to the specific details shown in an illustrative manner.
4. After the Inquiry, the Supreme Court issued its Judgement in the case of *Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)* on 10 May 2017 [2017] UKSC 37. In the interests of fairness, both main parties were given the opportunity to provide comments on this matter. I only received comments from the appellant on this specific matter.

Main Issues

5. The main issues are:

- i) The effect of the proposed development on the character and appearance of the area, including on the setting of any nearby heritage assets, and;
- ii) Whether the proposal would represent development of the best and most versatile agricultural land and, if so, is this necessary and have areas of poorer quality been considered in preference to that of a higher quality, and;
- iii) Whether the Council is able to demonstrate a five year supply of housing land for their area, and;
- iv) Whether the proposed development would make adequate provision in respect of local infrastructure with specific regard to development plan policies which seek affordable housing, education, highways, health services, public open space, SUDs and monitoring fees.

Reasons

Character and appearance

6. The appeal site is located to the south of Braintree Road which runs on a broadly east to west axis through the settlement of Felsted. It is roughly 2.67 hectares in size. As it lies outside of the settlement boundary for Felsted and given its character and appearance as an agricultural field, it is countryside for planning policy purposes. There are two Public Rights of Way (PROW) that cross the field on an approximate east-west axis; FP48 which is roughly to centre of the site, and FP110 that runs along the southern edge of the site. There is also a PROW that runs along the eastern boundary of the site (FP49) south from Braintree Road and links to FP48.
7. In terms of existing boundary treatments, the site is bounded on most sides by a mixture of hedges and pollarded trees. Beyond the east and south of the site are open agricultural fields; with open agricultural fields a key component of the wider landscape around Felsted. There are some residential properties located to the west and north of the site along on Jolly Boys Lane and Braintree Road. The Felsted Conservation Area lies to the west of the appeal site and includes two dwellings along Jolly Boys Lane, the rear elevations of which face the appeal site.
8. The urban form of Felsted is principally characterised by short spurs centred on culs-de-sac serving a few dwellings or ribbon development along the principal through-roads. This urban form contrasts with a fairly new development close to the west of Felsted off Station Road (known as Flich Green/Oakwood Park, located on the site of a former sugar beet factory), where the dwellings are situated on one side of an existing main road and have a clustered urban form; that is grouped around a number of estate roads rather than a few roads that lead to a specific destination outside of the settlement¹.

¹ For example if you enter at Baynard Avenue you would either leave by that access into the estate or at the junction with Tanton Road – the main purpose of these roads is not to carry passing traffic as it would along a ribbon form of development.

9. Layout is a reserved matter, but the illustrative drawings provide a helpful guide as to how a scheme of up to 55 dwellings might look in practice on the appeal site. The proposal in this case would be accessed from the single access point off- and on-to Braintree Road to serve up to 55 dwellings. What this means in practical terms is that any layout would take an urban form akin to that found at Flitch Green, with a clustered form, rather than the ribbon/short spur feature which is characteristic of the settlement of Felsted of which the appeal site directly abuts on its eastern edge.
10. The Appellant points to an existing development at Chaffix², off Garnetts Lane, which comprises 70 dwellings at a density of about 23.7 dwellings per hectare, which would not be dissimilar to that proposed under the appeal scheme. However, this is an exception to the typical urban form that I saw during my visit to the site, the settlement of Felsted and the wider area. As an exception to the general form found in the settlement of Felsted, this fails to provide justification for any further erosion of the urban form within this settlement. Indeed, the likely layout and urban form that any development of up to 55 dwellings with a single access point off Braintree Road would take on the appeal site points to one that would be at odds with the prevailing pattern of development found in the directly adjoining settlement of Felsted.
11. The second reason for refusal refers to detrimental harm to the character and setting of the conservation area³. At the appeal stage the Council confirmed that it was not seeking to contest this issue at the Inquiry. The statutory duty set out in Section 72(1) of the *Planning Listed Buildings and Conservation Areas Act 1990*, as amended (PLBCA), relates to any building or land within a conservation area. As the appeal site does not lie within the conservation area, the statutory duty is not engaged in this case. However, conservation areas are defined as designated heritage assets within the Framework and it is recognised that heritage assets may have a setting. The impact on the significance of this is relevant when considering the impact of a proposal in the context of the Framework policies.
12. I note the Appellant's evidence which both defines what they consider to be the significance of the conservation area, and the impact of the proposal on this⁴. They conclude that there is no justification for an objection to the proposed development on cultural heritage grounds⁵. With no evidence to the contrary I see no reason not to concur with this assessment and therefore find that the proposal would not result in harm or loss to the significance of the designated heritage asset in the form of the Felsted Conservation Area, within the context of Paragraph 132 of the Framework. For similar reasons, I do not find that the proposal would have any adverse impact on the setting of nearby listed buildings pointed out to me during the site inspection and detailed within the various written evidence, in respect of Section 66(1) of the PLBCA.
13. The appellant suggested at the Inquiry that the proposal was a landscape-led scheme and re-iterates this within their Closing Submissions at paragraph 57, stating '*the appeal proposals are landscape led*'⁶ (sic). The parties agree that the site is not designated for its landscape value or scenic beauty nor is it

² APP12 - Chaffix, Felsted development

³ CD3.1 – Decision Notice, UTT/16/0287/OP, dated 28 July 2016

⁴ POE Summary, Stephen Carter

⁵ POE, Stephen Carter, Page 23, para 6.7

⁶ APP25, Closing Submissions on behalf of the Appellant

within an Area of Outstanding Natural Beauty or Green Belt⁷. Nevertheless, it is within the countryside for planning policy purposes. Clearly the change from an open field to built-form would intrinsically alter the character of the appeal site. In doing so, it would result in some limited landscape harm in terms of openness and visual character, as explained in the POE of Mr Rosedale. What is more, with two PROW crossing the site, and others nearby and the location of the appeal site on a principal entry route into the settlement either by vehicle or foot, the change in the appearance of the site would be very noticeable to users of these routes.

14. To a certain, but not absolute, extent the proposal could be mitigated so as to reduce its visual impact on the wider landscape. I am unconvinced that the scheme was entirely landscape-led from inception. Nevertheless, it is clear that the appellant has undertaken detailed work so as to adapt the scheme; for example through the building heights parameter plan, in order to mitigate its impact. What is more, as landscaping is a reserved matter there remains scope for specific details to be agreed at that stage.
15. Be that as it may, the proposal would continue to result in some landscape harm to the countryside and in doing so it is at odds with Policy S7 *Uttlesford Local Plan 2005* (ULP) which seeks to ensure that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set. It would also fail to recognise the intrinsic character and beauty of the countryside set out at Paragraph 17 of the Framework, through the loss of an open agricultural field, which is an important component of the countryside around this part of Felsted. This is further exacerbated by the incongruent form the proposal would take in relation to the wider adjoining settlement, as I have considered above.
16. I therefore conclude that the proposed development would have a materially harmful impact on the character and appearance of the area by reason of; its elongated and single access point layout which would be at odds with the prevailing pattern of development within the settlement of Felsted and the harm to openness and visual character of the countryside which cannot be fully mitigated. Accordingly, it would fail to accord with Policy S7 of the ULP, which, amongst other aims, seeks to protect the countryside for its own sake and that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set.
17. It would also be contrary to Policies contained within the Framework, which amongst other aims includes taking account of the different roles and character of different areas as set out at Paragraph 17, failing to promote or reinforce local distinctiveness as set out in Paragraph 60 and fail to take the opportunities for improving the character and quality of an area and the way it functions explained in Paragraph 64.

Agricultural Land

18. The appeal site comprises an open field which consists of Grade 2 (81.5%) and Grade 3a (14.8%)⁸, which the glossary of the Framework indicates falls within the category of Best and Most Versatile Agricultural Land (BMVAL). With site specific soil sampling and assessment, I see no reason not to agree with the

⁷ APP1, SOCG, page 15, Para 4.7

⁸ POE, Tony Kernon, Volume 3: Summary of Proof, page 2, paragraph S4

- grading of the land or its inclusion within these grades or the overall BMVAL category.
19. Policy ENV5 of the ULP sets out that *'Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.'*⁹
20. The proposal in this case would not take place on previously developed land, nor would it take place within existing development limits. I acknowledge that the development of the land may be 'required' given my findings on the lack of a five year supply in the next main issue. However, beyond recognising the fact that over 80% of the District is classified as Grade 2 by MAFF¹⁰ there has been little detailed assessment of whether other sites of poorer quality have been considered in any detail by the Appellant. The adopted development plan policy, when read plainly, indicates that development on agricultural land should be focussed to poorer land and more generally it is clear that agricultural land is a finite resource.
21. Paragraph 112 of the Framework is not dissimilar in wording to Policy ENV5 of the ULP. One key difference is the use of the term 'significant development' whereas the adopted ULP policy only refers to 'development'. The appellant has pointed me to the fact the site would not require consultation with Natural England due to its size of less than 20 hectares¹¹ and that this infers it is not a 'significant' development of agricultural land. I have also been directed to two appeal decisions. The first in which the Inspector found that *'I am not persuaded that the proposed development can be considered to be significant in terms of the amount of BMV that would be taken'*¹². The second, in which the Inspector found that *'it has not been demonstrated that, within the overall context of the amount of best and most versatile agricultural land in the vicinity, this proposal would be a significant development of such land'*¹³.
22. I do not find that the level of development requiring consultation with Natural England to be necessarily symptomatic of the level of significance or otherwise of the development involved. In terms of the two appeal decisions, clearly the full evidence of those cases is not before me, but it is clear from reading both that the decision-maker, as is proper, made an assessment based upon the facts before them and did not provide any definitive definition of what 'significant' means in the context of Paragraph 112 of the Framework. Indeed, the Framework itself does not provide a definition of this term.
23. In this case, put very simply for both sides, the appellant considers that due to the small loss of BMVAL relative to the overall provision within the District the proposal would not represent a significant development. Slightly differently, the Council suggested that it is not only this factor to consider, but that there is a need to consider the context of the proposal within the site, and in this respect, with the complete loss of the agricultural field, this would represent a significant development. I am persuaded that the latter approach is

⁹ CD4.1, *Uttlesford Local Plan 2005*, Page 28, Policy ENV5

¹⁰ POE, Tony Kernon, Volume 1: Text, Page 5, Para 2.7

¹¹ Ibid, Page 4, Para 2.4

¹² POE, Tony Kernon, Volume 2: Appendices, Appendix 8, Appeal Ref: 2158146, paras 18 and 19

¹³ Ibid, Appendix 9, Appeal Ref: 3154193, paras 41 to 43

appropriate in this case; as ignoring the specific context of the site itself and the nature of the development proposed would potentially provide justification for the piecemeal development of much BMVAL, which clearly the Framework seeks to direct towards poorer quality land in the first instance. I find that the proposal would therefore, in this case, represent a significant development of agricultural land.

24. I therefore conclude that in light of both the absence of an assessment of land of poorer quality and the scale and quantum of development proposed representing a significant development of agricultural land, the proposal fails to comply with Policy ENV5 of the ULP and Paragraph 112 of the Framework, which seek the various aims I have aforesaid.

Housing land supply – OAN and Sites

25. Policy H1 of the *Uttlesford Local Plan 2005* (ULP) set out the Council's aim to deliver 5,052 dwellings between 2000 and 2011. This would equate to about 500dpa over that ten year period. At the Inquiry, both parties agreed that as this period had now passed, it no longer represents a 'housing requirement figure' for the local planning authority area. This appeal is not a local plan examination and it is not my role to set a specific housing requirement figure. Nevertheless, to ensure that the local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area as envisaged by Paragraph 47 of the Framework, a conclusion on an evidence-based OAN is necessary for this appeal.
26. The appellant has submitted the evidence of Mr Coop which constitutes an Objectively Assessed Need (OAN) assessment. This found that a figure of 719 dpa¹⁴ is required for the LPA to meet its need for housing. The LPA has submitted three different OAN figures: the Local Plan Inspector's (LPI) Conclusions from December 2014 with a figure of about 580dpa¹⁵, the September 2015 *West Essex and East Hertfordshire SHMA*¹⁶ with a figure of 568 dpa, and the August 2016 *ORS Updating the overall housing need* document (relating to the SHMA)¹⁷ with a figure of 640 dpa. They have also submitted a February 2017 *Impact of formation rates on OAN* with a range of approximately 481-492 dpa for Uttlesford¹⁸ but neither party suggests that this last survey should be considered in the context of this appeal as an OAN figure. In particular, the LPA consider that the 2015 SHMA is the only assessment which provides the latest full assessment of housing need¹⁹ as envisaged by the Framework.
27. Establishing an appropriate OAN figure is not a precise science; but it nonetheless needs to be considered in a logical fashion. The suggested OAN figures of 719dpa and 481-492 dpa appear to be either over- or under-optimistic when compared against previous requirements. I understand that one key difference is that the appellant's 719 dpa figure is driven in part by optimistic economic data for Stansted Airport, and that employees would seek housing in Uttlesford above that of any other district within the wider Housing Market Area (HMA). Yet there is limited evidence that the provision of housing

¹⁴ Dpa = Dwellings per annum

¹⁵ CD 4.3 - EX157, Paragraph 1.10

¹⁶ CD 4.7

¹⁷ CD 4.17

¹⁸ Figure 3, Appendix 11, Mr J Lee POE

¹⁹ Mr Lee POE, page 20, Para. 75

in Uttlesford would meet this specific aspect of need or that the Uttlesford area would need to provide more housing than the other three local authority areas within the HMA. Moreover, when the figure of 719 dpa is considered in the context of earlier years and the 580 dpa LPI Conclusions, the number appears to be questionably higher than one might reasonably expect.

28. The 580 dpa LPI figure is not based upon the latest 2014 DCLG household projections. The national Planning Practice Guidance (the Guidance) is clear in that the starting point to establish the need for housing are the household projections published by DCLG²⁰. It goes on to indicate that wherever possible, local housing needs assessments should be informed by the latest available information, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued²¹. Nevertheless, some time has passed since the 2014 DCLG household projections were issued, and therefore they provide a more recent dataset which it is not unreasonable to use. In this respect, whilst the LPI figure of 580 dpa is of statistical interest and points towards the need for a higher than 568 dpa figure, it is not based upon the latest figures and this limits its relevance to this appeal.
29. The 2014 DCLG projections are used within the LPA's August 2016 *Updating the overall housing need* document. The LPA suggested at the Inquiry that this document is not a SHMA 'update', as such an exercise awaits the Government's publication of a standardised approach to assessing housing requirement²². However, the document itself states that '*the SHMA demographic projections were fully updated to take account of the latest information and provide an updated assessment of overall housing need for the housing market area and for the four individual local planning authorities.*'²³ For the purposes of this appeal, therefore, it can be considered that this document is an 'SHMA update' of the August 2015 SHMA. The LPA has one set of figures which take into account the most recent DCLG projections in the form of the August 2016 SHMA update. This OAN of 640 dpa, represents the appropriate evidence-based OAN figure for Uttlesford for the purposes of this appeal.
30. In this context, the figure of 640 dpa is the base OAN figure for the period 1 April 2015 to 31 March 2020. Next one needs to consider the applicable buffer set out in Paragraph 47 of the Framework of 5% or 20%. This is set out in various scenarios within the *Statement of Common Ground on Five Year Housing Land Supply March 2017*²⁴ (herein SOCGHLS) and Council's Supply (with March 2017 adjustments) and 5% buffer²⁵ and Updated Five Year Supply Calculations – 2016 to 2021, dated 22 March 2017²⁶. Although the Framework sets out that LPAs should update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing²⁷ the LPA failed to do so in April 2016 for the preceding monitoring year.
31. To apply a 20% buffer, there needs to have been a record of persistent under delivery of housing. The main parties have supplied tables showing the extent of any gain or shortfall against the target in documents LPA2 and APP8 for the

²⁰ PPG, Paragraph: 015 Reference ID: 2a-015-20140306 - Revision Date 06/03/2014

²¹ PPG, Paragraph: 016 Reference ID: 2a-016-20150227 - Revision Date 27/02/2015

²² Mr Lee POE, page 20, Para 75

²³ CD4.15 Para 2 – ORS *Updating the overall housing need*

²⁴ APP2 - *Statement of Common Ground on Five Year Housing Land Supply March 2017*

²⁵ LPA4 - Council's Supply (with March 2017 adjustments) and 5% buffer

²⁶ APP10 - Updated Five Year Supply Calculations – 2016 to 2021, dated 22 March 2017

²⁷ The NPPF, Paragraph 47, second bullet point

period of 2001 to 2014 (LPA) or 2016 (APP). I acknowledge the Council's point that the 'target' from the East of England Plan May 2008²⁸ was, in practice, retrospective and a 'period' target rather than an annualised target. I also agree that the nature of house building is that there are peaks and troughs within the figures that are a result of a multitude of factors, including site specific issues. However, when these are smoothed out over a period of 13 years for the Council's table,²⁹ in seven years out of 13 the LPA did not achieve the target figure. Indeed in the last five years of the Council's table (from 2009 to 2014) it achieved its target two out of five years. What is more, the gain was 93 and 17, against a shortfall in this period of -128, -2, and -133 respectively.

32. When taken as a whole, I find that the under-delivery, in terms of length of time, seven out of thirteen years or three out of five years and the level of under-delivery against the years of gain, amount to a record of persistent under-delivery of housing. Therefore the 20% buffer, as set out in Paragraph 47 of the Framework, is applicable on the basis of the evidence in this case.
33. It is clear from the tables provided within the SOCGHLS at Section 4 (and also from the updates contained within LPA4 and APP10), that when a 20% buffer is applied the LPA cannot demonstrate a five year supply of deliverable housing sites – this is irrespective of whether one accepts the appellant's or the Council's supply figures; the main difference between the parties on this matter being the delivery rate.
34. What is more, even if the 20% buffer figure is applied to the SHMA 2015 figures, which the Council rely upon as the latest full assessment of housing needs though I take a different view, it is clear that the Council cannot demonstrate a five year supply of housing sites. Put another way, whether one accepts the 640 dpa figure or the LPAs figure of 568 dpa, neither amount is able to be met by supply. Consequently, I conclude that the relevant policies for the supply of housing should not be considered up to date, as set out in Paragraph 49 of the Framework, in this instance.

Local Infrastructure

35. The appellant has submitted a signed and dated Section 106 Agreement³⁰ (S106), which is an agreement between the landowners, appellant and the local planning authority. Amongst other factors, the S106 provides for 40% of the total number of dwellings to be affordable housing, 5% of the total number to be Starter Homes, a cycle parking contribution of £1,000, a parking management contribution of £11,500, a primary education contribution of £12,172, a healthcare contribution of £18,920, a monitoring fee of £3,000, an education contribution, a school transport contribution, and the creation of a management company for the public open space and Sustainable Drainage System (SuDS). The matters set out in the S106 are detailed within a 'UDC S106 Planning Obligations Justification' paper submitted by email on 14 March 2017 and discussed at the Inquiry.

²⁸ App 22 - East of England Plan May 2008, copy of page 30, Section 5 Housing, Minimum Dwelling Provision 2001 to 2021 (net increase, with annual average rates in brackets)

²⁹ LPA4

³⁰ LPA10 - Section 106 Agreement relating to land on south east side of Braintree Road, Felsted, Dunmow, dated 24th March 2017

36. Policy H9 seeks to negotiate an element of affordable housing up to 40% of the total provision of housing. A requisite 213 net affordable dwellings per annum based upon the evidence of the appellant's witness Mr Stacey³¹, is uncontested by the Council, and would not be met by the average affordable housing completions of roughly 80 dwellings per annum between 2000 and 2016. On the basis of the evidence before me, the Council is not providing a sufficient level of affordable housing to meet the needs of the local area, and as such the provision of a policy compliant 40%, plus an additional 5% as Starter Homes, would represent an exceedance of what the development plan policy seeks.
37. I note the comments from Felsted Parish Council³² in terms of disputing the need for affordable housing and that instead of providing affordable housing they would prefer any monies to be spent on community facilities such as a community hub containing features such as a doctor's surgery, village hall or shop for example. However, when I asked their representative if such an aim was supported by specific planning policies, whether they knew the costs involved in the erection of such a building and the purchase of land, and also the value of the commuted sum, the answers were mainly no. The Parish Council's views are noted, but in the absence of detailed justification for commuting the affordable housing sum, I am unable to afford them any weight as justifying the refusal of permission.
38. Policy GEN6 of the ULP requires that development should make provision for infrastructure that is made necessary by the proposed development. I have listed the various elements of infrastructure earlier under this main issue. The justification paper does not indicate that any of these contributions would amount to five or more pooled contributions. With no evidence to the contrary, I see no reason to not concur with this assessment.
39. Paragraph 204 of the Framework and CIL Regulation 122(2) set out the three tests for seeking planning obligations: that they must be '*necessary to make the development acceptable in planning terms, directly relate to the development, and fairly and reasonably related in scale and kind to the development.*' All the obligations in this case are necessary, directly related, and fairly and reasonably related to the development. Therefore, they meet all the tests within the CIL Regulations 122 and 123, and should be taken into account in the decision. What is more, the provision of affordable housing in accordance with local policy, and Starter Homes above any development plan policy, are public benefits which weigh in favour of the grant of permission.

Planning Balance and Overall Conclusion

40. Put simply, Section 38(6) of the *Planning Compulsory Purchase Act 2004*, as amended, sets out that in the determination of proposals, this must be made in accordance with the development plan, unless material considerations indicate otherwise. The Framework is an 'important' material consideration and therefore of relevance to assessing the planning merits of the proposal. However, the starting point is the development plan.
41. In this case, I have found that the proposed development would conflict with adopted development plan Policy S7 of the ULP. Prior to the Inquiry, the main

³¹ POE, James Stacey, page 52, Fig 6.3

³² LPA5 - Letter Felsted Parish Council, dated 21 March 2017 – specifically relating to wish to speak and affordable housing

- parties agreed that Policy S7 relates in part to the supply of housing³³. However, when this policy is assessed within the context of the Supreme Court judgement and the interpretation in terms of the 'narrow' approach being the correct one, I do not find that this is the case. What is more, when this policy is read plainly, I find that it is broadly consistent with the Framework in terms of Paragraphs 17 and 215. It should therefore be afforded the 'greater weight' envisaged under Paragraph 215 of the Framework, which I consider should be significant weight given the degree of consistency in this case.
42. The proposal would also conflict with adopted Policy ENV5 of the ULP. My attention was drawn to both Paragraphs 112 and 215 of the Framework in relation to this policy, and the fact that the adopted development plan policy does not use the term 'significant development,' whereas Paragraph 112 does. The appellant suggests that the absence of the word 'significant' in the adopted development plan means that it is less consistent with national policy and should therefore be considered as out-of-date and afforded less weight in any balance. However, there is no definition of the term 'significant,' which is for the decision-maker to assess. Moreover the crucial point here is consistency rather than replication. In this sense, I find that the Policy ENV5 does broadly comply with the policies within the Framework and should therefore be given greater weight in the overall planning balance.
43. I have also found that the proposal would conflict with elements of Paragraphs 17, 60, 64, and 112 of the Framework, which also weigh against the proposal.
44. Nonetheless, I have found that the Council is unable to demonstrate a five year supply of deliverable housing sites on the evidence before me. As such, Paragraph 14 of the Framework, and in particular the second limb, second bullet point, is engaged.
45. In finding that the Council is unable to demonstrate a five year supply of housing land in this instance, relevant policies for the supply of housing should not be considered up-to-date. In such circumstances, the decision-maker is required to grant permission 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, as set out in Paragraph 14 of the Framework.
46. The benefits arising in this case include the delivery of up to 55 dwellings in an area that is unable to demonstrate a five year supply of deliverable housing sites, the provision of 40% of the dwellings as affordable housing and the provision of 5% of the dwellings as starter homes or equivalent. There would also be economic benefits in terms of jobs created during the construction phase of the development. To the social and economic benefits of providing housing, including affordable housing, I afford significant weight, particularly given the lack of a deliverable five years of housing supply, the need for housing identified in the OAN and the current shortfall in such provision.
47. Benefits are also accrued by the sustainable location of the appeal site in terms of being adjacent to an existing settlement that has moderate levels of services or public transport links to other settlements that provide day-to-day services. This locational factor is afforded modest weight as a benefit. There would also

³³ APP1, SOCG, page 14, Para 4.3

be some biodiversity benefits; although given that there is little to stop these from being implemented outside the remit of this scheme these are only afforded minimal weight.

48. Against these benefits are the adverse impacts in terms of the limited degree of harm on the openness and visual character of the countryside which cannot be fully mitigated, even with the use of various landscaping techniques. There would also be an unjustified loss of BMVAL; principally by the lack of an assessment of areas of poorer quality and also in terms of the loss of this as an important but limited natural resource. The proposal would also have an adverse impact on the character and appearance of the existing settlement of Felsted.
49. In particular, the likely layout and atypical urban form, guided by a single access point to serve up to 55 dwellings, would fundamentally jar with one of the key principles of planning, which is to act in the public interest by protecting and enhancing our built and natural environment. It would also be counter to one of the key principles of the Framework, which, whilst making the point that planning should not simply be about scrutiny, but instead should be a creative exercise, that this should be within the context of finding ways to enhance and improve the places in which people live their lives. In this respect, the unacceptable urban form of the development is diametrically opposed to the concepts of good design and promoting or reinforcing local distinctiveness; notions which lie at the very heart of good planning practice. Given these conflicts, these adverse impacts should weigh very substantially in any planning balance.
50. Whilst I recognise the benefits arising from the proposal and that some of these amount to significant weight, I find that the adverse impacts I have identified would significantly and demonstrably outweigh these benefits. I therefore conclude that the proposal should not be granted permission as indicated under Paragraph 14 of the Framework, as it would fail the second bullet point of the second limb of the aforesaid paragraph.
51. I therefore conclude that the proposal would fail to accord with the adopted development plan, and that there are no material considerations that indicate that the proposal should be permitted.
52. For the reasons given above, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Asitha Ranatunga, Barrister Instructed by Elizabeth Smith, Solicitor of the Council

He called:
Mr Jonathan Lee, ORS – OAN

Mrs Alison Hutchinson, Hutchinsons Planning and Development Consultants –
MRTPI Planning, 5YHLS, Agricultural land, landscape,
affordable housing, heritage
Mr Nigel Brown* Development Manager
Ms Elizabeth Smith* Legal Services UDC

FOR THE APPELLANT:

Mr Christopher Young, Barrister Instructed by Mr Greg Mitchell

He called:
Mr Simon Coop, Lichfields - OAN
BA(Hons), MSc, MRTPI, MIED
Mr Jeffrey Richards, Turleys – 5 Year Supply
BA(Hons), MTP, MRTPI
Mr James Stacey, Tetlow King Planning – Affordable Housing
BA (Hons), Dip TP, MRTPI
Mr Benjamin Rosedale, EDP – Landscape
BSc (Hons), MSc, CMLI, AIEMA
Dr Steven Carter, Headland Archaeology – Heritage assets
BSc, PhD, MCifA, FSAScot
Mrs Louise Steel, Framptons – Planning (called in place of Mr Greg Mitchell
MRTPI owing to personal circumstances)
Mr Tony Kernon, Kernons – Agricultural Land (only written evidence)
BSc(Hons), MRICS, FBIAC
Mr David Morris* Catesby Property Limited
Mr Iain Crawford* Landowner

INTERESTED PERSONS:

Mr C Dawkins Local Resident
Mr Peter Watson Assistant to Parish Clerk, Felsted Parish Council

Those persons marked with an asterisk (*) formally took part in the Planning obligations and conditions roundtable session only.

Documents submitted at Inquiry:

No.	Title/Identifier
LPA1	Officer Report and Decision Notice for granted planning permission ref UTT/14/3182/FUL Site at 119 Radwinter Road, Saffron Walden
LPA2	Table re Issue 7D.2: Housing Targets and Delivery from Local Plan examination EX149
LPA3	Council's Opening Remarks by Asitha Ranatunga of Cornerstone Barristers, dated 21 March 2017
LPA4	Council's Supply (with March 2017 adjustments) and 5% buffer
LPA5	Letter Felsted Parish Council, dated 21 March 2017 – specifically relating to wish to speak and affordable housing
LPA6	Agenda of Inspector's Advisory Visit 1 November 2016
LPA7	(Draft) Note of meeting relating to Inspector's Advisory Visit, dated 2 November 2016
LPA8	List of housing land supply sites
LPA9	Go-East Saving Local Plan Policies letter, dated 21 December 2007
LPA10	Section 106 Agreement relating to land on south east side of Braintree Road, Felsted, Dunmow, dated 24 th March 2017
LPA11	Closing Submissions on Behalf of Uttlesford District Council, by Asitha Ranatunga of Cornerstone Barristers, dated 24 March 2017
LPA12	Copy of Title Plan numbered EX589577
LPA13	Response to Costs Application on behalf of Uttlesford District Council by Asitha Ranatunga of Cornerstone Barristers, dated 24 March 2017
LPA14	Planning Policy Working Group - notes from meeting 22 February 2017
IP1	Hand drawn plan from Mr C Hawkins submitted at site inspection detailing for me to look from triangular crossroads at Bannister Green (agreed by main parties at Inquiry satisfactory to accept as evidence) site viewed from specific location on 23 March 2017, unattended
APP1	Statement of Common Ground, signed by main parties 16 March 2017
APP2	Statement of Common Ground on Five Year Housing Land Supply March 2017 (signed but undated by main parties)
APP3	SofS and Inspector Report for 2146206 and 2148635 (Homelands Farm, Bishop's Cleve, Gloucestershire)
APP4	Appeal decision (allowed) ref 3089709 - Land At Waterloo Road, Bidford-on-Avon, Warwickshire
APP5	Opening Statement on behalf of the appellant by Christopher Young of No5 Chambers, dated 21 March 2017
APP6	POPGROUP Guidance Note 2, February 2010, revised February 2012
APP7	Local Plans Expert Group, March 2016, Appendix 6 – Housing and Economic Development Needs Assessment – Revised NPPG Text
APP8	Table JRT19 – Council performance against East of England Plan overall housing requirement (8,000 homes (2001-2021) – 400 homes per annum) and Council's preferred requirements from 2011
APP9	Section 106, Land on South East side of Braintree Road, Felsted, Dunmow, Note for Inspector from Eversheds Sutherland, dated 22 March 2017
APP10	Updated Five Year Supply Calculations – 2016 to 2021, dated 22 March 2017

No.	Title/Identifier
APP11	March 2017: Housing Trajectory for Uttlesford District Council in the period 2016-2021 – Turley analysis
APP12	Chaffix, Felsted development
APP13	Comparison of ULCA LCA Sensitivity ref CD4-10
APP14	Tewkesbury Borough Local Plan to 2011 (adopted March 2006), copy of Policy HOU4: Other Settlements/Rural Areas
APP15	Relief Map (OS Landform Panorama)
APP16	Copy of suggested condition 13 relating to building heights parameter plan
APP17	Draft conditions as per committee report dated 29 June 2016, CD3.3 with LS amends dated 22/03/17 – highlighted in yellow
APP18	Drawing LC/010 entitled 'PROW Improvement Plan'
APP19	Draft conditions as per committee report dated 29 June 2016 CD 3.3: Composite version 24/03/17 following round table discussion at the inquiry
APP20	Caselaw: [2016] EWCA Civ 1146, Case No: C1/2015/4315 Gladman Developments Limited v Daventry District Council and SoS CLG (interested party)
APP21	Caselaw: [2016] EWHC 1198 (Admin) Case No: CO/5583/2015 Cawrey Limited v SoS CLG and Hinckley and Bosworth Borough Council
APP22	East of England Plan May 2008, copy of page 30, Section 5 Housing, Minimum Dwelling Provision 2001 to 2021 (net increase, with annual average rates in brackets)
APP23	Tetlow King Planning, Response to Parish Council Letter dated 21 March 2017
APP24	Application for costs made on behalf of the Appellant Catesby Estates (Development) Limited by Christopher Young of No5 Chambers, dated 23 March 2017
APP25	Closing Submissions on behalf of the Appellant by Christopher Young of No5 Chambers, dated 24 March 2017
APP26	Draft Conditions as per committee report dated 29 June 2016 CD3.3 - Composite version 24/03/17 following round table discussion at the inquiry, as agreed with Alison Hutchinson and submitted to the Inspector

Document submitted after the Inquiry replying to the request of the Inspector:

Title: *Comments on The Supreme Court's judgement in Suffolk Coastal DC v Hopkins Homes; Richborough v Cheshire East made on behalf of the Appellant* by Christopher Young, No 5 Chambers dated 5 June 2017