



Appeal Decision

Inquiry Held on 11-14 September 2017

Site visit made on 13 September 2017

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 27 October 2017

Appeal Ref: APP/C1570/W/16/3166101

Land West of London Road, Newport, Essex.

- 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 Sir Arthur Ellis Will Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/15/1869/FUL, dated 15 June 2015, was refused by notice dated 18 November 2016.
 - The development proposed is described as the 'erection of 94 residential dwellings including flexible mixed use building (use classes B1, D1 or D2); open space, landscaping and new access'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 94 residential dwellings including flexible mixed use building (use classes B1, D1 or D2); open space, landscaping and new access at Land West of London Road, Newport, Essex in accordance with the terms of the application, Ref UTT/15/1869/FUL, dated 15 June 2015, subject to the conditions contained in the schedule at the end of this decision.

Application for costs

2. At the Inquiry an application for costs was made by Sir Arthur Ellis Will Ltd against Uttlesford District Council. This application is the subject of a separate decision.

Procedural matters

3. The date of the application in the banner heading above is taken from the original application form, however, I note that amended sections of the application form were provided to update the certificate of ownership confirming that Essex County Council Highways were also an owner and adding an amended declaration. These were dated 10 October 2016, before the application was determined on 18 November 2016.
4. At the Inquiry it was confirmed that the applicant and appellant was correctly identified as 'Sir Arthur Ellis Will Ltd', as on the application form, and not 'Sir Arthur Ellis Will Trust Ltd' as noted on the appeal form.
5. The application was refused by Uttlesford District Council (UDC) for three reasons, these relating to matters concerning highway safety, development in the open countryside outside the defined settlement limits of Newport, and the

failure to make adequate provisions for increased pressure on social and community infrastructure resulting from the development. The Council's proof of evidence¹ confirms the Council would not be defending reason for refusal 1 and would not be inviting me to refuse planning permission on the basis of road safety or convenience grounds.

6. Prior to the Inquiry the Appellant submitted a draft planning obligation under sec 106 of the Act. A certified copy of a completed Unilateral Undertaking (UU) was submitted at the end of the Inquiry² and its provisions are considered later in this decision. At the end of the Inquiry it was agreed by the Council that the matters related to social and community infrastructure would be resolved by the completed and executed Unilateral Undertaking. The Council and Appellant agreed that it overcomes the 3rd reason for refusal.
7. Newport Parish Council (NPC) were accorded Rule 6(6) party status and presented evidence in support of its objections to the proposals. These included matters related to all three of the Council's original reasons for refusal as well as other matters.
8. The Government published a consultation on 'Planning for the right homes in the right places: consultation proposals' and associated documents on 14 September 2017. As this was the last day of the Inquiry sitting, the parties were afforded the opportunity to comment on the effect of the consultation on their respective cases, if any, in writing. The Inquiry was formally closed, in writing, on the 22 September 2017. I have taken account of the parties comments in my decision.

Main Issues

9. On the basis of the above the main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of Newport and the surrounding countryside; and
 - The effect of the proposed development on the safe operation of the highway network in the surrounding area and whether the internal road layout of the appeal site would be safe.

Reasons

Background and planning policy

10. The development plan for the area comprises the saved policies of the Uttelsford Local Plan 2005 (ULP).
11. Following the withdrawal of its previous emerging local plan in January 2015 the Council has embarked on preparing a replacement Local Plan and has recently approved, July 2017, a Regulation 18 Consultation Draft Proposed Local Plan which it anticipates submitting for examination in spring 2018 with adoption in spring 2019³.
12. For the purposes of this appeal the statutory development plan and the starting point for my consideration of the appeal is the ULP. The latest emerging consultation draft local plan is at an early stage of the process and can only be

¹ Paragraph 5.12 of Proof of Evidence of Mr Philip Hughes

² ID 20

³ Paragraph 4.25 Mr Hughes proof of Evidence.

afforded limited weight. Furthermore the emerging plan proposes amongst other matters significant new settlements which are, I am informed, a contentious matter and subject of unresolved objections. This further reduces any weight that could be attributed to the emerging plan given the advice at paragraph 216 of the National Planning Policy Framework (the Framework).

13. Reason for refusal 2 relates to development in the countryside, outside the defined settlement limits of Newport, and in this regard relies on policies S3 and S7 from the ULP. Policy S3 identifies Newport as a Key Rural Settlement, the boundaries of which are identified on the proposals map, and is a permissive policy indicating that development compatible with the settlement's character and countryside setting will be permitted within the settlement boundaries. Policy S7 is a countryside protection policy, with the countryside being identified as those areas outside settlement boundaries and not within the Green Belt. The policy indicates there will be strict control on new building and 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. The policies work together to direct development to within the identified settlements and protect the countryside beyond.
14. Whilst there is a Steering Group for the Newport, Quendon and Rickling Neighbourhood Plan there is no made Neighbourhood Plan. Indeed any such progress towards a Neighbourhood Plan is at its very early stages with a recent consultation exercise on possible policies only just having concluded but no agreement or draft proposals for consultation having yet been formulated⁴.

Character and appearance

15. The appeal site is located towards the southern end of Newport a small village set in the Cam river valley. The Briantree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments by Chris Blandford Associates describe character areas in Uttlesford, amongst other adjoining authority areas. In terms of the Cam river valley in Uttlesford the landscape character assessment describes the key characteristics of the area as including rolling open landscape, well vegetated river banks, large scale downland, low hedges and few trees and dispersed settlements on valley sides connected by busy B roads. The visual characteristics in that assessment identify attractive panoramic views from the valley slopes, views of towns and villages from higher ground, with urban fringe settlement often not well integrated into the landscape.
16. The appeal site and immediate environs towards the southern end of Newport on the western valley slope is representative of many of these characteristics. The site is presently fallow agricultural land outside, but directly adjacent to the built up area of the village. Indeed the site is contained by ribbon development fronting London Road, to the east; the properties fronting Frambury Lane to the north; and Newport County Primary School and the Newport Village Recreation Ground to the west. The southern boundary contains a mature tree belt that separates the site from the countryside beyond and some of the deeper lying development accessed off London Road.
17. The site is not covered by any protective landscape designations and it is not argued by any party that the site forms part of a valued landscape for the

⁴ Evidence of Cllr Hargreaves

- purposes of paragraph 109 of the Framework. There are no public rights of way across the site.
18. In overall terms I saw that the site was significantly contained by existing built development and development associated with an urban form (the Primary School and playing fields) as well as structural landscaping such that it was a relatively distinct and segregated area of open land.
 19. It is common ground between the parties that the site is located outside of the defined settlement limits of Newport as defined in Policy S3 of the ULP and the adopted proposals map and therefore for the purposes of policy S7 of the ULP is within the countryside.
 20. The proposal would result in a change from an open field to a housing development, which would alter the intrinsic character of the site. The site is visible in the wider area and in views from public footpaths on the opposite valley side. In particular the site is seen in the context of the visible built form of the village along London Road and Frambury Lane and is contained and separated from the adjacent wider open countryside to the west and south by the Primary School, Recreation Ground and mature tree and boundary landscaping. In this context the introduction of housing would not appear as an isolated or alien element, as housing is already visible in close proximity to the site in wider views.
 21. The proposal would result in a reduction in the openness surrounding the southern end of the village and a minor, but contained, incursion into the countryside. This would be harmful to the general landscape character of the area. However, the residential development would not break the skyline would be contained by surrounding features and other built elements and would not rise any higher up the valley slope than the existing settlement. On this basis the harm is localised and limited.
 22. In closer views the development will have an impact on the London Road Frontage. Firstly from development fronting on to London Road and secondly from views into the site at the main entrance on to London Road.
 23. The properties proposed for London Road, four closely spaced detached houses, would not be out of keeping with the pattern of development on the approaches along London Road. Here the development is a mix of bungalows and two storey properties of detached, semi-detached and terraced form of various ages and designs. The properties would be of a different age and design but there is variation in the street already. The loss of significant sections of the landscaped hedge would reduce the softening effect this currently has but this is an overgrown hedge of little aesthetic value other than in softening the road frontage.
 24. At the entrance to the proposed site the layout provides for a large commercial building, an open hard landscaped area and the main access road. This would introduce a wide and open vista from London Road upwards and into the proposed development. There are other examples of large footprint buildings close by and areas of open forecourt, on the petrol filling station opposite for example, such that this would not appear totally out of keeping. It would be however a noticeable intervention in the street scene. The view of the rising estate road and properties closely spaced fronting onto the estate road would

- not be dissimilar to that of Frambury Lane, which similarly has properties rising from London Road.
25. The estate of housing adjacent to Frambury Lane is a 1950's / 1960's estate of vernacular buildings with render, tile and brick facades. The palette of materials proposed for the proposed buildings reflects the colours and textures of those materials. There are, of course, significant modern variants in terms of the solar panelling to provide for the energy needs of the proposed houses. Additionally the predominant asymmetric roof forms dictated by the eco-design of the properties would contrast with the more traditional forms of the existing buildings. These design features are however not used on the London Road frontage properties and kept to within the development itself. Thus, the proposed development would present buildings of a more traditional form and appearance on the main road, compatible with the character and appearance of the street scene.
 26. The site will be visible up the estate road and between the existing properties on London Road and Frambury Lane and the properties, given their design and layout, would have an urban feel and form. But they are of their age, as are those on the adjoining estate and planning should not attempt to impose architectural style or particular tastes and should not stifle innovation. The design proposes a similar colour and material palette maintains a scale of property that is consistent with the surrounding streets and more modern additions to the village and which are located at its periphery. In this regard while there will be some harm to the street scene through the loss of vegetation and opening up of a large gap in the frontage this is lessened and reduced by the context and general form of the development.
 27. The Council has not adopted the Essex Design Guide and in any case such documents are guidance and not to be rigidly adhered to. The extent and nature of the impact is one that is best considered in the context of the surrounding development which is what I have done.
 28. The parties agreed during the course of the Inquiry that the development of the appeal scheme would not have an effect on the nearby Conservation Area. Whilst relatively close it is separated from the site and there are no inter-visibility or associative connections between the site and the Conservation Area. The development would not be within the Conservation Area and would not affect its setting.
 29. Overall I conclude that the proposed development would result in harm to the overall landscape character of the area and the street scene. The proposal would result in development beyond the settlement limits, set by policy S3 and therefore in the open countryside, and would therefore conflict with policy S7 of the ULP. Policy S7 indicates development will only be permitted if its appearance protects or enhances the particular part of the countryside within which it is set. Policy S7 has a development management test of compatibility with the surrounding character and, given my conclusions above, I judge this to be failed, which further underpins the conflict with policy. This harm however is limited and localised by the contained nature of the site and its relationship with the surrounding built form. The identified harm weighs against the proposal in the planning balance. Policy S3 is a permissive policy allowing for development within the settlement boundary, as the development is outside the boundary the proposals are not in conflict with policy S3.

Highway safety

30. The Council withdrew its reason for refusal related to highway safety before the Inquiry began. Essex County Council as local Highway Authority did not object to the proposal subject to the imposition of conditions.
31. Newport Parish Council maintained its concern related to highway matters. In particular these included concerns that the proposals would increase the number of accesses onto London Road and these were not sufficiently well spaced to be safe; that the internal arrangements of the development were potentially unsafe as Essex County Council had not positively endorsed or approved the layout; and that the proposed parking arrangements were insufficient and could lead to parking problems on surrounding roads.
32. The fact that Essex County Council did not object to the proposals is itself significant, as if it was of the opinion that the development was inherently unsafe or would lead to unsafe conditions on the highway the appropriate course of action would have been for them to object to the proposals. Mr Bass, for the appellant, confirmed that the reason that the County Council did not endorse the proposed layout was due to the shared surface nature of the proposals and the underlying SUDs drainage system, which is not something it would adopt. This was not challenged by NPC.
33. In terms of junction spacing Mr Bass's evidence demonstrates that the site access would be set some 70m south of Frambury Lane. With the identified visibility splays for these roads being 2.4m x 50m to the left and 2.4m x 45m to the right it can be seen that the accesses would not therefore encroach on the visibility requirement of each other. The visibility splays were calculated on the basis of the 85th percentile of the off peak recorded vehicle speeds adjacent to the site. Concerns were expressed that the vehicle speeds recorded were lower than had been undertaken in a speed survey by Essex County Council in June 2016. However, that survey was conducted some 500m to the south of the appeal site. The appellant's speed survey was undertaken at off peak times to ensure free flowing traffic and was carried out adjacent to the site and is therefore more representative of speeds in the vicinity of the proposed access.
34. In terms of the other proposed minor access points these would serve small parking areas. They would not be dissimilar to many other existing accesses in the vicinity of the site and which currently operate without having a significant demonstrable adverse effect on highway safety.
35. For these reasons I am satisfied that the proposed access arrangements are safe.
36. Within the site the circulation roads are laid out and designed on the basis of a 20 MPH design speed. They are laid out as a home zone with shared surfaces, changes in materials, raised tables and other traffic calming measures to discourage excessive vehicle speeds. It was suggested by the appellant that the lack of segregation of road and footpath would assist in reducing speeds and ensure the pedestrian had priority. It was also suggested appropriate signage would be in place. Whilst it is true that there is no direct statement from Essex County Council to say that the road layout is acceptable or satisfactory there is no objection to the scheme. In effect that gives a strong

justification to conclude that ECC did not find the layout dangerous or unacceptable. NPC did not provide any detailed evidence to demonstrate that the road layout was unsafe but relied on the fact the County Council had stated that the layout is unsuitable for adoption. But on the basis of the evidence before me the Highway Authority's objection to adoption lies in the design of the proposal as a shared surface and with a SUDs drainage system rather than in road safety matters. To weigh against the concerns raised by NPC, which did not have a technical highway expert, I also have Mr Bass' unchallenged expert opinion that the scheme is safe.

37. In terms of the level of parking ECC standards, which are minimum standards for residential parking, would require 190 spaces for residents and 24 visitor spaces. The scheme provides for 203 resident parking spaces and 24 visitor spaces and therefore meets the overall ECC standard. The commercial parking is based on a maximum standard with the ECC standards suggesting a maximum of 27 spaces permissible. The plan identifies 8 parking spaces within the commercial building and use of the visitor parking within the vicinity of the building. It is suggested by the appellant that given the proximity to the rail station, within 200m, and bus stops the proposed level of parking would be adequate particularly having regard to the nature of the floor space which would likely serve the local area. I am satisfied that the level of parking proposed accords with the ECC standards, which is a maximum standard for commercial parking, and UDC guidance and that given the level of disabled spaces and cycle spaces the development would be well served with appropriate parking facilities.
38. For the reasons given above I conclude that the proposed development would not result in material harm to the safe operation of the highway network in the surrounding area and would provide a safe internal road layout for the appeal site. Consequently it would not conflict with policies Gen1 and Gen8 of the ULP and the Essex County Council parking standards.

Other matters

5 year housing land supply

39. The Council and appellant agree that the Council cannot demonstrate a five year housing land supply⁵ and this is not challenged by Newport Parish Council.
40. The Council and appellant disagree on the extent of the shortfall and whilst a significant amount of Inquiry time was spent considering this matter the end result is that at a best position the Council can demonstrate a 4.2 years supply. At worst, according to the appellant, it can only demonstrate a 3.1 years supply. I have no reason to doubt that the actual supply falls somewhere within these parameters.
41. Irrespective of the precise extent of the shortfall, I agree with the parties who both accept that that the shortfall is material and that as a consequence significant weight should be given to the benefit of delivering housing which can contribute toward addressing that shortfall.
42. The parties all accepted that the recent Government consultation⁶ should not carry any significant weight in the determination of this appeal and did not

⁵ Statement of Common Ground

⁶ Planning for the right homes in the right places: consultation proposals and associated documents

affect their cases. I have given the consultation very limited weight and agree with the reasons given by the parties.

Noise

43. NPC were concerned that the occupants of the proposed properties would not be adequately safeguarded from noise. NPC did not produce any acoustic evidence to support the claim but were concerned at the approach adopted in the appellant's noise assessment. The main source of noise of concern was that from the M11 motorway.
44. The noise assessment has been undertaken by suitably qualified and competent persons. The assessment regards the site as an urban area. To justify this position it has had regard to the advice in BS8233:2014 which seeks to give examples of situations where noise sources in the surrounding environment may affect consideration of the impact, and mitigation that is required, or the acceptability of the development.
45. The scheme takes on board and makes provision for the noise mitigation measures put forward in the noise assessment. There is further protection through the details required by the proposed condition in terms of fencing to ensure consideration is given to the design and detail of the acoustic fencing, amongst other matters.
46. The parish council did not put forward a noise expert or rely upon any expert evidence to challenge the submitted reports of the appellant. I have therefore given more weight to the evidence of the appellant in this regard. On the basis of the evidence before me I conclude for the reasons given above that there would be no harm to the living conditions of future residents by virtue of noise and disturbance from the close by M11. As there is no harm or any effect is mitigated this is a neutral factor in the overall balance

Flooding

47. Concern was expressed by NPC and other objectors about the potential for the proposals to adversely affect surface water flooding in the area. However, there was no technical or expert evidence provided to support or justify the claims. The appeal site is located in flood zone 1 and the proposal is located on a sloping site. The road layout and overall site layout is based around a SUDs scheme which is part of the wider eco-credentials of the scheme. The supporting information with the application demonstrates that the proposed houses are safe from flooding and there was no substantive evidence submitted to challenge that position.
48. In the context of the potential for the site to affect flood risk off site and elsewhere it was demonstrated that much of the flooding issues in the locality were down to faults with the existing surface water drainage system. The appellant's evidence demonstrates that much of the existing situation is not directly related to water running off the site onto adjacent land but rather the existing drainage infrastructure off site. It was further demonstrated that with the reduction in run-off rates from the site through the controlled collection of surface water and the new surface water system that would be operated there would be a potential improvement to the existing situation. In this regard the existing run-off from the site onto London Road could be more effectively managed and there is the potential to address some of the existing problems with the system to further improve the drainage in the area.

49. In this regard there was no substantive evidence to demonstrate that the proposed development would not be safe from flooding or that it would worsen flood risk elsewhere. As there is a potential benefit in terms of reducing off-site flooding this is a positive benefit of the scheme. However, the effect is limited and therefore the positive weight I attach to this is limited in the overall balance.

Best agricultural land

50. The appeal site is Grade 2, very good, agricultural land which in the glossary of the Framework falls within the Category of Best and Most Versatile Agricultural Land (BMVAL). The appeal site however is presently fallow; the evidence from Mr Challenger being that this was due to an area of the site having Japanese Knotweed. He advised that the tenant farmer did not wish to farm the land while this persisted.

51. The site is not previously developed land and is not located within the settlement limits. In the context of Policy ENV5 of the ULP if agricultural land is required developers should seek to use areas of poorer quality except where other sustainability considerations indicate otherwise. This is consistent with paragraph 112 of the Framework which also directs authorities to seek to use areas of poor quality land in preference to that of higher quality land.

52. In Uttlesford much of the open countryside is Grade 2 agricultural land with limited areas in grade 3 land or other non-agricultural land. The appeal site in the context of Uttlesford and the small extent of the site, only some 4.5 hectares is not in my view a 'significant' development of agricultural land, in the context of paragraph 112 of the Framework. It is a relatively small isolated field that is to an extent compromised in quality by the Japanese Knotweed, albeit that an eradication programme is on-going. Also the site is sustainably located in relation to the village, which I return to below.

53. Taking these factors together in the round I am satisfied that the use of the site does not conflict with policy ENV5 or the Framework at paragraph 112. This is a neutral factor in the planning balance.

Living conditions of occupiers of adjoining properties

54. The appeal site is located adjacent to existing properties fronting onto London Road and Frambury Lane. The plots adjacent to those existing properties fronting London Road, plots 12 through to 16 are bungalows. The proposed properties would be set at a higher level but have rear gardens in excess of 15m in depth and would be in excess of 24m from the closest existing properties. With the use of appropriate screen fencing I am satisfied this would adequately protect the amenities of the occupants of those existing properties.

55. Along the northern boundary, that with Frambury Lane, plots 76 – 94 would set a line of houses, including link-detached, semi-detached and a short terrace at 77 – 80, to the rear of the existing bungalows and two storey properties. These proposed houses would 'face' back to back with the properties in Frambury Lane, other than plot 76, which would have its flank wall facing them. The proposed houses would have rear gardens in excess of 15m and a minimum distance between the main facing rear facades of the proposed properties and those on Frambury Lane of 25m at the closest point. The cross section provided through plot 88 and Appleby suggests that the floor level of the properties on the development site would be lower than those of the

properties in Frambury Lane such that the first floor level would be only marginally above the ground floor level of those properties. Given the changes in levels, and boundary treatment, which can be the subject of a suitably worded condition, I am satisfied that the general arrangement would not significantly compromise the privacy and current living conditions of the occupants of properties in Frambury Lane.

56. The property Appleby has an outbuilding at the rear of the property which has been converted into habitable accommodation. There are windows in the structure which face out over the appeal site and which are only a short distance off the boundary. These windows would be in close proximity to the boundary. However, with a boundary fence they would not be overlooked. However given their close proximity to the boundary the outlook would be substantially reduced if fencing is introduced. The accommodation is laid out to take advantage of views over the adjoining land and on the basis of no fencing. If a solid fence were erected by the land owner this would similarly curtail the outlook from these windows, and the land owner could erect fencing under permitted development.
57. There are a number of the properties in the stretch of houses that back onto Frambury Lane that accommodate rooms in the roof space. However, these have roof light windows which are angled along the plane of the roof and set up the roof slope such that there would not be significant overlooking of the adjoining properties. Also a number of the properties have French doors illustrated at first floor level but there is no clear indication on the plans of the extent of any balcony. Large balcony areas could result in a greater degree of overlooking than normal windows or French doors with restricted access (such as with Juliet balconies). The appellant suggested that any such concerns could be addressed by conditions to deal with the specific design of the fenestration of the rear of these properties and/or a restriction on balconies. I have included such a restriction to protect the privacy of the occupiers of properties in Frambury Lane.
58. On the basis of the above reasons I conclude that the proposed development would not have an adverse effect on the living conditions of the occupants of surrounding properties. This is a neutral factor in the planning balance.

Locational sustainability

59. The appeal site is located adjacent to the settlement boundary of the village. There is a rail station with good links to higher order settlements within 200m of the appeal site. This is easily accessible. There are bus stops on either side of London Road directly outside the appeal site. The village has a range of services and shops that would meet the day to day needs of the future residents of the development, in the centre of the village which is within easy walking distance. There is a primary and secondary school within walking and cycling distance of the appeal site. All parties accept that the site is well located for access to sustainable modes of transport and has good access to services and shops to meet the day to day needs of future residents. This is a positive attribute of the location of the site and therefore weighs positively in favour of the development and I attribute it moderate weight.

Eco- credentials

60. The appellant contends that the scheme makes significant contributions to combat the effects of the development on climate change and includes positive sustainability measures generally through the eco-credentials of the scheme. In effect the scheme has been designed to store electricity generated by solar panels in battery units in each property. The amount of electricity generated by the solar arrays on the properties would be stored on site in each property and over summer months, when there would be a surplus supply, this could be exported to the national grid. It is contended that the technology and housing design, materials and insulation etc would ensure that the properties would have a net zero energy demand. This position was not contested by any party and the eco-village standard of the development would be a benefit of the scheme to which I afford significant weight. The Council contended that this should be moderated by the design and impact of the development on the character of the area but that would in effect double count that impact.

Economic benefits

61. The appellant has identified a number of economic benefits associated with construction and occupation of the scheme that would support and positively contribute to the local economy.

Planning Obligation

62. Prior to the opening of the Inquiry the Council provided a Community Infrastructure Levy compliance statement which set out the justification for the various contributions sought. The appellant submitted an executed Unilateral Undertaking (UU) at the end of the Inquiry, ID20, to make provision for the various contributions. In closing the Council confirmed that its concerns relating to community and social infrastructure was in its view addressed and resolved by what was now the completed and executed UU.

63. The UU makes provision for the delivery of affordable housing, not less than 40% of the residential dwellings, an education contribution (including an early years and child care contribution, a primary contribution and a secondary education contribution), school land for Newport Primary School, a Healthcare contribution, a SUDs management scheme, provision and management of open spaces, phasing and provision of the flexible mixed use building.

64. The CiL compliance statement notes that, of those currently on the waiting list in Uttlesford, some 177 households have indicated they would consider properties in Newport, of which 47 are defined as in housing need. The provision of 37 units as affordable housing would go a significant way towards meeting that need and is given significant weight in my decision.

65. The education contribution, covering all years, is based on child yield ratios and calculations, based on a standard formula with the schools in the catchment area identified as being in deficit in the coming year. As such the contributions are related to the development and the additional pressure that would be placed on these facilities, and are justified.

66. The applicant also has secured the gift of land to the primary school to facilitate future expansion. It is a constrained site and the additional land would facilitate adjustments to parking within the site, which would provide flexibility to enable expansion of the school. While the NPC raised concerns regarding

the amount of land to be provided, there was no objection from the education authority or the school. I am satisfied that the provision of the additional land is appropriate in scale and kind and would facilitate the expansion of the school to accommodate additional pupils from the development and is thereby justified.

67. The health care contribution is requested by NHS on the basis of the additional floor area required within the health catchment area to meet the additional patient yield from the development. As this is directly correlated to the yield from the development I am satisfied that it relates in scale and kind to the development and is justified. The project to which it would be put, Newport surgery or another surgery in the health catchment area relates to the development and the potential use of future occupiers of the development. I am therefore satisfied it has been justified.
68. The SUDs management scheme is required as the proposed roads are not to be adopted. The potential for contributions in the future would relate to the specific site infrastructure and would therefore relate to the development.
69. The open space layout, management and maintenance are specific to the site and requirements to ensure suitable provision and maintenance into the future. There are significant areas of open space within the site which are important elements of the layout. They are key parts of the overall design of the scheme, contributing to the appellant's description of the development as an eco-village. The obligations are necessary to ensure the realisation and maintenance of the open spaces and are clearly related to the development.
70. The scheme overall makes contributions towards matters of social and community infrastructure which would be directly affected by the development. The financial contributions would not be put to schemes that would have more than 4 other contributions provided and are therefore not caught by the Community Infrastructure Regulations pooling restrictions.
71. Overall I am satisfied for the reasons given above that the proposed contributions would make adequate provision for any additional need for community and social infrastructure arising from the development. They meet the necessary tests in the context of regulation 122 and 123 of the Community Infrastructure Regulations 2010 and the Framework para 204 where appropriate.

The Planning Balance

72. It is agreed that UDC cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework confirms, in these circumstances, that relevant policies for the supply of housing should not be considered up to date. The parties agree that the 'tilted balance' set out in the 4th bullet point of Paragraph 14 is engaged in this case.
73. Paragraph 14 requires that where the development plan is absent silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole – the tilted balance. It is further specified that, in effect, the tilted balance is disengaged where specific policies in the Framework indicate development should be restricted (Footnote 9). No such policies apply in this case. Accordingly, I am satisfied that the tilted balance is engaged.

74. In respect of the main issues I have concluded that there is harm to the character and appearance of the area, both in terms of the general landscape and the street scene. That harm is however limited as it is localised and contained. The harm results in conflict with Policy S7, a policy for the protection of the countryside. It was argued by the appellant that there was inconsistency with the Framework, as the policy seeks to protect the countryside for its own sake rather than the Framework's more permissive approach and recognition of the of the intrinsic character and beauty of the countryside. The Council suggest that taken in the round the Framework identifies protection of the countryside through paragraph 17, 55, 109 and in advising Councils to have clear policies on what will or will not be permitted and where (paragraph 154) such a policy is wholly consistent with the Framework.
75. The Council has, through its Compatibility Assessment, recognised that policy S7 is only partly consistent with the Framework. However, the Council was clear in its view that this inconsistency does not give support for residential development. I do however see policy S7 as being more restrictive than the Framework in general terms in that it seeks to protect the countryside for its own sake. The Framework does not use the word 'protect' in such a context. Instead it has adopted a different phrase, 'recognise the intrinsic character and beauty', and that must have a difference in meaning and intent. In my view that approach is less restrictive than the 'protection' in Policy S7. Policy S7 is therefore not consistent with the Framework. Moreover, Policy S7 is a counterpart to policy S3 which sets the settlement boundaries. The settlement boundaries are out of date as they were drawn up at a time of a different housing requirement and are no longer able to contain the necessary housing development to meet the district's need as demonstrated by the shortfall in the housing land. For these reasons I conclude that any conflict with policy S7 should only be given limited weight.
76. I have concluded that there is a shortfall in the housing land supply and this is material and significant, even if I accept the Council's best position the supply would only be in the region of 4 years. I give considerable weight to the provision of the additional housing, particularly in the circumstances when the Council cannot demonstrate a five year housing land supply. I also give significant weight to the positive benefit of the affordable housing provided as a proportion of the units to be constructed.
77. I have also considered the length of time that the deficit is likely to persist. Whilst the Council is adopting a pragmatic approach and granting permissions for development outside of settlement boundaries, in recognition of its current position, that is not a sustainable way forward and will not address the position in a planned manner with any degree of certainty. The Council contend that with the publication of its regulation 18 draft Local Plan, which is due for submission for examination in April 2018, the situation will be resolved in the short term. However, the draft regulation 18 plan is not yet submitted and during the Inquiry it was confirmed that there are matters of significant contention in terms of the strategy for housing provision that is proposed within it. Moreover beyond the submission of the Plan for examination there is a further significant period prior to its anticipated adoption sometime in mid-2019. It is unlikely the shortfall will therefore be addressed in the short term. In my view, bearing in mind the advice in paragraph 47 to boost significantly the supply of housing, this is not a matter that will be resolved quickly. In the

meantime it is only through the approval of sites such as this that the Council will be able to improve its five year supply position. This site is available and deliverable within 5 years and this supports the weight I have attached to the 94 dwellings proposed.

78. Added to these benefits I also add the positive benefit I have attributed to the eco-credentials of the scheme resulting in a zero energy development, potential exportation of electricity to the grid and supporting the UK in meeting its climate change targets, to which I have given significant weight.
79. The improvement in flood water management reducing flood risk elsewhere and the locational sustainability of the site, given its proximity to sustainable modes of transport and shops and services, are afforded moderate positive weight.
80. There are also economic benefits associated with the construction phase and the additional expenditure in the area post occupation of the development which attract only limited positive weight given that these benefits would derive from any such development in the area.
81. Overall the proposal would result in environmental harm, albeit this would be localised and limited, and would conflict with policy S7. However, the weight to be given to these policies is limited. The development plan is not up-to-date and there is no five year housing land supply. Taking all matters into account I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the scheme. The proposals therefore benefit from the presumption in favour of sustainable development as set out in paragraph 14 of the Framework. The conflict with the development plan is outweighed by the other material considerations and planning permission should be granted.

Overall conclusion and Conditions

82. A list of draft conditions was provided in the Statement of Common Ground and this was updated during the Inquiry by ID18. I have considered the conditions in the context of the advice in the Planning Practice Guidance and the model conditions set out in the annex (which remains extant) to the otherwise now cancelled Circular 11/95 the use of conditions in Planning Permissions.
83. An approved plans condition is required to identify the approved plans for the avoidance of doubt. During the Inquiry the appellant suggested alterations to the fenestration of the properties backing onto Frambury Lane and this is the subject of a condition to safeguard the privacy of the occupiers of those properties.
84. Conditions requiring details of materials and details of landscaping are required in the interest of the appearance of the development. As the landscaping details also provide details of fencing this is required also to protect the privacy of adjoining occupiers. Details of the biodiversity enhancement and bird hazard management are required to ensure the development achieves the enhancements detailed in the supporting information in the interests of ecology of the area and as the development is within the safeguarding area for Stansted airport.
85. Conditions are required to secure the vehicular and pedestrian accesses in the interests of highway safety. Conditions are also required to secure car parking

spaces, improvements to the local bus stops, electric vehicle charging points and the submission of a travel plan to ensure the development makes adequate provision for all modes of transport and encourages the use of sustainable transport modes. The management of the roads footpaths and lighting is secured through condition as the highways are not presently to be adopted by the local highway authority and are required in the interests of highway safety and convenience.

86. Details of surface water drainage, both for the development and during construction and details of the disposal of foul water are required to ensure the development is adequately drained and serviced.
87. A condition is required to ensure archaeological investigation to protect buried remains. A condition to secure a construction method statement is required to protect surrounding occupiers and users of the surrounding road network and a condition is required to ensure provision of wheelchair adaptable housing to ensure adequate provision is made to ensure the development is accessible. A condition is required to confirm the nature of the authorised uses of the commercial building identified in the description of development.
88. Conditions 3, 4, 5, 6, 9, 14, 15, 16, 17, 18 and 20 are 'pre-commencement' form conditions, or include such elements, and require certain actions before the commencement of development. In all cases the matters they address are of an importance or effect to mean they need to be resolved before construction begins.
89. With the imposition of these conditions and for the reasons given above I conclude that the appeal should be allowed.

Kenneth Stone

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Michael Bedford QC instructed by the Solicitor for Uttlesford District Council

He called
Philip Hughes BA(Hons) PHD Chartered Town Planners
Dip Man, MCMI, MRTPI

FOR THE APPELLANT:

Stephen Whale Of Counsel instructed by Michael Segan of SBP Law

He called
Colin Challenger On behalf of Ellis Will Trust Ltd

Prof Bill Dunster OBE, MA (Hons) Principal, Zed Factory Ltd

Justin Bass MSc, MCILT, MCIHT Technical Director, Intermodal Transport Ltd

Trevor Dodkins Director, Phase 2 Planning & Development Ltd
BSc(Hons) DipTP, MRTPI

FOR NEWPORT PARISH COUNCIL (NPC):

Alan Storah BSc, DipTCP, DMS, Walden Town Planning

INTERESTED PERSONS:

Neil Hargreaves District Councillor, Chair of Steering Group for the Newport, Quendon and Rickling Neighbourhood Plan, and local Resident

Howard Bowman Deputy Chair of Newport Parish Council and local resident

Leslie Smith Local resident

Anthony Gerard FRICS District Councillor, Parish Councillor, Member of Steering Group for the Newport, Quendon and Rickling Neighbourhood Plan, and local resident.

Judy Emanuel Parish Councillor Committee Member of Friends of Newport School and local resident.

DOCUMENTS SUBMITTED DURING INQUIRY

ID1 List of objectors proposing to speak
ID2 Photographs of Site submitted by Cllr Hargreaves
ID3 Extracts from Statement Of Common Ground submitted during

- Examination of Uttlesford Local Plan 2014 between Uttlesford district Council and Sir Arthur Ellis Trust submitted by Councillor Hargreaves
- ID4 Appellant's opening statement
 - ID5 Council's opening statement
 - ID6 Newport Parish Council's opening statement
 - ID7 Newport News magazine submitted by Cllr Hargreaves
 - ID8 Transcript of comments read by Leslie Smith
 - ID9 Transcript of comments read by Howard Bowman
 - ID10 Transcript of comments read by Anthony Gerard
 - ID11 Transcript of comments read by Judy Emanuel
 - ID12 Appeal decision APP/C1570/W/163156864 submitted by Council
 - ID13 Transcript of comments read by Councillor Hargreaves
 - ID14 Letter from Primary School to Ms Challenger dated 13 February 2015
 - ID15 Cross section of site to show relationship with 'Appleby' submitted by Prof Dunster
 - ID16 Colour copy of plan identifying agricultural grade land submitted by Mr Dodkin
 - ID17 Plan illustrating suggested route and viewpoints for accompanied site visit
 - ID18 Amended list of suggested conditions
 - ID19 Site Plan- proposed- Overlay submitted by appellant illustrating the proposed layout with the proposed contours.
 - ID20 Certified copy of executed Unilateral Undertaking.
 - ID21 Council's closing submissions
 - ID22 Closing submission on behalf of Newport Parish Council
 - ID23 Appellant's closing submissions
 - ID24 Appellant's Cost application
 - ID25 Council's response to cost application
 - ID26 Council's response to the Government Consultation paper
 - ID27 Appellant's response to the Government consultation paper
 - ID28 Newport Parish Council's Response to the Government consultation paper

SCHEDULE OF CONDITIONS FOR APPEAL APP/C1570/W/16/3166101

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, except insofar as the details are amended by condition 3: 301/01/001 ZA Block Plan 01/11/2016; 301/01/002 Location Plan 11/02/2016; 301/01/003C Adjacent distances 11/02/2016; 301/01/004 A Carriageway width 19/05/2016; 301/01/005 G Site Cross-section 16/06/2016; 301/01/006 E Site section 21/10/2016; 301/01/007 A Site section 21/10/2016; 301/01/008 A Section through access 19/05/2016; 302_B1A_4_01D Floor Plan (proposed); 302_B1A_4_04A Roof Plans 22/09/2015; 302_B1A_4_07 E Elevations (proposed) 06/09/2016; 302_B2_4_01C Floor Plan (proposed) 22/09/2015; 302_B2_4_04A Roof Plans 22/09/2015; 302_B2_4_07A Elevations (proposed) 22/09/2015; 302_COM_4_01E Floor Plan (proposed); 302_COM_4_02 D Floor Plan (proposed) 11/02/2016; 302_COM_4_07 A Elevations 06/09/2016; 302_D2A_4_01 E Floor Plan (proposed) 11/02/2016; 302_D2A_4_04 B Roof Plans 22/09/2015; 302_D2A_4_07 D Elevations (proposed) 11/02/2016; 302_EW2A_4_01 A Floor Plan (proposed) 11/02/2016; 302_EW2A_4_02 A Roof Plans 11/02/2016; 302_EW2A_4_07 A Elevations (proposed) 11/02/2016; 302_EW3_4_01B Floor Plan (proposed); 302_EW3_4_02B Combined; 302_EW3_4_07 Elevations (proposed); 302_EW4_4_01 C Floor Plan (proposed) 11/02/2016; 302_EW4_4_02C Combined 11/02/2016; 302_EW4_4_05 Section 06/07/2015; 302_EW4_4_07 A Elevations (proposed) 11/02/2016; 302_EW4W_4_01 B Floor Plan (proposed) 11/02/2016; 302_EW4W_4_02 B Combined 11/02/2016; 302_EW4W_4_07 A Elevations (proposed) 11/02/2016; 302_EW5_4_01 B Floor Plan (proposed) 11/02/2016; 302_EW5_4_02B Combined 11/02/2016; 302_EW5_4_07 A Elevations (proposed) 11/02/2016; 302_NS2A_4_01 A Floor Plan (proposed) 11/02/2016; 302_NS2A_4_02 A Roof Plans 11/02/2016; 302_NS2A_4_07 A Elevations (proposed) 11/02/2016; 302_NS3_4_01 B Floor Plan (proposed) 11/02/2016; 302_NS3_4_02B Combined 11/02/2016; 302_NS3_4_05 Section 06/07/2015; 302_NS3_4_06 Section 06/07/2015; 302_NS3_4_07 A Elevations (proposed) 11/02/2016 x2; 302_NS3A_4_01 C Floor Plan (proposed) 11/02/2016; 302_NS3A_4_02C Floor Plan (proposed) 11/02/2016; 302_NS3A_4_07 A Floor Plan (proposed) 11/02/2016; 302_NS3W_4_01 A Floor Plan (proposed) 11/02/2016; 302_NS3W_4_02A Floor Plan (proposed) 11/02/2016; 302_NS3W_4_07 Elevations (proposed) 11/02/2016; 302_NS4_4_01B Floor Plan (proposed) 22/09/2015; 302_NS4_4_02B Combined 22/09/2015; 302_NS4_4_07 A Elevations (proposed) 11/02/2016.
- 3) Notwithstanding condition 2, prior to the commencement of development revised floor plans and elevations to amend the fenestration on the first floor rear elevation to remove first floor rear doors on the houses on plots 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 88 shall be submitted to and approved in writing by the local planning authority. No access shall be provided to the roof areas of the ground floor projections of these properties and these areas shall not be used as balconies or other accessible external areas. Thereafter development shall be carried out in accordance with these approved details

- 4) Prior to the commencement of development, samples of the colours and details of the materials to be used for the construction of the dwellings and commercial building shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 5) Prior to the commencement of development full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:-
 - i. means of enclosure including details of the proposed walls and fencing including the gabions and cribblock walling proposed on the site.
 - ii. a scheme for the erection of fencing adjacent to the recreation ground to protect residents from cricket balls;
 - iii. vehicle and pedestrian access and circulation areas;
 - iv. hard surfacing materials;
 - v. details of the safety measures proposed for all the ponds within the open space.
 - vi. minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, street lighting, etc.);
 - vii. Layout of the NEAP and LAP shown on the approved plans together with the details of the play equipment.
 - viii. A programme for the implementation and completion of the details;

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 sizes and proposed numbers/densities where appropriate; implementation programme.

- 6) Prior to the commencement of development a Bird Hazard Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include details of:
 - i. monitoring of any standing water within the site temporary or permanent;
 - ii. Sustainable Urban Drainage Schemes (SUDS) - Such schemes shall comply with Advice Note 6 'Potential Bird Hazards from Sustainable Urban Drainage Schemes (SUDS) (available at www.aoa.org.uk/operations-safety);
 - iii. reinstatement of grass areas;
 - iv. maintenance of planted and landscaped areas, particularly in terms of height and species of plants that are allowed to grow;
 - v. profiles and dimensions of water bodies;
 - vi. management of adjacent grassland;

The Bird Hazard Management Plan shall be implemented as approved on completion of the development and shall remain in force thereafter. No subsequent alterations to the plan are to take place unless first submitted to and approved in writing by the Local Planning Authority

- 7) No works shall commence until a Biodiversity Enhancement and Management Plan has been produced for all open spaces. This should include
 - i. the design (or specification), implementation and management of

- Ponds
 - Marginal planting
 - Tree planting
 - Wildflower grassland seeding
 - Nest boxes
- ii. details of how the long-term implementation of the plan will be secured by the developer with the management body(bodies) responsible for its delivery.
 - iii. Details of how contingencies and/or remedial actions will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development hereby permitted shall be implemented in accordance with the approved plan.

- 8) Prior to commencement of construction of any dwellings, the main access shall be constructed and made available for use and shall include a 6 metre carriageway, a 2.2 metre footway (to the north) and a 2.5m footway (to the south) and radii of 10m (as shown in principle in drawing 301/01/001 Rev ZA). The three accesses to be taken from London Road at their centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 50m to the north of the access and 2.4m by 45m to the south, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the road junction is first used by vehicular traffic and retained free of any obstruction at all times. No dwelling shall be occupied until the repositioning of the pedestrian island has been implemented in accordance with details first submitted to and approved in writing by the local planning authority
- 9) Prior to the commencement of development details of the pedestrian link to Frambury Lane (as shown as B on page 45 of the Design and Access Statement), including all weather surfacing and signage, shall be submitted to and approved in writing by the local planning authority. The link shall be constructed in accordance with the approved details and made available for use prior to the occupation of Plots 53 to 94. Thereafter it shall be retained free from obstruction and available for use at all times.
- 10) Prior to the occupation of any dwelling the bus stops on either side of London Road, Newport in the vicinity of Station Road (opposite and adjacent to the site) shall be upgraded with the provision of real time passenger information in accordance with details first submitted to and approved in writing by the local planning authority.
- 11) The residential parking spaces shown on the approved plans shall be provided prior to the occupation of the dwellings to which they relate. They shall thereafter be retained as parking spaces for those dwellings and for no other purpose.
- 12) Prior to the occupation of any building electric vehicle charging points shall be provided for that building. For the dwellings these shall be incorporated within the residential garage(s) or accessible from any on plot parking space associated with that dwelling and for the commercial building within the garage area for the commercial building. Thereafter these charging points shall be maintained and retained as provided.

- 13) Prior to occupation of the development hereby approved, a Travel Plan shall be submitted to and approved in writing by the local planning authority and implemented. The Travel Plan shall include the initial commitments and commitments to be amended and supplemented under the provisions of a yearly report. The Travel Plan shall include details of a Travel Plan coordinator to give advice to the new residents of the development.
- 14) Prior to the commencement of development a management plan for the site shall be submitted to and approved in writing by the local planning authority to detail arrangements for the provision, maintenance and retention of:
- i. All roads and footpaths;
 - ii. All common areas; and
 - iii. Lighting;

Thereafter, the development shall be implemented and retained in accordance with the management plan.

- 15) No development including any preliminary groundworks shall commence until:
- i. a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority; and
 - ii. a mitigation strategy detailing the excavation/preservation strategy for archaeological deposits identified as a result of i has been submitted to the local planning authority following the completion of this work.

No development or preliminary groundworks can commence on those areas containing archaeological deposits identified pursuant to i until the satisfactory completion of fieldwork, as detailed in the mitigation strategy ii, and which has been agreed in writing by the local planning authority.

A post-excavation assessment report shall be submitted to the Local Planning Authority within three months of the completion of fieldwork, unless otherwise agreed in writing. This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

- 16) Prior to the commencement of development a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, shall be submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation of the development and shall include but not be limited to:
- i. Infiltration test results to support or otherwise revise the currently proposed rate of 10.1l/s;
 - ii. 1 treatment stage for roof drainage and 2 for roads, or as otherwise agreed;
 - iii. Provision for 2759cu.m storage or amount as otherwise agreed.

- 17) No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved and maintained during the construction of the development.
- 18) Prior to the commencement of development a foul water disposal strategy shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water disposal strategy so approved.
- 19) 5 of the dwellings approved by this permission shall be built to the standards set out in Category 3 (wheelchair user) housing M4(3)(2)(a) wheelchair adaptable, of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition. The remaining dwellings approved by this permission shall be built to accord with Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 20) 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 Statement shall provide for:
 - i. the parking of vehicles of contractors, site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. delivery, demolition and construction working hours.
 - ix. details of the construction access

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 21) The commercial building at the entrance to the site shall be used for purposes within Use Class B1, D1 or D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) and for no other purpose.

END