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## Appeal Decision

Inquiry Held on 11 & 12 October 2017

Accompanied site visit made on 11 October 2017

Unaccompanied site visit made on 12 October 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: 31<sup>st</sup> October 2017**

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**Appeal Ref: APP/P1560/W/17/3166985**

**Site to south of Frinton Road, Thorpe le Soken, CO16 0JF**

- 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 Mr Ryan of Drury Investments Ltd against the decision of Tendring District Council.
  - The application Ref 16/00838/OUT, dated 27 May 2016, was refused by notice dated 10 November 2016.
  - The development proposed is described as '*Outline Application for the construction of up to 49 houses together with access road etc*'.
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### Decision

1. The appeal is allowed and planning permission is granted for construction of up to 49 houses together with access road etc at Site to South of Frinton Road, Thorpe le Soken, CO16 0JF in accordance with the terms of the application, Ref 16/00838/OUT, dated 27 May 2016, subject to the conditions set out in Appendix A.

### Preliminary Matters

2. The appeal was originally to be considered by means of a two-day Hearing held from 22 August 2017. On the first day of the Hearing, the procedure changed to an Inquiry, which took place on 11 and 12 October 2017.
3. On the afternoon of the 11 October 2017, an allowed appeal decision was issued in relation to a site near Sladbury's Lane, Clacton<sup>1</sup>. The main parties submitted an agreed Statement of Common Ground (SOCG)<sup>2</sup> on the morning of the 12 October.
4. The Council conceded that it is not currently able to demonstrate a five year supply of deliverable housing sites. This instigates the '*tilted balance*' set out in Paragraph 14 of the *National Planning Policy Framework* (the Framework). Having carried out this exercise, the Council considered that the adverse impacts do not significantly and demonstrably outweigh the benefits.
5. Nonetheless, there remains an appeal, and the SOCG does not negate the need for me to exercise my duties as an appointed Inspector.

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<sup>1</sup> Ref: APP/P1560/W/17/3169220, see also document LPA6

<sup>2</sup> Reference in this decision to SOCG refers to this document.

## Application for costs

6. Prior to the Inquiry an application for costs was made by the appellant, Drury Investments Ltd against Tendring District Council. Following the submission of the SOCG referred to above this was withdrawn, and both parties confirmed that neither would be seeking costs in this case.

## Background and Main Issues

7. Originally the Council refused permission on three grounds; the first of which involved highway matters. At the early stages of the appeal the Council confirmed that it did not seek to contest the first reason for refusal and there were no objections from the local highways authority on this matter. What is more, no evidence to substantiate this reason further was presented. I have not considered it any further.
8. The main issues identified at the start of the Inquiry were:
  - Whether the proposed development would preserve or enhance the character or appearance of the Thorpe Le Soken Conservation Area and what effect, if any, there would be on the setting of the Grade II listed Registered Park and Garden and Conservation Area, and;
  - The effect of the proposed development on local biodiversity, and;
  - Whether the proposed development would make adequate provision in respect of local infrastructure, including matters such as affordable housing, and;
  - Whether the Council is able to demonstrate a five year supply of deliverable housing sites.

## Reasons

### *Heritage assets*

9. In terms of heritage assets, the main parties identified that the two which may be affected are the Grade II Thorpe Hall Registered Park and Garden (RPG), located broadly to the west and southwest of the appeal site, and the Thorpe le Soken Conservation Area mainly covering the historic heart of the settlement.
10. The significance of the RPG derives from its planned landscape and association with Thorpe Hall (now demolished) and the evolution of the settlement of Thorpe-le-Soken. The appeal site does not lie within the RPG, although part of the site abuts the western edge of part of the RPG. I saw that the character of the appeal site<sup>3</sup>, comprising of areas of tuft-like grass for grazing and agricultural uses, is very different to the formal gardens of the immediate grounds of Thorpe Hall (now a hotel and spa), the managed pastoral farmland appearance of the land near to the original entrance with a row of trees on one side, and the sports ground area.
11. In terms of the significance of the conservation area, I saw that this mainly derives from the historic heart of the settlement which benefits from a number of historic buildings located along in a ribbon fashion along the main high

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<sup>3</sup> To be clear, the appeal site includes more than one parcel of land. I have used the singular rather plural as there is only one appeal site. For the avoidance of doubt, my considerations relate to the whole appeal site.

street. To its eastern end of the conservation area, the ability of visitors using Frinton Road to see the church tower visually funnelled by the trees along the northern edge of the appeal site contributes to its significance. A few of these trees would be removed to provide access off Frinton Road; but in the main trees would be retained and the visual impact is likely to be very minimal.

12. The main parties agreed in the original August 2017 SOCG that any harm to heritage assets would be no more than 'less substantial harm'. This echoes Paragraph 134 of the Framework, which sets out that where less than substantial harm occurs, this should be weighed against the public benefits.
13. In considering the significance of both the RPG and the Thorpe le Soken Conservation Area in the context of the appeal scheme, I do not find that the proposal would result in any harm to this significance. The change in the use of the fields sought in this case does not detract from the significance of the heritage assets, which is the primary aim of the relevant heritage policies. Indeed, at the very worst the proposal would result in a neutral impact on the character or appearance of the conservation area, for which special attention should be paid under Section 72(1) of the PLBCA. What is more, the historic integrity of the assets would remain undiminished; in both cases the proposal would not erode the elements of the heritage assets which make them special.
14. I therefore conclude that the proposed development would not fail to preserve or enhance the character or appearance of the Thorpe le Soken Conservation Area. Nor would the proposal have an adverse impact on the setting of the conservation area or the Thorpe Hall RPG. Accordingly, the proposal would accord with Policies EN1 and EN17 of the *Tendring District Local Plan 2007* (LP), which amongst other aims, seeks to protect distinctive local character and that developments in conservation areas should not harm the character or appearance of the area.
15. It would also accord with the Policies of the *National Planning Policy Framework* (the Framework) which include conserving heritage assets in a manner appropriate to their significance.

#### *Local biodiversity*

16. The site contains or is close to habitat for animals such as dormice and bats, which are *European Protected Species* (EPS), and reptiles such as slow worms, grass snakes and common lizard, which are afforded protection under the *Countryside and Wildlife Act 1981*, as amended. Policies EN6 and EN6a of the LP seek to protect and enhance existing local biodiversity. These are reflected in the Framework at Paragraph 118 which seeks to conserve and enhance biodiversity.
17. At the Inquiry the main parties submitted a Biodiversity SOCG<sup>4</sup> (BSOCG), which agreed that mitigation could be used to address the effect on bats and reptiles, including the identification of a receptor site for reptiles. The Council accepts in the BSOCG that such measures would help address the impact on these species. With little evidence to the contrary, I see no reason to disagree.
18. A survey undertaken in 2016 in relation to another site recorded one dormouse in the southern boundary hedgerow. To address this matter the appellant seeks to use measures such as further hedgerow planting, the planting of

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<sup>4</sup> APP3

tussocky grass buffer, the erection of an intervening chain link fence between the old and new hedges, and the planting of species rich native wild flower and grass mix. Together with a management plan, the appellant is content that this would mitigate the impact. The Council disagreed and consider that the proposal would harm the long term conservation status of the species (prior to the SOCG).

19. In considering the various mitigation measures suggested, which could be secured by means of suitably worded planning conditions, I am content that the proposal would at the very least conserve the local dormouse population. Indeed, in many respects the mitigation measures proposed could be seen as enhancements which would assist in supporting a thriving dormouse population.
20. In terms of trees, I acknowledge that the proposal would result in the loss of some trees. However, these would in the main be restricted to those at the proposed western access into the site. It would be possible to secure through condition the replacement of these trees to other locations on the site so as to ensure there is no net loss of biodiversity and such measure should assist creatures such as bats using the tree lines to forage, for example.
21. I therefore conclude that the proposed development would not have an adverse impact on local biodiversity. It would therefore accord with Policies EN6 and EN6a of the LP, the aims of which are indicated above. It would also accord with the policies of the Framework which include helping to conserve and enhance the natural environment.

#### *Local Infrastructure*

22. In terms of the provision of local infrastructure, the Council has provided a *CIL Regulation Compliance Statement* (LPA1). This indicates the policy basis for seeking contributions towards affordable housing, (Policy HG4 of the LP), public open space (Policy COM6 of the LP) and towards education (Policy QL12 and COM26 of the LP).
23. To this end the appellant has submitted a completed legal agreement dated 9 October 2016 under Section 106 of the TCPA<sup>5</sup>. The Council is content that this legal agreement would secure the infrastructure sought by the above adopted development plan policies. With no evidence to the contrary I see no reason to disagree.
24. I therefore find that the submitted legal agreement would secure infrastructure in a manner compliant with the tests set out in Regulations 122 (2) and 123 of the CIL Regulations and Paragraph 204 of the Framework. It should therefore be taken into account in granting planning permission.

#### *Housing land supply*

25. On the second day of the Inquiry the Council confirmed that at the current time, in light of the appeal decision at Sladbury's Lane<sup>6</sup>, it could not demonstrate a five year supply of deliverable housing supply sites. In accordance with Paragraph 49 of the Framework, the Council considered that

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<sup>5</sup> APP2

<sup>6</sup> Ref: APP/P1560/W/17/3169220

its relevant policies for the supply of should not be considered up to date, thus engaging the latter part of Paragraph 14 of the Framework.

26. The main parties indicated that there is not a need for me to address or reach any conclusions in respect of Objectively Assessed needs (OAN) and lapse rates. In light of the agreed SOCG and the fact that there is no further recent evidence before me indicating otherwise, I agree with the position of the main parties as set out in SOCG in relation to the housing land supply issue. I consider the agreed housing land supply position in the overall conclusion below.

### **Other Matters**

27. A number of concerns were raised by interested parties; both before the appeal and at the Inquiry. To avoid repetition, I now consider those not already considered above, before coming to an overall conclusion.
28. With regard to the use of Hall Lane for construction vehicles, I saw during my site visit that this is a narrow 'no-through road' lane with a historic building near to its entrance. As such it would not be generally suitable for construction traffic. A condition could and should be imposed to ensure that this lane is not used at any point during building works; unless absolutely essential and agreed with the Council for a specific temporary period.
29. In terms of surface water flooding and the existing ditches, at the Inquiry a condition requiring such details was discussed. I am content that details pursuant to such matters, with the Council and statutory body needing to approve such details, would address this matter.
30. With regard to highway safety concerns, this is no longer an issue between the main parties. What is more, the local highways authority does not object to the locations of where the site would be accessed from. I have not been provided with any substantive technical evidence which would indicate that the local highways authority's view is incorrect. In such circumstances, I can only conclude that the proposal would not have any adverse impact on the local road network.
31. In considering all the various matters raised, I conclude that these do not, whether individually or cumulatively, amount to harm which indicates that the appeal should be dismissed.

### **Conditions**

32. In considering the conditions that may be imposed, I have taken into account Paragraph 206 of the Framework and the national Planning Practice Guidance in respect of the use of planning conditions. At the Inquiry a draft schedule of conditions was used without prejudice for considering what conditions might be imposed were the proposal acceptable<sup>7</sup>. These have formed the basis of my considerations.
33. Conditions relating to time limits, the submission of reserved matters, carrying out development according to submitted drawings, the total number of dwellings, details of floor/ground levels, access and visibility splays, external materials, lighting and refuse storage are necessary and reasonable in order to

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<sup>7</sup> LPA5

provide certainty. However, as the layout is a reserved matter, the suggested conditions relating to visibility splays should require details to be submitted to and approved by the Council.

34. The submission of a construction method statement; including details that no construction vehicles should use Hall Lane, is necessary in order to protect the living conditions of nearby residents during the construction phases. In terms of a residential travel plan, I am not convinced that it would reduce the need for travel by car and promote sustainable transport in its current wording. In particular, there is uncertainty as to how the travel plan co-ordinator role would work in practice. I accept the reasons behind the condition, but consider that it should be re-worded so that it excludes a potentially unenforceable requirement.
35. Conditions relating to a Landscape and Open Space Management Plan, a tree/plant replacement requirement, and the submission of details and use of tree protection measures are necessary in order ensure the long term management of such features and to contribute positively to local biodiversity.
36. As considered earlier in this decision, conditions relating to surface water drainage are necessary and reasonable in order to mitigate against any localised flood risk arising from the development.
37. An Archaeological condition requiring details such as a written scheme of investigation is necessary in order to protect and/or preserve any archaeological remains of interest on the appeal site. This should be reworded so as to include an implementation clause and desk based assessment.
38. The submission of an Ecological Mitigation Scheme, which should include an updated scoping survey, and the mitigation measures originally proposed by the appellant in relation to bats, reptiles and dormice, is necessary and reasonable to ensure a net gain for biodiversity.
39. Lastly a condition relating to the ability to connect to a fibre optic connection is necessary in order to ensure that future occupiers are able to benefit from the ability to work from home and access high speed web-based services more generally.

### **Overall Conclusion**

40. Section 38(6) of the *Planning and Compulsory 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. I have found that the proposal here would accord with the policies of the development plan in respect of the impact on heritage assets and local biodiversity. Indeed, in considering the SOCG, I have not been directed to any other conflict with the development plan when read as a whole or any other identified harm.
41. Paragraph 14 of the Framework indicates that the presumption in favour of sustainable development means for decision-making approving development that accords with the development plan without delay. I have found that the proposal would accord with the development plan. I acknowledge that the Council is currently unable to demonstrate a five year supply of deliverable housing sites. In the absence of any identified adverse impacts, I find that the benefits arising, which include the delivery of market and affordable housing,

are not outweighed by any adverse impacts. Accordingly, the Framework, as a material consideration, indicates that permission should be granted.

42. In this case, the proposal would accord with the policies of the development plan and there are no material considerations that indicate otherwise. For the reasons given above, and having taken all matters raised into account including the concerns raised by interested parties, I conclude that the appeal should be allowed.

*Cullum J A Parker*

INSPECTOR

Richborough Estates

## **APPEARANCES at the Inquiry**

### FOR THE LOCAL PLANNING AUTHORITY:

|  |   |
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| Edward Grant, Barrister                  | Instructed by Tendring District Council       |
| <b>He called:</b>                        |   |
| For housing land supply/planning balance | Gary Guiver*, BSc (Hons), PGDipTP, MRTPI, MBA |
| For heritage                             | Tim Murphy, IHBC, MCiFA                       |
| For biodiversity                         | Dr Annie Gordon, BSc PhD                      |

### FOR THE APPELLANT:

|                         |  |
|-------------------------|--|
| Ian Ponter, Barrister   | Instructed by Shakespeare Martineau Solicitors |
| <b>He called:</b>       |  |
| For ecology             | Ann Sherwood, BSc(Hons), MCIEEM                |
| For heritage            | Charmain Hawkins, BA(Hons), DipHBC, IHBC       |
| For overall planning    | Tim Snow, DipArch, RIBA                        |
| For housing land supply | Andrew Jackson*, DipSurv, MIED                 |

\*Messrs' Guiver and Jackson presented proofs of evidence, but following the SOCG, were not formally called for this evidence to be tested any further.

### INTERESTED PERSONS:

|                             |  |
|-----------------------------|--|
| Peter Standing              | Local Resident                         |
| David Walkden               | Local Resident                         |
| Councillor Daniel Land      | Local Resident and District Councillor |
| Councillor Richard Everett* | Local Resident and District Councillor |

\*Cllr Everett originally submitted a written document, however following the SOCG this was withdrawn and is not part of the evidence before me.



## DOCUMENTS SUBMITTED AT EVENTS:

| Ref  | Title/Identifier   |
|------|--|
| LPA1 | CIL Regulation Compliance Statement  |
| LPA2 | Opening Statement on behalf of Tendring DC   |
| LPA3 | Statement of Common Ground in respect of biodiversity  |
| LPA4 | Differences between appellants position and the Council's worst case position (in respect of disputed sites)                         |
| LPA5 | Schedule of suggested conditions   |
| LPA6 | Appeal decision letter, Land north west of Sladbury's Lane, Clacton, Essex CO15 4BG (allowed) Ref APP/P1560/W/17/3169220             |
| LPA7 | Agreed Architects Drawings (in respect of suggested condition 4)   |
| LPA8 | Appearances for Tendring DC  |
| LPA9 | Statement of Common Ground, dated 12 October 2017 (in respect of issues covered in preliminary matters of this decision)             |
| APP1 | Appellant's Opening Submissions  |
| APP2 | Copy of completed S106 legal agreement, dated 9 October 2017   |
| APP3 | Appeal decision letter, Land known as the Brambles, St Michaels Road, Thorpe le Soken, CO16 0E1 (allowed) Ref APP/P1560/W/17/3168892 |
| APP4 | Agreed vantage points for unaccompanied site visit   |
| APP5 | Appellant's list of appearances  |
| APP6 | Appellants Closing Submissions dated 18 October 2017   |
| IP1  | Written evidence of Mr P Standing  |
| IP2  | Written evidence of Mr Walkden   |
| IP3  | Written evidence of Mr Land  |

## **Appendix A – List of conditions imposed**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 776/02C, 776/10D, 776/11C, 776/12E and 776Tdet 1.
- 5) The maximum number of dwellings to be constructed pursuant to this permission shall be 49 dwellings.
- 6) No development shall take place until the following information has been submitted to and approved in writing by the local planning authority:
  - i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
  - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

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

- 7) Prior to the occupation of any proposed dwelling, details of the vehicular visibility splays including from the accesses to and from Life House Drive and the connections to and from Frinton Road, shall be submitted to and approved in writing by the local planning authority. What is more, any road widening required to facilitate such works shall be submitted in such details and shall be implemented prior to occupation of any proposed dwelling. Thereafter the visibility splays shall be retained as approved.
- 8) Prior to the first occupation of the development hereby permitted, the proposed roads serving the development, at their bellmouth junction with Life House Drive, shall be provided with 6 metres radius kerbs. The new road junction shall be constructed at least to binder course prior to the commencement of any other development or associated works including the delivery of materials.
- 9) Prior to the occupation of the development hereby permitted, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The submitted details shall include the measures to promote and encourage modes of sustainable transport; these could include information such as the location and number of electric vehicle charging points; the location of local bus stops and their serving routes; the location of local railway services; and the location and number of cycle storage areas. The details should explain how such information will be provided to new occupiers in the form of travel information packs or

similar documents. Thereafter the Travel Plan shall be implemented as approved.

- 10) No development shall take place, including any works of demolition or ground clearance, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) That no construction vehicles at all shall use Hall Lane, and details of measures of how this would be achieved in practice, for example the use of temporary signage and informing all operatives of such restrictions. If there is a need for Hall Lane to be used for temporary construction vehicle access at any time, details of the specific days and times of such use and the type/size of vehicle shall be submitted within the CMS and shall include that at least 7 days prior notice of such access will be advertised;
  - ii) Details of the use of noise or screening barriers;
  - iii) Selection and use of machinery to operate on the site;
  - iv) The parking of vehicles of site operatives and visitors;
  - v) Loading and unloading of plant and materials;
  - vi) Storage of plant and materials used in constructing the development;
  - vii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - viii) Wheel washing and under bodywork washing facilities;
  - ix) Measures to control the emission of dust and dirt during construction;
  - x) A scheme for recycling/disposing of waste resulting from demolition and construction works;
  - xi) Delivery, demolition, clearance and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No development shall take place, including clearance and/or demolition, until a Landscape and Public Open Space Management Plan (LPOSMP), which includes a lighting strategy (including consideration for bats and other creatures), long term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to and approved in writing by the local planning authority. The approved LPOSMP shall be carried out in accordance with the details and timescales to be contained in that document.
- 12) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the landscaping details pursuant to condition 1, shall be carried out during the first planting and/or seeding season following the commencement of the development. Any trees or shrubs which within a period of five years of being planted die, are removed, or are seriously damaged or diseased, shall be replaced in the next planting season with other of a similar size and species.
- 13) No development shall take place (including but not limited to site clearance) until details of tree protection measures, including during the

construction phase in accordance with BS5837:2012 (or any similar, updated or replacement standard) have been submitted to and approved in writing by the local planning authority. Thereafter the approved tree protection measures shall be implemented and retained as approved.

- 14) Prior to the commencement of the development hereby approved, details of the maintenance and management of surface water arrangements, including who is responsible for such matters, that a yearly maintenance log be retained, and that any such log is available for inspection upon request by the local planning authority; should be submitted to and approved in writing by the local planning authority. Thereafter the proposal shall be implemented in accordance with the approved details.
- 15) No development shall take place on the appeal site until a Written Scheme of Archaeological Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include:
  - i) A desk based assessment of potential archaeological remains on or near to the appeal site, including reference to the Historic Environment Record (HER) and other similar resources;
  - ii) The programme, including phasing and methodology of site investigation (this should also address/consider the need to conserve protected species on the site or their habitats);
  - iii) The programme for post-investigation assessment;
  - iv) The provision to be made for analysis of the site investigation and recording;
  - v) The provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - vi) The provision to be made for archive deposition of the analysis and records of the site investigation;
  - vii) The nomination of a competent person or organisation(s) who is or are supervised by a suitably qualified archaeologist to undertake the works set out within the Written Scheme of Investigation.
- 16) No development at all, including but not limited to clearance works and any necessary works involved in satisfying any other condition imposed, shall take place until an Ecological Mitigation Scheme and Management Plan for the site has been submitted to and approved in writing by the local planning authority. The document shall include:
  - i) An updated scoping survey to identify, confirm or otherwise the presence of protected species on or near to the appeal site, and their habitats.
  - ii) A management plan to demonstrate how biodiversity within the site will be encouraged by the development and who is responsible for its implementation.

If protected species are found to be present which have not already been identified, the survey shall include a scheme of appropriate mitigation measures. No development at all shall take place except in full accordance with such approved scheme, which may also include details of translocation of any species where appropriate and any legal agreements or other such processes to secure the long term protection of such species on any translocation site(s).

- 17) No development shall commence until details of lighting, refuse storage/collection points; the manufacturer and types and colours of the external facing and roofing materials; and all areas of hardsurfacing to be used in the construction of the proposal have been submitted to and approved in writing by the local planning authority. In particular, any lighting used should be supported with details of its suitability in the context of protected species such as bats on or near to the appeal site and areas they may use for foraging for example. The development shall be carried out in accordance with the approved details.
- 18) The development hereby permitted shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest suitable exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted to and approved in writing by the local planning authority.

If it is not possible to achieve this standard of connection, and this can be evidenced through consultation with local internet providers that this would not be possible, practical or economically viable, details of an alternative superfast wireless service should be submitted to and approved in writing by the local planning authority. Thereafter the details shall be implemented as approved.

---END OF CONDITIONS---

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