



Appeal Decision

Inquiry held on 18 & 19 September 2014

Site visits made on 17 & 18 September 2014

by Mr JP Sargent BA(Hons) MA MRTPI

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

Decision date: 21 October 2014

Appeal Ref: APP/T3535/A/14/2218439

Land off Heritage Green, Kessingland, Lowestoft, Suffolk NR33 7UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Badger Building (East Anglia) Limited against the decision of Waveney District Council.
 - The application Ref DC/12/1105/FUL, dated 18 September 2012¹, was refused by notice dated 20 December 2013.
 - The development proposed is the construction of 30 dwellings (6 bungalows and 24 houses).
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Procedural matters

1. During the course of the application the Appellant amended the proposal to that described above. I have considered the development accordingly.
2. As well as visiting the site during the Inquiry, I travelled along Heritage Green at 2030h on 17 September to assess the nature and effect of parking in the evening.
3. A legal agreement under section 106 of the Act was submitted at the Inquiry by the Appellant, and the weight I have given to this is outlined below.
4. At the Inquiry I watched the DVD from Mr Borderick with the parties. Furthermore, applications for costs were made by Appellant against Waveney District Council (the Council), and by the Council against the Appellant. These will be the subject of a separate Decision.
5. The Council attached to its costs application a second rebuttal proof from Mr Hubbard but that was not tabled in support of its case in relation to the planning merits of the appeal, and so it has not been taken into account in my reasoning below.

Decision

6. The appeal is allowed and planning permission is granted for the construction of 30 dwellings (6 bungalows and 24 houses) at land off Heritage Green, Kessingland, Lowestoft, Suffolk NR33 7UP in accordance with the terms of the application, Ref DC/12/1105/FUL, dated 18 September 2012, subject to the conditions in the Conditions Schedule below

¹ The signed declaration on the application form is undated. This is the date against the ownership declarations.

Main Issues

7. The main issues in this case are
 - a) whether the development would cause harm;
 - b) whether the Council can demonstrate a 5-year supply of deliverable housing sites;
 - c) whether the scheme offers any benefits, and
 - d) if there are any benefits, whether they constitute material considerations that outweigh any identified harm.

Policy

8. The development plan includes the Development Plan Documents of the Core Strategy, which was adopted in 2009, as well as the Waveney Site Specific Allocations (SSA) and the Development Management Policies (DMP), both of which were adopted in 2011. The Appellant accepted none of the policies cited from these were inconsistent with the National Planning Policy Framework (the Framework) and this is a view I share.
9. Work has also started on a neighbourhood plan for Kessingland, but that is at a relatively early stage. No details were submitted and no policies are yet available, and it will be presented to the Council in the spring of 2015. Therefore the weight I can afford it is extremely limited.

Reasons

Whether the development would cause harm

10. Kessingland has some 2300 households² and contains a number of shops as well as places of worship, a school and a doctors' surgery. It also has a bus service to and from Lowestoft, which is a few kilometres to the north. It is therefore defined within the development plan framework as one of 7 larger villages, and these form the third tier in the settlement hierarchy below Lowestoft and the 4 designated market towns. It sits in the open countryside, with the sea to the east and the A12 to the west. The development plan defines the extent of the village by a settlement boundary line, which it calls the physical limits, and that is drawn tightly around the existing built-up area.
11. The appeal site, which has an area of some 1.15ha, lies outside but immediately adjacent to Kessingland's physical limits, on the western side of the village. It is bounded to the south-east by a recently completed housing estate that lies within the physical limits of the settlement and is served by a road called Heritage Green. A small area of intended public open space with a lagoon is to the south of the site, while the A12 runs along the west on the other side of a heavily planted embankment. To the north-east is a public footpath lined by substantial trees, beyond which is a dwelling that also lies outside the village's physical limits. The site is now unkempt and contains the remnants of the builders' compound associated with the adjacent estate, but appears to have been used before then for grazing.

² Stated by Mr Wheatman based on the 2011 census

12. Although Kessingland is relatively large many of its shops and services are located in the centre of the village or towards the western end, and so were within walking distance of the appeal site.

'Policy' harm

13. Development should be determined in accordance with the development plan unless material considerations indicate otherwise.
14. The spatial strategy for the Council is contained in Core Strategy Policy CS01, which says that, between 2001 and 2021 (the Plan period), 70-80% of housing growth will be in Lowestoft, 15-25% will be in the market towns and up to 5% of the growth (about 300 houses) will be spread between the 7 larger villages. Although new housing in Kessingland since 2001 has exceeded what could be presumed to be its proportion of those 300 houses, that has not been given as a reason to resist this scheme and I have no basis to consider otherwise.
15. Policy CS01 states that in the larger villages the focus will be on brownfield sites, but it adds that *'some development may be needed on greenfield sites on the edge'*. It then goes on to say *'outside these locations'* development will be regarded as being in the open countryside and will be confined to specific types of housing not relevant to this appeal.
16. Policy CS11 builds on this, identifying a provision of 5800 houses in the District between 2001 and 2021, with a further 1160 houses between 2021 and 2025. It gives a sequential approach for sites that comprises 4 tiers, the last and lowest of which is *'greenfield sites on the edge of settlements'*. Again it adds that outside larger villages housing will be restricted to certain specified types suitable to a rural area.
17. Turning to the DMP, Policy DM01, which is headed *'Physical Limits'*, says development *'will be concentrated within'* the towns and larger villages. Under Policy DM22 housing will not be permitted in the open countryside unless for agriculture, forestry or certain other specific purposes³. However, contrary to some of the submissions before me, the site is not in an identified strategic gap between Kessingland and Lowestoft.
18. The Council said this policy basis sought to constrain general housing to within the physical limits of settlements apart from the instances where sites had been allocated outside but immediately adjacent to those limits. In contrast the Appellant contended the policies were not that proscriptive, and housing was acceptable outside but next to the physical limits of settlements.
19. The phrase *'on the edge'* was not defined in Policies CS01 or CS11. However, Mr Amor, for the Council, accepted it could be reworded as *'outside of but adjacent to the physical limits of'* the settlement. Moreover, while he gave that definition in relation to Policy CS11, it is fair to assume that same phrase could be similarly interpreted when it occurs elsewhere in the Core Strategy in Policy CS01. Such a definition is reasonable, as the reference to greenfield sites *'on the edge'* of a settlement in the final tier of the sequential test in Policy CS11 must refer to locations that are not *'greenfield sites within settlements'*, as that location is covered by the third tier in the sequential approach.

³ Henceforth when I refer to housing development I shall be excluding housing for agriculture, forestry and the other specified purposes that it is accepted can be in the open countryside but which would not be provided by this development.

20. Moreover, as the sequential approach is said to apply to '*allocated sites and proposals for development*' it cannot be taken to concern just the few allocated sites that lie outside of but next to the physical limits of settlements. Rather it must also be used as a means of assessing applications that come forward. Therefore, I share the Appellant's view that the development is not automatically contrary to the development plan merely because it would be outside but adjacent to the physical limits of Kessingland.
21. I acknowledge Policy CS11 and Policy DM22 say only certain specified housing is permissible '*outside larger villages*' or '*in the open countryside*'. However, given my reasoning in relation to Policies CS01 and CS11 it would appear there is an acceptance that such restrictions must not apply to development '*on the edge*' of settlements. Indeed Policy CS11 says the open countryside only applies '*outside these locations*' and based on my reading of that policy '*these locations*' must include the '*greenfield sites on the edge*' of larger villages identified in the preceding paragraph. Moreover, while the Council fairly said the DMP would be expected to provide the detail to inform the more general policies in the Core Strategy, Policies DM01 or DM22 cannot withdraw an acceptance of development outside but adjacent to the physical limits that is established by the 2 Core Strategy policies cited.
22. I am also aware though that this policy framework does not create an automatic acceptance of housing development on greenfield sites outside but adjacent to physical limits. Policy CS01 says development '*may be needed*' on the edge of settlements, while that location lies at the bottom of a sequential approach in Policy CS11. Putting aside the arguments about housing land supply explored below, I have nothing to highlight a specific need for these dwellings, to show that no previously developed sites are available within or on the edge of Kessingland or to indicate that there are no suitable greenfield sites in the village. In this regard I consider there to be a conflict with the development plan.

Other harm

23. Policy CS01 states that in the open countryside the objective is to '*preserve the countryside for its own sake*'. Although this requirement appears to be taken from national guidance that is now superseded, I nonetheless acknowledge it reflects one of the key planning principles in the Framework, namely the need for recognising the intrinsic character and beauty of the countryside.
24. The appeal site is dominated by the housing estate adjacent, but that is a common situation around the edge of settlements and in itself it does not necessarily mean it cannot be seen as part of the countryside or that its loss would not be harmful to the countryside. I also appreciate the Appellant said that if permission was refused the site was likely to become increasingly unkempt, but that is an issue of maintenance and cannot be decisive.
25. However, the strong barrier created by the A12 with its hedging means this relatively small area of land does not form a visual part of the wider rural landscape either when looking westwards from in the village or when on the east side of the A12 facing towards Kessingland. Rather it appears as an isolated remnant that was left over when the by-pass was built. Furthermore, it is not large enough to generate a rural character in its own right. Therefore, to my mind its development for housing would not adversely affect the countryside and would not detract from the countryside's intrinsic character

- and beauty. Moreover, the size of Kessingland means the scale of this development would not be inappropriate in relation to the village as a whole or that the size of the settlement would change significantly.
26. A second area of concern raised by Mr Amor on behalf of the Council was that developing this greenfield site would, in part, diminish the attractiveness of regeneration proposals in Lowestoft. I appreciate the spatial strategy focuses development on Lowestoft. I also acknowledge that to promote the reuse of previously developed land will inevitably involve discouraging development on greenfield sites, whether that be large individual proposals or a myriad of smaller parcels that had not been developed before. However, no specific evidence was offered to indicate the scale of this contention, and I accept it would be difficult to identify how this site in isolation would have such an effect. As such, this constitutes a further harm to that already identified, although the paucity of evidence to support this concern, and the limited effect of this development in isolation, diminishes the weight it can be afforded.
27. Turning to other matters raised by local residents, Heritage Green is a relatively sinuous road with tight bends and cars parked at the kerbside. However, at the times of my visits I saw little traffic and even with the kerbside parking the carriageway could comfortably accommodate the flows. Moreover, while I was told of speeding on the road in my opinion the parked cars and tight bends serve to slow down any vehicles. I also considered visibility to be adequate at the junction with High Street. Given these points the increased vehicle movements associated with the development would not be sufficient to affect highway safety unreasonably.
28. The views from some existing houses and bungalows would be affected, but that is not in itself a basis to resist a proposal. The new houses would be far enough from those properties to mean they would not be unduly dominant or cause material harm to levels of daylight and sunlight now enjoyed. Concern was raised about the overlooking of 44 Heritage Green. I accept that the open aspect from the upper floor in that house would change to some degree but in my opinion the angle and distances involved would mean any loss of privacy would not be unacceptable. I also consider the layout would not allow undue overlooking of other properties. While some disturbance would occur during the construction period that would be relatively short-lived and again is not a basis to object to the development. Therefore I conclude the scheme would not unreasonably harm the living conditions of existing residents.
29. The future residents would experience traffic noise from the A12, but suitable conditions could address this within the dwellings. Outside in the gardens it would be harder to mitigate against, but I am aware that other housing elsewhere in the recently built Heritage Green development also backs onto the A12, albeit nearer the roundabout, and I am not satisfied the effect of noise from this road would be unacceptable.
30. Whilst the Council's Environmental Health Officer highlighted the possible issue of a statutory noise nuisance resulting from the turbine to the south this was not suggested by him or by the Council as a reason to resist the scheme. I received no evidence that would justify a decision to the contrary. On the DVD from Mr Borderick I also saw the effect of the turbine's shadow, but again I have an insufficient basis to dismiss the proposal on that ground. As a result, the living conditions created for future residents would not be unreasonable.

31. I have noted the stated problems concerning foul sewage in the village, but Anglian Water accepted that with a suitable financial contribution this can be addressed as part of wider works to the sewer system. Furthermore, while the site might now flood this could be resolved by a surface water drainage scheme secured by condition.
32. As it is undeveloped it is not surprising that the site is used by wildlife, but there is no basis to consider the effect in this regard would be unsatisfactory. No ecological survey has been submitted and there is no basis to consider one was justified. However, the Appellant accepted a condition could be imposed to undertake such a survey and instigate whatever mitigation measures may be justified.
33. Finally, it was contended that the doctors' surgery and the school in the village could not cope with further development, especially in the light of all the construction that had been undertaken over recent years. There was little basis to support this though, and the letter from the school's headmaster, submitted by the Parish Council, alluded to between 5 and 10 places available in the majority of year groups. In the light of the evidence before me I consider the effect of these additional 30 dwellings on those facilities would not be unreasonable and could not be used as a basis to resist the proposal.

Conclusions on this issue

34. Accordingly, putting aside the housing land supply issues discussed below, I conclude that there is a policy harm resulting from the proposal as it has not been shown other sequentially preferable sites are not available or that this site is needed. Moreover, it is also reasonable to assume the development of this greenfield site would, in part, adversely affect the take-up and development of previously developed land in Lowestoft.

The demonstration of a 5-year housing land supply

35. Paragraph 49 of the Framework says that local planning authorities should be able to demonstrate a 5-year supply of deliverable housing sites.
36. To provide the 5800 dwellings identified in the Core Strategy over the Plan period, along with the provision of a further 1160 houses between 2021 and 2025, requires an average of 290 dwellings to be delivered each year from the outset. In the Further Statement of Common Ground it was accepted that by March 2015 4117 houses would have been delivered since 2001⁴. Therefore 2843 houses were still to be built to 2025 necessitating an average rate of 284 each year, and with a 5% buffer this was a 5-year requirement of 1491 houses. The Council contended it now had a 6.5 year supply when measured against this requirement, but that was challenged by the Appellant on 3 grounds, each of which I will explore in turn.

Ground 1) Some of the bedspaces from extant planning permissions for C2 uses⁵ should not be included

37. The Council's 5-year supply included the number of bedspaces arising from the various extant permissions for Class C2 care homes in the District. This was in response to the Planning Practice Guidance, first published earlier this year,

⁴ Based on an estimated 139 completions in 2014/15

⁵ Class C2 of the *Town and Country Planning (Use Classes) Order 1987* (as amended)

that said housing for older people, including care homes (C2 bedspaces), should count against the requirement.

38. However, I share the Appellant's view that it is too simplistic merely to add the C2 bedspaces from extant permissions to the identified housing supply, as it assumes each bedspace equates to a new dwelling. In reality though some could be double rooms occupied by a couple. Moreover, there was no reason to assume the housing figures in the Core Strategy took full account of accommodation for the elderly. Over the plan period I have no knowledge as to whether the number of C2 bedspaces has increased or fallen, and while Mr Hubbard said the bedspaces lost would probably balance out against those gained, this was not supported by evidence. The Council acknowledged that more work needed to be done on this, and to my mind that is an acceptance that the data before me now is insufficient to allow a full assessment of the contributions of such bedspaces to be made. The Appellant accepted that 47 of the Council's 309 C2 bedspaces should be counted towards the supply, but given my reasoning above I see no basis for the inclusion of even this figure.
39. Both parties accepted that if I considered the position on C2 bedspaces to be uncertain then I should exclude any reference to them from my assessment, and rely instead just on the situation concerning dwellings in Class C3⁶. That is what I propose to do and this means there is no need for me to consider whether each of the various C2 permissions is likely to be delivered.

Ground 2) A 20% buffer should be applied

40. Secondly the Appellant considered there should be a 20% buffer applied rather than the 5% favoured by the Council, as it alleged that the Council has a record of persistent under delivery of housing. In support of this, and drawing on the decision from the *Cotswold*⁷ case, it contended that over each of the last 5 years the supply of houses had consistently fallen below the figure of 290 that arises from the Core Strategy's housing target. Indeed, for the last 4 years it also had been below what I will call the variable annual supply figure⁸ and the trend in delivery is one of decline.
41. The Appellant accepted that the delivery at the beginning of the Plan period was high, but it said that was a long time ago and under a policy regime that had greater housing targets. As such, it contended that period of delivery cannot be attributed significant weight when considering this matter. It also noted that the change to the Core Strategy occurred in 2009, again supporting the use of a 5 year period.
42. I am aware the plentiful completions between 2001 and 2005 mean that at no time has the cumulative total of houses completed fallen below what should have been provided if a consistent deliver of 290 per year had been achieved over the Plan period. Indeed, even the variable annual supply figure has been exceeded in the majority of years.
43. While I have noted the *Cotswold* case supported the Inspector's use of a 5 year period for assessing whether or not there had been a record of a persistent under delivery, it did not say that was the timescale that should be taken in

⁶ Class C3 of the *Town and Country Planning (Use Classes) Order 1987* (as amended)

⁷ See Document B3

⁸ The variable annual supply figure is calculated by subtracting the number of houses delivered to any one date from the Core Strategy target, and dividing what remains by the number of years until the Plan period ends.

every instance. I note too that the Planning Practice Guidance does not give a specific period. Rather, it states *'the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle'*. In my view this accepts that regard has to be given, when assessing such matters, to times of economic decline and prosperity and the effects they can have on delivery rates.

44. I am mindful of the recent recession, and I appreciate that the annual requirement has been very much governed by the need to deliver the 5800 houses required by the Core Strategy. It is therefore reasonable to rely on the Plan period as a whole rather than just the last few years. Given this, and noting that, despite the recession, the Council is still above the cumulative figure that would result from 290 completions a year, I find that there has not been a record of persistent underdelivery.

Ground 3) Not all of the identified sites were deliverable

45. The Framework states that any sites included in the housing land supply should be *'deliverable'*, and what constitutes *'deliverable'* is defined in Footnote 11. In particular it is noted the Footnote says that sites with planning permission should be considered deliverable unless there is *'clear evidence'* they will not be implemented within 5 years. To my mind this is a high test. Having regard to this definition, the Appellant considered 5 sites were not deliverable in the manner envisaged by the Council, and this would result in a deduction of some 203 dwellings from the 5-year supply.
46. The Oulton Broad Caravan Park site was challenged because, although it has an extant planning permission dating from 2006, there had been no development other than the formation of the access. The Appellant contended there was no reason to assume this position would change in the foreseeable future. However, to my mind that is an inference and it does not constitute *'clear evidence'* that the site will not be forthcoming.
47. Turning to the Dairy Farm site (site HAL4 in the SSA), the email from the representative of Tesco to Mr Hubbard (dated March 2014) said the *'current thinking'* was it was *'likely'* to be sold to a house-builder/developer, and, although there were no *'definitive timescales'*, *'an application could possibly be made by the end of the year'*. While such phrases do not indicate definite intentions that is not the test given in the Footnote, and in my opinion they again cannot be deemed to offer sufficient evidence to show that housing on the site will not be delivered in accordance with the Council's expectations.
48. The third site was allocated as BUN1 in the SSA and was a greenfield site on the edge of Bungay. This had been identified principally as an employment site to address an identified need in the town, but it included an element of housing that would have a *'minor secondary role'* and would be *'limited to that necessary to achieve industrial use (about 35 units)'*. As a result, the Council's 5-year supply identifies 35 houses for this site.
49. The Council now accepts that *'about 35 houses'* are unlikely to be sufficient to render the industrial element viable. Instead more would be needed. The Appellant therefore contended that the scheme was not viable and so, under the terms of the Footnote, should be discounted.

50. However, the Council's desire for employment uses in Bungay was impressed upon me, and from this it is reasonable to draw a strong intent for it to see such development on this site. To achieve this employment development here Mr Hubbard said that even with more than 'about 35 units' the housing could still be of the 'minor secondary role' advocated by the policy and it would still be restricted to 'that necessary to achieve an industrial use'. Although no such scheme has been formally considered or even put forward, in his view a development of that nature was likely to be supported by the Council.
51. Such housing would have to be at a greater density than that anticipated in the policy if it was not to reduce appreciably the intended employment land. However, given the existing neighbouring estate I consider that this would not necessarily mean such a development would be out of place in this location. Therefore, although I accept that building 'about 35 units' is probably not viable, taking account of the Council's apparent intent I consider it is likely more houses could be accepted. Therefore, the issue of viability does not compromise the Council's overall stated position on housing supply.
52. The final 2 sites, known as the Sanyo site and the Brooke Peninsula/Jen Weld site, were part of a large regeneration scheme in central Lowestoft, and the contentions of the Appellant focussed on timescales. There was much discussion about when various elements of these 2 schemes would be built. However, mindful that the Appellant was not directly involved in either, it has not provided the a basis to undermine the evidence offered from those more directly involved in the development or to show that the Council's approach to the construction rates should be viewed as incorrect.
53. It is inevitable that there is always going to be some uncertainty over how undeveloped or partially developed sites will be brought forward, but that alone cannot be a reason to exclude them or to adopt an overly cautious approach. Accordingly, having regard to Footnote 11 in the Framework, I conclude that the 5 sites discussed can be reasonably viewed as deliverable in line with the manner anticipated by the Council.

Conclusions on this issue

54. Of the 3 lines of argument put forward by the Appellant to challenge the 5-year supply I have only shared its view in relation to the C2 bedspaces. Therefore, drawing on the Further Statement of Common Ground, the deletion of 309 units with a 5% buffer still leaves the Council with a surplus of 139 dwellings over the agreed requirement of 1491 dwellings. Indeed, this surplus provides sufficient leeway to mean that even if my assessment of any 2 of the specific sites is incorrect (or indeed if I am incorrect concerning any 3 of the sites other than the Sanyo site) the housing requirement would still be exceeded.
55. In assessing the issue I have taken into account the appeal decisions submitted by the parties. However, I have no knowledge of the level of information or analysis before the various Inspectors and, as one was a Hearing and the others were site visits, it is unlikely any such examination was as detailed as that which was before me. They also concerned different years and so circumstances could well have changed. Therefore they have not been afforded significant weight.
56. Accordingly I conclude the Council has demonstrated a 5-year supply of deliverable housing sites.

Benefits of the scheme

57. Mr Amor accepted the proposal would be sustainable development, despite having also considered there to be a conflict with the development plan. Throughout the Framework there is a clear and strong presumption in favour of sustainable development, which, it says, should be at the heart of decision-making. However, it also says that Local Plan policies should follow the approach of the presumption so that sustainable development can be approved without delay, and I am aware the Appellant accepted none of the relevant policies were inconsistent with the Framework.
58. As I have identified 2 areas of conflict with the development plan I stop short of defining this as sustainable development. In all other respects though I consider the scheme falls broadly within the specific definition of sustainable development given in paragraph 7 of the Framework, as well as the assessment of what sustainable development means that is found in paragraphs 18 to 219 of that guidance. To my mind the relatively sustainable nature of the proposal is an appreciable benefit.
59. In coming to this view I note that the site does not comply with every aspect of the definition of sustainable development in paragraph 7, and in particular I accept there are few job opportunities in the village. However, the definition is wide ranging and to my mind few developments outside major centres are likely to accord with each and every one of its various elements. I also appreciate that building within the 'physical limits' of Kessingland is generally viewed as being sustainable, as is shown by it being one of the larger villages and so identified to accommodate new housing. Therefore, putting aside the 2 areas of conflict with the development plan that I have outlined, if the proposal would be contrary to any of the various strands of the definition in paragraph 7 that would not be sufficient for me to consider it would not be a relatively sustainable development.
60. Moreover, the target of 5800 homes over the Plan period is not an upper limit and exceeding it does not, by itself, constitute a reason for refusal, especially as the Framework seeks to boost significantly the supply of housing. Therefore, even though I have come to the view that the Council has a 5 year housing land supply, the additional dwellings before me would be a benefit.
61. The development would also provide 10 affordable dwellings, secured through the submitted legal agreement. It was accepted by the Appellant that the scheme was viable with these included and moreover the viability would remain even with some dip in the housing market. The Council contended it was meeting its targets with regard to this level of housing. While that may well mean the weight given to this provision would be less than if there was a large shortfall, I still attach appreciable weight to this matter and to the legal agreement. Some local residents expressed concern about the amount of social housing being provided on the estate as a whole, but what is before me would be slightly below the 10½ houses required by policy and so I have no grounds to consider it would be leading to an over-concentration.
62. Accordingly I conclude that the relatively sustainable nature of the development and the provision of additional homes, 10 of which would be affordable, are benefits of the scheme.

Weighing the benefits against the harm

63. The only harm I have identified is a conflict with the development plan arising from a failure to show a need for the development of this greenfield site outside the 'physical limits' of Kessingland, and the potential for some adverse effect on the regeneration of Lowestoft. However, given the limited evidence I have received relating to these areas of harm, in my opinion they are outweighed by the significant and more tangible benefits resulting from this relatively sustainable additional housing.
64. In coming to this view, I have noted the comments about precedent. However, a key factor in this proposal being acceptable has rested on the confined nature of the site between the settlement and the A12 that has appreciably diminished its effect on the wider countryside. Such circumstances would not be readily apparent at other sites outside the physical limits of the larger villages.
65. Moreover I have taken into account the comments about localism. However while the Framework places a clear and bold emphasis on the primacy of the development plan and the opportunities communities have to shape the scale, location and timing of new housing, it strongly emphasises the presumption in favour of sustainable development as well. Therefore, while the concerns of elected representatives and local residents have been noted, they do not, on this occasion, offer me a basis to resist this relatively sustainable scheme.
66. Accordingly I conclude that the identified harm is outweighed by the benefits of this additional housing in this relatively sustainable development, and to my mind these constitute material considerations that indicate the decision need not be in accordance with the development plan.

Conditions

67. Having regard to the character and appearance of the area the materials and landscaping should be agreed and the existing planting around the site should be protected during construction. In the light of highway safety the parking shown should be provided and retained while the roads should be laid out to a certain standard prior to occupation of each dwelling.
68. A scheme to protect the living conditions of residents from undue noise nuisance from the A12 should also be agreed and implemented, and the area of intended public open space should be retained for public use. Having regard to ecology an ecology survey should be undertaken to ensure any suitable and necessary mitigation measures are in place while, to address the concerns about drainage, foul and surface water drainage schemes should be agreed and installed. Works should also begin in 3 years and, for the avoidance of doubt, a condition should be imposed requiring it to be in accordance with the submitted plans.
69. However, I see no reason why the details of the road construction should be agreed, and given the presence of other legislation and the site history, a condition relating to suspected or discovered contamination is also unnecessary.

Conclusions

70. I conclude the harm identified would be outweighed by the other material considerations of providing additional housing in this relatively sustainable development, and so I also conclude the development would not conflict with the Framework while any conflict with Policies CS01 or CS11 in the Core Strategy or DMP Policies DM01 or DM22 would not be sufficient to warrant refusal. Therefore, subject to the imposition of the conditions below appeal should be allowed.

J P Sargent

INSPECTOR

Richborough Estates

Conditions Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the development hereby permitted shall be carried out in accordance with approved drawings 6580 SL02B, PL01, PL02, PL03, PL04, PL05, PL06, PL08, PL09, PL10, PL11, PL12, PL13, & G01 (all dated July 2013) and 6580 S01 (dated August 2012)
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details and measures for the protection of any trees to be retained around the site, together with a timetable for their implementation and retention, have been submitted to and approved in writing by the local planning authority. The approved details and measures shall thereafter be provided and retained in accordance with the approved timetable.
- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include a timetable for the implementation of the landscaping and a management scheme for all areas falling outside domestic curtilages. These works shall be carried out as approved in accordance with the approved timetable, and shall thereafter be retained in accordance with the approved management scheme.
- 6) No development shall take place until schemes for the disposal foul and surface water, together with a timetable for their implementation, have been submitted to and approved in writing by the local planning authority. The drainage schemes shall be implemented in accordance with the approved details and timetable.
- 7) No development shall take place until an ecological survey has been submitted to and approved in writing by the local planning authority, together with details of any measures that may be necessary to mitigate the effect of the works in this regard and a timetable for their implementation. Any mitigation measures shall then be undertaken in accordance with the approved details and timetable and thereafter retained.
- 8) No development shall take place until a scheme of noise mitigation concerning noise from the A12 has been submitted to and approved in writing, and no dwelling shall be occupied until the approved mitigation has been completed in its entirety in relation to that dwelling.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with Drawing 6580 SL02B (dated July 2013) for cars to be parked in connection with that dwelling (including the provision of any garage space) and for vehicles to turn so that they may enter and leave

the site in forward gear, and that provision shall thereafter be retained for that purpose.

- 10) No dwelling shall be occupied until the carriageway and footpaths to that dwelling have been completed at least to base course.
- 11) Prior to the first occupation of the 20th dwelling the public open space on Drawing 6580 SL02B (dated July 2013) between the existing open space to the south-west and the front elevations of Plots 28, 29 & 30 shall be laid out and thereafter retained for public access.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Flanagan	Barrister instructed by Ms V Nutley, Solicitor at the Council
He called	
Mr R Amor	Principal Planner with the Council
BSc DipTP MRTPI	
Mr S Hubbard	Principal Planner, Planning Policy & Delivery Team with the Council
BSc(Hons) MA MRTPI	

FOR THE APPELLANT:

Mr T Ivory	Solicitor instructed by the Appellant
He called	
Mr S Wheatman	Planning consultant at Wheatman Planning
BSc(Hons) MRTPI	

INTERESTED PERSON:

Mr L Martin	Chairman of Kessingland Parish Council
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Richborough Estates

DOCUMENTS

DOCUMENTS SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- A1 *Kessingland area inset map*
- A2 Pages 37-42 from the *Waveney Core Strategy*
- A3 Pages 25-27 & 83-85 from the *Waveney Site Specific Allocations DPD*
- A4 Pages 82-91 from the *Lake Lothing and Outer Harbour Area Action Plan*

DOCUMENTS SUBMITTED BY THE APPELLANT

- B1 Legal agreement dated 18 September 2014
- B2 Table of Sites Contested
- B3 *Cotswold District Council v SoSCLG, Fay and Son Limited & Cotswold District Council v SoSCLG, Hannick Homes and Development Limited & The Queen on application of Cotswold District Council v SoSCLG v Hannick Homes and Development Limited* [2013] EWHC 3719 (Admin)
- B4 *Regina v Rochdale Metropolitan Borough Council ex parte Milne* [2000] EWHC 650 (Admin)
- B5 *Regina (Cherkley Campaign Ltd) v Mole Valley District Council* [2014] EWCA Civ 567
- B6 Extract from *Assessment of a 5-year supply of housing land* by Waveney District Council (October 2007)
- B7 *Predictions of Housing Land Supply Against Actual Delivery*, as amended by hand by Mr Wheatman
- B8 *Standing Advice Species Sheet: Great crested newts* by Natural England
- B9 Pages 1, 2 & 96-99 from the *Waveney Site Specific Allocations DPD*
- B10 Appendix 2 from Appendix 10 of Mr Wheatman's evidence
- B11 Pages 7 & 8 from the *Waveney Core Strategy*

DOCUMENT JOINTLY SUBMITTED BY THE LOCAL PLANNING AUTHORITY & THE APPELLANT

- C1 Further Statement of Common Ground (dated 17 September 2014)

DOCUMENTS SUBMITTED BY THIRD PARTIES

- D1 Photographs and DVD to accompany the written submissions of Mr Borderick
- D2 Appendices to accompany the written submissions of Mr Martin
- D3 Statement by Mr Martin