



Appeal Decision

Inquiry held on 30 September, 1 & 2 October 2015

Site visit made on 2 October 2015

by Lesley Coffey BA(Hons) BTP MRTPI

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

Decision date: 6 November 2015

Appeal Ref: APP/X1545/W/15/3003795

The Former Timber Yard, Basin Road, Heybridge Basin, Essex CM9 4RN

- 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 One Property Group against the decision of Maldon District Council.
 - The application Ref FUL/MAL/14/00742, dated 27 July 2014, was refused by notice dated 24 November 2014.
 - The development proposed is demolition of the existing buildings and the erection of 31 residential dwellings, together with associated access, car parking, landscaping, open space and related works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Shortly before the inquiry, following a review of the appellant's evidence, the Council acknowledged that the provision of affordable housing on the appeal site would not be viable and withdrew its reason for refusal in relation to this matter. I have no reason to take a different view on this matter.
3. The appellant submitted an agreement under s106 of the Act. This covenants to transfer an area of open space to Essex Waterways, transfer land to the owners of properties in Chapel Lane to facilitate rear access and parking, and to make a financial contribution towards Early Years and Childcare.
4. At the inquiry the appellant submitted a revised site layout plan (196.200.G) and parking allocation plan (196.201.G) to correct labelling errors on the previously submitted plans. Proposed street scenes plan 196.202.H_ (1/2) corrects the ridge height of 72 Basin Road and proposed street scenes 196.203.G_(2/2) includes AOD measurements for proposed and existing dwellings. Additional plans numbered 196.220.00 (Proposed site and first floor plan), 196.221.00 (Proposed site and second floor plan) and 196.222.00 (Proposed Typical House type) were submitted. These provided further information in respect of site dimensions and the extent of roof accommodation.
5. The Council did not object to substitution or submission of any of these plans and I am satisfied that they would not be prejudicial to any party. They seek to

address concerns raised by the Heybridge Basin Conservation Society prior to the inquiry. I have determined the appeal on the basis of the revised plans referred to above.

Main Issues

6. I consider the main issues to be:

- The effect of the proposal on the character and appearance of surrounding area with particular reference to the Heybridge Basin Conservation Area;
- Whether the proposed provide a sustainable housing mix to meet the housing needs of the District;
- The effect of the proposal on surrounding residents with reference to visual prominence, and privacy;
- Whether the Council has a five-year supply of deliverable housing land; and
- Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development.

Reasons

Planning Policy

7. The development plan for the area comprises the saved policies of the Maldon District Replacement Local Plan (adopted 2005) (MDRLP). The Council submitted its Local Development Plan (LDP) for examination in April 2014. The inspector issued his interim findings in May 2015. He found that the LDP was unsound due to concerns with policy H6 (Provision for Travellers). The Council subsequently requested the Secretary of State to call-in the LDP under section 21 of the Act on the grounds that the interim findings represented a disproportionate response in terms of the Inspector's interpretation of national guidance.
8. In a subsequent letter to the Council dated 3 June 2015, the inspector explained that all the housing policies within the plan, taken together, are fundamentally unsound because the plan does not identify and meet objectively assessed housing needs and it is not based on adequate, up-to-date, and relevant evidence as required in national policy. For this reason I am unable to accord significant weight to the housing policies within the LDP.

Character and Appearance

9. The origins of Heybridge Basin are as a settlement which evolved to service the canal. The appeal site is a former timber yard that was associated with the canal and continued to trade until about 1988.
10. The appeal site is situated to the rear of the dwellings on Basin Road. The Heybridge Basin Conservation Area adjoins the eastern boundary of the site. It was designated to recognise the contribution of the old lock and basin to the character of the historic fabric of the area and includes some of the oldest buildings within the settlement. Whilst the canal is no longer in commercial use, it is used extensively for sailing and recreational purposes, and there are two public houses and a tea room adjacent to the lock. The conservation area

adjoins the Chelmer and Blackwater Canal Conservation Area which follows the canal along Lock Hill.

11. Due to the piecemeal manner in which Heybridge Basin has evolved, the village lacks a regular street pattern. This informal layout typifies the settlement and is evident even within the more recent developments such as Blackwater Close and Burrswood Place.
12. The importance of the appeal site within the settlement is recognised by the Heybridge Basin Timber Yard Supplementary Planning Document (SPD) and the Heybridge Basin Village Design Statement(VDS). The former was adopted by the Council in 2006 following a period of public consultation and the latter in 2007. The SPD envisages a mixed use scheme with a minimum of 30 percent of the floorspace dedicated to employment uses.
13. The weight to be accorded to the SPD is reduced in that the national planning policies and those within the Southend on Sea Replacement Structure Plan on which it relied are no longer extant. In addition, policy E3 of the MDRLP has not been saved. The SPD does however set out design principles for the development of the site. The existing buildings are beyond economic repair and the SPD states that the Council would like the redevelopment of the site to be based on the bulk and form of the existing buildings which are seen as an asset and a positive development opportunity. It recommends that replacement buildings should utilise the footprint of the existing buildings and specifies that proposals should reference the maritime and historical features of the Basin.
14. The proposal would use the existing vehicular access from Basin Road. The scheme would provide a pedestrian link to Blackwater Close and a further footpath would link the site with the canal. It is intended that an area of land to the west would be provided as an area of publicly accessible open space.
15. The proposed terraced and semi-detached dwellings would adopt a formal layout with terraced houses fronting the access road and with further terraced dwellings arranged around a central 'square' which provides the main focal point for the development. Whilst the guidance within the SPD is not prescriptive, the form and layout of the proposal would introduce a degree of uniformity which is not typical of other development within the village or the adjoining conservation area.
16. The proposed dwellings would comprise two floors of accommodation above a garage area with first floor balconies supported on concrete columns to facilitate evacuation in the event of a flood. The appellant suggests that the proposed dwellings are not significantly higher than the two storey dwellings within the locality or the existing buildings on the site. The existing dwellings within the area vary in height and scale. The more recent dwellings such as those at Blackwater Close and Burrswood Place are generally higher than the older dwellings within the conservation area including those to the south of the site. The proposed dwellings would be about 2 metres higher at the eaves line than those at Blackwater Close and between 1 and 1.8 metres higher at the ridgeline. They would be significantly higher than the adjoining properties at Chapel Lane which are some of the oldest properties within the settlement. The height of the proposed dwellings would be noticeable in public views from within the conservation area, views towards the access to the site, from the tow path adjacent to the canal, as well as from Blackwater Close.

17. The majority of the dwellings would feature gable end elevations to the front and rear. The upper storeys would be clad with western red cedar hung in a vertical pattern on the front elevation and a horizontal pattern on the side elevation. The roofs would generally be finished with tiles which would continue down the flank elevation. The dwellings on plots 18 and 19 would have zinc roofs. The dwellings on the southern side of the square would be similar in height and the barrel roof would be finished with standing seam zinc covering with dormer windows to the uppermost floor. Although the upper floor is partially situated within the roof space, by virtue of their form, height and appearance the proposed dwellings would be clearly identifiable as three storey properties. As such they would appear significantly greater in scale by comparison with other properties within the settlement.
18. The linear emphasis provided by the balconies and the uniformity of design add to the formality of the scheme. These elements together with the layout of the site combine to give the proposal a very urban character that is neither compatible with, nor integrates with the established rural character of Heybridge Basin or the historic character of the conservation area.
19. The appellant submits that the barrel top roofs would reference the industrial past of the site and the existing commercial buildings within Heybridge Basin. Similar roof forms are evident at a nearby nursery (a Nissan hut style building) to the south west of the appeal site and the single storey tea rooms to the east of the lock gates. However, neither of these buildings is of any particular architectural merit, or typical of other buildings in the locality. Moreover, both are single storey buildings and due to their scale and height do not dominate the local area and are not prominent in views from within the conservation area. The barrel roofs appear to be an arbitrary feature and do not relate either to the layout of the site, or provide any significant reduction in height. Moreover, they fail to reflect the proportions of the lower floors of these dwellings and would give rise to a top heavy appearance that would be conspicuous in views from the canal.
20. I accept that it is proposed to use high quality materials, and the variation in materials could add visual interest. However each dwelling includes a range of materials and finishes some of which appear to be unrelated to the form or function of the building. The concrete columns and balconies they support form a dominant feature within the scheme and reinforce the regimented layout of the proposal.
21. In its current dilapidated state the appeal site detracts from the character and appearance of the area, including the adjacent conservation area. Neither the Council, nor Heybridge Basin Conservation Society, expect the design of the scheme to replicate the appearance of existing development within the village. Indeed, the VDS is supportive of contemporary design where it is well executed and incorporates aspects of design that reflect the diversity of form and style of the village as a whole.
22. The NPPF confirms that the government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development and is indivisible from good planning. The appeal proposal fails to respond to the layout, scale, form or materials of the surrounding area. As a consequence it would fundamentally alter the character of Heybridge Basin and would harm the setting of the adjoining conservation area. Whilst the appeal

proposal may be an improvement by comparison with the existing buildings on the site, for the reasons given above I am not convinced that it would deliver the high quality design sought by the Council. It would therefore fail to comply with policy BE1 which requires new development to be compatible with its surroundings and/or improve the surrounding location or the NPPF which states that proposals should contribute positively to making places better for people.

23. I am aware that the appeal scheme was reviewed by an independent architect and was considered to be a contemporary interpretation of the vernacular form which would enable the buildings to harmonise with the general character of the area. However, there are a number of inconsistencies between Ms Brown's evidence and the scheme as shown on the submitted plans. These relate to the height of the proposed dwellings, the materials used and the number of floors of accommodation. Therefore, whilst I have taken account of Ms Brown's views they do not alter my conclusions above.

Dwelling Mix

24. The Council consider that the proposed dwelling mix would not meet the housing needs of the District. The existing development plan policies do not specify a particular mix of housing, but policy H2 of the emerging LDP requires all development to provide a suitable mix of housing to reflect local housing needs for both market and affordable housing. The accompanying text encourages a greater provision of one and two bedroom dwellings to meet the identified need for market and intermediate housing. It explains that more detailed evidence as to the appropriate mix will be provided by the Strategic Housing Market Assessment (SHMA).
25. Although Policy H2 is not part of the development plan, paragraph 216 of the NPPF advises that from the day of publication, decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF.
26. The LDP has not yet been found sound and there remain a number of outstanding objections in relation to policy H2, including the reliance on the housing mix specified in the SHMA. Nonetheless, the approach within policy H2 is consistent with paragraph 50 of the NPPF. This requires local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. Local planning authorities should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Planning Practice Guidance (PPG) clarifies that housing need should address both the total number of homes needed and provide an understanding of the qualitative requirements of each market segment. It states that once an overall housing figure has been identified, plan makers will need to break this down by tenure, household type (singles, couples and families) and household size. (2a-003 & 2a-021).
27. I therefore consider that whilst the aim of policy H2, namely to address the identified housing imbalance within the district is consistent with the policies within the NPPF, at the present time the dwelling mix promoted by the SHMA

- can only carry limited weight in the light of the unresolved objections to LDP policy H2.
28. Since 2008 the SHMA's have consistently identified the relatively low proportion of 1 and 2 bedroom dwellings within the market sector by comparison with the affordable housing provision within the District and the national average. The most recent 2014 assessment identifies a need for more a balanced housing stock and in particular the need for 2 bedroom dwellings to meet the needs of newly forming households currently unable to access the market as first time buyers. It found that within market housing 70.7% of dwellings are 3 bedroom or more and this contributes to the under-occupation of the existing housing stock.
 29. The SHMA found that the greatest requirement for existing households moving within the market sector was for a three bedroom house. However, for concealed households and those moving into the District the demand is predominantly for 1 and 2 bedroom houses. When the existing stock is taken into account there is a deficit of 226 two bedroom dwellings, and 68 three bedroom dwellings. I acknowledge that there should be a choice of dwellings within the market and that many people may aspire to a three bedroom dwelling rather than a two bedroom dwelling, however for many households, particularly concealed household seeking to move to market accommodation the greatest need is for one or two bedroom dwellings.
 30. There remain unresolved objections regarding the deliverability of the 60/40 split in favour of 1 and 2 bedroom dwellings promoted by the SHMA. Nevertheless, given the clear evidence of the extent of the need for 1 and 2 bedroom dwellings the Council's desire to maximise the proportion of smaller dwellings is consistent with national planning policy. The appeal proposal would provide 3 two bedroom dwellings and the remainder would be three or four bedroom. It would therefore fall considerably short of the mix encouraged by the SHMA. Overall it would make a very limited contribution towards meeting the housing needs of the District and would fail to deliver a sustainable mix of dwellings.
 31. The appellant explained that due to the particular constraints of the site, including the requirements of the Environment Agency in relation to flood risk, the two bedroom houses would have a similar floor area to the three bedroom dwellings and would therefore attract lower sales values but would not result in proportionately lower build costs. As a consequence, any change in the mix of dwellings would impact on the profitability of the scheme. Viability evidence submitted by the appellant establishes that the provision of two bedroom dwellings in accordance with the 60/40 split sought by the SHMA would render the scheme unviable.
 32. There is no specific evidence to demonstrate the extent to which any increase in the proportion of smaller dwellings would impact on the viability of the scheme overall. Nevertheless, it is evident from the viability appraisal that the scheme remains challenging in terms of viability and is reliant on an expected increase in property values over the next few years to provide a profit level up to 20%. In these circumstances the failure to provide a suitable housing mix needs to be balanced against the benefits of the proposal.
 33. The appellant drew attention to one of the Council's strategic housing sites 2a(Land south of Limebrook Way), where 70% of the dwellings would be 3 or 4

bedroom. It was suggested that if the desired mix was found not to be viable on this larger site, it was unlikely to be viable on the appeal site. No substantive evidence was submitted to explain the reason for the dwelling mix on site 2a. Therefore this matter does not justify the failure to provide a sustainable mix of dwellings on the appeal site.

Living Conditions

34. The proposed dwellings on plots 1 to 8 would face towards the rear elevation of 23 to 27 Blackwater Close. They would be separated from the rear elevation of 27 Blackwater Close (the closest of these dwellings) by about 25.4 metres as measured from the rear elevation of the proposed dwellings.
35. The Essex Design Guide recommends a minimum distance of 25 metres between the rear elevations of two storey houses dwellings in order to maintain privacy. Whilst it does not specifically address three storey properties it states that upper storey flats can cause problems of overlooking from living rooms and in these circumstances it recommends that the minimum separation between properties should be increased to 35 metres. The appellant suggested that this guidance is not applicable to houses, however since it addresses the issue of first floor living rooms overlooking ground floor living rooms of the properties opposite, I consider that it is relevant to the appeal proposal.
36. The proposed dwellings would be three storeys high with balconies at both the first floor and the upper floor. At present there is some the screening to the boundary between the appeal site and the properties at Blackwater Close which have relatively short rear gardens. This would limit the extent of overlooking from the first floor towards the gardens and rear of these dwellings.
37. However the balconies to the second floor would directly overlook the rear gardens of these dwellings. The appellant suggested that the balconies could be finished with obscure glazing, however this would not mitigate the overlooking from the upper floor windows of the proposed dwellings. Due to the height and proximity of the proposed dwellings, I consider that they would have an overbearing impact on the occupants of these dwellings, particularly when using their gardens.
38. The proposed dwelling on Plot 9 would be situated at an oblique angle to 12 Blackwater Close. It would be separated from this dwelling by a distance of 12 metres and would be situated about 5.7 metres from the boundary. Although the proposed dwelling would be noticeable in views from the rear of 12 Blackwater Close, I do not consider that it will be so prominent as to have an overbearing effect on the outlook of the occupants of this property, or to give rise to a significant loss of privacy.
39. The dwelling at Plot 17 would be situated between 2.3 metres and 3.3 metres from the boundary with 7 Burrswood Place. It would be positioned adjacent to the boundary of the rear garden to this property, but there would not be any windows in the flank elevation. Consequently, it would be unlikely to give rise to any significant loss of privacy. However due to its height and proximity to the boundary it would be likely to dominate views from the rear garden and would have an overbearing on the occupants of this property.
40. The properties in Chapel Lane to the south of the proposed dwellings on plots 1 to 8 and are some of the oldest properties within the settlement. As such they

are significantly lower in height and smaller in scale than the proposed dwellings. The appeal proposal includes the provision of a private drive to serve the rear of these properties and allow the provision of parking for the occupants of these dwellings.

41. Holly Cottage and Field cottage is a single storey dwelling with a deeper rear garden by comparison with the neighbouring properties. It benefits from a well planted rear boundary and although the separation distance from the proposed dwellings would fall short of that recommended by the Essex Design Guide, due to the existing vegetation and the low height of the existing dwelling the extent of any overlooking would be limited.
42. The rear gardens to the dwellings at 2 and 3 Chapel Lane are very shallow, although both dwellings benefit from larger gardens to the front. They are separated from the proposed dwellings by a distance of about 25 metres. Due to the height of the proposed dwellings there would be some loss of privacy to these dwellings, but it would not be sufficient to justify the dismissal of the appeal. Due to the height of the proposed dwellings and the length of the proposed terraces relative to the properties in Chapel Lane I consider that the proposal would have an overbearing effect on the outlook of the occupants of these dwellings.
43. Whilst additional landscaping may mitigate the extent of overlooking from first floor windows, it will be less effective at screening views from upper floors and would not overcome the visual prominence of the proposal in relation to the surrounding dwellings. I therefore conclude that the proposal would harm the living conditions of surrounding residents and would fail to comply with policy BE1 which requires proposals to be compatible with their surroundings.

Housing Land Supply

44. The housing strategy within the development plan does not seek to meet housing needs beyond 2011. National planning policy is set out in the NPPF. This seeks to significantly boost the supply of housing. Paragraph 47 requires Local Planning Authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF. The Planning Practice Guidance (PPG) advises that in the absence of a relevant requirement within a Local Plan the housing requirements should be assessed against the full objectively assessed need for the area.
45. The NPPF encourages local planning authorities to ensure that their local plan meets the need for market and affordable housing and to identify a supply of deliverable sites sufficient to provide 5 years' worth of housing against their requirements. To ensure choice and competition in the market an additional buffer of 5% is required or, where there has been a record of persistent under-delivery, a buffer of 20%.
46. The assessment as to whether a Council is able to demonstrate a 5 year supply of housing land needs to take account of the housing requirement, any previous shortfall in delivery, the appropriate buffer, and the available housing land supply.

47. The housing requirement within the emerging LDP makes provision for 310 dwellings per year (dpa). This requirement takes account of the most recent household projections published in February 2015. Whilst the appellant considers that the full objectively assessed need for the District may be higher, he nevertheless agrees that 310 dpa represents a reasonable basis for the assessment of the 5 year housing land supply. Although the housing requirement within the LDP cannot be afforded full weight at the present time, in the absence of any alternative figure I agree that the housing land supply position should be assessed against this requirement. On this basis there is a requirement for 1550 dwelling over the next five years. Only 69 dwellings were completed in 2014-2015 giving rise to a shortfall of 241 dwellings which should be added to the requirement giving a total 5 year requirement of 1791dwellings.
48. The Council suggest that this figure should be adjusted downwards to take account of the oversupply that occurred between 2001/2002 and 2013/2014. However the LDP aims to meet the housing requirement for the period from 2014 onwards using the evidence within the SHMA which assessed the total need at that time. As such, any previous over or undersupply would have been taken into account in assessing housing need for the District. Therefore the Council's previous delivery record does not justify a reduction in the housing requirement. This matter was considered in the Zurich case¹ where it was held that the estimates for population growth and housing requirements within the Core Strategy were based on an up-to-date evidence base which provided the relevant total figure. It found that the inclusion of a different estimate using a different evidence base would have distorted the overall figure.
49. The Council submits that it does not have a persistent record of under-delivery and therefore the additional buffer required by the NPPF should be 5% rather than 20% as advocated by the Appellant.
50. The Council provided evidence of completions for the 12 year period from 2001/2002. These were assessed against the annualised requirement for 120 dpa within the East of England Plan which was adopted in 2008 and covered the period from 2001 up to its revocation in 2013. In the period following the adoption of the East of England Plan the Council has failed to reach its annual housing requirement in all but one year from 2008/2009 onwards. However, when assessed over the entire plan period there were 93 more dwellings delivered than required by the East of England Plan.
51. The appellant submits that for the period prior to the adoption of the East of England Plan housing completions should be assessed against the requirement within the MDRLP. This was adopted in 2005 and would have been the relevant development plan for that period. When assessed against this requirement the Council failed to meet the target in all three years. When considered together with the shortfalls in recent years this could be considered to represent a persistent record of under-delivery.
52. Although the Council would have been working to the target within the MDRLP prior to the adoption of the East of England Plan, it remains the case that following the adoption of the East of England Plan housing delivery would have been assessed over the entire plan period from 2001 onwards. Therefore having regard to the total number of dwellings delivered when assessed against

¹ Zurich Assurance Ltd V Winchester City Council and South Downs National Park[2014]

the East of England Plan requirement it is debateable whether there has been a record of persistent under-delivery given that the shortfalls in recent years would be offset by over-delivery in earlier years. I therefore conclude that on balance the Council does not have a persistent record of under-delivery and that the 5% buffer should apply.

53. The Council considers that the buffer should be applied to the five-year housing requirement before adding the shortfall. This approach is consistent with the Secretary of State's position in an appeal decision at Gresty Lane, Crewe². However, a Secretary of State decision at Droitwich Spa³ endorsed the inspector's approach of applying the buffer to the five year requirement (including the historic shortfall).
54. The NPPF states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land.
55. Accordingly, the purpose of the buffer is to increase the supply of land, but does not alter the number of houses required to be built within that period. It does not become part of the requirement, but is an additional supply of land beyond that necessary to permit the identified need for housing to be delivered. Its purpose is to provide choice and competition within the market. For this reason I consider that the buffer should be applied to the entire five year housing requirement.
56. Given the relatively modest extent of the shortfall within Maldon even if I were to accept that the buffer should be added to the five year requirement excluding the shortfall the overall requirement would be 1869, whereas if the shortfall were included prior to the addition of the buffer the requirement would be 1881 dwellings. Therefore the five year housing requirement is not markedly different regardless of the approach adopted.

Supply

57. The Council published an update to its 5 year housing land supply in July 2015. This was further updated prior to the inquiry. This indicates that the Council has a total housing land supply of 2127 dwellings, including a windfall allowance and a 5% adjustment to allow for non-implementation and slippage. The supply includes 944 sites with extant planning permission, 1195 dwellings from strategic allocations in the emerging LDP and a windfall allowance of 100 dwellings.
58. The differences between the parties relate to the timeframe for the delivery of two of the sites with extant planning permission and some of the strategic housing sites. The appellant does not dispute the rates of delivery put forward by the Council, but suggests that the supply should be reduced by 93 units to allow for the non-implementation of Sadds Wharf and 46 units in relation to the land at Bridgemans Green.

² APP/R0660/A/13/2209335

³ APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

59. Planning permission for Sadds Wharf was originally granted in 2009. At the time of the Heybridge Hall Site appeal in September 2010⁴ the inspector concluded that for reasons of viability and land contamination only about half of the 93 dwellings proposed would be likely to come forward in the following five years. More recently an appeal which effectively sought to extend the time period for the implementation of the permission was dismissed due to the absence of affordable housing provision⁵.
60. Reserved matters in relation to landscaping were approved in March 2013, and the required s106 contributions have been paid. At the inquiry it was confirmed that a technical start had been made on site, although neither party was able to advise me as to the extent of such works.
61. The appellant submitted evidence to show that the site had recently been marketed for storage use. Whilst this would indicate that the owner may not intend to develop the site imminently, the discharge of some of the reserved matters and payment of the s106 contributions suggests that there is a clear intention to develop the site for housing.
62. Footnote 11 of the NPPF provides that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years. The Council's trajectory indicates that the first houses will be delivered on this site in 2015/16. Taking account of the issues in respect of contaminated land and the fact that there are outstanding conditions to be discharged, I consider the Council's trajectory to be overly optimistic. Although the site has recently been marketed for alternative short term uses, in my view this does not constitute clear evidence that the site will not be deliverable within the next five years. Notwithstanding this, I consider that it is unrealistic to expect the first houses to be delivered before 2016/17. Therefore on the basis of the existing trajectory the number of houses to be delivered in the next five years should be reduced by 23.
63. The Council's trajectory indicates that the first dwellings at Bridgemans Green, Latchingdon will be delivered during 2017/18. The appellant states that a further application for 52 dwellings has been submitted in order to address concerns in relation to the viability of this scheme. The Council recently resolved to approve this recent application subject to a s106 Agreement. An email from the consultant acting on behalf of the owner of this site advises that it is currently being marketed and the housing mix sought by the Council is an issue for potential purchasers. This matter may delay the implementation of the permission, no substantive evidence was submitted to the inquiry to show that the permitted scheme would not be viable. I consider that it would still be possible to deliver the permitted dwellings within the next five years.
64. The Council aims to meet much of its housing requirement through strategic allocations. These include garden suburb extensions at Maldon and Heybridge. These sites are available for development and the Council has agreed Statements of Common Ground with the owners setting out the deliverability of the sites, including the phasing and funding of infrastructure. It is also in the process of preparing design codes in respect of the garden suburbs in order to

⁴ APP/X1545/A/10/2130246

⁵ APP/X1545/A/13/2194479

- expedite the delivery of reserved matters, although these have not yet been published or adopted.
65. The Statements of Common Ground together with the Infrastructure Delivery Plan(IDP) informed the Council's Five Year Housing Land Supply Statement. Based on the recent update the five year housing land supply includes 1195 dwellings on strategic allocations. Although the appellant does not dispute the delivery rates, he believes the Council's trajectory to be unrealistic in relation to some of these sites.
66. *Site 2a (South of Limebrook Way)* is predicted to deliver 1000 dwellings over the plan period with 235 of these during the next five years. The Council resolved to grant planning permission in June 2015. There are a considerable number of conditions to be discharged and the s106 agreement will need to provide for pooled contributions. For this reason it will not necessarily be straightforward. The Council's revised trajectory indicates that the first houses will be delivered on site during 2017/18. Taking account of the design codes and amended timescale I consider that the site could deliver the intended number of dwellings over the next five years.
67. *Site 2b (Wycke Hill North)* is expected to deliver 200 houses over the next five years with the first houses delivered in 2017/18. The Council anticipates that an outline application will be submitted shortly and that the design codes will inform and assist with expediting any reserved matters. The appellant considers that due to the absence of a planning application, the need for significant infrastructure and site preparation works, it is unlikely to deliver any dwellings within the plan period. The site is not currently owned by a developer and this could add to the time period for implementation. Taking account of the Council's commitment to proactively encourage applications on allocated sites, together with the Masterplan and forthcoming design codes, I consider the Council's trajectory to be achievable in the case of this site.
68. *Site 2d (North of Heybridge)* The Council anticipate that this site will deliver 326 dwellings over the five year period, whilst the appellant believes that it will deliver only 238 dwellings. There is an existing planning application which the Council expect to be determined in early January 2016. This will need to be followed by the submission of reserved matters and the discharge of conditions. Although the site requires the delivery of significant infrastructure this has been included in the IDP which has informed the Council's housing trajectory. This suggests that the first dwellings would be delivered during the 2017/18 monitoring period. Having regard to the fact that the site is already owned by a developer, I consider that the delivery of houses in accordance with the Council's trajectory to be achievable.
69. *Site 2e (Land North of Holloway Road)* The Council expect this site to deliver 100 dwellings over the next five years with the first dwellings delivered in the 2017/18 monitoring period. The Council anticipate that the current planning application will be determined in November/December 2015. The appellant suggests that no dwellings will be delivered during the next five years due to the time necessary to resolve the s106, submit reserved matters, concerns about viability and the necessary site preparation works. No evidence was submitted to the inquiry to suggest that additional infrastructure beyond that identified in the IDP would be required, or that site preparation works will differ significantly from other sites. I therefore consider the appellant's view that no

dwelling will be delivered on this site during the next five years to be unduly pessimistic. On the basis of the submitted evidence I find the Council's trajectory to be deliverable.

70. *Site 2h (Heybridge Swifts Football Club)* The appellant does not consider this site to be deliverable in that an alternative site for the relocation of the football club has not yet been identified and a planning application has not yet been submitted. The Council state that a detailed planning application for 100 dwellings is expected in the near future and that the LDP does not require alternative arrangements to be made for the football club. On this basis it anticipates that the first houses on this site will be delivered in 2018/19.
71. Footnote 11 of the NPPF states that to be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. It would seem that this site is not currently available, and at the present time it is uncertain when it will become available. In addition, it is probable that there will be specific costs associated with relocation of the football club and the provision of alternative facilities. These could impact on the timescale and viability of the scheme. Therefore on the basis of the evidence submitted to the inquiry I am not persuaded that this site is deliverable within the next five years.
72. *Site 2i (West of Burnham on Crouch)* This site is expected to deliver 180 dwellings over the five year period whilst the appellant suggests that it will deliver 108. There is currently a hybrid application before the Council and this includes a detailed application for 108 dwellings. The Council state that the site does not need to be sold on and since there is a detailed element to the application, it anticipates that the first houses will be delivered by 2016/17. It also states that there are no significant infrastructure requirements in relation to sites at Burnham on Crouch which would be likely to delay delivery. Since the application is yet to be determined, I find that the anticipated start date of 2016/17 to be overly optimistic and therefore consider that the number of dwellings to be delivered over the next five years should be reduced by 30.
73. *Site S2j (North of Burnham on Crouch)* The Council believe it will deliver 180 dwellings over the next five years, whilst the appellant suggests that it will only deliver 150. A detailed planning application has recently been refused on design grounds. The Council consider that this matter could be resolved and a revised planning application could be progressed within a year. The land is owned by a housebuilder and therefore there is no need for it to be sold on, nor are there any significant infrastructure requirements. On this basis, whilst the delivery of the first houses on site by 2017/18 is optimistic, I consider it to be achievable.
74. *Site 2k (North of Burnham on Crouch)* The Council consider that 90 dwellings could be delivered on this site in the next five years, whilst the appellant believes that no houses will be delivered. A planning application has not yet been submitted, however, the Council state that there is no need for the land to be sold on and there are no significant infrastructure requirements. In the absence of a submitted planning application I consider it unlikely that any dwellings will be delivered on this site prior to 2018/19. Therefore the Council's housing land supply should be reduced by 30 dwellings.

75. I therefore conclude that the number of dwellings delivered by the strategic sites should be reduced by 160 and a further 23 in respect of Sadds Wharf. This would provide a housing land supply sufficient for the delivery of 1953 dwellings. I therefore find that, on the evidence before me, the Council does have a five year housing land supply.

Other Matters

76. The entire settlement of Heybridge Basin comes within Flood Zone 3. At the time of the tidal surge in December 2014 local residents advise that the village was evacuated and residents were accommodated at a school for two days until the level of water diminished. Whilst the village did not flood on that occasion it is clear that there is a genuine concern that it is at risk of doing so.
77. The Council does not object to the proposal on the basis that the site comes within Flood Zone 3, but states that if there is a five year housing land supply the proposal would not comply with the sequential test as required by the NPPF. The appellant states that in the absence of a five year housing land supply the proposal would still satisfy the sequential test in that the appeal site comprises previously developed land within a sustainable settlement. He states that policies S1 (Development Boundaries and New Development) and H1 (Location of New Housing) the MDRLP direct new housing development to previously developed land within settlement boundaries in sustainable rural settlements. Policies S2 and S8 of the emerging LDP adopt a similar approach.
78. Paragraph 101 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It provides that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test, or for applications for minor development or change of use. However, the fact that site comprises previously developed land, or that policies which pre-date the Strategic Flood Risk Assessment for the District and the NPPF direct development to the village does not exempt the proposal from the Sequential Test.
79. The Flood Risk Assessment was prepared on the basis that the Council did not have a five year housing land supply and therefore assumed that there were no preferable sites at lower risk of flooding. I found above that the Council does have a five year housing land supply and therefore there is no evidence before me to demonstrate that the proposal would satisfy the Sequential Test. The information submitted to the inquiry in relation to housing land supply demonstrates that there are areas at less risk of flooding than the appeal site. However any flood risk must be balanced against the wider sustainability objectives in accordance with the NPPF.

Overall Planning Balance

80. The appeal site occupies a prominent position within the village and has been vacant for many years. It is agreed by the parties that in its present state it detracts from the appearance of the village and the neighbouring conservation area. The proposal would deliver a number of benefits, including the provision of publicly accessible open space and would provide pedestrian and cycle links the between the village and canal. It would also provide benefits of the

- resident of Chapel Lane through the provision of parking. The proposal would contribute towards meeting the need for additional housing within the District.
81. The NPPF sets out a presumption in favour of sustainable development. Paragraph 6 of the NPPF explains that regard must be had to the Framework as a whole in determining what the concept of sustainability means in practice
82. Paragraph 14 of the NPPF states that where the development plan is absent, silent, or the relevant policies are out-of-date, permission should be granted for development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies within the Framework as a whole, or specific policies within it that indicate that development should be restricted. The housing policies within the MDRLP are time expired and therefore the presumption in favour of sustainable development set out in paragraph 14 of the NPPF applies.
83. Economically, the development would bring short-term advantages in respect of jobs during the construction phase. Whilst the proposal would contribute to the social role of sustainability through the provision of housing, it would not provide any affordable housing or deliver a sustainable mix of dwellings to meet the identified housing needs of the District in accordance with paragraph 50 of the NPPF. The purpose of the financial contributions toward early years education and child care facilities are to mitigate the effect of the proposal on these services and therefore would not be a benefit of the scheme. Nevertheless it would ensure that the proposal was socially sustainable in respect of the provision of these services.
84. There are few services or facilities within Heybridge Basin aside from the public houses and café close to the canal. The appeal site is situated within walking distance of two different bus services. Together these provide 13 services a day to Maldon and Heybridge, although neither service operates in the evening or on Sundays. Therefore residents of the proposed dwellings would not be reliant on the use a car for all of their journeys. The proposal would provide environmental benefits in terms of the provision of publicly accessible open space and the provision of pedestrian and cycle links with the between the village and canal. The transfer land to residents of the properties in Chapel Lane for car parking would be a further benefit.
85. Balanced against these benefits, the proposal would harm the character and appearance of the surrounding area, as well as harm the living conditions of surrounding residents. Moreover, the site is situated within Flood Zone 3, and there is clear evidence that there are other sites within the District at lesser risk of flooding. Overall I consider that the proposal would not be sustainable development.
86. For the reasons given above I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies within the Framework as a whole.
87. For the reasons given above I conclude that the appeal should be dismissed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Zack Simons	Of Counsel
He called	
Mark Woodger	Planning Consultant
Tim Parton	Planning Officer
Paul Gayler	Strategic Housing Manager

FOR THE APPELLANT:

Mary Cook	Of Counsel
She called	
Annabel Brown	Architect
Anthony Lee	
Michael Calder	Planning Consultant

INTERESTED PERSONS:

Mark Jackson	Planning Consultant
Douglas Milsted	Heybridge Basin Conservation Society
Professor Schnurr	Chairman of Parish Council
Stephen Brown	
David Brock	
Alistair Cameron	
Glyn Cousins	

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Letters dated 6 May 2015 and 4 September 2015 notifying interested parties of the appeal
- 2 Bundle of documents submitted by the appellant
- 3 Housing Land Supply summary submitted by the appellant
- 4 Updated Appendix 16 to Tim Parton's proof of evidence
- 5 Paul Gayler Summary proof of evidence
- 6 Submissions from Glyn Cousins
- 7 Submissions from Professor Schnurr
- 8 Submissions from Mr Brown
- 9 Flood Risk – Practical Summary submitted by the appellant
- 10 Zurich Assurance Ltd V Winchester City Council and South Downs National Park[2014] submitted by the appellant
- 11 Submissions from Mr Cameron
- 12 Heybridge Basin SPD submitted by the Council
- 13 S106 Agreement submitted by the appellant
- 14 Gresty Lane Crewe Appeal decision submitted by the Council
- 15 Email in relation to Bridgemans Green site submitted by the appellant
- 16 Updated Housing Land Supply summary submitted by the appellant

PLANS

- A Site layout plan 196.200.G
- B Parking Allocation Plan 196.201.G
- C Proposed Street Scenes 196.202.H_(1/2)
- D Proposed Street Scenes 196.203.G_(2/2)
- E Proposed site and first floor plan 196.220.00
- F Proposed site and second floor plan 196.221.00
- G Proposed Typical House type 196.222.00

PHOTOGRAPHS

- 1 Flooding in Basin Road submitted by Mr Brock

Richborough Estates