



Appeal Decision

Inquiry commenced on 15 June 2020

Site visit made on 2 July 2020

by Frances Mahoney MRTPI IHBC

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

Decision date: 31st July 2020

Appeal Ref: APP/Z1510/W/20/3247020

Land off School Lane, Rayne, Braintree

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Wallace Land Investment and Management and John Mortier and Peter Mortier against Braintree District Council.
 - The application Ref 19/01326/OUT is dated 12 July 2019.
 - The development proposed is residential development of up to 150 dwellings including affordable homes, with areas of landscaping and public open space, including point of access off School Road and associated infrastructure works.
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Decision

1. The appeal is dismissed, and planning permission refused.

Preliminary matters

2. The Inquiry sat from the 15-17 June and 22-25 June 2020 with an unaccompanied site visit on 2 July 2020.
3. Both the Rayne and Felsted Parish Council, whilst not taking Rule 6 status, nonetheless took an effective part in the Inquiry proceedings, representing the views of local residents particularly in respect of matters relating to highways and aviation flightpaths.
4. In this outline proposal all matters are reserved for future consideration save that of access. Therefore, other than the location plan, the access arrangement plan and the forward visibility plan, all other plans are purely for illustrative purposes only and whilst they may not be determinative, they have informed my reasoning.
5. This appeal is against the failure of the District Council to make a decision within the prescribed period¹. However, the putative reasons for refusal for the Council are set out in the report to the Planning Committee dated 3 March 2020² and reflected in the Minutes of that meeting³.

¹ First bullet point in banner heading.

² CD4.03.

³ CD4.02.

Policy background

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the District includes the saved policies of the Braintree District Local Plan Review⁴ (BLPR) and the Braintree District Core Strategy⁵ (CS).
7. Both the CS and the BLPR pre-dates the Framework and whilst saved policies are still relied upon awaiting the adoption of a new local plan, the weight to be ascribed to these policies is dependant on their degree of consistency with the policies within the Framework⁶.
8. The Council has been engaged in the preparation of a new Local Plan known as the Publication Draft Local Plan⁷ (PDLP). The PDLP is set over two separate documents, one at a more strategic regional level and one which relates to Braintree District Council only. Following consultation, the PDLP has progressed to Examination stage which is on-going. One of the central stays to the PDLP⁸ is the development of a garden community close to Braintree. However, the Examining Inspector found that at best this Garden Community would have been very marginal in respect of financial viability and so was undeliverable. This has left the Council in the position of having to find currently a further 716 homes each year within the District. This then impacts upon the totality of the emerging PDLP with further thought, work and consultation being required to achieve a new responsive spatial strategy for the District.
9. In the current circumstances of examination and potential evolution of the strategy I can give little weight to the PDLP in my decision-making.
10. It is an agreed point that the appeal site lies outside the defined settlement envelope of Rayne in an area of countryside. The relevant policy in such a location is CS Policy CS5 which seeks to restrict development to uses appropriate to the countryside, in order to, amongst other things, protect and enhance the landscape character and amenity of the countryside.
11. The restraining element of CS Policy CS5 is not the only aspect of the policy for consideration. Whilst not in the same words the policy does reflect the terms of Framework paragraph 170 b) to recognise the intrinsic character and beauty of the countryside.
12. On the face of a plain reading of this policy it would appear that there is a direct conflict with CS Policy CS5 stemming from the site location in the countryside. However, Paragraph 11, footnote 7 of the Framework is clear where a Council cannot demonstrate a five-year supply of deliverable housing sites, such relevant policies must be considered out-of-date. That position is qualified in that they are not to be ignored. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies. This is a matter I will return to later in the decision.

⁴ Adopted 2005 – CD 5.01.

⁵ Adopted 2011 – CD5.02.

⁶ Framework para 213.

⁷ CD6.01.

⁸ Section 1 Plan, whilst an individual plan, it is common to 2 other North-Essex authorities.

Main matters for consideration

Highways

13. The Council were advised on highway implications by the Highway Authority (Essex County Council) and Highways England. Subject to appropriate conditions these bodies considered that the appeal proposal would be unlikely to adversely impact on the strategic road network nor on the more local highway network⁹. As a result, this was not a matter in opposition pursued by the Council.
14. However, both Parish Councils and local residents were concerned that the additional traffic generated by the appeal proposal would unacceptably and adversely impact on highway safety for all road users, particularly given the nature of the surrounding rural roads, the attractiveness of the immediate locality to cyclists¹⁰, and the presence of riding stables in the close vicinity.
15. The proposed development access would emerge onto School Road between The Woost and Little Paddocks. The road at this point is suburban in character. The presence of residential property frontages increases in frequency as the road travels north, linking in with New Road, where road users would be very much aware of the context of the road within an established village location, where village homes front the road to the south and the houses to the north of the Flitch Way are glimpsed through the trees. School Road benefits from a roadside pavement from at least the bridge crossing the A120, linking into that along New Road.
16. At the point of the proposed access onto School Road, inter-visibility in both directions is open, and the proposed access arrangements, including carriageway widening and realignment¹¹ are necessary and acceptable in design terms, these being uncontested¹² points.
17. To the south of the proposed new access, School Road passes into a more rural context, initially retaining the road width and pavement characteristics of the suburban section to the north. This then fades out into a more rural character of road bounded by hedges, edged by sporadic residential property linearly located, with significant stretches where the passing of opposing direction vehicles is manageable, sometimes with care, although roadside pavements are no longer particular features.
18. The nature of this rural route from the edge of Rayne down to the A131 is not exceptional in respect of any inadequacies it may exhibit below ideal Highway Authority standards, particularly when considered in the context of other country roads linking towns and villages across the Nation.
19. This equally applies to the driving routes along Gore Road/Rayne Road into Braintree and the B1256, or along Queensborough Lane down to the Skyline Enterprise Park and the A131, where the passing of on-coming vehicles has to be negotiated with care.

⁹ SofCG General section 13.

¹⁰ Following its inclusion in the Stage 2 route of the Tour de France 2014.

¹¹ CD1.06b dwg no PL01 -agreed with the Highway Authority.

¹² Inq Doc 14 acknowledges that the required carriageway widening would necessitate the removal of a small part of a special roadside verge (roadside nature reserve) which would give rise to limited adverse harm. However, this would be mitigated by the proposed biodiversity measures secured by planning condition were permission to be granted.

20. I experienced for myself driving the routes, as well as walking sections of the roads to the north and south of the appeal site, and observed the character and nature of the road network, including the parking along New Road close to the Booking Hall Café, the traffic light controlled pinch-point at the Gore Lane junction, the Gore Road bridge and the restricted width of Queensborough Lane.
21. I understand residents' concerns that at times, particularly when there are race days or events at the Chelmsford City Racecourse, School Road, Moulsham Hall Lane and the other village roads linking through from Braintree can be very busy, often used as a cut through for local traffic to avoid congestion elsewhere.
22. I agree the safety of walkers and those riding-out is of particular importance. However, this must be considered in the context of the impact of the traffic generated by the proposed development when added to the existing local traffic flows which, I heard anecdotally from local residents, already causes a conflict in highway safety terms for them, although I observed by the very nature of the rural roads, drivers are likely to proceed with care.
23. The Transport Assessment sets out in relation to existing traffic movements on School Road¹³, during the morning peak, the average two-way traffic flow would be 266 vehicle movements, with the evening peak being 217¹⁴. This equates to approximately 2 vehicles per minute travelling both southbound and northbound. The forecasted vehicular movements generated by the proposed development would be approximately 1 vehicle every 40 seconds travelling north or south in the same periods¹⁵.
24. This would add to traffic flows along School Road down to A131 and New Road, skirting the edge of the village to the A120. However, the extent of the additional traffic movements across the timeline of peak times would not add significantly to that of local traffic already accessing the immediate road network. Therefore, the impact of the traffic generated by the proposed development, in the context of existing traffic flows would not unacceptably impact on highway safety¹⁶.
25. I have considered whether the Mill House appeal decision¹⁷ is comparable to this appeal. However, the key difference, in my judgement, is that the Mill House site, whilst not being particularly remote to the village did lack a pavement or street lighting on the part of School Road nearest to that appeal site¹⁸. That is not the case for this development where School Road includes a continuous pavement linking through to New Road as well as street lighting.
26. The impact of the proposal on existing flooding issues within the local highway network was also mentioned by residents as a concern, particularly in relation to the free flow of traffic in the local highway network. However,

¹³ The proposed development access would be directly onto School Road.

¹⁴ CD1.06 Figs 2.8 & 2.9.

¹⁵ This evidence was uncontested and had been assessed by the Highway Authority as being a fair representation of what might be expected from the composition of accommodation proposed.

¹⁶ This would equally apply to the short-term impact of construction traffic where routing and times of lorry movements/deliveries could be controlled via appropriate planning conditions.

¹⁷ Inq Doc 6.

¹⁸ Inq Doc 6 para 8.

the surface water drainage strategy and flood risk assessment¹⁹ indicate how surface water run-off would be dealt with through a Sustainable Urban Drainage Scheme (SUDS) and this was accepted by the local lead flood authority. I have no reason to doubt the conclusion of that assessment.

27. Framework paragraph 109 sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Whilst acknowledging the shortcomings of the immediate road network, the anticipated traffic volumes from the new development would be comparatively low to that already frequenting the routes and would not cumulatively unacceptably aggravate highway safety.
28. Therefore, in the case of highway safety, I have found the impact of the proposal to be acceptable and the residual cumulative impacts on the road network cannot be described as severe, thereby the terms of paragraph 109 of the Framework would not be compromised²⁰.

Accessibility

29. Framework paragraph 103 identifies that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
30. The broad policy approach is to reduce the need to travel by placing new development where it has the best chance of accessing facilities and services required for day to day living.
31. As a village Rayne includes a primary school, post office, small shop, two pubs, two restaurants and a café²¹. As a large village it has the ability to provide some day to day services although not the full range, including health care provision²².
32. The village centre along The Street is within easy walking distance of the appeal site. The primary school is more of a stretch of the legs but the walking route to it is direct and the rather tortuous driving route to reach the school would be likely to encourage walking.
33. Rayne lies some 3 kilometres (km) from Braintree, which can be accessed on foot or by bike via the Flitch Way, and 2 kms from Great Notley. Just 1.7 kms away is the Skyline 120 Business Centre, which is one of the most significant employment parks in the District, and further on the new Horizon 120 Business and Innovation Park is under construction. Both can be accessed across-country on public footpaths via Great Notley Country Park. This is a very pleasant walk of around 20 minutes or so, quicker by cycle. I do appreciate during the winter and in inclement weather this route may not be so attractive, but it does offer an undeniable means of accessing

¹⁹ CD1.07.

²⁰ I have also considered the terms of Framework para 102, in particular d) but find that adverse effects have not be conclusively identified.

²¹ Agreed list and distances to the appeal site at section 2 SofCG Suitability of location and planning balance.

²² Health centres are located in Great Notley and Braintree some 2.4 km away.

significant local employment opportunities without year-round dependence on the motorcar.

34. The Flitch Way²³ also provides direct walking and cycling routes into Braintree, leading through to Braintree Station where there is an hourly train service direct to London Liverpool Street with a normal running time into the Capital of less than an hour.
35. The nearest bus stop to the appeal site is a 10 minute walk. The 133 service provides regular links to Braintree, Colchester and Stansted Airport all of which are centres for local employment²⁴. I do accept the Council's point that the timings of the buses do not conveniently fit with a traditional '9 to 5' start and finish job. However, at a time when patterns of working are changing and sectors such as manufacturing or many airport roles would favour shift working, and home working in recent months has become the normal for many, it does not follow that the weight to be given to the contribution of the bus service as an available, frequent and sustainable mode of transport should be reduced because it does not fit in with an '9 to 5' job model.
36. The proposed development includes the provision and implementation of a travel plan which would encourage future residents to use public transport.
37. Therefore, in these circumstances the appeal proposal would present ease of pedestrian and cycle movements with acceptable access to local facilities and public transport services providing a genuine choice of transport modes. In this way the development would meet the sustainable transport objectives of the Framework²⁵ and the terms of CS Policy CS7²⁶ in particular.

Aviation flightpath impacts

38. The concern of the Felsted Parish Council centres on the location of the appeal site and Rayne just off the end of the centre line of the Clacton Runway 4 Noise Preferential Route (NPR) which controls the routing for aircraft at heights of up to 4000ft. They allege that up to 175 aeroplanes a day currently overfly the appeal site at heights of between 4000 to 6000ft which is against Government policy to establish new flightpaths above 7000ft over-populated areas²⁷.
39. I am conscious that the Government policy referred to relates to guidance for proposers of airspace change for future aircraft routes²⁸. Further The Environmental Research and Consultancy Department Report: Noise Exposure Contours for Stansted Airport 2019²⁹ does not include the area of the appeal site in the published noise exposure contours for the Airport.
40. The appeal site lies some 17 kms from London Stansted Airport. The representation used to illustrate the end of the centre line of the NPR also

²³ Part of the national cycle route no 16.

²⁴ CD12.05 – Bus timetable.

²⁵ Framework paras 103 & 104.

²⁶ The main aim of CS Policy CS7 is to reduce the need to travel by locating development in sustainable locations. This is consistent with Framework para 103.

²⁷ This level of overflying is disputed by the appellants – daily average of 114 departures during the peak summer holiday period 2018 with an average of 52 over the remaining sample period.

²⁸ Appendices SKRS1 & SKRS1.

²⁹ Appendix SKRS3.

shows the inclusion of some of the town of Braintree as well as Great Notley, an established growth point within the District.

41. No objection was received to the appeal proposal from either the Civil Aviation Authority or the Airport authority itself. The Council advised by their environmental health officers did not support an objection to the proposal on this basis and the noise modelling undertaken in the assessment of the impact of external noise sources on future residents of the appeal development, were it to be permitted, was not required to consider aircraft noise.
42. Therefore, I have reached the conclusion that the impact of overflying aircraft on the development of the appeal site is not determinative in this case.

Landscape

43. The parties have agreed that the appeal site has no statutory or non-statutory landscape protection and is not a 'valued landscape' under the terms of Framework paragraph 170³⁰.
44. Just under 32% of the appeal site is shown on the illustrative masterplan and masterplan framework for informal and formal areas of open space (2.87 hectares (ha))³¹. These areas include retained and proposed trees, hedging and shrubs resulting in an overall increase of green planting within the site boundaries seeking to mitigate the loss of any existing trees and a small section of hedging³².
45. This edge of settlement site lies within the National Character Area 86 South Suffolk and North Essex Clayland which covers an extensive area and includes several large towns as well as the intervening countryside. At a county level the site is located within the B1 Central Essex Farmlands landscape character area (LCA)³³. This in essence is gently undulating arable farmland with irregular fields enclosed by thick but intermittent hedgerows or grassy banks and ditches. Its key characteristics are:
 - Irregular field pattern of mainly medium size arable fields, marked by sinuous hedgerows and ditches;
 - Many small woods and copses provide structure and edges in the landscape;
 - Scattered settlement pattern, with frequent small hamlets, typically with greens and ponds;
 - A concentration of isolated moated farmsteads;
 - Network of narrow, winding lanes; and
 - Mostly tranquil character away from major roads and Stansted Airport.

³⁰ SofCG Character and Appearance paras 2.11 & 2.12.

³¹ The overall appeal site is some 9.17 ha.

³² SofCG Character and Appearance Section 3.

³³ As outlined in the Essex Landscape Character Assessment 2003 – CD09.1.

46. This LCA has an agreed medium sensitivity to major urban extensions over 5 hectares³⁴.
47. At a district level the site is located within the B13 Rayne Farmland Plateau LCA³⁵. Amongst other features this LCA is characterised by the views on the tops of the hills being generally open to panoramic, depending on the heights and density of the surrounding trees and hedgerows. Some of the fields are only bound by ditches creating a very open view. Away from the 2 small river valleys within the LCA, there are long distance wide views over fields with the field boundaries generally delineated by hedges which can be gappy and fragmented.
48. Landscape Setting Area 19 of the Braintree District Settlement Fringe Landscape Capacity Analysis for Braintree and Environs (Nov 2007) includes the appeal site and has a low-medium capacity to accommodate residential development. This study forms the basis of the later (2015) Braintree District Settlement Fringes Evaluation of Landscape Analysis (SFELA). This divides the area (B19) into two parcels with the appeal site being in parcel 19b. This is assessed as having a medium-low capacity to accommodate residential development. The two levels of capacity expressed across the two studies are similar³⁶.
49. Parcel 19b is identified as functioning as a separator between Rayne, Great Notley and Braintree as well as being a buffer between the village and the A120. However, there is an acknowledgement within the SFELA that new residential development could be accommodated within the northern part of area B19 which would include the area of the proposed development adjoining the settlement edge.
50. The appeal site consists of an arable field still in active use extending from the gardens of homes on New Street, bounded to the south by the A120, a major trunk road. One is only aware of the road when standing on the appeal site by reason of the glimpses of tall lorries passing by, the top of the road-side directional signage, and the noise of the traffic which, I have no doubt, varies in magnitude depending on the time of day and day of the week.
51. The main factor which mitigates the visual impact of the A120 is that it is set in a cutting. From within the site and from the wider countryside surroundings, the open fields and rural landscape beyond the village edge seems visually uninterrupted as it spreads out into open wide views to the south. It is really only from the bridges which span the A120 that the observer is visually aware of the way the A120 bisects the rural hinterland of Rayne from the wider expansive countryside setting.
52. The claimed function of the appeal site as a buffer between the village edge and the A120 I do not find convincing as I have already established that the A120 is not visually obvious from the village or from much of the surroundings. It is the importance of the field in landscape terms in respect of the setting of the village and in the wider countryside context which is of primary concern.

³⁴ SofCG Character and Appearance para 4.4.

³⁵ CD09.02.

³⁶ SofCG Character and Appearance para 4.7-4.10.

53. The apparent continuation of the predominantly arable, hedge and tree edged fields is also appreciable from the southern side of the A120 looking north from the various viewpoints on footpaths traversing this landscape, including Long Lane. From the Mound in Great Notley Country Park, as well as its approaches, there are clear views across to the appeal site and the hard-suburban edge of the village, including Little Paddocks. The extent of the green open nature of the appeal site does serve to soften the impact of the existing village built development in the landscape.
54. To the north the hard-suburban edge of the village created by the garden fencing, residential massing of the buildings and paraphernalia of domestic, private recreational space, presents a strong and visually dominant characterising feature of this boundary of the appeal site. This northern section of the appeal site is much more visually influenced by the existing development within Rayne, along New Road. This includes the development to the north of the Flitch Way which cannot be divorced in character terms from the peripheral southern section of the village as part of the nature and entity of the settlement. Development on the western side of School Road in the vicinity of the proposed access is also influential in setting the character context for this part of the proposed development.
55. Little Paddocks as a development of bungalows detached from the village settlement edge does extend built form into the open rural nature of the landscape. The abrupt edge of the bungalow development creates a developed visual pinch-point before the appeal site opens out into the wider more open context of Fairy Hall with its associated farm buildings and the farming countryside beyond. Whilst some of the farm buildings are poor quality³⁷ a visual association with the adjacent farmland is clear to see in the landscape, which is a factor in establishing a rural character to this part of the appeal site.
56. The pattern of established hamlets and isolated farmsteads in the wider landscape would not be affected by the development of the appeal site. The location of Fairy Hall and its farmyard buildings does maintain some sense of limited isolation from the main built up area of the village but not in the sense of being an isolated farmstead such as Little Common Farm to the south where its remote setting is one of the characterising features of the rural landscape.
57. There is no doubt that the appeal proposal would result in a change from undeveloped to developed land. The Framework sets out at paragraph 170 that planning decisions should recognise the intrinsic character and beauty of the countryside, amongst other matters.
58. Public Footpath PROW103_16 crosses the appeal site, emerging from the southern edge of Little Paddocks traversing the field to the farmyard of Fairy Hall. The footpath is clearly well used, evidenced both anecdotally³⁸ as well as by the trodden nature of the path. At present walkers proceeding towards Fairy Hall would emerge from the enclosed nature of the footpath behind the Little Paddocks bungalows out to enjoy the openness and pastoral character of the field with the visually related farm buildings before

³⁷ Proposed to be demolished.

³⁸ Local residents.

them, a back drop of trees and hedging along Fairy Hall Lane and the wider wooded context of the landscape to the east.

59. To the south, there is an awareness of the A120 mainly through the level of road noise experienced. Beyond the A120 one is aware of the wider countryside location with a well treed skyline where distant woods and copse are discernible, particularly those within the Great Notley Country Park, but also beyond. There is also a sense of inclusion in the wider countryside, the landscape being relatively flat to the south of the appeal site. I did not find the A120, as an urban feature set in a cutting, to be a particularly dominant, visually limiting landscape element when viewed from the footpath. I did not experience it as diminishing the flow of the landscape from the appeal site across to the wider countryside setting in Little Common and Bartholomew Green. The existing trees and green landscape off to the east essentially screens off the built-up area of Great Notley, further confirming the visual association of the appeal site with the wider countryside landscape.
60. Looking to the north an awareness of the built development of Rayne is unmistakeable, further confirmed by the close proximity of the suburban fabric of development in Little Paddocks which, although softened by established trees and hedges, nonetheless still grates against open landscape character.
61. Those using footpath PROW103_16 would in the future find themselves enclosed by built development, on both sides albeit defused through some formalised planting. The nature of the path would change to likely a roadside path. It may be possible to design in views off to the east and possibly the south, but they would still be in the context of built development, changing the experience and enjoyment for those using the footpath. Clearly a residential scheme would change the character of the footpath route, its immediate surroundings and the experience of the walker in landscape terms.
62. From School Road the proposed development would be seen, and the formalisation of the proposed access, associated areas of hardsurfacing, and introduction of built form, would change the character of the field. However, I am conscious that from School Road it would be seen in the context of the existing development of the village and Little Paddocks.
63. From along Fairy Hall Lane, due to the bounding high hedges and trees the visual impact of the proposal would be limited to glimpsed views, although these would be more open in the vicinity of the access to Fairy Hall itself where the erosion of the pastoral backdrop to the house and farm buildings would be visually apparent.
64. From wider view-points to the south, such as the bridge over the A120, the Mound and its environs in the Great Notley Country Park, and the viewpoints along Long Lane and the linking footpaths, the proposed development, whether two or two and a half storey development, would be obvious and would represent a visual and physical spillage of built development across the site beyond what can reasonably be identified as the village of Rayne.
65. I am aware that the illustrative masterplan does indicate significant areas of open space and planting around the southern and eastern edges of the

scheme, including around the proposed access where development would be set back from the frontage. However, built form would still be apparent and dominant in wider views, albeit that overtime the proposed landscaping may serve to soften that impact. I am not convinced mature future landscaping would screen off the development from the wider countryside.

66. As already established by the various LCAs the intrinsic character and beauty of the countryside is firmly based on the open and expansive views of farmland divided by hedges and trees with a skyline backdrop of woods and copses, which disappear into the horizon.
67. The appeal site itself as a field does not display any unusual or valuable features over and above those of any other arable field. However, the proposed development of the full extent of the field, whilst including peripheral green space, would unacceptably erode the open pastoral character of the village setting and the wider farmland plateau of the North Essex countryside.
68. In this way the locally distinctive character of the landscape would be diminished resulting in significant harm to the intrinsic character and beauty of the countryside contrary to CS Policies CS5³⁹, CS8 and Framework paragraph 170b).

Heritage matters

69. As decision-maker I must consider this appeal in light of the statutory duties placed upon me in Section 66(1) and of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess.
70. It is an agreed point that the only heritage asset affected by the appeal proposal is Fairy Hall with its Victorian water pump⁴⁰, located adjacent to the appeal site to the east⁴¹.
71. The listing description of Fairy Hall⁴² is just that, an external description of the house. The vernacular form and building materials demonstrating craftsmanship of at least the 17th Century is of significant architectural interest. This is not, however, the only interest or value of the heritage asset. Neither the listing nor the architectural interest alone or in combination express the totality of the significance of the historic building and its associated environs, which I will come to.
72. The architectural features of Fairy Hall's 17th Century or earlier origins are evident. It is also clear from the various iterations of its history, evidenced through the series of Tithe maps, that the house has changed overtime, but its association with farm buildings and farmland has confirmed it as an established farmstead for some two hundred years. Whilst the village of

³⁹ In so far as it reflects the objective of Framework paragraph 170 b) to recognise the intrinsic character and beauty of the countryside.

⁴⁰ There is no direct impact on the significance of the water pump.

⁴¹ Part of the Village lies within the Rayne Conservation Area and there are also a number of listed buildings other than Fairy Hall in the wider vicinity. However, the appeal site is at a distance to these heritage assets with intervening modern suburban village development, and it is agreed between the parties that these heritage assets' significance would not be impacted upon by the proposed development. I have no reason to disagree - SofCG Heritage section 4.

⁴² CD 10.05.

Rayne has developed to the north of Fairy Hall and, there has been some modern development on Fairy Hall Lane, the farmstead has remained detached from the built-up area of the village. The farmstead can not be considered isolated in the same way as Little Common Farm, as a characterising feature of the wider rural landscape⁴³, but the separation from the village is evident both from along Fairy Hall Lane, from School Road and using footpath PROW103_16.

73. The setting of a heritage asset is defined in the Framework as the surroundings in which a heritage asset is experienced⁴⁴. In the case of Fairy Hall it can be experienced in glimpsed or distant views from Fairy Hall Lane and from across the fields in School Road. However, when crossing the open fields along the public footpath (PROW103_16) and then passing through part of the farmyard, one has an unimpeded view and a real sense, firstly of the relationship of the house, farm buildings and the immediate associated open working spaces around the farmstead, and then of the relationship of the surrounding open grounds of the house to the north and the open fields of the appeal site in active agricultural use. The lack of boundary definition between the fields and the farmyard, further heightens the experience and understanding of the farmstead in the context of the heritage asset and its historic association with some or all of the land and food production over the centuries⁴⁵.
74. Having established the setting of the heritage asset and the inclusion of the appeal site within it, it is necessary to consider the importance of the setting's contribution to the significance of the heritage asset.
75. As well as the contribution Fairy Hall makes to significance by reason of its architectural interest as a vernacular farmhouse, the heritage asset also has special historic interest as a discernible farmstead in an agrarian setting, which is an expression of the wider historic agricultural economy of the North Essex countryside of which it forms part.
76. The appeal site is the only remaining agricultural field which could reasonably be associated with the farmstead. The open nature and active use of these arable fields creates a strong linkage with the traditional agricultural buildings of the farmstead and even with the rather dilapidated modern barn building which is an expression of the evolution of farming use over a sustained period covering the centuries. Whether or not the field of the appeal site still remains in the ownership of Fairy Hall, I do not find to be a convincing reason to reduce the value of the agricultural land in respect of its significance. The casual observer unversed in the evidence of the Tithe maps or knowledge of current land ownership would not necessarily appreciate the evolution of the Fairy Hall as a farmstead. What is appreciable is the evident relationship between the farm buildings, Fairy Hall and the adjacent field, as confirming the sum of all of these elements to contribute to the significance of Fairy Hall, to be firmly based in its historic origins as a farmstead, including traditional farmhouse, farm buildings, farm yard and associated farm land.

⁴³ LCA.

⁴⁴ Framework Glossary.

⁴⁵ Whether the appeal site had been in the ownership of Fairy Hall and farmed from the farmstead was a disputed matter between the parties. I consider it likely that some of the field had been farmed by Fairy Hall overtime.

77. The appeal site as part of its setting is a significant and important contributor to the heritage interest of Fairy Hall, adding to its value both now and for future generations.
78. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance⁴⁶. The parties are agreed that the appeal proposal would cause less than substantial harm to the heritage significance of Fairy Hall as a Grade II listed building. The dispute rests in where on the sliding scale of less than substantial heritage harm to significance, the impact of the appeal proposal lies.
79. The appeal site, as part of an agrarian setting, would be significantly changed by the introduction of up to 150 homes. The northern section of the appeal site, including the site of the proposed access, as I have already indicated under the heading of landscape, is already influenced by the unsympathetic suburban development of the village, including Little Paddocks, which to some degree does detract from the agricultural quality of this part of the appeal site in the setting of the heritage asset. Nonetheless, it does still form part of the wider arable field.
80. The introduction of up to 150 homes across the full extent of the appeal site would completely change the character, appearance and function of the field in respect of its contribution to significance. The illustrative masterplan does show the establishment of a green buffer between Fairy Hall and the proposed built development which would include native boundary planting within an area of public/amenity open space. Nonetheless this proposed boundary space would form part of the wider residential layout with homes shown fronting onto the green space⁴⁷. As part of the estate layout, whilst remaining undeveloped, the limitation in size of this proposed landscape buffer, its enclosure by built form and its character as a green planted up space would not serve to mitigate the loss to significance of the openness, character and association of use of the existing field. This response to the loss of the agricultural setting in no way would serve to reflect or express the current relationship or importance of the field to the heritage asset or its significance.
81. The appellants also suggest that the existing hard suburban settlement edge to the village intrudes into the setting of Fairy Hall. I agree. However, the development of the full extent of the appeal site with a landscape-led development offering an intended improvement to the settlement edge through a landscaped buffer, would not serve as a benefit, heritage or otherwise, to mitigate the harm to heritage significance resultant from the appeal proposal. The proposed new homes would spread out across the appeal site extending the suburban character of the Village in close proximity to the heritage asset.
82. As already outlined the proposed development would change the experience of those using the footpath PROW103_16⁴⁸. At present, in my view, this well

⁴⁶ Framework para 193.

⁴⁷ Albeit that other design options could be considered.

⁴⁸ In Landscape section.

used footpath is the main location to appreciate the significance of Fairy Hall in its agricultural farmstead setting. Albeit that the main front elevation of the Hall can really only be appreciated from public views from Fairy Hall Lane, the form, scale, traditional nature and association with the existing farm buildings in the context of traversing the associated field can be openly experienced in varying views as walkers move towards the farmstead and then through the farmyard. With the ability to achieve travelling views from the footpath, looking from the heritage asset to then beyond Fairy Hall Lane and then over to the south to the expansive open countryside of North Essex, there is an appreciation of the farmstead in the context of the rural landscape which adds to the heritage interest.

83. The appeal proposal would erase this appreciation of the significance of the heritage asset when viewed from the footpath. The footpath is proposed to be set between built development obscuring wider views, creating an essentially tunnelled view forward through to the traditional agricultural buildings. Fairy Hall itself would become visible as one emerged out into the peripheral open space, although boundary and open space planting may obscure views from the footpath itself. The proposed open space may actually allow for close-quarter views of Fairy Hall and a greater appreciation of the architectural interest of the farmhouse as the public would have access to the Hall's eastern boundary closer to the heritage asset than it is currently possible to achieve. This would be a benefit but would not compensate for the loss of the field in the vicinity of Fairy Hall, which as already stated is an important contributor to significance.
84. It is undeniable that the appeal proposal would represent change in the significance and setting of this designated heritage asset. The proposed outline development in the context of the appeal site being outside of the settlement, within an area of rural character, which is of significant importance to the setting of Fairy Hall, would introduce a suburban form of development, eroding the countryside setting and significance.
85. However, there would not be a total loss of significance and so the appeal proposal, as a totality, would lead to less than substantial harm to the significance of the designated heritage asset. That said for the reasons given above, the degree of less than substantial harm would be at the higher level of this spectrum of heritage harm in my judgement⁴⁹.
86. Having reached this view, the less than substantial harm to the significance of the designated heritage asset should be weighed against the public benefits of the proposal⁵⁰.

Main public benefits - these are not listed in order of importance

87. *Delivery of market and affordable housing* – The proposal would contribute to the provision of housing in the District. There is agreement between the

⁴⁹ Framework paragraph 196.

⁵⁰ Paragraph 196 of the Framework requires that the identified harm in the less than substantial category should be weighed against the public benefits of the proposal. BLPR Policy RLP 100 and CS Policy CS9 both pre-date the Framework and both lack the balancing exercise contained in Framework paras 195/196. Albeit that they may reflect the statutory duties, I have considered my obligations as decision-maker in respect of Section 66(1) and of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the terms of the relevant paragraphs in the Framework. Any conflict with the development plan policies in this regard has much reduced weight in this instance.

parties that the Braintree District can not currently demonstrate a 5-year supply of deliverable sites 2020-2025⁵¹.

88. It is common ground between the Council and the appellants that calculating the housing land supply requirement to demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing⁵²(5YHLS), using the Government's Standard Methodology, resulting in a housing requirement of 858 homes per annum and then applying the agreed 20% buffer, an annual requirement of 1030 homes results⁵³.
89. The matter in dispute is the extent of the shortfall. This goes to the weight to be ascribed to the contribution the proposed development would make to the Council moving forward to reach a position of achieving their 5YHLS.
90. The Council promote a position of being able to demonstrate a supply of 4.52 years⁵⁴, whilst the appellants put the supply at only 3.72 years⁵⁵.
91. The matter at issue comes down to a difference in opinion relating to 7 housing sites and whether any of those identified sites can be shown to be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years⁵⁶.
92. It is clear from the East Northamptonshire Council, Secretary of State for Housing Communities and Local Government and Lourett Developments Ltd Consent Order⁵⁷ that whether a site does or does not meet the Framework definition is a matter of planning judgement on the evidence available.
93. I have considered the identified disputed sites on the basis of the evidence before me, including that set out within the 5YHLS Topic paper dated 12 June 2020 and the oral evidence of the parties in the round table session at the Inquiry on housing land supply, in the context of the relevant aspects of the Framework and of the Planning Practice Guidance⁵⁸.
94. *Site 334 – land west of Panfield Lane* – An allocated site within the CS. Phase 1 comprising 189 homes was accepted as being included in the 5YHLS. The development of the further 636 units (Phase 2), whilst the subject of an outline planning permission, there has been no obvious progression towards the formulation or submission of a reserved matters application. The commencement of Phase 2 is also dependant on the main development enabling infrastructure work taking place in advance.
95. I accept it is likely that the planning of the Phase 2 proposal will progress whilst Phase 1 is being built out but the lack of progress with the reserved matters as well as the need for the completion of agreed infrastructure work, does not provide me with surety that this scheme will progress at the rate the Council hope for. The site developer's suggestion that they are working

⁵¹ SofCG Five Year Housing Land Supply.

⁵² Framework para 73.

⁵³ 5 year supply requirement for 2020-2025 period, including 20% buffer is 5148 homes (SofCG 5 year housing land supply paras 2.15-2.19).

⁵⁴ Inquiry Doc 13 - A shortfall of 499 homes.

⁵⁵ Inq Doc 20 para 5 – a shortfall of 1321 – Inq Doc 13.

⁵⁶ Framework Glossary - Definition of deliverable – Inq Doc 8 - not a closed list.

⁵⁷ Inq Doc 8.

⁵⁸ PPG Ref ID: 68-007-20190722.

a year behind with amended estimated dates was not substantiated by any evidence of substance⁵⁹.

96. *Site 338 – land north of Colchester Road* – Outline planning permission for 300 homes was granted in April 2019. An application to vary the approved plans remains undetermined awaiting a new S106 agreement. The Council did not know when this would be signed. A reserved matters application has been submitted but cannot be validated or progressed until the issue of the S106 agreement has been resolved and the variation permission is issued.
97. I note the Council's reporting of the developer's intention to commence as soon as possible and that commencement of development for the enabling infrastructure would take place in late 2020. However, whilst the progress of reserved matters remains tied up, it is unclear whether it is realistic to suppose that the amount of housing the Council has counted into its 5YHLS can be delivered in full as a realistic prospect.
98. *Site 346 – Hatfield Bury Farm* – Full planning permission has been granted for 46 homes subject to the completion of S106 agreement. The terms of the agreement have been finalised and it is anticipated it will be completed as furlough ends and developers return to work. The site has been purchased by a major national housebuilder who is already building on an adjacent site. The housebuilder has already initiated preliminaries in respect of Building Regulations.
99. In combination this speaks to the clear intention to take this site forward within the five-year period and I see no reason to discount it from the HLS.
100. *Site 349 – Station Field Kelvedon* – Outline planning permission has been granted for up to 250 units. The site has been bought by a developer and discussions are on-going to achieve a policy compliant detailed scheme. Even over lock-down the developer's design team have been working on the scheme and the Council has been having weekly meetings as the detailed scheme evolves. A draft of a new S106 agreement is with the developer and it, in essence, mirrors that which formed part of the original outline permission.
101. Two existing dwellings have been demolished to enable access to the development site and the preliminaries relating to Building Regulations have been initiated. The developer has also provided pro-forma evidence of an intended start and a trajectory of a rate of development.
102. In the context of an outline permission for residential development, sustained progress towards approving full details of this development is evident along with a resolve and willingness on both sides to take this development forward in a timely fashion. In these circumstances, in my judgement, there is clear evidence that homes will be delivered which will contribute to the 5YHLS as anticipated by the Council.
103. *Site 352 – Phases 3B and 4 South West Witham* – This is a Growth Location divided into a number of phases. The early phases 1A, 1B, 2 and 3 all have detailed permission and are not disputed as contributing to the 5YHLS. Phases 3B and 4 have outline permission. Details of these phases

⁵⁹ A simple email from the site developer, in itself can not be considered to be clear relevant evidence in isolation of further substantiating evidence.

have been the subject of a constructive pre-application process. Whilst this could be considered to illustrate progress towards the submission of a reserve matters application, there is no direct evidence from the developer of the timings involved.

104. I do accept that as the developer concerned is already working on the earlier phases, lead-in times may be reduced. However, based on the evidence of progression before me, and, whilst I accept that as a Growth Location it is unlikely to stop producing completions over a prolonged period, the delivery line in accordance with the Council's promoted trajectory for these phases is based on a number of assumptions on the part of the Council to which the developer has not offered any confirmation and, although they may be based on how the Council has seen the Growth Location develop over time, there is no clear consensus view supported by evidence that the expected delivery is currently realistic.
105. *Site 353 – Phase 5 South West Witham* – This development is also part of the Growth Location and would be the final phase of the development to follow Site 352 above. Only 10 units of this phase are currently included in the 5YHLS in 2024/2025. At present no reserved matters applications have been submitted to cover this phase and no up to date information from the developer is available to indicate unit delivery in the current circumstances. As this phase would likely follow that of Site 352 the Council has applied the same unsubstantiated assumptions in respect of delivery. Therefore, in the absence of clear evidence to the contrary I cannot be sure that unit delivery will not be affected by slippage in respect of timings and consequently as a contributor to the 5YHLS.
106. *Site 354 – Land north of Conrad Road, Witham* – This site has outline permission for 150 homes and a full planning proposal with a resolution to grant subject to a S106 agreement that is nearing completion. There are frequent discussions between the parties who are both working to finalise the agreement and issue the decision. The developer has provided a trajectory for delivery within the 5-year period and the Council has confirmed the detail of the development is at an advanced stage. Whilst the site may have been excluded from being considered in the 5YHLS in other appeals, I am satisfied from the evidence of the Council before me, that the development site is now moving forward and even if there were to be some slippage in the trajectory for this site it is likely to contribute to the HLS over the coming 5 year period.
107. So having considered the sites being disputed as being contributors to the currently proffered 5YHLS, I have found that some of the sites, but not all, lack the substance of evidence to give me surety that there is a realistic prospect that the identified housing in the trajectory would be delivered on those sites within 5 years.
108. The Council already accept they do not have a 5YHLS. In my judgement, based on the specific evidence before the Inquiry, the 4.52 years supply claimed by the Council appears to me to be optimistic and, although I do not consider it to be as low as the 3.72 years claimed by the appellants, it is somewhere between the two figures.
109. I do not intend to recalculate the figure as the intervening range is still below a 5YHLS. Further, I am also conscious that the effect of the Covid-19

pandemic has been to initially delay the progress of developments and it is reasonable to suppose that in the short term there will be some economic repercussions. Currently these are difficult to define, and Government is working to minimise such economic limitations. Customer confidence may also be affected in the short-term, but it is also equally possible that a bounce back will occur as the crisis eases.

110. The delivery of housing on the appeal site would be in an area with access to existing services, particularly in respect of nearby employment opportunities and public transport links to the Capital and other regional centres, recognising the significant role the delivery of housing has in the sustainable economic well-being of the District.
111. It would also contribute (60 homes) to a particular need for affordable housing (AH) in the District which is similarly running in a position of considerable shortfall.
112. The appellants claim the entire 'up to 150 units' as making a significant contribution to the Council's 5YHLS⁶⁰. To be given full weight as a contributor to the Council's shortfall the evidence should show that development is achievable with a realistic prospect that housing will be delivered on the site within five years. I find the promoted evidential case in this regard to be weak. Emails from interested house builders⁶¹ are just that-interest. Nonetheless, I consider the site to be available now, suitably located and it is likely some homes could be delivered within 5 years, including much needed affordable housing⁶².
113. Overall, in a situation of uncertainty for the Council in respect of its emerging LP and long-term strategy for the District⁶³, a shortfall in both the 5YHLS and the associated provision of AH to meet the needs of the District, the proposed development would boost the supply of homes, and this would be a significant benefit and should be given significant weight in the balance of this decision.
114. *Economic and social benefits* – the proposal would enhance the economy of the community by the creation of jobs associated with the construction stage and supply chain jobs, and new residents are also likely to support existing local services and businesses. This should be given limited weight as I recognise these factors would be common to any such development.
115. *Provision of open space* – Over 30% of the appeal site would be provided for open space much of which would be publicly accessible open space. It was accepted that such a size of area would go beyond what would normally be required⁶⁴. The open space would include new and enhanced planting and landscaping with some net biodiversity gain. Further, the proposed recreational space would include linkages through to the footpath network within the surroundings, to the Flitch Way National Cycle Way (Route 16) and to Great Notley Country Park. Some of those linkages are existing but the proposal would improve the standard of those connections which could

⁶⁰ Inq Doc 20 para 140.

⁶¹ Inq Doc 15.

⁶² The appellant's acceptance of a shortened time period for submission of reserved matters from the standard 3 years to a 2 year period in the relevant planning condition to move the development forward in a tighter time frame has been taken into account.

⁶³ No clear timetable of progression has yet to be identified.

⁶⁴ Is compliant with CS Policy CS10.

increase usage with obvious health and well-being benefits beyond the future residents of the new development. Therefore, I ascribe considerable weight to the provision of recreational space.

116. *Contributions to local services through S106 agreement* – these contributions are required to mitigate the impacts of the proposal. Only that which supports the open space, which goes beyond the standard required, could be considered a benefit and I give little weight to this aspect in the positive scale pan of the decision.
117. *Heritage benefits* - The appellants' promoted heritage benefits of the replacement of the poorly defined settlement edge of Rayne through appropriate, contextual and landscape-led development along with additional public views to experience Fairy Hall from increasing public access to the setting of the heritage asset, are all benefits already discussed in the heritage section of this decision. I do recognise them as heritage and public benefits and ascribe them some weight on the positive side of the balance of the decision.
118. The removal of the dilapidated 20th Century farm outbuildings and slurry bed are accepted as beneficial both in respect of heritage and landscape considerations. Whilst it is an expression of the evolution of the farmstead into the last century, and a building of its time which is not an uncommon design to see in the wider countryside, the building has fallen into disrepair and has reached a point that it does have a negative effect on the setting of the heritage asset. Therefore, even though the removal of the modern barn serves to increase the size of the developable area of the appeal site to the benefit of the appellants in this regard, it should carry significant positive weight in favour of the development being a heritage and landscape benefit as described.

Heritage balance

119. The identified public benefits⁶⁵ of the appeal proposal do present cumulatively significant weight to be added in the heritage balance set out in Framework paragraph 196.
120. However, the designated heritage asset of Fairy Hall is, as a Grade II listed building, of National importance. Great weight should be afforded to the asset's conservation⁶⁶.
121. Further, considerable importance and weight to the desirability of preserving the settings of listed buildings must be undertaken in any balancing exercise.
122. In my consideration of the impact of the proposal in heritage terms, it is clear that there would be identified and weighty harm to the significance of Fairy Hall due to the erosion of its pastoral setting. This would result in an inordinate amount of harm to the significance of the heritage asset which, whilst constituting less than substantial harm⁶⁷ in Framework terms, would be of considerable importance and great weight sufficient to roundly

⁶⁵ These include heritage benefits.

⁶⁶ Framework para 193.

⁶⁷ At the higher end of a sliding scale of less than substantial harm.

outweigh the public benefits identified above which would ensue from the development.

Planning Balance

123. The reasoning above sets out that the Council cannot demonstrate a five year supply of deliverable housing sites. It then follows as a first notion that the most important Development Plan policies relevant to the provision of housing are out of date⁶⁸. The application of those policies has not resulted in the required 5YHLS⁶⁹. In these circumstances the tilted balance of Framework paragraph 11d) is engaged.
124. However, that said, taking into account the primacy of Development Plan policy it is clear from the above reasoning and conclusions that there is some conflict with the Development Plan as a whole, even given the reduced weight to be ascribed to the most important policies relevant to the provision of housing. This would generate some more limited harm alongside the weighty landscape and heritage harm already identified.
125. Taking all of these matters into account in the context of my conclusion that the identified less than substantial heritage harm being at the higher level, and outweighing the identified public benefits of the proposal, the exception to the application of the presumption in favour of sustainable development is brought to bear⁷⁰.
126. So the proposal having been assessed against the Framework as a whole and, when specifically assessed against paragraph 196, it is found in the balance of the decision, that specific policies in the Framework indicate development should be restricted. This finding weighs significantly against the proposal sufficient to provide clear reasons for dismissing this appeal.
127. Consequently, I dismiss this appeal and refuse planning permission⁷¹.

Frances Mahoney
Inspector

⁶⁸ Framework footnote 7.

⁶⁹ Framework Section 5 Delivering a sufficient supply of homes.

⁷⁰ Framework para 11 d) i Footnote 6.

⁷¹ In the circumstances of a decision to dismiss the appeal it has not been necessary to consider whether the development would not, beyond scientific doubt, have an adverse effect on the integrity of the Blackwater Estuary Special Protection Area/RAMSAR site which forms part of the Essex Estuaries Special Protection Area. I have however, noted that it is common ground that the secured mitigation would avoid any adverse effects on the integrity of the protected site.

INQUIRY DOCUMENTS LIST

1	Statement of Felstead Parish Council
2	Statement of Rayne Parish Council
3	Opening statement for the appellants
4	Opening statement for the Council
5	Feedback from local residents – summary document produced by Rayne Parish Council
6	Appeal decision - APP/Z1510/W/18/3199219 Land near Mill House, School Road, Rayne, Braintree
7	Recommendation letter from Director of Highways and Transportation Essex County Council dated 19 May 2020 re: Land adj Mill House School Road Rayne – 20/00296/OUT
8	Consent Order – Thrapston CO/917/2020
9	Appeal decision - APP/Z1510/W/16/3146968 Land off Western Road, Silver End
10	Inspector's report - APP/Z1510/W/16/3162004 Land off Stone Path Drive, Hatfield Peverel
11	Appropriate Assessment Mitigation Measures
12	Representation by Paul Spencer dated 25 June 2020
13	Updated HLS Position taking into account Inq Doc 8.
14	Appellants' note on Special roadside verges dated 24 June 2020
15	Details of interest by potential purchasers of the appeal site by developers
16	Agreed schedule of conditions
17	Section 106 agreement dated 9 July 2020
18	CIL Compliance Statement June 2020 – Braintree District Council
19	Closings of the Council
20	Closings of the appellants

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INTERESTED PARTIES:

Cllr Ann Hooks	Chairman Rayne Parish Council
Cllr Andy Bennett	Chair Planning Committee Felsted Parish Council