



Appeal Decision

Inquiry held on 14-17 December 2021

Site visit made on 19 December 2021

by Siobhan Watson BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2022

Appeal Ref: APP/Z1510/W/21/3281232

Land off Brain Valley Avenue, Black Notley. Grid reference 576927, 220616.

- 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 Gladman Developments Limited against Braintree District Council.
 - The application Ref 20/02127/OUT, is dated 10 December 2020.
 - The development proposed is for outline planning application for the demolition of existing farm outbuildings and the erection of up to 90 dwellings (including 40% affordable housing) with community park and public open space, landscaping and sustainable drainage system (SuDS) and a vehicular access point from Brain Valley Avenue. All matters are reserved except for means of access.
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Decision

1. The appeal is dismissed and outline planning permission is refused for the demolition of existing farm outbuildings and the erection of up to 90 dwellings (including 40% affordable housing) with community park and public open space, landscaping and sustainable drainage system (SuDS) and a vehicular access point from Brain Valley Avenue.

Preliminary Matters

2. The application was made in outline with the means of access applied for. All other matters are reserved for subsequent approval. During the course of the appeal, the appellant submitted an illustrative layout and offered to accept a condition limiting the number of dwellings to 80.
3. The Council has referred to Policies of the emerging Braintree District Draft Section 2 Local Plan which, at the time of the Inquiry, was currently undergoing modifications in advance of a re-consultation. I have had regard to these emerging policies but give them limited weight.

Main Issues

4. The main issues are (i) the effect of the proposed development on the character and appearance of the countryside; (ii) whether the future occupiers of the proposed dwellings would have adequate access to open space and private amenity space; (iii) whether the development would be in a suitable location in respect of access to day-to-day services by sustainable travel modes and (iv) whether the Council can demonstrate a five-year housing land supply.

Reasons

Character and Appearance

5. The appeal site is adjacent to but outside of the settlement of Black Notley and comprises paddocks with some equestrian related development including concrete hardstanding, stables, dilapidated barn structures, fencing and a manege, although most of the site is free from development. It lies on the side of a shallow valley and runs alongside an area of suburban housing.
6. Several landscape character assessments cover the site. Firstly, the site lies within Natural England's National Character Area 86 "South Suffolk and North Essex Clayland" which is a very extensive area but, amongst other characteristics, it identifies intimate small scale river valley floodplains and a pastoral landscape which is broadly representative of the appeal site and its surroundings, albeit that the site is in equestrian use.
7. Secondly, the site is covered by the Essex Landscape Character Assessment 2003, falling within the Blackwater and Brain Valley River Valley Landscape. The developed area would be less than 5 hectares so according to this assessment, it would be classed as a small urban extension for which the landscape sensitivity level is low. The key landscape sensitivity in this area is the integrity of the valley floor and exposed valley sides.
8. Thirdly, there is the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment 2006 where the Brain River Valley is identified as Landscape A10. Its key characteristics are a shallow valley with undulating valley sides; settlements on the sides near the highest points making them very visible; and pastoral irregular shaped fields sloping down the valley sides to the river. It identifies the area as having a moderate to high sensitivity to change. It indicates that the skyline of the valley slopes, in particular the edges of Black Notley, are visually sensitive to potential new development.
9. Fourthly, the site falls within Area B7 of the Braintree District Settlement Fringe Landscape Capacity Analysis 2007. This identifies the character area as having a medium to high landscape character sensitivity and value with a medium visual sensitivity on account of the enclosure provided by hedgerows and associated trees.
10. Fifthly, the Braintree District Settlement Fringes Evaluation of Landscape Analysis Study of Braintree and Environs 2015 says that the site has a medium capacity for development. It also says that the parcel is closely associated with the residential properties within Black Notley that abut the western boundary. In wider views of Black Notley the River corridor forms the perceived edge to the settlement and the parcel is contained within this. It indicates that the parcel is within the top 25% of sites in the Black Notley area for development.
11. The site is on the lower slopes of the valley and it has a fair landscape condition. The proposal does not include developing the valley floor, it would however, be on a valley side, lower down the slope than development within the existing settlement pattern. The housing would be partly screened from some views by hedgerows and trees along the River Brain. However, the development would be obvious from PROW 74_31 which affords views of the lower valley slopes of the appeal site. Although the development would be seen

against a backdrop of existing housing, the proposed housing would be an uncharacteristic incursion onto the valley slope.

12. The landscape character of this part of the slope would be dramatically changed to that of suburban development eroding the countryside and enclosing the valley floor. Whilst this enclosure would not lead to a loss of openness of the river valley itself, it would lead to a loss of the open character of the river valley as it would feel more enclosed due to the presence of development adjacent to it. I consider the impact on the view from PROW 73_31 to be significant.
13. The view of the appeal site from along PROW 74_21 would be partially screened by existing trees and hedgerow. Mitigation could be fairly successful here as the views would be at a closer range and from a lower level. The impact on the view from this PROW would be slight.
14. The housing would also adjoin Cokers Peace, a lottery funded community space that is owned by the Parish Council and maintained by local volunteers to provide peaceful pleasure for the community. There is a hedge separating this piece of land and the appeal site but there are currently some gaps within it. Nevertheless, it would provide a moderate level of screening between the two areas and screening could be improved. As Cokers Peace is already abutted by housing, I do not consider that the additional housing proposed would have any significant effect upon the peaceful enjoyment of the community space or its visual amenity.
15. The site is highly visible from Brain Valley Avenue which is the built edge to the settlement. It is not just private views that would be affected because much of the land is open to public view, being alongside the public highway. There are very attractive long-range views of the rolling countryside across the valley from Brain Valley Avenue. The proposed housing would block these views and have a clear impact on the skyline which, at the moment, is very much a wooded skyline. It would not be possible to mitigate the impact on these views because housing would physically block them and no amount of landscaping could change that. I note the appellant's comments about the detracting influence of existing pylons but these are only a small incursion into the landscape and are seen in the far distance.
16. Whether or not the landscape is considered to be "valued", in the terms of the Framework, the appeal site is part of the open countryside. Paragraph 174 of the Framework indicates that planning decisions should recognise the intrinsic character and beauty of the countryside.
17. The community park proposed would provide a new edge to the settlement which might be somewhat softer than the existing edge of Brain Valley Avenue due to the landscaping adjacent to the river. However, this would not compensate for the physical loss of countryside. The new views provided from the river by the formation of the community park would be reduced in length from the current available views from Brain Valley Avenue.
18. There was some dispute over the definition of "pastoral" at the inquiry. I appreciate that the site is used for the keeping of horses, rather than grazing sheep. It also contains more built development and paraphernalia than you would expect for sheep. Nevertheless, these are only a very small distraction from the general pastoral character of the valley as a whole and of the green

rural character of the site itself. However the word “pastoral” might be defined, a housing estate would be far less “pastoral” than the keeping of horses. Housing would not be in keeping with the landscape character of the area.

19. The proposed density of the development would be just under 40 dwellings per hectare which would be slightly more dense than the development on Mary Ruck Way which is some distance from the appeal site but within Black Notley. I visited Mary Ruck Way and whilst it is not unattractive, it has a much more urban appearance than Brain Valley Avenue with buildings being close together and frontages near the back of the pavement. The houses on Brain Valley Avenue are less dense, with generous front gardens. A development of a similar grain to that of Mary Ruck Way would be quite a contrast to the adjoining housing and whilst I recognise the Framework’s advice to optimise the use of land, the appearance of a more urban style of development adjoining the countryside at the edge of the settlement would be incongruous with its surroundings.
20. I appreciate that layout is a reserved matter and that density can vary depending on the type of dwelling built. I have, however, taken into account the indicative plan provided by the appellant which aims to demonstrate the site’s capacity for up to 80 dwellings. This indicative plan does not demonstrate that up to 80 dwellings can be successfully accommodated on the site without harm to the landscape character of the area or that the development could conform to Policy RLP 90 of the Braintree District Local Plan Review 2005 (BDLPR) which seeks to ensure that the density of buildings should reflect or enhance local distinctiveness. Whilst 80 dwellings would be a maximum rather than a minimum, I have no alternative scenario to show how a reduced number of dwellings might work. In any event, the development of the site for housing, even of a lower density, would be a significant and irreversible change to the landscape from a largely undeveloped rural edge to a suburban built development.
21. Whilst not all views would be significantly affected, some would. I therefore conclude that the proposal would significantly harm the character and appearance of the countryside and the setting of the settlement. It would conflict with Policies CS 5 and CS 8 of the Braintree Core Strategy (CS) and BDLPR RLP 2. I deal with the question of conflict with these policies, and the weight attached, in the final planning balance. It would also conflict with BDLPR RLP 80 which seeks to prevent development that would not successfully integrate into the local landscape; and BDLPR RLP 86 which seeks to protect the open character of the floodplains of the Brain River. Furthermore it would conflict with Policy SP 3 of the North Essex Authorities’ Shared Strategic Section 1 Plan which seeks to conserve the setting of existing settlements.

Open space/private amenity space

22. Much of the community park public open space would be within Flood Zone 3A. This element of open space would also be in a relatively remote part of the site with limited public surveillance. Aerial photographs from neighbours show the area as flooded at times and the submitted flood risk assessment and outline surface water drainage strategy confirm that the area to be used as open space is at risk of fluvial flooding. Much of it is also at high risk for surface water flooding.

23. The land has been assessed as having a 1 in 100 or greater annual probability of river flooding. However, this does not mean that the area is guaranteed to flood every year and flooding is a temporary state. The District has other nature reserves and public open spaces that are subject to flooding, including the main area of Bocking Blackwater in Braintree. Most of the time the community park would be useable. Surface water drainage would be a matter to be agreed as a planning condition and it is likely that the surface water flooding could be mitigated.
24. The community park would also lack natural surveillance due to the trees and hedging that would separate it from the development. Nevertheless, this is common with more natural open space that is often found alongside river corridors.
25. In addition to the community park, there is other communal open space indicated on the illustrative plan, next to the access to the proposed development. This shows that it would be possible to incorporate communal open space subject to natural surveillance from houses overlooking it. Furthermore, residents would have access to Cokers Peace which is overlooked by houses. Therefore, I consider that residents would have adequate access to open space.
26. The community park would be available to the public and not just the residents of the development. There is currently no access to the River Brain from Black Notley and the park would be accessible through the new development. Overall, whilst there are some drawbacks to the proposed community park, it would have some value to the general public and I give it moderate weight in favour of the proposal.
27. In terms of private amenity space, the indicative layout indicates that not all gardens would provide the 100 square metres of space advocated by the Essex Design Guide. Nevertheless, the Guide says that there are circumstances under which the insistence on a minimum of 100 square metres is not appropriate. These are listed as being: in houses with one or two bedrooms; in higher density situations where walled patios or courtyards are more appropriate; where houses back onto a substantial area of well landscaped and properly maintained communal open space; in houses performing a particular role in the layout; and flats. Therefore, it is not necessary to provide 100 square metres in every case and such matters would be considered as part of the reserved matters details.
28. I therefore conclude that the proposal could provide an adequate amount of open space and private amenity space. In this respect, I find no conflict with BDLPR Policies RLP 90 and RLP 138 which, in combination seek to ensure that open and landscape areas shall be of a high standard of design, that designs and layouts promote a safe and secure environment, crime reduction and prevention and encourage the related objective of enhancing personal safety, with the maximum amount of natural surveillance of open spaces, and that open space should be adequate in terms of size and location.

Sustainable Travel

29. Black Notley is classed as an "Other Village" in the Core Strategy which is the lowest of the 3 tiers within the settlement hierarchy. The draft Section 2 Local Plan proposes 4 tiers and it is in the lowest tier in the draft plan too.

30. There are a few services in Black Notley itself and they include a small convenience store containing a post office, a salon, village hall, café, pub, place of worship, a nursery, play areas and a sports field. It would be necessary to travel to Braintree or other higher order settlements for other services.
31. The nearest doctor's surgery with capacity to take new patients is Blyth's Meadow in Braintree some 3.6km away. The nearest superstore is around 3.2km away in Braintree and the nearest dentist is about 3.1km away. The nearest primary school is John Ray in Braintree approximately 2km from the site.
32. There are trains to Witham and Braintree from Cressing Station although the walk from the site is via a winding, narrow road lacking in footpaths and street-lighting. Evidence from interested parties also shows that it sometimes floods and I noted a pole in the road to measure the depth of water. Therefore, I consider it would be highly unattractive to walk or cycle to the station, especially in the dark. Nevertheless, the accessibility of the site does not solely depend upon the route to Cressing Station.
33. The Council accepted at the Inquiry that there is an adequate bus service into Braintree, which is the largest settlement in the district and at the top of the settlement hierarchy. It also accepts that bus stops are within a reasonable walking distance of the site. Braintree is also within easy cycling distance of Black Notley and whilst there are no cycle lanes en-route, this factor would not put all cyclists off given the relatively short distance.
34. The justifying text to CS Policy CS7 indicates that accessible locations will be defined as within 30 minutes walking or cycling distance of a retail centre, primary school, secondary school and GP surgery. Given the distances between the site and the services in Braintree, I consider that facilities would be within a 30-minute walk or cycle. Therefore, there would be a choice of modes of travel to other services and employment opportunities, especially as there are some industrial parks and a railway station in Braintree.
35. I appreciate that some 75% of people in Black Notley travel to work by car which is around 10% higher than in Braintree as a whole. However, this factor does not make services any less accessible and car ownership and use is influenced by other factors aside from an availability of a choice of transport.
36. The primary school is some 2km from the site and therefore within the 2-mile (under 8 years of age) and 3-mile (8-16 years of age) distances for walking to school as set by the Education Act 1996. Distances greater than these qualify the pupil for help with transport. There is a footway between the site and the school, and the appellant has offered a package of improvements to it in certain places, including widening parts of the pavement and adding street lighting. However, the pavement is very narrow along a significant distance and the highway is a main road subject to a 40 mile per hour speed limit and this part of the route cannot be widened.
37. Despite the Education Act not providing for assistance with travel for journeys to school of 2km, I consider that the route is unattractive. The distance itself would be somewhat off putting with young children, especially in inclement weather and the carers of such children are likely to have to walk back home again. Furthermore, the busy road and the narrowness of the footway would

make for a stressful walk for those carers who may have to manage the behaviour of more than one young child.

38. Although a bus trip to school is possible, the bus would arrive a bit too early for the start of the school day and too late for home time to be a particularly convenient option. As there is no cycle lane and it is a busy road, it would be unrealistic to expect primary children to cycle to school.
39. Given these factors, I consider it would be more convenient and likely that primary aged children would be driven to school, nevertheless, it is possible to get to and from school without using a car.
40. There is also a secondary school in Braintree but older children are more likely to walk and could do so without an adult accompanying them. The Council did not dispute that walking is a realistic mode of travel for secondary school pupils.
41. Whilst I accept that it would be most attractive to drive primary aged children to school, walking is not impossible and would be an option. Furthermore, there is an adequate choice of modes of transport to other services and to employment. Walking is reasonable for secondary school children.
42. Overall, I conclude that the development would be in a suitable location in respect of access to day-to-day services by sustainable travel modes. In this respect, I find no conflict with CS Policy CS 7 or Policy SP 3 of the North Essex Authorities Shared Strategic Section 1 Plan which seek to ensure that development is provided in accessible locations. Neither do I find conflict with Section 9 of the Framework which indicates that the planning system should actively manage patterns of growth in order to promote sustainable transport.
43. In respect of accessibility, I do not find direct conflict with CS Policy CS5 or BDLPR Policy RLP 2 as they seek to protect the countryside and I have dealt with this matter earlier in the decision.

Housing Land Supply

44. The parties agreed in the Statement of Common Ground that the Council had an up-to-date housing land supply (HLS). However, since then an appeal decision has been issued for land north of Station Road, Earls Colne.¹ As a consequence, the appellant has challenged the deliverability of two sites in Braintree which are (i) land east of Broad Road and (ii) Towerlands Park. The Council claims a supply of 5.27 years.
45. The Glossary to the Framework states that to be considered deliverable, sites for housing should 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 years. Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. I also note the advice within the Planning Practice Guidance (PPG) on what may be considered 'clear evidence'. The requirement to demonstrate a "realistic prospect" is not to be equated with the requirement to demonstrate "certainty", or even a

¹ APP/Z1510/W/21/3267825

“probability”, that the site will be delivered within the supply period². There simply needs to be a prospect of delivery within that period, and that prospect must be realistic.

Land East of Broad Road

46. Outline planning permission has been granted for around 1000 dwellings. The Council claim 270 dwellings in the 5-year supply. This is the figure shown on an updated housing questionnaire trajectory pro-forma obtained by the Council from the master developer which indicates that 270 units will be completed in the supply period starting in 2023/24.
47. I heard that the Council claimed a supply from this site of 320 dwellings in the Earls Colne case. The Council says that the Inspector in that case discounted 160 dwellings from the 320 to leave 160 in the supply. However, I have nothing before me to confirm that the Council were claiming 320 dwellings previously and the previous appeal decision does not specifically say that the site could provide 160 dwellings. I have considered the claimed 270 dwellings based on the information before me.
48. The Council said that it is anticipating a reserved matters application to be submitted early in 2022 following an ongoing extensive pre-application process. It also says that the reserved matters application will be determined under a planning performance agreement. Nevertheless, no reserved matters application had been submitted by the time of this Inquiry. I note that there is a Design Code which provides guidance about the reserved matters but this is a condition of the outline planning permission rather than evidence of progress with a reserved matters application. A discharge of condition application has been submitted in respect of phasing but the condition had not yet been discharged by the time of this Inquiry.
49. The Council also said that the site’s ownership has changed to a “master developer” from a land agent. I heard during the roundtable discussion that the master developer’s business model is to put in the infrastructure required for the housing and then it would be sold to a national housebuilder. I heard that discussions have been undertaken with the local authority in respect of the provision of infrastructure but I have no firm indication of when the infrastructure would be available. Furthermore, although I understand that negotiations are in progress, no house builder has purchased the site.
50. There is insufficient clear evidence that there is a realistic probability that housing completions will begin on site within five years and therefore I discount 270 dwellings from the supply.

Towerlands Park

51. The Council has indicated that this site can provide 155 dwellings in the supply. A reserved matters application has been submitted for 167 dwellings on this site since the Earls Colne decision and a planning performance agreement is in place for it to reach a January 2022 planning committee. The site is already owned by a developer.
52. However, the developer’s pro forma notes a planning obligation limiting occupations to 50 dwellings until a link road is put in place on an adjacent

² St Modwen v. Secretary of State for Communities and Local Government [2017] EWCA Civ 1643

development site. It also notes that if the link road is not put in place, it would be necessary to seek a variation to the obligation to ensure continued delivery of the site. The link road is not within the control of the developer of the Towerlands Park site. There is no indication that a variation of the deed would be agreed by the Council. The link road has not been put in place and I do not have any firm evidence about when it will be.

53. Whilst it cannot be absolutely certain that the link road will materialise, the site is owned by a developer, has outline planning permission and reserved matters have been submitted which are highly likely to be considered imminently at planning committee. Furthermore, even without the link road, 50 dwellings can be occupied before it is in place and construction can progress on the remainder. Taking into account these probabilities, on balance, I consider that there is clear evidence that the site is deliverable and therefore I include 155-167 dwellings in the supply.

Conclusion on HLS

54. The Council claims 5,688 units against a target of 5,352 resulting in the claimed supply being 5.27 years. Although I have discounted 270 of the claimed supply, there would still be in excess of the 5,352 requirement. Therefore, the Council can demonstrate an up-to-date housing land supply. In assessing this matter, I have based my conclusions upon the balance of the evidence put to me in reference to the above sites.

Other Matters

55. The appellant has submitted a unilateral undertaking which makes several provisions. Some are to make the development acceptable and others can be considered benefits of the scheme. I consider the benefits of the scheme would be the provision of 40% affordable housing and a community park. The Council's affordable housing trajectory is tight and so I give the provision of affordable housing significant weight. I have already given the provision of the community park moderate weight. The remainder of the provisions in the S.106 agreements pertain to make the development acceptable. However, it is not necessary for me to look at them in detail, given that I have found the proposal is unacceptable for other reasons.
56. There would also be other benefits to the scheme. There would be economic benefits arising from the construction of the development and from the people using the local services in Black Notley. I give the economic benefits moderate weight.
57. I give the provision of the market housing significant weight but I give very limited weight to the offer accepting a condition which would impose a shorter reserved matters and implementation condition as there is no possibility to extend compliance with such conditions³ I have no evidence from any future developer that it would be happy with such a condition and if the permission lapsed, it would end up taking even longer to get the development commenced.
58. Paragraph 174(d) NPPF requires that development delivers net gains in biodiversity. The Environment Act 2021 will require that 10% be delivered

³ s.73(5) Town and Country Planning Act 1990

when it comes into force. I attach limited weight to a projected 10% net gain especially as the full details would be subject to further approval.

59. I give minimal weight to landscaping and design as I have found an overall harm to the character and appearance of the area and good design and landscaping is an expectation of the planning system.
60. The improvements to the footway between Braintree and Black Notley would not significantly change the desirability of the route, as the main detractors are the narrow width of pavements alongside the main road traffic. Nevertheless, there would be some improvement to limited parts of the route. I therefore give the improvements moderate weight.

Planning Balance and Conclusion

61. I have found no harm in respect of accessibility and open space. However, I have found harm to the character and appearance of the countryside. In this respect I have found conflict with several development plan policies.
62. I have found that the Council can demonstrate a five-year HLS and thus footnote 8 of the Framework is not engaged. However, whilst the appellant accepts that there is conflict with Policies BDLPR RLP 2 and CS Policy CS 5, which is reliant on RLP 2, it was argued that these are out of date because the town and village boundaries drawn up in relation to CS 5 and RLP 2 were predicated upon much earlier levels of housing need, dating back to the 2001 Essex and Southend-on-Sea Replacement Structure Plan and conceived many years prior to the publication of the original 2012 Framework. The settlement boundary established through RLP 2 was based upon a housing requirement of 10,300 over 15 years or 687 dwellings per annum (dpa). The current adopted housing requirement is now 5,352 over 5 years, or 1070 dpa which is a considerably higher requirement. The Council did not dispute that, in appropriate circumstances, it grants consents outside of settlement boundaries in order to maintain supply⁴. Therefore, I consider that the development boundaries and RLP 2 and CS 5 are out of date as they have been overtaken by the specific event of the increase in the District's housing requirement. Consequently, these policies are out of date.
63. The appellant argued that CS Policy CS 5 has a further reason for being out of date. This policy indicates that outside town development boundaries and village envelopes, development will be strictly controlled to uses appropriate to the countryside in order to protect and enhance the landscape character and amenity of the countryside. The Framework does not give blanket protection to the countryside and the appellant relied on the Telford and Wrekin case⁵ and a previous appeal decision at Steeple Bumpstead⁶ in this respect. I agree that the framework does not give blanket protection to the countryside and this provides an additional reason for Policy CS 5 to be out of date.
64. The appellant argued that Policy CS 8 of the Core Strategy should also be considered out of date because of a requirement to enhance the landscape character. It indicates, amongst other matters, that development proposals should ensure the protection and enhancement of the natural environment. It also indicates that development must have regard to the character of the

⁴ For example, LPA Ref 20/01264/OUT

⁵ Telford and Wrekin v SSCLG and Gladman Developments Ltd [2016] EWHC 3073 (Admin)

⁶ APP/Z1510/W/20/3255805

landscape and its sensitivity to change and where development is permitted, it will need to enhance the locally distinctive character of the landscape in accordance with the landscape Character Assessment. It says that Landscape Character Areas (LCAs) will be defined in the Site Allocations Development Plan Document (DPD) and further guidance will be set out in a supplementary planning document (SPD). There is no adopted site allocation DPD or SPD and the LCAs have not been adopted as policy. Nevertheless, the LCAs are a material consideration before me.

65. Paragraph 8c of the Framework confirms that achieving sustainable development includes the environmental objective to protect and enhance our natural environment. Paragraph 20d) also refers to the conservation and enhancement of the natural environment. Paragraph 174 also says that "...decisions should contribute to and enhance the natural and local environment by ... (b) recognising the intrinsic character and beauty of the countryside...". Whilst I acknowledge the finding of the Inspector in the Rayne Road appeal,⁷ I find no conflict with the Framework in this respect. In any event, the Council's objection is focussed on whether the landscape would be protected rather than enhanced.
66. I find BDLPR Policy RLP 2 and CS Policy CS 5 to be out of date but they pertain to protect the countryside/landscape character and this is not irrelevant. Nevertheless, they still chime with the environmental objective in the Framework at paragraph 8c) and with the need set out at paragraph 170b) to recognise the intrinsic character and beauty of the countryside. To that extent, I afford any conflict with those policies some, albeit limited weight. I have also found conflict with BDLPR RLP 80 and 86, CS Policy CS 8 and Policy SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan. Taken together, including the out-of-date policies, these policies are the basket of most important policies for determining the appeal. The two that are out of date do not make the basket as a whole out of date. Therefore paragraph 11(d) of the Framework does not apply and the so-called tilted balance is not engaged.
67. Whilst there are some benefits to the scheme, including the substantial benefits of providing market housing and affordable housing, these do not outweigh the very significant harm to the character and appearance of the countryside and the setting of the settlement, especially when I have found that the Council can demonstrate an up-to-date housing land supply. The proposal therefore conflicts with the development plan as a whole and does not represent sustainable development, bringing it into conflict with Policy SP1 of the North Essex Authorities Shared Strategic Section 1 Plan and the Framework.
68. Even if I had agreed with the appellant that there was a 4.96 year HLS and paragraph 11(d) of the Framework were engaged, the degree of shortfall would be minimal and the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

⁷ APP/Z1510/W/20/3265895

69. I therefore conclude that the appeal should be dismissed.

Siobhan Watson

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Phillip Robson of Counsel, Kings Chambers

Called:

Stuart Carvel MTCP(Hons) MRTPI

Gary Holliday BA(Hons) MPhil, CMLI of FPCR

FOR THE LOCAL PLANNING AUTHORITY:

Dr Ashley Bowes QC, Cornerstone Barristers

Called:

Bobby Browne BSc(Hons), CMLI

Chris Tivey BSc(Hons), BPI, MRTPI

Transport Roundtable

For the Council:

Chris Tivey BSc(Hons), BPI, MRTPI

Neil Jones, Principal Planning Officer

For the appellant:

Stuart Carvell MTCP(Hons) MRTPI

Ian Cronshaw, Ashley Helm.

Housing Land Supply Roundtable

For the Council:

Kathryn Carpenter BA (Hons) Dip EP

Neil Jones, Principal Planning Officer

For the appellant:

Stuart Carvell MTCP(Hons) MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

ID 1 – Appellant’s opening statement

ID 2 – Council’s opening statement

ID 3 – APP/E2001/W/18/3207411

ID 4 – APP/K1935/W/20/3255692

ID 5 – APP/Q3115/W/21/3272377

ID 6 – L & Q Estates Document

ID7 – Start to Finish Second Edition, Lichfields

ID8 – HDT Results

ID9 – Council’s closing statement

ID10 – Appellant’s closing statement