



Appeal Decision

Inquiry held from 1 to 4 October 2024

Site visit made on 31 September 2024

by Richard Schofield BA (Hons) MA MSc MRTPI
an Inspector appointed by the Secretary of State

Decision date: 4th November 2024

Appeal Ref: APP/M1595/W/24/3342882

Land for Development, Muckingford Road, Linford, Essex SS17 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Mulberry Strategic Land Limited against Thurrock Borough Council.
- The application Ref is 16/01232/OUT.
- The development proposed is application for outline planning permission with some matters (appearance, landscaping, layout and scale) reserved: Proposed development of up to 830 dwellings (Use Class C3) if the Lower Thames Crossing is constructed (scenario 1) and up to 1000 dwellings (Use Class C3) if the Lower Thames Crossing does not proceed (scenario 2), a new local road network including a vehicular / pedestrian railway crossing, a primary school, local centre and new areas of open space, including formal recreation.

Decision

1. The appeal is allowed and outline planning permission with some matters (appearance, landscaping, layout and scale) reserved is granted for development of up to 830 dwellings (Use Class C3) if the Lower Thames Crossing is constructed (scenario 1) and up to 1000 dwellings (Use Class C3) if the Lower Thames Crossing does not proceed (scenario 2), a new local road network including a vehicular / pedestrian railway crossing, a primary school, local centre and new areas of open space, including formal recreation at Land for Development, Muckingford Road, Linford, Essex, SS17 0RR, in accordance with the terms of the application reference 16/01232/OUT, subject to the conditions set out in the Annex to this decision.

Preliminary Matters

2. Thurrock Council did not determine the planning application within the appropriate period. It indicated subsequently that, had it been able to determine the application, planning permission would have been refused for eight reasons.
3. These concerned inappropriate development in the Green Belt; conflict with Green Belt purposes; use of best and most versatile agricultural land; insufficient information in relation to the delivery of a railway overbridge and impacts upon the

local highway network; insufficient information to demonstrate how a primary school would be delivered on the site and how secondary school age children from the proposed development would travel to local schools; whether the proposal would provide appropriate living conditions for future residents with regard to noise, alongside the impacts upon existing businesses of mitigating this; lack of clarity about ecological mitigation, infrastructure contributions and affordable housing; and insufficient information in the Environmental Statement.

4. The Council confirmed at the opening of the inquiry that these issues had been resolved since the Case Management Conference, and that it would no longer be defending its putative reasons for refusal. It considered that planning permission should be granted (subject to agreement of appropriate planning conditions and obligations).
5. An Environmental Statement (ES) was submitted with the planning application, in 2016. An updated ES was submitted in 2022 to address changes since the application was first submitted. A further addendum was provided in 2023.
6. Some amended parameter plans were submitted as part of the appeal. They addressed minor issues in need of correction. I accepted them as they neither changed fundamentally the nature of the appeal scheme nor (being available for public consideration) did they prejudice any party to the appeal.

Main Issues

7. The appeal site is located within the London Metropolitan Green Belt. It was agreed between the appellant and the Council that, when assessed against both local¹ and national planning policy², the proposal would be inappropriate development within the Green Belt. I agree. This is a matter that must attract substantial weight against the proposal.
8. Both parties also agreed that there would be an impact from the proposed development upon the openness of the Green Belt, albeit there was no common position in relation to the level of harm arising. The Council also considered that there would be adverse impacts upon Green Belt purposes.
9. Notwithstanding the agreement reached between the Council and the appellant in relation to noise and the so-called “agent of change” principle³, an interested party, European Metal Recycling (EMR), continued to object to the scheme on these grounds. Legal submissions were made on EMR’s behalf and a noise specialist spoke for EMR, and was questioned by the appellant’s counsel, at the inquiry.
10. Given this context, I consider the main issues to be:
 - the effect of the proposal on the openness of the Green Belt and its purposes;
 - whether the appeal proposal would provide appropriate living conditions for future occupiers, regarding noise;

¹ Thurrock Council Core Strategies and Policies for Management of Development policy PMD6

² National Planning Policy Framework (the Framework) paragraphs 152-154

³ See the Framework paragraph 193, seeking to avoid “unreasonable restrictions” on existing operations.

- the effect of the appeal scheme upon the operation of an existing business (being EMR);
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations amounting to the very special circumstances necessary to justify the development.

Reasons

The effect of the proposal on the openness of the Green Belt and/or its purposes

11. The site is an extensive area of flat, open, chiefly agricultural land. It extends out well into the, largely undeveloped, countryside. This is readily apparent from the public rights of way that cross the site, as well as from viewpoints around the site.
12. There are large electricity pylons and a railway line crossing the site. The Thames Industrial Estate and more recent residential development abut the site's southern, western and northern boundaries. In addition, the parameter plans show that any new development would be interspersed with areas of open space.
13. Even in this context, however, the appeal proposal would result in the creation of built forms across a significant proportion of the site, changing fundamentally its open character.
14. Paragraph 134 of the Framework sets out the five Green Belt purposes: (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; (c) to assist in safeguarding the countryside from encroachment; (d) to preserve the setting and spatial character of historic towns; and (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
15. The scheme would not result in "unrestricted" sprawl. The site boundaries are defined clearly and there is no reason to suppose unstoppable expansion towards West Tilbury. Nor would it result in neighbouring towns merging. East Tilbury is not an "historic town", as such a settlement might usually be characterised, nor is there any compelling argument presented that the scheme would undermine any aims to recycle derelict and other urban land. It is unarguable, however, that the countryside would be encroached upon.
16. In conclusion, there would be substantial harm arising from the development to both the visual and spatial openness of the Green Belt (albeit this would be localised, having regard to the sheer extent of Green Belt in Thurrock). There would also be conflict with criterion c) above. This would mean conflict with local and national planning policy.
17. I attach substantial weight to this conflict and to the harm arising to the Green Belt and its purposes by virtue of the development's inappropriateness and the effect upon openness.
18. That harm will need to be outweighed by other considerations, if very special circumstances are to be demonstrated. This matter is addressed, in the context of the overall planning balance, later in this decision.

Whether the appeal proposal would provide appropriate living conditions for future occupiers, regarding noise

19. A planning permission from 1 December 1975 permits a change of use of (what is now) the EMR site “to a use for the purpose of scrap metal dealing”. This use is confined to 0800 to 1730 Monday to Friday and 0800 to 1300 on Saturdays. No use is permitted on Sundays or Bank Holidays.
20. A further condition requires:

“That the premises shall not be used in any manner which is detrimental to the amenities of the locality, whether by reason of noise, vibration, smell, fumes, soot, smoke, ash, dust, grit, or by any other means.”
21. Thus, under this permission, the site cannot operate in a manner likely to cause adverse noise impacts upon the locality.
22. A subsequent planning permission was granted on 18 May 2010. Several conditions attached to it are of relevance.
23. Condition 19 restricts operation of *any* machinery or industrial process outside the period 0700 to 1630 Monday to Friday. It also prevents such uses on Saturdays, Sundays and Bank Holidays.
24. Condition 21 sets out an absolute limit on noise emissions from the site of 66dB (LAeq 1hr) between 0700 and 2300 Monday to Friday and 55dB (LAeq 1hr) at any other time, as measured at Railway Cottages and Gravel Pit Cottages. These dwellings are, to all intents and purposes, neighbours of the EMR site. They are considerably closer to the EMR site than would be dwellings on the appeal site.
25. In short, EMR’s activities are already restricted in terms of hours of operation and maximum noise outputs.
26. Allied to these conditions is Condition 22, which establishes a “noise monitoring programme”. It is not clear whether such a programme was ever established but no evidence was presented to indicate that complaints, arising from excessive noise from the site operating as permitted, have been received by the Council. Indeed, the only, unchallenged, evidence of complaints was a statement from the Council⁴ noting that they had been in response to EMR operating outside the permitted hours.
27. Finally, Condition 24 required noise insulation / mitigation to Railway Cottages,

“to ensure that the noise level within any habitable room shall not exceed 35dB LAeq (2300 to 0700) and 40dB LAeq (0700 to 2300)”.
28. In summary, therefore, both the decision-making body and the applicant were satisfied that the EMR site could operate within clear noise and time limits, and remarkably near to dwellings, once suitable levels of mitigation against noise intrusion into habitable rooms was in place. The permission makes no requirement to mitigate noise to private outdoor space.

⁴ From Ms Stowell, Acoustic Officer, Thurrock Council.

29. It is further evident that EMR's current operation in this context (defined daytime operating hours; no nighttime, weekend or Bank Holiday operation; and clear noise limits) appears to be working satisfactorily, with no adverse noise impacts reported by occupiers of nearby dwellings.
30. Turning to the specific approach taken to assessing impacts upon the appeal scheme, it is never easy to come to a view when experts⁵ are, as here, in complete disagreement about the validity of each other's methodologies. In this case that is in relation to the interplay, if any, between BS4142⁶ and BS8233⁷ and the conclusions reached about noise mitigation.
31. Given the context⁸ in which EMR operates at present, the approach taken by the appellant, and since agreed by the Council, in relation to the modelling of likely noise impacts from EMR upon any future occupiers of dwellings on the appeal site, appears robust.
32. Without needing to dissect the technical minutiae, there is clear and explicit interplay between BS4142 and BS8233, both of which cross reference and support the other.
33. There may not be an explicit methodology on how to treat this interplay, where noise with a specific character from industrial premises is concerned, but nor is there an explicit preclusion on the use of both Standards, requiring practitioners to place sole reliance upon BS4142.
34. There is no support for the thesis that each Standard is an island and that mitigation should be only at source (i.e. the noise emitter), or on the pathway, rather than being considered at the receptor (i.e. (in this case) the dwelling).
35. This must allow for the application of professional judgement, over how to model what may be the worst-case industrial noise impacts upon proposed residential development, and to reach a rounded view (my terminology) on potential mitigation, having regard to context and potential design solutions.
36. It was agreed that the bald BS4142 assessments of noise indicate a "significant adverse impact" at the putative facades of development areas on the appeal site nearest to EMR. This is, however, without consideration of either contextual factors, such as those set out above, or of design solutions.
37. Having regard to these latter points, I am assured by the Waterman modelling evidence⁹ (which takes a very much worst-case approach, using a penalty rating of 9dB from the BS4142 assessment of the nature of specific character noise). This shows that with appropriate building orientations, and no further design measures, the external noise levels at the facades that would be facing away from EMR would achieve satisfactory ratings. This would remain the case even with open windows in those facades.

⁵ Mr Baker (for EMR) and Mr Thornely-Taylor (for the appellant)

⁶ BS4142:2014+A1:2019 METHODS FOR RATING AND ASSESSING INDUSTRIAL AND COMMERCIAL SOUND

⁷ BS8233: GUIDANCE ON SOUND INSULATION AND NOISE REDUCTION IN BUILDINGS

⁸ And noting that consideration of contextual elements is required by BS4142.

⁹ Waterman Technical Note CD1.137 N.B. no alternative modelling was presented by other parties.

38. It was also evident from the noise assessment work undertaken, whether for EMR or the appellant, as well as from my own extensive site visit, that the so-called “fragmentiser” machine, about which the greatest noise concerns were raised (given its specific character), operates only intermittently during the day, rather than being a constant intrusion.
39. In summary, therefore, if one were to have a well-considered design (making full use of building orientation (notably for private amenity spaces), room positioning and room layout), and to make effective use of sound insulation, residential development on the appeal site could be designed in such way as to provide acceptable living conditions for future residents.
40. It is notable that this would be possible without resorting to dwellings with no openable windows (by using dual aspect rooms, for example, where the rear windows could be opened). This is important for many reasons, not least of which is that there would be long periods of time when no noise at all would be emanating from EMR. During such periods, it is reasonable to consider that residents would wish to open their windows, rather than, as it were, being sealed in.
41. Finally, the appellant has agreed to a condition that requires the design to achieve acceptable levels of noise.

Impact upon existing industrial uses (EMR)

42. Given my conclusions above, I do not consider that EMR would be prejudiced under the so-called “agent of change” principle.
43. Put simply, if acceptable living conditions can be provided for future residents of the proposed scheme, there can be no reason to consider that noise complaints would arise. In turn, there can be no reason to consider that EMR would face unreasonable restrictions upon its activities.
44. This is putting aside the fact that EMR already operates satisfactorily in very close proximity to existing dwellings (the occupiers of which could complain of a nuisance, if one were to occur).
45. The appellant has also offered a Deed of Easement, which would grant EMR the right to generate noise, at appropriate levels, from its lawful operation, across certain dwellings at the appeal site. This would remove the ability of the residents in those dwellings to make complaints of noise nuisance, even if they were to arise (which should not be the case, for the reasons set out above), against EMR.
46. Legal opinion for EMR challenged the efficacy of such a Deed. Given that development could proceed satisfactorily without the Deed in operation, this is largely moot. Even so, the Supreme Court ruling in *Coventry v Lawrence* [2014] UKSC 13 does appear to endorse the operability of such a Deed, giving what would be additional protection (for want of a better word) to EMR against unreasonable restrictions being imposed.

Conclusions on noise

47. Several past appeal decisions were presented to me wherein Inspectors have refused planning permission on grounds of noise nuisance (and/or the “agent of

change” principle). None appear to be comparable to the appeal proposal, however, being related to unrestricted operations, in contrast to EMR’s operational context.

48. In any event, the appellant presented decisions where Inspectors have allowed appeals where there has been a juxtaposition between noise creating uses and residential schemes.
49. As is usually the case when Inspectors are presented with past appeal decisions, all this serves to demonstrate is that cases turn on their facts and that examples can be found from opposite ends of the spectrum to support different arguments.
50. I conclude, therefore, that the appeal proposal would provide acceptable living conditions for future residents and would not have adverse impacts upon the operation of an existing business (EMR).
51. It would accord, therefore, with Thurrock Council Core Strategies and Policies for Management of Development policy PMD1, which requires new development to avoid unacceptable effects on the amenity of future occupiers. It would also accord with policy CSSP2, which resists the introduction of sensitive uses in locations where their presence would be likely to lead to unreasonable restrictions over existing business activity.

Other Considerations

Interested parties

52. Numerous objections were raised against the scheme at planning application stage. No more than a handful were received at appeal stage (and no residents asked to address the inquiry). I am mindful of the concerns of residents and have taken their representations into account in my determination.
53. Unplanned for development, even if it is found to be appropriate, is not the optimal approach for anyone. It needs to be understood, however, that there is no prospect of planned development coming forward any time soon to address the massive shortfall in housing delivery over many years, which has arisen from the Council’s failure to engage with, and plan for, the borough’s needs.
54. The appeal scheme may well have an impact upon the settlement’s character and will alter the outlook from some dwellings. Change, however, does not always equate to harm. In addition, there are no unresolved issues in relation to objections raised around local infrastructure, highways, pollution, flood risk or biodiversity, with no objections on such grounds from the Council or from relevant statutory bodies.
55. Overall, therefore, while being sympathetic to the objections of residents, who find themselves in an invidious position, there is nothing within the representations received that would cause me to reach a different decision.

Other Scheme Impacts

56. In reaching my conclusions, I have considered the ES, comments from all relevant statutorily consulted bodies and all other environmental information submitted in connection with the appeal (including that arising from questioning at

the inquiry itself). The proposal is supported by a substantial amount of sound evidence on the full range of environmental topics, the most pertinent of which I address below.

A) Heritage

57. There are several designated heritage assets near the appeal site. Although it is common ground between the parties that heritage harm is not a reason for refusing planning permission it is, nonetheless, incumbent upon me to comply with my statutory duties under sections 66(1) and 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990.
58. The Heritage Statement of Common Ground identifies heritage assets that have the potential to be affected adversely by the proposed scheme. Of these, four¹⁰ are agreed as being unaffected. Based on all that I have seen and read, I agree. I will, therefore, consider those that remain.
59. The East Tilbury (Bata) Conservation Area is to the east of the site. The significance of the Conservation Area derives from its history as a purpose-built industrial village. Combining the English “Garden City” planning principles with Czech Modernist architecture, the survival of the factory buildings, social/pleasure buildings, and workers’ houses all contribute to a wider understanding of the social and architectural history of the Bata Shoe Company.
60. There are several Grade II listed buildings within the Conservation Areas, both industrial and domestic.
61. The significance of the industrial buildings lies in their simple, functional design, reflective of an international Modernist architectural movement, and based on the so-called Bata Grid, which allowed buildings to be scaled to fit the needs and requirements of the company in different international locations. They have clear group value, being associated closely with each other, functionally and architecturally, and contributing to one another’s setting.
62. The domestic buildings are found on Bata Avenue and are largely contemporary with the factory buildings. They form part of a wider avenue of Modernist dwellings, constructed to house workers at the factory. Their special interest derives heavily from their strong, coherent architectural style, and unique (within the wider settlement) street pattern, along with their contribution towards understanding the history and development of Bata’s settlements. The dwellings are appreciated as part of the wider settlement, notably in the context of their close physical and architectural relationships with the factory buildings. They are viewed as part of the Bata village core, rather than as distinct, feature buildings.
63. The appeal site forms part of the Conservation Area’s setting, with much of the site intended for development as the settlement expanded¹¹. In other words, this land was not designed to remain completely open and, while it may now allow for views of the five-storey, Grade II listed factory buildings, which rise out of the flat

¹⁰ West Tilbury Conservation Area, Church of St Katherine, Church of St James and Coalhouse Fort.

¹¹ According to historic masterplans, as referenced within the Conservation Area Appraisal and Management Plan for East Tilbury (Bata Settlement), dated April 2023.

landscape, from various vantage points, its contribution to the significance of the CA is moderate at best.

64. Indeed, other areas of previously open land around the Conservation Area have been developed (in some cases sympathetically) for residential uses with no obvious diminution in the prominence of the factory buildings, which are still dominant in views of the Conservation Area specifically and East Tilbury generally.
65. The archaeological baseline has been established from a Desk-Based Assessment based on the data from the Essex County Council Historic Environment Record, National Monuments Record, historic map and documentary evidence.
66. No designated archaeological assets are located on the site. Even so, it is possible to design a scheme that would preserve, in situ, the localised below ground remains of two Bronze Age barrows identified by aerial photographic survey and archaeological excavation.
67. To address potential impacts on any yet undiscovered archaeology, a programme of archaeological survey and mitigation could be secured by planning condition.
68. In conclusion, therefore, appropriately scaled, designed and oriented development, using sympathetic materials, would preserve the setting of the Conservation Area, as well its character and appearance. It would also preserve the significance and settings of the Grade II listed buildings contained therein.

B) Highway Network

69. There are no highways objections from the Council as the highway authority. The unilateral undertaking contains requirements for payments to facilitate the delivery of specific offsite highway works, including improvements at Cross Keys junction and Manor Way. Neither is required to be delivered at a specific point in advance of or during the development.
70. A planning condition requires a Construction Environment Management Plan (CEMP), to include details of vehicle routing in connection with construction, remediation and engineering operations.
71. It is common ground between the parties that the provision of a new pedestrian and vehicle bridge over the railway line that passes through East Tilbury, to link the two sections of the development, would be a wider benefit of the scheme. It would address longstanding concerns in relation to railway safety, notably at the Coal Road crossing, and traffic congestion within and around East Tilbury (arising from frequent operation of the various level crossings).
72. There is clear evidence of sustained support, over a long period of time, for a bridge from a range of stakeholders, including a substantial number of residents, the Council, Network Rail and local business interests.
73. The development would not have a severe adverse impact on the highway network nor would it introduce a significant road safety issue either during the construction phase or the operational phase.

74. I give this factor significant weight.

C) Ecology

75. Natural England has no objection to the appeal proposal subject to appropriate mitigation being secured. This is addressed through conditions as well as through the unilateral undertaking, which commits to financial contributions to the East Coast Recreational Disturbance & Avoidance Strategy (RAMS) and to the provision of Suitable Alternative Natural Greenspace (SANG). This is considered further in my considerations, below, (See *The effect of the proposed development on nearby sites of nature conservation importance*).

76. The site was subject to a suite of ecological surveys between 2015 and 2022. There does not appear to have been any material change in the management and use of the site during this time until now.

77. The proposals ensure that the habitats of higher ecological interest in nature conservation terms are retained, wherever possible, and enhanced. This is addressed through a planning condition requiring an Ecological Mitigation and Management Plan in compliance with the mitigation identified in Chapter 6 of the Environmental Statement.

78. Subject to the obligations and condition, neither the construction nor operational phases of the development would contribute to any cumulative or in combination adverse effects on protected species or biodiversity.

79. The appeal proposal is not required to deliver mandatory 10% Biodiversity Net Gain (BNG), insofar as Schedule 7A of Town and Country Planning Act 1990 is concerned. Even so, a Biodiversity Net Gain Assessment (February 2024) calculates that the appeal proposal could lead to an increase in habitat units of 18.47% (Scenario 1) or 47.13 (Scenario 2). These levels are neither promised nor conditioned, however, at this outline stage, so it is difficult to afford this aspect more than moderate weight.

D) Landscape and Visual Impact / Arboriculture

80. There would be a change to the landscape, in as much as greenfield land would become, in large part, developed. This effect would be localised, with the greatest impact being upon users of the public rights of way across the site. This would remain the case, even in combination with, for example, works related to the Lower Thames Crossing.

81. Overall, however, development on the site, of appropriate scale and design, would be well-related to the existing built-up area of East Tilbury. The proposed landscape works, secured by condition, would retain most of the trees, hedgerows and scrub margins on the site, with substantial new planting proposed.

82. There is no reason to suppose that, after a 15-year period of establishment, the impact of the scheme would be much reduced. Indeed, should the proposed landscaping be delivered as expected, it could, arguably, soften the impact of the rather less green, more recent development to the northeast.

E) Socio Economics

Primary school

83. The appeal scheme would deliver a 1.5 form entry primary school on the appeal site. This is necessary to accommodate the projected pupil numbers arising from the scheme (under whichever Scenario) but would result in some small additional pupil capacity.
84. There would also be space on the site to expand the school to a two-form entry, if necessary, mitigating the inability to grow East Tilbury Primary School (should it ever become oversubscribed).
85. I give this factor moderate weight.

Health

86. The appeal proposal would provide quantitative and qualitative increases in sports and leisure provision, through financial contributions towards a range of facilities and through off-site playing pitch provision.
87. These are, chiefly, to accommodate need arising from the development. Nonetheless, the facilities in question, including those at the school, as well as the open space provision on the site, would be available for use by the wider community.
88. Additionally, the unilateral undertaking provides contributions towards healthcare provision in the locality, to mitigate any impacts upon facilities arising from an increased population.
89. I give this factor moderate weight.

Economic impacts

90. A range of economic benefits, arising directly from construction and indirectly in relation to longer term employment and local economic benefits, are cited by the appellant. The former are more easily evidenced, but the latter arguments are not without merit.
91. It is evident, from modelling work done by the Council and the appellant, that there will likely be substantial job growth in Thurrock in coming years. What is less clear is the degree to which a lack of commensurate growth in housing may act as a constraint on labour required to fill the roles arising (notwithstanding that neither should be regarded as the be all and end all aims of planning).
92. Either way, the appeal proposal would, clearly, play a role in supporting the growth ambitions of the wider area, such as town centre regeneration schemes in Thurrock, the nearby Freeports and the Port of Tilbury expansion. There is explicit support for the scheme from local economic interests.
93. I give these factors moderate weight.

Housing

94. Facilitating the delivery of a housing requirement in an area so dominated by Green Belt is challenging. It requires a clear local plan strategy, strong political leadership, tough choices to be made and tough decisions to be taken.
95. For whatever reason(s), however, the housing land supply figure for Thurrock is between 0.72 and 0.91 years¹². There is nothing to be gained by seeking greater precision as, by any standards, this level of supply is woeful. The appellant's undisputed evidence¹³ is that the supply figures will drop further in coming years.
96. The full build out of the appeal scheme would take several years. Even so, it would make a significant contribution towards the provision of much needed market and affordable housing in the area.
97. Scenario 1 would provide 17% affordable housing; Scenario 2 would provide 29%. These levels would be below the 35% of the overall housing total that the Council "will seek to achieve", through the application of policy CSTP2¹⁴. It is common ground, however, that the schemes would deliver what is viable and, in the context of a local Housing Register containing 4855 households¹⁵ in need of housing, this a considerable benefit.
98. I give these factors very significant weight.

F) Flood Risk & Drainage

99. A Flood Risk Assessment, amended to address Environment Agency comments, was submitted with the appeal scheme. There is no objection from the Environment Agency, subject to suitable conditions being applied.
100. A further condition would address foul and surface water drainage.
101. There is potential for pollution of receiving waterbodies and groundwater resulting from higher levels of oils, sediments and hazardous materials during the construction phase of the development. The CEMP, and a contaminated land condition, would ensure that this was addressed appropriately.
102. Taking these measures into account, any adverse impacts of the proposed development during construction and operation, in relation to flood risk and drainage, are considered negligible.

G) Air Quality

103. The CEMP would ensure negligible effects upon air quality during construction and the development in its operational phase would cause no significant effect on local air quality.

¹² Principal Statement of Common Ground

¹³ Mr Ireland's Proof of Evidence

¹⁴ Thurrock Council Core Strategies and Policies for Management of Development

¹⁵ Mr Ireland's Proof of Evidence

The effect of the proposed development on nearby sites of nature conservation importance (Appropriate Assessment)

104. Article 6 of the Habitats Directive, which was transposed into UK law through the Conservation of Habitats and Species Regulations 2017, requires that where a plan or project is likely to result in a significant effect on a European site, and where that plan or project is not directly connected with or necessary to the management of the European site, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

105. An assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either alone or in combination with other plans and projects.

106. Measures intended to avoid or reduce the harmful effects of a plan or project (i.e. mitigation) should not be considered when determining if significant effects are likely. They may only be considered at the Appropriate Assessment stage.

107. As the competent authority, I undertake this assessment below.

108. The application site lies near to the Thames Estuary and Marshes Special Protection Area (SPA), which is a European site. The site is also listed as Thames Estuary and Marshes Ramsar site and notified at a national level as Mucking Flats and Marshes Site of Special Scientific Interest (SSSI).

109. The SPA includes both marine areas, including extensive mudflats and smaller areas of salt marsh, and land (not subject to tidal influence). It supports internationally important bird populations, notably of avocet and (wintering) hen harrier, in danger of extinction (so-called "Annex 1" bird species). Such bird populations are the object of special habitat conservation measures to ensure their survival.

110. The published conservation objectives for the SPA are to maintain the above habitats in favourable condition for internationally important populations of Annex 1 species, regularly occurring migratory bird species and assemblages of waterfowl.

111. The following are potential Likely Significant Effects, absent any mitigation:

Increased recreational pressure from new residents, giving rise to disturbance to bird populations using the SPA

112. There is the possibility that future residents of the site could use the accessible parts of the SPA for recreational purposes, potentially for dog walking. This would have significant potential to disrupt the site and disturb or displace the bird populations.

Changes to water quality and quantity

113. The development proposals have the potential to cause polluted run-off, through internal estate road run-off, for example, to the detriment of existing groundwater. This may be exacerbated by an increase in impermeable areas across the site.

114. Conversely, given that a large proportion of the site has been in farmed, arable use, it is reasonable to consider that inputs of inorganic fertiliser and pesticides may have been applied. The ceasing of this activity could be an improvement over current circumstances in this regard.

115. In addition, there is no identified surface water link between the appeal site and the SPA. Thus, the risk of Likely Significant Effects arising from surface water run-off are, in my judgement, almost none.

Impacts from the site being functionally linked with the SPA

116. The proximity of the site to the SPA may mean that it is used for feeding or roosting by birds from the SPA. Its development could restrict this use to the detriment of the bird populations.

117. It is clear, however, from the bird surveys undertaken, that the site has very low usage only by small numbers of Ringed Plover. This is not that surprising as the site does not provide any habitat of significance comparable to that at the SPA.

Mitigation

118. The parameter plans for the development proposal incorporate large areas of green space. The scheme would also retain existing public rights of way, which appeared to me, from my site visit, to be used by dog walkers. There are also readily accessible footpaths and green spaces in closer proximity to the appeal site than is the SPA.

119. In addition, provision is made in the unilateral undertaking for contributions towards the RAMS scheme and the provision of SANG space.

120. Taken together, I consider that these factors would mitigate any Likely Significant Effects on the SPA. I note that Natural England has no objection to the scheme, subject to the mitigation set out above.

121. At present, no other development proposals are presented as being “in combination” with the appeal scheme¹⁶. Even so, any proposals coming forward now would need to make financial contributions to RAMS, which specifically mitigates Likely Significant Effects from the in-combination impacts of residential development. They would also need to provide appropriate mitigation / avoidance measures. I consider, therefore, that there would not be any potential, significant in-combination effects on the SPA.

122. Overall, therefore, having considered all the potential Likely Significant Effects that could arise from the development proposals, and the avoidance and mitigation measures, I conclude that the proposals would not result in any adverse effects on the integrity of the SPA or its conservation objectives, when considered alone or in combination with other plans or projects.

¹⁶ I note that at that the time of writing, a decision on the Lower Thames Crossing has been put back until May 2025.

Conditions

123. An agreed schedule of suggested conditions was submitted to the inquiry and was the subject of discussion at a round table session. Where necessary, I have amended wording, or conflated conditions, in the interest of enforceability, precision, concision and consistency.
124. I have also included conditions relating to housing mix and housing numbers, which were discussed at the inquiry and left to me to take a view. Both conditions are necessary to ensure certainty and an appropriate mix of dwelling types and sizes to meet local requirements.
125. Conditions specifying the time limits, phasing, reserved matters details and approved plans are necessary for certainty.
126. Those covering matters of design (including landscaping, trees, boundary details, materials, lighting, Active Design, refuse/recycling, room sizes) are necessary in the interests of securing a high-quality, attractive development.
127. A condition to cover the possibility of land contamination and that relating to the high-pressure gas pipeline are necessary for reasons of health and safety.
128. An archaeological investigation condition is reasonable and necessary, given the potential for archaeological remains on the site.
129. The condition requiring a CEMP is necessary in the interests of highway safety and to protect the living conditions of nearby residents during construction. Those conditions aiming to mitigate noise intruding on living spaces and private gardens are necessary to provide suitable living conditions for future residents and to address the “agent of change” principle.
130. There are conditions relating to hours of use of the primary school, health centre and local centre, as well as restricting the use of ventilation and extraction plant. These are all necessary in the interests of ensuring suitable living conditions for future residents.
131. To address the satisfactory disposal of surface and foul water from the site, and to mitigate the potential impacts of flooding, conditions requiring details of Site Wide Water Surface Drainage Strategy, a foul water strategy and the submission of a scheme relating to surface water drainage and flood risk mitigation are necessary.
132. A condition relating to ecological mitigation / management is necessary, in tandem with those addressing green infrastructure, for the mitigation of impacts upon the SPA and protected species (on and off site) and for the delivery of the proposed biodiversity enhancements.
133. The green infrastructure conditions are also necessary, alongside those relating to play spaces, the MUGA, the allotments and the community use of the schools, to meet policy requirements in relation to recreational needs.
134. In the interests of highway safety, the conditions relating to accesses, visibility splays, carriageway construction and parking are necessary. Those relating to

travel planning are necessary in the interests of supporting sustainable travel ambitions set out in policy.

135. Conditions covering an Energy Statement and Electric Vehicle Charging Points are necessary to support policy-based moves away from fossil fuel dependency.

Planning Obligations

136. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations) requires that if planning obligations are to be considered in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.

137. The submitted Unilateral Undertaking sets out obligations in relation to healthcare; nursery education; primary education; school transport; sports, pitch, play, allotment and open space facilities; travel planning and monitoring; highways works; RAMS contributions and Homeowner Information Packs; SANG provision; rights of way improvements; rail bridge provision; affordable housing; and a monitoring fee.

138. Evidence of the necessity, relevance and proportionality of these obligations was set out in a submission from the Council. This demonstrates the basis for the obligations, how they relate to the development proposed (indicating the relevant planning policy basis for them) and sets out how any financial contributions have been calculated. In my judgment these provide satisfactory evidence that the above obligations meet the tests set out in the Regulations.

Planning Balance and Very Special Circumstances

139. Thurrock Council Core Strategies and Policies for Management of Development Policy PMD6 (Development in the Green Belt) defers to the requirements of the Framework, in relation to proposals such as the appeal scheme, which does not fall under one of the categories of development deemed as being appropriate in the Green Belt.

140. I have found that the proposed development would harm the Green Belt for reasons of inappropriateness and loss of openness. I have not found any other harms arising from the development proposed.

141. I give substantial weight to the harms to the Green Belt.

142. The proposal would, however, deliver market and affordable housing in an area with an extremely poor record of delivery of both, with no signs of this improving in the future. I have attributed very substantial weight to this.

143. It would also deliver what is agreed to be a much-needed bridge over the railway line through East Tilbury, to which I have afforded significant weight.

144. Moderate weight accrues to benefits in relation to biodiversity, primary school provision, recreational facilities and economic impacts.

145. These factors would, taken together, clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and harm to purposes.

They are the very special circumstances required to justify the grant of planning permission for the proposed development.

Conclusion

146. I conclude that the appeal proposal would comply with the development plan, when read as a whole. The appeal is allowed and planning permission granted.

Richard Schofield

INSPECTOR

Richborough

SCHEDULE OF CONDITIONS

1. Development shall not commence in each phase until details of:

- (a) the Layout of the development for that phase
- (b) the Scale of the development for that phase
- (c) the Appearance of the development for that phase
- (d) the Landscaping of the development for that phase

hereinafter called the 'Reserved Matters', have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.

- 2. Application for the approval of the Reserved Matters in respect of Phase 1 shall be made to the local planning authority before the expiration of three years from the date of this permission and application for the approval of Reserved Matters for all other phases shall be made to the local planning authority before the expiration of seven years from the date of this permission.
- 3. The development hereby permitted shall be begun within two years from the date of the approval of the Reserved Matters in respect of Phase 1. The development shall be carried out as approved.
- 4. The development (including any reserved matters applications) shall be carried out in accordance with the following approved plans:

Reference	Name	Received
008 rev R	Parameter Plan 1 – Land Use and Amount – Option 1	3 September 2024
009 rev I	Parameter Plan 2 – Scale and Heights – Option 1	3 September 2024
010 rev P	Parameter Plan 3 – Landscape Framework – Option 1	3 September 2024
011 rev N	Parameter Plan 4 – Movement – Option 1	3 September 2024
014 rev L	Parameter Plan 1 – Land Use and Amount – Option 2	3 September 2024
015 rev H	Parameter Plan 2 – Scale and Heights – Option 2	3 September 2024
016 rev L	Parameter Plan 3 – Landscape Framework – Option 2	3 September 2024
017 ref K	Parameter Plan 4 – Movement – Option 2	3 September 2024
014 rev A	Site Boundary	4 August 2023
22 – T004_29.1	Proposed Link Road with Dimensions (North – Scenario 1)	30 January 2024

Reference	Name	Received
22 – T004_29.2	Proposed Link Road with Dimensions (North – Scenario 2)	30 January 2024
22 – T004_29.3	Proposed Link Road with Dimension (South)	30 January 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 1 of 6)	5 February 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 2 of 6)	5 February 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 3 of 6)	5 February 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 4 of 6)	5 February 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 5 of 6)	5 February 2024
22-T004_33	Proposed Link Road Scenario 1 (sheet 6 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 1 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 2 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 3 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 4 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 5 of 6)	5 February 2024
22-T004_34	Proposed Link Road Scenario 2 (sheet 6 of 6)	5 February 2024
22-T004_32	Alternative TRL Arrangement (North of Love Lane)	30 January 2024

5. The mix of any market housing for any phase of development authorised by this planning permission, including details of dwelling size and type, shall be agreed in writing by the local planning authority as part of any relevant reserved matters application(s). Development of each phase shall thereafter be carried out in accordance with the approved mix.
6. The number of dwellings to be constructed shall not exceed 830 in Scenario 1 or 1000 in Scenario 2.

7. Prior to the first Reserved Matters application a site wide Design Code document for the site shall be submitted to and approved in writing by the local planning authority. The site wide Design Code shall be produced using the latest industry standard/national Design Code guidance and shall show how Active Design principles have been met. The site wide Design Code shall reference the Design and Access Statement, the approved Parameter Plans, Highway Access drawings and shall in any case address and codify the following:

Built form:

- Block structure
- Building forms and types
- Use of building heights to enhance legibility
- Corner treatments
- Elevation composition
- Placement of entrances
- Building materials palette

Public realm:

- Landscape design principles
- Planting palette
- Street types
- Surface materials palette
- Street furniture and design of play equipment, lighting and boundary treatments
- Integration of car parking and traffic calming measures
- Incorporation of public art

Private space:

- Living standards which will establish a benchmark for detailed submissions to be assessed against, e.g. storage provision for individual dwellings, provision of private outdoor space
- Integration of usable terraces and balconies

Other matters:

- Character areas
- Types of refuse and recycling storage
- Cycle parking
- Standards to be applied (including back-to-back distances, car parking ratios, garden sizes) which shall have regard to the adopted standards.

Each application for approval of Reserved Matters for each phase shall comply with the approved site wide Design Code and the approved plans. Each

application for approval of Reserved Matters for a phase shall include a Design Code Compliance Statement demonstrating compliance with the approved site wide Design Code.

Each phase of the development shall be constructed in accordance with the approved reserved matters.

8. Prior to the submission of the first of the Reserved Matters a site wide phasing strategy including a timetable for delivery of development and associated infrastructure to be provided within each Phase shall be submitted to and approved in writing by the local planning authority. This shall include details of:

A) the timing for the delivery of:

- the residential units and associated infrastructure;
- the non-residential components and associated infrastructure;
- highway works including footpath and cycle links.

B) mechanisms for monitoring the implementation of and delivery of the development and its associated infrastructure and facilities.

The phasing strategy shall be accompanied either by a statement confirming that the proposed phasing of development falls within the parameters assessed in the Environmental Statement accompanying the application or by an Addendum to the Environmental Statement.

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

9. Each application for the approval of Reserved Matters for a phase incorporating residential units shall be accompanied by:

A) a schedule of residential accommodation proposed within that phase

B) details of how the remaining quantum of development permitted and the requirement for open space can be satisfactorily accommodated on the Site.

10. Room sizes in all dwellings constructed as part of the development hereby approved must meet or exceed the Nationally Described Space Standards (March 2015).

11. The relevant application(s) for the approval of Reserved Matters relating to the multi modal bridge over the railway line shall include:

- a) Drawings and cross sections to show how the bridge can be accommodated on the site and within the landscape
- b) All details of segregated vehicle, pedestrian, cycle and equestrian provision including the roadway, cycleway, pedestrian path and any bridleway
- c) All material finishings

- d) Signage
- e) Security measures
- f) External lighting

The bridge development shall be carried out in accordance with the approved details, the bridge delivery plan and a programme of implementation (as identified in schedule 12 of the s106 legal agreement) and shall be maintained and retained as approved.

12. The relevant application(s) for the approval of Reserved Matters in respect of the primary school shall provide full details of the following:
- a) Drawings and cross sections to show how the school can be accommodated on the site and within the landscape
 - b) Outdoor and indoor play space
 - c) Material and boundary finishes
 - d) Signage
 - e) Security measures
 - f) External lighting
 - g) A plan to show the location of the associated car parking spaces
 - h) Compliance with BREEAM 'Outstanding' if the school building is more than 1,000m² in floorspace.

The primary school facility shall be constructed as approved.

13. The relevant application(s) for the approval of Reserved Matters for the health centre facility shall provide full details of the following:
- a) Drawings and cross sections to show how the building can be accommodated on the site and within the landscape
 - b) Material and boundary finishes
 - c) Signage
 - d) Security measures
 - e) External lighting
 - f) A plan to show the location of associated car parking spaces
 - g) A programme for implementation.

The health centre shall be designed to meet the building and operational standards of the NHS and shall be constructed as approved in accordance with the programme of implementation and shall be maintained and retained as approved.

14. The relevant application(s) for the approval of Reserved Matters for the local centre buildings and uses shall include the following:
- a) Drawings and cross sections to show how the building(s) can be accommodated on the site and within the landscape
 - b) Material and boundary finishes
 - c) Signage

- d) Security measures
- e) External lighting
- f) A plan to show the location of the associated car parking spaces
- g) A programme for implementation.

The local centre buildings and uses shall be constructed as approved in accordance with the programme of implementation and shall be maintained and retained as approved.

15. Each application for the approval of Reserved Matters for a phase shall include details of all materials to be used in the external surfaces of the buildings to be constructed in that phase and shall be in accordance with the approved Design Code.

Notwithstanding the information on any approved plans or approved parameter plans, no development above ground level shall commence for each phase until written details or samples of all materials to be used in the construction of the external surfaces that accord with the approved Design Code for the site have been submitted to and approved in writing by the local planning authority.

The development in that phase shall be carried out using the approved materials and/or details.

16. Each application for the approval of Reserved Matters for a phase shall include details of the siting, height, design and materials for all boundaries including gates, fences, walls, railings and piers to be constructed in that phase and shall be in accordance with the approved Design Code for the site.

Notwithstanding the information on any approved plans or approved parameter plans, no development above ground level shall commence for each phase until written details or samples of all boundary treatments to be used in the construction of that phase have been submitted to and approved in writing by the local planning authority.

The development in that phase shall be carried out using the approved materials and/or details and shall be retained thereafter.

17. Each application for the approval of Reserved Matters for a phase shall be accompanied by an Energy Statement. Each Energy Statement shall demonstrate that the proposed buildings in that phase will achieve the generation of at least 20% of their energy needs using decentralised, renewable or low carbon technologies.

No development shall commence pursuant to the relevant Reserved Matters approval for that phase until the Energy Statement for that phase has been approved in writing by the local planning authority.

The measures contained in each approved Energy Statement shall be implemented and operational prior to the occupation of the buildings for that phase and shall thereafter be retained in the approved form.

18. Prior to or alongside the submission of any Reserved Matters application(s) a Site Wide Green Infrastructure Plan shall be submitted to and approved in writing by the local planning authority. The approved Site Wide Green Infrastructure Plan shall provide either 15.9 hectares of open space and SANG land for Scenario 1 or 19.2 hectares of open space and SANG land for Scenario 2 and shall be in broad accordance with the areas of Green Infrastructure identified on the approved Landscape Parameter Plan.

The development shall be carried out in accordance with the approved Green Infrastructure Plan.

19. Each application for the approval of Reserved Matters for a phase that includes the Green Infrastructure and Open Space shall include the following details (where applicable):
 - a) Open Space and any SANG land
 - b) grassland management and restoration
 - c) a programme of implementation
 - d) locations and specifications and product literature relating to street furniture including signs, seats, bollards, planters and refuse bins
 - e) whether public access will be permitted to such land
 - f) details of measures to promote ecological interests and biodiversity.

The Green Infrastructure and Open Space provision shall be implemented in accordance with the programme of implementation and the Reserved Matters approval for that phase. The Green Infrastructure and Open Space shall be completed and available for use prior to the first occupation of that phase and shall be permanently maintained and retained for such amenity purposes thereafter.

20. Each application for the approval of Reserved Matters for a phase shall include details of the provision of play space for that phase (where applicable) that accords with the requirements of Appendix 5 of adopted Thurrock LDF Core Strategy and Policies for the Management of Development (2015) or any successor document or policy to this. This shall include:
 - (a) 4 areas of equipped children's play space for Scenario 1; or
 - (b) 5 areas of equipped children's play space for Scenario 2

Such details shall include, for that phase, all items of play equipment, ground surfacing, enclosure of the area(s) incorporating self-closing gates, seating, refuse facilities and safety notices.

No development of the relevant phase shall be commenced until details for the play space for that phase have been approved in writing by the local planning authority.

No more than 50% of the dwellings in the relevant phase shall be occupied unless and until the play space in that phase has been implemented and completed in accordance with the approved details.

The children's play space(s) shall be maintained and retained for such amenity purposes thereafter.

21. Under Scenario 1 no development of Phase 1 shall be commenced until details for the multi-use game area (MUGA) to be provided in Phase 1 have been submitted to and approved in writing by the local planning authority. No more than 50% of the dwellings within Phase 1 shall be occupied until the MUGA has been completed in accordance with the approved details and is available for use. The MUGA shall be maintained and retained for such amenity purposes thereafter.

Under Scenario 2 no development of Phase 2 shall be commenced until details for the multi-use game area (MUGA) to be provided in Phase 2 have been submitted to and approved in writing by the local planning authority. No more than 50% of the dwellings within Phase 2 shall be occupied until the MUGA has been completed in accordance with the approved details and is available for use. The MUGA shall be maintained and retained for such amenity purposes thereafter.

22. No development shall commence in Phase 1 until a detailed specification for allotments has been submitted and approved in writing by the local planning authority. The specification shall include the following details:
- a) 32 allotment plots within an area of around 0.16 hectares for Scenario 1 or 68 allotment plots within an area of around 0.54 hectares for Scenario 2
 - b) A plan to show the location and layout of the allotments.
 - c) Access and parking arrangements to allow easy and safe access to the allotments. This should include vehicular access and a turning area, access for those with disabilities, cycle parking within the site and associated car parking;
 - d) Boundary treatment, including security arrangements;
 - e) Location of communal areas and water supply;
 - f) A programme of implementation and ongoing management.

No more than 50% of the dwellings within Phase 2 (or any subsequent phase of the development) shall be occupied until the allotments have been completed in accordance with the approved specification. The allotments shall be retained and maintained for their intended use thereafter.

23. Each application for approval of Reserved Matters shall include a Landscaping Scheme for approval in writing by the local planning authority that is in accordance with the approved Design Code. This shall include details of:
- (a) hard landscaping structures and materials
 - (b) trees, hedgerows and other landscape features to be removed, retained, restored or reinforced
 - (c) the location, species and size of all new planting including trees, shrubs, hedging, herbaceous plants and grass
 - (d) written planting specifications (including cultivation and other operations to achieve successful establishment).
 - (e) pit design for tree planting within streets or areas of hard landscaping.
 - (f) existing and proposed levels comprising spot heights, gradients and contours, grading, ground modelling and earth works.
 - (g) locations and specifications and product literature relating to street furniture including signs, seats, bollards, planters, refuse bins.
 - (h) whether public access will be permitted to such land.
 - (i) details of proposals to promote ecological interests and biodiversity in accordance with the Ecological Mitigation and Management Plan.
 - (j) a programme of implementation, including a timetable linked to the occupation of development.

The Landscaping Scheme and associated works shall be implemented as approved in accordance with the programme of implementation and thereafter retained as approved.

If within five years from the completion of the development within the relevant Phase a tree, shrub or hedgerow planted as part of the Landscaping Scheme is removed, destroyed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, a replacement tree (as the case may be) shall be planted within the site of such species and size and shall be planted at such time as specified in writing by the Local Planning Authority.

24. No development shall be occupied until a Landscape Management Plan (LMP) including a programme for implementation, addressing management responsibilities and maintenance schedules for upkeep of all landscaped areas, other than domestic gardens been submitted to and approved in writing by the local planning authority. The LMP shall be implemented in accordance with the details of the programme of implementation and shall be maintained and retained thereafter.
25. No development for a phase shall commence until tree protection measures have been carried out in accordance with the requirements of BS5837:2012 and retained in accordance with the approved details for the duration of the construction phase.

If within five years from the completion of the development within the relevant Phase a retained tree, shrub or hedgerow is removed, destroyed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, a replacement tree (as the case may be) shall be planted within the site of such species and size and shall be planted at such time as specified in writing by the Local Planning Authority.

26. No occupation shall commence of the primary school hereby permitted until a community use agreement prepared in consultation with Sport England has been submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority.

The agreement shall apply to the school hall, natural turf playing field and supporting ancillary changing and parking facilities as a minimum and include details of pricing policy, hours of use, access by community users, management responsibilities and a mechanism for review, and anything else which the Local Planning Authority in consultation with Sport England considers necessary to secure the effective community use of the facilities.

The development shall thereafter be operated in strict compliance with the approved agreement.

27. No development shall commence until an Ecological Mitigation and Management Plan (EMMP) has been submitted to, and approved in writing by, the Local Planning Authority. The EMMP shall comply with the mitigation proposals identified in Chapter 6 of the Environmental Statement including provision of SANG land and shall:

- a) include the results of any up-to-date ecological surveys which may be required, with the type and extent of such surveys to be informed by a preliminary ecological appraisal;
- b) set out the mitigation measures required to protect the species and habitats identified in the surveys during the construction phase;
- c) set out the management requirements necessary to ensure long term maintenance of the species and habitats identified in the Surveys during the occupation phase;
- d) set out the measures proposed for the control, treatment or removal of invasive species;
- e) outline the broad governing principles for the creation and retention of additional Green Infrastructure within the wider site;
- f) Set out a timetable for implementation.

The EMMP shall be implemented in accordance with the approved timetable and shall be maintained and retained at all times thereafter.

28. No development shall commence in each phase until full details of any access points to the adopted highway have been submitted to and approved in writing by the local planning authority.

No residential unit or non-residential unit in that phase shall be occupied until the access points have been laid out, constructed and surface finished in accordance with the approved details.

29. The road(s) within each phase hereby permitted (apart from the wearing surface) and footway(s) shall be constructed prior to the occupation of any residential units within that phase that are accessed from such road(s) or footway(s).

The road(s) and turning space(s) shall be constructed to a surface course level to the frontage of each dwelling within six months of the date of the first occupation of that dwelling.

30. Applications for approval of Reserved Matters for each phase pursuant to Condition 29 shall include (where applicable) at each internal estate road junction clear to ground level visibility splays with dimensions based on the Manual for Streets criteria for emerging visibility sight splays, as measured from and along the nearside edge of the carriageway.

Such visibility splays shall be approved in writing by the local planning authority and provided before the road is first used by vehicular traffic and retained free of any obstruction in perpetuity.

31. On any bend within an internal estate road visibility should be provided in accordance with the Manual for Streets with details to be submitted pursuant to the reserved matters.

Such visibility splays shall be approved in writing by the local planning authority and provided as approved before the road is first used by vehicular traffic and thereafter retained free of any obstruction in perpetuity.

32. Application for approval of Reserved Matters for each phase of the development shall include details of pedestrian sight splays measuring 1.5 metres x 1.5 metres measured from the back of the footway with no obstruction within 0.6m and 2m in height.

The sight splays shall be approved in writing by the local planning authority and shall be laid out in accordance with the approved proposals each side of the proposed vehicle access onto a road and thereafter be permanently maintained free of any obstruction.

33. Each application for the approval of Reserved Matters for a phase shall include the submission of a phase wide Parking Strategy (including proposals for its future management) for all vehicle types, including electric vehicles with details of charging provision, to accord with the Council's adopted parking policy 'Thurrock Parking Design and Development Standards' (February 2022) or any

subsequent amended Thurrock Council parking standards document and the approved Design Code. No residential unit or non-residential unit in each phase shall be occupied until the phase-wide Parking Strategy including the details of the electric vehicle charging provision for that phase has been approved in writing by the Local Planning Authority.

Any approved parking areas shall be constructed, surfaced, laid out and made available for such purposes and the electric vehicle charging provision shall be installed and made available for such purposes in accordance with the approved Parking Strategy for all vehicle types for that phase prior to the first occupation of the relevant phase to which they relate and shall be always maintained and retained as such.

34. Any garage space or car port space shall be constructed to the minimum internal space dimensions of 3 metres in width and 7 metres in depth and shall be used for no other purpose than the parking of vehicles and ancillary uses associated with the storage of vehicles. Any garage space provided, with its vehicular door(s) facing the highway, shall be sited a minimum of 6 metres from the highway boundary.
35. No development shall be occupied until a suitably qualified and experienced travel plan coordinator has been appointed to implement, monitor and promote the achievement of the targets set out in the approved travel plan pursuant to condition 36. The travel plan coordinator shall be retained until the expiry of the final monitoring period. The monitoring period is from no less than first occupation until the period ending 5 years following the completion and final occupation of the development. The identity (including relevant qualifications) of the appointed travel plan coordinator shall be notified to the local planning authority each time a travel plan coordinator is appointed.
36. Prior to the occupation of the dwellings hereby permitted, a Travel Plan shall be submitted to and agreed in writing by the local planning authority. The Travel Plan shall include detailed and specific measures to reduce the number of journeys made by car to and from the site and shall include specific details of the operation and management of the proposed measures. The measures shall be implemented upon the occupation of the dwellings hereby permitted and shall be kept in place thereafter. Upon written request, the applicant or their successors in title shall provide the local planning authority with written details of how the measures contained in the Travel Plan are being undertaken at any given time.
37. Prior to the use of the building(s) hereby permitted, a Travel Plan shall be submitted to and agreed in writing with the local planning authority. The Travel Plan shall include detailed and specific measures to reduce the number of journeys made by car to and from non-residential uses and building(s) hereby permitted and shall include specific details of the operation and management of the proposed measures. The measures shall be implemented upon the use of the building(s) hereby permitted and shall be kept in place thereafter. Upon written request, the applicant or their successors in title shall provide the local

planning authority with written details of how the agreed measures contained in the Travel Plan are being undertaken at any given time.

38. Prior to occupation of any of the following:

- a) Primary School and any nursery/early years uses
- b) Health Centre
- c) Local centre building(s)

Details of the hours of use and/or of delivery and collection shall be submitted to and approved in writing by the local planning authority. The use of the premises shall be implemented in accordance with the details as approved.

39. No external plant or machinery shall be used for of any of the following:

- a) Primary School and any nursery/early years uses
- b) Health Centre
- c) Local centre building(s)

unless and until details of the ventilation and extraction equipment have been submitted to and approved in writing by the local planning authority.

Any measures required by the local planning authority to reduce noise from the plant or equipment shall be completed prior to the ventilation and extraction equipment being brought into use in accordance with the details as approved and shall be retained and maintained as such thereafter.

40. Prior to occupation of any of the following:

- a) Primary School and any nursery/early years uses
- b) Health Centre
- c) Local centre building(s)

Detailed plans of the number, size, location, design and materials of bin and recycling stores to serve these uses together with details of the means of access to bin and recycling stores shall be submitted to and approved in writing by the local planning authority. The approved refuse and recycling stores shall be provided prior occupation of the use to which the refuse and recycling storage facility relates and permanently retained in the form agreed thereafter.

41. Each application for the approval of Reserved Matters shall include details of the residential refuse and recycling storage arrangements which shall be in accordance with the requirements of the approved Design Code. Details will be approved in writing by the local planning authority.

The residential refuse and recycling storage arrangements shall include details of the number, size, location, design and materials of bin and recycling stores / communal waste systems to serve the development, together with details of the

means of access to bin and recycling stores / communal waste systems for residents and refuse operatives, including collection points if necessary. The development shall make provision for:

- (a) 1x 180 litre container for refuse, 1 x 240 litre container for recycling and 1 x 240 litre container for kitchen and garden waste per Residential Unit;
- (b) Flats containing more than 4 units shall be provided with communal bins.

The calculation used for refuse and recycling provision shall be as follows:

- (c) Number of households x 180-litre capacity (residual waste)
- (d) Number of households x 240-litre capacity (dry recycling)

or such other equivalent waste capacity for each residential unit if a communal waste system is provided.

The bin and recycling stores as approved shall be provided prior to occupation of any of the residential units that they serve and shall be constructed and permanently maintained and retained in the form approved.

- 42. Each application for the approval of Reserved Matters shall include details of all external lighting proposals for the uses in that Phase (except for lighting for each dwelling house). The details shall be approved in writing by the local planning authority and the external lighting shall be installed as approved and shall be retained and maintained at all times thereafter.
- 43. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and its appendices, prepared by Aegaea Limited, referenced AEG0728_RM18_Tilbury_07 and dated 31/01/2024, and the following mitigation measures detailed within the FRA:
 - a) The development layout shall be as detailed upon drawing number 008, revision R dated 22.08.2024 and drawing number 014, revision L, dated 22.08.2024.
 - b) Finished ground floor levels for all more vulnerable development, as detailed in Annexe 3 of the NPPF, shall be set no lower than the 0.5% (1 in 200) annual probability breach flood level including climate change. This level is assumed to be 6.39 metres above Ordnance Datum (AOD) in the absence of breach modelling. An internally accessible refuge should be provided on the first floor set no lower than the 0.1% (1 in 1000) annual probability breach flood level including climate change. This level is assumed to be 6.67 metres above Ordnance Datum (AOD) in the absence of breach modelling.
 - c) Finished ground floor levels of any single-storey more vulnerable development, as detailed in Annexe 3 of the NPPF, shall be set no lower than set no lower than the 0.1% (1 in 1000) annual probability breach flood level including climate change. This level is assumed to be 6.67 metres above Ordnance Datum (AOD) in the absence of breach modelling.

The mitigation measures shall be fully implemented prior to occupation in accordance with the site wide phasing strategy.

44. Prior to the first Reserved Matters application, a Site Wide Surface Water Drainage Strategy to serve the development shall be submitted to and approved in writing by the local planning authority. The Site Wide Surface Water Drainage Strategy shall include the following details:
- a) Full details of all components of the proposed surface water drainage system including dimensions, locations, gradients, invert levels, cover levels and relevant construction details.
 - b) Supporting calculations confirming compliance with the Non-statutory Standards for Sustainable Drainage, and the agreed discharge rates for each catchment and the attenuation volumes to be provided.
 - c) Details of the maintenance arrangements relating to the proposed surface water drainage system, confirming who will be responsible for its maintenance and the maintenance regime to be implemented.
 - d) Infiltration tests to be carried out in line with BRE 365 for the locations where SUDS are proposed.
 - e) Detailed engineering drawings of each component of the drainage scheme final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - f) Pollution interceptors and/or measures to prevent pollution entering into water courses or contaminating the ground.
 - g) A programme for implementation.
 - h) Details of future maintenance and management arrangements.

The Site Wide Surface Water Drainage Strategy shall be implemented as approved and in accordance with the programme for implementation. The Site Wide Surface Water Drainage Strategy shall then be retained and maintained thereafter.

45. No development shall commence until a foul water strategy, including details of the connection point(s) and discharge rate(s), has been submitted to and approved in writing by the local planning authority. No part of the development for a phase shall be occupied until the works have been carried out in complete accordance with the approved foul water strategy for that phase.
46. If, during development, contamination not previously identified is found to be present, then no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the local planning authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be carried out in accordance with the approved strategy.

47. With respect to the risks posed by the proximity of the site to major hazard sites and major accident hazard pipelines the development shall only be carried out in accordance with the details a-d below:
- a. The area allocated for the primary school (including school buildings and playing fields but excluding staff parking area) shall be located outside of any HSE consultation zones, or (ii) if the primary school site encroaches into the outer consultation zone of the pipeline the total area of the school shall be limited to no more than 1.4 hectares.
 - b. No facilities which involve outdoor use by the public such as play areas, sports facilities shall be located within the inner consultation zone.
 - c. No facilities which involve outdoor use by the public such as play areas, sports facilities, which may lead to more than 100 people being present at any one time, shall be located within the middle consultation zone.
 - d. No facilities which involve outdoor use by the public such as play areas, sports facilities, which may lead to more than 1000 people being present at any one time, shall be located within the outer consultation zone.
48. No development shall commence until a programme of archaeological evaluation has been secured and undertaken in accordance with a written scheme of investigation which has been first submitted to and approved in writing by the local planning authority.

A mitigation strategy detailing the approach to excavation/preservation shall be submitted to and approved in writing by the local planning authority following the completion of the programme of archaeological evaluation.

No development shall commence on those areas of the site containing archaeological deposits until the satisfactory completion of any fieldwork and/or other requirements detailed in the mitigation strategy.

Within six months of the completion of any fieldwork a post-excavation assessment shall be submitted to and approved in writing by the local planning authority. This will include a programme and timetable for completion of post-excavation analysis and preparation of a full site archive. Any post-excavation analysis shall be carried out as approved.

49. No development shall commence until a site wide Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall address the following matters:
- (a) Hours of use for the construction of the development
 - (b) Hours and duration of any piling operations
 - (c) Vehicle haul routing in connection with construction, remediation and engineering operations
 - (d) Wheel washing and sheeting of vehicles transporting loose aggregates or similar materials on or off site

- (e) Details of construction any access or temporary access, and details of temporary parking requirements
- (f) Road condition surveys before demolition and after construction is completed; with assurances that any degradation of existing surfaces will be remediated as part of the development proposals. Extents of road condition surveys to be agreed as part of this CEMP
- (g) Location and size of on-site compounds (including the design layout of any proposed temporary artificial lighting systems)
- (h) Details of any temporary hardstandings
- (i) Details of temporary hoarding
- (j) Details of the method for the control of noise with reference to BS5228 together with a monitoring regime
- (k) Measures to reduce vibration and mitigate the impacts on sensitive receptors together with a monitoring regime
- (l) Measures to reduce dust with air quality mitigation and monitoring
- (m) Measures for water management including wastewater and surface water discharge
- (n) A method statement for the prevention of contamination of soil and groundwater and air pollution, including the storage of fuel and chemicals
- (o) Details of a procedure to deal with any unforeseen contamination, should it be encountered during development
- (p) A Site Waste Management Plan
- (q) Details of security lighting layout and design
- (r) Contact details for site managers including information about community liaison including a method for handling and monitoring complaints.

No development in any phase shall be carried out other than in accordance with the approved CEMP.

50. No construction of any dwellings on that part of the site shown edged in red on drawing number 21-M015 (rev 2) shall be begun until an updated noise assessment has been submitted to, and approved in writing by, the local planning authority. The noise assessment shall include: (i) the best available current survey information to address noise from industrial operations at the EMR metal recycling facility at Station Road, East Tilbury; and (ii) a noise mitigation scheme which shall be in accordance with the conclusions and recommendations set out in the following reports:

- Assessment of Residential & School Amenity prepared by Waterman (reference: WIE19480-102-R-2.3.3_PlanningNoise) dated September 2023; and

- Land To the East of East Tilbury Technical Note – Noise Mitigation prepared by Waterman (reference: WIE19480-109-TN-1.1.3) dated 8 February 2024.

The noise mitigation scheme shall include:

- (a) a specification for the proposed dwellings to include: (i) a glazing system with an R_w value of not less than 40 dB for the frontages of those dwellings that are to be located on the south-west of the spine road; (ii) a glazing system with an R_w value of not less than 35 dB for the frontages of those dwellings that are to be located on the south-east of the spine road; and (iii) ventilation/cooling in accordance with approved document O and the acoustics ventilation and overheating residential design guide dated January 2020;
- (b) full details of the measures to be incorporated into the design of the proposed dwellings to achieve internal day-time noise levels in respect of noise emanating from the EMR metal recycling facility of 26 dB LAeq, 16 hr in habitable rooms with openable windows (or such other levels as are specified in any replacement of BS8233: 2014 that is in force at the time when the noise mitigation scheme is submitted subject to any applicable penalty rating); and
- (c) details of any sealed windows that are proposed to be incorporated into the design of the proposed dwellings.

All dwellings on that part of the site shown edged red on drawing number 21-M015 (rev 2) shall be built in accordance with the approved noise mitigation scheme which shall subsequently be retained.

51. Prior to the commencement of development for each phase details of a scheme of noise mitigation measures in full compliance with all recommendations of the following acoustic reports shall be submitted to and approved in writing by the local planning authority:

- Assessment of Residential & School Amenity prepared by Waterman, reference: WIE19480-102-R-2.3.3_PlanningNoise, dated: September 2023
- Land To the East of East Tilbury Technical Note – Noise Mitigation, prepared by Waterman, reference: WIE19480-109-TN-1.1.3, dated 8th February 2024.

The approved scheme of noise mitigation shall be implemented prior to occupation of that phase and shall be maintained thereafter.

APPEARANCES

FOR THE APPELLANT:

James Strachan KC Instructed by Ian Ginbey of Clyde and Co.

He called:

Rupert Thornely-Taylor Rupert Taylor Ltd

Attendees at the planning obligations / conditions round table session were:

James Bompas Icen Projects

Ian Ginbey Clyde and Co

FOR THE LOCAL PLANNING AUTHORITY:

James Pereira KC Instructed by Thurrock Council Solicitor

Attendees at the planning obligations / conditions round table session were:

Chris Purvis Major Applications Manager, Thurrock Council

Elizabeth Reynolds Major Applications Planner, Thurrock Council

Matthew Ford Transport Development Manager, Thurrock Council

INTERESTED PARTIES:

Daniel Baker for EMR Director, Broodbakker Acoustic Consultants

DOCUMENTS SUBMITTED DURING THE INQUIRY

Note on Environmental Nuisance and Regulation on Behalf of EMR

Second Note on Environmental Nuisance and Regulation on Behalf of EMR

Statement of Common Ground on Viability

Principal Statement of Common Ground

Letter to the Inspector from Sport England dated 2 October 2024

Letter to the Inspector from Thurrock Residential Developers Partnership dated September 2024 [sic]

Letter to Thurrock Council from HSE dated 30 August 2024

Final Planning Conditions

Draft Unilateral Undertaking

CIL Compliance Statement

Closing Statement on behalf of the Appellant

ENDS