

Appeal Decision

Inquiry held on 21-24 October and 5-7 November 2025

Site visit made on 7 November 2025

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Appeal Ref: APP/W1525/W/25/3365611

Land West of The Fox and Raven, Chelmer Village Way, Chelmsford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Sean Marten of Countryside Properties (UK) Limited and Stonebond Properties (Chelmsford) Ltd against the decision of Chelmsford City Council.
- The application Ref is 23/01105/FUL.
- The development proposed is residential development comprising the construction of 55 affordable homes, provision of open space, landscaping, sustainable drainage, ground re-profiling, formation of bund, cycle and footpath links, vehicular access from Chelmer Village Way and highway changes to Chelmer Village Way.

Decision

1. The appeal is dismissed.

Applications for costs

2. During the Inquiry, applications for costs were made by the Custodians of the Chelmer Valley Water Meadows (the Custodians) against the appellants (Countryside Properties (UK) Limited and Stonebond Properties (Chelmsford) Ltd) and Chelmsford City Council. These applications are the subject of separate decisions.

Preliminary Matters

3. The description of development above is taken from the Council's decision notice. The original description referred to 54 homes and the transfer of land to facilitate the creation of a country park.
4. The Custodians, representing residents from Chelmsford and the surrounding area, were awarded Rule 6 status early in the appeal process and took an active role at the Inquiry.
5. A completed and executed Section 106 agreement (S106) dated 20 November 2025 was submitted shortly after the Inquiry closed. This is assessed below.
6. In addition to the accompanied site visit on 7 November 2025, I looked at the area surrounding the site on 20 October 2025 and visited other locations within the Green Wedge on 4 November 2025.
7. A draft update to the National Planning Policy Framework (NPPF) was published for consultation on 16 December 2025. The main parties consider that the draft text should carry little if any weight as it is subject to change. I concur with this position and so have not considered the draft update as part of my decision.

Main Issues

8. At the case management conference, 9 main issues were set out. However, the fifth issue on the extent of the shortfall in the Council's 5 year housing land supply was no longer contested by the start of the Inquiry. Therefore, the 8 main issues are as follows:
- a) the effect of the proposed development on the Green Wedge;
 - b) the effect of the proposed development on the significance and setting of the Chelmer and Blackwater Navigation Conservation Area and nearby listed buildings;
 - c) the effect of the proposed development on trees and woodland;
 - d) whether the proposed development would represent good design;
 - e) the effect of the proposed development on flood risk, having regard to the sequential and exception tests and the proposed drainage scheme;
 - f) the effect of the proposed development on highways;
 - g) whether the proposed development would make adequate provision for affordable housing, infrastructure requirements, and protected European habitat sites; and
 - h) the overall planning balance, having regard to any relevant material considerations including any proposed benefits (such as affordable housing and the transfer of land to the Council).

Reasons

(a) Green Wedge

The existing site and its surroundings

9. The appeal site is located on the southern side of Chelmer Village Way next to the junction with the A138 Chelmer Road. While the site was used as a temporary compound for the construction of the Chelmer Road Viaduct in the mid-2010s, little evidence of this use remains, and the site has reverted to a natural and undeveloped state. The site is broadly rectangular and contains rough scrub bounded by trees and hedges. The southern boundary is a predominantly hawthorn hedgerow measuring up to 7m tall, while the eastern boundary is a mixture of Leyland cypress and hawthorn with a 17m tall Corsican pine. The western boundary is a young hawthorn hedge around 2m tall, while the northern boundary contains a wide variety of tree and hedgerow species.
10. To the north is Chelmer Village Retail Park which contains large commercial buildings and surface car parking, while to the west are houses and apartments comprising an inner suburb of the city. To the east of the site is The Fox and Raven Public House and Miller and Carter Steakhouse, both located in historic buildings with various outbuildings and surface car parking. Further east are several mid-20th century bungalows on Mill Vue Road, along with Barnes Mill, Barnes Mill House and Prentices Farm, but otherwise little built development. To the south of the site are water meadows either side of the River Chelmer (also known as the Chelmer Navigation) which stretch south to the A1114 Essex Yeomanry Way and east to the A12 bypass and wider countryside beyond.

11. Outside the red line of the site (Parcel A) are two parcels of land in the same ownership outlined in blue, totalling around 29.5 hectares. Parcel B is water meadow immediately to the south of the site up to the north bank of the river. Parcel C contains open space and water meadow to the east of Mill Vue Road as far as Sandford Mill Road excluding smaller areas in separate ownership. The area intended for biodiversity net gain (BNG) purposes is located with Parcel C.
12. In planning policy terms, the site is situated within the Green Wedge as part of the countryside outside the urban area of Chelmsford. Strategic Policy S11 of the adopted Chelmsford Local Plan (CLP) sets out the approach to development within the countryside, seeking to balance needs with avoiding adverse impacts. The policy notes that the Green Wedge has an identified intrinsic character and beauty and is a multi-faceted distinctive landscape providing important open green networks which shape the city's growth, character and appearance. These networks prevent urban sprawl and settlement coalescence and provide for wildlife, flood storage capacity, leisure and recreation, cycling, and walking. The policy states that development which materially harms the role, function and intrinsic character and beauty of the Green Wedge will not be approved.
13. CLP Policy DM7 sets out what development is appropriate in the Green Wedge and provided detailed criteria by which proposals will be assessed. Although DM7(A) permits new buildings and structures which do not conflict with the Green Wedge purposes, it is common ground that the proposed development does not benefit from any of the criteria including (viii) on limited affordable housing for local needs.
14. The CLP and its Policies Map refer to the Green Wedge as a single entity. Nevertheless, the CLP evidence base¹ divides the Green Wedge into three river valleys to the north, east and south-west of Chelmsford. The area of Green Wedge known as Chelmer East starts in the city centre before heading east over Chelmer Road past the site and into the wider water meadows bordered by Chelmer Village Way and the A1114. It continues east of the A12 to the city boundary with Maldon.
15. The Green Wedge here gradually unfolds from the confines of the city into a more open river landscape. Although major road infrastructure, pylons and sewage works intrude into the Green Wedge, there is relatively little built development with a strong sense of transition into the countryside. Field patterns and sizes vary, often defined by trees and hedgerows. The CLP evidence base for Parcel CE3, which includes the site, refers to elements of both open and enclosed character along with medium and long distance views to and from the city.
16. In landscape character terms, the site and surrounding area fall within *A7 Lower Chelmer River Valley* whose key characteristics include a shallow valley with arable farmland and a strong sense of place and tranquillity away from settlements and transport infrastructure. Reference is made to open and expansive views but also trees and hedgerows delineating field boundaries along the river.
17. The Green Wedge sub-area Parcel CE3 contains a network of footpaths allowing good public access and recreation opportunities from the city. It also provides for wildlife and flood storage as evidenced by designated ecology sites and its Flood Zone 3 status. Despite the proximity of urban development on three sides, it has an intrinsic character and beauty as a large tract of countryside extending up to the edge of the city centre. Except for prominent views of The Fox and Raven, there is

¹ Green Wedges and Green Corridors: Defining Chelmsford's River Valleys (February 2017)

little obvious built form south of Chelmer Village Way when travelling through the Green Wedge. Views of housing and the retail park further to the north are more distant.

18. Guidance² from the Landscape Institute makes clear that spatial designations such as Green Belt or green gaps are not in themselves an indicator of high landscape value. Nevertheless, the Green Wedge is designated for more than just spatial reasons given its intrinsic character and beauty and multifunctional qualities. While the Inspector examining the CLP considered it had not been demonstrated that the Green Wedge was a valued landscape, it was not ruled out. It remains open for decision makers to assess and conclude on valued landscape status without necessarily being landscape experts, provided any conclusions are based on the evidence before them³.
19. The Green Wedge in this location has natural and cultural heritage interest and distinctive landscape quality, with recreational opportunities, scenic views, and tranquillity. It also has a functional role as a multi-faceted landscape that provides for people, wildlife and water management. Therefore, while not particularly rare or an important example of a landscape character type, or with any particular associations, the Green Wedge here could be regarded as a valued landscape.
20. The undeveloped site is on the edge of the Green Wedge near to two main roads and large scale buildings. It is private land and enclosed by planting, but its value to the Green Wedge as open land is not reliant on public access or visibility. Nevertheless, the boundary vegetation does not provide a complete screen, and the open and undeveloped nature of the site can be appreciated travelling along footpaths and cycle paths next to Chelmer Road and Chelmer Village Way with glimpses of the wider valley to the south and east. The southern hedgerow is a prominent feature looking north from public rights of way with glimpses into the site.
21. The site is not designated for ecology reasons, but neither is it devoid of wildlife value, while the southern parts of the site lie within Flood Zones 2 and 3. The residential and retail development to the north and west is set back by wide roads and verges while the buildings to the east are generally less apparent due to vegetation screening. Therefore, despite some urbanising influences, the site appears separate and distinct from the urban area and so makes an important and positive contribution to the Green Wedge. Conversely, its peripheral location, unkempt condition and limited functionality means that it only makes a limited positive contribution to the Green Wedge as a valued landscape.

The effect of the proposed development on the Green Wedge

22. The proposed development would comprise a series of courtyard blocks either side of an east-west spine road with pedestrian and vehicular access onto Chelmer Village Way. While areas of green space would be provided within the development including an orchard, the site would cease to be open and undeveloped due to the extent of built form.
23. The buildings would be mostly two storey houses or flats, with three storey buildings on the western side. Each building would have a steeply pitched roof with gable ends. Most of the trees and hedges along the northern and southern sides of

² Technical Guidance Note 02/21 Assessing Landscape Value outside National Designations, which complements Guidelines for Landscape and Visual Impact Assessment (Third Edition 2013)

³ For example, see Appeal Decision APP/W1525/W/24/3341747 Land east of Main Road, Broomfield, Chelmsford

the site would be removed to make way for housing, access points, and an engineering bund for flood management purposes. Replacement and additional planting along the western and southern boundaries would eventually help to soften the effect of the buildings, but even at Year 15 in summer months there would be views of roof forms from the south, especially the three storey elements. Deciduous species in the winter would provide less screening even once mature.

24. The development would not extend further south than existing buildings on either side and there is an obvious presence of existing housing and retail buildings to the north and west. However, the urban edge of Chelmsford would perceptibly encroach into the Green Wedge as it would not be completely screened. There would be no settlement coalescence or an extended finger of development into the countryside, but there would be urban sprawl.
25. There would be less dense replacement planting along the northern boundary with garden hedges and limited opportunities for new trees. The view across the site from Chelmer Village Way to the water meadows would be altered by housing and road infrastructure and potentially lost altogether. The site would be accessible to the public who could use its green spaces and cut through to the water meadows, and there is scope for some ecological enhancements. However, this would be seen in the context of a relatively dense suburban development.
26. In summary, the proposed development would have an adverse effect on the Green Wedge, detracting from its intrinsic character and beauty through urban sprawl without any meaningful benefits in terms of its role and function. While the site is only a small part of the Green Wedge, and has a limited role in valued landscape terms, its existing positive qualities and the scale of developments means that the adverse effects would be significant rather than minor in magnitude. Thus, there would be material harm to the Green Wedge contrary to CLP Policy S11. The proposal would also conflict with CLP Policy DM7 as it would not comply with any of the detailed criteria for appropriate forms of development.

(b) Heritage assets

The significance of the conservation area and the listed buildings

27. The site lies within the Chelmer and Blackwater Navigation Conservation Area which covers a considerable tract of land from the city centre eastwards to the boundary with Maldon. The river navigation forms the spine to this linear conservation area, flanked by fields and water meadows. Its character and appearance as well as its significance is greatly influenced by the history of canal navigation from the late 18th century onwards, with a series of locks and bridges along the route of the waterway. There are some buildings within the conservation area, including listed and historic structures, but otherwise it is largely free from built development. Road and pylon infrastructure detract to some extent, but the conservation area remains a predominately green, open and tranquil space.
28. Six Grade II listed buildings are located to the east of the site. Barnes Farmhouse (list entry number 1141357) is the nearest and operates today as The Fox and Raven pub. It dates from the late 16th century with late 17th century stuccoed elevations, timber sash windows and a clay tile roof. The special interest of this listed building is greatly informed by its architectural qualities and history as a former farmhouse, but also by its setting. The principal elevation with its moulded pediment faces west towards the site across a beer garden, while there is car

parking to the north. Windows on the south elevation provide views across the water meadows. Despite some modern pub-related features, the setting of the listed building makes a positive contribution to its special interest and significance.

29. The next listed building to the east is the “former barn at east edge of yard to the former Barnes Farmhouse” (list entry number 1141358) now operating as Miller and Carter Steakhouse. It is a 16th century five-bay timber framed barn with external black weatherboarding and a clay tile roof. Again, its special interest is strongly informed by its architectural and historic qualities as a former agricultural building, but also by its setting. A gabled entrance faces west towards the site and there are historic outbuildings to the south as well as car parking. Views across the water meadows are restricted, but the setting is generally positive given the proximity of historic structures including The Fox and Raven (Barnes Farmhouse) which contributes to its special interest and significance.
30. Towards the end of Mill Vue Road are two adjoining listed buildings known as Barnes Mill House (list entry number 1122621) and Barnes Mill (list entry number 1328769) which both date to circa 1700. The former is timber framed and plastered with a clay tile roof while the latter is timber framed and weatherboarded. The mill is the taller and larger of the two buildings. Both are now in residential use, but the mill continues to channel water diverted from the river navigation via sluices and gates that passes through the mill race and ponds and underneath the building. The special interest of both listed buildings is greatly informed by their architectural and historic significance as mill buildings. They are quite secluded by their location and vegetation screening, but they have an attractive setting next to green space and water which contributes positively to their special interest and significance.
31. To the south of Barnes Mill is Barnes Mill Lock including Lock Gates (list entry number 1237554) which dates from the opening of the navigation in the late 18th century. It comprises a brick and stone channel with wooden lock gates that remain operational. It has architectural and historic interest as one of the original locks on the navigation. Its setting and significance are informed by its green surroundings and the waterway, with the lock located on a public footpath.
32. Prentices Farm (list entry number 1237528) is located furthest from the site at the end of a track that leads from Mill Vue Road. It is a residential property dating back to the 16th century with timber framing, rendered walls, and clay tile roofs. It has architectural and historic interest as a farmhouse while its setting and significance is informed by its isolated location and screening from Chelmer Village Way. Nevertheless, the roof of the building can be seen from public footpaths
33. The Chelmsford Borough Historic Environment Characterisation Project was produced around the mid to late 2000s to provide an overview of Chelmsford’s heritage and assist with development proposals. The borough is divided into character areas and zones with Area 4 (Middle Chelmer Valley) broadly following the boundaries of the Green Wedge and the conservation area. Zone 4.2 covers the Chelmer and Blackwater Navigation more narrowly and includes the site. The project notes the flood plain and enclosed meadow pasture within this zone which offer the potential for below ground archaeology along with the navigation heritage itself. It also notes the importance of protecting and reinstating these elements and ensuring that development is sympathetic to the conservation area. While the character areas and zones are not specific heritage assets, the project reinforces

the significance of the conservation area and listed buildings described above and how they form part of a rich and holistic historic landscape.

The site's contribution to the heritage assets

34. The site is on the edge of the conservation area where the boundary broadly follows the route of Chelmer Village Way. Historic mapping indicates that it was agricultural land associated with Barnes Farmhouse and that the southern boundary has largely remained unchanged over the past 200 years, with historic maps referring to the land as a chase or pasture. While the site does not form part of the open water meadows to the south, the conservation area appraisal notes 'trees of significance' around its boundaries. The appraisal also identifies it as an enhancement or opportunity site. While no site specific information is provided, there are general references in the appraisal to protecting historic features and trees, strengthening planting, and preventing further urban encroachment.
35. The urbanising influences referenced in the previous main issue have some effect on the site's role within the conservation area. However, its open and undeveloped nature surrounded by mature vegetation including the surviving southern boundary, with little trace of any former compound use, means that it makes a moderate positive contribution to this designated heritage asset.
36. There is intervisibility between the site and Barnes Farmhouse as the cypress boundary planting is gappy and of low quality. It is possible to appreciate the undeveloped nature of the site from the principal west elevation albeit partly filtered. Views from the water meadows to the south encompass both the farmhouse and the hedgerow boundary of the site. There is also an historical association between the site and the farmhouse, although such associations are only apparent from documentary evidence and the agricultural quality of the land has been lost to scrub. Thus, the site makes a moderate positive contribution to the setting and significance of this listed building.
37. The intervisibility between the site and the former barn (Miller and Carter) is less apparent due to the greater distance and intervening vegetation and paraphernalia associated with the beer garden. Views of the former barn from the south are also very restricted. Although there may be some historical links between the former barn and the site in agricultural terms, the site makes a low to moderate contribution to this listed building.
38. There is no obvious intervisibility between the site and the four other listed buildings and no known historical association. One passes the site to and from these buildings, but they are secluded and screened from much of the surrounding area. Therefore, the site makes a minimal contribution to these listed buildings.

The effect of the proposed development on heritage assets

39. The proposed development seeks a vernacular design and materials based on a historic farm courtyard. Nevertheless, it would cause urban encroachment into the conservation area even though it would not encroach into the water meadows. The site's undeveloped nature would be eroded. Most of the boundary trees and hedges would be removed meaning that the development would be highly visible at first. Replacement planting would help to soften views of the development but would not screen entirely due to the height and mass, with a raised engineering bund also noticeable along the southern boundary. Thus, notwithstanding the

proximity of built form to the north and west, the development would not preserve or enhance the character and appearance of the conservation area and would result in a moderate level of less than substantial harm to its significance.

40. The proposed development would result in the loss of a remnant field associated with Barnes Farmhouse and the former barn, although this historical link is not readily apparent and is much diminished. While the southern hedgerow (and other planting) would be lost, the historic boundary line would be maintained and replanted. An orchard in the south-east corner would provide some buffer from the principal elevation of Barnes Farmhouse. Nevertheless, new buildings would be seen through gaps in the cypress boundary from both listed buildings. There would also be views of the development from the south reducing the prominence of Barnes Farmhouse. Therefore, the proposal would not preserve the setting of either listed building and would result in a moderate level of less than substantial harm to their significance.
41. The lack of intervisibility between the site and the remaining listed buildings means that the proposed development would not be discernible from any of them. The development and the listed buildings would not be appreciated together from the water meadows, and the approaches to and from the listed buildings would not be materially affected. Therefore, while I have taken a holistic view of the historic landscape, the proposal would preserve the setting of the remaining listed buildings and not harm their significance.
42. Concluding on this main issue, the proposed development would harm the significance of the Chelmer and Blackwater Navigation Conservation Area and would harm the setting and significance of the Grade II listed Barnes Farmhouse and former barn. This would conflict with Sections 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990. No heritage-related public benefits have been advanced as part of the proposal.
43. The proposed development would thus not accord with CLP Policy S3, which seeks to conserve and where appropriate enhance the historic environment including conservation areas and listed buildings, and places great weight on their preservation or enhancement, consistent with NPPF paragraph 212. It would also not accord with CLP Policy DM13 insofar as it seeks to safeguard the significance of listed buildings from development within its setting and preserve or enhance the character or appearance of conservation areas through siting, design and scale.
44. CLP Policy DM13 also reflects NPPF paragraph 215 insofar as it requires less than substantial harm to designated heritage assets to be weighed against the public benefits of the proposed development. This exercise will be carried out as part of the planning balance to reach an overall conclusion, noting that NPPF paragraph 213 requires clear and convincing justification for any harm or loss.
45. The appellants' original Built Heritage Assessment dated June 2023, which forms part of the core documents library, found no impact on heritage assets. However, I have had regard to all evidence before me, including the appellants' heritage proof of evidence where harm is acknowledged. I am also aware that Historic England raised two objections at the application stage. While in heritage terms they did not find any benefits to outweigh the harm to heritage assets, they noted the need to weigh the harm against the proposal's public benefits. This will be done below.

(c) Trees

46. As noted above, the site contains several trees and hedges, particularly along the northern and southern sides, most of which would be removed by the proposed development. The appellants' original arboricultural assessment identified some of the trees as woodland, but it has since been agreed between the three main parties that none of the trees meet the Forestry Commission's definition of woodland. Nevertheless, there are groups of trees as well as many standalone specimens. While most are situated within the conservation area, none are covered by a Tree Protection Order (TPO). There are also groups of trees or hedges just beyond the boundary including along the road frontage.
47. The first paragraph in Part A of CLP Policy DM17 states that permission will be granted for proposals that do not result in unacceptable harm to the health of a preserved tree or trees in a conservation area amongst other things, with the second paragraph requiring proposals affecting such trees to set out measures to secure their protection. The third paragraph states that, in exceptional circumstances, there may be overriding public benefits arising from the development that could justify the removal of a preserved tree.
48. The policy and supporting text do not define what is meant by a 'preserved tree', but it is not the same as a 'trees in a conservation area'. The parties accepted that a reasonable interpretation means a tree covered by a TPO which carries more weight and control than simply a tree in a conservation area. Therefore, the third paragraph in Part A of the policy would not apply here. However, the fact that there can be exceptions to the loss of a preserved tree must mean that there can also be exceptions to the loss of a tree in a conservation area given the relative importance of each type of tree.
49. Part B of CLP Policy DM17 deals with other landscape features such as hedgerows and similarly seeks to avoid unacceptable harm to features that are important to the character and appearance of the area. Harm or loss is only permitted where there is a compensatory landscape strategy or where there are overriding public benefits from the development.
50. The removal of 32 individual trees and most of the southern hedgerow from the site would inevitably result in harm even if the development protects any remaining specimens. This would result in an adverse effect on the conservation area (and Green Wedge) that would last for several years until replacement trees reached maturity, with a significant change to the site's character and appearance. While the trees to be lost have a low monetary value due to their age and condition, this does not diminish the environmental and amenity effects of their removal.
51. Nevertheless, nearly 200 trees would be planted to mitigate for the loss, and so it is likely that the adverse effects in terms of trees and hedgerows would lessen over time to the extent that the harm would not be unacceptable. There is little evidence to indicate that planting would not be successful on the proposed bund. Moreover, the proposal includes a landscape strategy to secure the replacement planting and retain existing specimens. Finally, it is possible that overriding public benefits could be demonstrated subject to the planning balance below.
52. Concluding on this main issue, subject to securing adequate mitigation and demonstrating overriding public benefits, the proposed development would have an acceptable effect on trees and woodland. Therefore, it would accord with CLP

Policy DM17. However, there would still be a moderate level of harm caused from the loss of so many trees and hedgerows in the short-term to weigh in the balance.

(d) Design

53. CLP Policies DM24 and DM26 deal with design matters in major developments and new dwellings. Amongst other things, they seek high quality design and proposals that achieve suitable privacy and living environment for residential occupiers and sufficient private amenity space. They also require accordance with the development standards set out in CLP Appendix B.
54. For privacy/proximity standards and garden/balcony standards, Tables 9 to 11 in Appendix B set out differences between areas inside and outside the city centre. The site is only just outside the city centre boundary on the Policies Map but feels distant from it due to the open space to the west of Chelmer Road and the proximity of suburban development. Although standards can be relaxed through careful design, the starting point should be the outside city centre distances.

Privacy

55. Table 9 states that minimum back to back distances between parallel 2 or 3 storey buildings with facing windows serving habitable rooms on upper floors should be 25m. The first floor flats at plots 15 and 20 would have just over 9m between rooms serving kitchens, living/dining rooms and a bedroom. Opaque glazing is proposed for two windows at plot 20 which would remove any overlooking. This would have some negative effects on outlook for future occupiers at plot 20, although the room is served by two other windows on different elevations.
56. The distance between the rear of the two storey house at plot 27 and two bedrooms windows at the first floor flat at plot 32 would be just over 14m. Opaque glazing is proposed for the bedroom windows at plot 32. While bedrooms are typically occupied less in the daytime than a living room or kitchen, they are still habitable rooms. Opaque glazing would allow sufficient daylight to pass through, but the inability to look clearly from the only windows serving the bedrooms would have a negative effect on outlook for future occupiers.
57. Table 9 also states that minimum back to flank wall distances should be 12.5m, while the minimum distance between a window serving an upper floor habitable room and the side garden boundary of an adjacent property should be 15m. Notes to the table explain that clear glazed windows should be avoided for privacy reasons. Thus, the use of opaque glazing to the side windows of the living space at the first floor flats of plots 4, 6 and 17, to address substandard distances to habitable room windows at plots 1, 3 and 20 respectively, would be appropriate, particularly as two clear glazed windows would remain on different elevations of the same room at plots 4, 6 and 17.
58. Opaque glazing is proposed to two first floor rear windows (landing and bedroom 1) for the house at plot 28 to address a substandard distance to the rear garden of the house at plot 30. It would appear necessary to have the same glazing at plot 28 for bedroom 2 as it is on the same first floor elevation. The use of a trellis privacy screen on the fence dividing the two properties might be sufficient by itself but it is not clear from the plans before me. Unlike bedroom 1, there is only one window at bedroom 2 and so opaque glazing would cause negative outlook effects as above.

59. Opaque glazing to first floor windows at plots 30, 33, 35 and 36 is proposed to prevent overlooking of adjoining rear gardens at plots 29, 34 and 35. Where such glazing involves landing windows, little adverse effect would occur in terms of outlook. However, such glazing to bedrooms with only one window (at plots 33 and 36) would have negative effects as above. The same would apply to the opaque glazing of the only window of bedroom 2 at plot 14 to avoid oblique overlooking of bedroom windows at plot 11.
60. There are several locations elsewhere where back to flank wall distances would be less than the required distances. However, these are at ground floor where views would be screened by intervening boundary fences or would face blank walls where no privacy issues would arise. Nonetheless, there would be poor outlook for occupants of specific habitable rooms as outlined above.

Private amenity space

61. Table 10 seeks 50sqm private garden space for 1 or 2 bedroom houses and 80sqm for houses with 3 or more bedrooms in non-city centre locations. None of the 22 proposed houses would meet these requirements with only two larger houses (plots 24 and 35) coming close at around 78sqm. The shortfall ranges from around 10sqm in a couple of cases (plots 1 and 42) to approximately 15-20sqm in several cases (plots 2, 27, 28, 30, 33, 34, 36, 38, 39, 40, 41) to nearly 40sqm for plots 23 and 26. Most of the proposed houses would have 3 or 4 bedrooms, so would be suitable for families with two or more children, but the limited garden sizes would make them less attractive. Moreover, the gardens at plots 26 and 34 would have an awkward and less usable dog-leg shape, bearing in mind the 4 bedroom house at plot 26 would have one of the smallest gardens.
62. The 33 ground floor and upper floor flats would meet the minimum provision for private amenity space in Table 11 but would also require at least 20sqm communal garden space per unit. Table 11 only waives the requirement for communal gardens in city centre locations where a site is within 600m of a park or recreation ground. The supporting text to Table 11 explains that communal gardens should benefit from some form of enclosure as they are intended to be semi-private spaces and should be of an appropriate shape benefiting from casual surveillance.
63. The proposed development would include a range of public open space but no communal gardens. This means that occupiers of the flats would only benefit from small balconies or demarcated ground floor areas for private use to the detriment of their living conditions.
64. The onsite public open space would include a community orchard, amenity space and incidental play space that would offer some additional outdoor provision for the development. The playground at Ruskin Road is within a 5 minute walk via an underpass below Chelmer Road. While it cannot be used to waive the communal space requirement, it would provide additional public space within easy reach. Proposed footpaths through to the water meadows would also allow access to a much larger outdoor space. Nevertheless, there would be a lack of private amenity space across the development for all occupiers.

Visitor parking

65. The proposed development would provide ample parking per unit to meet the 2024 Parking Standards from Essex County Council in a location considered to be highly

connected with opportunities to walk, cycle or travel by bus from the site to wider locations. 83 spaces would be provided compared to a requirement for 69. Conversely, only 8 visitor parking spaces would be provided against a requirement for 14 spaces.

66. The lack of visitor parking could result in traffic having to either circulate around Chelmer Village Way until a space becomes available or fly parking elsewhere within the development. However, given the accessibility of the site by means other than private car, and the overprovision of private spaces, this risk seems low. Thus, the shortfall in visitor parking would be acceptable and there would be no conflict with CLP Policy DM27. This policy seeks adherence to parking standards and justification for any deviation from the standard.

Conclusion on design

67. The proposed development does not benefit from a city centre location and could not readily be described as such. The need to use opaque glazing in several locations is an indication of trying to build too many units in one location and results in poor outlook from some bedrooms. Although it would only affect 5 bedrooms in a 55 unit scheme, this is still a significant effect for the occupiers who would be affected. Moreover, the amount of garden provision falls significantly below standards for some houses and there is a lack of communal space for the flats. The proximity of public open space provides some mitigation but does not adequately compensate for a deficiency in private and communal space.
68. The relative narrowness of the site makes it more challenging in design terms but could be adequately addressed through changes in layout and potentially revising the overall number and size of units proposed. Moreover, while prospective future occupants ultimately have a choice whether to move into a new development, occupants of an affordable housing scheme may have fewer options given that they require a specific type of housing tenure. As tenants or shared owners, they may also have less control over changes to properties such as window glazing or boundary treatments. Conditions requiring the retention of opaque glazing and screening measures would also reduce the ability to make changes. None of these points justify poor design.
69. In conclusion, while the proposed development has been through several design iterations and pre-application discussions, it would not represent good design in terms of the living environment for some occupiers and the provision of private amenity space. This would be contrary to CLP Policies DM24 and DM26 having regard to Appendix B. The development would also be contrary to NPPF paragraph 135(f) which seeks a high standard of amenity for existing and future users of places. NPPF paragraph 139 also states that development that is not well designed should be refused, especially where it fails to reflect local design policies.

(e) Flood risk

Sequential test

70. The southern part of the site lies within Flood Zones 2 and 3. Allowing for climate change by the 2080s, the fluvial flood zone could over time extend further into the site. Areas of low, medium and high surface water flooding are also located within sections of the site.

71. NPPF paragraph 170 stipulates that inappropriate development in areas at risk of flooding should be avoided by directing proposals away from areas at highest risk now or in the future. Where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere. NPPF paragraph 174 sets out the aim of the sequential test to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
72. CLP Policy S1 requires new development to avoid or manage flood risk. CLP Policy S2 requires development to be safe from all types of flooding with appropriate mitigation measures identified, secured and implemented and flood risk not worsened elsewhere. The supporting text in paragraph 5.9 refers to the sequential test considering risk from all sources.
73. Planning policy guidance (PPG) was updated in September 2025 regarding the sequential test⁴. Where a site-specific flood risk assessment (FRA) demonstrates clearly that the proposed development would remain safe from current and future surface water flood risk without increasing flood risk elsewhere, then the sequential test need not be applied. Nevertheless, the requirement for a sequential test remains for areas at risk of fluvial (or other) forms of flooding.
74. PPG paragraph 027a clarifies that the area to apply the sequential test will be governed by local circumstances relating to the catchment area for the type of development proposed and the needs it is proposing to address. The catchment area should always be appropriate to the nature and scale of the proposal and the settlement it is proposed for. The test should be applied proportionately, focusing on realistic alternatives in areas of lower flood risk that could meet the same development need.
75. The original application form referred to the transfer of land to facilitate the creation of a country park north of the River Chelmer alongside the affordable homes and associated works. This element was removed from the description as it does not require planning permission, but the proposed development continues to provide for the transfer of land within the blue edged areas (Parcels B and C) to be secured via the S106 agreement.
76. The transfer land is within the same ownership as the red line site, Parcel B borders the site, and Parcels B and C are linked by public rights of way. The Council has general aspirations for improved open space in this location. The CLP Policies Map identifies both parcels as existing open space and for future recreation use and/or sustainable urban drainage purposes. The Council's Policy Board in July 2022 discussed enhancements of the city's waterways and adjacent public spaces, noting opportunities to extend public land ownership. Such aspirations may not be as formal as a country park but would nevertheless see greater public access to, and management of, the water meadows. There is no alternative proposal before me to bring forward the transfer land for public use. Therefore, it is appropriate in this instance to consider the transfer land alongside the affordable housing when conducting the sequential test.
77. The appellants carried out a sequential test at the application stage and before the recent changes to the PPG. It is unfortunate that the Council did not appear to

⁴ Paragraphs 023, 027, 027a and 028 of the Flood Risk PPG (revision date 17 09 2025)

determine an appropriate area of search as required by PPG paragraph 029 even though officers had no concerns with the approach (as stated in their report to planning committee in January 2025). Nevertheless, the appellants' area of search was narrowed to the land south of Chelmer Village as far south as Essex Yeomanry Way and Maldon Road and as far east as the A12. Given that the proposed development provides for the transfer of land for a country park, and the Council's aspirations in this part of Chelmsford, this is an acceptable and appropriate area of search.

78. PPG paragraph 028 defines a reasonably available site as a location suitable for the type of development proposed, meeting the same development needs, and having a reasonable prospect of being developed at the same time as the proposal. In considering whether alternative lower-risk sites, which could include a series of smaller sites, would be capable of accommodating the proposed development, such alternative sites do not need to be owned by the appellants to be considered reasonably available.
79. The area of search contains strategic allocations to the north of Maldon Road for employment and residential development and at Manor Farm for a country park. Apart from the country park element, these allocations have lower flood risk than the appeal site. It is conceivable that 55 affordable houses and country park aspirations could be met through development undertaken within a comparable time frame. However, these allocations already have emerging proposals for their own development and so could be not considered to be reasonably available.
80. The area of search also contains several sites put forward at the call for sites stage during the preparation of the CLP. Some overlap with the above allocations and the appeal site plus transfer land, while others are too small and/or contain similar level of flood risk. Any remaining land within the area of search also has the same issue in terms of size and flood zone status. Therefore, there are no reasonably available sites within the area of search that are sequentially preferable to the appeal site and so the sequential test is passed.
81. It is generally agreed that had the proposed development related solely to affordable housing, then the area of search should have included the whole of Chelmsford. There is no specific evidence before me, but it seems feasible that there would be reasonably available sites that are sequentially preferable to the appeal site in flood risk terms. However, for the reasons set out above and below, I consider that the provisions for the transfer land contained in the S106 agreement would meet the three tests for planning obligations. Thus, the transfer land forms part of the development proposal before me and informs the sequential test.
82. I am conscious that a recent High Court judgment⁵ and subsequent appeal decisions⁶ indicate that a failure of the sequential test does not automatically mean that planning permission should be refused but instead should be weighed in the overall planning balance. This has led to concerns about the interpretation of national policy from some planning organisations⁷. However, I have found that the sequential test is passed, so it is not necessary to consider this matter further.

⁵ *Mead Realisations Ltd and Redrow Homes Ltd v SoS LUHC* [2024] EWHC 279 (Admin)

⁶ Including APP/U1105/W/24/3357849

⁷ ID29 Briefing note from the Town and Country Planning Association (August 2025) on the sequential test in appeal decisions

Hydrological and flood modelling issues

83. The data underpinning the flood modelling and hydrological assessments comes from the Environment Agency (EA). Such data is used widely across the country and is expanded upon in site specific work. The data is often complemented by local information such as historic flood events, water levels, photographs and reports. It can also be reviewed as needed, with the EA maps updated in March 2025.
84. Flow monitoring data provided by the Custodians from the first two months of 2021 identifies some of the readings from the Beach's Mill hydrometric station upstream as suspect. This appears to be due to overflows in high water events although could also be due to faults, blockages or a lack of verification of the data. The lack of an operational hydrometric station downstream at Rushes Lock is unfortunate and makes it difficult to measure flow and runoff through Chelmsford. However, the appellants' site specific modelling has utilised various data sources to refine the flood risk assessment, which has been reviewed and verified by the EA with no concerns raised by them or the Lead Local Flood Authority (LLFA).
85. Flooding is evidently a significant issue for this part of Chelmsford. Although climate change is influencing weather patterns with more extreme events, average rainfall has not increased markedly in recent years. New development in the city centre, including transport infrastructure improvements, have the potential to increase runoff into the river network, but it will depend on the design and mitigation measures used in each case.
86. The experience of the owners of Barnes Mill was set out in evidence and at the Inquiry. Water flowing along the river navigation divides just to the west of the mill and flows through a series of sluice and house gates via the mill race and mill ponds before rejoining the river to the east. The owners open and close the gates to manage water levels particularly in response to rainfall events to prevent water backing up towards the city centre. Photographs show the extent of flooding around the mill following heavy storms. A 3-day rainfall event has not occurred recently but could at any time.
87. Further downstream there are bottlenecks at Sandford Mill where the river navigation passes through narrow locks and bridges, and then again at the A12, where the embankment carrying the bypass has a single opening beneath the bridge over the river. Such bottlenecks can contribute to flooding across the water meadows and beyond, with properties such as Barnes Mill and cottages near Sandford Mill at risk of inundation. Water can take a long time to leave the water meadows due to ground saturation.
88. It is accepted that the site floods both in terms of the modelling and photographic information. Two scenarios have been modelled by the appellants for 1 in 30 and 1 in 100 year events, with the fluvial flood levels shown as 22.23m and 22.27m AOD respectively. While these events are occurring more frequently than every 30 or 100 years, they remain useful markers of the extent of flooding and how often they might occur. The modelling also shows the fluvial flood levels allowing for climate change which would extend slightly further into the site at 22.36m AOD. The difference in flooding at the site between the different modelled scenarios is marginal but nevertheless requires adequate mitigation to be provided. In

summary, I am satisfied that hydrological and flood modelling issues have been adequately addressed by the proposed development.

Proposed flood mitigation and drainage strategy

89. Although the sequential test is passed, NPPF paragraph 177 indicates that it is necessary to carry out the exception test as it is not possible to location the proposed development in areas with a lower risk of flooding. NPPF paragraph 178 requires the exception test to be informed by a site-specific FRA and demonstrate that (a) the development would provide wider sustainability benefits to the community that outweigh the flood risk and (b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible, reduce flood risk overall. NPPF paragraph 179 requires both elements of the exception test to be satisfied for the development to be allocated or permitted. NPPF paragraph 181 repeats the need to ensure that flood risk is not increased elsewhere and also provides detailed criteria (a) to (e) to consider for schemes in areas at risk of flooding.
90. CLP Policy DM18 states that planning permission will only be granted where it can be demonstrated that the site is safe from all types of flooding, either because of existing site conditions or through flood risk management from the development now and for its lifetime and it does not worsen flood risk elsewhere. Additionally, development within areas of flood risk will be required to, amongst other things, manage surface water runoff so that the rate is no greater than the runoff prior to the development taking place unless the site is previously developed. Major development should incorporate water management measures to reduce surface water runoff and ensure that it does not increase flood risk elsewhere.
91. There is currently no strategic flood alleviation project for Chelmsford with a previous scheme first mentioned in 2009 having been cancelled in 2019. It is possible that wider intervention may be needed to address flooding issues in Chelmsford such as works to the A12 embankment or increasing capacity at Sandford Mill. However, for the purposes of this appeal, I need to be satisfied that the site can be made safe from flooding without increasing the risk of flooding elsewhere.
92. A bund is proposed along the site's southern boundary that would have a maximum height of 22.96m AOD. This would provide a 600mm freeboard above the likely peak water levels allowing for climate change. In addition to flood resistant design measures in each dwelling, finished floor levels being set above 22.36m AOD, and a flood risk emergency plan, this would ensure that the proposed development would be safe from fluvial flooding. The structural details of the bund and other design measures can be secured through planning conditions. The use of bunds as flood defences is not uncommon and can be seen in other locations nearby.
93. However, the bund would result in the displacement of water around the western edge of the site. While the area of displacement would be less than or equal to 5mm only and would be contained to a small location immediately next to the site boundary, it would still represent an increase in flood risk elsewhere within the water meadows, contrary to national and local policy.
94. In terms of managing surface water, the drainage scheme contained in the site-specific FRA involves infiltration into an attenuation basin and discharge into the closest watercourse at a greenfield rate. The appellants presented an alternative

scheme before the Inquiry opened to address concerns about the levels of infiltration and the location of the attenuation basin in Flood Zone 3. The scheme would involve attenuation into tanks within the development area behind the bund. This would discharge at the same greenfield rate into the basin that would be retained for treatment purposes only, rather than for storage. The tanks would have a storage volume more than double than that of the basin allowing more surface water to be held if the basin was inundated. Thus, I consider that the alternative scheme presents a more workable option than the FRA scheme which could have problems in fluvial flooding events.

95. The alternative scheme has not been subject to consultation with the EA or LLFA yet and full details would be required by condition with a final design to be agreed. Nevertheless, the scheme has not been shown to be unworkable in principle, and I am satisfied that it could adequately address surface water flooding issues.
96. The various design measures proposed, including the bund, would ensure that the development would be safe for its lifetime allowing for climate change, and would meet the criteria in NPPF paragraph 181 (a) to (e). However, it would increase flood risk elsewhere, albeit to a shallow depth across a limited area. Therefore, while it is plausible that the development would provide wider sustainability benefits to outweigh flood risk concerns, the exception test would not be fully satisfied.
97. Concluding on this main issue, the proposed development would have an acceptable effect in terms of the sequential test and the drainage scheme but would not fully satisfy the exception test. Consequently, there would be harm in terms of flood risk and conflict with CLP Policies S1, S2 and DM18 and NPPF paragraphs 178, 179 and 181.

(f) Highways

98. Chelmer Village Way acts as a distributor road around the late 20th century suburb of the same name. Along the northern boundary of the site, Chelmer Village Way is dual carriageway between the roundabouts at Chelmer Road to the west and Beeleigh Link to the east. The speed limit is 40mph and there is a raised central reservation. Both sides of the road have pavements, with the pavement next to the site boundary also forming part of National Cycle Route 1 (NCR1). There is no data before me on the numbers of pedestrians and cyclists using the pavements and NCR1, but I observed such movements when visiting the site. Flows do not appear to be particularly high in this location but will vary over the day and week.
99. There are various services and facilities within 1-1.2km of the site including a range of shops at the Chelmer Village Retail Park immediately opposite. Currently, there is only one crossing point of Chelmer Village Way with an unmarked and uncontrolled dropped kerb close to the Chelmer Road roundabout. The local highway authority (LHA) has requested a signalised crossing point be provided just to the east of the site to allow pedestrians and cyclists to cross safely.
100. Option 9 of the proposed crossing arrangement was submitted in early 2024 during the application process following negotiations between the appellants and the LHA. It was amended twice in 2024 with Revision B reflecting the comments of the road safety audit. There is limited information on earlier options considered and it is unfortunate that there seems to have been little consultation with relevant groups. Nevertheless, Option 9 (Revision B) formed part of the Council's decision and is the scheme before me to be assessed. It comprises a staggered toucan

crossing to be used by pedestrians and cyclists together and a widened central reservation to provide refuge between the two sets of traffic lights. The proximity of the Beeleigh Link roundabout, the flow of vehicular traffic, and the limited width of the central reservation necessitates a staggered design.

101. There are various highway guidance documents including Local Transport Note (LTN) 1/20 from the Department of Transport on Cycle Infrastructure Design. It notes that negotiating staggered crossings can be problematic especially for those using non-standard bikes and can cause conflict with pedestrians. CD195 Designing for Cycle Traffic from the Design Manual for Roads and Bridges requires the central refuge on staggered crossings to accommodate design parameters for cycles and pedestrians. It says that shared space can be used where the routes towards the crossing point are shared.
102. Based on a relatively low cycle flow, CD195 states that a desirable minimum width of 3m is required for two-way flow with an extra 1m for vertical features above 600mm such as guardrails. The central refuge in Option 9 would be 4.46m wide and around 11m long. It would allow two bikes travelling in opposite directions to navigate the space successfully and provide room for pedestrians. Larger bikes such as cargo bikes or trailers would need to take the manoeuvre more carefully, but with courtesy and common sense the risk of conflict between users would be low. Given that the approaches are shared, the proposed central refuge would appear to be a safe and suitable design.
103. To achieve the width dimensions for the central reservation, the westbound exit from the Beeleigh Link roundabout would need to be narrowed to a single carriageway up to the crossing. There is little evidence to show that the junction is at or over capacity, while the distance between the roundabout and the crossing would meet the safe stopping requirements in CD116 Geometric Design of Roundabouts. Traffic looping around the roundabout from the retail park to head back to Chelmer Road is unlikely to be materially affected in terms of capacity.
104. The widening of the westbound carriageway back to two lanes after the crossing could cause vehicles to accelerate and overtake close to the proposed site access, but vehicles in the right-hand lane would avoid vehicles entering and leaving the site. There would be a priority crossing point of the site access for users of NCR1, which would be set back from Chelmer Village Way to allow vehicles entering the site to stop safely. The likelihood of large numbers of vehicles entering the site simultaneous to cyclists crossing the access would be low based on the trip generation data and so the risk of tailbacks onto the main road would also be low. The provision of a new westbound bus stop beyond the site access would cause an obstruction for vehicles leaving the site, but only when a bus was stopped there and vehicles could move into the right-hand lane if clear to do so.
105. Concluding on this main issue, while there are some risks associated with the offsite highway design and the proposed crossing point, these have been adequately mitigated such that the risk to highway safety would be low. Therefore, the proposed development would accord with CLP Policies S9 and DM24 which, amongst other things, seek sustainable means of transport to serve new development and improve cycling and walking routes. It would also adhere to NPPF paragraphs 115 and 116 which require safe and suitable access for all, with development only prevented or refused on highway grounds if there would be an

unacceptable impact on highway safety or a severe residual cumulative impact on the road network.

(g) Infrastructure

106. The S106 agreement sets out several planning obligations. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and NPPF paragraph 58 set out three tests that all obligations should meet. They should be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.
107. The S106 requires the provision of an affordable housing scheme to secure 100% of the dwellings as affordable housing, split between rented and share ownership units. Some of the units are required to be wheelchair accessible and they should all benefit from a dedicated electric vehicle charging point. These obligations would accord with CLP Policies DM1 and DM2, which require at least 35% affordable housing form major housing schemes with at least 5% of such dwellings built to wheelchair accessibility standards, and CLP Policy DM25 which requires electric vehicle charging points. Thus, they would meet the three tests set out above.
108. The S106 would secure the provision, specification and maintenance of local open space on site. These obligations would accord with CLP Policies S1, S9, S10, DM24 and DM26 which seek necessary green infrastructure and public open space with new developments, delivered in a timely manner. Thus, they would meet the three tests set out above.
109. A healthcare contribution would provide monies towards local healthcare facilities as requested by the Integrated Care Board. An off-site open space contribution would be used to upgrade the nearby playground at Ruskin Road. These obligations would accord with CLP Policies S1, S5, S9, S10, DM24 and DM26 which seek necessary improvements to existing health and community infrastructure, delivered in a timely manner. Thus, they would meet the three tests set out above.
110. The S106 would also secure the provision of the BNG land and its transfer to the Council to manage and maintain. A related biodiversity offset land contribution would be used by the Council for the management and maintenance of the BNG site, while a separate contribution would be used to fund mitigation in the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS). These obligations would accord with CLP Policies S1, S4, S9, S10 and DM16 which seek to conserve and enhance the natural environment through the provision of timely and necessary infrastructure. Thus, they would meet the three tests set out above.
111. Finally, the S106 would require the transfer to the Council of the 'transfer land' defined as the freehold interest in all or part of the land labelled 'B' and 'C' on the transfer land plan, which equates to the Parcels B and C described above. It would also provide a transfer land contribution to the Council towards the maintenance and management of the transfer land.
112. As set out above, the Council has aspirations for the enhancement and expansion of public access along Chelmsford's waterways and has specially identified the transfer land on the CLP Policies Map for future recreational use and/or sustainable urban drainage purposes. CLP Policies S4 and S9 seek a multifunctional network

of green infrastructure to conserve and enhance the natural environment and meet amenity and recreational needs. The transfer land would accord with such policies.

113. The transfer land forms part of the appeal proposal and is being argued as a planning benefit. Although the transfer land is significantly larger than the land for housing, it is intended to help meet the Council's corporate and planning policy aims. There is no need for a specific detailed plan for the transfer land because that would be more appropriate for the Council to define following any acquisition.
114. It is unfortunate that the transfer land did not come forward when the Chelmer Village estate was built in the 1980s but it does not prevent a proposal being advanced now. Moreover, while the CLP was found sound and its deliverability is not being challenged here, it relies on specific development proposals to meet its objectives. There are no other options before me to secure the transfer of land. Therefore, I consider the obligations relating to the transfer land are necessary to make the development acceptable, directly related to the development, and fairly and reasonably related to the development in scale and kind.
115. Concluding on this main issue, the proposed development would make adequate provision for affordable housing, infrastructure requirements, and protected European habitat sites in accordance with the various policies cited above. The various obligations all meet the three tests and so they can be taken into account as part of my decision.

(h) Planning balance

116. The parties agree that the Council cannot demonstrate a 5 year housing land supply. For the purposes of this appeal, the supply stands at 3.83 years. This shortfall engages NPPF paragraph 11(d) via footnote 8 and renders policies which are most important for determining the proposal out of date. It is generally agreed that the most important policies are those listed in the reasons for refusal, although those relating to flood risk and highway safety matters could also be included given that they now form main issues. However, while it is agreed that they should not be disregarded, the weight to be given them is contested.
117. The various policies are consistent with the NPPF having regard to paragraph 232 and the changes that have been made to the NPPF since the CLP was adopted. Although the emerging Local Plan carries little weight at present and may be subject to modifications, many of the policies, including those relating to the Green Wedge, are intended to be carried forward with few changes. This is an indication, albeit limited, of the Council's direction of travel in policy terms.
118. Nonetheless, the triggering of NPPF paragraph 11(d) has a material effect on the weight to be given to the policies, particularly as it stipulates that planning permission should be granted unless one of two exceptions apply. The first in NPPF paragraph 11(d)(i) is whether the application of NPPF policies that protect areas or assets of particular importance provide a strong reason for refusing the development. The second in NPPF paragraph 11(d)(ii) is whether the adverse impact of granting permission would significantly and demonstrably outweigh the benefits when assessed against the NPPF taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

119. The lack of a 5 year supply affects the ability to resist development proposals. Accordingly, there should be a meaningful reduction in the weight given to the most important policies beyond merely stepping down from full to substantial weight.
120. CLP Policies S11 and DM7 take a restrictive approach to proposals in the Green Wedge, but they do not prevent development unless there is material harm. CLP Policies S3, DM13 and DM17 seek to sustain the city's historic environment and trees, but they acknowledge the need to balance this against a proposal's benefits. CLP Policies DM24 and DM26 set out detailed but reasonable design standards. The flood risk and highway safety requirements set out in CLP Policies S1, S2, S9 and DM18 are important technical matters. Therefore, I afford significant weight to all these policies for the purpose of this decision.

Adverse impacts

121. The proposed development would have a significant adverse effect on the Green Wedge and would conflict with CLP Policies S11 and DM7. Given the policy objective to avoid material harm to the Green Wedge, I afford significant weight to the adverse effect and policy conflicts.
122. The development would cause a moderate level of less than substantial harm to the conservation area and two listed buildings and conflict with CLP Policies S3 and DM13. Great weight should be given to the conservation of heritage assets regardless of the degree of harm in line with NPPF paragraph 212, while case law requires it to be given considerable importance and weight⁸.
123. The development would have an overall acceptable effect on trees and comply with CLP Policy DM17. Nevertheless, there would be a moderate level of harm for the reasons set out above which carries moderate weight.
124. The development would not represent good design contrary to CLP Policies DM24 and DM26, noting also the requirements in NPPF paragraphs 135(f) and 139. There would be several instances of poor outlook due to privacy mitigation and inadequate private amenity space provision for all units. Thus, I attach substantial weight to the adverse effect and policy conflict.
125. The development would increase the risk of flooding elsewhere and so would not fully satisfy the exception test, contrary to CLP Policies S1, S2 and DM18. I afford moderate weight to the harm and policy conflicts given the limited area of increased flooding beyond the site.
126. The development would have an acceptable effect on highway matters and would also make adequate provision for affordable housing and other infrastructure. Nevertheless, it would cause adverse impacts across a range of issues and would not accord with the development plan read as a whole.

Benefits

127. While the development is not particularly large in terms of unit numbers, the delivery of 55 dwellings and the provision of 18 x 4 bedroom homes suitable for families, can both be afforded moderate weight having regard to the Council's housing land supply position and the need for larger accommodation locally.

⁸ *Barnwell Manor Wind Energy Ltd v East Northants DC and Ors* [2014] EWCA Civ 137

128. 100% of the homes would be affordable, which is considerably more than the 35% required by CLP Policy DM2. There is an affordable housing shortfall of nearly 1,300 dwellings since the latest monitoring period began in 2022/23 against an annual target of delivering 816 homes per year. The number of households on the housing register, in temporary accommodation, and/or homeless is significant and includes those with children. The private rental market and house prices are above national and regional averages.
129. The proposed development would have a tenure split of 44% affordable rent and 56% shared ownership. The evidence indicates that there is a critical need for affordable rented property. However, CLP Policy DM2 does not set out a specific tenure split but instead requires that the mix, size, type and cost of affordable homes meet identified needs. There is an identified need for all types of affordable housing and a significant shortfall in supply. Therefore, I attribute substantial weight to the provision of affordable housing here.
130. The proposed development would deliver a BNG of 10.25% for habitats and 63.86% for hedgerows. This carries moderate weight. The economic benefits in terms of construction employment and local expenditure carry moderate weight taken as a whole. Other social and environmental benefits comprising additional public open space and tree planting and good access to a range of facilities including bus services, carry limited weight.
131. The transfer of land to public ownership via the S106 agreement would allow for better management and accessibility of land on the north side of the water meadows. However, the land already benefits from access via multiple footpaths and is evidently managed and maintained to a reasonable standard by the existing landowners. Therefore, I afford no more than moderate weight to this benefit.

The heritage balance

132. In line with NPPF paragraph 215 and CLP Policy DM13, it is necessary to weigh the moderate levels of less than substantial harm to the significance of the conservation area and the two listed buildings against the public benefits. All the above benefits can be regarded as public ones. Taken as a whole, they are sufficient to outweigh the harm to significance notwithstanding the considerable importance and weight I have given to that harm. While NPPF paragraph 212 indicates that great weight should be afforded to the conservation of designated heritage assets, there is clear and convincing justification for the harm to these assets as required by NPPF paragraph 213.
133. On balance, the proposed development would have an acceptable effect on the significance of the conservation area and the listed buildings. The application of NPPF paragraphs 212, 213 and 215 would outweigh the conflict with CLP Policies S3 and DM13 in this instance. The application of these NPPF paragraphs also indicates that there is no strong reason for refusing the proposed development in terms of designated heritage assets, having regard to NPPF paragraph 11(d)(i). Nevertheless, it is necessary to include the moderate harm to heritage assets in the overall planning balance.

The overall planning balance

134. The proposed development would provide benefits in terms of affordable housing delivery that carries substantial weight and benefits in terms of addressing the

housing land supply and larger family housing deficits that carry moderate weight. The delivery of BNG, the transfer of land, and economic benefits, carry moderate weight. Other benefits carry limited weight.

135. Conversely, I have afforded significant weight to the adverse impacts on the Green Wedge and substantial weight to the lack of good design. There would be moderate harm to designated heritage assets, and I have afforded moderate weight in terms of adverse impacts on trees and flood risk.
136. Having regard to NPPF paragraph 11(d)(ii) and the relevant key policies mentioned via footnote 9, the proposed development would provide affordable homes (NPPF paragraph 66) and would be in sustainable location (NPPF paragraphs 110 and 115). However, for the reasons set out above, it would not secure well-designed places and would conflict with NPPF paragraphs 135(f) and 139, the latter of which directs the decision-maker towards refusal of schemes.
137. Weighing everything together in light of NPPF paragraph 11(d)(ii), I conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the NPPF policies taken as a whole and having particular regard to key policies. The proposed development would be contrary to the development plan taken as a whole, with insufficient material considerations to indicate that planning permission should otherwise be granted.

Other Matters

138. The site is within the zone of influence for the Essex Coast RAMS. There are several protected European habitats sites along the Essex coast which are designed to safeguard breeding and non-breeding birds as well as coastal habitats. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed additional housing could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects.
139. On this basis, it would be necessary to carry out an appropriate assessment (AA) as part of my decision were I minded to allow the appeal. However, given my findings on the main issues and the overall planning balance, there is no need for me to carry out an AA as there is no prospect of planning permission being granted. Therefore, it is not necessary for me to consider this matter any further.

Conclusion

140. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellants:

Christopher Young KC and Chatura Saravanan, Counsel, instructed by Jonathan Dixon, Savills (UK) Ltd.

They called:

Gail Stoten BA (Hons) PG Cert Res MCIfA FSA
Heritage Executive Director, Pegasus Planning Group

Frank Spooner BSc (Hons) RCARBOR A MARBOUR A TechCert (Arbor A) VETCert
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Andy Williams BA (Hons) DipLA DipUD CMLI
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Alexander Bennett BSc (Hons) MCIHT MTPS
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Jonathan Dixon BA (Hons) MA MRTPI
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Lydia Voyias
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For the Council:

Josef Cannon KC and Dr Lois Lane, Counsel, instructed by Chelmsford City Council.

They called:

Azizul Karim MCIfA
Built Heritage Consultant, Place Services

Alison Hutchinson MRTPI
Partner, Hutchinsons Planning

Stephen Dunks
Senior Planning Officer, Chelmsford City Council

For the Custodians of the Chelmer Valley Water Meadows (the Custodians):

Russel Forde MRTPI, Principal Director, Smart Planning Ltd, instructed by the Custodians.

He called (in addition to himself):

Mike Parker
Local resident

Leo Wollner
Local resident

Interested Parties who spoke at the Inquiry:

David Frost	Local resident
Councillor Sue Dobson	Chelmsford City Council
Councillor Steve Hall	Chelmsford City Council
Councillor Susan Sullivan	Village Council of Chelmer and Chelmsford City Council
Philip Humm	Local resident
Mary Cordeiro	Local resident

Inquiry Documents:

ID1:	Appellants' opening statement
ID2:	Appellants' list of appearances
ID3:	List of plans
ID4:	Council's opening statement
ID5:	Council's list of appearances
ID6:	Press notice from Essex Chronicle (25 September 2025)
ID7:	The Custodians' opening statement
ID8:	Flood volume calculations
ID9:	Photograph from David Frost
ID10:	Statement from Philip Humm
ID11:	Photographs from Philip Humm
ID12:	Statement from Councillor Sullivan
ID13:	Environment Agency data sources
ID14:	Part A of the Green Wedges report (February 2017)
ID15:	Engrossed (unsigned) version of the Section 106 agreement
ID16:	Email from Council's ecology adviser including the citations and conservation objectives for the Blackwater Estuary Special Protection Area/Ramsar and the Essex Estuaries Special Area of Conservation
ID17:	Title information from the Land Registry

- ID18: Title map from the Land Registry
- ID19: Environment Agency email (30 October 2025)
- ID20: Appellants' response to ID13
- ID21: Statement from Mary Cordeiro
- ID22: Site visit itinerary (revision A)
- ID23: Landscape Institute Technical Guidance Note 1/20
- ID24: Costs applications A and B from the Custodians
- ID25: *Mead Realisations Ltd and Redrow Homes Ltd v SoS LUHC* [2024] EWHC 279 (Admin)
- ID26: Appeal decision APP/U1105/W/24/3357849
- ID27: Updated conditions schedule
- ID28: The Custodians' closing submissions
- ID29: Town and Country Planning Association briefing note on recent planning appeals and the sequential test (August 2025)
- ID30: List of members of the Custodians
- ID31: Council's closing submissions including:
- (a) *Brown v London Borough of Ealing* [2018] EWCA Civ 556
 - (b) *CEG Land Promotions II Ltd v SSHCLG* [2018] EWHC 1799 (Admin)
 - (c) *Gladman Developments Ltd v SSHCLG* [2021] EWCA Civ 104
 - (d) *Hook v SHCLG* [2020] EWCA Civ 486
 - (e) *R (on the application of Liverpool Open and Green Spaces Community Interest Company v Liverpool City Council* [2020] EWCA Civ 861
- ID32: Appellants' closing submissions including:
- (a) *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] UKSC 37
 - (b) *The Ikarian Reefer* [1993] Vol 2 Lloyds Law Reports
- ID33: Appellants' response to ID19 and ID21

Documents submitted after the close of the Inquiry

Responses from the appellants and the Council to the costs applications

Final comments from the Custodians on the costs applications

Completed and executed Section 106 Agreement dated 20 November 2025

Costs Decisions

Inquiry held on 21-24 October and 5-7 November 2025

Site visit made on 7 November 2025

by **Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Costs applications (A and B) in relation to Appeal Ref: APP/W1525/W/25/3365611 Land West of The Fox and Raven, Chelmer Village Way, Chelmsford

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by the Custodians of the Chelmer Valley Water Meadows (the Custodians) for a full award of costs against Chelmsford City Council (the Council).
- The inquiry was in connection with an appeal against the refusal of planning permission for residential development comprising the construction of 55 affordable homes, provision of open space, landscaping, sustainable drainage, ground re-profiling, formation of bund, cycle and footpath links, vehicular access from Chelmer Village Way and highway changes to Chelmer Village Way.

Decisions

1. Costs Applications A and B for an award of costs are both refused.

The submissions and responses by the parties

2. The costs applications A and B were submitted by the Custodians on 5 November 2025 jointly against the Council and the appellants. Separate decisions have been written for the applications against the Council and the appellants given that these parties submitted separate responses.
3. As there was insufficient time left in the Inquiry programme following receipt of the costs applications, it was agreed that the responses and any final comments from the Custodians could be provided in writing within a specified timeframe. The Council's response was received on 11 November 2025 and the Custodians' final comments were received on 20 November 2025.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The Custodians contend that the Council has behaved unreasonably on two bases.
5. **Costs Application A** relates to the proposition that it is acceptable to receive a gift, unconnected to the development to be permitted, whether or not the gift provides a different public benefit. The application sets out the three tests for planning obligations from paragraph 58 of the National Planning Policy Framework with the contention that the 'gift land' (transfer land) is not necessary, directly related, or fairly and reasonably related in scale and kind to the development. The Custodians

- contend that the offer of the land was inappropriate and the Council lacked impartiality in accepting the offer. They argue that if the transfer land was removed from the proposal, then the proposed development would be in serious jeopardy and the appeal would have been unnecessary, hence full costs are sought. Even if the appeal had proceeded without the transfer land, then the Custodians seek a partial award of costs for the time spent dealing with this matter at appeal.
6. It will be seen from my appeal decision that I consider the transfer land to form a legitimate part of the proposed development and it represents a planning benefit. There is a clear connection between the transfer land and the red line site in terms of ownership and footpath links. There are also corporate and policy aspirations for enhanced public open space and no alternative scheme before me to achieve this for the transfer land. My decision concludes that the transfer land would pass the three tests for planning obligations.
 7. There is no evidence that the Council has behaved in a manner that compromises its objectivity or impartiality. It has not been demonstrated that the transfer of land represents a 'gift' or has unduly influenced the Council on this proposal. The Council is required to consider all elements of a proposed development. In any case, permission was refused for this scheme at planning committee. Therefore, even if the Council had agreed with the Custodians on the transfer land as being irrelevant or failing to meet the three tests, an appeal would still likely have been submitted and necessary costs incurred. A partial award of costs would only be possible if I agreed with the Custodians on this matter, which I do not.
 8. As part of this costs applications, the Custodians also refer to the weakening of the Council's position during a lengthy pre-application process and the lack of public access to and involvement in meetings, with highways negotiations cited as a prime example of discussions behind closed doors. However, the pre-application process aims to reduce differences between an applicant and the Council and so there is nothing odd about the Council's changing position which, in any case, still led to a refusal. Moreover, it is not feasible or reasonable to involve the public in every discussion or to provide bespoke responses to every objection. It will be seen from my appeal decision that while there could have been greater transparency regarding the evolution of highway options, it did not prevent me or others from assessing the development on its merits based on the evidence presented.
 9. Concluding on Costs Application A, there has been no unreasonable behaviour from the Council that has led to unnecessary or wasted expense in the appeal process. Thus, a full or partial award of costs against the Council is not justified.
 10. **Costs Application B** relates to the sequential test, which the Custodians contend was contrived and passed by defining parameters that were unreasonably narrow and exclusively relied on the inclusion of the transfer land which is not part of the development to be permitted. The Custodians argue that the area of search was too small and based on the premise that the housing and strategic open space had to be found in the same location. They contend that the Council was at fault by accepting the appellants' approach and findings and that a flawed test puts the whole permission at risk. Thus, a full award of costs is sought against an appeal that should not have been necessary.
 11. As noted in my appeal decision, it was unfortunate that the Council did not appear to determine an appropriate area of search as required by the PPG. However, there

is nothing unreasonable about the Council agreeing with the search area put forward by the appellants. Officers covered the sequential test in the committee report and so were actively engaged in the process. They were aware of the Custodians' objections dating back to October 2023 and came to a reasoned view of the overall proposal. The Council is entitled to maintain or amend its position on specific matters depending on the evidence presented. There is no basis to claim that the offer of the 'gift land' skewed the Council's handling of the application or the sequential test. Planning permission was ultimately refused by the Council.

12. My appeal decision finds that it was reasonable to include the transfer land within the area of search and to focus on land to the east of Chelmsford given the corporate and policy aims of the Council. My decision also finds that the housing site and the transfer land are connected and that the proposed development was the only option before me for the delivery of improved strategic open space.
13. Nevertheless, even if I had agreed with the Custodians and concluded that the sequential test was not passed, this would not necessarily have prevented planning permission from being granted. I would have been required to consider case law and other appeal decisions to decide whether it was a matter to weigh in the planning balance rather than automatically dismiss the appeal.
14. Concluding on Costs Application B, there has been no unreasonable behaviour from the Council that has led to unnecessary or wasted expense in the appeal process. Therefore, an award of costs against the Council is not justified.

Tom Gilbert-Wooldridge

INSPECTOR

Costs Decisions

Inquiry held on 21-24 October and 5-7 November 2025

Site visit made on 7 November 2025

by **Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Costs applications (A and B) in relation to Appeal Ref: APP/W1525/W/25/3365611 Land West of The Fox and Raven, Chelmer Village Way, Chelmsford

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by the Custodians of the Chelmer Valley Water Meadows (the Custodians) for a full award of costs against Countryside Properties (UK) Limited and Stonebond Properties (Chelmsford) Ltd (the appellants).
 - The inquiry was in connection with an appeal against the refusal of planning permission for residential development comprising the construction of 55 affordable homes, provision of open space, landscaping, sustainable drainage, ground re-profiling, formation of bund, cycle and footpath links, vehicular access from Chelmer Village Way and highway changes to Chelmer Village Way.
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Decisions

1. Costs Applications A and B for an award of costs are both refused.

The submissions and responses by the parties

2. The costs applications A and B were submitted by the Custodians on 5 November 2025 jointly against the Council and the appellants. Separate decisions have been written for the applications against the Council and the appellants given that these parties submitted separate responses.
3. As there was insufficient time left in the Inquiry programme following receipt of the costs applications, it was agreed that the responses and any final comments from the Custodians could be provided in writing within a specified timeframe. The appellants' response was received on 14 November 2025 and the Custodians' final comments were received on 20 November 2025.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG states that awards against an appellant may be procedural, in regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The Custodians contend that the appellants have behaved unreasonably on two bases.
5. **Costs Application A** relates to the proposition that it is acceptable to receive a gift, unconnected to the development to be permitted, whether or not the gift provides a different public benefit. The application sets out the three tests for planning obligations from paragraph 58 of the National Planning Policy Framework with the

contention that the 'gift land' (transfer land) is not necessary, directly related, or fairly and reasonably related in scale and kind to the development. The Custodians contend that the offer of land was inappropriate and the appellants failed to justify the offer and how it meets the three tests. They argue that if the transfer land was removed from the proposal, then the proposed development would be in serious jeopardy and the appeal would have been unnecessary, hence full costs are sought. Even if the appeal had proceeded without the transfer land, then the Custodians seek a partial award of costs for the time spent dealing with this matter at appeal.

6. It will be seen from my appeal decision that I consider the transfer land to form a legitimate part of the proposed development and it represents a planning benefit. There is a clear connection between the transfer land and the red line site in terms of ownership and footpath links. There are also corporate and policy aspirations for enhanced public open space and no alternative scheme before me to achieve this for the transfer land. My decision concludes that the transfer land would pass the three tests for planning obligations.
7. I consider that the appellants adequately set out the justification for the transfer land and how it meets the three tests, from Mr Dixon's proof of evidence to the closing submissions. Consequently, it was not inappropriate for the appellants to offer the transfer land to the Council. In any case, permission was refused for this scheme at planning committee. Therefore, even if the Council had agreed with the Custodians on the transfer land as being irrelevant or failing to meet the three tests, an appeal would still likely have been submitted by the appellants and necessary costs incurred. A partial award of costs would only be possible if I agreed with the Custodians on this matter, which I do not.
8. As part of this costs applications, the Custodians also refer to the weakening of the Council's position during a lengthy pre-application process and the lack of public access to and involvement in meetings, with highways negotiations cited as a prime example of discussions behind closed doors. While these contentions are mainly directed at the Council, I have no evidence of any untoward behaviour on the part of the appellants as part of the pre-application process and highway negotiations.
9. Concluding on Costs Application A, there has been no unreasonable behaviour from the appellants that has led to unnecessary or wasted expense in the appeal process. Thus, a full or partial award of costs against the appellants is not justified.
10. **Costs Application B** relates to the sequential test, which the Custodians contend was contrived and passed by defining parameters that were unreasonably narrow and exclusively relied on the inclusion of the transfer land which is not part of the development to be permitted. The Custodians argue that the area of search was too small and based on the premise that the housing and strategic open space had to be found in the same location. They contend that the appellants were at fault by putting forward such an approach and that a flawed test puts the whole permission at risk. Thus, a full award of costs is sought against an appeal that should not have been necessary.
11. It will be seen from my appeal decision that I found the appellants' area of search to be acceptable and appropriate. Although the appellants' flood risk and planning witnesses did not elaborate on the sequential test at the Inquiry, the appellants had already produced an assessment at the application stage and were happy to rely

on its contents. The appellants were entitled to put forward the transfer land as part of the proposed development. The circumstances here are very specific to this location and these appellants/landowners. Thus, it is not accurate to say that the approach was contrived or could be repeated by all owners of land in flood zone 3.

12. My appeal decision finds that it was reasonable to include the transfer land within the area of search and to focus on land to the east of Chelmsford given the corporate and policy aims of the Council. My decision also finds that the housing site and the transfer land are connected and that the proposed development was the only option before me for the delivery of improved strategic open space.
13. Nevertheless, even if I had agreed with the Custodians and concluded that the sequential test was not passed, this would not necessarily have prevented planning permission from being granted. I would have been required to consider case law and other appeal decisions to decide whether it was a matter to weigh in the planning balance rather than automatically dismiss the appeal.
14. Concluding on Costs Application B, there has been no unreasonable behaviour from the appellants that has led to unnecessary or wasted expense in the appeal process. Therefore, an award of costs against the appellants is not justified.

Tom Gilbert-Wooldridge

INSPECTOR