



---

## Appeal Decision

Inquiry held on 6 December 2022

Site visit made on 7 December 2022

**by O S Woodward BA(Hons.) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> January 2023**

---

**Appeal Ref: APP/Z1510/W/22/3305099**

**Phase 4, Land North East of Rectory Lane, Rivenhall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Bellway Homes Ltd against the decision of Braintree District Council.
  - The application Ref 20/02060/OUT, dated 27 November 2020, was refused by notice dated 18 March 2022.
  - The development proposed is for up to 230 dwellings including affordable homes; public open space including sports pitches and facilities, neighbourhood equipped area for play, parkland and alternative natural greenspace, vehicular access via Forest Road and Evans way, a bus, cycle and pedestrian connection to Rickstones Road, sustainable drainage systems, landscaping and all associated infrastructure and development.
- 

### Decision

1. The appeal is allowed, and planning permission is granted for up to 230 dwellings including affordable homes; public open space including sports pitches and facilities, neighbourhood equipped area for play, parkland and alternative natural greenspace, vehicular access via Forest Road and Evans way, a bus, cycle and pedestrian connection to Rickstones Road, sustainable drainage systems, landscaping and all associated infrastructure and development at Phase 4, Land North East of Rectory Lane, Rivenhall, in accordance with the terms of the application Ref 20/02060/OUT, dated 27 November 2020, subject to the conditions set out in Annex C to this Decision.

### Preliminary Matters

2. The Council's decision notice refers to policies from the Braintree Local Plan 2005 and Braintree Core Strategy 2011. Both those plans have been subsequently replaced by the policies in the now adopted Braintree District Local Plan 2013-2033: North Essex Authorities' Shared Strategic Section 1 Plan 2021 (the Section 1 LP) and Braintree District Local Plan Section 2 2022 (the Section 2 LP) Local Plans. The main parties have confirmed the relevant policies from the Section 1 and 2 LPs, which I refer to as appropriate throughout my Decision.
3. The application was made in outline with all matters reserved. A series of parameters plans have been submitted detailing land use zones, areas of green infrastructure, indicative pedestrian and cycle routes, indicative 'spine road' for vehicular access, and storey height zones. An illustrative masterplan and sports

pitch layout drawing have also been submitted which I have had regard to, whilst acknowledging their illustrative nature.

4. Documents were submitted during and after the inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the additional documents.
5. The application was refused on 18 March 2020. There was one reason for refusal but it was multi-faceted, relating to: the principle of the proposed development outside of a designated development boundary; harm to the character and appearance of the area including to landscape, Rectory Lane, loss of trees and hedgerows, and coalescence of Witham and Rivenhall; less than substantial harm to the historic significance of The Old Rectory grade II Listed building through harm to its setting; harm to the free-flow of traffic to the surrounding highway network; harm from the sterilisation of a minerals resource on the appeal site; and, harm through the loss of best and most versatile agricultural land.
6. The Council published a Five-Year Housing Land Supply Position Statement in April 2022. This concluded that the Council can only demonstrate a 4.86 year supply of housing land, as opposed to the 5.1 years that the Council believed it could demonstrate at the time of refusing the planning application the subject of the appeal. The appellant has not agreed with the 4.86 year figure, believing that it may be lower, however this issue was not explored at the inquiry. I have therefore adopted the 4.86 year figure for the purposes of this Decision.
7. A s106 Planning Obligation, dated 19 December 2022 (the s106) has been submitted. It secures:
  - a contribution towards a new community facility at Maltings Lane, Witham;
  - the provision of a circular walking route, a play area, public open space, other amenity areas and woodland, including the requirement to agree the specification and detail of these areas with the Council, and the future management and maintenance through a management company;
  - land for an allotment, including the requirement to agree the specification with the Council, and the future management and maintenance through a management company;
  - skylark mitigation through the provision of suitable habitat, including a management plan;
  - a reptile receptor site, including the requirement to agree the specification with the Council and a management plan;
  - the provision of playing pitches, pavilion and car parking, at a specification to be agreed with the Council, their maintenance, and the transfer of the land to the Council at nominal cost;
  - 30% of the dwellings to be affordable housing, with a split of 66.66% affordable housing for rent and 33.33% shared ownership;

- a contribution towards the extension or refurbishment or reconfiguration or relocation of the Witham Health Centre;
  - a contribution towards strategic 'off-site' measures as set out in the Recreational disturbance Avoidance and Mitigation Strategy, in mitigation of the effect of the proposal on the Blackwater Estuary Special Protection Area (SPA) and Ramsar, Dengie SPA and Ramsar, and Essex Estuaries Special Area of Conservation;
  - a contribution towards early years, childcare, primary and secondary education facilities, within three miles of the appeal site;
  - a contribution towards upgrading the facilities at Witham library;
  - highways works and agreement, including:
    - a footway/cycleway along Rickstones Road including an uncontrolled crossing;
    - the closure of the southern part of Rectory Lane to vehicles;
    - a revised junction from Rickstones Road to the appeal site, including a bus gate (or alternative scheme to be agreed with the Council), leading to a spine road through the appeal site to Evans Way;
    - two new bus stops either within the appeal site or elsewhere as to be agreed with the Council and Essex County Council (ECC);
    - a controlled crossing on Rickstones Road; and,
    - upgrading existing bus stops, or providing new bus stops, on Rickstones Road and/or Forest Road;
  - a Residential Travel Plan monitoring fee;
  - a contribution to upgrade or enhance the River Walk, potentially to include improved connectivity to the River Walk from the public highway;
  - a contribution to enhance the bus service that uses Forest Road and/or pedestrian and cycle improvements between the appeal site and Witham Town Centre, the details of which are to be agreed with the Council; and,
  - 2% of the dwellings to be provided as self-build/custom build plots.
8. The Council's CIL Compliance Statement sets out the detailed background and justification for each of the obligations. I am satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and the tests at paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

## **Main Issues**

9. As a result of the change to the housing land supply position and further to the provision of the s106, the Council did not defend its position at the inquiry, which was uncontested between the main parties. However, a number of issues were raised by interested parties, which were explored at the inquiry.

10. These form the basis for the main issues for the appeal, as follows:

- whether or not the appeal site is an appropriate location for development of this type, having regard to local and national planning policy and guidance;
- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on highway safety, in particular regarding cyclists and the proposed access to Rickstones Road; and,
- the effect of the proposed development on the efficient operation of the highway network in the vicinity of the appeal site.

## **Reasons**

### *Location of development*

#### Principle

11. Policy SP3 of the Section 1 LP sets out the spatial strategy for North Essex. The spatial strategy is for development within or adjoining existing settlements at a scale according to their hierarchy, as set out in detail through the Section 2 LP. The Section 2 LP allocates Witham as a 'town', the highest settlement definition in the hierarchy, and Rivenhall as a Third Tier village, the lowest defined settlement level in the hierarchy. The Spatial Strategy is to concentrate development on the towns, including Witham. Policy LPP1 of the Section 2 LP restricts development outside of the defined development boundaries to uses appropriate to the countryside.
12. The appeal site is entirely outside the defined development boundaries for Witham town or Rivenhall village. It is common ground, and I agree, that the proposed residential-led development would not be a use appropriate to the countryside. The proposal would therefore be contrary to the Development Plan and its overall Spatial Strategy and would fail to comply with Policy LPP1 of the Section 2 LP and therefore also Policy SP3 of the Section 1 LP, which cross-refers to the Section 2 LP.

#### Accessibility

13. The appeal site is adjacent to Witham, and within walking distance of local shops, schools, and Witham train station. A bus route also connects the site to the town centre and train station. The s106 secures improvements to the local cycle infrastructure including along Rickstones Road and between the appeal site and the town centre. The s106 secures enhancements to the River Walk. It also secures two new bus stops and the diversion of bus routes through the appeal site.
14. The proposal is therefore in an accessible location to local services and facilities and is well served by, and would improve, local non-car transport connections. It would also represent the extension of an existing large residential-led development by the appellant and would directly connect to the existing development through the proposed spine road vehicular access. It therefore complies with the relevant parts of Policy SP6 of the Section 1 LP and Policy LPP42 of the Section 2 LP, both of which encourage development in accessible locations and the promotion of non-car based modes of travel.

## *Character and appearance*

### Coalescence

15. The appeal site is on, and would extend, the northern boundary of Witham town. It technically sits within the parish of Rivenhall but it is experienced, on the ground, as an extension to Witham, which it immediately abuts. Either side of Rickstones Road, which leads from Witham to Rivenhall village, is a collection of houses and other buildings, known as Rickstones End. These are not part of a defined 'village' in the Local Plan. Since the construction of Phase 3 of the development and the new school to the west of Rickstones Road, Rickstones End has been physically joined to Witham town. Further north, separated by fields and a golf course, lies the village of Rivenhall.
16. The proposal would create a bus access point on Rickstones Road within Rickstones End. No other built form is proposed in this area, with the proposed housing being set significantly behind this frontage on the other side of the proposed playing fields. The proposal would therefore have no material effect on the coalescence of Rickstones End and Witham, which are already coalesced.
17. With regard to the separation of Rivenhall village and Witham, the open land of the appeal site would be lost and this currently forms part of the open land separating the two settlements. However, the golf course and other open land to the north would remain. This is a significant size and width. Importantly, all the land that is part of the green buffer zone, as identified in Policy LPP68 of the Section 2 LP, would be unaffected by the proposal. The proposal would not, therefore, result in coalescence between Witham town and Rivenhall village and complies with Policy LPP68 of the Section 2 LP and also Policy SP3 of the Section 1 LP.

### Rectory Lane

18. Rectory Lane is a Protected Lane. It runs along part of the southern boundary of the appeal site. It is a narrow, quiet, country lane with low traffic levels. However, at present it can function as a 'rat-run' for drivers if traffic builds up significantly on Rickstones Road and/or Forest Road. The s106 secures the shutting of the southern half of Rectory Lane to vehicular traffic. This would reduce the amount of traffic using the lane by removing the ability to 'rat-run'.
19. There would be no change to the lane or its hedgerows other than a proposed turning head which would be needed to enable the proposed road closure. The proposal would introduce built form in the vicinity of the lane but set back a moderate distance and with the ability to ensure an appropriate landscape buffer be provided. The detail of these elements could be controlled at reserved matters or condition discharge stages.
20. The proposal would therefore conserve the traditional landscape and character of the Protected Lane and it complies with Policy LPP69 of the Section 2 LP.

### Landscape

21. The appeal site is not within a nationally designated or valued landscape. It is an unremarkable field with significant built form to the south, west and east, and even to the north a golf course, rather than open countryside. Some trees on the appeal site would be lost, however, they would be moderate and low

category trees. The significant band of woodland that runs north-south across the appeal site would be largely retained apart from a thin band to be felled for the proposed spine road and a crescent area to be felled to create a play area. Extensive replacement and additional landscaping including tree planting is proposed and could be controlled by future reserved matters and conditions submissions.

22. Nevertheless, there would be some harm to the landscape character of the site and surroundings due to the proposed built form on the field. This would be appreciated by some sensitive receptors, including residents of existing nearby properties and users of footways and Rectory Lane, which includes pedestrians as well as vehicles. However, those harms would be largely self-contained and any harm to the wider context would be limited.
23. The creation of the cycle and bus gate access routes would result in the loss of hedgerow and trees along Rickstones Road. This would result in harm to the character and appearance of the road. However, this harm would be limited because the amount of tree and hedgerow loss required would be small and because this part of the road has existing built form and development. In addition, the detail of the removal of existing hedgerows and trees could be controlled by future reserved matters and conditions submissions, to minimise any effects.
24. Overall, there would be some harm to the character and appearance of the area through the loss of the existing field to be replaced by a substantial residential development. The existing landscape is unremarkable and extensive open space, parkland and tree planting is proposed. Any harm would be largely visually self-contained. I therefore assess the level of harm to be limited. However, the proposal would fail to comply with Policy LPP67 of the Section 2 LP, which requires proposals to be sympathetic to the existing character of the landscape. It would also fail to comply with Policy SP7 of the Section 1 LP, which requires high quality design.

#### *Highway safety*

##### Access

25. It is proposed to re-configure an existing vehicular access point from Rickstones Road. The existing access is to a collection of industrial units. The proposed access would provide a turning head to retain access to the industrial units and would, in addition, provide access for busses through the appeal site by connecting to the proposed spine road. A bus gate situated beyond the turning head for the existing industrial units would ensure this access for the appeal site would only be used by busses.
26. The details of the access have not yet been confirmed. However, a detailed drawing has been provided of the current proposed design. The existing access is nearby to a bend in the road and currently has poor visibility to the south. However, the proposed access, although broadly in the same location, would also include the creation of 2.4m x 43m visibility splays in both directions. The size of visibility splay corresponds to that set out in Manual for Streets 2 (MfS2) where 85<sup>th</sup> percentile speeds are up to 37 mph, which MfS2 states is generally achieved within 30 mph speed limits. The relevant part of Rickstones Road is subject to a 30 mph speed limit. The Rickstones Road Action Group has stated that supporting information to a planning application in relation to Chatten



School measured the actual speed of vehicles and found northbound traffic to be travelling at an 85<sup>th</sup> percentile speed of 43.7 mph. However, I have not been provided with full details regarding this measurement. In addition, the access for the school, though nearby, is to the south of two tight bends in Rickstones Road, which are likely to slow northbound traffic. No surveys of vehicle speeds outside the proposed access point have been provided to demonstrate an 85<sup>th</sup> percentile speed greater than 37 mph. I am therefore satisfied that the visibility splay used by the appellant is appropriate for the proposed access.

27. Residential properties Nos 302, 304 and 306 Rickstones Road lie to the north east of the proposed access. There is no footpath in front of these three properties and instead the driveways and front gardens for the houses directly abut the road. I have been provided with land registry documents confirming the land ownership boundaries of the three properties and the visibility splay runs through the land ownership of all three. However, the visibility splay would also be entirely within the highway boundary and would therefore be over highways land maintainable at public expense, as set out in Section 36 of the Highways Act 1980 (as amended). I am therefore confident that the visibility splay would be kept free of visual obstructions by the Highways Authority.
28. The detailed design of the proposed access could be controlled by future reserved matters and condition discharge submissions. The Highways Authority has not objected to the proposal. Personal injury accident data has been provided that confirms this part of Rickstones Road has no road safety issues at present. The additional traffic using the access compared to as existing would only be the three busses an hour. I am therefore satisfied that the proposed access would likely not materially harm highway safety and could improve safety in comparison to the existing access point, depending on the final detailed design.
29. The proposal therefore complies with paragraph 111 of the Framework, which states that development should only be refused if there would be an unacceptable impact on highway safety. It also complies with Policy LPP52 of the Section 2 LP, which states that proposals should not have a detrimental impact on highway safety.

#### Cyclists

30. A joint foot and cycle way is proposed from the appeal site to Rickstones Road. This part of Rickstones Road would then be upgraded to provide cycleways and controlled crossings. The detail of these proposals would be controlled by future reserved matters, condition discharge and s38/s278 works submissions. They would improve the connectivity and safety of Rickstones Road for cyclists.
31. The s106 secures payment towards improving cycle connections between the appeal site and the town centre. One potential scheme is along Collingwood Road. Several concerns regarding this proposal have been raised, including cyclist and wider highway safety. However, there are alternative routes and options, for example using Armond Road or Motts Lane. The detail of the Collingwood Road scheme could also evolve and change. I am therefore satisfied that a solution is likely to be found for a suitably safe and accessible cycle connectivity solution between the appeal site and the town centre.

### *Free-flow of traffic*

32. The appeal is supported by a Transport Statement. Normally, for a proposal of the scale proposed, a full Transport Assessment would be required. However, ECC as Highways Authority has confirmed that in this instance the submitted Transport Statement is sufficient. In addition, traffic surveys from September 2022 found peak hour traffic levels to be 24% lower than was predicted in the Transport Assessment's accompanying the Phase 1 and 2 planning applications in 2015, which conclude there is sufficient highways capacity for further development even at their own predicted traffic levels.
33. The proposal includes a significant package of mitigation measures that would reduce the reliance on the car for journeys by the future residents of the proposal, including the bus route diversion, new foot and cycle routes along Rickstones Road, and contributions towards a new cycle route to Witham train station and to improve River Walk between the appeal site and Witham town centre. The Highways Authority has not objected to the proposal with regard to the effect on the free-flow of traffic and I have seen no substantiated evidence that would lead me to a different conclusion.
34. The proposal therefore complies with paragraph 111 of the Framework and Policy LPP52 of the Section 2 LP, which state that development should only be refused if the residual cumulative impacts on the road network would be severe.

### **Other Matters**

#### *Heritage*

35. To the south west of the appeal site lies the Old Rectory, a grade II Listed building. The building sits in extensive grounds, all of which lie on the opposite side of Rectory Lane from the appeal site. The building was historically isolated but this has already been partially eroded through the extension of Witham to the south, east and west of the building. The appeal site is currently an open field and is the only remaining open field surrounding the building.
36. The listed building has primarily functioned as a private residence and estate. It no longer serves as a rectory and has no association with the land beyond the enclosed grounds. The field pattern of the appeal site is different to what it would have been at the time the building was associated with this land. Both sides of Rectory Lane, in this location, are bordered by thick hedgerow and some tree planting. Views between the Old Rectory and the appeal site would be extremely limited and restricted to partial or glimpsed views at most. The setting of the listed building is therefore primarily focused on its own extensive, formal, private grounds and the appeal site does not materially contribute to the significance, or special architectural and historic interest, of the listed building.
37. The proposal would result in a significant change in the character of the land nearby to the listed property and its curtilage, through the introduction of built form. However, the proposed built form of the proposal would be set back significantly from Rectory Lane and additional landscaping and planting in this area is proposed, the detail of which could be controlled by future reserved matters and condition submissions. The proposal would not alter the current private, enclosed setting of the Old Rectory, or the ability to appreciate the



building and its special architectural and historic interest from within this setting. Consequently, the proposal would not harm the setting of the listed building, which would retain its special architectural and historic significance.

### *Appropriate Assessment*

38. The appeal site falls within the Zones of Influence (ZoI) for the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, the Dengie SPA and Ramsar site, and the Essex Estuaries Special Area of Conservation (SAC), all of which fall within the scope of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS). Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment (AA). As the Competent Authority, I have therefore undertaken an AA.
39. The Blackwater Estuary site provides saltmarsh, mudflats, shingle and shell bank habitats. It supports numerous important breeding and non-breeding bird species. The Dengie site has a large and remote area of tidal mudflats and saltmarshes which supports internationally important numbers of overwintering, non-breeding bird species.
40. The proposal would increase population within the ZoI, resulting in increased recreational pressure on the sites, including from dog walking, which has been shown to potentially lead to disturbance of birds using intertidal habitats with the adverse effect on these birds. The appeal site is fairly distant from the protected sites but the indirect recreational pressure increases on the sites would likely have a significant effect in-combination with other development proposals, despite likely having a negligible effect on its own.
41. Natural England (NE) has confirmed that 4.3 ha of space would be required in on-site mitigation. The proposal would include 2.33 ha of sports provision, 2.00 ha of parkland and 3.37 ha of woodland, in excess of the area required by NE. The provision and maintenance of these spaces, including a circular dog walking route, are secured through the s106 and by conditions. The spaces are throughout the development and would be easily accessible to the future residents. I am therefore satisfied that they would be used.
42. In addition, in relation to any residual effects on the protected sites, the s106 also secures a payment towards the Essex Coast RAMS, which would ensure there would be no increased recreational pressures on the coastal protected areas in combination with other plans and projects. I am therefore satisfied that the mitigation payment is required to avoid an adverse effect on the integrity of the sites. I am also satisfied that the planning obligation meets the tests set out in Regulation 122 of the CIL Regulations 2010 and paragraph 57 of the Framework.
43. Overall, I conclude that, subject to the provision of the on-site open space and facilities and the contribution to the Essex Coast RAMS, there would be no likely significant adverse effects on the integrity of the designated sites, in-isolation or in-combination with other plans or projects.

### *Local infrastructure*

44. The proposal would result in new people living in the area. They would increase demand on local services and facilities. The s106 secures contributions towards: a new community facility at Maltings Lane; the extension or

refurbishment or reconfiguration or relocation of the Witham Health Centre; early years, childcare, primary education, and secondary education facilities, within three miles of the appeal site; and, upgrading the facilities at Witham library. The amount of the contributions has been assessed in the CIL Compliance Statement and they are linked to the projected population of the proposal and the likely level of effect on local infrastructure. The identified facilities are nearby to the appeal site. I am therefore satisfied that the planning obligations meet the tests set out in Regulation 122 of the CIL Regulations 2010 and paragraph 57 of the Framework. Subject to the s106, the proposal would therefore have an acceptable effect on local infrastructure of this type.

### *Biodiversity*

45. The appeal site provides habitat for bats, birds in particular skylarks, great crested newts and reptiles. The s106 secures extensive open areas and woodland, skylark mitigation through the provision of suitable habitat, and a reptile receptor site for any reptiles which need to be re-located. Conditions discharge and reserved matters submissions could control: the lighting scheme to be appropriate for bats; the detail of the provision and management of the proposed landscaping and open space; the felling and protection of trees; obtaining relevant licenses; and securing a Biodiversity Net Gain. Subject to these controls, the proposal would have an acceptable effect on biodiversity.

### *Agricultural land*

46. The appellant has undertaken an Agricultural Land Classification (ALC) survey of the appeal site. The ALC finds that the proposal would result in the loss of around 13 ha of Grade 3a and 1 ha of Grade 2 agricultural land, both of which are classified as best and most valuable agricultural land (BMV) in the Framework. However, evidence has been provided that the majority of agricultural land in the District is BMV, including a high proportion of the higher Grade 2 land. This includes alternative land in the Witham area and all the Local Plan greenfield allocated sites for large-scale development. Paragraph 6.29 of the Section 2 LP confirms that the use of BMV for development is inevitable. Therefore, the appeal site is, at worst, sequentially neutral in the consideration of BMV. There would be conflict with paragraph 174 of the Framework, which recognises the wider benefits, including economic, of BMV, but this must be considered in this context.

### *Minerals*

47. The appeal site falls within a Mineral Safeguarding Area (MSA). Paragraph 212 of the Framework finds that proposals should not normally be permitted in MSA if they might constrain the potential future use for mineral working. ECC has objected to the proposal because of the potential for future mineral working on the MSA, including potentially as part of a larger mineral extraction site. However, the appellant has provided a Minerals Resource Assessment (MRA) that concludes there are a number of practical constraints that would reduce the amount of minerals that could be extracted and that there is an overburden ratio of 2.3:1 which makes it commercial unviable to extract at this location. The MRA also finds that the nearby quarry is separated from the appeal site by the A12 and a railway line and has access constraints. The MRA was uncontested at the inquiry. I am therefore satisfied that there is only a remote

chance that the mineral resource would be extracted in the future.  
Consequently, the proposal complies with paragraph 212 of the Framework.

### *Objections*

48. A large number objections have been submitted, including a petition submitted by Witham Town Council, and objections from the Rickstones Action Group, Campaign for the Protection of Rural England, Witham and Countryside Society and Rivenhall Parish Council. The objections raise various concerns in addition to those addressed above, in particular: disruption during construction; loss of an existing playing field; loss of old trees; overshadowing of neighbouring gardens and play areas; and, overlooking and loss of privacy. I have taken all these factors into consideration. They are not in dispute between the main parties. Most were addressed in the Officer's Report, with the Council concluding that there would be no material harm in these regards. No substantiated evidence has been submitted that leads me to any different view. Others are addressed in my reasoning above, can be addressed by condition or reserved matters submissions or are dealt with by the planning obligations secured.

### *Support*

49. A letter of support has also been received, due to the importance of building new housing, the restrictions to traffic on Rectory Lane, the significant gap that would remain between Witham and Rivenhall, and Witham's road infrastructure being able to accommodate increased traffic. All these points are addressed in my Decision.

## **Planning Balance**

### *Weighting*

50. The proposal would be for inappropriate development in the countryside, conflicting with the overall Spatial Strategy of the Development Plan. However, the Council cannot demonstrate a five year supply of housing land and it is inevitable that such sites will need to be released to address this shortfall. The Spatial Strategy and the associated restrictions on development outside defined development boundaries therefore have reduced weight and I place very limited negative weight on this conflict.
51. There would be limited harm to the character and appearance of the area through the loss of the existing field to be replaced by a substantial residential development. However, the existing landscape is unremarkable and any harm would be largely visually self-contained. The effect would be no more than would be expected on any site outside of the defined development boundaries which is capable of meeting the Council's housing needs. I therefore place very limited negative weight on this harm.
52. The proposed loss of BMV agricultural land would be fairly extensive, at 13 ha, however use of BMV for development is inevitable and the appeal site is, at worst, sequentially neutral in the consideration of BMV. I therefore place limited negative weight on this harm.
53. That there is only a remote chance that the mineral resource on the appeal site would be extracted in the future, that the effects on local infrastructure would be adequately mitigated, that there would be no likely significant adverse

effects on the integrity of the designated sites, that the proposal would not harm the setting of the listed building, that there would likely be no material harm to highway safety or the free-flow of traffic, that the proposal would conserve the traditional landscape and character of the Protected Lane and that the proposal would not result in coalescence between Witham town and Rivenhall village all lie neutrally in the planning balance.

54. Up to 230 dwellings are proposed. The provision of housing is one of, if not the most, important objectives of national planning policy. The Council cannot demonstrate a five year supply of housing land, contrary to the expectation set out in the presumption in favour of sustainable development in the Framework. Approximately 180 of the proposed dwellings are likely to come forward within the next five year period, directly meeting this shortfall. I place substantial positive weight on the proposed housing.
55. Of the up to 230 dwellings, the s106 secures that 30% would be affordable housing dwellings. The Strategic Housing Market Assessment 2015 sets a target for affordable housing delivery of 218 dwellings per annum (dpa). The current delivery rate is 140 dpa and the shortfall this has created means that the current required delivery rate is likely much higher than 218 dpa. I therefore place substantial positive weight on the proposed affordable housing.
56. Of the 230 dwellings, the s106 secures that 2% (likely five plots) would be for self-build/custom build housing. There is an existing shortfall in the provision of such housing. The extent of the shortfall is contested but the main parties are in agreement that the proposed self-build/custom build plots should have significant positive weight, and I see no reason to disagree.
57. 7.6 ha of public open space is proposed, significantly in excess of the Policy LP50 of the Section 2 LP minimum requirement of 1.43 ha. In addition, play areas, woodland, allotments, plating fields and a circular walk are proposed. These facilities would not only be able to be used by the future residents of the proposal but also the general public. I therefore place significant positive weight on these elements of the proposal.
58. It is proposed to provide and/or improve existing cycle and pedestrian connections between the appeal site and the town, such as the River Walk and the yet to be finalised cycle route. In addition, new bus stops are secured by the s106. These works are beyond that required to mitigate the effect of the proposal and would be used by the general public in addition to the future residents of the scheme. I therefore place significant positive weight on these elements of the proposal.
59. There would be short term economic benefits to the area through construction of the proposal. There would also be longer term economic benefits from spending in the local economy by the future occupants of the scheme. As directed by paragraph 81 of the Framework, I place significant positive weight on this support for economic growth.
60. The appeal site is in an accessible location to local services and facilities and is well served by, and would improve, local non-car transport connections. I place moderate positive weight on these factors.

61. Subject to control by conditions and the s106, there would be a Biodiversity Net Gain as a result of the proposal. I place moderate positive weight on this benefit.

*The balance*

62. The conflicts I have identified include with the overall Spatial Strategy of the area. Therefore, whilst the conflicts are only limited in weight, I find that there would be conflict with the Development Plan as a whole. S38(6) of the Planning and Compulsory Purchase Act 2004 states that regard must be had to the Development Plan unless material considerations indicate otherwise. The Framework is a very important material consideration. In this case, the Council cannot demonstrate a five year supply of housing land and the application of policies that protect areas or assets of particular importance do not provide a clear reason for dismissing the appeal. Paragraph 11dii of the Framework is therefore engaged and the appeal should be allowed unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
63. However, the benefits of the proposal are many and weighty. The harms and conflicts with the Development Plan are few and of lesser overall weight. The material considerations therefore indicate that the proposal is acceptable and it is not necessary to engage the 'tilted balance', although the lack of a five year supply of housing land has influenced the weightings that has led to this conclusion.

**Conditions**

64. A schedule of conditions was agreed between the parties ahead of the inquiry. This was discussed through a round-table session at the inquiry. I have considered the conditions against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and in the interests of clarity, precision, and simplicity. I set out below specific reasons for each condition:
- In addition to the standard time limit conditions, a condition specifying the relevant drawings and confirming the reserved matters to be submitted provides certainty and clarity;
  - The limit on dwelling numbers condition and the minimum proportion of 1 and 2-bedroom dwellings conditions are necessary to control the scale of development and to ensure a suitable mix of dwelling sizes are built;
  - The design code, affordable dwelling layout, Lighting Scheme, Landscaping Scheme, Arboricultural Impact Assessment Report, Refuse Scheme, boundary treatment, solar panels and space standards conditions are necessary to ensure a satisfactory standard of development;
  - The design code, Lighting Scheme, Landscaping Scheme, Arboricultural Impact Assessment Report, Refuse Scheme, boundary treatment, solar panels, Arboricultural Method Statement (AMS), Construction Method Statement (CMS), T93 and T94 Method Statement, materials and sports pitch lighting conditions are necessary to protect and enhance the character and appearance of the area;

- The Noise Assessment, Lighting Scheme, CMS, piling, construction hours and burning of materials conditions are necessary to protect the living conditions of future occupants and neighbouring occupiers to the proposal;
  - The Lighting Scheme, Biodiversity Enhancement Strategy, Landscaping Scheme, Arboricultural Impact Assessment Report, Landscape Ecological Management Plan (LEMP), CEMP: Biodiversity, AMS, T93 and T94 Method Statement, Natural England license, Bat Survey Report, ecological measures, compliance with ecological documents and sports pitch lighting conditions are necessary to protect and enhance biodiversity;
  - The Electric Vehicle Charging Points condition is necessary to secure details of the appearance and type of the points, beyond Requirement S1 of The Building Regulations 2010, Approved Document S 2021 Edition;
  - The archaeology, land contamination, ground conditions, SuDS Maintenance Plan and yearly SuDS logs conditions are necessary to ensure the proposal would have acceptable effects with regard to these technical considerations;
  - The Surface Water Drainage Scheme and off-site flooding conditions are necessary to ensure that suitable mitigation is provided regarding surface water drainage and flooding; and,
  - The CMS, Residential Travel Plan, ball stop mitigation and spine road width conditions are necessary to protect the free-flow of traffic and highway safety.
65. The LEMP, CEMP: Biodiversity, Archaeological Evaluation, Archaeological Mitigation Statement, Surface Water Drainage Scheme, off-site flooding, Phase 2 Land Contamination Survey, AMS, CMS, ground conditions and T93 and T94 Method Statement conditions are necessarily worded as pre-commencement condition, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used. The appellant has confirmed acceptance of the pre-commencement conditions.

## **Conclusion**

66. For the reasons above, I conclude that the appeal be allowed.

*O S Woodward*  
INSPECTOR



## **ANNEX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga, of Counsel. He called:

Neil Jones	Principal Planning Officer, Braintree District Council
Joanna Lilliot	Senior Solicitor, Holmes & Hills LLP

### FOR THE APPELLANT:

Paul Brown KC, of Landmark Chambers. He called:

Nigel Cowlin CMLI	Nigel Cowlin Ltd
Oliver Spencer MRTPI	Director, Andrew Martin Planning Ltd
Kevin Kay FCIHT CTPP	Divisional Director, Ardent Consulting Engineers

### INTERESTED PERSONS:

Councillor James Abbott	Chairman, Rivenhall Parish Council
Councillor Michael Lager	Ward Councillor, Witham Town Council
Councillor Bob Wright	Ward Councillor, Braintree District Council and Rivenhall Parish Council
Melanie A'Lee	Rickstones Action Group

**ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY**

- 1 Sport England Model Planning Conditions, dated March 2017
- 2 Councillor James Abbott speech transcript
- 3 Statement on behalf of Witham Town Council at the Appeal hearing
- 4 Opening statement on behalf of Bellway Homes Ltd, by Paul Brown KC, dated 6 December 2022
- 5 The Conservation of Habitats and Species Regulations 2017
- 6 Crime and Disorder Act 1998, Chapter 37
- 7 Council's Opening, by Asitha Ranatunga, dated 6 December 2022

## **ANNEX C: SCHEDULE OF PLANNING CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings: BW219-PL01 Rev E, PP-01 Rev I, 02 Rev I, 03A Rev G, 03B Rev F, 04 Rev J.

### **Reserved matters submissions**

- 5) The submission of reserved matters application(s) pursuant to this outline planning permission shall together provide for no more than 230 dwellings.
- 6) Prior to submission of the first reserved matters, a Design Code for all areas of the site, including housing development, public realm and character areas, which demonstrates compliance with the design principles of the Rivenhall Park IV Vision Statement (submitted 22 September 2021), shall be submitted to and approved in writing by the local planning authority. All reserved matters submissions shall accord with the approved site wide Design Code.
- 7) Concurrent with the submission of reserved matters for layout under Condition 1 of this decision, details of the following shall be submitted:
  - i. A Confirmation Report from an Approved Inspector or Local Authority Building Control Service that the drawings for all houses and ground floor flats proposed as affordable dwellings and shown on the submitted Affordable Housing Scheme as such (or any revisions of this Scheme subsequently submitted for approval as part of the application) have been designed to comply with Building Regulations 2015 (as amended) Part M(4) Category 2;
  - ii. A Confirmation Report from an Approved Inspector of Local Authority Building Control Service that the drawings for all bungalows proposed as affordable dwellings and shown on the Affordable Housing Scheme (or any revisions of this Scheme subsequently submitted for approval as part of the application) as needing to be compliant with Building Regulations 2015 (as amended) Part M(4) Category 3 have been designed as such; and,
  - iii. The affordable dwellings shall only be built in accordance with the approved details and, in the case of plots indicated in the Affordable Housing Scheme to be constructed in accordance with Building Regulations 2015 Part M(4) Category 2 or Building Regulations Part M(4) Category 3, prior to their occupation, written

confirmation from an Approved Inspector or Local Authority Building Control Service shall be submitted to and approved in writing by the local planning authority to certify that they have been built to the agreed standard.

- 8) Concurrent with the submission of reserved matters for appearance or layout under Condition 1 of this decision, an updated Noise Assessment Report shall be submitted.
- 9) Concurrent with the submission of reserved matters for layout under Condition 1 of this decision, a Lighting Scheme designed to promote personal safety, protect living conditions and the night-time landscape and biodiversity shall be submitted. The Lighting Scheme shall detail the following:
  - Details of phasing, location and design of all lighting to be installed within the site during periods of construction and occupation;
  - Details of ownership of lighting once the development is occupied and, where relevant, details of its associated maintenance to ensure the lighting is provided in perpetuity thereof in the interests of personal safety;
  - Assessment of the impacts of the lighting scheme upon biodiversity which identifies those features on or immediately adjoining the site that are particularly sensitive for bats including those areas where lighting could cause disturbance along important routes used for foraging; and,
  - Provision of appropriate lighting contour plans, isolux drawings and technical specifications to demonstrate which areas of the development are lit and to limit any relative impacts upon the territories of bats.

The approved lighting scheme shall be implemented prior to first occupation of the development and shall thereafter be retained and maintained as such in accordance with the approved details.

- 10) Concurrent with the submission of reserved matters for layout or landscaping under Condition 1 of this decision, a Biodiversity Enhancement Strategy for Protected and Priority Species shall be submitted. The content of the Strategy shall include the following:
  - Purpose and conservation objectives for the proposed enhancement measures;
  - Detailed designs to achieve stated objectives;
  - Locations of proposed enhancement measures by appropriate maps and plans;
  - Persons responsible for implementing the enhancement measures; and,
  - Details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the details as approved and shall be retained in that manner thereafter.

- 11) Concurrent with the submission of reserved matters for landscaping under Condition 1 of this decision, a Landscaping Scheme shall be submitted. This shall comprise a detailed specification of hard and soft landscaping works, to include details of the following:
- Types and sizes of all trees/plants to be planted on the site, demonstrating that for each tree that will be removed from the site a minimum of two new trees will be planted within the public open space on the site, and that for each 1 metre of hedgerow that is removed a minimum of 2 metres of new hedgerow will be planted within the public open space on the site;
  - Numbers and distances of all plants to be planted on the site;
  - Soil specification;
  - Seeding and turfing treatment within the site;
  - Colour and type of material for all public hard surface areas and private areas visible from the public realm;
  - Watering maintenance regime for all areas of new planting; and,
  - Programme and timetable for implementation of the above works.

The Landscaping Scheme shall subsequently only be implemented in accordance with the approved details. Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of five years from the completion of the development, shall be replaced in the next available planting season with others of a similar size and species.

- 12) Concurrent with the submission of reserved matters for layout, landscaping or access under Condition 1 of this decision, an Arboricultural Impact Assessment Report shall be submitted. The Report shall have regard to the Preliminary Tree Removals Plan (TR&R/Prelim NE Witham/07.10.21) and Proposed Tree Management Location Details submitted at outline stage and the requirements of Condition 11 of this permission.
- 13) Concurrent with the submission of reserved matters for layout under Condition 1 of this decision, a Refuse Scheme shall be submitted, including the following details:
- Location of refuse bins and recycling materials - their storage areas and waste/recycling presentation points;
  - Appearance of any associated screening or/and enclosures;
  - Confirmation that distances travelled by local authority refuse vehicle operatives from the location where a refuse vehicle are intended to stop to the presentation points specified do not exceed 20m each way;
  - Confirmation of 26 tonne carrying capacity of all roads intended for use by local authority refuse vehicles; and,
  - Refuse vehicle swept path analysis for all roads intended for use by local authority waste vehicles.

The development shall be implemented in accordance with the approved details prior to the first occupation of each relevant unit of the development and thereafter retained.

- 14) Concurrent with the submission of reserved matters for layout under Condition 1 of this decision, a Strategy detailing the location and

specification of all Electric Vehicle Charging Points to be provided shall be submitted and which, as a minimum, shall ensure each new dwelling includes provision of one charging point wherever practical.

- 15) Concurrent with the submission of reserved matters for appearance, landscaping or layout under Condition 1 of this decision, a plan indicating the location and general design of all walls, fences, other boundary treatments and means of enclosure shall be submitted.
- 16) Concurrent with the submission of reserved matters for layout under Condition 1 of this decision, details of the location and design of all garages/car parking spaces and cycle storage facilities shall be submitted. The garages/car parking spaces and cycle storage facilities shall be provided prior to occupation of the dwelling to which they relate and shall thereafter be retained and kept available for use for their specified purpose. The garages/car parking spaces and cycle storage facilities shall be used solely for the benefit of the occupants of the dwelling of which it forms part, and their visitors, and for no other purpose and permanently retained as such thereafter.
- 17) Concurrent with the submission of reserved matters for appearance under Condition 1 of this decision, a plan indicating the location and design of solar photovoltaic generation equipment for every dwelling shall be submitted.

### **Pre-commencement**

- 18) Prior to the commencement of development, a Landscape Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
  - Description and evaluation of all features to be managed;
  - Ecological trends and constraints on site that might influence management;
  - Aims and objectives of management;
  - Appropriate management options for achieving aims and objectives;
  - Prescriptions for management actions;
  - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - Details of the body or organisation responsible for implementation of the plan; and,
  - Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body or bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved in accordance with the approved details.



- 19) No development or groundworks of any kind shall commence until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:
- Risk assessment of potentially damaging construction activities;
  - Identification of "biodiversity protection zones";
  - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - The location and timing of sensitive works to avoid harm to biodiversity features;
  - The times during construction when specialist ecologists need to be present on site to oversee works;
  - Responsible persons and lines of communication;
  - The role and responsibilities on site of an ecological clerk of works or similarly competent person;
  - Use of protective fences, exclusion barriers and warning signs; and,
  - Areas of the site identified as habitat for Great Crested Newts in which development should be restricted as it may adversely affect this species and thus may be subject to licence under Condition 29 of this consent.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 20) No development or preliminary groundworks shall commence until a Programme of Archaeological Evaluation has been secured and undertaken in accordance with a Written Scheme of Investigation which shall previously have been submitted to and approved in writing by the local planning authority.
- 21) No development or preliminary groundworks shall commence in those areas identified as containing archaeological deposits until the satisfactory completion of fieldwork undertaken in accordance with an Archaeological Mitigation Statement detailing excavation/preservation strategy, which shall previously have been submitted to and approved in writing by the local planning authority.
- 22) No development shall commence until a detailed Surface Water Drainage Scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include the following (but not be limited to this):
- Limitation of discharge rates to the 1 in 1 year greenfield rate for both the eastern (5.3l/s) and western (13.1l/s) parcels for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change, subject to agreement with the relevant third party,
  - All relevant permissions to discharge from the site into any outfall should be demonstrated;
  - Provision of sufficient storage to ensure no off-site flooding as a result of development during all storm events up to and including the 1 in 100 year plus 40% climate change event;

- Demonstration that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event;
- Demonstration that Phases 1 and 2 of development in the south have been designed to accommodate the flows from the development hereby approved;
- Demonstration, as far as is practicable, that use of above ground SuDS has been maximised throughout the development to enable the conveyance and treatment of water as close to source as possible;
- Demonstration that rainwater reuse has been considered and incorporated as much as possible as the primary method of managing surface water drainage;
- Provision of final modelling calculations for all areas of the drainage system;
- Provision of an appropriate level of treatment for all run-off leaving the site, in line with the Simple Index Approach as detailed in Chapter 26 of the CIRIA SuDS Manual C753;
- Provision of detailed engineering drawings of each component of the drainage scheme; and,
- Provision of final drainage plans which detail exceedance and conveyance routes, finished floor and ground levels, and location and sizing of any drainage features.

The scheme shall subsequently be implemented as approved prior to first occupation of the development.

- 23) No development shall commence until a Scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater, and to prevent pollution, during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented as approved.
- 24) No development shall commence until a comprehensive Phase 2 Land Contamination Survey has been undertaken to assess the nature and extent of any contamination on the site and a copy of this survey's findings, together with a remediation scheme to bring the site to a suitable condition in that it represents an acceptable risk (if required), has been submitted to and approved in writing by the local planning authority. The survey's findings must subsequently be implemented as approved. Formulation and implementation of the remediation scheme shall be undertaken by competent persons and in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. Further advice is available in the 'Essex Contaminated Land Consortium's Land Affected by Contamination: Technical Guidance for Applicants and Developers'. Such agreed measures shall be implemented and completed prior to the commencement of development hereby approved.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in the remediation scheme agreed in writing with the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing by the local planning authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

Prior to occupation of any property hereby permitted on the part of the site where contamination is found the developer shall submit to the local planning authority a signed certificate to confirm that the remediation works have been completed on that part of the site in accordance with the documents and plans detailed in the approved contaminated land assessment reports and the approved remediation scheme.

- 25) No development shall commence until an Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the local planning authority. The AMS will include a Detailed Tree Protection Plan (DTPP) in broad accordance with the Arboricultural Impact Assessment Report approved under Condition 12 and provide details of trees to be retained, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, operation of site machinery, site storage and other construction related facilities, and agreement to notify the local planning authority in writing at least five working days prior to the commencement of development on site.

The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (frequency of visits; key works which will need to be monitored, etc.) and how they will record their monitoring and supervision of the site.

The development shall be carried out in accordance with the approved details. For the duration that construction occurs on the site, and at such intervals have been agreed within the AMS, the Project Arboricultural Consultant shall submit a report to the local planning authority summarising the findings of their site inspections carried out during that period.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the relevant part of the development.

- 26) No development shall commence, including any groundworks, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- A Construction Traffic Management Plan to ensure safe access to/from the site including details of any temporary haul routes and the means by which these will be closed off following the completion of the construction of the development;
  - A Dust and Mud Control Management Scheme;
  - The parking of vehicles of site operatives and visitors;
  - The loading and unloading of plant and materials;
  - The storage of plant and materials used in constructing the development;
  - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - Wheel washing facilities;

- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling/disposing of waste resulting from demolition and construction works;
- A scheme to control noise and vibration during the construction phase; and,
- Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.

The Statement shall thereafter be implemented as approved.

- 27) No development shall commence until a Method Statement has been submitted to and approved in writing by the local planning authority setting out how the two Pine trees identified as T93 & T94 identified for translocation in 'The Proposed Tree Management Location Details Based on Outline Plan' (SES, 24 Nov 2021) will be re-located and detailing all stages of work and timescales for such work in relation to the development construction timescales. The Method Statement shall also identify relevant stages of the process at which an appropriately qualified Independent Specialist shall both certify that the work has been carried out in accordance with the approved details of the Method Statement and submit a certification statement to the local planning authority for approval in writing. The re-location of the identified trees shall be carried out in accordance with the approved details and timescales.
- 28) No development shall commence until the following documents have been submitted to and approved in writing by the local planning authority:
- i. A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and,
  - ii. Where the results of the assessment to be carried out pursuant to (i) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soil structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

The approved scheme shall be carried out in full and in accordance with the approved programme of implementation. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

### **Specific part of the development**

- 29) No development or groundworks of any kind shall commence within the areas identified within the CEMP: Biodiversity under Condition 19 until the local planning authority has been provided with either:
- i. A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or

- ii. A statement in writing from Natural England, or from a qualified ecologist if Natural England does not respond within 56 days to a written request for a statement, to the effect that it does not consider that a specified activity / development will require a licence.
- 30) No above ground development shall commence until samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the local planning authority. The development shall only be implemented in accordance with the approved details.
- 31) No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the local planning authority. The agreed noise and vibration levels shall be adhered to throughout the construction process.
- 32) A Post Excavation Assessment shall be submitted to and approved in writing by the local planning authority within six months of the completion of the fieldwork; such assessment shall include details of the completion of post excavation analysis, preparation of a full site archive and report and an undertaking for deposition of a post excavation report at the local museum. The report shall be deposited as agreed within the stated timeframes in the Post Excavation Assessment.
- 33) Notwithstanding the submitted details, any works to provide the priority junction and site access off Rickstones Road, bus lane and gate, as shown in principle on drawings numbered 2002470-005 B and 2002470-012 B, shall not occur unless and until a Bat Survey Report has been submitted and approved in writing by the local planning authority containing the results of at least two roost surveys of tree T1 (as identified in SES Ecological Impact Assessment October 2021) between the months of May to September together with associated proposed mitigation and enhancement measures should bats be found to be roosting in this tree. Tree T1 shall be retained unless the local planning authority has expressly agreed in writing to its removal.

### **Pre-occupation**

- 34) The dwellings shall not be first occupied until the Technical Housing Standards - Nationally Described Space Standards (2015) has been complied with and the details of compliance provided to the local planning authority.
- 35) Prior to first occupation of the development, a SuDS Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall be submitted to and approved in writing by the local planning authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.
- 36) Prior to first occupation of the development, a Revised Residential Travel Plan together with the contents of Residential Travel Information Packs for sustainable transport (including information as to circular walking routes accessible from the application site) shall have been submitted to

and agreed in writing with the local planning authority. The Revised Residential Travel Plan shall be implemented as agreed. The provision of Residential Travel Information Packs shall be distributed as agreed to the owners of each dwelling at the point of their first occupation.

- 37) Prior to first occupation of the development, full details of the design and specification of the ball stop mitigation, including details of management and maintenance responsibilities, shall have been submitted to and approved in writing by the local planning authority. The approved details shall be installed in full before the development is first occupied and thereafter be managed and maintained in accordance with the approved details.

#### **For compliance**

- 38) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:
- Monday to Friday 0800 hours - 1800 hours;
  - Saturday 0800 hours - 1300 hours; and,
  - Bank Holidays & Sundays - no work.
- 39) No burning of refuse, waste materials or vegetation shall be undertaken in connection with the site clearance or construction of the development.
- 40) If the development hereby approved does not commence (or having commenced, is suspended for more than 12 months) within three years from the date of this outline planning consent, all ecological measures previously approved shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to: i) establish if there have been any changes in the presence and/or abundance of Protected or Priority species; and, ii) identify any likely new ecological impacts that might arise from the changes.

Where the survey results indicate changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures shall be revised and new or amended measures, and a timetable for their implementation, submitted to and approved in writing by the local planning authority prior to the commencement/re-commencement of development. Works shall then only be carried out in accordance with the new approved details.

- 41) The applicant or any successor in title must maintain yearly Logs of SuDS Maintenance which should be carried out in accordance with any approved Maintenance Plan under Condition 35 of this decision. The Logs of SuDS Maintenance must be available for inspection upon a request by the local planning authority.
- 42) Unless revised under a condition of this consent or legal obligation tied to it, all ecological mitigation measures and/or works shall be carried out in accordance with the following documents: Ecological Impact Assessment (Southern Ecological Solutions Ltd, October 2021), Skylark Mitigation Strategy (Southern Ecological Solutions Ltd, Jul 2021) and Reptile Mitigation Strategy - Rev B (Southern Ecological Solutions Ltd, July 2021).



- 43) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order (England) 2015 (as amended) the Sports Pitches shown to be provided in the north of the site on Land Use Parameters Plan (BW219-PP-01 Rev I) shall not be lit unless the local planning authority gives written consent to details of such lighting either submitted in conjunction with reserved matters application(s) to this planning application or by a separate application for planning permission made thereafter.
- 44) Notwithstanding the submitted details, the development hereby permitted shall provide for a minimum of 25% of the Market Housing as 1 or 2-bed dwellings.
- 45) Notwithstanding the submitted details, the spine road to be provided through the development (as shown in principle between Evans Way and Rickstones Road on drawing number Vehicular Access & Movement Parameter Plan BW219-PP-03B Rev F) shall have a minimum carriageway width of 6.75 metres.

=====END OF SCHEDULE=====