

Wickham Bishops Neighbourhood Plan 2016-2029 Regulation 16 Consultation

Response submitted on Behalf of Mazdev Limited

November 2020



ARROW PLANNING LIMITED

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Ref: APL-003 – Wickham Bishops

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1.0 Introduction

- 1.1 These representations have been prepared on behalf of Mazdev Limited and in response to the Regulation 16 Consultation on the Wickham Bishops Neighbourhood Plan 2016-2029 (the 'WBNP').
- 1.2 Mazdev Limited are the owners of land at and to the rear of 9 Church Road, Wickham Bishops. The land in question has been the subject to a previous planning application and appeal, as well as having been promoted through the Local Plan process.
- 1.3 A Neighbourhood Plan needs to meet the Basic Conditions, which are:
 1. The Neighbourhood Plan has regard to national policies and advice contained in guidance issued by the Secretary of State. (e.g., National Planning Policy Framework and Guidance)
 2. The making of the Neighbourhood Plan contributes to the achievement of sustainable development.
 3. The making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area). The development plan is made up of the Maldon District Local Development Plan, the Essex & Southend-on-Sea Waste Local Plan and Essex Minerals Local Plan.
 4. The making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations (particularly, the Strategic Environmental Assessment Directive, Environmental Impact Assessment Directive, and the Habitats and Wild Birds Directives).
 5. The making of the Neighbourhood Plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010), either alone or in combination with other plans or projects. The nearest European Site to Wickham Bishops is the Blackwater Estuary
- 1.4 For the reasons set out in these representations, Mazdev Limited strongly objects to the Neighbourhood Plan and considers it does not meet the Basic Conditions for the following reasons:
 - The Neighbourhood Plan does not contribute to the achievement of sustainable development as it does not positively plan for sustainable development;
 - It does not include proposals to meet an identified housing need, including that identified in its own evidence base;
 - There is no justification or evidence for the inclusion of part of our client's land as an Open Space and therefore the Plan is contrary to national policies and advice;

- Instead, the proposed allocation appears to be a way to attempt to sterilise land, contrary to national advice and guidance;
- The WBNP is not consistent with national policy and advice and does not meet the Basic Conditions tests.

1.5 The WBNP should instead be amended as follows:

- The Open Space designation should be removed from the land to the rear of 9 Church Road and those residential properties on Mope Lane;
- The land should instead be allocated for housing in order to meet identified housing need.

1.6 In the event that, having considered written representations, the Examiner is considering the retention of the open space designation, then it is essential that this matter is considered by way of a hearing to listen to oral representations, in accordance with advice contained in the Planning Practice Guidance¹.

1.7 Should that not happen, and the open space designation remains on the land, our client will pursue the matter through the legal process.

¹ Planning Practice Guidance, Neighbourhood Planning, paragraph 056 Reference ID: 41-056-20180222

2.0 Background

- 2.1 Our client, Mazdev Limited, is the owner of the land at and to the rear of 9 Church Road. Enclosed at Appendix 1 is a red line plan which identifies the extent of its land ownership.
- 2.2 The land is entirely in private ownership and there is no public right of access. It comprises a residential dwelling and garden which are within the settlement boundary of Wickham Bishops, along with an enclosed area of grass land that is adjacent to the settlement boundary on three sides.
- 2.3 The land was previously promoted through the Maldon District Local Plan process. At that time, the Council's intention was to produce a separate Site Allocations document, which would allocate sites of this scale in villages such as Wickham Bishops. The Council therefore advised at that time that the site would fall to be properly considered in that document.
- 2.4 However, at the final stage of the Local Plan process (main modifications), the Council changed approach due to the number of sites that had come forward through planning applications elsewhere in the District, but, not in Wickham Bishops. This site was one such site, as evidenced by the evidence base documents at that time, used for that consultation. These documents included the site as contributing towards the housing figures, as evidenced by the enclosed document at Appendix 2.
- 2.5 Planning permission was granted for a development of 52 dwellings on the site at appeal in February 2017. A copy of the Inspector's decision is enclosed at Appendix 3.
- 2.6 Following the quashing of that planning permission, the appeal was reheard, and a copy of the second Inspector's report is enclosed at Appendix 4. Whilst that appeal was dismissed, the findings were consistent with the original Inspector's report, with the only reason for refusal relating to the fact that the Maldon District Local Development Plan (2014 – 2029) had been adopted in the intervening period.

3.0 Planning Policy Requirements for Neighbourhood Plans

- 3.1 Guidance and advice for the content of Neighbourhood Plans is contained in the National Planning Policy Framework (February 2019) (the ‘NPPF’) and Planning Practice Guidance (the ‘PPG’).
- 3.2 In respect of development, para 13 of the NPPF states that *“Neighbourhood Plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.”*
- 3.3 Paragraph 69 of the NPPF states that *“Neighbourhood planning groups should also consider the opportunities for allocating small and medium-sized sites (of a size consistent with paragraph 68a) suitable for housing in their area”*.
- 3.4 The PPG provides further guidance. Paragraph 009 (Reference ID 41-009-20190509) of the section on Neighbourhood Planning states that up to date housing needs evidence is relevant to the question of whether a housing supply policy in a Neighbourhood Plan contributes to achieving sustainable development.
- 3.5 Paragraph 56 (Reference ID 41-056-20180222) advises that “Where the independent examiner considers it necessary to ensure adequate examination of an issue or **to give a person a fair chance to put a case, they must hold a hearing** to listen to oral representations about a particular issue.” (emphasis added).
- 3.6 Paragraph 74 (Reference ID 41-074-20140306) states:
- “When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*
- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with*
 - *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy*
 - *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy*
 - *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach*

4.0 Proposed Open Space Allocation

- 4.1 The WBNP does not provide any justification as to why the land to rear of Church Road is included as an Open Space. Little to no reference is made throughout the document to Open Space, save for Policy WBen 04, and at no point does the Plan or the Evidence Base provide any justification as to why that specific designation, should apply to this specific area of land.
- 4.2 Paragraphs 18-24 of the second appeal Inspector's report for the land consider landscape and the potential impacts of development upon the landscape character of the area.
- 4.3 The Inspectors were very clear in their findings: that the site is mainly viewed against the backdrop of residential development. Furthermore, the Inspector found that views of the site from the wider area are relatively limited. This followed a detailed technical assessment of the landscape impact that was considered through the appeal process. Such an assessment is a more detailed, and thorough assessment of that land when compared to a higher level assessment that has been carried out as part of the Neighbourhood Plan Evidence Base.
- 4.4 Both Inspectors, having considered: the Council's evidence; the Parish Council evidence; and third parties, as well as the appellant's evidence; concluded that development of the Church Road site "*would not adversely affect the intrinsic character and beauty of the countryside nor harm the character and appearance of the wider area*" (paragraph 23 of the second Inspector's Report).
- 4.5 It is evident, therefore, that with two different appeal Inspectors having considered the site, and two opportunities for the District & Parish Councils to produce evidence to the contrary, the findings were consistently that the site does not have any particular landscape value nor contribute to the landscape character of the area.
- 4.6 In both cases, when considering the planning balance, the Inspectors did not find the proposals to have an undue impact on the landscape, highways, character and appearance of the area, ecology, or result in a loss of open space. Instead, they found the scheme acceptable in all aspects, with the ultimate deciding factor weighing against the development being solely the fact that part of the land currently sits outside of the settlement boundary of an up to date Local Plan.
- 4.7 Our previous representations, which included Counsel's opinion on the matter, are enclosed at Appendix 5. Those representations and Counsel's opinion made it clear that there was no basis for the land to be designated as a Local Green Space and that its inclusion represented a blatant attempt to prevent future development. Whilst in the latest draft the designation of this site has now been slightly down-graded to open space, its arbitrary selection for this treatment [and the treatment of other sites where a planning application has previously been received] once again demonstrates a further unjustified attempt to sterilise a prime development site in the village.

- 4.8 The “Audit Record of Changes to Draft Plan following Responses through Regulation-14 Consultation as agreed at NHP Meeting 24/02/2020” (‘the Audit Record’) provides notes identifying changes made to the WBNP from the Regulation 14 stage to that which is now subject of this consultation.
- 4.9 The Audit Record states (p.11) that the land in question has been changed from a Local Green Space to an Open Space designation. It then continues by reference to the Landscape Character Assessment (‘the LCA’), presumably to justify this change.
- 4.10 The reasons quoted from the Landscape Character Assessment, however, are not relevant to this site and do not evidence or justify its designation as an Open Space.
- 4.11 The stated reasons are:
- “Landscape Character Assessment confirms the need to preserve the remaining fields and open spaces in their undeveloped form, as they are important in retaining the rural character of the area and setting of the village. They should be retained to maintain low density settlement pattern and openness of the countryside on West-facing slopes of Tiptree Ridge where this site lies near the Ridgetop. It also highlights the need to maintain the quiet rural character of Mope Lane and Station Road.”*
- 4.12 Turning to the Landscape Character Assessment, the land in question falls within “Local Landscape Character Area 5: Tiptree Ridge – Ridgetop” (p.36-40). Para 6.21 quite clearly states that the “areas around the village are influenced by the proximity of the settlement and have an urban-fringe character”. This is consistent with the appeal Inspector’s findings.
- 4.13 The Assessment makes no specific reference to this site. The above quote from the Audit Record is correct in that the LCA does state that there are remaining fields which are important in retaining the rural character of the area and setting of the village. However, as per the appeal decision, this field is not one such field that performs that function.
- 4.14 Moreover, there are numerous fields within Area 5, yet there are only a small number which are designated as an Open Space in the WBNP. A number of them, particularly those south of Church Road, perform a more important function than the Church Road land. Yet those are not designated as Open Space. This provides further evidence that the designation is not based on a robust, justified evidence based reason, but only a desire to prevent development. This is contrary to national policy and guidance.
- 4.15 Finally, the Open Space designation also encompasses a number of residential properties and gardens on Mope Lane. Plainly, these are not “fields and open spaces in their undeveloped form”. This again demonstrates that the Open Space designation is not justified in this instance and should be removed.

- 4.16 What appears to have happened is that the Council have instead applied the findings of Local Landscape Character Area 4: Tiptree Ridge – West-facing slopes, to land within Area 5. This is despite there being a clear separation between the two.
- 4.17 Paragraph 6.18 of the LCA, which considers Area 4 (not Area 5) states “*Maintain quiet rural character of Mope Land and Station Road*”. Paragraph 6.16, meanwhile, also confirms that Area 4 contains the “relatively steep westward-facing slopes which form part of Tiptree ridge”. Area 5 does not contain these slopes and is instead described as “relatively flat” (para 6.19).
- 4.18 Therefore, the claim in the Audit that these fields “should be retained to maintain low density settlement pattern and openness of the countryside on West-facing slopes of Tiptree Ridge where this site lies” is factually incorrect and is not reflective of what the evidence base for the WBNP actually states.
- 4.19 It is also of note that the LCA does not include any photographs of the site, any specific viewpoints identifying it and does not, in fact, reference the site at all.
- 4.20 This provides further justification as to why the Open Space designation has been applied without evidence.
- 4.21 Planning Practice Guidance states (reference ID 41-074-20140306) that:
When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following.....
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach*
- 4.22 There is no rationale for the proposed designation and there is no evidence to justify it. Therefore, the Neighbourhood Plan does not meet the Basic Conditions as it is not in general conformity with the Local Plan for the area or National Policy.

Strategic Environmental Assessment

- 4.23 The Strategic Environmental Assessment (SEA) consideration of Policy WBen 04 states in a table on p.18 that protecting existing green space will encourage residents to spend more leisure time in the Parish.
- 4.24 This is factually incorrect in respect of the land to the rear of Church Road. The land is not publicly accessible, therefore does not provide a leisure function. It cannot therefore be claimed to contribute to this function and the assessment should be amended to reflect this fact. As currently drafted, it is inaccurate and unsound.

Summary

- 4.25 Our client therefore objects to the proposed Open Space allocation for the following reasons:

- The land is not readily visible from public or wider viewpoints and does not contribute to the landscape character of the area (as confirmed at appeal);
- There is no evidence or justification for the allocation. The quoted references apply to a different Landscape Character Area;
- There is no identified need for the land to be identified as an Open Space and the approach taken is inconsistent with other open fields; fields which are more relevant to the matters referenced in the LCA as being the “justification” for the designation;
- The SEA of the Policy is inaccurate and unsound;
- The allocation instead appears to have been drafted to prevent development and sterilise the land;

- 4.26 Having regard to these matters, the WBNP as drafted fails the Basic Conditions for Neighbourhood Plans.
- 4.27 Given the serious flaws in the evidence base, the Examiner must require the removal of the open space designation.
- 4.28 In the event the Examiner is not minded to require the open space designation to be removed from this land, then, in accordance with the PPG², the Examiner **must** hold a hearing to ensure adequate examination of this issue to allow our client, the landowner, a fair chance to put their case forward.

² Planning Practice Guidance, Neighbourhood Planning, paragraph 056 Reference ID: 41-056-20180222

5.0 Housing Need in Wickham Bishops

5.1 One of the stated objectives of the WBNP is that:

“To provide an appropriate mix and type of dwellings to meet local, current and future needs”

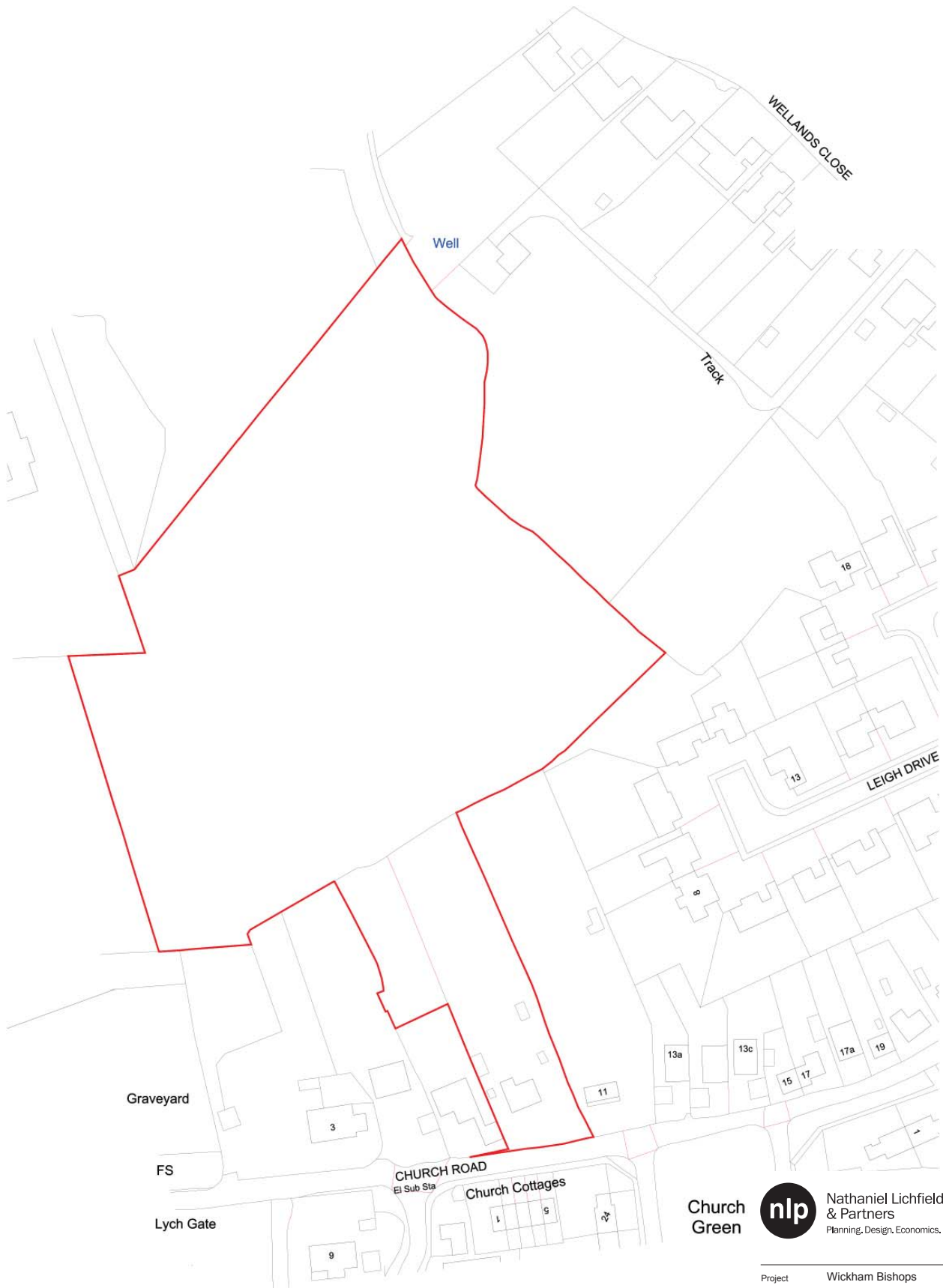
- 5.2 The Housing Needs Survey (HNS) dated January 2017 provides the most up to date picture for housing need within Wickham Bishops. Table 2 of the HNS shows an identified need for 40 homes within the village. Having regard to the stated objective of the WBNP, it should follow therefore that the WBNP includes one or more allocations for at least these 40 homes, to meet current and future needs.
- 5.3 However, the Plan fails to do so. Instead, it does not propose any housing allocations at all. The Plan is therefore silent on how these needs will be met. This is despite the fact that the Residents Survey also expressed many views stating that there should be new housing development in the village (p.39 of the Housing Needs Survey).
- 5.4 The Audit Trail states that the village has already “met its contribution to the LDP”. This does not mean it has met its identified needs.
- 5.5 A review of MDC’s Five Year Housing Land Supply Statement for recent years (covers the period 2017-2019, so the period since the Housing Needs Survey), shows that only 16 homes have been granted planning permission and/or been built since that survey was carried out.
- 5.6 The vast majority of those homes already had permission at the time the survey was completed.
- 5.7 Thus, according to the Housing Needs Survey, even whilst having regard for the 16 homes with permission/built, there remains a shortfall of 24 houses to meet local need.
- 5.8 Furthermore, a recent report to the Council’s Strategy and Resources Committee on 17 September confirmed that the Government’s proposed changes to the standard methodology of housing would result in a significant increase in housing need for the District.
- 5.9 The report presented three different scenarios: the proposed method; the existing method applied to the 2018 Household Projections; and the proposed method with a 40% cap.
- 5.10 In every scenario there was an increase in housing need, ranging from 368 dwellings per annum (dpa) through to as many as 623dpa.
- 5.11 Whilst there remains uncertainty as to which methodology will ultimately be adopted, it is clear that there will be an increase in housing numbers in the District.
- 5.12 The Local Plan, meanwhile, is now over 3 years old and will have to have been reviewed by 2022. Therefore, it is also reasonable to assume it will have to make further housing allocations given the projected increase in housing need.

- 5.13 If the WBNP fails to make any allocations, then it will likely find allocations imposed on it through the new Local Plan just some 2 years away.
- 5.14 The NPPF is clear (para 69) that Neighbourhood Planning groups should consider the opportunities for allocations. That has not been the case in this instance, and, given the existing evidenced housing need, and emerging need, there is a clear and proven need for this area.
- 5.15 This was also supported by the aforementioned responses to the Residents Survey.
- 5.16 As set out earlier in these representations, the previous appeal decisions have confirmed the suitability of the land rear of Church Road for residential development. The land has been subject to full scrutiny by two different appeal Inspectors, both finding that the benefits of delivering housing, including affordable housing, would outweigh the limited harm from developing a greenfield site.
- 5.17 The land is therefore a suitable and appropriate location to meet the housing needs for the village. Having regard to the evidence base (i.e. the HNS and Residents Survey), along with the appeal Inspector findings, the land at and to the rear of 9 Church road should be allocated for residential development to meet current and future housing needs in the village.
- 5.18 Without such an allocation the WBNP fails the Basic Conditions test as it does not contribute to the achievement of sustainable development.



Appendix 1

Site Location Plan



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Church Green



Nathaniel Lichfield & Partners
 Planning, Design, Economics.

Project **Wickham Bishops**

Title **Red line plan**

Client **MAZDEV Ltd**

Date **December 2015**

Scale **1:1250 @ A3**

Drawn by **CP**

Drg. No **PS14433-001-Rev B**



CL14433

KEY

Site boundary





November 2020

Appendix 2

Maldon DC Local Plan Evidence Statement



Matters 2, 3, 4 and 5 Strategic Housing Growth

Q11-12 Contribution of Strategic Sites to Housing Delivery (DOC 129)

Q6a Amended tables (DOC 127)

Updated Infrastructure Phasing Plan (DOC 129)

Q15b Revised Affordable Housing Statement (DOC 132)

Statement made on behalf of the Local Planning Authority

30 January 2017

Q15 Revised Affordable Housing Statement

At the Examination Hearings the Inspector requested that the Council correct the table on the sources of affordable housing (Council's Hearing Statement in response to Q15b) to ensure that the most up to date information was available. The revised statement is provided below:

4. **Sub-Question (15b):** The Table 1 below identifies the sources of affordable housing identified for the Plan period including that completed, secured via planning consents, resolved to grant and forecast for the S2 sites.

Table 1: Sources of Affordable Housing (updated table)

	No. Units	Affordable Units
S2 Sites		
S2 (a) Limebrook Way	1,000	300
S2 (b) Wycke Hill North	320	102
S2 (c) Wycke Hill South	108	0
S2 (d) North Heybridge	1,138	227
S2 (e) North Holloway Road	100	30
S2 (f) Broad Street Green	145	58
S2 (g) Park Drive	131	39*
S2 (h) Heybridge Swifts	101	41
S2 (i) Burnham on Crouch West	180	72
S2 (j) Burnham on Crouch North (West)	180	72
S2 (k) Burnham on Crouch North (East)	90	36
Sub Total S2 Sites	3,493	977
Other sites with Planning Permission and affordable housing		
Bridgmans Green	52	16
Snows Corner, Wickham Bishops	27	12
Latchingdon Bowls Club	41	16
Malone Cottage, Wickham Bishops	14	5
Theedhams Farm, Southminster	94	28
East of Burnham Rd, Latchingdon	30	9
Marsh Rd, Burnham on Crouch	75	23
Woodrolfe Rd, Tollesbury	24	9
Scotts Hill, Southminster	117	35*
South Street, Tillingham	27	9*
Old Engine Shed, Maldon	20	8
Land west of Fambridge Road North Fambridge	75	23
Manor Farm, North Fambridge	30	10
Sub Total Sites with planning permission	626	203
Pipeline applications subject to planning approval		
Land off 34 Hall Rd, Gt Totham	12	4
Mansion House, Althorne	48	19
Land south of Rose Drive Southminster	37	11
Land to rear of 9 Church Road Wickham Bishops	52	21
Sub Total Pipeline Units	149	55
Financial payment in lieu of on-site provision		
Lime Tree Cottage, Gt Braxted	14	5 (Commuted Sum Agreed)

	No. Units	Affordable Units
Turkey Farm Spital Road Maldon	7	2 (Commuted Sum Agreed)
Sub Total units	21	0
Total	4,289	1,235
Target of 130 units x 15 years		1,950
Shortfall/Surplus (Target-Total)		715

*Completed in part or whole

5. The table indicating pipeline supply of affordable housing delivered through planning gain shows a shortfall of 715 homes (1,950 less 1,235). The subsequent paragraph outlines the reasons why the Council is satisfied that the overall requirement will still be achieved but recognises that this does not clearly quantify the number against each source that is mentioned. For greater clarity this is provided in more detail below:

Table 2: Addressing the shortfall in affordable housing supply

Source	Number
Provision of affordable extra care (Independent Living) through partnership with Essex County Council	120 (minimum number – SHMA indicates requirement of 138)
Increased supply through releasing existing stock	120*
Increased supply through releasing existing stock (60 affordable bungalows agreed in s106 for site S2(a))	60*
Rural Exception Schemes (based upon past performance of 5 units per annum x 15 years)	75
Strategic development, e.g. working with partner housing associations to improve supply through other strategic initiatives such as remodelling and intensification of existing schemes / sites (based upon past performance that averages 23 units per annum x 15 years)**	340
Total	715

*SHMA Key Recommendation – see 13.11 pg.156

** The Council is working on improving the capacity of other local housing providers such as almshouse associations and other local charities to enable additional development of supported and affordable housing, funded through the Government's Community Housing Fund but has not added any additional homes into this amount relying on past performance which is likely to improve but cannot yet be demonstrated.

6. Inevitably delivery will not be consistent from one year to another, nor can there be any certainty as to the exact number that will be delivered through these other sources but by relying on previous performance over the previous ten years when overall delivery was lower and the need to enable development through these more strategic initiatives was often the main source of supply, the Council remains confident that it will be able to meet the requirement for affordable housing.



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Appendix 3

Inspectors Report dated 01/02/17



Appeal Decision

Hearing held on 4 January 2017

Site visit made on 4 January 2017

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 1 February 2017

Appeal Ref: APP/X1545/W/16/3152640

**Land at and to the rear of 9 Church Road, Wickham Bishops, Essex
CM8 3LA**

- 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 MAZ Dev Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/01342, dated 23 December 2015, was refused by notice dated 13 April 2016.
 - The development proposed is demolition of an existing dwelling and erection of up to 52 residential dwellings with associated vehicular access.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of an existing dwelling and erection of up to 52 residential dwellings with associated vehicular access at land at and to the rear of 9 Church Road, Wickham Bishops, Essex CM8 3LA in accordance with the terms of the application, Ref OUT/MAL/15/01342, dated 23 December 2015, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The application is for outline permission with all matters except means of access reserved. An illustrative layout plan was submitted with the application and an amended version of that plan was submitted with the appeal. The latter was not before the Council when it made its decision and was not subject to consultation. However because it is merely illustrative of a possible scheme rather than forming part of the proposal I am satisfied that no party would be prejudiced by my considering the amended plan on this basis.

Main Issues

3. The Council's reasons for refusal make reference to the absence of a signed legal agreement for the provision of affordable housing and school transport. Since the Council's refusal a Unilateral Undertaking (UU) has been provided regarding these matters. The Council agreed at the Hearing that its second and third reasons for refusal which concern the principle of affordable housing and infrastructure provision have been addressed. However a matter that remains in dispute is the amount of affordable housing required to be provided. Accordingly the main issues in the appeal are:
 - i) the effect of the proposed development on the character and appearance of the area;
-

- ii) the accessibility of the proposed dwellings to services and facilities by sustainable means of transport; and
- iii) the amount of affordable housing to be provided.

Reasons

Planning Policies

- 4. The development plan consists of the saved policies of the Maldon District Replacement Local Plan (RLP) (2005). The majority of the site is outside the development boundary as defined in the RLP but its policies for the provision of housing covered the period up to 2011 and have expired.
- 5. The Council's Local Development Plan (LDP)¹ has been submitted for examination and is at an advanced stage. The previous Local Plan Inspector had concluded that policy H6 (provision for travellers) was unsound. Subsequently the LDP was called in for consideration by the Secretary of State who has advised that the Plan as a whole is not unsound and that examination may proceed. Paragraph 216 of the National Planning Policy Framework (the Framework) advises that weight may be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies to the policies in the Framework.

Character and Appearance

- 6. The built up area of Wickham Bishops at its western edge comprises 20th century residential estate development off Wellands Close and Leigh Drive. There is also residential development along Church Road as far as the grade II listed church of Saint Bartholomew. Church Road adjoins Mope Lane and Station Road which are rural in character but there are several large detached houses in large gardens along Mope Lane. The appeal site comprises grass land which is to the rear of frontage development on Church Road. It lies between the residential properties on Leigh Drive/Wellands Close and Mope Lane but there is open land between the site and the rear gardens of the Wellands Close properties.
- 7. To the immediate north of the site there is woodland and there are trees along parts of the site boundaries. Part of the eastern boundary is a watercourse. I saw on my visit that the site is elevated in relation to Wellands Close and Leigh Drive. The woodland to the north would screen the proposed development from view from that direction. The development would extend the built up area into the countryside but it would be contained to some extent by existing built development including that along Mope Lane.
- 8. The site forms part of a Special Landscape Area as defined in the RLP. This forms part of the Totham Wooded Farmland Landscape Character Area as identified in the Landscape Character Assessment (LCA).² The Character Area has wooded ridges and hillsides with agricultural fields enclosed by trees although the area becomes more open towards the fringes of Wickham Bishops. The LCA notes that Wickham Bishops is a modern settlement which largely dates from the 20th century. The enclosed nature of the site would

¹ Maldon District Pre-Submission Local Development Plan 2014-2029

² Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments (2006)

- seem to be typical of the landscape character but its close proximity to the built up area also influences its character. The existing adjacent built development and the woodland enclose the site so that it is not readily visible across the wider landscape.
9. For these reasons the impact of the proposal on the landscape would be limited. Although designated in the RLP as a Special Landscape Area the Council confirmed at the Hearing that the site has no particular landscape value and I concur with this view.
 10. Saved policy CC7 of the RLP presumes against development in Special Landscape Areas unless the character of the area is conserved. The proposal would clearly alter the character of the site and would not conserve its character. However saved policy CC7 is not consistent with paragraph 113 of the Framework which requires that policies for development on protected landscape areas should be criteria-based. This limits the weight that can be given to that policy.
 11. The Maldon District Characterisation Assessment (2012) identifies an Arcadian character to villages in the district, including Wickham Bishops. This is a result of low density residential areas that were laid out in the 19th and 20th centuries whereby landscape features were retained and houses set within spacious plots. Whereas this forms a clear part of the defined character of the area it is also evident from what I saw on my visit that there is extensive 20th century residential estate development at higher densities. Indeed the predominant character in the immediate area of the site is of such higher density development. The proposed density of about 21 dwellings per hectare would not be particularly high or out of character in this context.
 12. The Council and interested parties have expressed concern about the layout and scale of the proposed development in terms of the number of dwellings proposed and the single means of access onto Church Road. I saw that there are a number of housing developments in the area which have access via culs-de-sac. The number of proposed dwellings would not be out of scale with the layout or size of the village.
 13. The trees around the boundaries of the site could be retained and the appellants' Arboricultural Impact Assessment and illustrative layout plan demonstrate that trees within the site could be retained. Additional planting could be required by condition. Thus the structure of the existing landscape features could be retained and reinforced and these features would help to ensure that elements of the existing character are retained.
 14. There are two nearby grade II listed buildings, namely 3 Church Road whose rear garden adjoins the site and the Church of Saint Bartholomew which is on the opposite side of Church Road. 3 Church Road is separated from the site by its garden and the trees that grow along its rear boundary. That building is sufficiently separate from the site to ensure that the development would not harm its setting. The church is some distance away from the site and the trees along the boundary with the graveyard provide a good degree of visual separation. For these reasons I concur with the Council's view that there would be no harmful effect on the settings of the listed buildings.
 15. The proposed development would change the character of the site by extending built development into the rural area. However for the reasons given the

extent of that change would be limited by the contained nature of the site and the existing landscape features. I have found that in other respects the development would be in keeping with the adjacent built up areas of the village. For these reasons I conclude on this issue that the proposed development would result in some harm to the character and appearance of the area. The overall harm in this respect would however be limited and for these reasons I give moderate to significant weight to that harm.

16. Saved policy CC6 of the RLP only permits development in the countryside which would not harm landscape character. Saved policy BE1 requires that development in general is compatible with its surroundings. Policy D1 of the LDP has a similar requirement. For the reasons given the proposal would not accord with saved policy CC6. Because it would retain existing landscape features and would be in keeping with the adjacent residential areas I find that the proposal would largely accord with saved policy BE1 of the RLP and policy D1 of the LDP. Policy H4 of the LDP requires optimisation of the use of land consistent with the character and density of the surrounding area. The proposal would accord with those requirements.

Housing Supply

17. Paragraph 47 of the Framework requires that the supply of housing is significantly boosted and that local planning authorities should ensure that their Local Plan meets the full objectively assessed needs for housing. The Council has provided evidence that it has more than a 5 year supply of deliverable housing sites³ and there is no substantive evidence before me to the contrary. While the Council may be able to demonstrate a 5 year supply, the objectively assessed need is a matter to be examined as part of the LDP process and therefore there is some uncertainty in this respect. The policies for housing provision in the RLP are time expired and do not make adequate provision for housing supply. For these reasons the policies for the supply of housing in the RLP are out-of-date and the stated existence of a 5 year land supply does not alter this.
18. This position has been confirmed by Inspectors in two appeals which have been brought to my attention⁴ who found that the housing supply policies are out-of-date notwithstanding the existence of a 5 year supply. In another appeal⁵ the Inspector noted that the RLP policies are time expired but that they have a degree of consistency with the Framework in terms of protecting the countryside. In that appeal the Inspector concluded that the RLP policies are not out-of-date but I take the contrary view in this appeal for the reasons given.
19. The housing policies of the LDP have yet to be fully examined taking into account the economic strategy of the LDP. Given also that there are outstanding objections I cannot give more than limited weight to its housing supply policies. In this context policies restricting development outside the development boundaries restrict the supply of housing and carry limited weight.

³ Maldon District Council Five Year Housing Land Supply Statement (August 2016)

⁴ APP/X1545/W/15/3003795 and APP/X1545/W/15/3133309

⁵ APP/X1545/W/15/3139154

20. Saved policy H1 of the RLP restricts housing development outside settlement boundaries and saved policy S2 of the RLP requires protection of the countryside. Those policies together with the restrictive wording of saved policy CC6 of the RLP constrain the supply of new housing. The proposal would not accord with those saved policies but I give limited weight in this respect because the housing supply policies of the RLP are out-of-date. Paragraph 14 of the Framework states that where relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
21. Draft policy S2 of the LDP provides for housing growth in villages and Wickham Bishops is identified in policy S8 as a larger village. The proposal would not accord with those draft policies in as much as it would extend outside the development boundary but that boundary is yet to be reviewed as part of the LDP and this further limits the weight that can be given to them.
22. The Council's decision cites policies N1 and N2 of the LDP. Policy N1 concerns green infrastructure. While I have taken into account the value of the existing landscape features it has not been demonstrated that the site forms part of a network of green space or that it has particular public value as an open space. Policy N2 concerns biodiversity and geodiversity. The Council has agreed that there would be no harm in these respects. For these reasons the proposal would not conflict with those policies.

Accessibility

23. The village has a number of local facilities, notably a large village hall, two public houses and shops. It is served by frequent bus services to Maldon and Whitham where there is a railway station. There is a church in close proximity to the site. It seems to me that the village is a sustainable location for new development given that it has local facilities and good public transport connections. The designation in the LDP as a larger village indicates that further development there would be sustainable in principle.
24. The Council and interested parties however have concern about the distance that residents of the proposed development would have to walk to services and facilities and the lack of footpaths along the roads. Mr Munson on behalf of the Parish Council said that the site is 700m from the nearest bus stop and 750m from the nearest shop. *Manual for Streets*⁶ states that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800m) walking distance. Although dwellings at the far end of the development may exceed this distance this does not mean that the services and facilities in the village would be an unacceptable walking distance for the occupants of those dwellings.
25. I saw on my visit that although there are parts of Church Road and Blacksmiths Lane without footpaths, for the most part there are footpaths along the roads into the centre of the village. The roads are subject to a 30 mph speed limit. The appellant proposes to widen the existing footpaths on the opposite side of Church Road close to the site using parts of the highway verges. The Highway Authority has no objection to the proposal in terms of highway or pedestrian safety. I note that there is a lack of street lighting along the roads but the

⁶ *Manual for Streets* paragraph 4.4.1

standard of footpath provision is reasonable and the appellants would improve that provision. Given that vehicle speeds are restricted I find that the pedestrian routes into the village are reasonably safe and attractive. While future residents would undoubtedly use the private car to a significant extent the availability of a choice of sustainable means of transport including cycling would be consistent with the Framework's core planning principle of making the fullest use of those means. For the reasons given I find that the proposed dwellings would have a reasonably good degree of accessibility to services and facilities by sustainable means of transport.

26. In reaching this conclusion I have taken into account the lack of capacity of the local doctor's surgery to accept new patients and the lack of capacity in the nearest primary school at Great Totham. With respect to the latter the County Council provides school transport services and travel to schools would be possible by sustainable means.
27. A number of LDP policies require new development to be well connected to local services and facilities and that there are safe and attractive routes for walking and cycling. Policies D1, H4, T1 and T2 have these requirements. For the reasons given the proposal would accord with those draft policies.

Affordable Housing

28. The UU makes provision for either 30% or 40% affordable housing provision depending on my findings. Saved policy H9 of the RLP requires 30% provision but policy H1 of the LDP requires 40% in the Northern Rural Area in which the site is located. The out of date nature of the RLP and the evidence on which it was based limits the weight that can be given to saved policy H9 and the weight that can be given to emerging policy H1 is also limited given that it has not been examined.
29. In the absence of an up-to-date policy, the Framework requires that the evidence base is used to ensure the full objectively assessed need for affordable housing is met. The Strategic Housing Market Assessment (SHMA) (2012) identifies a significant shortage in affordable housing in the district and this supports the higher percentage required in policy H1 of the LDP.
30. Furthermore some weight albeit limited can be given to emerging policy H1. I note that the Inspector examining the LDP has asked for a number of points of clarification regarding that policy but those points do not relate directly to the percentage requirement.
31. There is no information before me to cast doubt on the viability of 40% affordable housing provision as part of the development proposal. For the reasons given I conclude that 40% affordable housing provision as required by emerging policy H1 of the LDP would be justified.
32. I note local residents' views that there is no need for more affordable housing in the village but the evidence referred to by the Council notably the SHMA indicates a general need in the district as a whole.

The Unilateral Undertaking

33. Because the local primary school is near capacity pupils would need to be transported to another primary school. Secondary school pupils would also need transport. The County Council has identified the need for a developer

contribution towards school transport services of £204,459 and the UU would secure this contribution. The amount of the contribution has been calculated according to a standard methodology used by the County Council. Because there would be no local school facilities the contribution would be necessary in order to make effective use of available schools infrastructure and to use sustainable means of transport.

34. The proposal would make provision for public open space within the development for the recreational needs of the occupants. The UU would secure that provision and arrangements for its future maintenance. These provisions accord with the tests set out in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations). The proposal would accord with saved policy PU1 of the RLP and policy I1 of the LDP which require contributions towards education facilities and necessary infrastructure.
35. Regulation 123 of the CIL Regulations restricts the pooling of infrastructure contributions. The public open space would only relate to the proposed development rather than the wider area. School transport is an existing service and the contributions would not therefore be towards infrastructure. For these reasons I am satisfied that the pooling restrictions do not apply to the provisions of the UU.

Other Matters

36. Local residents have pointed out that the local doctor's surgery is at capacity. The NHS was consulted on the application but did not make any request for a contribution towards upgrading the facility taking into account the pooling restriction.
37. The indicative mix of housing sizes would accord with the identified requirement for smaller homes. The Council says that the mix would not address an identified imbalance in the housing stock but the details given in this respect are indicative only and matters of layout and scale are not for my consideration.
38. The Parish Council and local residents have expressed concerns about extra traffic and potential congestion. However the Transport Assessment demonstrates that the development would have no adverse effect on the highway network, the Highway Authority has no objection to the proposal and this matter did not form a reason for refusal by the District Council.
39. Concern has also been expressed about the potential for flooding but the County Council as Lead Local Flood Authority has no objection subject to the imposition of suitable conditions.
40. I have taken into account all other matters raised including concern about light pollution, broadband speed, water and electricity supplies and effects on the living conditions of adjacent residents but those matters do not alter my conclusions on the main issues.

Overall Balance

41. The proposal would provide a significant number of new homes in a generally accessible location. Although the Council can demonstrate a greater than 5 year supply of housing land, the Framework requires local authorities to boost

significantly the supply of housing. For this reason I give significant weight in favour of the proposal on this basis. I give further significant weight to the benefit from the provision of 40% affordable housing.

42. I have found that the proposed development would have reasonably good accessibility to services and facilities by sustainable means but that nevertheless residents would still use the car to a significant extent. For these reasons this matter is neutral in the overall balance. The public open space to be provided would be required for the occupiers of the development and so would not be of general public benefit.
43. On the other hand I have found there to be harm in terms of the character and appearance of the area and I have attached moderate to significant weight to that harm. The proposal would conflict with development plan policies which restrict development outside settlement boundaries and I give limited weight to those conflicts because the policies are either out-of-date or have not been subject to examination.
44. The weights that I have given to the identified harms are not sufficient to significantly and demonstrably outweigh the weights that I have given to the benefits of the proposal.
45. Policy S1 of the LDP reflects the Framework in presuming in favour of sustainable development. The proposal would address general and affordable housing need and would support the local economy. In these respects the proposal would accord with the social and economic dimensions of sustainable development. The accessibility of the site to services and facilities by sustainable means would also accord with those dimensions as well as the environmental dimension by limiting emissions.
46. The harm to the character and appearance of the area that I have identified would weigh against the environmental dimension but for the reasons given when considered overall the proposal would be a sustainable form of development.

Conditions

47. The original illustrative layout shows 52 dwellings but that number is reduced to 49 on the amended illustrative plan in order to accommodate a drainage facility. Because the application is for up to 52 dwellings and there is no other evidence before me to justify a limit on the maximum number I have not imposed a condition in this respect.
48. I have imposed the conditions suggested by the Council and as agreed by the appellant with one exception. In doing so I have had regard to the tests set out in paragraph 206 of the Framework.
49. Details of external facing materials, boundary treatments and landscaping are required to be approved in order to ensure the appearance of the development is acceptable. The Arboricultural Impact Assessment proposes measures to protect trees but because details of layout are not part of the application it is necessary to require tree protection measures by condition.
50. Details of foul and surface water drainage are required in order to ensure that sustainable measures are used and that flooding elsewhere is prevented. I have also imposed the requested conditions regarding surface water run-off

during construction and the maintenance of the surface water drainage system. The main parties agreed at the Hearing that a condition regarding foul water drainage as recommended by Anglian Water would be necessary.

51. A Construction Method Statement would be necessary in order to ensure that construction operations do not have undue impact on highway safety and the living conditions of residents. I have included conditions requiring provision of the access including drainage requirements, car parking in accordance with adopted standards and a Residential Travel Information Pack to future occupants in order to ensure that the relevant highway standards are met and that use of sustainable means of transport is encouraged.
52. The Phase1 Geo-Environmental Desk Study Report recommends a proportionate programme of intrusive investigation for contamination and I have imposed conditions accordingly. Finally I have imposed a condition requiring archaeological investigation because the site is identified as potentially being of archaeological interest.
53. I have not imposed the suggested condition 20 which would require mitigation measures for air quality. Although the Council has explained that this would be required in order to reduce traffic emissions in other parts of the district there is no substantive evidence before me to justify the need for such a condition.
54. The Fire Service requested the provision of further fire hydrants to serve the development but this would be covered by the Building Regulations and so it would not be necessary to impose a condition.

Conclusion

55. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

Schedule of Conditions

- 1) Details of the 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 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) No development shall take place until written details or samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of the siting, height, design and materials of all boundary treatments have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be provided before the part(s) of the development to which they relate are occupied.
- 6) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas, the materials and finishes to be used together with the car parking layout, vehicle and pedestrian accesses. The details of the soft landscape works shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of a programme for implementation, aftercare and maintenance. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) All the trees and hedges which are to be retained shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 8) No development shall take place 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. This shall include but not be limited to:
- i) a restriction on surface water run-off to the existing greenfield 1 in 1 year rate for all storm events up to the 1 in 100 year event taking into account climate change;
 - ii) provision of sufficient storage to manage surface water on site during a 1 in 100 year storm event taking into account climate change; and
 - iii) provision of water treatment in accordance with the CIRIA SuDS manual (C753).

No dwelling shall be occupied until the works have been carried out in accordance with the approved details.

- 9) No development shall take place until a detailed foul water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved details.
- 10) No development shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction work has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 11) No development shall take place until a Maintenance Plan for the surface water drainage system has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall include details of maintenance activities and frequencies and the organisation responsible for maintenance. The system shall be maintained in accordance with the approved Plan. Maintenance activities shall be recorded in annual logs which shall be made available for inspection by the local planning authority upon request.
- 12) No development shall take place, including any ground works or demolition until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. Works shall take place in accordance with the approved details. The Construction Method Statement shall provide for:
- i) parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development; and
 - iv) wheel and underbody washing facilities.
- 13) Before the development is occupied the access and highway works including the visibility splays shown on drawing number 1471L-01 shall be provided.
- 14) Before the development is occupied the footpath improvement works shown on drawing number 1471-02A shall be provided.
- 15) Before the development is occupied details of a Residential Travel Information Pack for sustainable transport, which shall include six one

day travel vouchers for use with the relevant local public transport operator shall be submitted to and approved in writing by the local planning authority. The approved Residential Travel Information Packs shall be provided to each dwelling upon its occupation.

- 16) There shall be no discharge of surface water onto the highway.
- 17) All off-street parking provision shall be in accordance with the applicable Maldon District Council parking standards.
- 18) No development shall commence until an intrusive investigation has been carried out and an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems, and
 - archaeological sites and ancient monuments.
- 19) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied. The local planning authority shall be given 2 weeks written notification of the commencement of any remediation works.
- 20) No development including any site clearance or ground works shall take place until an assessment of archaeological significance of the site and a scheme of investigation including details of the programme and methodology of investigation and recording to be used have been submitted to and approved in writing by the local planning authority. The

assessment and scheme of investigation shall be undertaken by a suitably qualified archaeologist. Development shall take place in accordance with the approved details.

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mark Schull MRTPI	Associate Director, Nathaniel Lichfield & Partners
Ben Wright CMLI	Director, Aspect Landscape Planning Ltd
Mark Tentori	MAZ Dev Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Yee Cheung MRTPI	Planning Officer, Maldon District Council
Matthew Leigh MRTPI	Group Manager, Planning, Maldon District Council

INTERESTED PERSONS:

Barry Sayers	Chair of Planning Committee, Wickham Bishops Parish Council
Paul Munson MRTPI	Representing Wickham Bishops Parish Council
Henry Bass	Ward Member
Jane Williams	Local resident
John Richardson	Local resident
Mr T Dayes	Local resident
Bryan Wearmouth	Local resident
Kevin Walter	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

SUBMITTED BY THE APPELLANT:

- 1 Signed Unilateral Undertaking and copies of title

SUBMITTED BY THE LOCAL PLANNING AUTHORITY:

- 2 Policy H9 of the Maldon District Replacement Local Plan

SUBMITTED BY MR MUNSON:

- 3 Extracts from *Manual for Streets, Policy, Planning and Design for Walking and Cycling and Providing for Journeys on Foot*



November 2020

Appendix 4

Inspectors Report dated 18/12/2017



Appeal Decision

Hearing Held on 17 October 2017

Site visit made on 17 October 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 18th December 2017

Appeal Ref: APP/X1545/W/16/3152640

Number 9 and land at rear of Church Road, Wickham Bishops, Maldon

- 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 MazDev Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/01342, dated 23 December 2015, was refused by notice dated 13 April 2016.
 - The development proposed is outline planning permission for demolition of existing dwelling and erection of up to 52 dwellings with associated vehicular access.
 - This decision supersedes that issued on 1 February 2017. That decision on the appeal was quashed by the High Court.
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Decision

1. This appeal is dismissed.

Procedural matters

2. The application was made in outline with all detailed matters other than access reserved for future consideration. At the start of the Hearing the appellant confirmed that the layout plan (PS14433-003 rev I) was illustrative and I have considered the appeal on that basis.
 3. Since the original application was determined the Council, in July 2017, adopted the Maldon District Approved Local Development Plan 2014-2029 (the LDP) and this now forms the development plan for the district.
 4. The decision notice refers to policies S2, H1, BE1, PU1, CC6 and CC7 of the adopted Maldon District Replacement Local Plan (2005) (the RLP) and policies S1, S2, S8, H1, D1, H4, N1, N2, T1, T2 and I1 of the Maldon District Pre-Submission Local Development Plan 2014-2029 (the ELP). These policies have now been replaced by the policies contained within the LDP. The Council in their updated appeal statement and at the Hearing have referred to LDP policies S1, S2, S8, H1, H2, H4, D1, N2, T1, T2 and I1. In addition they consider that policies D2 and D5 which deal with climate change and flood risk are also relevant but agree that policy N1 is no longer applicable. At the Hearing the appellant agreed that these were the relevant policies and I have considered the appeal on this basis.
 5. A significant number of interested parties have submitted representations in relation to the appeal. However, these contained a number of assertions with regards to policy designations for the site. In order to clarify the situation at the start of the Hearing the Council confirmed that the site was not in the Green Belt; an Area of Outstanding Natural Beauty; nor was it covered by a
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Tree Preservation Order. Furthermore, they agreed that the proposal would not result in the loss of agricultural land. Finally, they confirmed that the Defined Settlement Boundary (the DSB) for Wickham Bishops ran through the rear garden of the current bungalow and as a result they accepted that part of the site was within the DSB. This was endorsed at the subsequent site visit where the Council and appellant indicated on site where they considered the DSB to be located.

6. Reference was also made in correspondence to a number of other recent and proposed developments within the local area. However, the number of units and addresses for these schemes varied. At the Hearing the main parties confirmed that the three relevant schemes were the recently completed 27 unit scheme at Snows Corner; an extant scheme for 14 units at Land east of Malone Cottage, Maypole Road that was allowed at appeal¹ and a scheme for outline planning permission for 4 new units at Beaconhill Fruit Farm, Kelvedon Road². Following a request from interested parties I visited the Snows Corner development on an unaccompanied basis.
7. A Unilateral Undertaking under S106 of the Town and Country Planning Act 1990 (the UU) was submitted prior to the start of the Hearing. The UU would provide a contribution of £204,459 towards the provision of secondary school transportation; a scheme of affordable housing that shall not be less than 30% or 40% depending upon my findings with regards to policy requirements on affordable housing and the provision on site of an area of open space which would be available to the general public, subject to an agreed open space specification and open space management plan. At the Hearing the Council confirmed that subject to a 40% affordable housing provision, they were satisfied that the second and third reasons for refusal had been resolved.

Main Issues

8. Based on the original reasons for refusal and the evidence submitted and heard in relation to the appeal I consider that the main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the amount of affordable housing to be provided.

Reasons

Planning policies

9. Since the application was considered by the Council they have adopted the LDP and have a National Planning Policy Framework (the Framework) compliant supply of housing land. As a result I consider that I can give full weight to the policies contained within the LDP.
10. The policies relevant to the determination of this appeal are LDP policies S1, S2, S8, H1, H2, H4, D1, D2, D5, N2, T1, T2 and I1.
11. Policies S1 and S2 advocate that the Council will take a positive approach that reflects the presumption in favour of sustainable development whilst protecting and enhancing the districts natural, built and historic environment.

¹ PINS reference: APP/X1545/W/15/313309

² LPA reference: OUT/MAL/13/007

12. Policy S8 supports sustainable development within the DSB. Outside of the DSB it indicates that planning permission would only be granted where the intrinsic character and beauty of the countryside is not adversely affected and provided it meets at least one of the exceptions listed. Policy H4 seeks to optimise the use of land but amongst other things the location and setting of the site and the existing character and density of the surrounding area must be considered.
13. All housing developments of 10 or more units are expected to contribute towards affordable housing provision (policy H1) and to provide a suitable mix and range of housing in terms of size, type and tenure (policy H2).
14. The Council require development to be well designed and amongst other things to respect character and local context (policy D1). Further it must minimise its impact on the environment (policy D2) and minimise risks from flooding (policy D5).
15. Policy N2 seeks to protect the natural environment by encouraging development proposals to improve the condition of existing international, national or local designations.
16. In order to encourage sustainable travel patterns the Council seeks to locate development where amongst other things there is physical and environmental capacity to accommodate the type and amount of traffic generated (policy T2) and to deliver a more sustainable transport network for the district (policy T1).
17. Policy I1 seeks, where necessary, contributions towards local and strategic infrastructure and services that are necessary to support the proposed development.

The effect of the proposal on the character and appearance of the area

18. All parties agreed that the proposal would affect the character and appearance of the area by virtue of introducing housing and its related infrastructure into what is effectively a greenfield site. However, it is the harm that would result from this change and the effect that this would have on the character and appearance of the area that needs to be assessed.
19. The site has no specific landscape designation in adopted planning policy terms. However, a lack of formal designation or protection does not necessarily mean that the site's landscape is without worth or value. Policy S8 of the LDP seeks, amongst other things, to protect the landscape and intrinsic character and beauty of the countryside.
20. Wickham Bishops is a nucleated settlement with development extending out from The Street. The appeal site is located on the western edge of the village where development becomes more linear and the village takes on a more rural character which the Council referred to as Arcadian. The majority of the site is comprised of an agricultural field which currently consists of overgrown grassland surrounded by mature trees and hedges. I observed at my site visit that this gives the site a pleasant rural aspect. It is clear from what I have read and heard that the site's open and undeveloped nature is clearly appreciated and valued by those who live in and around the area.
21. However, from most vantage points the site is viewed against the backdrop of the existing village or the houses in Mope Lane. Furthermore, the mature

- hedges and trees located around the site boundary filter views into the site. The illustrative masterplan indicates that this planting could be retained and reinforced and I agree that this could be achieved by means of a suitably worded condition.
22. Having visited the various long distance viewpoints discussed at the Hearing and on the site visit, I consider that views of the site from the wider area are relatively limited. Whilst I observed on site that the levels fall from Church Road down to the rear boundary of the site I do not consider that this drop in levels makes the site particularly exposed in wider views. As a consequence I consider that from the wider vantage points the proposal would be viewed in the context of the existing village and landscape
 23. As a result the proposal would not, in my judgement, adversely affect the intrinsic character and beauty of the countryside nor harm the character and appearance of the wider area.
 24. Whilst the proposal would be at a relatively low density, I recognise that on the basis of what I heard at the Hearing and observed on site it would be higher than that of adjoining developments and for the village as a whole. Furthermore, I acknowledge that due to the number of units proposed, the scheme would result in a different layout and urban grain to the established pattern of development. However, given the location of the site; it's relatively contained nature and the existing landscape features I consider that on balance although the proposal would deliver development at a higher density and in a different form to the existing housing it would not be to the detriment of the character and appearance of the village.
 25. The Council advocate that due to the backland location the proposal would be disconnected from the existing settlement which would, in their opinion, make it impermeable to walking and cycling other than via the one access point which in turn would limit access and connectivity to the rest of the village.
 26. The appeal scheme is in outline with all matters except access reserved. Consequently, the illustrative masterplan represents only one possible layout for development at the site and as such I can only give it limited weight. However, I accept, having visited the site that due to the limited width of the plot at the front of the site that the bulk of the proposed units would need to be located at the rear of the site, behind the existing properties in Church Road. As a result I agree that the site would be relatively impermeable and that access from the site to other parts of the village would only be possible via Church Road. However, I consider that that the site is not so deep that future occupiers of units located at the rear may not choose to walk or cycle to village facilities.
 27. The majority of these facilities are located to the west of the appeal site accessed either via Blacksmiths Lane or, in the case of the village hall and the shops at Snows Corner, via Church Road. Whilst I consider that it would be possible to walk or cycle from the site to these facilities I accept that there are limited public footpaths in the vicinity of the site. However, I note that through the use of a suitably worded conditions footpath improvements are proposed which would in my opinion increase the likelihood of people using sustainable methods of transport.

28. As a result whilst I accept that the site would be relatively impermeable I do not consider that this would limit connectivity to the rest of the village nor preclude the use of walking or cycling to access facilities such as the village hall or shops.
29. Finally, I agree with the Council that to meet their day to day needs most future residents would need to access facilities in the larger neighbouring settlements of Maldon and Witham. However, I consider that this is not as a result of the backland location of the site but due to the fact that facilities within the village are relatively limited. Although there are a number of shops they provide a limited range of goods and services; the bus service to Maldon and Witham is restricted and in my opinion would not be an attractive option for travel on a regular basis. Furthermore, from what I observed on site opportunities for employment within the village and the surrounding area would appear to be relatively narrow. As a result given the limited access to public transport I agree with the Council that the majority of these trips would be by private car.
30. However, I recognise that given its rural location that Wickham Bishops is not unique in having access to limited facilities and residents who are reliant on the car to meet their day to day needs. As the appellant has highlighted Policy S8 of the LDP classifies Wickham Bishops as a larger village for the location of development, second within the settlement hierarchy after Maldon, Heybridge and Burnham-on-Crouch. Therefore, whilst recognising that the development would be outside of the DSB, given the location of the site in the context of this predominantly rural district I consider that the proposal would be located within one of its more sustainable locations.
31. As a result whilst I accept that the proposal would alter the open character of the edge of the village I consider that the rural character of the area would be maintained. Furthermore, for the reasons I have outlined, I consider that the proposal would not result in an intrusion in to open countryside nor would it adversely affect the character and appearance of the area. I do not consider that the proposal would be isolated from the rest of the village and I consider that the site is located within one of the villages which, given the rural nature of the district, is more sustainable. As a result the proposal would be in accordance with policies S1, S2, H4, D1, D2 and T1 of the LDP.

The amount of affordable housing to be provided

32. In order to comply with the Framework and policy H1 of the LDP a percentage of the proposed units would need to be affordable. The appellant has submitted a completed UU. Under the terms of the UU, either 30% or 40 % of the units on-site would be affordable. The reason for the differing offer is that at the time that the UU was drafted policy H9 of the RLP required a provision of 30% whilst policy H1 of the ELP required 40%. Since the UU was completed the LDP has been adopted and policy H1 of the LDP requires that for this location 40% of the units need to be affordable. At the Hearing the appellant confirmed they would be prepared to provide 40% of the on-site units as affordable and as a result the proposal would be in accordance with policy H1.

The Unilateral Undertaking

33. The UU would also deliver a financial contribution to fund the transportation costs of any secondary aged pupils that would result from the development.

The contribution has been calculated by the County Council in accordance with their published formula. As these contributions would not be towards infrastructure costs they would comply with the requirements of Regulation 123 of the Community Infrastructure Levy Regulations (the CIL regulations) which restricts the pooling of infrastructure contributions.

34. The proposal would also deliver a new area of open space and the UU details how this would be maintained. The space is necessary to meet the recreational needs of future occupants of the development.
35. On the basis of the evidence that I have read and heard I am satisfied that the obligations within the UU are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly and reasonable related in scale and kind to the development. As a consequence I consider that they meet the tests within the CIL Regulations³ and the Framework⁴ and would comply with policy I1 of the LDP. I am therefore satisfied that that the issues raised by the Council in their second and third reasons for refusal have been satisfactorily addressed.

Other matters

36. The Council consider that the proposed mix of units would not meet the requirements of policy H2 of the LDP which seeks to deliver a higher proportion of smaller (1 and 2 bedroom units). However, this is an outline application and as such at this stage the mix of units is indicative only and not for my consideration.
37. There was significant local concern raised in relation to the potential effect of the proposed development on the capacity of the local road network and highway safety. However, based on all the evidence before me and the observations during my site visits, I am satisfied that the design of the access is satisfactory and that any increase in traffic from the proposal would not compromise highway safety or result in congestion on the local road network. Moreover, this is consistent with the Highways Authority who raised no objections in relation to site access, highway safety and network capacity subject to a number of suitable worded conditions. As a consequence the proposal would be in accordance with policy T2 of the LDP
38. A number of local residents are concerned that the proposal would affect the setting of a number of listed buildings, namely 3 Church Road and Saint Bartholomew's church. I observed at my site visits that the church is some distance from the site. Furthermore, from most viewpoints the church is viewed in the context of the surrounding village. Whilst the proposal would increase the size of the village I consider that the views of the church would be maintained. Three Church Road is separated from the site by its garden and I noted on site that a row of mature trees grows along the rear boundary of this property. As a result I consider that the house would be sufficiently distant from the site that the development would not harm its setting. I therefore conclude that the setting of these designated heritage assets would not be harmed.
39. I am also aware that the Parish Council and a number of local residents advocate that there is no need for any further affordable housing within the

³ Regulations 122 and 123

⁴ Paragraph 204 of the National Planning Policy Framework (2012)

village over and above that provided by the recent Snows Corner development. However, based on the LDP and the evidence provided by the Council and the appellant it is clear that there is a general need in the district as a whole.

40. A number of references have been made to the development of a neighbourhood plan for Wickham Bishops. At the Hearing the Parish Council confirmed that they were in the process of creating an evidence base which would then be used to develop such a plan. Given the very early stage that the plan has reached and the fact that none of the evidence has been the subject of any testing through examination I consider that I can give it no weight when determining this appeal.
41. Concerns have been raised that the site may provide the habitat for a number of protected species including bats and a number of birds of prey. However I note that the Council are satisfied with the ecological work undertaken by the appellant and do not have any concerns regarding wildlife. Nothing I have read or heard in the evidence before me of from what I observed on site leads me to a different conclusion to the Council.
42. I have also taken into account number of additional issues raised by local residents including amongst other things the capacity of the local schools, doctor's surgeries and dentists; flooding; necessity of the scheme given units remain unsold at Snows Corner; water and electricity provision; the effect of construction work on the road network and the effect on the living conditions of a number of neighbouring properties. However, they do not alter my conclusions on the main issues.

Planning balance

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 state determination of a planning application must be carried out in accordance with the development plan unless material considerations indicate otherwise.
44. Policy S8 of the DLP supports sustainable development within the DSB. Outside of the DSB it indicates that planning permission would only be granted where the intrinsic character and beauty of the countryside is not adversely affected and provided it meets at least one of the exceptions listed.
45. With the exception of the front of the site the majority of the proposal would fall outside of the DSB. Although I have, for the reasons outlined, concluded that the intrinsic character and beauty of the countryside would not be adversely affected I consider that the proposal would not be for any of the thirteen exceptions listed in the policy. As a result in my opinion the proposal would not comply with policy S8 and consequently the proposal would not be in accordance with the development plan.
46. I accept that the scheme would deliver several social and economic benefits. The delivery of new housing is a clear benefit of the scheme which reflects one of the key objectives of the Framework. Moreover, the scheme would secure the delivery of affordable housing in an area where there is an acknowledged need. On-site open space would be provided which would be accessible to the general public and there would be a number of off-site highway works that would improve footpaths in the immediate vicinity of the site. In the short term the proposal would deliver a number of construction jobs and local

investment and in the longer term the new units would bring new households which would use local business and services. As a result I acknowledge that the scheme would deliver a number of positive benefits.

47. However, I am satisfied that the Council has five years-worth of housing land supply and as such in my opinion there is not, at this stage in the plan, the need for additional housing sites to come forward. Furthermore, whilst the site would deliver an element of affordable housing this would not be above the amount required for the scheme to comply with the requirements of policy H1.
48. The Council acknowledge that there is a need for affordable housing within the district and that there is currently a shortfall in affordable housing over the plan period. However, I consider that the amount of affordable housing this scheme would deliver is limited and although it would help address this shortfall I do not consider that it is sufficient to warrant me giving it significant weight in the planning balance. Consequently, I do not consider that the limited delivery of affordable housing would be sufficient reason to warrant determining the appeal other than in accordance with the development plan.

Conclusion

49. As a result I conclude that the proposal would be contrary to policy S8 of the LDP and for the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed.

Jo Dowling

INSPECTOR

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

Document 1 Email from the appellant detailing the wording of a condition that had been agreed with the Council with regard to foul water and broadband connections



Appendix 5

Regulation 14 Representations



Parish Clerk
Wickham Bishops Parish Council
The Village Hall
Church Road
Wickham Bishops
CM8 3JZ
By email to: info@wickhambishopsparishcouncil.org

8th March 2019

Dear Sir/Madam

Regulation 14 Consultation in respect of Wickham Bishops Neighbourhood Plan – Response on behalf of Mazdev Ltd

We write on behalf of our client, Mazdev Ltd in response to the Regulation 14 consultation on the Wickham Bishops Neighbourhood Plan. Mazdev Ltd are the owners of the land at and to the rear of 9 Church Road, part of which is proposed as an allocation as a Local Green Space.

We enclose with this letter a full representation to the consultation draft Neighbourhood Plan. Our representations strongly object to the proposed Local Green Space allocation. They also object to the lack of housing allocations to meet the identified need for the area, based on the Housing Needs Survey (January 2017) as published alongside the Neighbourhood Plan consultation document.

This letter also encloses Counsel's Advice in respect of the proposed Local Green Space designation. The Advice concludes that there is no proper basis upon which the land in question should be designated as a Local Green Space.

We trust that you will take the content of the representations and Counsel's Advice into consideration in respect of the future stages of the Neighbourhood Plan.

We would be keen to engage and work with the Parish Council in the future, not least in the production of a revised version of the Neighbourhood Plan. We would like to meet with the Parish Council to discuss this. If the Parish Council would be willing to do so, please contact me on the details at the head of this letter.



Yours faithfully

A handwritten signature in black ink that reads "M. Schmull". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Mark Schmull

RE: LAND AT 9 CHURCH ROAD, WICKHAM BISHOPS

ADVICE

1. I am instructed by Arrow Planning Ltd to advise Mazdev Limited ('Mazdev') on matters arising from the consultation draft Wickham Bishops Neighbourhood Plan 2016-2029 ('the NP'), which is being promoted by the Wickham Bishops Parish Council.
2. Mazdev owns land to the rear of 9 Church Road, Wickham Bishops ('the Land'). The Land was the subject of an outline application for planning permission, which was refused, and a subsequent appeal which was at first allowed but later dismissed following the quashing of the first appeal decision. The Land was also promoted as a housing site in the Local Plan process. I am instructed that the Parish Council has consistently opposed development proposals on the Land.
3. I am told that the Land is entirely in private ownership, and there is no public right of access to it. It comprises a residential dwelling and garden which are within the settlement boundary of Wickham Bishops, along with an enclosed area of grass land that is adjacent to the settlement boundary on three sides.
4. The Land is now identified within the draft NP as part of a larger area which is proposed to be allocated as 'Local Green Space' ('LGS') under draft NP Policy WBen 06. The draft Policy WBen 06 states that LGS designation will apply to the areas identified on Map 7 of the draft NP. That map shows two sites, 1 and 2. Site 1 includes but is not limited to the Land owned by Mazdev. I am instructed that the area of 'Site 1' also includes St Bartholomew's Church, and land used for car parking for the church.

5. I am instructed that Mazdev intends to object to the proposed allocation of the Land as LGS in the draft NP, and to object to the draft NP generally because it fails to plan for the housing need which the draft NP itself identifies.
6. I am asked to advise on whether the draft NP contains sufficient justification for the proposed allocation of the Land as LGS.

Relevant Planning Policy

7. The basis of Local Green Space designation is found in the National Planning Policy Framework ('NPPF'), the most recent iteration of which was published in February 2019. Paragraph 99 of the NPPF states: "The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of **particular** importance to them... ." (Emphasis added).
8. Paragraph 100 of the NPPF states:

"The Local Green Space designation should **only** be used where the green space is:

 - a) in reasonably close proximity to the community it serves;
 - b) **demonstrably special to a local community and holds a particular local significance**, for example because of its **beauty, historic significance, recreational value** (including as a playing field), **tranquillity** or **richness of its wildlife**; and
 - c) **local in character** and is **not an extensive tract of land.**"

(Emphasis added).
9. Finally paragraph 101 of the NPPF states:

"Policies for managing development within a Local Green Space should be consistent with those for Green Belts"

In other words, where land is designated as LGS, there are significant restrictions on the nature of any development that might take place upon it, akin to Green Belt land.

10. That being so, it is necessary for a draft NP and any supporting documents which accompany it to address these policy tests and provide a clear and compelling justification for designation of any land as LGS.
11. The online National Planning Policy Guidance ('the NPPG') provides further guidance as to the application of the LGS policies in the NPPF.
12. An important matter of context is that a NP must provide positive planning for sustainable development. Paragraph 004 of the Neighbourhood Planning section of the NPPG (ref. 41-004-20170728) states that "a neighbourhood plan should support the strategic development needs set out in the Local Plan and plan positively to support local development", echoing paragraph 13 of the NPPF.
13. Furthermore, paragraph 009 (ref. 41-009-20160211) of the same section notes that "up to date housing needs evidence is relevant to the question of whether a housing supply policy in a Neighbourhood Plan ... contributes to achieving sustainable development".
14. Paragraph 004 (ref. 37-005-20140306) of the Open Space section of the NPPG states: "Local Green Space designation is a way to provide **special protection against development** for green areas of **particular importance** to local communities" (emphasis added.) The extent of this protection is confirmed in paragraph 020 (ref. 37-020-20140306): "Designating a green area as Local Green Space would give it protection consistent with that in respect of Green Belt "

15. Paragraph 007 (ref. 37-007-20140306) states: “plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making”.

16. Paragraph 015 (ref. 37-015-20140306) advises that “blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name.”

17. Paragraph 017 (ref. 37-017-20140306) states that where land does not have public access, it could be designated as LGS if it is “valued for matters such as wildlife, historic significance and/or beauty”.

Analysis

18. In the light of this detailed policy and guidance as to the circumstances in which land might be designated as LGS, one would expect to see a careful and comprehensive explanation and justification in the draft NP for the proposed LGS designation. However, it soon becomes apparent from reading the draft NP that there is next to no discussion of the proposed LGS designation and why it might be appropriate for planning and sustainable development in Wickham Bishops. I note that the draft NP is accompanied by a Residents’ Survey Report, a Housing Needs Survey Final Report, and a Strategic Environmental Assessment and Habitat Regulation Assessment Screening Determination. I have also read those documents, but they do not provide any further justification for LGS designation.

19. Aside from the text of Policy WBE n 06 itself, there is almost no reference to LGS in the draft NP¹, let alone discussion of what LGS means and why designation of one or more sites as LGS might be necessary and appropriate.
20. The “objectives“ of the WBNP set out on p9 does not refer to any matter which might be potentially relevant to the policy criteria for LGS designation, save perhaps for a reference to “enhanced access to open/green spaces“. There is of course no public access to the Land, so that aspiration could not be relied upon as justification for LGS designation of the Land.
21. Policy WBE n 06 provides that development within either proposed LGS “...that will harm the permanent open character of the land will only be supported in very exceptional circumstances“, but there is no text to explain which of the policy criteria for designation are met in the case of Site 1, and the Mazdev Land in particular. The implication of the wording of the policy is that the land in Site 1 has a “permanent open character“ without any further discussion or explanation, but that is not borne out by the fact that part of the Site comprises a church and its car park, and the fact that the Mazdev Land is enclosed, is not accessible by the public or readily visible from public viewpoints.
22. Indeed it is not suggested in the draft NP that there are important or valued views of the Land from any public vantage point: section 3.2 on p18 sets out in table form seven “special views“, which “residents felt were particularly valuable and which residents wish to retain“. None of those seven views, which are shown on Map 5 on p19, include any part of Site 1, and the Mazdev Land in particular. Map 5 is referred to in policy WBE n 04 which states that “Development should protect or enhance special views identified within the Parish shown on Map 5. It is not proposed that Site 1 is to be protected by policy WBE n 04, which implies that Site 1 is not particularly valued in terms of views.

¹ There is reference to ‘Local green spaces’ on p20, but not in connection with policy WBE n 06.

23. Similarly, section 3.3 on p24 refers to “local assets” which are of particular value to local residents. The Mazdev Land is not mentioned as one of those particularly valued assets. Indeed the draft NP states on p24 that “the village is well served with sports and community facilities...”, which suggests that there is no particular need for additional spaces for recreation.
24. It should also be noted that on p28 the draft NP states that a Housing Needs Survey conducted in 2016 identified a need for 42 additional homes in the village. However in the ‘Housing’ policies in section 3.4 on p26 there are no proposals for any new housing site allocations, or numbers of houses to be built. That approach is clearly inconsistent with the second “objective” set out on p9 of the draft NP, which is that **“there is sustainable development** of a high quality design that is in character with the local area, and **of an appropriate mix and type to meet local current and future needs”** (emphasis added).
25. It is important to bear in mind that the burden of demonstrating the need for designation of a parcel of land as LGS lies with the body proposing that designation. The mere fact that a site is included in a draft plan as LGS provides absolutely no justification for that designation, in and of itself. The requirement to justify such a policy designation becomes even more important where the effect of the proposed policy will be to import “special protection against development”, “consistent with that in respect of Green Belt”, as the NPPG notes.
26. There is no attempt in the draft NP to engage with the criteria in the NPPF for designation of land as LGS. There is simply nothing in the draft NP which even suggests that Site 1, and the Mazdev Land in particular is “demonstrably special” to the local community, and “holds a particular local significance” (NPPF paragraph 100b), for any reason, but particularly in terms of “beauty, historic significance, recreational value, tranquillity or richness of its wildlife”. Indeed, the various references in the draft NP to locally valued assets and views which do not include the

Mazdev Land tend to suggest that the Mazdev Land is not demonstrably special and of particular local significance.

27. Although the NPPG states that where land does not have public access, it could be designated as LGS if it is “valued for matters such as wildlife, historic significance and/or beauty” there is nothing in the draft NP to suggest that any part of Site 1 and the Mazdev Land in particular is valued for wildlife, historic significance or beauty.

28. In addition, the NPPG states that plans must identify sufficient land in suitable locations to meet identified development needs, and the Local Green Space designation should not be used in a way that undermines this aim of plan making, and that LGS designation should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name. I consider that the draft NP demonstrably fails in this regard. It identifies a housing need of 42 new homes, but fails to identify any land suitable and sufficient to meet that requirement, whilst at the same time proposing LGS designation of the Mazdev Land which has recently been promoted for housing development, without providing any justification for that LGS designation. The absence of any justification in the draft NP for LGS designation of Site 1 suggests that the Parish Council is seeking to undermine the aim of proper plan making, and to achieve a quasi-Green Belt designation of the Land ‘by the back door’.

Conclusion

29. For all these reasons I consider that, on the information and justification provided by the Parish Council to date, there is no proper basis upon which the Mazdev Land could be designated as LGS in the Neighbourhood Plan.

JEREMY PIKE

Francis Taylor Building,
Temple, London EC4Y 7BY

8th March 2019

Wickham Bishops Neighbourhood Plan 2016-2029 Regulation 14 Consultation

Response submitted on Behalf of Mazdev Limited

March 2019



ARROW PLANNING LIMITED

w: www.arrowplanning.co.uk

e: mark@arrowplanning.co.uk

Ref: APL-003 – Wickham Bishops

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1.0 Introduction

- 1.1 These representations have been prepared on behalf of Mazdev Limited and in response to the consultation draft (Regulation 14) Wickham Bishops Neighbourhood Plan 2016-2029 (the 'WBNP').
- 1.2 Mazdev Limited are the owners of land at and to the rear of 9 Church Road, Wickham Bishops. The land in question has been the subject to a previous planning application and appeal, as well as having been promoted through the Local Plan process. It is identified within the WBNP as part of a larger identified Local Green Space (no 1) under Policy WBen 06.
- 1.3 For the reasons set out in these representations, Mazdev Limited strongly objects to the proposed allocation of the land as a Local Green Space and also raise objections to other elements of the WBNP. In summary:
 - The Neighbourhood Plan does not positively plan for sustainable development;
 - It does not include proposals to meet an identified housing need as demonstrated by its own evidence base;
 - There is no justification or evidence for the inclusion of our client's land as a Local Green Space;
 - Instead, the proposed allocation appears to be a way to attempt to sterilise land, contrary to national advice contained in the Planning Practice Guidance;
 - The WBNP is not consistent with national policy and advice and does not meet the Basic Conditions tests. It would therefore ultimately fail if it were to reach the examination stage in its current form.
- 1.4 The WBNP should instead be amended as follows:
 - The Local Green Space designation 1 should be removed from the land at and to the rear of 9 Church Road;
 - The land should instead be allocated for housing in order to meet local housing needs, as evidenced by the Housing Needs Survey (January 2017).

2.0 Background

- 2.1 Our client, Mazdev Limited, are the owners of the land at and to the rear of 9 Church Road. Enclosed at Appendix 1 is a red line plan which identifies the extent of their land ownership.
- 2.2 The land is entirely in private ownership and there is no public right of access. It comprises a residential dwelling and garden which are within the settlement boundary of Wickham Bishops, along with an enclosed area of grass land that is adjacent to the settlement boundary on three sides.
- 2.3 The land was previously promoted through the Maldon District Local Plan process. At that time, the Council's intention was to produce a separate Site Allocations document, which would allocate sites of this scale in villages such as Wickham Bishops. The Council therefore advised at that time that the site would fall to be properly considered in that document.
- 2.4 However, at the final stage of the Local Plan process (main modifications), the Council changed approach due to the number of sites that had come forward through planning applications elsewhere. This site was one such site, as evidenced by the evidence base documents at that time, used for that consultation. These included the site as contributing towards the housing figures, as evidenced by the enclosed document at Appendix 2.
- 2.5 Planning permission was granted for a development of 52 dwellings on the site at appeal in February 2017. A copy of the Inspector's decision is enclosed at Appendix 3. Paragraph 22 of that Inspector's report stated the land does not have any particular public value as an open space.
- 2.6 Following the quashing of that planning permission, the appeal was reheard, and a copy of the second Inspector's report is enclosed at Appendix 4. Whilst that appeal was dismissed, the findings were consistent with the original Inspector's report, with the only reason for refusal relating to the fact that the Maldon District Local Development Plan (2014 – 2029) had been adopted in the intervening period.
- 2.7 In both cases, when considering the planning balance, the Inspectors did not find the proposals to have an undue impact on the landscape, highways, character and appearance of the area, ecology, or result in a loss of open space. Instead they found the scheme acceptable in all aspects, with the ultimate deciding factor weighing against the development being the fact that the part of the land sits outside of the settlement boundary of an up to date Local Plan.

Wider Site 1 Area

- 2.8 The wider land subject to the Local Green Space designation, known as Site 1, includes a variety of landforms and uses in addition to the land to the rear of 9 Church Road, as follows:
- Built form comprising St Bartholomews Church;
 - Car parking, including grass used as overflow car parking;
 - A cemetery;
 - A narrow, enclosed strip of grassland which is not publicly accessible.

3.0 Planning Policy Requirements for Neighbourhood Plans

- 3.1 Guidance and advice for the content of Neighbourhood Plans is contained in the National Planning Policy Framework (February 2019) (the 'NPPF') and Planning Practice Guidance (the 'PPG').
- 3.2 In respect of development, para 13 of the NPPF states that *"Neighbourhood Plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies."*
- 3.3 The NPPF meanwhile states at para 99: *"Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services."*
- 3.4 Para 100 of the NPPF sets out three criteria for Local Green Space, that they should be:
- a) in reasonably close proximity to the community it serves;
 - b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
 - c) local in character and is not an extensive tract of land.
- 3.5 The PPG provides further guidance. Paragraph 009 (Reference ID) of the section on Neighbourhood Planning states that up to date housing needs evidence is relevant to the question of whether a housing supply policy in a Neighbourhood Plan contributes to achieving sustainable development.
- 3.6 The section in respect of Open Space, meanwhile, states at paragraph 7 (Reference ID 37-007-20140306) that *"plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making"*.
- 3.7 Paragraph 15 (Reference ID 37-015-20140306) advises that *"blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name."*
- 3.8 Finally, paragraph 17 (Reference ID 37-017-20140306) states that land without public access could be considered for designation for areas that are valued for matters such as wildlife, historic significance and/or beauty.

4.0 Proposed Local Green Space Allocation

- 4.1 The WBNP does not provide any justification as to why the land at Site 1 is included as a Local Green Space. Little to no reference is made throughout the document to Local Green Space, save for Policy WBen 06, and at no point does the Plan provide any justification for the proposed designation.
- 4.2 The stated objectives of the WBNP at Section 2.2 refer to enhanced access to open/green spaces, however that cannot apply to the land as it does not (and will not) benefit from public access.
- 4.3 Turning to Policy WBen 06, the Policy does not explain what the Local Green Space designation is or why the sites in question have been selected. It is noted that the Policy refers to “the permanent open character of the land”. However, in the case of Site 1 that does not describe the land for a number of reasons:
 - Firstly, the land includes built form (a church), which cannot be considered “open”;
 - It also includes land used for car parking;
 - The land is wholly enclosed, with residential development on 3 sides and a woodland on the fourth;
 - Both Inspectors reports for the appeal site to the rear of Church Road concluded that the land is enclosed/contained by the village (see paragraph 8 of Appendix 3 and paragraph 24 of Appendix 4).
- 4.4 The entirety of Site 1 therefore, is not “open” and does not meet that description.
- 4.5 In respect of other Sections of the WBNP, Section 3.2 makes reference to “important views”. None of these important views include the land to the rear of Church Road, principally because the site is not readily visible from public viewpoints and even when it is, it is against the backdrop of the built form of the village (again, as confirmed in the Inspectors reports).
- 4.6 Finally, Section 3.3 makes reference to sports & recreation facilities and local assets. The land in question is not identified within this section.
- 4.7 The Village is already well served by open space and opportunities for public recreation, as evidenced by the multiple references in the WBNP. Section 2.2, Objectives, refers to the village’s “existing high standard of sports and community facilities”. Section 3.3 meanwhile states “The village is well served with sports and community facilities”.
- 4.8 It also benefits from an extensive public rights of way network in the wider area. Map 8 on p.23 of the WBNP shows the existing public rights of way with proposed improvements. The

accompanying text identifies the fact that the village already benefits from six walks in and around it, whilst the wider network connects the village to places such as Witham, Great Totham and pleasant leisure routes in all directions through the open countryside. None of the routes pass through or adjoin the land.

- 4.9 In summary therefore, the WBNP contains no justification or evidence at any point in the document as to why the land to the rear of Church Road has not just a high value, but any value whatsoever as a Local Green Space. Having regard to the advice provided in the PPG, the land does not meet any of the proposed criteria for designation as a Local Green Space and should not therefore be designated as such.
- 4.10 The closest category in the PPG which the proposed allocation does meet, is that contained in Para 15, with the land appearing to have been allocated as a “*blanket designation*” adjacent to a settlement, or a “*back door’ way*” to try and prevent development taking place on the site.

WBNP Evidence Base

- 4.11 The website contains three accompanying documents, which have been taken as the ‘Evidence Base’ for the WBNP. These are the Residents Survey Report, the Strategic Environmental Assessment and Habitat Regulation Assessment Screening Determination and the Housing Needs Survey Final Report. The Housing Needs Survey is considered in Section 5 below.
- 4.12 As the WBNP refers to these documents it is our expectation that these are placed in front of both Maldon District Council, and the Examiner, at the Regulation 16 Basic Conditions consultation stage for the Examination. In the event that these are not enclosed, we would formally submit those as evidence accompanying our response at that stage of the process as they are fundamental to the consideration of the WBNP.

Residents Survey Report

- 4.13 Published alongside the WBNP are the results of the Residents Survey report. The document provides some further information, but still fails to justify why the land is allocated as a Local Green Space.
- 4.14 Included within the Residents Survey results is a table on p.21 which summarises responses to a question enquiring which “green spaces” are most important to the community. It should be noted that “green spaces” was not defined in the Residents Survey, and respondents were only allowed to select from those in the list.
- 4.15 The land to the rear of Church Road received the joint lowest percentage of respondents identifying it as important (83%), with the joint highest finding it not important (17%). This likely reflects

the fact it is not publicly accessible or readily visible from public view points.

- 4.16 The site ranks lower than many other areas within the Village, which, other than one other area (Site 2), none have been designated as Local Green Space. The fact that the land scored lowly when compared to others which have not been designated further demonstrates the lack of evidence justifying the proposed allocation and adds weight to the argument that the proposed allocation is simply a back-door way to prevent development on the land, contrary to advice in national planning guidance.
- 4.17 We also note that the Residents Survey results do not demonstrate any need for local green spaces, or new areas of public open space.
- 4.18 In reviewing the WBNP, it has become apparent that the Residents Survey is not accurately reflected within the section on Housing (Section 3.4, p.26). The final paragraph states "*Free text comments made clear the lack of support for any further development*". This is factually incorrect. Within the text comments published there are multiple references to support for new development of a varied housing mix to meet different needs. For example, comments such as:
- "Wickham Bishops should welcome in-comers and provide its share of affordable and smaller housing to allow older people to downsize and younger people to move in and keep the village alive" (p.102)
 - "Allow high quality developments rather than be forced to take lower quality higher density housing" (p.102)
 - "houses for young people" (p.13 in response to the question "What would you like to see change in the village in the next 12 years")
- 4.19 The same paragraph also states no respondent identified any specific site. As acknowledged in the same sentence, this is because the Residents Survey did not ask residents to identify any suitable sites. The Residents Survey did not seek local views on suitable locations for development, so it is unreasonable and inappropriate to draw any conclusions based on the apparent lack of suggested sites.

Strategic Environmental Assessment

- 4.20 The Strategic Environmental Assessment (SEA) consideration of Policy WBen 06 states in a table on p.17 that protecting existing green space will encourage residents to spend more leisure time in the Parish.
- 4.21 This is factually incorrect in respect of the land to the rear of Church Road. The land is not publicly accessible, therefore does not provide a leisure function. It cannot therefore be claimed to

contribute to this function and the assessment should be amended to reflect this fact. As currently drafted, it is inaccurate and unsound.

Summary

- 4.22 Our client therefore objects to the proposed Local Green Space allocation for the following reasons:
- The land is in private ownership with no public access;
 - The land is not readily visible from public viewpoints (as confirmed at appeal);
 - The land provides no demonstrable value as a Local Green Space and there is no evidence or justification for the allocation;
 - There is no identified need for the land to be identified as a Local Green Space;
 - The SEA of the Policy is inaccurate and unsound;
 - The allocation instead appears to have been drafted to prevent development and sterilise the land, contrary to the advice in the PPG.
- 4.23 Having regard to these matters, the WBNP as currently drafted would fail the examination (if it were to reach that stage) as it would fail the Basic Conditions for Neighbourhood Plans.

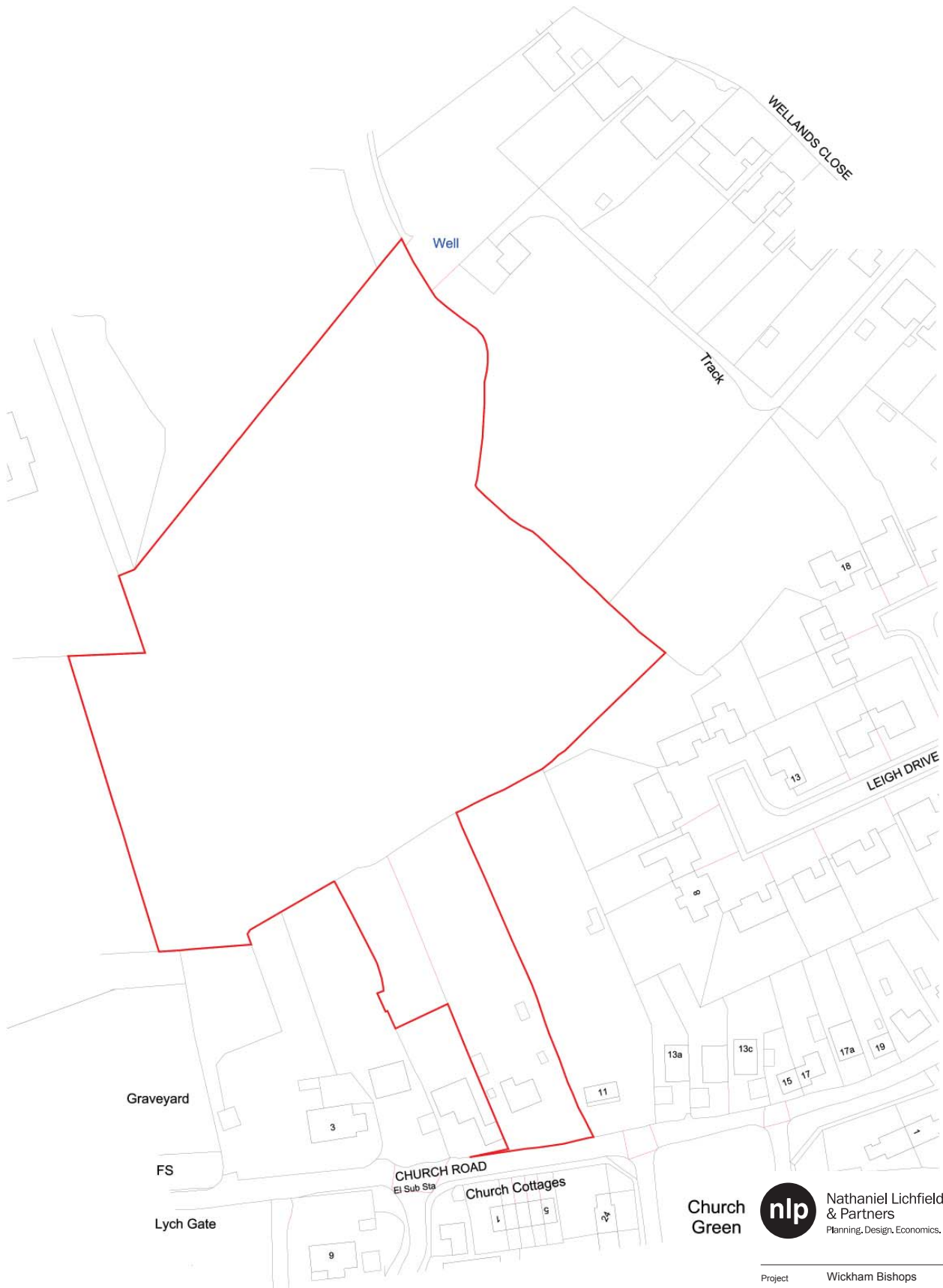
5.0 Housing Need in Wickham Bishops

- 5.1 One of the stated objectives of the WBNP is that:
- “There is sustainable development of high quality design that is in character with the local area, and of an appropriate mix and type to meet local current and future needs”*
- 5.2 The Housing Needs Survey (HNS) dated January 2017 provides the most up to date picture for housing need within Wickham Bishops. Table 2 of the HNS shows an identified need for 40 homes within the village. Having regard to the stated objective of the WBNP, it should follow therefore that the WBNP includes one or more allocations for at least these 40 homes, to meet current and future needs.
- 5.3 However, the Plan fails to do so. Instead, it does not propose any housing allocations at all. The Plan is therefore silent on how these needs will be met. This is despite the fact that the Residents Survey also expressed many views stating that there should be new housing development in the village.
- 5.4 As set out earlier in these representations, the previous appeal decisions have confirmed the suitability of the land rear of Church Road for residential development. The land has been subject to full scrutiny by two different appeal Inspectors, both finding that the benefits of delivering housing, including affordable housing, would outweigh the limited harm from developing a greenfield site.
- 5.5 The land is therefore a suitable and appropriate location to meet the housing needs for the village. Having regard to the evidence base (i.e. the HNS and Residents Survey), along with the appeal Inspector findings, the land at and to the rear of 9 Church road should be allocated for residential development to meet current and future housing needs in the village.
- 5.6 To fail to do so would likely result in the Plan not passing the examination stage, as it would fail the Basic Conditions test.



Appendix 1

Site Location Plan



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Church Green



Nathaniel Lichfield & Partners
 Planning, Design, Economics.

Project **Wickham Bishops**

Title **Red line plan**

Client **MAZDEV Ltd**

Date **December 2015**

Scale **1:1250 @ A3**

Drawn by **CP**

Drg. No **PS14433-001-Rev B**



CL14433

KEY

Site boundary





October 2018

Appendix 2

Maldon DC Local Plan Evidence Statement



Matters 2, 3, 4 and 5 Strategic Housing Growth

Q11-12 Contribution of Strategic Sites to Housing Delivery (DOC 129)

Q6a Amended tables (DOC 127)

Updated Infrastructure Phasing Plan (DOC 129)

Q15b Revised Affordable Housing Statement (DOC 132)

Statement made on behalf of the Local Planning Authority

30 January 2017

Q15 Revised Affordable Housing Statement

At the Examination Hearings the Inspector requested that the Council correct the table on the sources of affordable housing (Council's Hearing Statement in response to Q15b) to ensure that the most up to date information was available. The revised statement is provided below:

4. **Sub-Question (15b):** The Table 1 below identifies the sources of affordable housing identified for the Plan period including that completed, secured via planning consents, resolved to grant and forecast for the S2 sites.

Table 1: Sources of Affordable Housing (updated table)

	No. Units	Affordable Units
S2 Sites		
S2 (a) Limebrook Way	1,000	300
S2 (b) Wycke Hill North	320	102
S2 (c) Wycke Hill South	108	0
S2 (d) North Heybridge	1,138	227
S2 (e) North Holloway Road	100	30
S2 (f) Broad Street Green	145	58
S2 (g) Park Drive	131	39*
S2 (h) Heybridge Swifts	101	41
S2 (i) Burnham on Crouch West	180	72
S2 (j) Burnham on Crouch North (West)	180	72
S2 (k) Burnham on Crouch North (East)	90	36
Sub Total S2 Sites	3,493	977
Other sites with Planning Permission and affordable housing		
Bridgmans Green	52	16
Snows Corner, Wickham Bishops	27	12
Latchingdon Bowls Club	41	16
Malone Cottage, Wickham Bishops	14	5
Theedhams Farm, Southminster	94	28
East of Burnham Rd, Latchingdon	30	9
Marsh Rd, Burnham on Crouch	75	23
Woodrolfe Rd, Tollesbury	24	9
Scotts Hill, Southminster	117	35*
South Street, Tillingham	27	9*
Old Engine Shed, Maldon	20	8
Land west of Fambridge Road North Fambridge	75	23
Manor Farm, North Fambridge	30	10
Sub Total Sites with planning permission	626	203
Pipeline applications subject to planning approval		
Land off 34 Hall Rd, Gt Totham	12	4
Mansion House, Althorne	48	19
Land south of Rose Drive Southminster	37	11
Land to rear of 9 Church Road Wickham Bishops	52	21
Sub Total Pipeline Units	149	55
Financial payment in lieu of on-site provision		
Lime Tree Cottage, Gt Braxted	14	5 (Commuted Sum Agreed)

	No. Units	Affordable Units
Turkey Farm Spital Road Maldon	7	2 (Commuted Sum Agreed)
Sub Total units	21	0
Total	4,289	1,235
Target of 130 units x 15 years		1,950
Shortfall/Surplus (Target-Total)		715

*Completed in part or whole

5. The table indicating pipeline supply of affordable housing delivered through planning gain shows a shortfall of 715 homes (1,950 less 1,235). The subsequent paragraph outlines the reasons why the Council is satisfied that the overall requirement will still be achieved but recognises that this does not clearly quantify the number against each source that is mentioned. For greater clarity this is provided in more detail below:

Table 2: Addressing the shortfall in affordable housing supply

Source	Number
Provision of affordable extra care (Independent Living) through partnership with Essex County Council	120 (minimum number – SHMA indicates requirement of 138)
Increased supply through releasing existing stock	120*
Increased supply through releasing existing stock (60 affordable bungalows agreed in s106 for site S2(a))	60*
Rural Exception Schemes (based upon past performance of 5 units per annum x 15 years)	75
Strategic development, e.g. working with partner housing associations to improve supply through other strategic initiatives such as remodelling and intensification of existing schemes / sites (based upon past performance that averages 23 units per annum x 15 years)**	340
Total	715

*SHMA Key Recommendation – see 13.11 pg.156

** The Council is working on improving the capacity of other local housing providers such as almshouse associations and other local charities to enable additional development of supported and affordable housing, funded through the Government's Community Housing Fund but has not added any additional homes into this amount relying on past performance which is likely to improve but cannot yet be demonstrated.

6. Inevitably delivery will not be consistent from one year to another, nor can there be any certainty as to the exact number that will be delivered through these other sources but by relying on previous performance over the previous ten years when overall delivery was lower and the need to enable development through these more strategic initiatives was often the main source of supply, the Council remains confident that it will be able to meet the requirement for affordable housing.



October 2018

Appendix 3

Inspectors Report dated 01/02/17



Appeal Decision

Hearing held on 4 January 2017

Site visit made on 4 January 2017

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 1 February 2017

Appeal Ref: APP/X1545/W/16/3152640

**Land at and to the rear of 9 Church Road, Wickham Bishops, Essex
CM8 3LA**

- 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 MAZ Dev Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/01342, dated 23 December 2015, was refused by notice dated 13 April 2016.
 - The development proposed is demolition of an existing dwelling and erection of up to 52 residential dwellings with associated vehicular access.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of an existing dwelling and erection of up to 52 residential dwellings with associated vehicular access at land at and to the rear of 9 Church Road, Wickham Bishops, Essex CM8 3LA in accordance with the terms of the application, Ref OUT/MAL/15/01342, dated 23 December 2015, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The application is for outline permission with all matters except means of access reserved. An illustrative layout plan was submitted with the application and an amended version of that plan was submitted with the appeal. The latter was not before the Council when it made its decision and was not subject to consultation. However because it is merely illustrative of a possible scheme rather than forming part of the proposal I am satisfied that no party would be prejudiced by my considering the amended plan on this basis.

Main Issues

3. The Council's reasons for refusal make reference to the absence of a signed legal agreement for the provision of affordable housing and school transport. Since the Council's refusal a Unilateral Undertaking (UU) has been provided regarding these matters. The Council agreed at the Hearing that its second and third reasons for refusal which concern the principle of affordable housing and infrastructure provision have been addressed. However a matter that remains in dispute is the amount of affordable housing required to be provided. Accordingly the main issues in the appeal are:
 - i) the effect of the proposed development on the character and appearance of the area;
-

- ii) the accessibility of the proposed dwellings to services and facilities by sustainable means of transport; and
- iii) the amount of affordable housing to be provided.

Reasons

Planning Policies

- 4. The development plan consists of the saved policies of the Maldon District Replacement Local Plan (RLP) (2005). The majority of the site is outside the development boundary as defined in the RLP but its policies for the provision of housing covered the period up to 2011 and have expired.
- 5. The Council's Local Development Plan (LDP)¹ has been submitted for examination and is at an advanced stage. The previous Local Plan Inspector had concluded that policy H6 (provision for travellers) was unsound. Subsequently the LDP was called in for consideration by the Secretary of State who has advised that the Plan as a whole is not unsound and that examination may proceed. Paragraph 216 of the National Planning Policy Framework (the Framework) advises that weight may be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies to the policies in the Framework.

Character and Appearance

- 6. The built up area of Wickham Bishops at its western edge comprises 20th century residential estate development off Wellands Close and Leigh Drive. There is also residential development along Church Road as far as the grade II listed church of Saint Bartholomew. Church Road adjoins Mope Lane and Station Road which are rural in character but there are several large detached houses in large gardens along Mope Lane. The appeal site comprises grass land which is to the rear of frontage development on Church Road. It lies between the residential properties on Leigh Drive/Wellands Close and Mope Lane but there is open land between the site and the rear gardens of the Wellands Close properties.
- 7. To the immediate north of the site there is woodland and there are trees along parts of the site boundaries. Part of the eastern boundary is a watercourse. I saw on my visit that the site is elevated in relation to Wellands Close and Leigh Drive. The woodland to the north would screen the proposed development from view from that direction. The development would extend the built up area into the countryside but it would be contained to some extent by existing built development including that along Mope Lane.
- 8. The site forms part of a Special Landscape Area as defined in the RLP. This forms part of the Totham Wooded Farmland Landscape Character Area as identified in the Landscape Character Assessment (LCA).² The Character Area has wooded ridges and hillsides with agricultural fields enclosed by trees although the area becomes more open towards the fringes of Wickham Bishops. The LCA notes that Wickham Bishops is a modern settlement which largely dates from the 20th century. The enclosed nature of the site would

¹ Maldon District Pre-Submission Local Development Plan 2014-2029

² Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments (2006)

- seem to be typical of the landscape character but its close proximity to the built up area also influences its character. The existing adjacent built development and the woodland enclose the site so that it is not readily visible across the wider landscape.
9. For these reasons the impact of the proposal on the landscape would be limited. Although designated in the RLP as a Special Landscape Area the Council confirmed at the Hearing that the site has no particular landscape value and I concur with this view.
 10. Saved policy CC7 of the RLP presumes against development in Special Landscape Areas unless the character of the area is conserved. The proposal would clearly alter the character of the site and would not conserve its character. However saved policy CC7 is not consistent with paragraph 113 of the Framework which requires that policies for development on protected landscape areas should be criteria-based. This limits the weight that can be given to that policy.
 11. The Maldon District Characterisation Assessment (2012) identifies an Arcadian character to villages in the district, including Wickham Bishops. This is a result of low density residential areas that were laid out in the 19th and 20th centuries whereby landscape features were retained and houses set within spacious plots. Whereas this forms a clear part of the defined character of the area it is also evident from what I saw on my visit that there is extensive 20th century residential estate development at higher densities. Indeed the predominant character in the immediate area of the site is of such higher density development. The proposed density of about 21 dwellings per hectare would not be particularly high or out of character in this context.
 12. The Council and interested parties have expressed concern about the layout and scale of the proposed development in terms of the number of dwellings proposed and the single means of access onto Church Road. I saw that there are a number of housing developments in the area which have access via culs-de-sac. The number of proposed dwellings would not be out of scale with the layout or size of the village.
 13. The trees around the boundaries of the site could be retained and the appellants' Arboricultural Impact Assessment and illustrative layout plan demonstrate that trees within the site could be retained. Additional planting could be required by condition. Thus the structure of the existing landscape features could be retained and reinforced and these features would help to ensure that elements of the existing character are retained.
 14. There are two nearby grade II listed buildings, namely 3 Church Road whose rear garden adjoins the site and the Church of Saint Bartholomew which is on the opposite side of Church Road. 3 Church Road is separated from the site by its garden and the trees that grow along its rear boundary. That building is sufficiently separate from the site to ensure that the development would not harm its setting. The church is some distance away from the site and the trees along the boundary with the graveyard provide a good degree of visual separation. For these reasons I concur with the Council's view that there would be no harmful effect on the settings of the listed buildings.
 15. The proposed development would change the character of the site by extending built development into the rural area. However for the reasons given the

extent of that change would be limited by the contained nature of the site and the existing landscape features. I have found that in other respects the development would be in keeping with the adjacent built up areas of the village. For these reasons I conclude on this issue that the proposed development would result in some harm to the character and appearance of the area. The overall harm in this respect would however be limited and for these reasons I give moderate to significant weight to that harm.

16. Saved policy CC6 of the RLP only permits development in the countryside which would not harm landscape character. Saved policy BE1 requires that development in general is compatible with its surroundings. Policy D1 of the LDP has a similar requirement. For the reasons given the proposal would not accord with saved policy CC6. Because it would retain existing landscape features and would be in keeping with the adjacent residential areas I find that the proposal would largely accord with saved policy BE1 of the RLP and policy D1 of the LDP. Policy H4 of the LDP requires optimisation of the use of land consistent with the character and density of the surrounding area. The proposal would accord with those requirements.

Housing Supply

17. Paragraph 47 of the Framework requires that the supply of housing is significantly boosted and that local planning authorities should ensure that their Local Plan meets the full objectively assessed needs for housing. The Council has provided evidence that it has more than a 5 year supply of deliverable housing sites³ and there is no substantive evidence before me to the contrary. While the Council may be able to demonstrate a 5 year supply, the objectively assessed need is a matter to be examined as part of the LDP process and therefore there is some uncertainty in this respect. The policies for housing provision in the RLP are time expired and do not make adequate provision for housing supply. For these reasons the policies for the supply of housing in the RLP are out-of-date and the stated existence of a 5 year land supply does not alter this.
18. This position has been confirmed by Inspectors in two appeals which have been brought to my attention⁴ who found that the housing supply policies are out-of-date notwithstanding the existence of a 5 year supply. In another appeal⁵ the Inspector noted that the RLP policies are time expired but that they have a degree of consistency with the Framework in terms of protecting the countryside. In that appeal the Inspector concluded that the RLP policies are not out-of-date but I take the contrary view in this appeal for the reasons given.
19. The housing policies of the LDP have yet to be fully examined taking into account the economic strategy of the LDP. Given also that there are outstanding objections I cannot give more than limited weight to its housing supply policies. In this context policies restricting development outside the development boundaries restrict the supply of housing and carry limited weight.

³ Maldon District Council Five Year Housing Land Supply Statement (August 2016)

⁴ APP/X1545/W/15/3003795 and APP/X1545/W/15/3133309

⁵ APP/X1545/W/15/3139154

20. Saved policy H1 of the RLP restricts housing development outside settlement boundaries and saved policy S2 of the RLP requires protection of the countryside. Those policies together with the restrictive wording of saved policy CC6 of the RLP constrain the supply of new housing. The proposal would not accord with those saved policies but I give limited weight in this respect because the housing supply policies of the RLP are out-of-date. Paragraph 14 of the Framework states that where relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
21. Draft policy S2 of the LDP provides for housing growth in villages and Wickham Bishops is identified in policy S8 as a larger village. The proposal would not accord with those draft policies in as much as it would extend outside the development boundary but that boundary is yet to be reviewed as part of the LDP and this further limits the weight that can be given to them.
22. The Council's decision cites policies N1 and N2 of the LDP. Policy N1 concerns green infrastructure. While I have taken into account the value of the existing landscape features it has not been demonstrated that the site forms part of a network of green space or that it has particular public value as an open space. Policy N2 concerns biodiversity and geodiversity. The Council has agreed that there would be no harm in these respects. For these reasons the proposal would not conflict with those policies.

Accessibility

23. The village has a number of local facilities, notably a large village hall, two public houses and shops. It is served by frequent bus services to Maldon and Whitham where there is a railway station. There is a church in close proximity to the site. It seems to me that the village is a sustainable location for new development given that it has local facilities and good public transport connections. The designation in the LDP as a larger village indicates that further development there would be sustainable in principle.
24. The Council and interested parties however have concern about the distance that residents of the proposed development would have to walk to services and facilities and the lack of footpaths along the roads. Mr Munson on behalf of the Parish Council said that the site is 700m from the nearest bus stop and 750m from the nearest shop. Manual for Streets⁶ states that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800m) walking distance. Although dwellings at the far end of the development may exceed this distance this does not mean that the services and facilities in the village would be an unacceptable walking distance for the occupants of those dwellings.
25. I saw on my visit that although there are parts of Church Road and Blacksmiths Lane without footpaths, for the most part there are footpaths along the roads into the centre of the village. The roads are subject to a 30 mph speed limit. The appellant proposes to widen the existing footpaths on the opposite side of Church Road close to the site using parts of the highway verges. The Highway Authority has no objection to the proposal in terms of highway or pedestrian safety. I note that there is a lack of street lighting along the roads but the

⁶ Manual for Streets paragraph 4.4.1

standard of footpath provision is reasonable and the appellants would improve that provision. Given that vehicle speeds are restricted I find that the pedestrian routes into the village are reasonably safe and attractive. While future residents would undoubtedly use the private car to a significant extent the availability of a choice of sustainable means of transport including cycling would be consistent with the Framework's core planning principle of making the fullest use of those means. For the reasons given I find that the proposed dwellings would have a reasonably good degree of accessibility to services and facilities by sustainable means of transport.

26. In reaching this conclusion I have taken into account the lack of capacity of the local doctor's surgery to accept new patients and the lack of capacity in the nearest primary school at Great Totham. With respect to the latter the County Council provides school transport services and travel to schools would be possible by sustainable means.
27. A number of LDP policies require new development to be well connected to local services and facilities and that there are safe and attractive routes for walking and cycling. Policies D1, H4, T1 and T2 have these requirements. For the reasons given the proposal would accord with those draft policies.

Affordable Housing

28. The UU makes provision for either 30% or 40% affordable housing provision depending on my findings. Saved policy H9 of the RLP requires 30% provision but policy H1 of the LDP requires 40% in the Northern Rural Area in which the site is located. The out of date nature of the RLP and the evidence on which it was based limits the weight that can be given to saved policy H9 and the weight that can be given to emerging policy H1 is also limited given that it has not been examined.
29. In the absence of an up-to-date policy, the Framework requires that the evidence base is used to ensure the full objectively assessed need for affordable housing is met. The Strategic Housing Market Assessment (SHMA) (2012) identifies a significant shortage in affordable housing in the district and this supports the higher percentage required in policy H1 of the LDP.
30. Furthermore some weight albeit limited can be given to emerging policy H1. I note that the Inspector examining the LDP has asked for a number of points of clarification regarding that policy but those points do not relate directly to the percentage requirement.
31. There is no information before me to cast doubt on the viability of 40% affordable housing provision as part of the development proposal. For the reasons given I conclude that 40% affordable housing provision as required by emerging policy H1 of the LDP would be justified.
32. I note local residents' views that there is no need for more affordable housing in the village but the evidence referred to by the Council notably the SHMA indicates a general need in the district as a whole.

The Unilateral Undertaking

33. Because the local primary school is near capacity pupils would need to be transported to another primary school. Secondary school pupils would also need transport. The County Council has identified the need for a developer

contribution towards school transport services of £204,459 and the UU would secure this contribution. The amount of the contribution has been calculated according to a standard methodology used by the County Council. Because there would be no local school facilities the contribution would be necessary in order to make effective use of available schools infrastructure and to use sustainable means of transport.

34. The proposal would make provision for public open space within the development for the recreational needs of the occupants. The UU would secure that provision and arrangements for its future maintenance. These provisions accord with the tests set out in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations). The proposal would accord with saved policy PU1 of the RLP and policy I1 of the LDP which require contributions towards education facilities and necessary infrastructure.
35. Regulation 123 of the CIL Regulations restricts the pooling of infrastructure contributions. The public open space would only relate to the proposed development rather than the wider area. School transport is an existing service and the contributions would not therefore be towards infrastructure. For these reasons I am satisfied that the pooling restrictions do not apply to the provisions of the UU.

Other Matters

36. Local residents have pointed out that the local doctor's surgery is at capacity. The NHS was consulted on the application but did not make any request for a contribution towards upgrading the facility taking into account the pooling restriction.
37. The indicative mix of housing sizes would accord with the identified requirement for smaller homes. The Council says that the mix would not address an identified imbalance in the housing stock but the details given in this respect are indicative only and matters of layout and scale are not for my consideration.
38. The Parish Council and local residents have expressed concerns about extra traffic and potential congestion. However the Transport Assessment demonstrates that the development would have no adverse effect on the highway network, the Highway Authority has no objection to the proposal and this matter did not form a reason for refusal by the District Council.
39. Concern has also been expressed about the potential for flooding but the County Council as Lead Local Flood Authority has no objection subject to the imposition of suitable conditions.
40. I have taken into account all other matters raised including concern about light pollution, broadband speed, water and electricity supplies and effects on the living conditions of adjacent residents but those matters do not alter my conclusions on the main issues.

Overall Balance

41. The proposal would provide a significant number of new homes in a generally accessible location. Although the Council can demonstrate a greater than 5 year supply of housing land, the Framework requires local authorities to boost

significantly the supply of housing. For this reason I give significant weight in favour of the proposal on this basis. I give further significant weight to the benefit from the provision of 40% affordable housing.

42. I have found that the proposed development would have reasonably good accessibility to services and facilities by sustainable means but that nevertheless residents would still use the car to a significant extent. For these reasons this matter is neutral in the overall balance. The public open space to be provided would be required for the occupiers of the development and so would not be of general public benefit.
43. On the other hand I have found there to be harm in terms of the character and appearance of the area and I have attached moderate to significant weight to that harm. The proposal would conflict with development plan policies which restrict development outside settlement boundaries and I give limited weight to those conflicts because the policies are either out-of-date or have not been subject to examination.
44. The weights that I have given to the identified harms are not sufficient to significantly and demonstrably outweigh the weights that I have given to the benefits of the proposal.
45. Policy S1 of the LDP reflects the Framework in presuming in favour of sustainable development. The proposal would address general and affordable housing need and would support the local economy. In these respects the proposal would accord with the social and economic dimensions of sustainable development. The accessibility of the site to services and facilities by sustainable means would also accord with those dimensions as well as the environmental dimension by limiting emissions.
46. The harm to the character and appearance of the area that I have identified would weigh against the environmental dimension but for the reasons given when considered overall the proposal would be a sustainable form of development.

Conditions

47. The original illustrative layout shows 52 dwellings but that number is reduced to 49 on the amended illustrative plan in order to accommodate a drainage facility. Because the application is for up to 52 dwellings and there is no other evidence before me to justify a limit on the maximum number I have not imposed a condition in this respect.
48. I have imposed the conditions suggested by the Council and as agreed by the appellant with one exception. In doing so I have had regard to the tests set out in paragraph 206 of the Framework.
49. Details of external facing materials, boundary treatments and landscaping are required to be approved in order to ensure the appearance of the development is acceptable. The Arboricultural Impact Assessment proposes measures to protect trees but because details of layout are not part of the application it is necessary to require tree protection measures by condition.
50. Details of foul and surface water drainage are required in order to ensure that sustainable measures are used and that flooding elsewhere is prevented. I have also imposed the requested conditions regarding surface water run-off

during construction and the maintenance of the surface water drainage system. The main parties agreed at the Hearing that a condition regarding foul water drainage as recommended by Anglian Water would be necessary.

51. A Construction Method Statement would be necessary in order to ensure that construction operations do not have undue impact on highway safety and the living conditions of residents. I have included conditions requiring provision of the access including drainage requirements, car parking in accordance with adopted standards and a Residential Travel Information Pack to future occupants in order to ensure that the relevant highway standards are met and that use of sustainable means of transport is encouraged.
52. The Phase1 Geo-Environmental Desk Study Report recommends a proportionate programme of intrusive investigation for contamination and I have imposed conditions accordingly. Finally I have imposed a condition requiring archaeological investigation because the site is identified as potentially being of archaeological interest.
53. I have not imposed the suggested condition 20 which would require mitigation measures for air quality. Although the Council has explained that this would be required in order to reduce traffic emissions in other parts of the district there is no substantive evidence before me to justify the need for such a condition.
54. The Fire Service requested the provision of further fire hydrants to serve the development but this would be covered by the Building Regulations and so it would not be necessary to impose a condition.

Conclusion

55. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

Schedule of Conditions

- 1) Details of the 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 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) No development shall take place until written details or samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of the siting, height, design and materials of all boundary treatments have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be provided before the part(s) of the development to which they relate are occupied.
- 6) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas, the materials and finishes to be used together with the car parking layout, vehicle and pedestrian accesses. The details of the soft landscape works shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of a programme for implementation, aftercare and maintenance. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) All the trees and hedges which are to be retained shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 8) No development shall take place 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. This shall include but not be limited to:
- i) a restriction on surface water run-off to the existing greenfield 1 in 1 year rate for all storm events up to the 1 in 100 year event taking into account climate change;
 - ii) provision of sufficient storage to manage surface water on site during a 1 in 100 year storm event taking into account climate change; and
 - iii) provision of water treatment in accordance with the CIRIA SuDS manual (C753).

No dwelling shall be occupied until the works have been carried out in accordance with the approved details.

- 9) No development shall take place until a detailed foul water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved details.
- 10) No development shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction work has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 11) No development shall take place until a Maintenance Plan for the surface water drainage system has been submitted to and approved in writing by the local planning authority. The Maintenance Plan shall include details of maintenance activities and frequencies and the organisation responsible for maintenance. The system shall be maintained in accordance with the approved Plan. Maintenance activities shall be recorded in annual logs which shall be made available for inspection by the local planning authority upon request.
- 12) No development shall take place, including any ground works or demolition until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. Works shall take place in accordance with the approved details. The Construction Method Statement shall provide for:
- i) parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development; and
 - iv) wheel and underbody washing facilities.
- 13) Before the development is occupied the access and highway works including the visibility splays shown on drawing number 1471L-01 shall be provided.
- 14) Before the development is occupied the footpath improvement works shown on drawing number 1471-02A shall be provided.
- 15) Before the development is occupied details of a Residential Travel Information Pack for sustainable transport, which shall include six one

day travel vouchers for use with the relevant local public transport operator shall be submitted to and approved in writing by the local planning authority. The approved Residential Travel Information Packs shall be provided to each dwelling upon its occupation.

- 16) There shall be no discharge of surface water onto the highway.
- 17) All off-street parking provision shall be in accordance with the applicable Maldon District Council parking standards.
- 18) No development shall commence until an intrusive investigation has been carried out and an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems, and
 - archaeological sites and ancient monuments.
- 19) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied. The local planning authority shall be given 2 weeks written notification of the commencement of any remediation works.
- 20) No development including any site clearance or ground works shall take place until an assessment of archaeological significance of the site and a scheme of investigation including details of the programme and methodology of investigation and recording to be used have been submitted to and approved in writing by the local planning authority. The

assessment and scheme of investigation shall be undertaken by a suitably qualified archaeologist. Development shall take place in accordance with the approved details.

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mark Schnull MRTPI	Associate Director, Nathaniel Lichfield & Partners
Ben Wright CMLI	Director, Aspect Landscape Planning Ltd
Mark Tentori	MAZ Dev Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Yee Cheung MRTPI	Planning Officer, Maldon District Council
Matthew Leigh MRTPI	Group Manager, Planning, Maldon District Council

INTERESTED PERSONS:

Barry Sayers	Chair of Planning Committee, Wickham Bishops Parish Council
Paul Munson MRTPI	Representing Wickham Bishops Parish Council
Henry Bass	Ward Member
Jane Williams	Local resident
John Richardson	Local resident
Mr T Dayes	Local resident
Bryan Wearmouth	Local resident
Kevin Walter	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

SUBMITTED BY THE APPELLANT:

- 1 Signed Unilateral Undertaking and copies of title

SUBMITTED BY THE LOCAL PLANNING AUTHORITY:

- 2 Policy H9 of the Maldon District Replacement Local Plan

SUBMITTED BY MR MUNSON:

- 3 Extracts from *Manual for Streets, Policy, Planning and Design for Walking and Cycling and Providing for Journeys on Foot*



October 2018

Appendix 4

Inspectors Report dated 18/12/2017



Appeal Decision

Hearing Held on 17 October 2017

Site visit made on 17 October 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 18th December 2017

Appeal Ref: APP/X1545/W/16/3152640

Number 9 and land at rear of Church Road, Wickham Bishops, Maldon

- 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 MazDev Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/15/01342, dated 23 December 2015, was refused by notice dated 13 April 2016.
 - The development proposed is outline planning permission for demolition of existing dwelling and erection of up to 52 dwellings with associated vehicular access.
 - This decision supersedes that issued on 1 February 2017. That decision on the appeal was quashed by the High Court.
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Decision

1. This appeal is dismissed.

Procedural matters

2. The application was made in outline with all detailed matters other than access reserved for future consideration. At the start of the Hearing the appellant confirmed that the layout plan (PS14433-003 rev I) was illustrative and I have considered the appeal on that basis.
 3. Since the original application was determined the Council, in July 2017, adopted the Maldon District Approved Local Development Plan 2014-2029 (the LDP) and this now forms the development plan for the district.
 4. The decision notice refers to policies S2, H1, BE1, PU1, CC6 and CC7 of the adopted Maldon District Replacement Local Plan (2005) (the RLP) and policies S1, S2, S8, H1, D1, H4, N1, N2, T1, T2 and I1 of the Maldon District Pre-Submission Local Development Plan 2014-2029 (the ELP). These policies have now been replaced by the policies contained within the LDP. The Council in their updated appeal statement and at the Hearing have referred to LDP policies S1, S2, S8, H1, H2, H4, D1, N2, T1, T2 and I1. In addition they consider that policies D2 and D5 which deal with climate change and flood risk are also relevant but agree that policy N1 is no longer applicable. At the Hearing the appellant agreed that these were the relevant policies and I have considered the appeal on this basis.
 5. A significant number of interested parties have submitted representations in relation to the appeal. However, these contained a number of assertions with regards to policy designations for the site. In order to clarify the situation at the start of the Hearing the Council confirmed that the site was not in the Green Belt; an Area of Outstanding Natural Beauty; nor was it covered by a
-

Tree Preservation Order. Furthermore, they agreed that the proposal would not result in the loss of agricultural land. Finally, they confirmed that the Defined Settlement Boundary (the DSB) for Wickham Bishops ran through the rear garden of the current bungalow and as a result they accepted that part of the site was within the DSB. This was endorsed at the subsequent site visit where the Council and appellant indicated on site where they considered the DSB to be located.

6. Reference was also made in correspondence to a number of other recent and proposed developments within the local area. However, the number of units and addresses for these schemes varied. At the Hearing the main parties confirmed that the three relevant schemes were the recently completed 27 unit scheme at Snows Corner; an extant scheme for 14 units at Land east of Malone Cottage, Maypole Road that was allowed at appeal¹ and a scheme for outline planning permission for 4 new units at Beaconhill Fruit Farm, Kelvedon Road². Following a request from interested parties I visited the Snows Corner development on an unaccompanied basis.
7. A Unilateral Undertaking under S106 of the Town and Country Planning Act 1990 (the UU) was submitted prior to the start of the Hearing. The UU would provide a contribution of £204,459 towards the provision of secondary school transportation; a scheme of affordable housing that shall not be less than 30% or 40% depending upon my findings with regards to policy requirements on affordable housing and the provision on site of an area of open space which would be available to the general public, subject to an agreed open space specification and open space management plan. At the Hearing the Council confirmed that subject to a 40% affordable housing provision, they were satisfied that the second and third reasons for refusal had been resolved.

Main Issues

8. Based on the original reasons for refusal and the evidence submitted and heard in relation to the appeal I consider that the main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the amount of affordable housing to be provided.

Reasons

Planning policies

9. Since the application was considered by the Council they have adopted the LDP and have a National Planning Policy Framework (the Framework) compliant supply of housing land. As a result I consider that I can give full weight to the policies contained within the LDP.
10. The policies relevant to the determination of this appeal are LDP policies S1, S2, S8, H1, H2, H4, D1, D2, D5, N2, T1, T2 and I1.
11. Policies S1 and S2 advocate that the Council will take a positive approach that reflects the presumption in favour of sustainable development whilst protecting and enhancing the districts natural, built and historic environment.

¹ PINS reference: APP/X1545/W/15/313309

² LPA reference: OUT/MAL/13/007

12. Policy S8 supports sustainable development within the DSB. Outside of the DSB it indicates that planning permission would only be granted where the intrinsic character and beauty of the countryside is not adversely affected and provided it meets at least one of the exceptions listed. Policy H4 seeks to optimise the use of land but amongst other things the location and setting of the site and the existing character and density of the surrounding area must be considered.
13. All housing developments of 10 or more units are expected to contribute towards affordable housing provision (policy H1) and to provide a suitable mix and range of housing in terms of size, type and tenure (policy H2).
14. The Council require development to be well designed and amongst other things to respect character and local context (policy D1). Further it must minimise its impact on the environment (policy D2) and minimise risks from flooding (policy D5).
15. Policy N2 seeks to protect the natural environment by encouraging development proposals to improve the condition of existing international, national or local designations.
16. In order to encourage sustainable travel patterns the Council seeks to locate development where amongst other things there is physical and environmental capacity to accommodate the type and amount of traffic generated (policy T2) and to deliver a more sustainable transport network for the district (policy T1).
17. Policy I1 seeks, where necessary, contributions towards local and strategic infrastructure and services that are necessary to support the proposed development.

The effect of the proposal on the character and appearance of the area

18. All parties agreed that the proposal would affect the character and appearance of the area by virtue of introducing housing and its related infrastructure into what is effectively a greenfield site. However, it is the harm that would result from this change and the effect that this would have on the character and appearance of the area that needs to be assessed.
19. The site has no specific landscape designation in adopted planning policy terms. However, a lack of formal designation or protection does not necessarily mean that the site's landscape is without worth or value. Policy S8 of the LDP seeks, amongst other things, to protect the landscape and intrinsic character and beauty of the countryside.
20. Wickham Bishops is a nucleated settlement with development extending out from The Street. The appeal site is located on the western edge of the village where development becomes more linear and the village takes on a more rural character which the Council referred to as Arcadian. The majority of the site is comprised of an agricultural field which currently consists of overgrown grassland surrounded by mature trees and hedges. I observed at my site visit that this gives the site a pleasant rural aspect. It is clear from what I have read and heard that the site's open and undeveloped nature is clearly appreciated and valued by those who live in and around the area.
21. However, from most vantage points the site is viewed against the backdrop of the existing village or the houses in Mope Lane. Furthermore, the mature

hedges and trees located around the site boundary filter views into the site. The illustrative masterplan indicates that this planting could be retained and reinforced and I agree that this could be achieved by means of a suitably worded condition.

22. Having visited the various long distance viewpoints discussed at the Hearing and on the site visit, I consider that views of the site from the wider area are relatively limited. Whilst I observed on site that the levels fall from Church Road down to the rear boundary of the site I do not consider that this drop in levels makes the site particularly exposed in wider views. As a consequence I consider that from the wider vantage points the proposal would be viewed in the context of the existing village and landscape
23. As a result the proposal would not, in my judgement, adversely affect the intrinsic character and beauty of the countryside nor harm the character and appearance of the wider area.
24. Whilst the proposal would be at a relatively low density, I recognise that on the basis of what I heard at the Hearing and observed on site it would be higher than that of adjoining developments and for the village as a whole. Furthermore, I acknowledge that due to the number of units proposed, the scheme would result in a different layout and urban grain to the established pattern of development. However, given the location of the site; it's relatively contained nature and the existing landscape features I consider that on balance although the proposal would deliver development at a higher density and in a different form to the existing housing it would not be to the detriment of the character and appearance of the village.
25. The Council advocate that due to the backland location the proposal would be disconnected from the existing settlement which would, in their opinion, make it impermeable to walking and cycling other than via the one access point which in turn would limit access and connectivity to the rest of the village.
26. The appeal scheme is in outline with all matters except access reserved. Consequently, the illustrative masterplan represents only one possible layout for development at the site and as such I can only give it limited weight. However, I accept, having visited the site that due to the limited width of the plot at the front of the site that the bulk of the proposed units would need to be located at the rear of the site, behind the existing properties in Church Road. As a result I agree that the site would be relatively impermeable and that access from the site to other parts of the village would only be possible via Church Road. However, I consider that that the site is not so deep that future occupiers of units located at the rear may not choose to walk or cycle to village facilities.
27. The majority of these facilities are located to the west of the appeal site accessed either via Blacksmiths Lane or, in the case of the village hall and the shops at Snows Corner, via Church Road. Whilst I consider that it would be possible to walk or cycle from the site to these facilities I accept that there are limited public footpaths in the vicinity of the site. However, I note that through the use of a suitably worded conditions footpath improvements are proposed which would in my opinion increase the likelihood of people using sustainable methods of transport.

28. As a result whilst I accept that the site would be relatively impermeable I do not consider that this would limit connectivity to the rest of the village nor preclude the use of walking or cycling to access facilities such as the village hall or shops.
29. Finally, I agree with the Council that to meet their day to day needs most future residents would need to access facilities in the larger neighbouring settlements of Maldon and Witham. However, I consider that this is not as a result of the backland location of the site but due to the fact that facilities within the village are relatively limited. Although there are a number of shops they provide a limited range of goods and services; the bus service to Maldon and Witham is restricted and in my opinion would not be an attractive option for travel on a regular basis. Furthermore, from what I observed on site opportunities for employment within the village and the surrounding area would appear to be relatively narrow. As a result given the limited access to public transport I agree with the Council that the majority of these trips would be by private car.
30. However, I recognise that given its rural location that Wickham Bishops is not unique in having access to limited facilities and residents who are reliant on the car to meet their day to day needs. As the appellant has highlighted Policy S8 of the LDP classifies Wickham Bishops as a larger village for the location of development, second within the settlement hierarchy after Maldon, Heybridge and Burnham-on-Crouch. Therefore, whilst recognising that the development would be outside of the DSB, given the location of the site in the context of this predominantly rural district I consider that the proposal would be located within one of its more sustainable locations.
31. As a result whilst I accept that the proposal would alter the open character of the edge of the village I consider that the rural character of the area would be maintained. Furthermore, for the reasons I have outlined, I consider that the proposal would not result in an intrusion in to open countryside nor would it adversely affect the character and appearance of the area. I do not consider that the proposal would be isolated from the rest of the village and I consider that the site is located within one of the villages which, given the rural nature of the district, is more sustainable. As a result the proposal would be in accordance with policies S1, S2, H4, D1, D2 and T1 of the LDP.

The amount of affordable housing to be provided

32. In order to comply with the Framework and policy H1 of the LDP a percentage of the proposed units would need to be affordable. The appellant has submitted a completed UU. Under the terms of the UU, either 30% or 40 % of the units on-site would be affordable. The reason for the differing offer is that at the time that the UU was drafted policy H9 of the RLP required a provision of 30% whilst policy H1 of the ELP required 40%. Since the UU was completed the LDP has been adopted and policy H1 of the LDP requires that for this location 40% of the units need to be affordable. At the Hearing the appellant confirmed they would be prepared to provide 40% of the on-site units as affordable and as a result the proposal would be in accordance with policy H1.

The Unilateral Undertaking

33. The UU would also deliver a financial contribution to fund the transportation costs of any secondary aged pupils that would result from the development.

The contribution has been calculated by the County Council in accordance with their published formula. As these contributions would not be towards infrastructure costs they would comply with the requirements of Regulation 123 of the Community Infrastructure Levy Regulations (the CIL regulations) which restricts the pooling of infrastructure contributions.

34. The proposal would also deliver a new area of open space and the UU details how this would be maintained. The space is necessary to meet the recreational needs of future occupants of the development.
35. On the basis of the evidence that I have read and heard I am satisfied that the obligations within the UU are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly and reasonable related in scale and kind to the development. As a consequence I consider that they meet the tests within the CIL Regulations³ and the Framework⁴ and would comply with policy I1 of the LDP. I am therefore satisfied that that the issues raised by the Council in their second and third reasons for refusal have been satisfactorily addressed.

Other matters

36. The Council consider that the proposed mix of units would not meet the requirements of policy H2 of the LDP which seeks to deliver a higher proportion of smaller (1 and 2 bedroom units). However, this is an outline application and as such at this stage the mix of units is indicative only and not for my consideration.
37. There was significant local concern raised in relation to the potential effect of the proposed development on the capacity of the local road network and highway safety. However, based on all the evidence before me and the observations during my site visits, I am satisfied that the design of the access is satisfactory and that any increase in traffic from the proposal would not compromise highway safety or result in congestion on the local road network. Moreover, this is consistent with the Highways Authority who raised no objections in relation to site access, highway safety and network capacity subject to a number of suitable worded conditions. As a consequence the proposal would be in accordance with policy T2 of the LDP
38. A number of local residents are concerned that the proposal would affect the setting of a number of listed buildings, namely 3 Church Road and Saint Bartholomew's church. I observed at my site visits that the church is some distance from the site. Furthermore, from most viewpoints the church is viewed in the context of the surrounding village. Whilst the proposal would increase the size of the village I consider that the views of the church would be maintained. Three Church Road is separated from the site by its garden and I noted on site that a row of mature trees grows along the rear boundary of this property. As a result I consider that the house would be sufficiently distant from the site that the development would not harm its setting. I therefore conclude that the setting of these designated heritage assets would not be harmed.
39. I am also aware that the Parish Council and a number of local residents advocate that there is no need for any further affordable housing within the

³ Regulations 122 and 123

⁴ Paragraph 204 of the National Planning Policy Framework (2012)

village over and above that provided by the recent Snows Corner development. However, based on the LDP and the evidence provided by the Council and the appellant it is clear that there is a general need in the district as a whole.

40. A number of references have been made to the development of a neighbourhood plan for Wickham Bishops. At the Hearing the Parish Council confirmed that they were in the process of creating an evidence base which would then be used to develop such a plan. Given the very early stage that the plan has reached and the fact that none of the evidence has been the subject of any testing through examination I consider that I can give it no weight when determining this appeal.
41. Concerns have been raised that the site may provide the habitat for a number of protected species including bats and a number of birds of prey. However I note that the Council are satisfied with the ecological work undertaken by the appellant and do not have any concerns regarding wildlife. Nothing I have read or heard in the evidence before me of from what I observed on site leads me to a different conclusion to the Council.
42. I have also taken into account number of additional issues raised by local residents including amongst other things the capacity of the local schools, doctor's surgeries and dentists; flooding; necessity of the scheme given units remain unsold at Snows Corner; water and electricity provision; the effect of construction work on the road network and the effect on the living conditions of a number of neighbouring properties. However, they do not alter my conclusions on the main issues.

Planning balance

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 state determination of a planning application must be carried out in accordance with the development plan unless material considerations indicate otherwise.
44. Policy S8 of the DLP supports sustainable development within the DSB. Outside of the DSB it indicates that planning permission would only be granted where the intrinsic character and beauty of the countryside is not adversely affected and provided it meets at least one of the exceptions listed.
45. With the exception of the front of the site the majority of the proposal would fall outside of the DSB. Although I have, for the reasons outlined, concluded that the intrinsic character and beauty of the countryside would not be adversely affected I consider that the proposal would not be for any of the thirteen exceptions listed in the policy. As a result in my opinion the proposal would not comply with policy S8 and consequently the proposal would not be in accordance with the development plan.
46. I accept that the scheme would deliver several social and economic benefits. The delivery of new housing is a clear benefit of the scheme which reflects one of the key objectives of the Framework. Moreover, the scheme would secure the delivery of affordable housing in an area where there is an acknowledged need. On-site open space would be provided which would be accessible to the general public and there would be a number of off-site highway works that would improve footpaths in the immediate vicinity of the site. In the short term the proposal would deliver a number of construction jobs and local

investment and in the longer term the new units would bring new households which would use local business and services. As a result I acknowledge that the scheme would deliver a number of positive benefits.

47. However, I am satisfied that the Council has five years-worth of housing land supply and as such in my opinion there is not, at this stage in the plan, the need for additional housing sites to come forward. Furthermore, whilst the site would deliver an element of affordable housing this would not be above the amount required for the scheme to comply with the requirements of policy H1.
48. The Council acknowledge that there is a need for affordable housing within the district and that there is currently a shortfall in affordable housing over the plan period. However, I consider that the amount of affordable housing this scheme would deliver is limited and although it would help address this shortfall I do not consider that it is sufficient to warrant me giving it significant weight in the planning balance. Consequently, I do not consider that the limited delivery of affordable housing would be sufficient reason to warrant determining the appeal other than in accordance with the development plan.

Conclusion

49. As a result I conclude that the proposal would be contrary to policy S8 of the LDP and for the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed.

Jo Dowling

INSPECTOR

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

Document 1 Email from the appellant detailing the wording of a condition that had been agreed with the Council with regard to foul water and broadband connections