



## Department for Communities and Local Government

Mr Matthew Clarke  
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Our Ref: APP/N1540/A/11/2167480  
APP/N1540/A/11/2174502  
Your Ref: 01.134

15 November 2012

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS BY BARRATT STRATEGIC, PERSIMMON HOMES & TAYLOR WIMPEY  
LAND NORTH OF GILDEN WAY, HARLOW  
APPLICATIONS: REF HW/PL/11/00055 and HW/PL/12/00061**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Phillip J G Ware, BSc DipTP MRTPI, who held a public local inquiry on 8 days between 3 and 13 July 2012 into your clients' appeals against the failure of Harlow District Council to determine applications for outline planning permission for:

**Appeal A:** approximately 1,200 dwellings; site for a primary school (2.16 ha); community buildings (0.06 ha); retail/business/live work units (0.18 ha); together with associated uses comprising allotments and public open space, plus associated infrastructure and engineering works, with vehicular access from Gilden Way at land north of Gilden Way, Harlow, Essex, in accordance with application ref: HW/PL/11/0005, dated 24 February 2011;

**Appeal B:** the construction of a footpath/cycleway in conjunction with the proposed development in respect of land north of Gilden Way at the Forebury, Old Harlow, Essex, in accordance with application ref: HW/PL/12/00061, dated 13 February 2012.

2. On 10 January 2012, Appeal A was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities. Appeal B was recovered on 23 April 2012 because it is most efficiently and effectively decided with Appeal A.

### **Inspector's recommendation and summary of the decision**

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3. The Inspector recommended that both appeals be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

4. The Inspector reports (IR2) that, at the time the appeal was lodged, the appellant submitted revised illustrative plans and a revised Design and Access Statement incorporating a number of changes to the Appeal A proposal, and the inquiry proceeded on the basis of the amended plans. For the reasons given by the Inspector, the Secretary of State agrees with him that no interests would thereby be prejudiced; and he has determined Appeal A on that basis.

5. In reaching his decision, the Secretary of State has also taken into account the Environmental Statement (ES) dated January 2011 and submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR3) in respect of Appeal A. He considers that the environmental information provided meets the requirements of the above regulations and that sufficient information has been provided for him to assess the environmental impact of the Appeal A scheme.

### **Policy considerations**

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. As stated in paragraph 12 of National Planning Policy Framework (the Framework), that document does not change the statutory status of the development plan as a starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

7. In this case, the development plan comprises the *East of England Plan - 2008 (Regional Spatial Strategy – RSS)* and the *Replacement Harlow Local Plan – 2006 (LP)*. The Secretary of State agrees with the Inspector (IR171) that the emerging Core Strategy Issues and Options Report can be given little weight at this stage; and he also gives little weight to the Supplementary Planning Documents and other guidance referred to at IR172.

8. The Localism Act 2011 provides for the abolition of RSSs by Order. However, the Secretary of State has attributed limited weight to the proposed plan to revoke the East of England Plan. Any decision to revoke the East of England Plan will be subject to the environmental assessment which is in train.

9. Other material considerations which the Secretary of State has taken into account include the Framework; *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; the *Community Infrastructure Levy (CIL) Regulations 2010* as amended; and the Harlow Design Guide.

### **Appeal A**

## Housing demand and supply and the Development Plan

10. The Secretary of State has taken account of the Inspector's observations at IR165-172 with regard to the weight to be given to the RSS and the Framework, and, for the reasons given at IR173-181, agrees with him that, although the identification of the Appeal A site as a Special Restraint Area (SRA) in the LP does not specifically refer to its reservation for housing development, little weight can be given to the Council's suggestion that the appeal proposal breaches LP policies NE5 and NE6 because they do not specifically reserve the appeal site for housing.

11. For the reasons given at IR173-196, the Secretary of State agrees with the Inspector at IR197 that there is clearly a shortfall in housing land supply (with a supply of between 2.08 and 3.98 years if Gilden Way is included and of between 1.31 and 3.19 years if it is excluded). He agrees with the Inspector (IR198) that the fact that there is a pressing need for housing in Harlow which the Appeal A scheme would help to reduce is an important material consideration in the light of the Framework; and he further agrees (IR199) that the significant contribution which the Appeal A scheme would make to the need for affordable housing would also be a benefit.

12. As the Secretary of State agrees with the Inspector that there is clearly less than a five-year supply of housing land in Harlow and the housing policies in the LP are out of date (IR200-201), he also agrees (IR202) that the policies in the Framework come into play unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Secretary of State also agrees with the Inspector that, as it is intended to meet longer term needs, safeguarded land is not a type of land which the Framework seeks to protect (IR203); and thus that LP policy NE5<sup>1</sup> can be given only limited weight in the planning balance. Nevertheless, for the reasons given at IR205-214, the Secretary of State agrees with the Inspector that release of the Appeal A site now would frustrate the expectation, based on adopted policy, that any such release would take place through a review of the LP, and that this is a matter which, although not determinative in itself, needs to be weighed in the balance.

## Sustainability and accessibility

13. The Secretary of State agrees with the Inspector at IR 221 that, for the reasons given at IR215-220, the Appeal A scheme would be sustainable and accessible, and that this weighs in favour of the proposal.

## Layout and design

14. Having regard to the fact that the Appeal A proposal is in outline and the only element which would be decided by the grant of outline planning permission would be the quantum of development (IR222), the Secretary of State agrees with the Inspector at IR 262 that, for the reasons given at IR223-262, there is no reason to suppose that the details of the appeal scheme would not be of a high standard and address the detailed issues identified at the Inquiry. He therefore also agrees that it can be concluded that, in terms of layout and design, the illustrative proposal complies with the relevant LP policies, the Framework and the Harlow Design Guide.

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<sup>1</sup> that there is a presumption against development in the Special Restraint Area designated in the LP unless the land is shown to be needed resulting from a review of the LP

### Highways issues

15. For the reasons given at IR263-265, the Secretary of State agrees with the Inspector that the proposal would not significantly harm highway safety or the free flow of traffic.

16. The Secretary of State also agrees with the Inspector (IR266) that adopting the Council's approach to parking provision would affect the density which could be achieved and is therefore relevant at the outline application stage. The Secretary of State has given careful consideration to the appellants' alternative methodology but, for the reasons given at IR267-276, he agrees with the Inspector at IR276 that the quantum of development should be restricted to 1,100 units to accord with adopted car parking standards. He notes that the appellants accept the imposition of a condition to that effect as a fall-back position (IR276); and he agrees with the Inspector that breaching adopted standards would be likely to be to the detriment of highway safety and the amenity of the area. He therefore proposes to accept the Inspector's recommendation to impose such a condition – see paragraph 23 below – and has amended the terms of the approved scheme accordingly (see paragraph 26 below).

17. For the reasons given at IR277-282, the Secretary of State agrees with the Inspector that, while it would be appropriate for the appellants to make a contribution towards the cost of mitigating the level of rat-running through Old Harlow, it would not be reasonable to expect the developers of the appeal scheme to fund 100% of the costs.

### Green Belt issues

18. The Secretary of State agrees with the Inspector (IR283) that none of the housing or other built development would be located in that part of the Appeal A site which falls within the Green Belt. However, the proposed sports pitches and allotments do lie within the Green Belt (IR284-290), and the Secretary of State agrees with the Inspector that, while there would be no material change of use from agricultural land to allotments (IR288), the change of use of part of the Green Belt land to sports pitches, and the engineering works associated with that, would be inappropriate development (IR287 and IR290) which would be harmful by definition and should not be approved except in very special circumstances.

### The effect on Heritage Assets

19. For the reasons given at IR291-301, the Secretary of State agrees with the Inspector's conclusion at IR302 that the effect of the Appeal A proposals on Designated Heritage Assets would be neutral or, in the case of the Roman Villa, positive.

### Other matters

20. The Secretary of State agrees with the Inspector (IR303-304) that there would be no adverse impact on the ecology and biodiversity of the site. In coming to this conclusion, the Secretary of State has noted that Natural England has not objected to the proposal and that one of the proposed conditions would require the approval of a biodiversity and ecology strategy (IR304). Furthermore, for the reasons given at IR305-308, the Secretary of State agrees with the Inspector's conclusion (IR308) that the development would not be liable to flooding or increase flood risk elsewhere.

### Balance and conclusion on Appeal A

21. For the reasons given at IR345-357, the Secretary of State agrees with the Inspector's conclusion at IR358 that, although the matter is finely balanced, the appeal scheme has much to commend it – most notably the sustainable contribution it would make to housing land supply. Like the Inspector, he acknowledges that this has to be balanced against the clear policy requirement that the planning system should be plan led (IR359) but that, for the reasons given at IR360, waiting for the emergence of the LP would not accord with national policy. Furthermore, the Secretary of State agrees with the Inspector that very special circumstances exist to justify the inappropriate development proposed in the Green Belt (IR361). Overall, therefore, the Secretary of State agrees with the Inspector (IR362) that the Appeal A proposal represents sustainable development, the adverse impacts of which would not significantly and demonstratively outweigh the benefits when assessed against the policies in the Framework as a whole.

### **Appeal B**

22. For the reasons given at IR309-314, the Secretary of State agrees with the Inspector's conclusion at IR315 that the proposed footway/cycleway running across the southern side of The Forebury would be neutral in terms of the setting and fabric of any Designated Heritage Asset, and there is no reason on any grounds to conclude that planning permission should be refused.

### **Conditions and obligations**

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR328-340. He is satisfied that the conditions recommended by the Inspector at Annexes A and B to the IR are reasonable and necessary and meet the tests of Circular 11/95. This includes Conditions 4 (Design Codes) and 11 (restricting the development to a maximum of 1100 dwellings) at Annex A. However, the Secretary of State also agrees with the Inspector (IR340) that the condition proposed by the Council to require submission of a scheme for floodlighting should not be included as it lacks precision.

24. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Planning Obligations relating to Appeal A as set out at IR316-327. He agrees with the Inspector that the Agreement with Essex County Council (IR318) and the obligation in favour of Essex County Council (IR219-322) meet the relevant requirements set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the policy set out in the Framework and should be accorded due weight. He also agrees with the Inspector that those aspects of the Obligation in favour of Harlow District Council considered at IR323-324 should be accorded due weight (IR325) and that the indoor sports contribution should be accorded no weight (IR326-327).

### **Overall Conclusions**

25. The Secretary of State concludes that the Appeal A proposal represents sustainable development, the adverse impacts of which would not significantly and demonstratively outweigh the benefits when assessed against the policies in the Framework as a whole. He is satisfied that it would help to make up the shortfall in the five-year supply of housing land in Harlow and that very special circumstances exist to justify the inappropriate development proposed in the Green Belt.

### **Formal Decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeals and grants outline planning permission for:

**Appeal A:** approximately 1,100 dwellings; site for a primary school (2.16 ha); community buildings (0.06 ha); retail/business/live work units (0.18 ha); together with associated uses comprising allotments and public open space, plus associated infrastructure and engineering works, with vehicular access from Gilden Way at land north of Gilden Way, Harlow, Essex, in accordance with application ref: HW/PL/11/0005, dated 24 February 2011, subject to the conditions listed at Annex A of this letter;

**Appeal B:** the construction of a footpath/cycleway in conjunction with the proposed development in respect of land north of Gilden Way at the Forebury, Old Harlow, Essex, in accordance with applications ref: HW/PL/12/00061, dated 13 February 2012, subject to the conditions listed at Annex B of this letter.

27. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

28. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

29. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### **Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

31. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

**CONDITIONS: Appeal A**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the submission of any reserved matters application, Design Codes for all Public Realm areas and Character areas shall be submitted to and approved in writing by the Local Planning Authority. The reserved matters submissions shall thereafter accord with the approved Design Codes for the site.
- 5) Prior to the submission of any reserved matters, a phasing scheme for the delivery of the entire development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved phasing scheme.
- 6) No development shall take place until a programme of archaeological work and a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the programme.
- 7) No development shall take place until a survey of trees, hedgerows and other vegetation within the site and a scheme identifying those trees and hedgerows to be retained and the measures to be taken to protect them during the construction of the development, in accordance with BS5837, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out prior to the commencement of that phase of the development and retained at all times during the course of the development of the phase, as approved under condition 5, within which they are located.
- 8) No development shall take place on each phase of development, as approved under condition 5, until details of existing and proposed site levels and the levels of the proposed roads and buildings in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 9) No development shall take place until a scheme for the foul and surface water drainage for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be in general accordance with the Flood Risk Assessment and shall include a timetable for implementation. The development shall be carried out in accordance with the approved scheme.
- 10) No development shall take place until a biodiversity and ecology strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:
  - a) The measures proposed to maintain the biodiversity of the site during construction
  - b) The measures proposed to maintain the biodiversity of the site following the completion of the development
  - c) Mitigation proposals for all protected species and Schedule 1 birds

- d) Details for each habitat of any works such as earth contouring, seed mixes or construction design for ponds and hibernacula
- e) Planting proposals to ensure biodiversity is maintained
- f) A management plan for all activities relating to habitats and species within the site for the 10 years following completion of the development

Development shall be carried out in accordance with the approved strategy and the management plan shall be implemented as approved.

- 11) The reserved matters submitted pursuant to condition 1 shall be restricted to a maximum of 1,100 dwellings<sup>2</sup>.
- 12) The dwellings shall achieve at least Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that at least Code Level 3 has been achieved.
- 13) Prior to the commencement of each phase of the development, as agreed under condition 5 above, details of the proposed refuse storage and collection facilities for that phase shall be submitted to and approved in writing by the Local Planning Authority. The facilities proposed shall be provided on site prior to the occupation of the associated dwellings and in accordance with the approved details.
- 14) Prior to the commencement of each phase of the development, in accordance with condition 5, details of all the external materials shall be submitted to and approved in writing by the Local Planning Authority. These details shall include walls, roof, windows, doors, soffits, guttering, mortar mix, and a sample panel of a minimum 1 sq.m. shall be erected on the site to demonstrate the use of the wall and roofing materials proposed. The development shall thereafter be carried out in strict accordance with the approved details.
- 15) Prior to the commencement of development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include:
  - a) Details of measures to encourage sustainable travel patterns
  - b) A scheme for the management and implementation of the Travel Plan
  - c) Targets for modal shift
  - d) Implementation timescales
  - e) A strategy for marketing and proposed incentives
  - f) Arrangements for monitoring and review

The Travel Plan shall be implemented as approved.

- 16) No development shall take place on any phase of the development, as agreed under condition 5, until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase of the development. The Statement shall provide for:
  - a) an appropriate construction access
  - b) adequate turning and off loading facilities for delivery/construction vehicles

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<sup>2</sup> This assumes acceptance of the need to limit the quantum of the development in relation to parking provision – as discussed above.



- c) an adequate parking area clear of the highway for those employed in developing the site
  - d) wheel cleaning facilities
  - e) construction traffic routes
  - f) protection of public rights of way
  - g) a before and after road condition survey
- 17) No development, on each phase of development as approved under condition 5, shall commence until a scheme for the provision of cycle and car parking in respect of that phase has been submitted to and approved in writing by the Local Planning Authority. The cycle and car parking shall be carried out in accordance with the approved scheme prior to the occupation of the relevant dwelling. The cycle and car parking shall thereafter be permanently kept available for their intended purpose.
- 18) Prior to the first use or occupation of any aspect of the development hereby approved, the following highway works shall be completed and made available for use, in accordance with a detailed engineering scheme to be submitted to and approved in writing by the Local Planning Authority:
- a) New vehicular, pedestrian, cyclist and bus access from the site onto the B183 Gilden Way/Churchgate Street Roundabout
  - b) New vehicular, pedestrian, cyclist and bus access from the site onto Gilden Way to the east of the B183 Gilden Way/Churchgate Street Roundabout
  - c) New footway/cycleway along Gilden Way between the application site and the B183 Gilden Way/London Road Roundabout to link with the national cycle network to the north of Mulberry Green junction and existing local cycle route at the B183 Gilden Way/London Road Roundabout. To include a new Toucan Crossing on the eastern arm of the B183 Gilden Way/ London Road Roundabout
  - d) New pedestrian connection to The Oxleys
  - e) New pedestrian connection to Harlow Mill railway station

The submitted engineering schemes shall include carriageway/footway reconstruction, resurfacing, drainage, street lighting, signing and lining.

- 19) Prior to occupation of any phase of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out in their entirety prior to the access becoming operational and shall be retained at all times.
- 20) Prior to the commencement of each phase of the development, as defined by condition 5, details of the estate roads and footways to accord with the Essex Design Guide (including layout, levels, gradients, surfacing, means of surface water drainage, lighting and bus stop location/specification) shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 21) A 3.5 metre wide strip of land across the entire Gilden Way frontage of the application site for use by the Highway Authority in connection with any future carriageway widening of Gilden Way shall be reserved, and the land shall not be used for any built development.
- 22) A scheme of traffic management to discourage rat running through Old Harlow via Mulberry Green, including an implementation timetable, shall be submitted to and

approved in writing by the Local Planning Authority. The approved traffic management scheme shall be carried out in accordance with the implementation timetable.

- 23) No works or development shall take place on each phase of development, as defined by condition 5, until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping and implementation which shall include details of any hard surfacing, means of enclosure and all proposed tree and shrub planting.
- 24) All planting, seeding or turfing comprised in the above scheme of landscaping shall be carried out in the first planting and seeding season following the beneficial occupation of any building, or the substantial completion of the associated phase of development, whichever is sooner; and any trees or plants which, within a period of 5 years from the completion of the development die, are removed, uprooted or destroyed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives its written consent to any variation.
- 25) A landscape management plan, including long term design objective, management responsibilities and maintenance schedules for all landscape areas other than within individual property curtilages shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of that phase of the development. The landscape management plan shall thereafter be carried out as approved.
- 26) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The scheme, investigation and risk assessment must be undertaken by competent persons and a written report of the finding must be produced. No works or development shall take place on each phase of development, as defined by condition 5, until the scheme and written report has been submitted to and approved in writing by the Local Planning Authority. The report of findings must include:
  - a) A survey of the extent, scale and nature of contamination
  - b) An assessment of the potential risks to:
    - (i) Human health
    - (ii) Property (existing and proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
    - (iii) Adjoining land
    - (iv) Groundwater and surface waters
    - (v) Ecological systems
    - (vi) Archaeological sites and ancient monuments
  - c) an appraisal of remedial options and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR11.

- 27) If the scheme, investigation and risk assessment under condition 5 indicate the presence of contamination, a scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that

the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- 28) The remediation scheme approved subject to condition 27 must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
- 29) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 26 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 27, which is subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 28.
- 30) A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a 5 year period and the provisions of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR11.
- 31) The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment (January 2011) and the following mitigation measures as detailed within the Flood Risk Assessment:
  - a) Surface water run-off generated by the 100 year critical storm (with allowance for climate change) to be limited so that it will not exceed the run-off from the undeveloped site and will not increase the risk of flooding off-site. Restriction to greenfield run-off rates to be achieved through the use of Sustainable Drainage Systems including source control measures and above ground attenuation ponds.
  - b) Compensatory flood storage to be provided on site on a level for basis up to a 100 year flood event (with allowance for climate change). This is required for any encroachment into the flood plain that is necessary for the construction of the detention basin.
  - c) Demonstration that the detention basis will be adequately designed to withstand erosion from the river and that maintenance of the bund will be provided.
- 32) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.
- 33) Piling or other foundation designs using penetration methods shall not be permitted other than in locations where it has been demonstrated that there is no unacceptable risk to groundwater. Details of any such locations shall be submitted to approved in

writing by the local planning authority before penetrative piling or foundations takes place in that area.

- 34) Construction work shall not begin until a scheme for protecting the proposed properties fronting Gilden Way from noise from the road has been submitted and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the noise-sensitive development is occupied.
- 35) Prior to the commencement of development, comprehensive details of the proposed sports pitches, including levels and lighting, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 36) Prior to the commencement of development, details of the proposed allotments shall be submitted to and approved in writing by the Local Planning Authority. The allotments shall thereafter be provided in accordance with the approved details.
- 37) Any Reserved Matters submitted pursuant to condition 2, and Design Codes submitted pursuant to condition 4, shall be in strict accordance with the scale parameters set out in Sections 13 and 14 of the Revised Design and Access Statement (December 2011).
- 38)
  - a) The business floorspace of any live/work unit to be delivered pursuant to Reserved Matters approvals shall be finished ready for occupation before the residential floorspace is occupied and the residential use shall not precede commencement of the business use.
  - b) The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
  - c) The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependants.
- 39) The development hereby permitted shall be carried out within the area shown on site boundary plan 2984\_112. The illustrative scheme is shown on the masterplan 3224\_2008\_A and described on the Parameter Plans R1(Land Use), R2 (Landscape), R3 (Access), R4 (Building heights), R5 (Residential density).

**CONDITIONS: Appeal B**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 0881/GA/08; 0881/GA/33; 080881/GA/37.
3. The footpath/cycleway hereby approved shall be carried out in conjunction with the wider residential development approved under application reference HW/PL/11/00055, and shall be completed before the occupation of the first dwelling in that wider development.
4. Notwithstanding the details of the fence shown on the plans hereby approved, prior to the commencement of development, a detailed hard and soft landscaping scheme, including any fencing proposed, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a detailed method statement including hedgerow retention, a timetable for the implementation of the landscaping and a 5 year maintenance plan and samples of the proposed surface materials. The development shall thereafter be carried out in accordance with the approved details.
5. Prior to the commencement of development hereby approved, details of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved plans.



The Planning  
Inspectorate

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# **Report to the Secretary of State for Communities and Local Government**

**by Phillip J G Ware BSc DipTP MRTPI**

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

**Date 14 September 2012**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**HARLOW DISTRICT COUNCIL**

**LAND NORTH OF GILDEN WAY, HARLOW**

**AND**

**THE FOREBURY, OLD HARLOW**

**APPEALS BY**

**BARRATT STRATEGIC, PERSIMMON HOMES AND TAYLOR WIMPEY**

Inquiry opened on 3 July 2012

Land north of Gilden Way, Harlow

File Refs: APP/N1540/A/11/2167480 and APP/N1540/A/12/2174502

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**File Ref: APP/N1540/A/11/2167480 ('The Gilden Way appeal')**  
**Land north of Gilden Way, Harlow, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Barratt Strategic, Persimmon Homes and Taylor Wimpey against Harlow District Council.
- The application Ref HW/PL/11/00055 is dated 24 February 2011.
- The development proposed is: approximately 1,200 dwellings; site for a primary school (2.16 ha); community buildings (0.06 ha); retail/business/live work units (0.18 ha); together with associated uses comprising allotments and public open space, plus associated infrastructure and engineering works, with vehicular access from Gilden Way.

**Summary of Recommendation: The appeal be allowed.**

**File Ref: APP/N1540/A/12/2174502 ('The Forebury appeal')**  
**The Forebury, Old Harlow, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Barratt Strategic, Persimmon Homes and Taylor Wimpey against Harlow District Council.
- The application Ref HW/PL/12/00061 is dated 13 February 2012.
- The development proposed is the construction of a footpath/cycleway in conjunction with proposed development in respect of land north of Gilden Way.

**Summary of Recommendation: The appeal be allowed.**

Abbreviations	
The Gilden Way application	APP/N1540/A/11/2167480
The Forebury application	APP/N1540/A/12/2174502
DAS	Revised Design and Access Statement (December 2011)
ES	Environmental Statement (2011)
SOCG	Statement of Common Ground (Planning or Highways)
The Appellants	Barratt Strategic, Persimmon Homes and Taylor Wimpey
The Council	Harlow District Council
The County Council	Essex County Council
EDRP	Essex Design Review Panel
The Framework	National Planning Policy Framework (2012)
RS	Regional Strategy the East of England Plan (2008)
LP	Replacement Harlow Local Plan (2006)
SRA	Special Restraint Area (in the LP)
AMR	Annual Monitoring Report
LVIA	Landscape and Visual Impact Assessment
DHA	Designated Heritage Asset
SPD	Supplementary Planning Document
ES	Environmental Statement
TA	Traffic Assessment
EIA	Environmental Impact Assessment
Dpa	Dwellings per year

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## Procedural matters

1. The Inquiry sat for 8 days (3 July to 13 July 2012). An accompanied site visit was undertaken on 18 July to the Gibberd Garden and Harlowbury Manor and Chapel. A further accompanied site visit was undertaken on 31 July to the site itself and viewpoints in the surrounding area, following which a further range of agreed viewpoints were visited unaccompanied.
2. At the time the appeal was lodged, the appellant submitted revised illustrative plans and a revised Design and Access Statement (DAS)<sup>1</sup> incorporating a number of minor changes to the Gilden Way proposal. These changes were summarised by the appellants in a Note<sup>2</sup>. The main changes related to the extent and location of the school site, and consequent changes to the adjoining housing and mixed use areas. The scheme considered on appeal should normally be that which was before the Council when the appeal was lodged. However, in this case, the proposed minor alterations were well known to the Council and to residents at an early stage in the appeal process and there was ample opportunity for any interested persons to make their views known. The Inquiry proceeded on the basis of the amended plans.
3. The Gilden Way proposal is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended). The originating application was accompanied by an Environmental Statement (ES) dated January 2011<sup>3</sup>. The changes shown in the revised DAS did not result in any changes to the assessment of the effects in the ES<sup>4</sup>. There has been no suggestion that the ES does not meet the needs of the relevant Regulations. It is considered that it meets those needs and, along with all the other material presented to the Inquiry, has been taken into account in this report.
4. During the course of the Inquiry it was explained that discussions were proceeding (on a without prejudice basis) in relation to potential unilateral and bilateral Obligations. By the end of the Inquiry the position was that agreement had been reached on a range of matters. In relation to the Unilateral Obligations, the discussions had reached their conclusion and the parties agreed to differ on some issues - as was explained in closing submissions and associated notes.
5. With that background a period of 14 days was given for the signed Obligations to be submitted. It was noted that these three Obligations should be the same as the unsigned versions which were handed in before the close of the Inquiry.
6. The three Obligations were submitted within the time period, but were in counterpart form – a total of 13 documents in all<sup>5</sup>. This approach had not been suggested during the Inquiry. The Council drew attention to the Planning Inspectorate's Good Practice Advice Note 16<sup>6</sup>, which provides that counterpart Obligations are not usually appropriate. However, in this case the contents of the

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<sup>1</sup> CD1/12

<sup>2</sup> CD1/13

<sup>3</sup> CD1/6

<sup>4</sup> As described in CD1/13

<sup>5</sup> CD2/11, CD2/12, CD2/13

<sup>6</sup> Paragraph 18

counterpart Obligations are the same as the documents considered at the Inquiry, and it is considered that, whilst not best practice, no good purpose would be served by requiring them to be resubmitted as three Obligations.

### **The site and its surroundings**

7. The Gilden Way site is around 63 hectares of agricultural land to the east of Old Harlow and to the north of Churchgate Street, with public footpaths and hedges running across it<sup>7</sup>. It lies beyond the currently developed extent of Harlow, and is largely bounded by fields to the north and east. Photographs of the site and its environs have been submitted by various parties<sup>8</sup>.
8. The Gilden Way site is undulating, with the highest part being in the south-eastern and eastern areas. It is bounded by Gilden Way to the south, Marsh Lane to the east, a railway line to the north, and Harlowbury Brook to the west. There are two County Wildlife sites beyond the Gilden Way land, along with other local designations affecting land off the site<sup>9</sup>.
9. Harlowbury Roman Villa (a Scheduled Ancient Monument) is within that part of the site in the Green Belt – in an area which is not proposed to be developed. To the west of the site is the Harlowbury Conservation Area, which includes a deserted medieval village and Harlowbury Chapel (both Scheduled Ancient Monuments) and Harlowbury House (Grade I Listed). Old Harlow and Churchgate Street Conservation Areas lie further to the west and south respectively<sup>10</sup>. The Gibberd Garden (a Registered Park and Garden) lies to the north of the site<sup>11</sup>.
10. The site of the Forebury proposal is an irregularly shaped area of land extending across the southern end of an area of open grassland.<sup>12</sup> It lies to the south of an existing right of way which runs from Old Road across the existing fields to the east (the Gilden Way appeal site).
11. At the northern end of the Forebury there is the complex of historic buildings, including Harlowbury Manor and Harlowbury Chapel<sup>13</sup>.

### **Policy context**

12. The development plan comprises the East of England Plan (2008) (RS) and the Replacement Harlow Local Plan (2006) (LP). The process leading to the adoption of the LP is of some relevance.
13. The Inspector's report into the 1990 Local Plan recommended that the Gilden Way site be allocated for housing. The Council resolved that the site be designated as Green Belt, with housing allocated at another site – known as Newhall. The 1995 Local Plan was adopted on that basis, but was then the subject of a High Court challenge, which resulted in the Green Belt allocation and the Newhall housing allocation being quashed.

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<sup>7</sup> CD2/9 Paragraph 2.5

<sup>8</sup> Especially in Environmental Statement CD1/6 Page 64 onwards

<sup>9</sup> CD2/9 Paragraph 2.3

<sup>10</sup> All shown on LP Proposals Map CD/11/2

<sup>11</sup> CD1/6 Figure 7.1 shows the Gibberd Garden and other heritage elements

<sup>12</sup> Plan at CD1/16 Appendix 2, Photograph at CD1/16 Appendix 3

<sup>13</sup> Descriptions at CD1/16 Appendix 5

14. A second alteration to the Local Plan was adopted in 1998. This included the designation of the Newhall site as housing, and the allocation of the Gilden Way site partly as Green Belt and partly as a Special Restraint Area (SRA). An SRA is land excluded from the Green Belt and reserved for future development.
15. The draft Replacement Harlow Local Plan retained the SRA and the Green Belt designations. However the Inspector recommended that the SRA designation be deleted – although it was not recommended that the site be returned to the Green Belt. The Council published proposed modifications and a second Inquiry was held. This Inspector recommended that the site remain SRA, and the Replacement Harlow Local Plan (LP) was adopted in 2006.
16. The current position is therefore that the southern part of the Gilden Way site is identified in the LP as an SRA<sup>14</sup>, whilst the northern part of the site is within the Green Belt<sup>15</sup>.
17. The emerging LP comprises the 'Core Strategy Issues and Options Report'<sup>16</sup>, which has been the subject of consultation<sup>17</sup>. In addition there are a number of Supplementary Planning Documents and other guidance, particular reference being made to the 'Harlow Design Guide'<sup>18</sup> and the County Council's document 'Parking Standards: Design and Good Practice'<sup>19</sup>.

## Planning history and the proposals

18. A planning application was submitted by Harlow Council in 1986 for a residential development on the Gilden Way site. The application (along with what is now known as the Church Langley development) was called in by the Secretary of State. The Gilden Way application was refused<sup>20</sup> for reasons related to the protection of the countryside (Church Langley was approved).
19. Two planning applications made by Harlowbury Estates were refused in 1990. One of these, which was in outline and was for a residential led mixed use scheme, was the subject of an unsuccessful appeal in 1993<sup>21</sup>. The appeal was dismissed for reasons related to the effect on the character of the area.
20. A further planning application was made by Harlowbury Estates in 1994. Following the refusal of planning permission an appeal was lodged but subsequently withdrawn.
21. The current Gilden Way application was submitted in February 2011, and the appeal against non-determination was lodged in December 2011. In February 2012 the Council resolved that it would have refused planning permission for four reasons<sup>22</sup>. In essence these related to whether development of the site should come forward in advance of the Local Plan (together with sustainability issues); the effect on the Green Belt and the adequacy of the 'Green Wedges' within the

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<sup>14</sup> CD6/8 LP policy NE6

<sup>15</sup> As shown on LP Proposals map CD11/2

<sup>16</sup> CD10/16 Appendix 17

<sup>17</sup> CD2/9 Paragraph 5.3.4

<sup>18</sup> Set out at CD2/9 Paragraph 5.3.5

<sup>19</sup> CD6/20

<sup>20</sup> CD9/15 Appendix 2

<sup>21</sup> CD10/16 Appendix 2

<sup>22</sup> CD2/9 Paragraph 1.3

site; access arrangements and the impact on the highway network; and the provision of infrastructure facilities.

22. The Gilden Way application was in outline with all matters reserved. It comprises approximately 1,200 dwellings<sup>23</sup> on a net site of 26.69 hectares, a site for a primary school (2.36 hectares), community buildings, retail/business/live work units, play space, sports pitches, allotments, open space, landscaping/wildlife areas and balancing ponds. The sports pitches and the allotments would be within the Green Belt, whilst the remainder of the development would be in the SRA. As well as the revised DAS, the application (as revised) included an Illustrative Masterplan and Parameter Plans (land use, building heights, landscape, access, and density).
23. There is no planning history related to the Forebury site. The Forebury proposal is a detailed scheme for a footpath/cycleway running across the southern side of The Forebury, running from Old Road in the west to the existing bridge across Harlowbury Brook to the east. A fence is proposed along the northern edge of the footpath, which would be finished in gravel with timber edging. A line of illuminated studs would be set within the surface. A maximum of 350 mm of topsoil would be removed and a geotextile reinforced layer would be laid on the ground<sup>24</sup>.

### Agreed facts

24. A number of matters agreed between the main parties are set out in the Planning and Highways Statements of Common Ground (SOCG)<sup>25</sup>. The following are the main areas of agreement<sup>26</sup>:
  - The southern part of the site (the SRA), on which built development is proposed, is land between the urban area and the Green Belt which is safeguarded to meet future needs, if a need is established.
  - The appeal site is identified in the latest Council Annual Monitoring Report (AMR) (2010-11)<sup>27</sup> as a potential development site. It is identified as having the potential for 1000 dwellings, of which 625 could be delivered in the 5 year housing land supply period.
  - The Core Strategy Issues and Options Report identifies capacity in Harlow for c.5000 dwellings, based on the AMR current at that time. This included land north of Gilden Way.
  - The East of England Plan (Policy H1) set a requirement for at least 16,000 dwellings to be built in Harlow between 2001 and 2021.
  - The most recent information on housing completions is in the AMR<sup>28</sup>.

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<sup>23</sup> Agreed by the main parties to mean up to, but not exceeding 1200 dwellings

<sup>24</sup> Full description at CD1/16 Section 6

<sup>25</sup> CD2/9 & 10

<sup>26</sup> CD2/9 Section 6

<sup>27</sup> CD10/16 Appendix 19

<sup>28</sup> CD2/9 Paragraph 6.3.2

- The 2011 AMR states that the 5 year housing land supply requirement is 3,203. The supply trajectory in the AMR shows a supply of 1,725 dwellings in the 5 year period. (This supply figure includes the appeal site.)
- The appellants' table which summarises the relevant figures from AMRs is accepted as accurate by both parties – though not the implications of the figures<sup>29</sup>.
- The Essex County Council document 'Parking Standards – Design and Good Practice'<sup>30</sup> has been adopted by Harlow Council. An alternative demand-based methodology is also available as set out by the appellants<sup>31</sup>. The parties do not agree which approach should be employed, and consequently do not agree the adequacy of the proposed residential car parking provision.
- The appellants' trip generation forecast is appropriate for the assessment of the development, as is their trip distribution assessment.
- The Environment Agency has no objections, subject to conditions<sup>32</sup>.
- English Heritage has no objections, subject to conditions. The Historic Environment Team at Essex County Council is satisfied with the proposals, subject to conditions.
- Natural England has confirmed that they have no objections, subject to conditions<sup>33</sup>.
- A number of the matters related to the fourth reason for refusal – the provision of infrastructure facilities – are dealt with by the Obligations. Many of these matters are agreed between the main parties, but some remain in dispute.

### **The case for the Appellants<sup>34</sup>**

#### ***The National Planning Policy Framework (the Framework)***

25. The Framework is agreed to be a highly material consideration<sup>35</sup>. It affects the weight to be attributed to LP policies, especially policy NE5:

- Despite the Council's assertion to the contrary, the LP was adopted pursuant to the provisions of the Town and Country Planning Act 1990, as the adoption notice makes clear<sup>36</sup>. Accordingly the provisions of paragraph 215 of the Framework are engaged.
- Paragraph 12 of the Framework envisages that the statutory presumption<sup>37</sup> in favour of the development plan will be rebutted where there is a conflict

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<sup>29</sup> CD10/11

<sup>30</sup> CD6/20

<sup>31</sup> CD10/14 Appendix C

<sup>32</sup> Letters dated 8 June 2011 and 22 February 2012

<sup>33</sup> Letter dated 18 May 2011 and online comment 5 March 2012

<sup>34</sup> The case given here is an edited version of the opening and closing submissions at CD10/17 & CD10/18, including references to evidence given therein

<sup>35</sup> Set out in detail in CD10/16

<sup>36</sup> CD10/5

<sup>37</sup> s38(6) Planning and Compulsory Purchase Act 2004

between the policies of an out-of-date Local Plan and the policies of the Framework.

- This is made explicit by the presumption in favour of sustainable development contained in Framework paragraph 14, which equates an out-of-date development plan policy to a non-existent one. This presumption is engaged due to paragraph 49 of the Framework and because the housing supply policies of the LP make no provision for the supply of housing after 2011.
- Nor can this presumption be overcome by Framework paragraph 85, as the Council contends. This paragraph is concerned with defining Green Belts in the future and with safeguarding land for development in the long-term. The appeal site has already been through the Green Belt boundary process, and the development needs for which the site was safeguarded are no longer long term.

26. Applying the policies contained in the Framework, LP Policy NE5 can be given little or no material weight in the planning balance.

27. Attention was drawn to an apparent omission in the Framework's Green Belt policies because, whereas paragraph 3.12 of the former Planning Policy Guidance 2 established that a material change of use was inappropriate development unless it maintained openness and did not conflict with the purposes of the Green Belt, paragraphs 89 and 90 of the Framework do not state whether a material change of use will be inappropriate or not inappropriate development.

28. However this does not give rise to any difficulties in respect of this appeal<sup>38</sup>:

- By virtue of paragraph 89 of the Framework, buildings for the provision of appropriate facilities for outdoor sport and recreation are deemed to be not inappropriate. It would be meaningless to allow the construction of these buildings unless permission to use the land for sports pitches can also be inferred.
- Allotments are by definition agricultural, and a change of use to allotments is therefore not development<sup>39</sup>.
- The previous Green Belt policy has largely been unchanged by the Framework. Had it been the intention to cause a change in policy of this magnitude, it would therefore have been incumbent on the Secretary of State to use clear words to that effect.

### ***The development plan***

29. The development plan consists of the East of England Plan (RS) and the Replacement Local Plan (LP). The former post-dates the latter, and was accepted by the Council<sup>40</sup> as relevant in relation to housing requirements. The relevant RS housing requirement is for 400 dwellings per year (dpa) for the period 2001 to 2021, subject to account being taken of past under-provision. There is agreement between the main parties as to the level of housing required whether or not the RS is revoked in future – 400 dpa from 2001.

<sup>38</sup> Mr Lander in chief

<sup>39</sup> CD10/16 Appendix 22

<sup>40</sup> Ms Fitzgerald in xx

30. No material weight may be accorded to the expressed intention to revoke RSs given the fact that the Strategic Environmental Assessment process has not been completed, and that no Order has been made to revoke RSs<sup>41</sup>. It is not correct to suggest that the RS housing requirement is of less weight by reason of the provision in the Localism Act 2011 to revoke RSs.
31. The unchallenged evidence in the Barton Willmore 'Housing Requirements Assessment'<sup>42</sup> supports a minimum housing requirement of 8,610. In addition, to ensure there are no barriers to economic growth, Barton Willmore recommend a target of 10,789 dwellings in the period 2011-2031. Accordingly the appropriate requirement should be based on a figure of no less than 400 dpa for the RS plan period.
32. There is no suggestion that the Council's growth strategy, reflective of the RS, has been abandoned. On the contrary, the Council's case is that in order to pursue that growth strategy there will need to be a Green Belt review to accommodate urban extensions. This follows from RS policy HA1(3), which requires a Green Belt review – but there is nothing in this policy to suggest that the designated area will be extended.

### ***The principle of development***

33. The principle of residential development on the appeal site is long established:
  - The site was first identified as a possible option to accommodate future growth in a consultation plan published by Essex County Council in 1982.
  - The Second Alteration of the Local Plan (1998) was adopted on the basis of an Inspector's report which recommended that the site be identified as a Special Restraint Area, to come forward once a need for development was identified<sup>43</sup>.
  - At the Local Plan Inquiry in 2004, the Inspector recognised that the suitability of land north of Gilden Way for development had been established in principle<sup>44</sup>.
  - A further Inquiry was held in 2005, at which the opening statement for the Council<sup>45</sup> made it clear that the authority saw the land north of Gilden Way as a future development site. In March 2006, the Inspector concluded that the SRA designation should be maintained<sup>46</sup>, and the replacement LP was adopted on that basis.
  - At a pre-application meeting in August 2010, Council officers confirmed that they saw no impediment to a planning application provided it responded to the Council's Growth Strategy and did not prejudice it<sup>47</sup>. That Growth Strategy was reaffirmed by the Council in the same month<sup>48</sup>.

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<sup>41</sup> CD 10/10 Paragraphs 30-33

<sup>42</sup> CD7/B/1

<sup>43</sup> CD6/4

<sup>44</sup> CD6/6

<sup>45</sup> CD10/3

<sup>46</sup> CD6/7

<sup>47</sup> CD10/16 Appendix 9

<sup>48</sup> CD10/16 Appendix 16

- In the Council's 2009-2010 AMR, the appeal site was included in the housing trajectory as a site where the principle of development was accepted. 400 dwellings at the site were included in the 5 year housing supply figure<sup>49</sup>.
  - Gilden Way was also identified as a site where the principle of development was accepted in the Council's AMR for 2010-2011<sup>50</sup>. The number of dwellings which it was assumed the site would yield was increased from 400 to 625. Whereas in the 2009-2010 AMR the site was recorded as being available and achievable but not suitable, in the draft AMR for 2010-2011, the site was recorded as satisfying all three criteria.
34. With that background the question is not whether the site should be developed, but when it should be developed.
35. Past reports and decisions reflect the particular circumstances at the time - especially the need for housing. The following circumstances demonstrate a compelling case for release of the site now:
- National planning policy emphasises the importance of maintaining a five year supply of deliverable housing land in order to significantly boost the supply of housing<sup>51</sup>.
  - One of the Core Planning Principles in the Framework is to make every effort to objectively identify and then meet the housing needs of an area<sup>52</sup>.
  - The site has already been identified through the development plan process as a reserve site for housing development. The trigger for the release is, according to the policy, a review of the LP.
  - Another Core Planning Principle in the Framework is that the planning system should be genuinely plan-led, with up to date plans<sup>53</sup>. But reliance on this principle is misplaced in this case as the LP plan is clearly out of date.
  - Under paragraph 215 of the Framework, due weight should be given to relevant policies according to their degree of consistency with the Framework.
  - The housing policies of the LP are time-expired, and were produced without the requirement for a five year housing land supply, which was first introduced in November 2006 in Planning Policy Statement 3. Thus the requirement in LP policy NE6 that the release of the site should await the review of the LP, which will not be until late 2014 or 2015, is clearly in conflict with the Framework requirement to significantly boost the supply of housing. Accordingly, little weight can be attached to the requirement that the release of the site should await the review of the LP.
36. The plan led system does not just require that planning applications should be determined in accordance with the development plan. It is that they should be determined in accordance with the development plan unless material considerations indicate otherwise.

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<sup>49</sup> CD6/10

<sup>50</sup> CD6/11

<sup>51</sup> Paragraph 47

<sup>52</sup> Paragraph 17 Bullet point 3

<sup>53</sup> Paragraph 17 Bullet point 1



37. The need to maintain a five year supply of deliverable housing land<sup>54</sup> is clearly a highly significant change to the basis upon which land should be released for development. There is a demonstrable need in Harlow for the release of land for housing. Coupled with the timescale for the review of the LP, the case for setting aside the requirement that the site be released in the context of a review of the LP is overwhelming.

### ***The five year housing land supply***

38. This is essentially a housing land supply case. There is a substantial amount of agreement on housing requirements<sup>55</sup>:

- There is an agreed five year land supply period, namely five years from 1 April 2012 to 31 March 2017.
- The residual requirement of 3,402 for the period 2012-2017 is agreed by the Council<sup>56</sup> - excluding any 20% buffer. The Council's evidence did not consider the issue of past under-provision.
- Despite the written evidence of the authority<sup>57</sup> the Council accepted in cross examination<sup>58</sup> that the 20% buffer should be applied under paragraph 47 of the Framework, as there had been a record of persistent under delivery. It could hardly be otherwise given that the average delivery rate since 2001 has been just under 160.<sup>59</sup>

39. An issue was raised in cross examination of the appellants' witness, though not in the Council's evidence, as to whether the 20% should relate to the residual requirement or the base figure. Given the wording of the Framework, the literal meaning would favour the former. But whichever figure is taken, it does not make any significant difference to the overall picture.

40. Turning to the supply of housing land<sup>60</sup>, if the figures contained in the 2010-2011 AMR are used, the Council has a supply of just 1,725 dwellings or 2.11 years (in relation to the RS target). This includes the 625 dwellings assumed to come forward on the appeal site. If the appeal site is excluded, the five-year supply drops to just 1.35 years<sup>61</sup>.

41. In May 2012 the Council issued a revised draft AMR which purported to exclude the appeal site from consideration<sup>62</sup>. On the basis of the figures contained in this trajectory, the total number of projected completions in 2011/12 drops to 1,072 – 1.31 years supply. On the Council's own figures, the five-year housing supply position on the basis of the May 2012 AMR is therefore even worse than previously forecast. In any case, no credible explanation has been offered for the removal of the appeal site from the AMR. Its inclusion clearly indicated that the Council considered that it was a site where the principle of development was

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<sup>54</sup> In Planning Policy Statement 3 and then in the Framework

<sup>55</sup> With reference to CD10/16 Proof; Table on Page 31

<sup>56</sup> Ms Fitzgerald in xx

<sup>57</sup> CD9/15 Paragraph 9.7

<sup>58</sup> Ms Fitzgerald in xx

<sup>59</sup> CD2/9 Paragraph 6.3.2

<sup>60</sup> Using CD10/12

<sup>61</sup> CD/10/16 Proof Paragraph 6.3.2

<sup>62</sup> CD/10/16 Appendix 21

accepted. Even the Leader of the Council at the relevant time<sup>63</sup> stated that the principle of development of the site was accepted, and that the question was when it should be released, and for how many units.

42. Only two weeks later, the appellants received a further revised housing trajectory in the Council's evidence<sup>64</sup>, which purported to demonstrate over 7 years supply<sup>65</sup>. This has been achieved by significantly increasing the rate of completions at the Newhall development, and including completions for both Phase 2 and Phase 3 within the 5 year housing supply figure.

43. The Council's position on the various AMRs is untenable because:

- The rationale for requiring Councils to identify a rolling five-year supply of housing is to ensure that sufficient provision is made to meet demand in the near future. Footnote 11 to paragraph 47 of the Framework therefore does not mean that all dwellings for which permission has been granted can be included, regardless of whether there is any prospect of those dwellings actually coming forward within the next five years.
- The final exception contained in footnote 11 deals with implementation and phasing. There is no evidence to suggest that Phase 2 or Phase 3 of the Newhall development will come forward within the next five years, and this was reflected by their exclusion from the housing trajectories provided prior to the exchange of evidence. The Council has not demonstrated that the position changed between 15 May and 28 May 2012.
- The Council's position on the delivery of the Newhall development has changed substantially. The rate of delivery in the published AMR is 50 dpa starting in 2013/14 increasing to 100 dpa (taking phases 2 and 3 together) from 2016/17. The total contribution within the five years is 250. (This assessment is consistent with the AMR for 2009-2010<sup>66</sup>.)
- The Council's evidence at the Inquiry was that the rate of delivery at Newhall would not be 50 dpa but 450 dpa. To justify this it was stated in evidence that the annual average build rate at Church Langley was 450 dpa – but the Council's AMR for 2004-05 indicates that even the peak of completions was only 400 dpa.
- This re-assessment of the contribution of Newhall Phases II and III was undertaken without any discussion with the landowner. This would be a basic requirement, especially in the light of the very modest rate of delivery in the past<sup>67</sup>. The position is very different where (as at Newhall) the land is in the ownership of a landowner/investor as opposed to a housebuilder (as at Gilden Way). There is no incentive for a landowner to divest himself of substantial amount of land at the same time, as this would drive land prices down. For housebuilders such as the appellants, there is every incentive to build quickly to produce a return.

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<sup>63</sup> Councillor Garnett

<sup>64</sup> CD9/15 Appendix 4

<sup>65</sup> CD9/15 Proof Paragraph 9.7 and Appendix 4

<sup>66</sup> CD10/16 Appendix 18

<sup>67</sup> CD10/6

- The Council's evidence with respect to completions stemmed from a misconceived interpretation of footnote 11 to paragraph 47 of the Framework, dealing with implementation. The Council's evidence equated implementation to the commencement of development<sup>68</sup>. The whole purpose of the Framework is that Councils have to demonstrate a five year supply of deliverable housing sites. It is not possible to interpret paragraph 47 as indicating that provided permission has been granted and some works commenced then the permitted units should be deemed to be deliverable within the five year period<sup>69</sup>.
44. The appellants have re-assessed the likely land supply<sup>70</sup> by reference to the various AMRs produced by the Council. These are AMR 1 (the most recent AMR 2010-11); AMR 2 (the draft sent by the Council by email of 15 March 2012); AMR 3 (the draft AMR included in the Council's evidence<sup>71</sup>); and AMR 4 based on the same level of delivery assumed for the appeal site. Leaving aside the totally unrealistic AMR 3 (discussed above), the 5 year supply including the appeal site is somewhere between 2 and 2.5 years. This is clearly an improvement on the position without the appeal site, which demonstrates the important contribution it will make towards the housing land requirement of the district.
45. In this context the Council's argument regarding prematurity can be considered. The key points for the appellant are:
- Granting planning permission would not pre-determine decisions about the scale, location or phasing of new development, as the Gilden Way site has already been committed for housing through the development plan process. The current need for housing is at least as great as the need which was identified in the RS.
  - The Core Strategy has not progressed beyond the consultation stage and there is no early prospect of submission for examination. Under these circumstances a refusal on prematurity grounds is not justified, because of the delay which this would impose in determining the future use of the land<sup>72</sup>.
  - The Gilden Way site has no part to play in any forthcoming Green Belt boundary review, because the land proposed for built development has already been removed from the Green Belt and identified as safeguarded land.
  - The Framework<sup>73</sup> states that planning permission on safeguarded land should only be granted following a Local Plan review. But this is concerned with longer-term development needs established by an up-to-date plan. It is not material to the question of whether safeguarded land should be released where the plan period has already expired and where there is an immediate need for additional housing.

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<sup>68</sup> s.56 of the TCPA 1990

<sup>69</sup> See C10/18 Paragraph 16.9/10

<sup>70</sup> CD10/11

<sup>71</sup> CD9/15 Appendix 4

<sup>72</sup> CD3/2 Paragraph 18

<sup>73</sup> Paragraph 85

46. The Council's argument that the proposal is premature is not related to re-evaluation of housing need but is related to the size of the site and the hypothesis that it may no longer be required to meet the identified housing need. These arguments do not have merit because:
- The size of the site is not relevant to the issue of prematurity. The question of when the site should be released depends on the acceptability of the site, the status of the site, the need for housing, and the site's ability to contribute to the shortfall without prejudicing future decisions as to housing distribution and growth.
  - The site's acceptability has long been established through the LP process, which envisaged that it would meet housing needs post-2011. The need for housing is immediate and, as the only strategic site within the urban boundary which is not within the Green Belt, the site's ability to contribute to the shortfall is not in dispute.
47. There can be no question of the site's reinstatement to the Green Belt, having regard to the high threshold which would have to be crossed<sup>74</sup>. Equally, the release of any Green Belt land<sup>75</sup>, would have to be in addition to rather than as an alternative to the release of the appeal site, because the release of Green Belt land could only happen if no alternative location were available to meet the need for housing.
48. The inevitable conclusion of any future LP process will be that the site must be released to meet the housing need which already exists and which cannot be met elsewhere. The circumstances of this appeal are therefore entirely different to the circumstances of the Hatchfield Farm decision to which the Council referred<sup>76</sup>.
49. The proposal will, in accordance with policy, make provision for up to 33% affordable housing subject to viability testing and subject also to a minimum provision of 25%. The requirement for viability testing accords with national as well as local planning policy. Given the limited contribution which development in Harlow has made to affordable housing (an average of 54 a year over the last 7 years) against a requirement of 153, the proposal will make a significant contribution. Although this is a policy requirement, it is clearly still an important material consideration.

### ***Design matters***

50. Given the Council's approach to design, it is important to be clear about the scope of the issue:
- This is an outline application. Despite the detailed examination of the illustrative layout and landscaping proposals during the course of the Inquiry, the only element of the design which will be determined by the grant of outline permission is the quantum of development, in accordance with the submitted parameter plans. The design principles and landscape framework

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<sup>74</sup> CD 10/12 Paragraph 40

<sup>75</sup> CD5/1 Policy HA1

<sup>76</sup> CD11/4

in the revised DAS<sup>77</sup> also form an important part of the application. All matters of detail would be determined at the reserved matters stage.

- The putative reasons for refusal are based on the original DAS submitted with the planning application<sup>78</sup>. They take no account of the material contained in the revised DAS, which responds to the concerns identified by the Essex Design Review Panel<sup>79</sup>.
- The impact on conservation areas does not form part of any putative reason for refusal, and the Council agreed that the proposal would not cause any adverse impact or harm to any conservation area<sup>80</sup>. No objection has been received from English Heritage. The relationship with the conservation areas is therefore relevant only insofar as it relates to the design of the appeal scheme.
- The issue of design does not exist in a vacuum, but must be assessed with reference to the relevant design policies. Of particular relevance in this respect is LP policy BE1 and the Harlow Design Guide SPD (2011)<sup>81</sup>.

51. The revised Design and Access Statement was not criticised by the Council and was accepted to be comprehensive. No issue was taken with any aspect of the site analysis contained therein<sup>82</sup>. The revised DAS satisfies the requirements of DCLG's "Guidance on Information Requirements and Validation"<sup>83</sup> and should be given great weight.

52. The cross-examination of the appellants' design witness did not deal with the analysis contained within the revised DAS, but focussed almost exclusively on the Essex Design Review Panel's response to the original DAS. But this response was produced without the benefit of the current comprehensive analysis, and was produced after a flawed meeting:

- The appellants were not given a proper opportunity to explain the scheme at the Design Review Panel's meeting. The notes of the meeting bear out the appellants' description of the unusual manner in which the process was conducted<sup>84</sup>. As those minutes demonstrate, following a short presentation and Question and Answer session, the Chair of the Panel raised a whole series of new matters, to which the appellants were not permitted to respond. The appellants were then asked to leave the meeting, while officers from Harlow Council and Essex County Council remained with the Panel for a further closed session.
- The Panel's approach, and in particular the involvement of officers from both Councils in private discussions, is contrary to the most basic principles of transparent decision-making, and creates a strong perception of unfairness.

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<sup>77</sup> CD1/12 Sections 13 and 14

<sup>78</sup> Accepted by Ms Fitzgerald in XX

<sup>79</sup> CD10/15 Appendix 4

<sup>80</sup> Ms Moon in xx

<sup>81</sup> CD 6/13

<sup>82</sup> Ms Moon in xx

<sup>83</sup> CD 3/5 Paragraph 1.43 and 1.44

<sup>84</sup> CD 9/8

53. In any event, the revised DAS took on board the Panel's criticism that the original DAS did not adequately explain how the site analysis had been translated into the design principles for the site. This was one of the main reasons for submitting a revised DAS.
54. The revised DAS answers all the concerns raised by the Council on design matters.

*Design – the policy framework*

55. The relevant LP policy is BE1, which states that all new buildings "should relate to their setting to strengthen, enhance, protect or create local character". It identifies four criteria, all of which are met by the appeal scheme:

- The scheme complies with the first criterion, in that it is well-connected and integrated with the wider settlement<sup>85</sup>. There has been no challenge to the appellants' evidence as to the sustainability of the scheme.
- The scheme meets the second criterion, dealing with the relationship with the surrounding area (dealt with below). In any event, satisfaction of this criterion is a matter of detail<sup>86</sup>.
- The Council omitted any reference to criterion 3. However it was subsequently conceded that the proposal would satisfy this criterion – relating to the need to respect but not necessarily replicate local characteristics.
- Criterion 4 is specific to sites of high public visibility. The appellants have carried out a detailed landscape and visual impact assessment<sup>87</sup> (LVIA). The Council accepted that the views had been agreed, that there was no issue as to the adequacy of the assessment, nor was there an alternative LVIA. The LVIA concluded that, 15 years after completion, integration with the surrounding townscape and landscape should be improved, and that the appeal scheme would result in an improved integration of the rural-urban fringe landscape<sup>88</sup>. Criterion 4 of LP policy BE1 is therefore satisfied.

*Design – the relationship with Old Harlow and Churchgate Street*

56. Although it was accepted by the Council that the proposal would respect local characteristics, the illustrative masterplan was criticised for failing to "strongly reference" the layout, massing, grain and key features of Old Harlow and Churchgate Street<sup>89</sup>. However it was accepted the words "strongly reference" are not derived from any relevant policy.
57. In any event it is impossible to ascertain how the appeal scheme would fail to achieve this objective:
- The extent to which the development succeeds in referencing the conservation areas and nearby settlements will depend on the detail to be

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<sup>85</sup> Accepted by Ms Moon in xx

<sup>86</sup> Accepted by Ms Moon in xx

<sup>87</sup> CD1/5, Appendix 5.1

<sup>88</sup> CD1/5 Page 63 Section 5.11; Page 64, Paragraph 5.11.2

<sup>89</sup> CD9/14 Proof Paragraph 5.1

submitted at the reserved matters stage. The key considerations in the DAS will be highly relevant to the formulation of the overall design<sup>90</sup>.

- Insofar as the development will form a distinct new sub-neighbourhood, separated from the conservation areas and nearby settlements by green fingers, it responds to the overall character of the conservation areas. The draft Old Harlow Conservation Area Appraisal refers to Old Harlow as a self-contained neighbourhood<sup>91</sup>.
- The weight to be given to the Gibberd masterplan was repeatedly highlighted by local residents, and is reflected in the Harlow Design Guide<sup>92</sup>. It is entirely legitimate for the scheme to adopt an orthogonal layout while preserving the variety which is a feature of the more historic settlements. No one has explained how an organic layout would be more suitable.

### *Design - views of St Mary's and St John's church*

58. The Council's criticism of the alleged failure of the illustrative masterplan to respond to the views of the two conservation area churches and the topography of the site is misconceived.
59. The views of St Mary's and St John's church from the appeal site are not strategic views, and there is no policy requirement that the views should be retained<sup>93</sup>. In any event, the assertion that the appellants have provided no evidence to show how these views will be retained is wrong:
- The revised DAS contains a detailed description of the visual considerations which influenced the design and layout of the proposal<sup>94</sup>. It highlights the importance of the views of the two churches.
  - The revised DAS explains that the linear park which will run through the centre of the site has been aligned with views of St John's church and with the water tower<sup>95</sup>.
  - The revised DAS contains a detailed explanation of how the views of the churches influenced the preferred approach based on a distorted grid of orthogonal streets<sup>96</sup>. The two arms of the cruciform structure align almost exactly with the two churches.
60. The precise nature of the views will be dictated by the placement of buildings at the detailed design stage.

### *Design - topography*

61. Large parts of the Council's evidence relating to topography were simply lifted from the report of the Essex Design Review Panel<sup>97</sup>, which was based on an incomplete understanding of the rationale behind the original scheme.

<sup>90</sup> CD1/12 Section 6

<sup>91</sup> CD6/16 Paragraphs 3.0 and 3.7

<sup>92</sup> CD6/13 Paragraph 1.3.4

<sup>93</sup> Accepted by Ms Moon in xx

<sup>94</sup> CD1/12 Paragraph 9.7.1

<sup>95</sup> CD1/12 Diagram on Page 37

<sup>96</sup> CD1/12 Paragraph 15.2

<sup>97</sup> Accepted by Ms Moon

62. The revised DAS takes full account of the topography of the site and explains how it has influenced the illustrative masterplan<sup>98</sup>.
63. The response to topography has been determined with close reference to the Gibberd masterplan and to the conservation areas. Section 4 Diagram 1 of the revised DAS identifies some of the key structural principles established by the Gibberd masterplan. Section 5 shows how Gibberd's masterplan responded to the topography and to the principle of development below the ridgeline. Contrary to concerns expressed by local residents, there is therefore no question of the development breaking the ridgeline identified by Gibberd, because that ridge is located to the south of the town. There are very few areas in Harlow where streets follow the contours<sup>99</sup>, nor is this a feature of either of the nearby conservation areas.

*Design - the illustrative layout*

64. The principle of an orthogonal grid layout is well-established in urban design terms<sup>100</sup>. It is recognised in 'By Design'<sup>101</sup> and the 'Urban Design Compendium'<sup>102</sup>.
65. Other developments (either wholly or partly within conservation areas) which were referred to by the appellants all have an orthogonal layout<sup>103</sup>. This was accepted by the Council, who acknowledged that there are a variety of layouts and settlement patterns in Harlow<sup>104</sup>.
66. The illustrative orthogonal grid takes full account of the topography of the site, while respecting existing landscape features and views<sup>105</sup>. An orthogonal layout also makes efficient use of space, and the Council accepted that if the best use is not made of the site, the inevitable consequence would be that more Green Belt land would be released<sup>106</sup>. Neither the Council nor the Design Review Panel explained why the cruciform approach is intrinsically unacceptable.

*Design - the Gilden Way frontage*

67. The Council's criticism<sup>107</sup> of the Gilden Way frontage and landscape buffer is inconsistent. On the one hand, it was argued that the frontage to Gilden Way was weak and fragmented. But it was also contended<sup>108</sup> that the "green finger" along Gilden Way should be expanded, the effect of which would be to weaken the urban edge to the development.

*Design - Green wedges/fingers*

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<sup>98</sup> CD1/12 Sections 13.2; 13.4; 13.6

<sup>99</sup> CD1/3 Page 18

<sup>100</sup> Accepted by Ms Moon

<sup>101</sup> CD7/C/4 Page 25

<sup>102</sup> CD/7/C/5 Page 38 Paragraph 3.1.4

<sup>103</sup> CD10/15 Proof Paragraph 6.2.8

<sup>104</sup> Ms Moon in xx

<sup>105</sup> CD1/12 Section 15

<sup>106</sup> Ms Moon in xx

<sup>107</sup> CD9/14 Section 7

<sup>108</sup> Ms Moon in xx



68. The Council conceded that it was appropriate for the scheme to provide 'green fingers' rather than 'green wedges'<sup>109</sup>. It was also accepted that the proposed green fingers complied with the requirements of the Harlow Design Guide<sup>110</sup>, and that in terms of character and place-making the green fingers would provide sufficient separation between sub-neighbourhoods.
69. Although LP Policy NE6 refers to the need to provide green wedges, there is no definition of a 'green wedge' in the LP. This policy has now been overtaken by the more recent Harlow Design Guide, which distinguishes between green wedges (policy DG20) and green fingers (policy DG21).
70. In any event the provision of green wedges of the width envisaged by Policy DG20 would be absurd, because it would restrict any development on the site to just 250 dwellings, and would isolate that development from nearby settlements<sup>111</sup>. The Council accepted that this would be an extreme position to take<sup>112</sup>.
71. Overall, the dispute between the Council and the Appellants as to the acceptability of the proposed green fingers comes down to two matters:
  - The Council's belief that the north-south green finger adjacent to The Oxleys development should be 50 metres wide rather than 30 metres.
  - The assertion that the green finger running along the development edge at Gilden Way is too narrow, notwithstanding that at its narrowest (73 metres) it is wider than the narrowest point of the "green wedge" provided at Newhall (60 metres).
72. Neither of these arguments can possibly amount to a reason for refusing to grant outline planning permission.

### ***Highways and transportation***

73. Most highway issues have now been agreed or conceded<sup>113</sup>. In particular, it should be noted that it was accepted that the Transport Assessment<sup>114</sup> submitted as part of the Environmental Statement was robust and that great weight could be placed on it<sup>115</sup>. There is no criticism of the Travel Plan. The Environmental Statement<sup>116</sup> shows connectivity with facilities in the area and the accessibility of the site is uncontested. The outstanding issues are therefore the adequacy of the car parking provision, the viability of the proposed bus service, and the acceptability of the rat running contribution.

### ***Highways and transportation - parking provision***

74. The Council has not suggested that the proposed parking would be inadequate to meet the needs of the development. The issue is whether the level of parking to

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<sup>109</sup> Ms Moon in xx

<sup>110</sup> CD6/13 Policy DG21

<sup>111</sup> CD10/15 Rebuttal

<sup>112</sup> Ms Moon in xx

<sup>113</sup> Mr Bradley in xx

<sup>114</sup> Part of the Environmental Statement

<sup>115</sup> Despite the assertion in the Council's planning evidence CD/9/15 Paragraph 9.23

<sup>116</sup> CD1/5 Figure 6.3

be supplied as part of the development should comply with the County Council's 'Parking Standards – Design and Good Practice 2009'<sup>117</sup>, or whether the level of parking resulting from the appellants' 'Car Parking Strategy'<sup>118</sup> is an acceptable alternative.

75. The appellants' Car Parking Strategy is an appropriate alternative methodology which respects the principles of good urban design and makes efficient use of the land without resulting in under-provision, for the following reasons:

- It conforms to all five criteria set out in the Framework<sup>119</sup>. This was not challenged.
- The Council referred to the 'Parking Standards Design and Good Practice Supplementary Planning Document Consultation Statement'<sup>120</sup>, which explained how the Council's parking standards were developed. However the statement reveals that only 162 residents were surveyed in order to ascertain local views about the current parking provision - this degree of consultation is astonishingly low.
- Despite assertion to the contrary, there is nothing to suggest that the demand led approach - advocated in 'Car Parking: What Works Where'<sup>121</sup> and DCLG's 'Residential Car Parking Research'<sup>122</sup> - was considered when formulating the Council's standards. This reduces the weight to be given to those standards.
- The Council accepted that the appeal decision at Boston Spa, Leeds<sup>123</sup> was an example of a case where a demand-based approach was accepted, notwithstanding the existence of a Council car parking policy. This illustrated the importance of balancing the need for car parking against urban design and safety considerations.

76. In any event, even if it were accepted that the Council's Parking Standards should be adhered to, this would not be a reason for refusing planning permission, but would simply affect the density of the development<sup>124</sup>.

#### *Highways and transportation - the provision of a bus service*

77. The Unilateral Undertaking contains a clear commitment to enter into a bus contract with an operator for a period of five years from the date of occupation<sup>125</sup>. The Council agree that there is no evidence before the Inquiry to suggest that the bus service would be unachievable or unviable<sup>126</sup>.

78. There is every reason to have great confidence that the bus service will be delivered. Discussions with a bus operator are well underway and at this early

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<sup>117</sup> CD/6/20 Adopted as an SPD by Harlow

<sup>118</sup> CD10/14 Appendix C

<sup>119</sup> Paragraph 39

<sup>120</sup> CD9/2

<sup>121</sup> CD7/D/1

<sup>122</sup> CD7/D/2

<sup>123</sup> CD7/D/5 Paragraphs 125-126

<sup>124</sup> The appellants would accept a condition limiting the development to 1,100 units if necessary

<sup>125</sup> CD2/12 Paragraph 3.1 Schedule 1

<sup>126</sup> Mr Bradley in xx

stage the operator has given the clearest possible indication of its willingness to deliver the service<sup>127</sup>. This is hardly surprising given the substantial financial carrot which is being offered to the operator and given that the extended service will inevitably result in an increase in overall passenger numbers.

79. There is every reason to believe that the bus service will be viable. The appellants' viability assessment concludes that the service will be self-funding within two years and profitable within three years<sup>128</sup>. None of the scenarios indicate that the service would not be commercially viable, and there is nothing to challenge the validity of the appellants' assessment.

#### *Highways and transportation – rat running*

80. The appellants' surveys show that the existing rat running flow through Old Harlow is approximately 222 vehicles in the morning peak, and 108 vehicles in the afternoon peak. The development is estimated to create an additional 68 vehicles in the morning peak, and 40 vehicles in the afternoon peak. Thus it is estimated that there may be an increase of 30 - 40% in the level of rat running, or one vehicle per minute<sup>129</sup>.
81. The appellants initially offered a rat running contribution of £70,000, to reflect a proportion of the estimated cost of mitigating the existing problem by way of the County Council's preferred method of introducing traffic calming measures. It was considered that any traffic calming measures should be brought forward by the County Council and that a contribution would be more appropriate than an undertaking to directly carry out the works.
82. Following further discussions, the appellants have now increased that contribution to £150,000, to allow the full delivery of a traffic calming scheme. This is secured by the Unilateral Undertaking<sup>130</sup>. The visual impact of the traffic calming measures would be limited.
83. Far from being a reason for refusing to grant planning permission, the rat running contribution will improve the existing situation in Old Harlow.

#### ***Third Party representations***

84. A large number of different points have been made, and there have been many impassioned pleas in the name of localism to allow local residents to be given their say in determining whether this site should be developed.
85. However it is essential to keep in mind that the principle of development of the site has already been long established through the democratic plan making process. There can be no question of revisiting the site's reserved status in the future, because the land is the only strategic housing site outside the Green Belt. There can be no question of the appeal site being put back into the Green Belt as part of any future review.

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<sup>127</sup> CD10/14 Rebuttal Appendix C

<sup>128</sup> CD10/14 Rebuttal Appendix C

<sup>129</sup> CD10/14 Appendix F

<sup>130</sup> CD2/12

86. The inescapability of this conclusion was demonstrated by the evidence of Councillor Garnett<sup>131</sup>. He was asked whether, on the hypothesis that there was an identifiable need for more housing, there was any reason for not fulfilling that need now. In response, he accepted that the site was "...suitable for some development – it's protected for some housing when the need arises..". However he maintained that "When we do the next Local Plan it probably will be released possibly if we need it - currently we don't need it". For the reasons set out above the evidence of current need is overwhelming.

87. In summary, the response to the main third party representations is:

- Concerns about flooding and drainage issues were addressed in the appellants' evidence. There is no objection from the Environment Agency.<sup>132</sup>
- Concerns about the impact of the appeal scheme on Designated Heritage Assets (DHAs) were addressed in evidence<sup>133</sup>. There is no objection from English Heritage to either appeal, nor is there any objection from the heritage or archaeological officers at the County Council.
- A number of local residents raised concerns about the impact on the highway network, in the light of the extensive survey work undertaken by the appellants. But the Highway Authority has now agreed that the impact on the highways network would be acceptable.
- Concerns were also raised about the visibility of the development from the Gibberd Garden<sup>134</sup>. This was addressed in the appellants' evidence<sup>135</sup>. The Gibberd Garden is designed to be inward-looking, with tightly enclosed boundaries, so that while there might be occasional glimpses of the allotments and sports pitches from points very close to the boundary, there would be no significant visibility from within the garden.

### ***Planning obligations***

88. The appeal is supported by three undertakings:

- A bilateral Obligation with Essex County Council in respect of education matters<sup>136</sup>.
- A unilateral Obligation in favour of Essex County Council in respect of highways and transportation matters<sup>137</sup>.

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<sup>131</sup> CD8/12

<sup>132</sup> CD10/14 Paragraph 7.2.5

<sup>133</sup> CD10/15 Appendix 7 and CD10/13

<sup>134</sup> In particular CD8/7

<sup>135</sup> Mr Crawford

<sup>136</sup> CD2/13

<sup>137</sup> CD2/12

- A unilateral Obligation in favour of Harlow District Council in respect of planning matters<sup>138</sup>.

89. The appellants' note<sup>139</sup> sets out the terms of the three undertakings and identifies those aspects on which it has not been possible to reach agreement. A summary of the policy justification is also set out.
90. The appellants are satisfied that the Obligations offered in support of the appeal comply with the requirements of s122(2) Community Infrastructure Regulations 2010, in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

### ***The Forebury appeal***

91. None of the appellants' evidence submitted in respect of the Forebury appeal has been challenged by the Council.
92. The proposed footpath/cycleway would be a safe and convenient route for pedestrians and cyclists between the new development and destinations within Harlow and Old Harlow, and would make an important contribution to the overall sustainability of the site.
93. The scheme respects the historic sensitivity of the area, and there is no objection to the proposal from English Heritage or from the Historic Environment Officer at the County Council. The appellants' evidence demonstrates that the proposal would not harm either the setting or the fabric of any DHA<sup>140</sup>.
94. The detailed layout and design of the footpath/cycleway can be controlled by a condition, but the development (including the proposed fence) would not have a material impact on the appearance and character of the open space.

### ***Overall conclusion and the planning balance***

95. The history of the allocation of the site demonstrates that it has long been recognised as the most appropriate non-Green Belt site to provide housing development when an assessment of housing need identified its release as necessary. That time has come, as was recognised by Council officers in August 2010. The only basis on which there could be said to be a hint of a conflict with the development plan relates to the issue of whether its release should await a LP review.
96. But that aspect of the LP policy NE5 is out of date and that aspect of the policy should be accorded little weight. The fact is that there is a dire housing land supply shortage which must be addressed at once.
97. The Framework advises that decision-makers should make every effort to meet objectively assessed needs for housing development. Harlow Council has made every effort to frustrate the provision of much needed housing by its opposition to this appeal scheme, which is an extremely high quality proposal which should be fully supported.

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<sup>138</sup> CD2/11

<sup>139</sup> CD18/10 Note on Obligations

<sup>140</sup> CD10/15 Appendix 7

## **The case for the Council<sup>141</sup>**

### ***The plan led process***

98. The plan led process is the touchstone of planning. The extensive planning history of this case demonstrates the clear and consistent application of that principle to this site – which represents about 20% of the residual land requirement of the RS to 2021<sup>142</sup>. Dealing with such a large site outside the development plan process would be a wrong approach - the appellants accepted that, given that the appeal has been recovered, its size can be properly described as “strategic”.
99. Furthermore, the sensitivity of the site due to its location, surroundings, topography and policy protection (LP policies NE5 and NE6), further support the need to deal with it through the orthodox process of the LP.
100. On each occasion when the site has been considered within the local plan process alternative land has been identified as being more appropriate for sustainable development than the appeal site. A core planning principle of the Framework<sup>143</sup> is that planning should: “..contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework.”
101. The prospects of alternative land of lesser environmental value being identified are obviously greater in the circumstances of joint working and Green Belt review (described below). The key point about this is not whether the site might be put back into the Green Belt<sup>144</sup> but the possibility that the review might lead to the identification of alternative sites currently in the Green Belt which, once removed from the Green Belt by the review, are more amenable to sustainable residential development than the appeal site.
102. There is insufficient evidence at present to undertake the comparative exercise that will be carried out as part of the LP process, as was recognised in the recent Hatchfield Farm decision<sup>145</sup>. The comparison of long term sustainable alternative locations for housing development cannot be carried out when determining a planning appeal.

### ***Previous consideration of the Gilden Way site***

103. The main occasions on which the treatment of the site has been considered are:
  - 1987 - the decision of the Secretary of State on a proposal for 1,200 dwellings<sup>146</sup>. The reporting Inspector observed that “The importance of the site to the town in shaping its character and in contributing to its setting

<sup>141</sup> The case given here is an edited version of the opening and closing submissions at CD9/16 and 17, including references to evidence given therein.

<sup>142</sup> Mr Lander in xx accepted the figure was 19.6%

<sup>143</sup> Paragraph 17

<sup>144</sup> Although on Ms Fitzgerald’s evidence that cannot be discounted bearing in mind the Green Belt review and considering paragraph 82 of the Framework.

<sup>145</sup> CD11/4 Paragraph 25

<sup>146</sup> CD9/15 Appendix 2.1

should not be underestimated . . . it is the case that the site stands at an important approach to the town from the east and together with a swathe of open space on the south side of Gilden Way it marks the point where there is a clear cut off between the town and the adjoining countryside. The site also provides a recreation amenity for residents because the network of footpaths crossing it gives ready public access . . . "

- 1993 – the decision of the Secretary of State on a proposal for 600 dwellings<sup>147</sup>. The Secretary of State shared the Inspector's view that development of the site would result in "the loss of a substantial area of the open countryside that has long been seen as important in shaping the character of Harlow and contributing to its setting; that this loss would be apparent from several viewpoints . . . the residents of Old Harlow and Churchgate Street would be cut off from their agricultural environs, that the rural settings of the Ancient Monuments and listed buildings would be similarly transformed, and that the proposed development would have a damaging effect on the character of the two villages".<sup>148</sup> In relation to housing need the Secretary of State did not find the (then existing) shortfall "so major or so urgent that the need for its resolution should outweigh the land use planning objections to the development of the appeal site." The Secretary of State would have dismissed the appeal on prematurity grounds alone, deciding that "Clearly, the development proposed would be so substantial that if planning permission were granted it would significantly affect decisions on the location of new housing in the Local Plan . . ." <sup>149</sup>.
- 1997/98 - the first and second alterations to the 1995 Local Plan. The site was recommended to be given SRA status rather than Green Belt primarily because of the policy flux at the time and the Inspector's concern that the Green Belt status might not endure. The alterations which were adopted in 1998 set out the correct approach, namely to establish a need by way of a future review of the LP<sup>150</sup>.
- 2005 – the Inspector's report into the Replacement Harlow LP. The Inspector, whilst his approach to deletion of the SRA was criticised, took an orthodox view in relation to the importance of the site to the LP process. The current appellants rely upon this Inspector's report to suggest that the principle of development on the Gilden Way site had been accepted, and that it is simply a matter of timing. That is not right - the Inspector was clear that any release of the site ".....must therefore be determined as part of the LDF process in the context of approved Regional Planning Guidance"<sup>151</sup>.
- 2006 – the Inspector's report into the Replacement Harlow LP. This Inspector was again clear as to the proper approach to the site, and gave a more accurate description of the purpose of SRAs than his predecessor, expressly stating that such a designation "While not establishing a commitment to development gives a broad indication of the direction in

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<sup>147</sup> CD9/15 Appendix 2.2 and CD10/16 Appendix 2

<sup>148</sup> CD10/16 Appendix 2 Paragraph 6

<sup>149</sup> CD10/16 Appendix 2 Paragraph 8

<sup>150</sup> CD10/16 Appendix 5 Paragraph 10.11

<sup>151</sup> CD6/6 Paragraph 15.6.11

which development might proceed after the plan period. Clear criteria are defined against which the designation should be applied and its functions in terms of the implementation of the Local Plan are defined. In particular, any release of such land should be pursued through a review of the Local Plan, failing which it should formally be treated as a departure"<sup>152</sup>.

- July 2006 – the adopted LP. The adopted LP makes provision for a strategic housing site at Newhall in section 6.5 and policy H3.<sup>153</sup> The SRA was maintained for the appeal site by policy NE5<sup>154</sup>. The contrast between LP policies H3 and NE5 is clear - Newhall may be released for development after 2011 without a review of the LP, whereas there is a presumption against the release of Gilden Way, which is to be achieved through a review of the LP. The supporting text refers to the next plan period<sup>155</sup>. LP policy NE6 continued the requirement of substantial green wedges between the site and Old Harlow and Churchgate Street in the event that the site was to be developed<sup>156</sup>.

### ***The Regional Strategy***

104. The development plan comprises the RS and the LP, but policy is in a state of flux. The Secretary of State's intention remains the revocation of the RS, which he now has power to do<sup>157</sup>. At a local level the Council is taking initial steps towards the progression of a Local Plan which will take into account the provisions of the Framework.

105. The RS<sup>158</sup> supports a determination of the future of this site through the LP process:

- Policy HA1 requires joint working between 3 local planning authorities in order to properly pursue the growth of Harlow. The level of need identified in the LP review will be dealt with in that process. The appellants' analysis is artificial and cannot be answered in the context of appeals of this kind. The proposed urban extensions must be relevant in any future LP review to whether or not it is necessary to develop the appeal site.
- Policy SS/7 requires a Green Belt review in order to pursue the growth strategy. That provides an opportunity, as the appellants accepted<sup>159</sup>, which had not been present at any previous time when the SRA designation was considered.

### ***The Framework***

106. Relevant matters related to the Framework:

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<sup>152</sup> CD6/7 Paragraph 4.3

<sup>153</sup> CD6/8 Policy H3

<sup>154</sup> CD6/8 Policy NE5

<sup>155</sup> CD6/8 Paragraph 10.6.2

<sup>156</sup> CD6/8 Policy NE6

<sup>157</sup> Localism Act 2011

<sup>158</sup> Extract at CD10/16 Appendix 15

<sup>159</sup> Mr Lander in xx



- It is one material consideration.
- The overarching intention is that the plan led process should prevail. This is also clearly reflected in the section dealing with housing<sup>160</sup>.
- LP Policies NE5 and NE6 are entirely consistent with the provisions in the Framework and therefore whether they are dealt with according to paragraph 214 or 215 they retain their full weight.
- The sections dealing with safeguarded land are located in the section of the Framework dealing with Green Belts, as previously they were found in Planning Policy Guidance 2. They are principles concerned with providing continuing protection to sites that should only be dealt with through the development plan process.
- The weight that should be attached to any deficit in the 5 year housing land supply is (as before) not so serious or grave as to require this site to come forward outside of the LP process.

### ***Housing figures***

107. The Council adopts the table produced by the appellants during the Inquiry<sup>161</sup>. The main housing supply issues are: the correct approach to deliverability; whether the residual approach should be applied to the housing land supply calculation; what weight or approach should be applied to any deficit; and the reliance to be placed on the Council's 'Issues and Options' paper and the AMRs.

### ***Housing - the correct approach to deliverability***

108. Paragraph 47 of the framework provides for a buffer of up to 20%. The proper approach to determining the level of supply is made clear by footnote 11, which creates a clear presumption in favour of including sites with planning permission within the supply calculation. The potential exceptions to that general presumption include schemes that will not be viable, situations where there is no longer a demand for the type of unit proposed, and where sites have long term phasing plans.
109. On that basis the Newhall development is included in the Council's assessment of the housing land supply as the first two potential exceptions do not apply<sup>162</sup>. The third exception, to the extent that it may apply, merely relates to a phasing plan which would apply equally to any development at Gilden Way. There is no clear evidence that Newhall is unlikely to be implemented within 5 years.
110. There is doubt as to the meaning of the word 'implementation' in footnote 11. Whether it attracts its normal statutory meaning or a more general meaning

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<sup>160</sup> Paragraph 47 First and second bullet points; Paragraph 50

<sup>161</sup> CD10/11

<sup>162</sup> Mr Lander in xx

relating to whether a development is deliverable does not matter because in the case of Newhall the result is the same.

111. The Council gave examples of the steps that are actively being taken in relation to the Newhall site. In particular independent housebuilders have approached the Council asking informal opinions in relation to proposed layouts and plots; the haul road is already the subject of a planning application for report to Committee this month; and the Council anticipates reserved matters applications in the near future. Newhall has a substantial head start on the appeal site<sup>163</sup>. Therefore, in assessing housing numbers, full allowance should be made for the Newhall development.

*Housing - the residual approach*

112. The Framework is not clear as to whether housing land supply should be calculated using the residual method. If that is the case an oddity arises in that any history of under provision is counted once in relation to the supply to be made across the remainder of the plan, and then is factored in again in increasing the buffer to 20%. On the other hand, if the Framework uses the actual plan yearly average, the application of the buffer will help to ensure that the deficit is overcome.

*Housing - the weight to be applied to any deficit*

113. The consequence of not having a 5 year supply of housing is that "relevant policies" for the supply of housing should not be considered up to date<sup>164</sup>. Permission should be granted unless "...any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this framework taken as a whole; or specific policies in the Framework indicate development should be restricted"<sup>165</sup>.
114. In this case both points apply. The first because of the adverse impacts arising from poor design and in other respects. In addition, the failure to comply with the plan led process in relation to a site of real importance is an adverse impact in itself. The second applies independently because there is a specific policy in the Framework indicating that development should be restricted - "...local planning authorities should . . . make clear that safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development"<sup>166</sup>.
115. In any event, Framework paragraph 215 provides that full weight can be given to LP policy NE5 because it is materially identical to Framework paragraph 85. Again, in the event that paragraph 214 is considered to apply then the same result occurs because policy NE5 is not in conflict with the Framework.

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<sup>163</sup> Ms Fitzgerald in xx

<sup>164</sup> Framework paragraph 49

<sup>165</sup> Framework paragraph 14

<sup>166</sup> Framework Paragraph 85

116. Further, the level of housing land supply in AMR 3, making only a 1,800 allowance for Newhall, provides 3.19 years of supply against the developing background set out immediately below. Accordingly, care must be taken not to overstate the case on housing supply.
117. Moreover, the appeal site would only make a limited contribution to the housing supply in the period of time before the LP provides for new site allocations for housing. The likely timetable<sup>167</sup> for the adoption of the LP late in 2014 means that it could well be adopted just over 2 years from now, with the site allocations consultation less than a year away. On the assumption that permission were granted for this development in 6 months time, the appeal site may yield up to 600 units by the time of the adoption of the LP.<sup>168</sup> Such a contribution is not a sufficient reason to displace established LP policy which has been in place since 1998.

*Housing - reliance on the Issues and Options paper and the AMR*

118. The appellants rely on non-policy documents as if those documents substantially affected the approach to adopted policy. This is misplaced and illustrates the extent to which the adopted policy position does not support the appellants.
119. The Issues and Options paper<sup>169</sup> is an early draft seeking consultation responses. Those responses indicate that local views require careful consideration of an appropriate growth strategy for Harlow, and that there is very substantial opposition to the approach suggested by the consultants<sup>170</sup>. In relation to AMR's it is important to note that each AMR specifically records that the need for development on the appeal site has not been proven. Accordingly it was an error of principle to include those figures within the AMR, as they related to an SRA protected by the LP. As was explained, very limited weight can be given to those documents<sup>171</sup>.

***Conclusions on the plan led process***

120. The correct approach to this site is clear and consistent across the evolution of the LP. A site which makes up to 20% of the residual RS requirement should be dealt with as the LP provides – during the course of an LP review. That process will establish the best way of meeting the acknowledged need to provide housing in the context of joint working and Green Belt review. The prospect of developing this land is not simply a matter of timing as there is no reason to suppose that it will be an allocation in the new LP. It is open to the appellants (as they have done in the past) to seek to promote the allocation of this site through the development plan process.
121. The provision of some housing in the intervening period before the adoption of the LP is not of sufficient benefit to displace this keystone of the planning

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<sup>167</sup> CD10/16 Proof Paragraph 6.3.9

<sup>168</sup> CD1/12 Page 71

<sup>169</sup> CD6/9

<sup>170</sup> CD9/9 Appendix 2

<sup>171</sup> Ms Fitzgerald in xx

process. The proposal is contrary to LP policy NE5 and the safeguarding provisions of the Framework. In addition further harm (as set out below) would be caused.

### ***Design***

122. The parties are agreed that the Framework requires a high standard of design. The guidance relating to DASs makes the obvious point that the level of analysis required in a DAS will vary according to the nature of the proposal.
123. It is therefore a serious concern that there is no real evidence to suggest that potential alternative designs to the cruciform plan have been adequately investigated. The regularity of the illustrative masterplan is problematic and the appellants' design witness inherited the proposal - by which time the cruciform design had been settled<sup>172</sup>.
124. The Council considers that grid layout has been adopted for reasons related to efficiency and numbers, based on the framework of hedges. The appellants have produced a layout in advance of contextual studies, and imposed them on that site which has some unique characteristics. There are no strong references to Old Harlow and Churchgate Street, which are the two settlements with the strongest character in the vicinity of the site, or any reflection of topography.
125. A feature of the surrounding villages is their informal, organic nature - in stark contrast to the orthogonal and regular cruciform design proposed by the appellant. This would be likely to lead to a monotonous and disorientating development.
126. There are no substantial Green Wedges proposed – this is a key policy requirement. The important views identified in the DAS would not be retained as the main access road is to the east of the hedgerow, so that the hedge would obscure views of the spire. Built development would further restrict important views.
127. All the experts outside the appellants' team have voiced fundamental criticism of the design principles which guide the scheme, and there has been no real attempt to revisit those principles. The Council and the Design Panel (a group of highly qualified, independent, dispassionate individuals) do not criticise the analysis of the constraints affecting the site but disagree with the translation of that analysis to the proposed design. The Design Panel<sup>173</sup> and the County Council's response to the planning application invited fundamental reconsideration of the proposals and suggested a transparent options process.
128. There was a curious disconnect between the appellants' case in cross-examination and the case in their own evidence. In cross-examination of the Council's witness the need for the development to make strong reference to

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<sup>172</sup> Mr Crawford in xx

<sup>173</sup> CD10/15 Appendix 3

Old Harlow and Churchgate Street was criticised. But the appellants' witness did not substantially object to that approach<sup>174</sup>.

129. Accordingly, the proposal fails to comply with both LP policy and the Framework. This is a further reason against allowing the development to come forward now outside the proper LP process.

### ***Green Belt***

130. The proposed sports/recreation area will amount to a material change of use from the current agricultural use. In addition, the change in land level at 2 metres in general and in parts at up to 3 metres<sup>175</sup> will cause a significant impact on openness of the Green Belt. That is a harm which should be accorded substantial weight. The area of Green Belt affected will appear contrived and out of place.
131. The proposed allotments were specifically not inappropriate development in the former Planning Policy Guidance 2, but that reference no longer appears in the Framework. In any event, as is clear from the long list of paraphernalia which the appellants accepted<sup>176</sup> were likely to be found with allotments, the openness of the Green Belt is likely to be affected. This is especially as the allotments would be close to the residential development and they would be read together.

### ***Car parking***

132. The scheme cannot comply with the adopted parking standards – on the appellants' own evidence compliance with adopted standards would be likely to lead to a loss of around 10% of the units on site<sup>177</sup>.
133. Rather than reduce housing numbers an alternative strategy based on a demand led approach was advanced by the appellants in the first draft of a report in December 2011<sup>178</sup>.
134. The report has a number of significant failings:
- It is based upon census data which is now around 10 years old.
  - It does not allow for an assessment of which scenario the developers of a particular phase would be likely to choose, and thus precludes an accurate assessment of any likely differences between the adopted standards and the demand led approach.
  - It does not provide any comparison of the anticipated level of car parking provision in relation to the previous standards, which have so obviously and recently failed to provide adequate parking in the locality.

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<sup>174</sup> Mr Crawford in xx

<sup>175</sup> Mr Crawford in xx

<sup>176</sup> Mr Crawford in xx

<sup>177</sup> Mr Crawford in xx

<sup>178</sup> CD10/14 Appendix C

- The demand led approach is likely to lead to provision of the order of 14% less than the adopted standards. That is a substantial departure from the standard.
- The appellants' report and evidence did not attempt to criticise the analysis that led Essex County Council and then Harlow Council to adopt the local parking standards. There is no reason to think that experienced officers in producing that guidance overlooked well known alternative concepts such as demand led parking, or the advice in 'What Works Where',<sup>179</sup>.

135. Bearing in mind the process which led to the adoption of the SPD the failure of the scheme to meet adopted parking standards should be given substantial weight.

### ***Highways – the proposed bus service and rat running***

136. The appellant has failed to demonstrate that a local bus operator will provide a service to the development. The latest emails from TGM Group<sup>180</sup> refer to early costings and give no real comfort as to the ability of the developer to secure a contractual arrangement with any operator.
137. The form of words used in the Obligation will not guarantee the provision of a suitable bus service in either the short or long term<sup>181</sup>. The fallback position adopted within the Obligation is to provide the Highway Authority with £500,000 of funding, but the Highway Authority would not be able to provide a bus service.
138. The Highway Statement of Common Ground<sup>182</sup> makes it clear that Essex County Council only accepted the trip generation rates advanced by the appellants subject to the provision of "an appropriate passenger transport service which is viable in the long term, beyond the developers' interest in the site". Accordingly the proposal fails to comply with LP policy IMP1 because adequate provision has not been secured.
139. In relation to rat running it is clear that the traffic situation in Old Harlow would be significantly exacerbated by the development. A contribution of £150,000 has been made within the Planning Obligation<sup>183</sup> but there remains no guarantee that it would be sufficient to fund the necessary mitigation scheme and, as has been made clear, there is no guarantee of additional funding from the Highway Authority. The details of the scheme have not been submitted and fall within the part of Old Harlow protected by an Article 4 direction.

### **Conclusion**

140. The proposal is in serious conflict with the development plan. It would fail to provide high quality design which appropriately relates to its environs. It

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<sup>179</sup> CD7/D/1

<sup>180</sup> CD10/14 Appendix C

<sup>181</sup> CD2/12

<sup>182</sup> CD2/10

<sup>183</sup> CD2/12

would have a material impact on the openness of the Green Belt. The proposal would not provide more affordable housing than the recognised starting point under local policy, and this should not attract any real weight. Whether or not the proposed range of community facilities and infrastructure provision will be made and maintained is uncertain<sup>184</sup>.

### **The cases for residents and others who appeared at the Inquiry**

141. Mr S Newens<sup>185</sup> is the Chair of the Harlow Civic Society and a former M.P. He explained the background to the development of Harlow within fixed boundaries and the Green Wedge concept. The Civic Society fully recognises the need for some housing, and has supported other developments. However the appeal scheme would visually dominate Churchgate Street and Old Harlow, and would seriously conflict with the masterplan for the town. The proposed layout is over formal and regular, and would detract from the landscape, blur the boundaries of the Green Belt and harm the surrounding area. The proposal would increase parking and traffic problems, and give rise to increased flooding. Local opinion is not against all development, but supports proper consideration in the context of the LP. (Mr Newens referred to the written submissions of the Civic Society and presented a petition from around 3,600 people opposing the development.)
142. Mr R McCartney<sup>186</sup> is the Chair of the Churchgate Street Residents Association, which represents a thriving community. There are four particular issues - inadequate consultation by the developers, the threat of flooding, pressure on medical and other services, and the increase in traffic. Although Harlow is a new town, one of its successes has been the preservation and integration of historic areas such as Churchgate Street. The Framework demonstrates that heritage assets are an irreplaceable resource. The proposal would diminish the character of Churchgate Street, which would be enveloped by housing.
143. Mrs M Farningham<sup>187</sup> is the owner/resident of Harlowbury Manor. She stressed the historic importance and history of the Manor and the Chapel. The setting of both properties is quite rural, and this is highly valued – one of the particular attractions is the walk from Old Road, past the Chapel and up to the Gibberd Garden. This attractiveness would disappear. There would be serious disturbance to the buried medieval village, harm to the setting of the Listed Buildings, and a threat to the structures as a result of the increased number of people close to the buildings – with consequent danger of further vandalism.
144. Mr J Curry stated that Green Wedges are an important component of the Gibberd masterplan. The proposal would dominate the landscape. Visitors to Harlow often do not see the houses – the proposal would change that.
145. Mr R Bill<sup>188</sup> is a local historian, author and guide. The Gibberd masterplan emphasised the importance of the agricultural land on which it is now

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<sup>184</sup> Issues arising from the Planning obligations are at CD9/17

<sup>185</sup> CD8/1

<sup>186</sup> CD8/2

<sup>187</sup> CD8/3

<sup>188</sup> CD8/4

proposed to build. The appeal site is a popular local amenity and an important archaeological area. The Gibberd masterplan should be respected and the development should be refused.

146. Councillor M Jolles<sup>189</sup> is a Ward Councillor for Old Harlow. She particularly emphasised the traffic and rat running problems in the area, which would be exacerbated by the development. The infrastructure to support increasing development, including healthcare provision, utility supplies and education, is not present. Flooding is a serious issue. Local peoples' views, in the context of localism, should be respected.
147. Councillor J Clark<sup>190</sup> has been a Member of the Council for over 24 years and is its Deputy Leader. The proposal would be contrary to the principles of local democracy and localism. He stressed the range of organisations opposing the development. The Council is anxious to meet local housing needs, but has 8 years land supply and the proposal could prejudice future decision making. The proposal would be visually too dominant in a rural landscape, would jeopardise the Gibberd Garden and Harlowbury. The development would breach the Gibberd principles and not provide adequate Green Wedges. The boundary of the Green Belt would be blurred. Highway safety and traffic issues have been raised and are the subject of opposition from the County Council.
148. Ms C Morrison emphasised the flood risk which would be caused by the proposal. It would replicate the design faults of other schemes. Although the Environment Agency has approved the development, they have taken too little account of existing flooding problems. In particular, flooding has taken place as a result of the Newhall development. Various flood events were described, including the flooding of Churchgate Street. New estates are effectively exporting their floodwaters, and the Old Harlow area cannot take the cumulative additional burden.
149. Ms J Quinton<sup>191</sup> spoke on behalf of the Gibberd Garden Trust and the Friends of the Gibberd Garden. She described the creation and importance of the Garden and its current role. The proposal would entirely alter the remoteness and open aspect of the Garden. The houses would dominate the views from the Garden, and the access along Marsh Lane – currently rural - would become suburban. The Garden relies entirely on income from visitors and the help of volunteers, and the proposal would diminish its attractiveness and threaten its future maintenance.
150. Mr D Turley<sup>192</sup> stated that the Highway Authority has not agreed that development traffic can be accommodated on the highway network. This is especially as the Transport Assessment relies on a predicted baseline assuming a link road to be provided as part of the Newhall development – which is not happening. The appellants acknowledge a significant increase in traffic which would cause gridlock on various roads. The parking provision would be below

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<sup>189</sup> CD8/15

<sup>190</sup> CD8/14

<sup>191</sup> CD8/7

<sup>192</sup> CD8/9



the Essex Parking Standards, despite the problems of parking on other developments which are clear to see.

151. Mrs J Wright<sup>193</sup> emphasised the importance of Harlowbury and its semi-rural setting. Harlowbury gives a sense of place to Old Harlow. The cycleway/footpath would urbanise The Forebury and potentially encourage anti-social behaviour. The Gilden Way development would be in breach of the Gibberd masterplan, and the land is a well used and attractive area for walkers, offering excellent views. The proposal would result in a hard edge to the town, which would lead to an urban feel for those arriving in Harlow.
152. Mrs J West<sup>194</sup> has lived in Harlow for 55 years. Her concern is that, especially in the light of water shortages and hosepipe bans, the proposal would exacerbate water shortages.
153. Mr M Jury<sup>195</sup> stressed the importance of the archaeology on the appeal site, and its importance in the context of heritage assets in the wider area. He explained the numerous finds made by himself and others on the site.
154. Mrs M Wiltshire also referred to the numerous archaeological finds on the site. The Gilden Way land are fields, not a potential development site. The rural quality of the area has diminished over the years, as had (previously) the Harlowbury assets – though this has been rectified by two careful owners. A proper response to the importance of Harlowbury would be to prevent further development – both the housing proposal and the new cycleway (which would damage archaeology). Views could be obtained of the appeal site – and therefore of the proposed development – from considerable distances.
155. Mr D Wright stated that the design of Harlow was of high density housing with Green Wedges between. The development would conflict with that approach. There is a desperate need for housing in Harlow, but this development would not be housing for rent, and would not meet the need. There is no demand for open market housing. Development of land north of Harlow would fit into the existing matrix of the town, whereas land such as the appeal site would not. There may one day be a need to expand – but this is the wrong time and any land release should be with the consent of local people through the LP process.
156. Councillor M Garnett<sup>196</sup> is a Ward Councillor for Old Harlow and has been a Member/Chairman of the Development and Management Committee for most of his 14 years as a Councillor. Development of the Gilden Way site, which is an SRA, would be premature. Until a new LP comes forward in the light of localism, the Council was right to refuse planning permission. Residents are not totally opposed to development. The Council has identified over 8 years of housing land supply, and the development is therefore unnecessary. The design is totally unconnected to and unrelated to its surroundings, and does not respect the Gibberd principle of settlements surrounded by Green Wedges. It would infringe the Green Belt. The proposal would breach two of the

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<sup>193</sup> CD8/8

<sup>194</sup> CD8/14

<sup>195</sup> CD8/10

<sup>196</sup> CD8/12

fundamental principles of the Framework – that planning should be genuinely plan led, and that account should be taken of the different roles and character of different areas. The Framework also empowers localism. The impact of traffic and rat running would be unacceptable and unmanageable.

## Written representations

157. Three additional written representations were handed in at the Inquiry:

- Mr D Farningham<sup>197</sup> stressed the importance of the Listed Buildings at Harlowbury and their rural setting. With the considerable increase in pedestrian flows close to the group of buildings this would disappear (exacerbated by the proposed lighting of the new path) and there would be an increase in vandalism. The medieval remains would be disturbed. It is not correct to say that the proposals are approved by English Heritage, as Scheduled Monument consent has not been sought.
- Mr P Mountsteven<sup>198</sup> set out some of the early history of the site, and stated that the Gilden Way site was not identified as an expansion area in the 1960's and 1970's, and has been discounted as a residential site as recently as the 1990's. The proposed gridiron layout would be out of keeping with the area. The depth of the proposed landscaping along Gilden Way would be inadequate.
- Campaign to Protect Rural England (Essex)<sup>199</sup> stressed the importance of the Gibberd masterplan, and stated that the proposal should be rejected on landscape and heritage grounds. The proposal would diminish the setting of historic sites. The development is not needed, as Harlow has a five year housing supply. The development would have a significant visual impact on the Green Belt, and the edges of the designated area would be blurred.

158. Approximately 524 representations opposing the development have been made by local residents and organisations at the appeal stage<sup>200</sup>. Amongst other issues, objections were raised on the basis of prematurity, failure to meet housing needs, breach of the Gibberd masterplan, harm to the landscape and to heritage assets, impact on traffic flows, impact on infrastructure and utilities, and flood risk.

159. Included in these is an objection by N.H.S. North Essex on the grounds that the development would not meet healthcare needs – however it was stated that this objection would be withdrawn on receipt of a satisfactory Obligation.

160. Also included is an objection from Robert Halfon MP. He stated his main concerns to be the impact on Harlowbury Manor, the effect on infrastructure (especially traffic), and the importance of localism.

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<sup>197</sup> CD8/6

<sup>198</sup> CD8/11

<sup>199</sup> CD8/5

<sup>200</sup> Two blue folders accompanying the appeal files

161. In addition, approximately 612 representations opposing the development were made to the Council before their decision<sup>201</sup>. Similar issues were raised.

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<sup>201</sup> Two separate blue folders accompanying the appeal files

## Inspector's conclusions

[Numbers in square brackets denote source paragraphs.]

162. The majority of this report deals with the residential led proposal on land north of Gilden Way. This reflects the overwhelming majority of the evidence and Inquiry time dealing with this proposal. There is a separate section below dealing with the Forebury appeal, along with separate consideration of suggested conditions related to that proposal.

### ***Background and agreed matters***

163. There are a number of matters about which the main parties reached agreement, either before or during the Inquiry. Of those agreed before the Inquiry, as set out in the Statements of Common Ground [24], the most important are:
- The southern part of the site is a Special Restraint Area (SRA). This is land between the urban area and the Green Belt which is safeguarded in the Replacement Harlow Local Plan (2006) (LP) to meet future needs, if a need is established through a review of the LP. It is this part of the site on which built development is proposed. (There is no agreement as to whether/when this land should be released, and this is a key element of the dispute between the parties.)
  - There is a significant (agreed) housing need in Harlow, although there is a dispute as to whether that need can be met from the housing land supply.
  - The general capacity of surrounding roads is not an issue for the Council or the Highway Authority, although it is for some residents. The highways objections relate to issues around the provision of a bus service, the amount of car parking to be provided, and measures to reduce rat running.
  - There are no objections from the Environment Agency, Natural England or English Heritage. The Council does not object to the proposal on grounds of flood risk, ecology and biodiversity, or the effect on heritage assets, although these matters are the subject of objections from residents and others.
  - A number of the issues related to the fourth reason for refusal – the provision of infrastructure facilities – are dealt with by the three Obligations.
164. In addition, agreement was reached during the course of the Inquiry on a number of other matters, which inform the remainder of this report. The most important of these are:
- In relation to the need for housing there is agreement on the relevant period to be considered and the extent of the housing requirement. These matters are set out in an agreed table [29, 44, 107].
  - The same table summarises the relevant figures from Annual Monitoring Reports (AMRs) is accepted as accurate by both parties – though not the

implications of the figures. This table is a useful means of comparing the implications of the various versions of the AMR.

***The development plan, other policy and guidance***

165. The development plan comprises the East of England Plan (2008) (RS) and the Replacement Harlow Local Plan (2006) (LP).
166. The intention that Regional Strategies such as the East of England Plan be revoked was referred to by the Council [104], although the authority did not specifically suggest that this would reduce the weight to be accorded to the RS. The authority dealt with the applicable RS policies in evidence and in closing submissions. The appellants stated that no material weight should be accorded to the expressed intention to revoke RSs [30].
167. In any event, in addition to policies dealing with joint working and a review of the Green Belt [105], the main role of the RS in this case was that it provides the most up to date housing requirement. This was not contested and both parties addressed the RS housing requirement, as will be discussed below.
168. Both parties agreed that the National Planning Policy Framework (the Framework) is a material consideration. Given its recent publication, it clearly attracts significant weight.
169. One matter set out in the Framework which can usefully be dealt with at this stage is the weight to be given to LP policies in the light of the Framework. The Council asserted at the Inquiry that the LP was adopted under the Planning and Compulsory Purchase Act 2004, but no evidence was produced to support that assertion. The appellants produced the adoption notice which states that the LP was adopted under the earlier 1990 Act [25]. This evidence is persuasive and paragraph 215 of the Framework therefore applies, and due weight is given to relevant policies in the LP according to their degree of consistency with the Framework.
170. The Framework also deals with the weight to be accorded to out-of-date policies in adopted local plans. In this case, for reasons related largely to housing land supply, the appellant contends that the relevant LP policy (NE5) can be given little or no weight. This matter will be considered after assessing the housing land supply position.
171. The emerging LP comprises the Core Strategy Issues and Options Report, which has been the subject of consultation [17, 24, 118/119]. The Council accurately referred to this as the 'initial steps' in the preparation of a new Local Plan, and it can accordingly be given little weight at this stage.
172. In addition there are a number of Supplementary Planning Documents and other guidance, as set out in the Core Document list below. Of particular importance are the 'Harlow Design Guide' [17, 50, 57, 68, 69] and the County Council's document 'Parking Standards: Design and Good Practice', which has also been adopted by Harlow Council [17, 24, 74, 75, 132, 134, 135].

***The history of the site in the context of local policy***

173. The Gilden Way site has a history of planning decisions and LP allocations over recent decades, and this has a direct bearing on this appeal.
174. In summary, there have been various planning applications [18 – 23] for residential development since 1986. All have been refused by the Secretary of State ('call-ins' and appeals) and the Council, largely for reasons related to the character of the area and the countryside.
175. During this time the LP has gone through various iterations [13 – 16]. The history includes an Inspector's recommendations that the site be allocated for housing [13], a quashed LP which identified it as Green Belt [13], an allocation of part of the site as an SRA outside the Green Belt [14], a recommendation to delete the SRA [15], and a recommendation that the site remain divided between the SRA and Green Belt [15].
176. The culmination of that process was that the adopted LP identifies the northern part of the site as Green Belt (wherein the current proposal is for sports pitches and allotments) and the southern part as an SRA (wherein built development is now proposed).
177. This history is of particular importance as the appellants' position is that the issue of whether the SRA site should be developed for housing has been settled (particularly under LP policies NE5 and NE6), and that the remaining question is when this should happen [33 - 34]. The Council's position is that the land is reserved for development, but not specifically housing development, and that any release of land should be through the LP process [98 - 103]. These are two questions which go to the heart of the dispute.
178. Turning to the first question - whether LP policy reserves the site for development or specifically for housing development. On the face of the matter, the Council's position is clearly correct – policies NE5 and NE6 refer to the potential development of the site under certain circumstances, but there is no reference to the type of development or the land use. It is also notable that the relevant policies are within the Natural Environment chapter rather than the Housing chapter of the LP.
179. Although the wording of the adopted policy must be given due weight, this is only part of the story. It is quite clear from a number of sources that the Council and local residents have always considered that the reservation of the Gilden Way site was for housing led development (if any development were to occur). In particular:
  - The Council's opening submission at the 2005 LP Inquiry made it clear that the land was a future development site. This was in the context of objections to the specific policy from housebuilders, and there was no suggestion of any other form of development [33]. (The appellants' assertion that Counsel for the authority was wrong to say what he did at that time cannot be given credence in the absence of any evidence.)

- The site was referred in the AMR published in 2011 (and earlier versions) as a location where the principle of (housing) development was accepted [33]. (The fact that subsequent versions of the dwelling trajectory have omitted the site is a matter which is dealt with below.)
  - Local residents and Councillors who appeared at the Inquiry (who were clearly well informed about the history of the site) made it clear that they have been addressing potential residential development for many years.
180. There is no evidence that any previous or current development proposal has been anything other than housing led.
181. In conclusion, the LP identification of the land as an SRA in the context of policies NE5 and NE6 does not specifically refer to reservation for housing development. However there is abundant evidence that the Council and local residents have known that this is the type of development which was being considered. The Council's suggestion that the current proposal breaches these policies because they do not specifically reserve the land for housing led development can therefore be given little weight.
182. Turning to the second question – whether the release of land should be through the review of the LP. At this stage it is sufficient to note that LP policy NE5 states that there is a presumption against development in the SRA unless the land is shown to be needed resulting from a review of the LP. This can best be considered below, after dealing with the issue of housing land supply – which has potential implications for the weight to be accorded to the LP policies.

### ***Housing demand and supply***

183. The housing requirement should be taken from the most up to date plan – which in this case is the RS. The agreed land supply period runs to March 2017 and this results in an annual requirement of 816 dwellings per year (dpa) (ignoring for the moment the possibility of a 20% buffer arising from persistent under-delivery). These demand figures (and the various calculations as to supply) were agreed by the Council in the summary table [107].
184. Turning to housing land supply, three versions of the Council's Annual Monitoring Report (AMR) have been produced recently [44], and it is useful to consider the differences between the reports:
- The only full published AMR is related to 2010 – 2011, which was published in December 2011 (referred to as AMR 1 in the agreed table). This refers to the appeal site as one where the principle of (housing) development has been accepted, and sets out the contribution which the site was anticipated to make to the land supply.
  - By email in May 2012 the Council produced a revised draft dwelling trajectory (AMR 2 in the agreed table). This omits the appeal site from the trajectory.

- As an appendix to the Council's evidence, a further revised draft dwelling trajectory was submitted (AMR 3 in the agreed table). The appeal site remained absent from the table, and the delivery rate for the Newhall development was significantly increased.
185. These changes to the dwelling trajectory raise two particular issues: the removal of the Gilden Way site in AMR 2 and AMR 3, and the increase in the delivery rate ascribed to the Newhall development.
186. The Council stated in cross-examination that the inclusion of the Gilden Way site in the published AMR 1 was a mistake, which was rectified in the draft trajectories at AMR 2 and AMR 3. The authority also stated that, as these are not policy documents, they can be given very limited weight. However although the AMR is not part of the development plan nor is it a Supplementary Planning Document (SPD), it is an important piece of work which is doubtless compiled with great care and reliance should be able to be placed upon it. To suggest that the inclusion of a particular site was a mistake, and for it then to be removed shortly before an Inquiry into that site, does not seem credible.
187. Dealing next with the delivery rate at the Newhall development, when AMR 3 was submitted with the Council's evidence the development known as Newhall Phase III was included for the first time as a site with planning permission (recently granted). The delivery rate for the overall Newhall development was significantly increased at that time.
188. There is a difference between the parties as to the interpretation of footnote 11 to paragraph 47 of the Framework, dealing with the definition of deliverable sites. The authority stated that this permits the inclusion of sites with planning permission, such as Newhall. On that basis, and with an increased delivery rate at Newhall, the Council stated in evidence that it can demonstrate more than a five year land supply.
189. However it is difficult to regard paragraph 47 and footnote 11 in the manner which the Council has done. That position effectively equates implementation of a development to the commencement of the development. The overall approach of the Framework is to require Councils to demonstrate a five year (or more) supply of deliverable housing sites. In that light, it is unreasonable to suggest that paragraph 47 means that, provided planning permission has been granted and implemented – which could involve comparatively minor work - then the permitted units should be deemed to be deliverable within the five year period. Simply granting planning permission for a development, which is then implemented (perhaps by way of limited works) does not mean that the development can be automatically be counted in the housing land trajectory, or that the whole site would be delivered within the relevant 5 year period.
190. The Council's position on the delivery of Newhall Phases II and III has changed substantially. The rate of delivery in the published AMR 1 was 50 dpa starting in 2013/14 increasing to 100 dpa (taking Phases II and III together) from 2016/17. This means that the total contribution within the five years is 250. (This matches the AMR for 2009-2010.)



191. This delivery rate was mirrored in AMR 2, which came out on 15 May 2012. But by 28 May 2012, when AMR 3 was included in the Council's evidence, the delivery rate at Newhall had increased from 50 dpa to 450 dpa a year. This rate, if correct, would have a very considerable effect on the delivery of housing during the five year period.
192. However there is no persuasive evidence to suggest that Newhall Phase II or Phase III will come forward within the next five years, nor what happened to require the reassessment of the delivery rate during the two week period in May 2012. The Council explained that various matters were moving forward [111] but none of these matters supports the assertion of a sudden upturn in delivery.
193. The Council stated comparison was with the annual average build rate at another development (Church Langley) – but the Council's AMR for 2004-05 shows the peak of completions (rather than the average) was only 400 dpa, and this was at a very different time in the housing market. (This figure was accepted by the Council.) In any event, this peak build rate at Church Langley would have been known to the Council at the time of the preparation of all subsequent AMRs.
194. Nor has the revised delivery rate at Newhall II and III been the subject of any discussion with the relevant landowner. The appellants' evidence was that the build rate at Newhall has previously been very modest, and this was not contested by the Council [43].
195. The appellants further stated that the land at Newhall is in the ownership of a land-owner investor in contrast with housebuilders (as at the appeal site) [43]. Although there is no direct evidence to substantiate the suggestion, the appellants stated that there is no incentive for a landowner to divest himself of a substantial amount of land at one time, as this would drive land prices down, whereas for housebuilders there is every incentive to build as quickly as possible in order to produce a return. However, although the appellants stressed their desire to move forward rapidly if planning permission is granted, landbanking is far from unknown amongst housebuilders. There can be no guarantee as to when the appellants would develop the site, but there is no evidence to doubt their intentions. This further emphasises the importance of the Council's failure to discuss their revised trajectory with the Newhall landowner. Overall, limited weight can be ascribed to the revised delivery rate assumed in AMR 3.
196. An issue was raised in cross examination of the appellants' witness, though not in the Council's evidence, as to whether the 20% buffer should be a residual requirement or the base figure [112]. Given the wording of the Framework, the literal meaning would favour the former. But whichever figure is taken, it does not make any significance difference to the overall picture.
197. Turning back to the three scenarios on the agreed table, excluding the Gilden Way site, the Council has agreed that there is between 1.31 and 3.19 years housing land supply. If Gilden Way is included, the supply rises to between 2.08 and 3.98 years, although it is likely that the contribution made by the

development by the time of the anticipated LP adoption would be limited [117].

198. In the Council's written evidence it was stated that there is no record of persistent under delivery. However the appellants' evidence was that the agreed annual requirement is 400 dpa and that the average delivery rate since 2001 has been just under 160 [38]. On that basis the Council accepted at the Inquiry that the 20% buffer in paragraph 47 of the Framework should be applied [38]. This further emphasises the pressing need for housing in Harlow, and the contribution that the Gilden Way development would make in reducing the shortfall in the housing land supply weighs significantly in favour of the proposal. This is clearly an important material consideration, especially in the light of the Framework policies aimed at the delivery of housing.
199. It should finally be noted that the development would make a significant contribution to the need for affordable housing – up to 33% subject to viability testing and subject to a minimum 25% provision [49]. The uncontested evidence demonstrates the very limited historical provision of affordable housing in Harlow [49], and this would undoubtedly be a benefit. However as this is a policy requirement, this matter does not in itself weigh heavily in favour of the development.

### ***Consequences of the housing supply position for the Local Plan***

200. Under paragraph 215 of the Framework, due weight should be given to relevant LP policies according to their degree of consistency with the Framework. In addition, paragraph 49 provides that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing sites. The importance of having an up to date LP is also set out elsewhere in the Framework.
201. For the reasons set out above, and despite the Council's initial assertion to the contrary, on the evidence presented it is clear that there is less than a five year housing land supply in Harlow. In addition, there are the additional arguments that the LP housing policies are out of date as they were introduced before there was any requirement for a five year housing land supply (first introduced in November 2006 in Planning Policy Statement 3), and are in any event time expired [35]. The former point has some merit. On the latter point, it should be noted that the Framework envisages safeguarded land between urban areas and the Green Belt stretching well beyond the plan period. (There was no dispute between the parties that the site can be described as safeguarded land). Overall, it is concluded that the housing policies in the LP are out of date.
202. This then engages the presumption in favour of sustainable development. Where the development plan is out of date, national policy (paragraph 14 of the Framework) is that 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 taken as a whole, or where specific Framework policies indicate development should be restricted.

203. The Framework gives examples of the type of policies which need to be assessed in this balance (Footnote to paragraph 14). Safeguarded land is not included in these examples, and it lacks the permanence of the designations listed. In addition, paragraph 85 of the Framework advises that safeguarded land is intended to meet longer term development needs, and this distinguishes it further from the examples given in the Footnote – albeit that the list is clearly not intended to be exhaustive.
204. In the context of the Gilden Way appeal it is therefore concluded that LP policy NE5 can be given limited weight in the planning balance. This has particular consequences for the timing of the potential release of the land.

### ***The plan led process***

205. One of the core planning principles in the Framework is that planning should be genuinely plan led, thereby empowering local people to shape their surroundings. In addition, the importance of the plan led process is clearly reflected in the Framework policies dealing with housing. This matter was stressed by the Council and by a number of residents [33 – 37, 84, 85, 98 – 102, 146, 147, 155, 156].
206. The appeal site has a long history of planning applications and consideration through the development plan process [12 – 23]. In summary, all specific planning applications have been refused or dismissed on appeal. At the same time, aside from the short lived designation of the whole site as Green Belt which was quashed in the High Court, the site has been identified partly as Green Belt and partly as an SRA - i.e. land reserved for development.
207. Presumably for reasons related to the particular circumstances at the time and details of individual proposals [35], there is therefore a superficial disconnect between the LP process, which identified the land for potential development, and the decisions on specific proposals. This may well have related to the LP (policy NE5) presumption against development until the release of the land was shown to be needed in an LP review. However the concept of a five year housing land supply post-dates the LP, and most recently the Framework has given further guidance on the circumstances when policies may be out of date.
208. The key LP policy (NE5) can only be given limited weight, for the reasons set out above. However it must be acknowledged that the development plan process over the years has set up a clear expectation that the land would not be released for development other than through the process of LP review. The appellants' argument [33] that the site's acceptability for residential development has long been established through the LP process is only partly correct – as the policy also clearly established the mechanism for potential release.
209. The proposal would represent around 20% of the residual land requirement for the RS period to 2021 [98]. The appellants argue that the scheme would contribute to housing need without prejudicing future decisions as to housing distribution and growth, and that the size of the site is not relevant to the issue of prematurity. However there is justifiable concern that approval of the development of this strategic site would predetermine decisions about the

scale and location of new development, which should be properly addressed in the review of the LP.

210. The appeal site is (despite verbal references by the Council to a vacant central site about which no evidence was forthcoming) the only strategic site within the urban boundary which is not within the Green Belt. However, although the merits of this particular proposal have been thoroughly examined in evidence and at the Inquiry, any other long term sustainable locations for housing in Harlow could not be assessed. However joint working with other authorities and a review of the Green Belt are to be undertaken, as set out in the RS and allowed for in the Framework, and as suggested by the Council's growth strategy [32] – and the outcome of this work obviously cannot be known at present.
211. Although there is an immediate need for additional housing, only part of the appeal site could be developed before the anticipated date of LP adoption [117] and this reduces the weight to be given to the argument that the site should be released now.
212. Reference was made to an appeal decision at Hatchfield Farm, Newmarket. However the circumstances of that case in relation to housing need and the availability of alternatives are significantly different to the current case [48, 102].
213. In conclusion, the appellants' argument [35] that reliance on the plan led principle in the Framework is misplaced because the LP is out of date is not persuasive. Although the community has had a number of opportunities to express its views through the development plan and application/appeal process, the emphasis on the LP process in taking strategic decisions about the future of the area cannot be regarded as misplaced because the existing plan is outdated.
214. Perhaps unusually, a clear expectation - based on adopted policy - has been established through the development plan process that any release of this strategic site for development would take place through a review of the LP. Release of the land now would frustrate that expectation and conflict with the policy in the LP (even allowing for its reduced weight). This is a very different approach to that taken in the LP in regard to the immediate release of the Newhall site [102]. While this expectation is not determinative in itself, it is a matter which needs to be weighed in the balance.

### ***Sustainability and accessibility***

215. The appellants Sustainability Appraisal (2011) was not substantially challenged by any party. This considered environmental, community and economic issues, in the context of LP policies and using the East of England checklist. The scoring of the majority of issues was 'Excellent' or 'Good', with none falling below 'Neutral'. Subject to the imposition of conditions in some instances, there is no reason to doubt the sustainability credentials of the proposal in relation to these matters.

216. The existing rights of way [7] across the site give good accessibility in all directions, and especially towards Old Harlow. The proposed layout, as shown in the illustrative masterplan would retain these routes and, in the case of the additional footpath/cycleway proposed by the Forebury appeal, would enhance them. The site is within reasonable walking distance of a range of local facilities [73].
217. Existing bus services into the town centre are available at various locations, but the best services are from Old Harlow, thus emphasising the importance of good pedestrian/cycle links between the proposed development and Old Harlow. However it is agreed by both parties that an additional bus route serving the site is necessary – and it was only on the basis of the provision of a long term viable bus service that the County Council accepted the appellants' trip generation rates [138].
218. The Unilateral Undertaking contains a commitment to enter a contract with a bus operator for a period of five years from the date of occupation of the development [77 – 79]. Although discussions with an operator are at a preliminary stage [78, 136] that is unsurprising given the relatively early stage which the development itself has reached. Given the financial incentive being offered by the appellants [78] there is nothing to suggest that the contract will not be forthcoming, and the Council did not offer any evidence to counter the appellants' confidence.
219. It is important that the bus service, once established with a financial incentive, becomes viable and therefore continues to serve the development in the future. The appellants' viability assessment [79] concludes that the service will be self-funding within two years and profitable within three years. All the scenarios therein indicate future viability and these were not challenged by any party, nor were any alternative scenarios put forward.
220. The fallback position is that, if a bus service contract cannot be entered into, the Highway Authority would be provided with £500,000. But this would be unlikely to deliver a bus service as the Highway Authority itself would not be able to provide a bus service [137]. However the Obligation provides that this contribution could be used for other sustainable transport initiatives to serve the development, which could be of some benefit in the absence of a bus service.
221. Overall it is concluded that the development would be sustainable and accessible in the terms discussed above, and this weighs in favour of the proposal. Other aspects of the economic, social and environmental aspects of sustainability are discussed elsewhere in this report.

### ***Layout and design***

#### ***Background***

222. Although there was substantial evidence from both main parties and third parties in relation to the illustrative design and layout of the development, it must be remembered that the proposal is in outline [50]. The only element which would be decided by the grant of outline planning permission would be

the quantum of development in accordance with the submitted parameter plans. The design principles and landscape framework in the revised DAS are also important, but all matters would be reserved.

223. The DAS is an important document, which should demonstrate the appraisal of the setting of a proposed development and explain how the local context has influenced the design. The Council has not criticised the comprehensive nature of the DAS or any aspect of the site analysis – but it has criticised the way in which the proposal responds to its context [50].
224. The Council's putative reasons for refusal naturally referred to the original layout and DAS, as the slightly revised layout and DAS were not produced until the appeal was lodged. However the Council's evidence dealt with the revised DAS.
225. It is important to note that the response from the Essex Design Review Panel also relates to the original scheme and DAS, and it needs to be considered in this light. However much of the Council's cross-examination of the appellants' design witness focussed on the Design Review Panel's comments, which do not relate directly to the modified proposal (which the appellants maintain addresses many of the Panel's comments).
226. The importance of high quality design and layout is reflected in LP policy BE1, which states that all new buildings should relate to their setting so as to strengthen, enhance, protect or create local character. The Harlow Design Guide (2011) gives further advice. In addition LP Policy NE6 refers to the need to provide 'substantial green wedges' between the development and Old Harlow and Churchgate Street.
227. With the outline nature of the proposal in mind, the specific criticisms of the proposed layout and design will now be considered.

*The relationship with Old Harlow and Churchgate Street*

228. Old Harlow and Churchgate Street, to the west and the south of the site respectively, are settlements which substantially predate the new town and retain a village character, deriving from older buildings and distinctive street patterns. Both are conservation areas, and there is a draft Conservation Area Appraisal for Old Harlow which identifies a number of characteristic features of the area.
229. These two settlements are some distance away from the appeal site, and the illustrative layout proposes areas of open space between the built development and the conservation areas. Whether these are adequate in scale will be considered below, but they would serve to separate the conservation areas and the new development.
230. The effect on the conservation areas was not a putative reason for refusal. There is no reason to disagree with that position, especially as English Heritage has not objected to the proposal. The relevance of the conservation areas therefore relates to the design of the appeal scheme rather than any impact on the conservation areas.

231. There was discussion at the Inquiry as to whether the proposal would 'strongly reference' the key features of Old Harlow and Churchgate Street [56]. This was the wording adopted by the Council's witness, although it was accepted that this formulation does not appear in any policy. However this is a somewhat semantic debate, as all parties accepted the importance of the design relating to its setting. In large part the relationship would be a matter for the detailed stage.

*Views of St Mary's and St John's churches*

232. The views of the spire of St John's church in Old Harlow and the spire of St Mary's church in Churchgate Street are somewhat distant when viewed from the appeal site, and they are not protected views. However all parties agreed their importance.
233. The Council stated that it was not clear how these views influenced the evolution of the scheme design. The authority maintained that the views of both churches would be obstructed and not preserved.
234. However the revised DAS sets out the considerations which influenced the layout of the proposal, reflecting the existing features of the site (particularly footpaths and hedgerows) in the illustrative masterplan [59]. The east – west axis and the linear park would align with St John's church, as would the majority of the north – south axis with St Mary's. The remaining section of the north - south axis would not diverge from the view to a significant extent and in any event this could be the subject of a slight amendment at the detailed stage.
235. The appellants' assessment of the visibility of these landmarks was not challenged and, to the extent that it is relevant at this outline stage, the Council's objection related to these views cannot be substantiated.

*Topography*

236. All parties agree that the topography of the site, with land rising towards the east and south-east, makes a significant contribution to its character [61 – 63, 124]. Although this gentle slope is not one of the main ridges which strongly influences the character of Harlow, it is of some local significance.
237. The Council's criticism of the illustrative Masterplan was that the layout would not respect the contours of the site. However it should be noted that substantial parts of the Council's evidence relating to topography were accepted to have been copied from the report of the Essex Design Review Panel – which dealt with the original scheme. The appellants also alleged that the Panel had an incomplete understanding of the scheme.
238. The location of the edges of the development and the use of the shallow valley within the site as a linear park would relate well to the topography. The rationale for the layout in terms of topography is thoroughly set out in the DAS [62].

239. The Council's written evidence suggested that topography should be taken into account to a far greater degree. The approach taken at the Inquiry was that this meant consideration of the benefits of contouring, with the main road pattern responding directly to the contour lines.
240. However the appellants analysed this approach in the DAS, and concluded that there were very few parts of Harlow where roads follow the contours and that, where contoured development has been adopted, this had tended to produce monotonous main frontages and steeply sloping side roads. The evidence suggests that this is the case and, in any event, in visits to agreed locations in the wider area around the appeal site showed little evidence of contouring. Certainly it is not a feature of Old Harlow or Churchgate Street.
241. There was also criticism related to the visibility of the proposed development, largely as a result of the way in which the development would relate to topography. However the assessment by the appellants in the DAS, which concluded that the proposal would only be visible from a limited area, was not challenged and was substantiated by site visits. The ridgeline identified in the original Gibberd masterplan for Harlow would not be broken, as asserted by some local residents, as this lies well to the south [63].
242. To the extent that it is relevant at this outline stage, the objection related to topography cannot be substantiated.

*The Gilden Way frontage*

243. There was some criticism by the Council of the Gilden Way frontage of the development – both that the open space fronting the road was too narrow, and the argument that the built form behind it was weak and fragmented. The Council's argument on the latter point was that the detailing shown on the illustrative masterplan would not produce a strongly defined edge at the entrance to the town.
244. This is largely a matter which could be addressed at the detailed stage, but in any event the Council's criticism is substantially weakened by the conflicting suggestion that the open space should be wider – as this would inevitably have the consequence of reducing the effect of the buildings behind.

*The illustrative layout*

245. The illustrative masterplan shows a pattern of roads and buildings based on a slightly distorted orthogonal grid.
246. The Council's criticism of this approach to the layout was that its regularity would be in stark contrast to the informal and organic form of surrounding villages [123 – 125]. It was stated that this would lead to a monotonous and disorientating development.
247. However, as discussed in relation to the effect on the conservation areas, the proposed development would be set some distance away from the surrounding villages. There is no way in reality that the onlooker would read the nature of the layout of the new development in the context of the villages.



248. The argument that the grid base would lead to a monotonous development makes unproven assumptions about the detailing of the scheme. There is no reason to suppose that a high quality of detailed layout and design would not be forthcoming, and this could lead to an interesting and attractive townscape based on an orthogonal grid. The use of such a grid layout is well-established in urban design terms [64] and is at the heart of some of the most cherished townscapes in the country. Variety could be achieved within the individual quadrants. In any event, what may appear monotonous to one onlooker could appear to have a pleasing regularity to the next.
249. The persuasive evidence from the appellant, largely resting on the DAS, was that there are many areas of Harlow where the roads do not respond directly to contours, but where an orthogonal layout has been employed. A number of these were seen on the site visit, and no criticism was made by the authority of any specific developments which use this approach.
250. The DAS clearly explains how the topography, hedgerows, footpaths, and field patterns give the site a clear structure at present. The approach of the illustrative masterplan is to respect that structure, which has the significant benefit of ensuring the retention of the views towards local landmarks – as already discussed.
251. The Council criticised the scheme on the basis that no potential alternatives to the cruciform layout were adequately investigated, especially after the comments of the Design Review Panel. It was also pointed out that the appellants' design witness had 'inherited' the layout. Whilst there is little obvious consideration of alternative layouts in either the original or revised DAS, the existing structure of the site and the desirability of respecting existing views point so strongly to a grid layout that this omission is not a significant criticism. The fact that the appellants' witness had 'inherited' the scheme (although he stated that he had been previously well aware of it) is not relevant, provided he was professionally able to support it – which he did.
252. To the extent that it is relevant at this outline stage, the objection related to the layout of the development has not been substantiated.

*Green Wedges/Fingers*

253. The layout of Harlow derives from Sir Frederick Gibberd's original masterplan for Harlow new town, and features a compact central area with outlying neighbourhoods. Between these are a number of 'green wedges', generally in valleys, which link to the surrounding countryside.
254. LP Policy NE6 refers to the need to provide 'substantial green wedges' between the development and Old Harlow and Churchgate Street. Even bearing in mind the reduced weight which can be accorded to this policy (as above), the provision of substantial open areas separating neighbourhoods, and smaller open areas separating sub-neighbourhoods, is important in townscape terms.
255. However the LP does not define 'green wedges' and reference must therefore be had to the more recent Harlow Design Guide, which defines green wedges

(policy DG20) and green fingers (policy DG21). Green fingers are landscape corridors between the larger strategic spaces (green wedges) and more formal local spaces. The Council accepted in cross-examination that it was appropriate for the scheme to provide 'green fingers' rather than 'green wedges' as these would provide sufficient separation between sub-neighbourhoods. (Although this acceptance was not reflected in the closing submissions for the Council which reverted to the criticism of the lack of green wedges [126]).

256. The appellants demonstrated that, if green wedges on the scale suggested in the reasoned justification to policy DG20 were provided, this would limit the capacity of the site to around 250 dwellings. It would also isolate the new development from its neighbours [70]. The Council accepted that this would be an 'extreme' position to take. Such an approach would represent an unacceptable waste of land resources and would not be supported by policy.
257. Accordingly the approach of the illustrative masterplan which is to provide green fingers along Gilden Way and Harlowbury Brook is acceptable. The issue remaining between the main parties is the width of the green fingers.
258. The north-south green finger adjacent to Harlowbury Brook would be of substantial width for most of its length, but would narrow to around 30 metres in width adjacent to a development known as The Oxleys, where it links to a wider area adjacent to Gilden Way. The Council consider this should be 50 metres wide.
259. However the proposed green finger on the west side of the site would form a significant break between the proposed development and historic Harlowbury together with existing residential areas. The narrower section would be comparatively limited in length and would still provide a break between the existing and proposed housing. In any event, in the context of an illustrative masterplan, this is a matter which could be reconsidered at the detailed stage.
260. The Council also considers that the proposed green finger running along the development edge at Gilden Way would be too narrow. Bearing in mind that this area of the proposed development would accommodate the highest density on the site, it is important that the open area reads as a purposeful and attractive element of the townscape, rather than as an area left over in front of the buildings. The illustrative width is, in part, not sufficient to achieve that objective in a satisfactory manner. The comparison made by the appellants with the green wedge at Newhall is noted, but the importance of the Gilden Way entrance to the town should not be underestimated, and this sets the developments apart.
261. However, again bearing in mind the illustrative nature of the masterplan, this is something which could be resolved at the detailed stage.

#### *Conclusion on layout and design*

262. The proposal has the potential to create a place with its own identity, which would respect locally distinctive patterns of development and landscape. It would retain important local views, whilst retaining a high degree of

permeability. There is no reason to suggest that the details of the proposal would not be of a high standard, or that they could not address the detailed issues discussed above. On that basis the illustrative proposal complies with the relevant LP policies, the Framework, and the Harlow Design Guide.

### ***Highways issues***

#### *The highway network*

263. A number of third parties raised concerns about the impact of the proposal on the road network [141, 142, 146, 147, 150]. However, in the light of the Transport Assessment and the survey work undertaken by the appellants, the Highway Authority has not raised objection related to the impact on the highway network [73].
264. The appellants' Transport Assessment considered the impact of the proposal and considered mitigation measures [73]. In recognition of the fact that the development would increase traffic particularly during peak hours, geometric improvements are proposed to a series of junctions. The persuasive evidence is that, on that basis, the junctions would perform at least as well if the development goes ahead as they do at present.
265. Although the concerns of residents are appreciated, and certainly heavy traffic flows were observed in the area during the rush hour, there is no substantial evidence to set against the appellants' thorough assessment. On that basis, the proposal would not significantly harm highway safety or the free flow of traffic.

#### *Parking provision*

266. The application is in outline, but the issue of the correct approach to parking provision would affect the density which could be achieved. It is therefore of relevance at this stage.
267. The Council and local residents explained the parking problems which have occurred at various other developments in Harlow. The key issue is whether the level of parking should comply with the County Council's "Parking Standards – Design and Good Practice 2009" (also adopted by Harlow Council), or whether the level of parking resulting from the appellants' Car Parking Strategy [75] is an acceptable alternative.
268. The appellants maintain that their Car Parking Strategy is an appropriate alternative methodology. It would, they state, respect the principles of good urban design and make efficient use of the land without resulting in under-provision [75].
269. It is agreed that compliance with the Council's adopted standards would lead to a reduction of around 10% of the number of units achievable on the site, and that the proposal as it currently stands represents around a 14% shortfall in parking in comparison with the adopted standards [132, 134].

270. The Council's standards would have been well known to the appellants from the early days of designing the scheme but, in December 2011, they produced a report setting out an alternative approach. The appellants maintain that this approach conforms to the five criteria set out in paragraph 39 of the Framework. However these criteria deal with a situation where a local authority may be considering setting local parking standards. Although this is of some weight, that is not the position here.
271. The Council's standards were adopted after public consultation – although the appellants' point that this was limited in extent is noted [75]. The standards represent the considered position of the Highway Authority and Harlow Council, and should not be set aside on a piecemeal basis unless there is convincing evidence of the need to do so.
272. The appellants' Car Parking Strategy and written evidence did not criticise the analysis that led the Councils to adopt their local parking standards. However at the Inquiry it was suggested that officers were unaware of and had ignored the concept of demand led parking. There is no evidence to that effect, and it seems unlikely that officers of two authorities would have been ignorant of or overlooked such a well known approach.
273. The demand led approach has a pedigree based on well known documents. It was accepted in an appeal decision in Leeds referenced by the appellant [75], but the application of the methodology to this case is less than persuasive.
274. In particular it is noted that the appellants' report is based on 2001 census data [134]. These data are of considerable vintage and are an unreliable source of information to set aside more recently adopted standards.
275. In addition, the Council criticised the report for other reasons [134]. It was stated that the report does not allow for an assessment of which scenario the developers of a particular phase would choose, and that this precludes an assessment of any likely differences between the adopted standards and the demand led basis. Furthermore it does not provide any comparison of the anticipated level of car parking in relation to the previous standards, which have allegedly failed to provide adequate parking in the locality [134]. These criticisms have some weight.
276. These matters could be overcome by the imposition of a condition, accepted by the appellants' as a fallback position, limiting the quantum of development to 1,100 units. Such a condition would obviously affect the quantum of both market and affordable housing which could be delivered, and this needs to be weighed against the desirability of complying with parking standards. However there is no suggestion that the viability of the development would be affected by the condition. Despite the reduction in the number of houses which could be delivered, the limitation is recommended if planning permission is granted, as without that the proposal would breach adopted standards and would be likely to lead to an insufficient level of car parking – to the detriment of highway safety and the amenity of the area.

### *Rat running*

277. The appellants' uncontested surveys demonstrate that, as a result of the development, there would be an increase of 30-40% in the level of rat running through Old Harlow. This equates to around one vehicle per minute [80].
278. Both main parties therefore accept that the development, if allowed, would exacerbate the traffic situation in Old Harlow, and that this needs to be mitigated. The dispute relates to the amount of the contribution and the consequences of any shortfall.
279. The appellants initially offered a contribution of £70,000, which was aimed at covering a proportion of the estimated cost of introducing rat running measures [81]. This was regarded as a more appropriate approach than an undertaking on the part of a developer to carry out the works. This approach was not contested. Following discussions, the contribution was increased to £150,000, secured by an Obligation, which the appellants' consider would allow full delivery of the rat running schemes [82].
280. The Council's concern is that there is no guarantee that the contribution would fund the entire mitigation scheme – for which the detailed design and costing has not been undertaken. There is no guarantee of additional funding from the Highway Authority [139].
281. However the Council did not produce any alternative cost estimate for these comparatively limited schemes, and the contribution in the Obligation is a reasonable amount for the implementation of the mitigation measures. The Council noted that the schemes would lie within a conservation area where an Article IV direction is in force [139]. However traffic calming is commonplace in conservation areas, and there is no reason why the scheme should not go ahead in such a location, nor is there any evidence that this would significantly add to costs.
282. In any event, even should the contribution not amount to the total cost of the mitigation scheme, this would not be a reason for dismissing the appeal, as the rat running contribution would also improve the existing situation in Old Harlow. It would therefore not be reasonable to expect the developers to fund 100% of the costs.

### ***Green Belt issues***

283. None of the housing or other built development would be located in the area of the site which falls within the Green Belt. However there would be sports pitches in the western part of this area, and allotments in the east.
284. Dealing first with the proposed change of use of the agricultural land to sports pitches, there is no doubt that this is a material change of use. Previous national policy was that changes of use would be inappropriate development unless they maintained openness and did not conflict with the purposes of the Green Belt.

285. However that position has changed in the Framework, which sets out (Paragraph 90) forms of development (aside from the construction of new buildings) which are not inappropriate in the Green Belt provided they preserve openness and do not conflict with the purposes of including land in the designated area. The specific types of development are listed in five bullet points – and these do not include material changes of use. Therefore a material change of use of land is inappropriate development in the Green Belt.
286. The appellant [28] drew attention to the fact that appropriate facilities for outdoor sport and recreation are deemed to be not inappropriate development in terms of the Framework. In addition it was stated that Green Belt policy has largely been unchanged by the Framework and that a change of policy such as this, if it were intended, would have been made more explicit. However the Framework is adopted national policy, and should be read as it is written – it would be wrong to go behind the policies and infer a meaning as suggested by the appellants [28].
287. The proposed sports pitches would be located on a sloping field and the levelling of part of the area by 2 metres (and at parts by 3 metres) would clearly be an engineering operation [130]. Given the scale of the development in relation to the existing natural slope of the land, this would not preserve the openness of the Green Belt, and would therefore be inappropriate development.
288. Turning to the allotments, both main parties agreed that there is no material change of use from agricultural land to allotments, and therefore the question of inappropriate development is not relevant. It is reasonable to expect that there would be a range of sheds, fences and various other structures associated with allotment use [131] – but equally these would not require planning permission and could, in any event, be the subject of control by way of a condition.
289. Finally, there is a concern on the part of the Council that the allotments and sports pitches would be close to the residential development and that these elements would be read together [131]. This could result in an ill-defined boundary to the Green Belt, contrary to paragraph 85 of the Framework. However, bearing in mind that this is an outline proposal, much could be done by a clear delineation of the edge of the built development, possibly using extensive planting, and this could overcome that issue.
290. In summary, the change of use of agricultural land to sports pitches and the engineering works necessary to bring this about would be inappropriate development in the Green Belt, as would the associated engineering operations. This would be harmful by definition and should not be approved except in very special circumstances. The considerations in this report will be assessed in the conclusion, in order to assess whether the development can be approved on the basis of such very special circumstances.

### ***The effect on Heritage Assets***

291. There are a number of Designated Heritage Assets (DHAs) which might be directly or indirectly affected by the Gilden Way proposal: the site of the

Roman Villa, the conservation areas, the Listed Buildings and Scheduled Monuments at Harlowbury, and the Gibberd Garden.

*The site of the Roman villa*

292. The only DHA within the Gilden Way boundary is the site of the Roman Villa, in the northern part of the site, which is within the Green Belt. This is currently agricultural land, which is the subject of ploughing, and this has potential harmful consequences for archaeology. However the proposal is that this land would neither be developed or ploughed, therefore the impact on the special interest of the site would be a positive one. No convincing evidence was put forward by any party related to potential harm to this DHA, and no objection (to any aspect of the proposal) has been raised by English Heritage or by either Council [87, 153, 154]. A scheme of archaeological investigation could be required by a condition.
293. There are also potential indirect effects on a number of DHAs. These are considered below.

*The setting of the conservation areas*

294. The setting of conservation areas was not raised as an issue by the Council and it did not form part of a reason for refusal [50], although reference was made to it by third parties [141, 142]. The setting of a conservation area can clearly be an important factor in considering development proposals but, the distance between the proposed built development and the conservation areas, together with some intervening development, supports the Council's position that the setting of the conservation areas would not be affected.

*Harlowbury Manor and Chapel*

295. From the lawn and gardens of the Manor, and from the areas around the Chapel, glimpses of the proposed housing development would be possible. This was the subject of third party concern [143, 147, 151, 157], though it was not a matter raised by either Council or by English Heritage.
296. It is appreciated that the setting of the Manor and Chapel is quite rural [143] but although part of the housing development would be at comparatively close-quarters, the existing intervening development would significantly limit the visual effect on the historic buildings and the Conservation Area. In addition, the open area of The Forebury to the south would remain. As before, bearing in mind the outline nature of the proposal, this edge of the development would have to be given careful consideration at the detailed stage, in order to preserve the setting of the historic buildings and the Conservation Area.
297. The Gilden Way development (even aside from the separate Forebury proposal) would generate additional use of the existing footway across The Forebury. The concerns regarding the potential increase in vandalism to the Chapel can well be appreciated, especially given the evidence of anti-social behaviour which was seen on site. However it could equally be argued that additional footfall along the path would increase surveillance of the area, and it

has not been demonstrated that alternative security measures have been fully explored.

### *The Gibberd Garden*

298. The Gibberd Garden, which was created by Sir Fredrick Gibberd from the late 1950's onwards, is laid out in a series of adjacent spaces with the plants and walls enclosing them also forming part of the next space. The spaces, which become less formal as one moves away from the central area, are of various sizes and designs, but all have an intimate and enclosed feel. There are glimpses of open countryside beyond, and a few of these would be affected to a limited degree by the proposed development.
299. The objection raised by those responsible for the Garden and others is that the development would harm the rural setting of the Garden [87, 147, 149]. Certainly, if this occurred, there could be a reduction in the special quality of the Garden, despite its generally inward facing emphasis.
300. However the views of the appeal scheme (from viewpoints agreed on site) would be limited. In particular there would be a partial view of the allotments and a glimpse of housing further up the slope – but the only location from where this view could be achieved to any extent would be from the car park rather than from within the garden itself.
301. Concern was also expressed at the Inquiry that the illustrative landscaping scheme shows additional planting on the east side of Marsh Lane, which is the existing rural lane giving access to the Garden. Marsh Lane would therefore effectively run within the housing development, and this would significantly and harmfully change it from a country lane to an estate road. This would lead to a consequent reduction in the feeling of isolation experienced by the Gibberd Garden. However this was accepted by the appellants at the Inquiry as a mistake on the illustrative masterplan, and it could be rectified at the detailed stage.

### *Conclusion on Heritage Assets*

302. For the reasons set out above, and bearing in mind the fact that the proposal is in outline, the effect on DHAs would be neutral (or, in the cases of the Roman Villa) positive.

### ***Other matters***

#### *Ecology*

303. Some written representations have raised the impact on the ecology and biodiversity of the site. The Environmental Statement set out the ecological survey work which has been undertaken on the site, along with a desktop study of the wider area [163]. This assesses the baseline position, the impact of the development and potential mitigation measures both in terms of the construction phase and the effect of the completed development.



304. Based on this uncontested evidence, it is clear that the proposal would retain and/or enhance most of the semi-natural habitats, whilst retaining connectivity through the site and along the perimeter, and that this would help biodiversity. Some new wetland habitats would be formed by the Sustainable Drainage Systems which are proposed. Natural England has not objected to the proposal, and one of the suggested conditions would require the approval of a biodiversity and ecology strategy.

### *Flooding*

305. The site itself is in Flood Zone 1 (aside from the extreme western and north-eastern boundaries), with a consequently low risk of flooding, and the appellants' hydraulic modelling demonstrates that the main part of the site is suitable for development. The Sequential Test is therefore satisfied, and the Exception Test does not need to be applied.
306. The land drains into Harlowbury Brook, which carries water into the River Stort. Residents and Councillors [141, 142, 146, 148] have raised concerns about the implications of the development in relation to flood risk. In particular residents' experience of the effect of other developments was described.
307. The Environmental Statement defined the existing situation in relation to Harlowbury Brook and the surrounding area [163]. The proposal includes mitigation measures in the form of detention basins and swales, with the overall aim of ensuring that the development would not worsen existing flood risk.
308. Importantly, there is no objection from the Environment Agency, provided the design follows the Flood Risk Assessment. This could be the subject of a condition. Set against residents' concerns, there is a substantial amount of persuasive evidence that the development would not be liable to flooding or increase flood risk elsewhere.

### *The Forebury appeal*

309. The Forebury appeal relates to a proposed footpath/cycleway running across the southern side of The Forebury, from Old Road in the west to the existing bridge across Harlowbury Brook in the east [23]. The purpose of the proposal is to reinforce existing footpath connections and make the route more attractive in inclement weather, in order to improve linkages from the proposed Gilden Way development to the facilities in Old Harlow, and to improve access to sustainable transport modes.
310. In practice, the proposal is entirely dependant on and related to the implementation of the Gilden Way development. There is no suggestion that the footpath/cycleway would go ahead in the absence of the Gilden Way development. That said, it is a separate application and appeal, and it is not correct to approach the proposal, as the Council did in opening, by stating that if the Gilden Way scheme falls, there is "no justification" for the Forebury proposal. The Forebury scheme should be determined, as should any other

proposal, in accordance with the development plan unless material considerations indicate otherwise.

311. The route runs across the site of a deserted medieval village, and it is clearly important that this DHA should at least be preserved. Residents have expressed concern about potential damage to the archaeology [143, 151, 154].
312. However there would be minimal excavation of topsoil, with the removal of no more than 350 mm, and a geotextile-reinforced stone layer with gravel above would be used. There is nothing to suggest any adverse effect on the Scheduled Ancient Monument. Subject to a condition relating to levels, there is no objection from English Heritage or from either Council. In addition, although Scheduled Monument consent has yet to be sought, English Heritage has agreed the specification for the path/cycleway.
313. The proposal would not have a direct impact on Harlowbury Manor or Chapel, due to the distance of the proposal from the group of buildings, and the fact that existing footpaths run closer to the group than would the proposal. The wooden post and rail fence, with ground level lighting studs, would be visible from the group of buildings. However the effect on the Conservation Area and the setting of the historic buildings would essentially be neutral as such fences are not uncommon and the area around Old Road is well lit [143, 151, 154, 157].
314. The owners of the Manor and Chapel (and others) have expressed particular concern regarding vandalism at the Chapel – as was evident on site – and the potential increase in anti-social behaviour which could be caused by greater use of the Forebury route. However, as discussed above in relation to the Gilden Way appeal, there is a counter argument that greater use of the area would be self-policing and that there is no evidence that other security measures have been exhausted.
315. No reference was made to the Forebury appeal by the Council in closing submissions or in evidence. The Council's statement of case simply asserted that the Forebury appeal needed to be linked to the main Gilden Way appeal. None of the appellants' evidence was challenged by the Council. Overall, the persuasive evidence is that the proposal would be neutral in terms of the setting and fabric of any DHA, and there is no reason on any grounds to conclude that planning permission should be refused.

### ***Planning obligations (related to the Gilden Way appeal)***

316. There are three completed Obligations related to the Gilden Way proposal. An agreement with Essex County Council dealing with education matters, an Obligation in favour of Essex County Council dealing with highway matters, and an Obligation in favour of Harlow Council dealing with a range of planning matters [88 – 90].
317. The backdrop to the Obligations is provided by LP policy IMP1. This establishes the development plan context for an appropriate level of facilities,

where the need is established. The Obligations will now be considered in turn, in the light of the notes submitted by the parties [89, 140].

*Agreement with Essex County Council*

318. The agreement with Essex County Council deals with an education site and contributions. These are based on the County Council's Education Contribution Guidelines Supplement. This is a companion document to the Developers Guide to Infrastructure Contributions (2010) and both documents, whilst not formally adopted as a Supplementary Planning Document (SPD), were the subject of consultation before being ratified by the authority. Given the obvious demands which the construction of up to 1,200 dwellings would place on the education services in Harlow, the education provision is clearly necessary and directly related to the development. Using the detail set out in the Guidelines, it is fairly and reasonably related in scale and kind to the development. It therefore meets the requirements of the Community Infrastructure Levy Regulations 2010 and the policy set out in the Framework and should be accorded due weight.

*Obligation in favour of Essex County Council*

319. This Obligation deals with highway matters. The policy foundation for these elements is largely in the County Council's Development Management policies (2011) which, although not formally adopted as SPD, were the subject of consultation and carries some weight. A number of the elements of the Obligation are uncontentious, such as the need to enter into a Section 278 agreement to carry out highway works necessitated by the development, and the provision of cycle hoops to encourage sustainable transport.
320. The Obligation also deals with the provision of a bus service, which is clearly necessary in sustainability terms. As discussed above, the Council has reservations about this element, but it is considered that the progress made to date with a bus operator and the appellants' evidence related to viability indicates the likelihood of a continuing service. The fallback contribution could be used for other sustainable transport initiatives. The bus service, or other sustainable transport measures, is clearly necessary and directly related to a development of this scale, and the terms of the Obligation are reasonably related to the development.
321. The Obligation also deals with the rat running contribution, clearly necessitated by the evidence related to the impact of the development on the existing problem. As discussed above, the Council is concerned that the contribution would not fund the full extent of the works – however the available evidence is that the contribution would be satisfactory and, in any event, the works would be of wider benefit and it would be unreasonable to require a greater level of contribution from this development.
322. Overall, the Obligation meets the requirements of the Community Infrastructure Levy Regulations 2010 and the policy set out in the Framework, and should be accorded due weight.

*Obligation in favour of Harlow District Council*

323. This Obligation includes a range of broadly uncontentious matters related to the need to make the development acceptable in planning terms in accordance with adopted policy. These include a phasing plan; the provision of affordable housing subject to a viability assessment (based on LP policy H5); and a health care contribution (based on the general provisions of LP policies CP1, CP2 and CP5 and the detailed assessment of N.H.S. North Essex). There is also provision for public art and a library contribution (based on the Essex County Council Developers Guide to Infrastructure Contributions).
324. In addition, given the scale of the scheme, there is a clear need to ensure the provision of a mixed development, and take reasonable steps to ensure the delivery of certain elements of the proposal. The Obligation deals with open space and allotments (based on LP policy L2); retail units and the community site. The latter two elements (based on LP policies RTCS1 and CP1/CP2) have caveats related to an assessment of retail demand and marketing (respectively). It would be unreasonable to require the provision of these facilities in the absence of a demonstrable need or potential occupiers, and this approach is reasonable.
325. All the above matters are based on LP policy and guidance, and are clearly necessary for the development to be acceptable in planning terms and are directly related to the scale of the development. They should be accorded due weight.
326. However no evidence was provided to suggest that the indoor sports contribution is based on policy or guidance. The source of the requirement appears to be a letter from Sport England in April 2011. There remain differences between the parties related to the capacity of existing facilities, average household size, and the level of sports participation. If agreement cannot be reached, the provision in the Obligation is that the matter would be determined by an expert. Although the provision of indoor sports facilities would be a welcome addition to the overall mixed nature of the scheme, there is nothing to demonstrate that this provision would be necessary to make the development acceptable in planning terms, or that it would be directly related in scale and kind to the development.
327. This element of the Obligation would not meet the requirements of the Community Infrastructure Levy Regulations 2010 and the policy set out in the Framework and, although it would come into force if planning permission is granted, it should be accorded no weight in the planning balance.

***Planning conditions related to the Gilden Way appeal***

328. If planning permission is granted for this development, a range of conditions were discussed (and largely agreed) at the Inquiry (Annex A below). Those which were not agreed in whole or in part are identified below.
329. Given the outline nature of the proposal, there are a number of agreed conditions (1, 2, 3 and 5) which require the submission of further details and phasing to the Council, in the interests of the appearance and proper functioning of the development. In addition, details of refuse storage,

materials and cycle parking should be submitted for approval (Conditions 13, 14 and 17). The detail of the estate roads and footpaths, sports pitches (including lighting) and the allotments should be submitted (Conditions 20, 35 and 36). For the avoidance of doubt, a condition should specify the approved plans (Condition 39).

330. Condition 4, related to Design Codes, is not agreed. The Council wish to see a Design Code for the entire site prior to the submission of any reserved matters application, so as to ensure a consistency of the design approach across the whole development. The condition as discussed would only require a Design Code for each phase of the development. Given the importance of the layout of the whole development and the need to avoid a piecemeal approach, the Council's stance is supported, and the recommended condition reflects that position.
331. The details of the scheme should be submitted in accordance with the DAS, as that is the background to any grant of planning permission. Although the agreed condition refers to a specific sub section of the DAS, it is more appropriate to widen this to the sections dealing with design principles and landscape details. This is reflected in the recommended condition (Condition 38).
332. The appeal scheme is for up to 1,200 dwellings [22]. However, if the above conclusions related to the approach towards parking are accepted, this should be limited to 1,100 dwellings – as set out in condition 11 at Annex A. If the parking conclusions are not accepted, this condition should revert to 1,200 dwellings.
333. In addition to the outline matters above, a range of other details need to be submitted for approval. These include a survey of trees and hedgerows and measures to protect them (Condition 7); site levels (Condition 8); and landscaping works (Conditions 23 – 25). These are necessary to control the quality of the final development. In the interests of avoiding flooding, schemes for foul and surface water drainage and dealing with discharge onto the highway need to be submitted to the Council. Penetrative foundations should be prevented unless it has been demonstrated that there is no risk to groundwater. (Conditions 9, 19, and 31 - 33). For biodiversity reasons an ecology strategy needs to be submitted for approval (Condition 10). For sustainability reasons, at least Code Level 3 should be required (Condition 12) and a Travel Plan should be submitted for approval (Condition 15). Although there is limited evidence of contamination, it is necessary and prudent to impose conditions dealing with potential hazard (Conditions 27 – 31). That part of the development fronting towards Gilden Way could be the subject of unacceptable noise, and a condition is necessary to require a scheme for protecting those properties (Condition 34).
334. To ensure the development is undertaken in a satisfactory manner, a Construction Method Statement should be submitted for approval (Condition 16).
335. A programme of archaeological work needs to be secured (Condition 6). As and permission and conditions run with the land, the unnecessary reference to

the applicant/agent/successors in title, which was originally put forward, has been omitted.

336. The Obligation in favour of Essex County Council requires the developer to undertake certain highway works. A condition discussed at the Inquiry similarly requires highway works to be undertaken (Condition 18). The appellants did not object to this condition, but stated that it should tie in with the Obligation. In fact the condition goes further, in particular requiring pedestrian connections to The Oxleys development and the railway station, both of which are necessary to ensure the best possible level of accessibility. The condition should therefore be imposed.
337. The same Obligation requires the payment of a contribution for mitigation works related to rat running. The need for this has been set out above, but a condition is necessary to require approval of the scheme (Condition 22).
338. In the interests of ensuring a genuinely mixed use development, it is necessary to impose a Condition (38) to ensure that the live-work units are occupied for mixed use, and not solely for residential use.
339. The parties accepted that there may be a need to widen the Gilden Way carriageway in the future. Agreed Condition 21 seeks to reserve that area of land, and it is additionally considered that the condition should restrict any built development.
340. One condition which was put forward by the Council is not recommended due to its lack of precision. This would require the submission of a scheme of floodlighting. Any floodlighting to the sports pitches would be addressed by Condition 35, and a requirement for a scheme of lighting covering the remainder of the development is not precise or necessary.

### ***Planning conditions related to The Forebury appeal***

341. If planning permission is granted for this development, a number of conditions were discussed at the Inquiry. With one exception, the conditions relating to the Forebury appeal as set out in Annex B below were as discussed and agreed by the main parties at the Inquiry.
342. In recognition of the importance of the site in heritage terms, details of the levels, landscaping and fencing should be submitted to the Council (Conditions 3 and 4). For the avoidance of doubt, a condition should specify the approved plans (Condition 2).
343. A condition was agreed which stated that the footpath/cycleway should be carried out in conjunction with the wider Gilden Way development, and not prior to the commencement of that development. This raises two issues:
- Given that the Forebury proposal is essentially neutral in relation to its effects on heritage assets, and would improve the access to the area east of Harlow, there is no reason to prohibit implementation in advance of the Gilden Way development.

- The agreed condition requires that the footpath/cycleway should be carried out “..in conjunction..” with the wider Gilden Way development. However it does not specify at what stage this should be. In recognition of the importance of enhanced accessibility, it is considered that this development should be completed before the occupation of the first dwelling (Condition 3 set out below).

344. This final point was discussed at the Inquiry, and although the timing of the provision of the footpath/cycleway was not finally agreed, all parties did agree on the importance of enhanced accessibility as early possible. On that basis, it is recommended that the trigger should be the occupation of the first dwelling.

***Balance and conclusion (Gilden Way appeal)***

345. Following the recovery of these appeals, the Secretary of State set out matters about which he particularly wished to be informed. In summary, these were the relationship with the development plan, sustainability, design, implications for Green Belt policy, housing land supply, and Obligations and conditions. These matters have all been dealt with in this report, but the publication of the Framework has altered some of the details of the matters as originally set out.
346. The starting point is the development plan. In this case the role of the RS is largely related to the question of the need for housing, but the LP has a central role in the issues raised by the appeal.
347. The LP was adopted under the 1990 Act, and therefore due weight should be given to relevant LP policies according to their degree of consistency with the Framework.
348. The key LP policy is that the site is identified as an SRA, which is safeguarded land. Although the nature of the development is not specified in the LP, it is clear that all parties have understood, over a period of years, that any development would be housing led. This designation lends weight to the appeal proposal, but it is also important to note that the LP provides that the release of the land would be by way of a review of the LP – this has been a consistent policy approach for some years.
349. There is clear evidence that there is a substantial shortfall in the housing land supply against the agreed RS housing requirement. The appeal development would make a significant contribution towards meeting this outstanding housing need – albeit that only some of the proposed housing would be likely to be provided before the estimated date of adoption of the emerging LP.
350. The lack of a five year land supply has a number of implications. Overall, the housing land supply position weighs significantly in favour of the proposal, and this is an important material consideration in the light of the Framework policies aimed at the delivery of housing. In addition, it means that the LP policies related to the supply of housing are clearly out of date (especially as they were introduced before a five year land supply became a policy requirement).

351. LP policy that the release of the appeal site should await the review of the LP can therefore only be given limited weight.
352. The presumption in favour of sustainable development is therefore engaged. As the LP housing policies cannot be considered to be up to date, consideration has to be given to whether the proposal represents sustainable development and whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
353. As set out above, the appeal scheme represents an accessible and sustainable proposal, in terms of the three dimensions of sustainable development as set out in the Framework. It would fulfil an economic role by expanding the quality and choice of housing, a social role by providing clearly needed market and affordable housing to contribute towards agreed needs, and play a satisfactory environmental role. This is an important factor in support of the appeal.
354. However one of the other core planning principles in the Framework is that planning should be genuinely plan led, thereby empowering local people to shape their surroundings. This is a thread which, like sustainability, is found in a number of places in national policy.
355. There is a clear expectation on the part of the Council and local residents, who have been actively engaged throughout the history of the site, that the future of the land would be established through the LP process. This expectation has been based on the history of policy development related to the site – at each turn, the LP review was identified as the appropriate mechanism for potential release. Although the LP policy related to the timing of the release of the land must now be given limited weight, the expectation of the Council and the local community remains that any release will be achieved through the LP process.
356. The appeal scheme would amount to a significant proportion of the necessary housing provision in the area. On the one hand the provision of that amount of housing would be an obvious benefit, but the relative scale of the development could prejudice decisions about the appropriate sustainable location for development in the area. The appeal process is clearly not the mechanism to consider alternative or additional locations and, although it appears that alternatives would require a review of Green Belt boundaries, such a review in cooperation with neighbouring authorities will be part of the LP process.
357. There are a number of other matters, assessed above, which are essentially neutral in the balancing exercise. These include the impact on the highway network and rat running, where mitigation measures are proposed (which would also be of some help to the existing problem), parking issues (which at most would lead to a reduction in the number of units), the provision of a bus service, the effect on heritage assets (including a slight benefit related to the site of the Roman villa) and flooding. The design and layout of the development, to the extent that it is relevant, is certainly not a negative factor, but at this stage too many details remain to be settled to regard it as a factor weighing in favour of the outline proposal.



358. The matter is finely balanced, as the proposal has much to commend it – most notably the sustainable contribution it would make to housing land supply.
359. However this has to be balanced against the clear policy requirement that the planning system should be plan led, and the expectation of the local community that the LP review will be the vehicle to consider all the options for the growth of the settlement. That expectation, unusually, is specifically based on a policy set out in a number of iterations of the Local Plan – albeit now of limited weight. If this development, which is accepted to be of strategic size, goes ahead, it would have a significant impact on the selection of housing sites in the LP process.
360. However, although the Framework endorses a plan led system, there is no adopted development plan that identifies sufficient housing to meet the clear housing land shortfall. The emerging LP will no doubt seek to address this problem but this is still at a very early stage. National policy is that every effort should be made to identify and then meet the housing needs of an area. The housing need in Harlow is established, and the appeal scheme would make a significant contribution towards meeting that need. Waiting for the emergence of the LP would not accord with national policy.
361. The harm to the Green Belt caused by the sports facilities being located within the designated area must not be ignored. The harm by reason of inappropriateness has been considered against all the material considerations advanced by the parties and these considerations, especially the provision of much needed housing, clearly outweigh the harm to the Green Belt. Very special circumstances to justify the inappropriate development therefore exist.
362. Overall, the proposal represents sustainable development, and the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

### ***Balance and conclusion (the Forebury appeal)***

363. As set out above, the proposal would not have any effect on DHAs, and no objection has been raised to the scheme by the Council. It complies with the development plan and Framework policies related to DHAs.
364. There is no reason why this proposal should not be approved even in the absence of the main residential development. The fact that the Gilden Way proposal is the reason for the Forebury scheme coming forward is not a reason for dismissing the latter if the former is dismissed.

### ***Recommendations***

365. I recommend that the Gilden Way appeal (APP/N1540/A/11/2167480) be and planning permission be granted subject to conditions.

366. I recommend that the Forebury appeal (APP/N1540/A/12/2174502) be allowed and planning permission be granted subject to conditions.

*P. J. G. Ware*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr W Beglan of Counsel  
Assisted by Mr J Parker of Counsel

Instructed by Head of Legal Services, Harlow  
District Council

He called<sup>202</sup>

Mr M Bradley  
BSc(Hons)

Development Manager, Sustainable Environment  
and Enterprise, Essex County Council

Ms E Moon  
BA(Hons) DipArch Registered  
Architect

Senior Consultant, Place Services, Essex County  
Council

Ms E Fitzgerald  
BA(Hons) DipTP MRTPI

Development Manager, Harlow District Council

Ms J Lilliot<sup>203</sup>

Solicitor, Holmes and Hills

### FOR THE APPELLANT:

Mr P Village QC  
Assisted by Ms P Jackson of Counsel

Instructed by Boyer Planning

They called<sup>204</sup>

Mr P R Chadwick  
BA(Hons) FSA IfA

Board Director, CgMs Consulting

Mr J Hutchins  
CEng MICE MCIHT

Director, WSP Property and Development

Mr C Crawford  
MA Cantab DipLA CMLI

Director, LDA Design

Mr D Lander  
MRTPI

Planning consultant, Boyer Planning

Ms D Kaur<sup>205</sup>

Senior Associate Solicitor, Berwin Leighton  
Paisner

### INTERESTED PERSONS:

Mr S Newens

Chair, Harlow Civic Society

Mr R McCartney

Member of Harlow Civic Society, Chair of  
Churchgate Street Residents Association

Mrs M Farningham

Member of Harlow Civic Society, resident of  
Harlowbury Manor

Mr J Curry

Vice Chair, Harlow Civic Society

Mr R Bill

Local resident, historian and author

Cllr M Jolles

Councillor, Old Harlow Ward

Cllr J Clark

Deputy Leader of the Council

Ms C Morrison

Member of Harlow Civic Society, local resident

Ms J Quinton

Member of Harlow Civic Society, Secretary  
Gibberd Garden Trust

Mr D Turley

Member of Harlow Civic Society, local resident

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<sup>202</sup> Evidence of Mr B Gammie not called

<sup>203</sup> In relation to Planning Obligation matters

<sup>204</sup> Evidence of Mr S Clyne not called

<sup>205</sup> In relation to Planning Obligation matters

Mrs J Wright	Member of Harlow Civic Society, local resident
Mrs J West	Local resident
Mr M Jury	Local resident and archaeologist
Mrs M Wiltshire	Local resident
Mr D Wright	Member of Harlow Civic Society, local resident
Cllr M Garnett	Councillor, Old Harlow Ward

## DOCUMENTS

(Those asterisked\* to be found on appeal files)

<b>CD1</b>	<b>Planning Applications Documents and Environmental Statement</b>
CD1/1	Planning Application covering letter, application forms, description of development and ownership certificates*
CD1/2	Application Drawings*
CD1/3	Design and Access Statement (January 2011)
CD1/4	Planning Statement
CD1/5	Environmental Statement
CD1/6	Non-Technical Summary
CD1/7	Heads of Terms Statement
CD1/8	Sustainability Appraisal
CD1/9	Statement of Community Involvement
CD1/10	Transport Assessment & Car Parking Strategy
CD1/11	Additional information – Gilden Way application drawings (December 2011)*
CD1/12	Additional information – Revised Design and Access Statement (December 2011)
CD1/13	Additional information - Note regarding changes to Design and Access Statement (December 2011)*
CD1/14	Additional information - Car Parking Strategy Report (December 2011)
CD1/15	Forebury application covering letter, application forms and ownership certificates
CD1/16	Forebury Design and Access and Heritage Statement
CD1/17	Forebury application drawings*
<b>CD2</b>	<b>Appeal Documents</b>
CD2/1	Appeal Form*
CD2/2	LPA Appeal Questionnaire*
CD2/3	Appellant Rule 6 statement*
CD2/4	LPA Rule 6 Statement*
CD2/5	Forebury Appeal Form*
CD2/6	LPA Forebury Appeal Questionnaire*
CD2/7	Forebury Appellant Rule 6 Statement*
CD2/8	Forebury LPA Rule 6 Statement*
CD2/9	Statement of Common Ground on planning matters
CD2/10	Statement of Common Ground on highways matters
CD2/11	Unilateral Undertaking to Harlow Council
CD2/12	Unilateral Undertaking to Essex County Council: Highways
CD2/13	Bilateral agreement with Essex County Council: Education
<b>CD3</b>	<b>National policy</b>
CD3/1	National Planning Policy Framework (March 2012)

CD3/2	The Planning System: General Principles
CD3/3	Planning for Growth (23 March 2011)
CD3/4	Planning and the Budget (24 March 2011)
CD3/5	Guidance on Information Requirements and Validation (2010)
CD3/6	Planning Appeals and Called-In Planning Applications (PINS 01/2009, April 2010)
<b>CD4</b>	<b>Circulars</b>
CD4/1	01/09 Public Rights of Way (DEFRA, 2009)
CD4/2	11/95 Use of Conditions (DCLG, 1995)
<b>CD5</b>	<b>Regional Planning Policy</b>
CD5/1	East of England Plan (May 2008) (Extract at Mr Lander Appendix 15)
CD5/2	Draft East of England Plan 2011-2031
CD5/3	Regional Planning Guidance for the South East RPG9 (March 2001) (Extract at Mr Lander Appendix 13)
<b>CD6</b>	<b>Local planning policy documents</b>
CD6/1	Essex and Southend-on-Sea Structure Plan (April 2001) (Extract at Mr Lander Appendix 14)
CD6/2	Harlow Local Plan Inspectors Report (May 1992) (Extract at Mr Lander Appendix 1)
CD6/3	Harlow Local Plan 1995, amended by High Court (February 1996) (Extract at Mr Lander Appendix 3)
CD6/4	Harlow Local Plan Second Alteration Inspectors Report (February 1998) (Extract at Mr Lander Appendix 4)
CD6/5	Harlow Local Plan Second Alteration (December 1998) (Extract at Mr Lander Appendix 5)
CD6/6	Replacement Harlow Local Plan Inspectors Report (March 2005) (Extract at Mr Lander Appendix 6)
CD6/7	Replacement Harlow Local Plan Modifications Inspectors Report (March 2006) (Extract at Mr Lander Appendix 7)
CD6/8	Replacement Harlow Local Plan (July 2006) (Extract at Mr Lander Appendix 8)
CD6/9	Harlow Core Strategy Issues and Options Consultation (November 2010) (Extract at Mr Lander Appendix 17)
CD6/10	Harlow Annual Monitoring Report 2009 – 2010 (Extract at Mr Lander Appendix 18)
CD6/11	Harlow Annual Monitoring Report 2010 – 2011 (Extract at Mr Lander Appendix 19)
CD6/12	Harlow Options Study (Atkins 2003)
CD6/13	Harlow Design Guide SPD (October 2011)
CD6/14	Affordable Housing SPD (March 2007)
CD6/15	Harlow Open Space, Sport and Recreation SPD (June 2007)
CD6/16	Draft Conservation Area Appraisal for Old Harlow (March 2011)
CD6/17	Harlow Infrastructure Study – Stage 2 - Final Report (March 2010)
CD6/18	Essex Sports Facilities Strategy (2008)
CD6/19	Developers Guide to Infrastructure Contributions (ECC, 2010)
CD6/20	Parking Standards: Design and Good Practice (ECC, 2009)
CD6/21	Essex Planning Officers Association: Demographic Forecasts (March 2012)
CD6/22	Development Management Policies (ECC, 2011)

<b>CD7/A</b>	<b>General</b>
CD7/1	Committee Report (1st February 2012)
<b>CD7/B</b>	<b>Planning</b>
CD7/B/1	Housing Requirements Assessment (Barton Willmore, May 2012)
CD7/B/2	Appeal Decision APP/F4410/A/93/431635
CD7/B/3	Appeal Decision APP/F4410/A/10/2139071
<b>CD7/C</b>	<b>Design</b>
CD7/C/1	Design Review: Principles and Practice (CABE, 2009) (Extract at Mr Crawford Appendix 1)
CD7/C/2	Design Review Panel Planning Report, prepared by LDA (August 2011)
CD7/C/3	By Design - Urban Design in the Planning System: Towards Better Practice (CABE, 2000)
CD7/C/4	By Design - Better Places to Live (CABE, 2001)
CD7/C/5	The Urban Design Compendium (English Partnerships, The Housing Corporation)
CD7/C/6	Design and Access Statements: How to Write, Read and Use them (CABE, 2006)
<b>CD7/D</b>	<b>Transport</b>
CD7/D/1	Car Parking: What Works Where? (2006)
CD7/D/2	Residential Car Parking Research (2007)
CD7/D/3	Demand and Provision in private sector housing developments (Jenks and Noble, 1996)
CD7/D/4	Guidance Note: Residential Parking (2012)
CD7/D/5	Appeal Decision APP/N4720/A/09/2117381
CD7/D/6	Manual for Streets (Department for Transport, 2007)
CD7/D/7	Guidance on Transport Assessment (Department for Transport, 2007)
CD7/D/8	Safety Audit
CD7/D/9	Note of meeting between ECC and WSP (8 March 2012) and accompanying email
<b>CD7/E</b>	<b>Open space</b>
CD7/E/1	Pavilions and Clubhouses (Sport England, 1999)
CD7/E/2	Natural Turf for Sport (Sport England, 2011)
CD7/E/3	Letter from Sport England (26 June 2012)
<b>CD7/G</b>	<b>Landscape</b>
CD7/G/1	Guidelines for Landscape and Visual Impact Assessment (Landscape Institute, IEMA, 2002)
<b>CD8</b>	<b>Third party representations</b>
CD8/1	Stan Newens, Harlow Civic Society (including petition)
CD8/2	Robin McCartney, Chair of local Residents Association
CD8/3	Marian Farningham, local resident
CD8/4	Mr R Bill, local resident
CD8/5	CPRE Essex (written statement)
CD8/6	David Farningham, local resident
CD8/7	Jane Quinton, Trustee of the Gibberd Garden Trust

CD8/8	Jean Wright, local resident
CD8/9	Damien Turley, local resident
CD8/10	Michael Jury, local resident
CD8/11	Mr P Mountsteven, local resident
CD8/12	Councillor Mike Garnett
CD8/14	Councillor Jean Clark
CD8/14	Jo West, local resident
CD8/15	Councillor Muriel Jolles
<b>CD/9</b>	<b>Council's documents</b>
CD9/1	Note on land north of Gilden Way
CD9/2	Parking Standards Design and Good Practice SPD consultation statement and photographs
CD9/3	Newhall s106 agreement
CD9/4	Allotments: A Plotholder's Guide
CD9/5	Written ministerial statement - planning simplification measures
CD9/6	Extracts from the Urban Design Compendium and By Design
CD9/7	Land Registry Title EX805228 for land at Passmores
CD9/8	Notes of Design Panel Meeting
CD9/9	Core Strategy options response report
CD9/10	Newhall Phase 1 s106 agreement with Harlow District Council
CD9/11	RSS policy HA3 on affordable housing
CD9/12	Response from the Council to the Framework
CD9/13	Proof and Appendices of Mr Bradley
CD9/14	Proof and Appendices of Ms Moon
CD9/15	Proof and Appendices of Ms Fitzgerald
CD9/16	Opening statement
CD9/17	Closing statement and note on Planning Obligations
<b>CD/10</b>	<b>Appellants' documents</b>
CD10/1	Letter from Jon Moen, Newhall projects (22 June 2004)
CD10/2	Replacement Harlow Local Plan Inspector's Report (extract)
CD10/3	Opening Statement LP to Modifications Inquiry on behalf of Harlow District Council (extract)
CD10/4	Newhall s106 agreement relating to transport and education matters
CD10/5	Notice of Adoption of Harlow Local Plan
CD10/6	Housing completions, Newhall Phase I
CD10/7	Planning permission for Newhall Phase II
CD10/8	Extract from Newhall Transport Assessment (2 August 2007)
CD10/9	Report to Planning Committee, Newhall Phase II (2 March 2010)
CD10/10	R (Cala Homes South) v Secretary of State for Communities and Local Government [2011] EWCA Civ 639
CD10/11	Harlow AMR comparison table
CD10/12	R (Copas & Anor) v Royal Borough of Windsor and Maidenhead [2001] EWCA Civ 180s
CD10/13	Rebuttal evidence of Mr Chadwick
CD10/14	Proof, Appendices and Rebuttal of Mr Hutchins
CD10/15	Proof, Appendices and Rebuttal of Mr Crawford
CD10/16	Proof, Appendices (incl. Barton Wilmore report) of Mr Lander
CD10/17	Opening statement

CD10/18	Closing statement and note on Planning Obligations
<b>CD/11</b>	<b>Inquiry documents</b>
CD11/1	Attendance list
CD11/2	Harlow Local Plan proposals map (2006)
CD11/3	Newhall Phase II Masterplan
CD11/4	Hatchfield Farm, Newmarket decision (22 March 2012)



## **Annex A**

### **Conditions as discussed at the Inquiry – Gilden Way**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the submission of any reserved matters application, Design Codes for all Public Realm areas and Character areas shall be submitted to and approved in writing by the Local Planning Authority. The reserved matters submissions shall thereafter accord with the approved Design Codes for the site.
- 5) Prior to the submission of any reserved matters, a phasing scheme for the delivery of the entire development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved phasing scheme.
- 6) No development shall take place until a programme of archaeological work and a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the programme.
- 7) No development shall take place until a survey of trees, hedgerows and other vegetation within the site and a scheme identifying those trees and hedgerows to be retained and the measures to be taken to protect them during the construction of the development, in accordance with BS5837, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out prior to the commencement of that phase of the development and retained at all times during the course of the development of the phase, as approved under condition 5, within which they are located.
- 8) No development shall take place on each phase of development, as approved under condition 5, until details of existing and proposed site levels and the levels of the proposed roads and buildings in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 9) No development shall take place until a scheme for the foul and surface water drainage for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be in general accordance with the Flood Risk Assessment and shall include a timetable for implementation. The development shall be carried out in accordance with the approved scheme.

- 10) No development shall take place until a biodiversity and ecology strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:
  - a) The measures proposed to maintain the biodiversity of the site during construction
  - b) The measures proposed to maintain the biodiversity of the site following the completion of the development
  - c) Mitigation proposals for all protected species and Schedule 1 birds
  - d) Details for each habitat of any works such as earth contouring, seed mixes or construction design for ponds and hibernacula
  - e) Planting proposals to ensure biodiversity is maintained
  - f) A management plan for all activities relating to habitats and species within the site for the 10 years following completion of the development

Development shall be carried out in accordance with the approved strategy and the management plan shall be implemented as approved.

- 11) The reserved matters submitted pursuant to condition 1 shall be restricted to a maximum of 1,100 dwellings<sup>206</sup>.
- 12) The dwellings shall achieve at least Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that at least Code Level 3 has been achieved.
- 13) Prior to the commencement of each phase of the development, as agreed under condition 5 above, details of the proposed refuse storage and collection facilities for that phase shall be submitted to and approved in writing by the Local Planning Authority. The facilities proposed shall be provided on site prior to the occupation of the associated dwellings and in accordance with the approved details.
- 14) Prior to the commencement of each phase of the development, in accordance with condition 5, details of all the external materials shall be submitted to and approved in writing by the Local Planning Authority. These details shall include walls, roof, windows, doors, soffits, guttering, mortar mix, and a sample panel of a minimum 1 sq.m. shall be erected on the site to demonstrate the use of the wall and roofing materials proposed. The development shall thereafter be carried out in strict accordance with the approved details.
- 15) Prior to the commencement of development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include:
  - a) Details of measures to encourage sustainable travel patterns

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<sup>206</sup> This assumes acceptance of the need to limit the quantum of the development in relation to parking provision – as discussed above.

- b) A scheme for the management and implementation of the Travel Plan
- c) Targets for modal shift
- d) Implementation timescales
- e) A strategy for marketing and proposed incentives
- f) Arrangements for monitoring and review

The Travel Plan shall be implemented as approved.

- 16) No development shall take place on any phase of the development, as agreed under condition 5, until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase of the development. The Statement shall provide for:
  - a) an appropriate construction access
  - b) adequate turning and off loading facilities for delivery/construction vehicles
  - c) an adequate parking area clear of the highway for those employed in developing the site
  - d) wheel cleaning facilities
  - e) construction traffic routes
  - f) protection of public rights of way
  - g) a before and after road condition survey
- 17) No development, on each phase of development as approved under condition 5, shall commence until a scheme for the provision of cycle and car parking in respect of that phase has been submitted to and approved in writing by the Local Planning Authority. The cycle and car parking shall be carried out in accordance with the approved scheme prior to the occupation of the relevant dwelling. The cycle and car parking shall thereafter be permanently kept available for their intended purpose.
- 18) Prior to the first use or occupation of any aspect of the development hereby approved, the following highway works shall be completed and made available for use, in accordance with a detailed engineering scheme to be submitted to and approved in writing by the Local Planning Authority:
  - a) New vehicular, pedestrian, cyclist and bus access from the site onto the B183 Gilden Way/Churchgate Street Roundabout
  - b) New vehicular, pedestrian, cyclist and bus access from the site onto Gilden Way to the east of the B183 Gilden Way/Churchgate Street Roundabout
  - c) New footway/cycleway along Gilden Way between the application site and the B183 Gilden Way/London Road Roundabout to link with the national cycle network to the north of Mulberry Green junction and existing local cycle route at the B183 Gilden

Way/London Road Roundabout. To include a new Toucan Crossing on the eastern arm of the B183 Gilden Way/ London Road Roundabout

- d) New pedestrian connection to The Oxleys
- e) New pedestrian connection to Harlow Mill railway station

The submitted engineering schemes shall include carriageway/footway reconstruction, resurfacing, drainage, street lighting, signing and lining.

- 19) Prior to occupation of any phase of the development details showing the means to prevent the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out in their entirety prior to the access becoming operational and shall be retained at all times.
- 20) Prior to the commencement of each phase of the development, as defined by condition 5, details of the estate roads and footways to accord with the Essex Design Guide (including layout, levels, gradients, surfacing, means of surface water drainage, lighting and bus stop location/specification) shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 21) A 3.5 metre wide strip of land across the entire Gilden Way frontage of the application site for use by the Highway Authority in connection with any future carriageway widening of Gilden Way shall be reserved, and the land shall not be used for any built development.
- 22) A scheme of traffic management to discourage rat running through Old Harlow via Mulberry Green, including an implementation timetable, shall be submitted to and approved in writing by the Local Planning Authority. The approved traffic management scheme shall be carried out in accordance with the implementation timetable.
- 23) No works or development shall take place on each phase of development, as defined by condition 5, until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping and implementation which shall include details of any hard surfacing, means of enclosure and all proposed tree and shrub planting.
- 24) All planting, seeding or turfing comprised in the above scheme of landscaping shall be carried out in the first planting and seeding season following the beneficial occupation of any building, or the substantial completion of the associated phase of development, whichever is sooner; and any trees or plants which, within a period of 5 years from the completion of the development die, are removed, uprooted or destroyed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives its written consent to any variation.
- 25) A landscape management plan, including long term design objective, management responsibilities and maintenance schedules for all landscape areas other than within individual property curtilages shall be submitted to and approved in writing by the Local Planning Authority prior to the first

occupation of that phase of the development. The landscape management plan shall thereafter be carried out as approved.

- 26) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The scheme, investigation and risk assessment must be undertaken by competent persons and a written report of the finding must be produced. No works or development shall take place on each phase of development, as defined by condition 5, until the scheme and written report has been submitted to and approved in writing by the Local Planning Authority. The report of findings must include:
- a) A survey of the extent, scale and nature of contamination
  - b) An assessment of the potential risks to:
    - (i) Human health
    - (ii) Property (existing and proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
    - (iii) Adjoining land
    - (iv) Groundwater and surface waters
    - (v) Ecological systems
    - (vi) Archaeological sites and ancient monuments
  - c) an appraisal of remedial options and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR11.

- 27) If the scheme, investigation and risk assessment under condition 5 indicate the presence of contamination, a scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 28) The remediation scheme approved subject to condition 27 must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out

must be produced, and is subject to the approval in writing of the Local Planning Authority.

- 29) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 26 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 27, which is subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 28.
- 30) A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a 5 year period and the provisions of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR11.
- 31) The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment (January 2011) and the following mitigation measures as detailed within the Flood Risk Assessment:
  - a) Surface water run-off generated by the 100 year critical storm (with allowance for climate change) to be limited so that it will not exceed the run-off from the undeveloped site and will not increase the risk of flooding off-site. Restriction to greenfield run-off rates to be achieved through the use of Sustainable Drainage Systems including source control measures and above ground attenuation ponds.
  - b) Compensatory flood storage to be provided on site on a level for basis up to a 100 year flood event (with allowance for climate change). This is required for any encroachment into the flood plain that is necessary for the construction of the detention basin.
  - c) Demonstration that the detention basin will be adequately designed to withstand erosion from the river and that maintenance of the bund will be provided.
- 32) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.
- 33) Piling or other foundation designs using penetration methods shall not be permitted other than in locations where it has been demonstrated that there is no unacceptable risk to groundwater. Details of any such locations

- shall be submitted to approved in writing by the local planning authority before penetrative piling or foundations takes place in that area.
- 34) Construction work shall not begin until a scheme for protecting the proposed properties fronting Gilden Way from noise from the road has been submitted and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the noise-sensitive development is occupied.
- 35) Prior to the commencement of development, comprehensive details of the proposed sports pitches, including levels and lighting, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 36) Prior to the commencement of development, details of the proposed allotments shall be submitted to and approved in writing by the Local Planning Authority. The allotments shall thereafter be provided in accordance with the approved details.
- 37) Any Reserved Matters submitted pursuant to condition 2, and Design Codes submitted pursuant to condition 4, shall be in strict accordance with the scale parameters set out in Sections 13 and 14 of the Revised Design and Access Statement (December 2011).
- 38) a) The business floorspace of any live/work unit to be delivered pursuant to Reserved Matters approvals shall be finished ready for occupation before the residential floorspace is occupied and the residential use shall not precede commencement of the business use.
- b) The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- c) The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependants.
- 39) The development hereby permitted shall be carried out within the area shown on site boundary plan 2984\_112. The illustrative scheme is shown on the masterplan 3224\_2008\_A and described on the Parameter Plans R1(Land Use), R2 (Landscape), R3 (Access), R4 (Building heights), R5 (Residential density).

## **Annex B**

### **Conditions as discussed at the Inquiry – The Forebury**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 0881/GA/08; 0881/GA/33; 080881/GA/37.
3. The footpath/cycleway hereby approved shall be carried out in conjunction with the wider residential development approved under application reference HW/PL/11/00055, and shall be completed before the occupation of the first dwelling in that wider development.
4. Notwithstanding the details of the fence shown on the plans hereby approved, prior to the commencement of development, a detailed hard and soft landscaping scheme, including any fencing proposed, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a detailed method statement including hedgerow retention, a timetable for the implementation of the landscaping and a 5 year maintenance plan and samples of the proposed surface materials. The development shall thereafter be carried out in accordance with the approved details.
5. Prior to the commencement of development hereby approved, details of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved plans.





## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.