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## Appeal Decision

Inquiry held on 21-24 August 2018

Site visit made on 24 August 2018

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 30<sup>th</sup> October 2018**

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**Appeal Ref: APP/D3505/W/18/3197391**  
**Land off Daking Avenue, Boxford CO10 5AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Landex Ltd (Mr Dan Davies) against the decision of Babergh District Council.
  - The application Ref B/17/00091, received by the Council on 23 January 2017, was refused by notice dated 13 November 2017.
  - The development proposed is up to 24 dwellings (including up to 8 affordable dwellings) with access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application reserves all matters except access for further approval. However, the application was supported by a Proposed Block Plan (drawing number 4862 SK03 Rev E) which shows the layout of the access roads, buildings, open space and landscaping. A revised version of this plan (drawing number 4862 SK03 Rev E-1), indicating the route of an access to Woodland Trust land to the south of the appeal site, was submitted at the Inquiry. The appellant also confirmed at the Inquiry that approval was sought for the point of access only and that other elements shown on the Proposed Block Plan are indicative only. I have considered the revised plan on that basis.
3. At the time that the parties' statements of case were submitted the Council accepted that it could not demonstrate a five year supply of housing land. The Council published its 2018 Annual Monitoring Report (AMR) shortly before the parties were due to exchange proofs of evidence. The AMR found that the Council has a 6.7 year housing land supply. The exchange of evidence was delayed to allow the parties to update their positions on housing land supply and to take into account the revised National Planning Policy Framework (the Framework).
4. My attention has been drawn to a recent appeal decision<sup>1</sup> which considers the same AMR and deals with housing land supply matters based on the revised Framework. However, it is for a different local planning authority area and the

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<sup>1</sup> Appeal decision reference: APP/W3520/W/18/3194926

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site specific circumstances of the case are also different. As such, it is of limited relevance to my decision.

5. At the Inquiry I identified housing land supply as a main issue. However, having subsequently reached a conclusion on the highway safety issue, the housing land supply matter can be dealt with fairly briefly and no longer needs to be a main issue. The reasoning for this approach is set out in the Planning Balance below.

### **Main Issues**

6. The main issues are:

- the effect of the proposal on highway safety;
- whether the proposal accords with development plan policies for the location of new housing.

### **Reasons**

#### *Highway Safety*

7. The proposed dwellings would be accessed from Daking Avenue which, in turn, leads to Swan Street. That road runs north from the centre of the village and, whilst it serves a number of villages to the north of Boxford, the parties agreed that most trips from the new dwellings would head south into Boxford and to the strategic highway network. It is also common ground that the proposal would generate seven or eight additional vehicle movements along this section of Swan Street during the morning and evening peak hours.
8. A completed Unilateral Undertaking has been submitted which would secure the provision of a pedestrian link from the site to Swan Street at a point approximately halfway between its junctions with Daking Avenue and Church Street. This would considerably shorten the walking distance from the site to the shops and local services in Boxford compared with the route via Daking Avenue. However, Swan Street would continue to be the shortest route for residents walking to the centre of Boxford from the established part of Daking Avenue, Homefield and Sherbourne Street.
9. Swan Street runs through the historic core of the village and falls within the Boxford Conservation Area. Few of the properties it serves have off-street parking. On street parking therefore takes place, mainly along the western side of the road, in blocks separated by double yellow lines. There is also parking associated with the local shops and facilities at the southern end of the road at its junction with Church Street and Broad Street. The carriageway varies in width between some 6.2m at its southern end to 4.57m<sup>2</sup> further north. The width of the footpath on the west side of the road also varies considerably, in places being 0.3m – 0.5m wide.
10. The appellant's Transport Statement<sup>3</sup> includes an assessment of the capacity of Swan Street using the guidance in the Design Manual for Roads and Bridges (TA79/99). However, that is based on the road having a uniform width of 6.1m and does not take into account factors such as the narrow pavements and pedestrians walking in the road. Given the irregular configuration of Swan

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<sup>2</sup> Measurement taken on the site and agreed by both main parties

<sup>3</sup> GH Bullard and Associated Rev C – May 2017

Street and its on street parking arrangements, there is no straightforward quantitative means of establishing the safe capacity of the road by reference to policy or guidance. It follows that the assessment of the impact of the additional movements generated by the appeal proposal is, to a large degree, a matter of judgement.

11. A 2015 survey found that 'parking stress' in Swan Street ranged from 61% (of available spaces in use) to 38%. I saw on the site visit that the spaces were well used, particularly at the southern end of the road, although spaces were in use up to and beyond the Daking Avenue junction. Therefore, whilst there is spare parking capacity and gaps between blocks of parking, the parking which does take place constrains vehicle movements throughout the relevant length of the road.
12. Reflecting its role in the local highway network, Swan Street is used by a range of vehicle types. The Council's 2018 Automated Traffic Count found heavy goods vehicles (HGV) accounted for 1-5% of north and south bound flows. For light goods vehicles (LGV) the range was 4-7%. Anecdotal evidence from local residents suggest that this includes agricultural vehicles which, given the rural location, seems reasonable. Total 12 hour flows of 979 to 1039 northbound and 961 to 1043 southbound were recorded. These can be compared with surveys undertaken by Suffolk County Council in 2004, 2012 and 2017. Whilst the 2018 figures are lower than those of the 2004 survey, they are broadly comparable with the 2017 survey and significantly greater than the 2012 survey. This suggests that the traffic volumes dipped around 2012 but have increased more recently. Moreover, the 2018 flows during the morning and afternoon peaks were greater even than the 2004 figures.
13. Due to the width of the road, traffic passes the blocks of parking in single file for the most part. Vehicles travelling north are required to pull in between parked cars to allow those travelling south to pass. The Council's evidence includes a traffic survey which records the number of vehicle and pedestrian incidents at five defined 'Areas' along Swan Street. It distinguishes between 'conflicts', where the road is blocked by oncoming vehicles and 'locked up conflicts', where the road is blocked and vehicles are required to reverse or mount the kerb in order to allow an oncoming vehicle to pass.
14. Unsurprisingly, such incidents are more common during weekday morning, afternoon (school collection) and evening hours and at the busiest weekend hours. Area 5, at the southern end of the road, experienced most incidents with up to 45 'conflicts' and 18 'locked up conflicts' during these peak hours. In this area surveyors reported vehicles mounting the kerb and reversing into the Church Street junction in order to avoid oncoming vehicles. The survey recorded up to 35 'conflicts' and 15 'locked up conflicts' in Area 2, which is towards the northern end of the road. Drivers reaching this section of the road may have already needed to pull in between successive blocks of parking further south along the road. This is also the area where the footpath is narrowest and pedestrians cannot avoid walking in the road. As such, this section of the road effectively operates as a shared space. However, whereas Manual for Streets 2 advises that speeds in shared spaces should not exceed 20mph, the 85<sup>th</sup> percentile traffic speed in this area is 27mph.
15. In terms of highway safety risk, it is also significant that the vehicles involved in these manoeuvres include light and heavy goods and agricultural vehicles.

Taken together with its narrowness elsewhere along Swan Street, this indicates that the footpath falls considerably short of the objectives for safe and attractive pedestrian routes set out in Section 6.3 of Manual for Streets, even allowing for flexibility due to the historic environment.

16. The survey records fewer or no incidents at other Areas and at other times of the day. Nevertheless, I consider that the number of incidents recorded over the week as a whole shows that the road experiences a persistent pattern of significant problems.
17. The parking at the junction of Swan Street and Church Street affects the forward visibility of drivers turning left into Swan Street. Whilst parking at this location does not comply with the Highway Code, it appears to occur consistently and there is nothing to suggest that enforcement action has been, or will be, taken. There was some dispute at the Inquiry over the appropriate vehicle speed to use to establish the forward visibility distance. However, even if actual vehicle speeds are somewhat lower than the 24-25mph adopted by the Council, the parked cars prevent drivers approaching Swan Street from Church Street seeing vehicles travelling south along that road until after they have committed to making the turn. Since the road is not wide enough for two vehicles to pass safely, drivers coming from Church Street are required to stop on the junction and, on occasions, reverse in order to allow the Swan Street vehicles to pass.
18. To my mind these findings show that Swan Street is not dealing with the demands placed on it by current traffic conditions. The combination of driver frustration, relatively high vehicle speeds, the need to make awkward manoeuvres and instances of a mix of vehicle types sharing or intruding into pedestrians spaces poses a substantial risk to highway safety. There is no record of personal injury accidents in this part of Swan Street. However, there is a substantial body of anecdotal evidence from local residents and the Parish Council of near misses involving vehicles and pedestrians, as well as damage to vehicles and buildings. Indeed, I saw on the site visit several examples of damage to structures which, realistically, could only have been caused by contact from moving vehicles. This illustrates the difficulties in manoeuvring through the area. That the structures are within the Conservation Area heightens this concern.
19. The appellant has expressed concern regarding the basis on which the Council's highways witness accepted her appointment. It is also argued that there are shortcomings in the methodology used in the Council's traffic survey and that the findings have not been adequately corroborated. I recognise that the definitions of 'conflict' and 'locked up conflict' are somewhat vague. Nevertheless, the nature of the incidents they describe fit the driver behaviour I observed in the area. There is no substantive evidence to indicate that the surveyors were deficient in their recordings. I see no need to record the reason why the number of pedestrians waiting to walk in the road due to traffic should be recorded in the survey. The point is that they were present at a time when vehicles were manoeuvring between parked cars. The appellant has not produced comparable alternative evidence to counter the findings of the survey. Moreover, the findings are generally consistent with the extensive body of concern expressed by local residents.

20. The appellant has also questioned the fluctuations in peak hour traffic flows during the course of the week of the Council's survey. Compared with a very busy urban road, where traffic may have numerous origins, Swan Street serves a relatively small settlement and the rural communities to the north. Against this background individual events may create a surge in vehicle movements which would show up in the survey as a fluctuation in traffic levels. However, as Councillor Hurren pointed out, such events are a regular part of life in the area and the resulting fluctuations simply reflect the character of local traffic conditions. Consequently, I consider the Council's survey findings to be sound. Suffolk County Council, as the highway authority, did not object to the application. However, it did not have the benefit of the evidence presented to the Inquiry and the District Council was entitled to reach its own conclusions on the highway effects of the proposal.
21. The appeal proposal would generate few, if any, HGV and LGV movements and the number of additional car movements would be relatively low. However, in the context of a situation where the affected highway is currently unable to cope, and the available evidence indicates that traffic levels along Swan Street are rising, I consider that the additional vehicle movements would place an unacceptable burden on the road. They would increase the incidence of conflicts between vehicles travelling in opposite directions along Swan Street and, in turn, the likelihood of conflict between pedestrians and vehicles.
22. Pedestrians walking from the appeal site to the facilities in Boxford using the new link would avoid the narrowest section of footpath, which is to the north of the link. Nevertheless, there are obstructions along the footpath to the south of the link, including a telephone pole close to where the link joins Swan Street, steps protruding from the front of buildings and, on occasions, wheelie bins on the footpath. I have also noted that vehicles have been observed to mount the kerb in the Council's survey Area 5 which is to the south of the new link. Moreover, people walking from the existing residential areas to the north of the new link would be likely to continue to use this stretch of Swan Street where the footpath is so narrow that it is necessary to walk in the carriageway. I am also mindful that people using this route would include vulnerable groups such as the elderly, those with reduced mobility, children and push chair users. Having regard to these considerations, I find that the proposal would lead to a significant reduction in highway safety for vehicles and pedestrians using Swan Street.
23. The Unilateral Undertaking would secure a financial contribution of £10,000 to be used for 'future potential traffic management requirements in Swan Street'. However, limited firm evidence has been provided on what measures the contribution would secure. It has been suggested that it could be used to reduce the amount of on-street parking in the road. However, that would need to be the subject of consultation, the results of which would be beyond the appellant's control. Nor is there any indication of if, or where, the displaced parking would be relocated and nor has any assessment been made of the effectiveness or cost of such a scheme. In the absence of this information, I give little weight to the financial contribution as mitigation of the highways effects of the proposal.
24. Consequently, I find that the proposal would have a significantly harmful effect on highway safety. It would, therefore, conflict with paragraph 109 of the Framework, which states that development should be refused if it would have

an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

25. The reasons for refusal cite conflict with Policy HS21 of the Babergh Local Plan 2006 (LP). This policy allocates land at Goodlands Farm for 20 houses and sets out requirements for the development, including the provision of open space. The appeal site falls within the land designated as open space. A development of 21 houses within the allocated area has been completed and the requirements of the policy have been essentially satisfied, albeit that the open space has been provided in a different location than that envisaged. Nevertheless, the appellant considers that the policy is spent since its provisions have been implemented by the earlier development.
26. The supporting text to the policy confirms that the upper limit of 20 dwellings was imposed due to Suffolk County Council's concerns over the capacity of the road network to accommodate traffic from a greater number of dwellings. It seems that the basis for the limit of 20 dwellings was a judgement on the part of the highway officer, rather than a more formal analysis. However, I have already found that the nature of Swan Street does not lend itself to strict quantitative analysis. The limitation also survived the Local Plan examination process and the policy was saved by the Secretary of State. As such, it is part of the development plan for the area. The 24 dwellings now proposed would more than double the limitation in the allocation and I have found that it would lead to the kind of highways problems which the limit sought to avoid. Therefore, I consider that the policy remains relevant and that the appeal proposal conflicts with it.

#### *Development Plan Policies for the Location of New Housing*

27. It is common ground that the appeal site falls within the countryside for the purposes of Policy CS2 of the Babergh Core Strategy 2014 (CS). This policy states that development in the countryside will only be permitted in exceptional circumstances subject to a proven justifiable need. Case law<sup>4</sup> has established that, to be acceptable, development in the countryside must also fulfil the requirements of Policy CS11. This policy, in turn, requires proposals to score positively against Policy CS15 which sets out the requirements for sustainable development. Two of the six criteria in Policy CS11 are in dispute. In terms of criterion (iv), which concerns the cumulative effect of development with regard to social, physical and environmental impacts, I have already found that the proposal would lead to unacceptable highways impacts. It would not, therefore, meet this criterion.
28. The other criterion in dispute is (vi), which requires proposals to address locally identified need, including the need for housing and affordable housing. The same case law has established that local housing need refers to need within the settlement and its functional cluster and that it is necessary to demonstrate such need in order to show that the exceptional circumstances under Policy CS2 exist. It is common ground that a need for the scale of market and affordable houses proposed must be demonstrated. The Council's Rural Development and Core Strategy Policy CS11 Supplementary Planning Document requires proposals to be accompanied by a statement analysing local housing needs and how they have been taken into account.

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<sup>4</sup> R(East Bergholt Parish Council) v Babergh District Council [2016]

29. Boxford is defined in CS Policy CS2 as a Core Village which will be a focus for development within its functional cluster. The functional cluster in this case includes some 14 smaller settlements. It was agreed that there are no housing sites available closer to the settlement core than the appeal site. However, there has been a recent residential development at Sand Hill and, I understand that other potential housing sites, closer to the strategic highway network than the appeal site, are under consideration. Taken together with the recent development at Goodlands Farm therefore, there is evidence that Boxford is performing the role required of it by Policy CS2.
30. The Council did not dispute that there is a local need for the proposed affordable housing and the provision of up to 8 affordable units accords with CS Policy CS19. The appellant has sought to demonstrate a local need for market housing, primarily by reference to Appendix 1 of its Planning Statement. There appears to be a lack of published data to support an assessment of the need for market housing at the level of a functional cluster. The appellant has not undertaken a local needs survey and the exercise at Appendix 1 seeks to re-interpret District-wide information at a local scale. The findings focus more on the mix of dwelling types, rather than the number of dwellings needed.
31. Whilst I am mindful that information requirements should be proportionate to the scale of the proposal, the onus in this case is on the appellant to demonstrate that exceptional circumstances exist. Considered against this requirement, the outcome of the appellant's exercise is indeterminate at best. The appellant argues that the affordable housing would not come forward without the market housing. However, no viability assessment has been provided to demonstrate the relationship. Overall therefore, I consider that the proposal does not comply with criterion (vi). I deal with the sustainability of the proposal and whether it scores positively against Policy CS15 in the Planning Balance below.
32. In terms of distance, the appeal site is reasonably well located with regard to access to local facilities, services and public transport. However, its accessibility is tempered by my concerns regarding the safety and convenience of the route. It is common ground that the proposal complies with the other criteria of Policy CS11. Nevertheless, the exceptional circumstances necessary to justify development in the countryside have not been demonstrated and the proposal would not comply with CS Policies CS2 and CS11, insofar as they deal with the location of new housing.
33. Although the appellant's evidence contends that Policies CS2 and CS11 are not consistent with the Framework, these matters are not pursued in its closing submissions. Policy CS2 defines a hierarchy of development locations and relates the location of development to local housing need, employment and service provision, existing social and physical infrastructure and environmental constraints. These considerations are broadly reflected in the economic, social and environmental objectives set out in Framework paragraph 8. The requirement in Policy CS11 for local housing need to be demonstrated is consistent with Framework paragraphs 78, 103 and 170 insofar as they require rural housing to enhance or maintain the vitality of rural communities whilst managing growth to support sustainable transport objectives and recognising the intrinsic character and beauty of the countryside.

34. I deal with housing land supply and the weight to be attached to these policies in the light of Framework paragraph 11 below.

*Other Matters*

35. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

36. The affordable housing obligation in the Unilateral Undertaking is supported by development plan policy and the proposed provision is fairly related in scale and kind to the appeal proposal. As such, it meets the tests set out in the Community Infrastructure Levy Regulations 2010 and I have taken it into account in the Planning Balance. Since the appeal is to be dismissed for other substantive reasons, it is not necessary to consider in detail whether the other obligations in the Unilateral Undertaking meet the statutory tests.

**Planning Balance and Conclusion**

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

38. The proposal would offer some economic benefits. Construction-related benefits would be temporary and, in any event, they would apply to new housing in most locations. Therefore, I give them modest weight. The introduction of new residents would also provide a limited degree of support for local businesses and services. The proposal would provide benefits in the form of some 0.5ha of community open space and the opportunity for bio-diversity enhancements. Footpath links to the wider countryside were secured in the Planning Agreement for the earlier Goodlands Farm scheme and are not, therefore, an additional benefit of this proposal.

39. I have already found that the proposal would meet a need for affordable housing. Having regard to the number of units proposed, I attach moderate weight to this benefit. Whilst I have found that the local need for market housing has not been adequately demonstrated, national planning policies seek to boost the supply of housing. The proposed market housing would, therefore, be a benefit, although the provision of 16 units would be modest in the context of the District as a whole.

40. Housing land supply was also the subject of extensive debate at the Inquiry. The parties put forward a range of figures based on differing assumptions for the housing requirement and the supply of sites. The appellant considers that there is a supply of between 3.4 years and 4.5 years, depending on whether the housing requirement is taken from the latest Strategic Housing Market Assessment or the Core Strategy. The Council argues it can demonstrate 6.7 year supply and suggest that, even if some of the assumptions put forward by the appellant were accepted, that would not compromise their ability to demonstrate at least a 5 year supply.

41. The Core Strategy is less than five years old. As such, Framework paragraph 73 is clear that it should be used to establish the housing requirement. The up to date Planning Practice Guidance confirms this approach (Paragraph ID: 3-030-20180913<sup>5</sup>) as the 'starting point' for calculating the 5 year land supply

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<sup>5</sup> This version is not materially different from the draft version referred to at the Inquiry

figure. In my view, the term 'starting point' refers to the need to go on to consider the supply and delivery of sites, as set out in the remainder of the paragraph. It does not offer an invitation to go behind the requirement to use the Core Strategy for the first five years of the Plan where, for example, more up to date information becomes available. The Framework does not support that approach. On this basis, even if I were to accept the appellant's position on the availability and delivery of sites, the five year land supply would be 4.5 years. That amounts to a relatively modest shortfall.

42. Both parties agree that, irrespective of the housing land supply position, if I found that the proposal has an unacceptable highways impact, the appeal should be dismissed. I have found that the proposal would be unacceptable in this regard and that it conflicts with Framework paragraph 109, LP Policy HS21 and criterion (iv) of CS Policy CS2. Furthermore, I have found that the proposal does not accord with CS Policies CS2 and CS11 for the location of new housing. Even if I were to conclude that a 5 year supply of housing land has not been demonstrated and that the weight to be attached to the most important policies should be reduced accordingly, in line with Framework paragraph 11, the adverse impacts of granting permission would still significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal does not amount to sustainable development and, therefore, does not score positively against the criteria of CS Policy CS15 as a whole.

### **Conclusion**

43. For the reasons set out above, the appeal should be dismissed.

*Simon Warder*

INSPECTOR

## **Appearances**

### FOR THE COUNCIL

David Lintott of Counsel, instructed by the Council's Solicitor

He called

Faye Murray BEng(Hons) MIHT Principal Transport Engineer, MLM Consulting Engineers

Alex Roberts BSc(Hons) AssocMRTPI Director, DLP (Strategic Planning & Research Unit)

Andrew Ryland MSc MRTPI Associate Director, DLP

### FOR THE APPELLANT

Paul Shadarevian of Queen's Counsel, instructed by Artisan Planning & Property Services

He called

Carol Grimsey CEng CIHT Associate, GH Bullard and Associates

Leslie Short BA(Hons) MRTPI MRICS Director, Artisan Planning & Property Services

### INTERESTED PERSONS

Bryn Hurren Ward Councillor, Babergh District Council

Mathew Wooderson Vice Chair, Boxford Parish Council

David Lamming Local resident

Gillian West Local resident

John Cox Local resident

## **Inquiry Documents**

### *Documents submitted at the Inquiry*

1. Swan Street ATC Report for week beginning 20 September 2004
2. Amended plan from Appendix 9 of Faye Murray's proof
3. Additional photographs submitted by Carol Grimsey
4. Completed Unilateral Undertaking
5. Email correspondence between the appellant and the Woodland Trust

6. Opening submissions for the Council
  7. Extract from Orwell Housing website
  8. Extract from APC website
  9. Email correspondence between Gregg Dodds and Leslie Short
  10. Email correspondence between Mat Blacoe and Leslie Short
  11. Decision notice for development at Factory Lane, Brantham
  12. Briefing Note for development at Factory Lane, Brantham
  13. Email correspondence between Emma Coone and Leslie Short
  14. Extract from Heritage and Settlement Sensitivity Assessment for Boxford
  15. Closing submissions for the Council
  16. Appeal decision for Former Readshill Quarry development
  17. Closing submissions for the appellant
  18. Reserved Matters application form for Land off Norman Way, Lavenham
  19. Revised Proposed Block Plan (drawing number 4862 SK03 Rev E-1)
- Document submitted after the Inquiry closed*
20. Table showing the parties' positions on housing land supply
  21. Appeal decision reference APP/W3520/W/18/3194926