

Spatial Planning Services
Civic Centre, Duke Street, Chelmsford,
Essex CM1 1JE

Date: 25 July 2024

Telephone: 01245 606265

E-mail: jenny.robinson@chelmsford.gov.uk

Your ref: 01/AF/DNP

Dear Mr Freeman,

Independent Examination of the Danbury Neighbourhood Development Plan

Thank you for your Initial Letter relating to the Danbury Neighbourhood Plan examination.

Danbury Parish Council has asked me to assist with responding to the letter. The following has been agreed by both councils. I shall deal with the points in the order they appear in the letter.

Allocation of around 100 homes

The allocation in the adopted Local Plan for around 100 new homes is Strategic Growth Site Policy 13 – Danbury, to contribute towards meeting the overall housing need in the City Council's administrative area.

The matter of determining site capacities for Local Plan allocations by reference to an 'around' figure was addressed during the Examination to the Chelmsford Draft Local Plan. The report on the Examination is published on Chelmsford City Council's website, at [EX054 Report on the Examination of the Chelmsford Draft Local Plan](#). The Examiner states at Paragraph 87:

'In terms of determining the site capacities for housing provision, the Council has generally used higher development densities in urban Chelmsford and lower densities on greenfield sites. The former makes optimum use of previously developed land within the City whilst the latter reflects the characteristics of the locality. The identification of 'around' housing figures for each relevant site allocation allows for an appropriate degree of flexibility in provision. Furthermore, it does not prevent higher density development from being brought forward, if this conforms with other policies in the Plan as a whole. The approach to site capacity within the Plan is therefore justified.'

Site selection

The Chelmsford Adopted Local Plan (published at <https://www.chelmsford.gov.uk/media/fvfjfkf0i/chelmsford-adopted-local-plan-may-2020-text-only.pdf>) notes the constraints relating to the allocation of Strategic Growth Site Policy 13 – Danbury:

“... future development in Danbury is restricted by significant landscape, ecology and highway constraints...” (para 7.354)

This acknowledges that the task of finding sites to allocate around 100 homes may be difficult for a number of reasons. Chelmsford City Council is comfortable with a total allocation of 93 new homes, in the context of contributing to meeting the overall housing requirement.

Heritage considerations

Within the reasoned justification to the policy, the need to consider heritage assets is particularly highlighted:

“There are a number of heritage assets in and around Danbury which may need to be considered by future development proposals. These include Danbury Conservation Area, two Registered Parks and Gardens, Danbury Hill Fort Scheduled Monument and a variety of listed buildings.” (para 7.357)

A Heritage Assessment Technical Note was prepared to support the Chelmsford Local Plan’s development, and published as part of the evidence base (Reference EB 108A – March 2017). This assessment includes reference to the land now developed as the Danbury Medical Centre (Site F), immediately to the east of Bay Meadow. An addendum (April 2019) supplements the Heritage Assessment, to assess sites submitted through the Danbury Neighbourhood Plan Call for Sites. This includes site D12 – Maldon Road/Gay Bowers Lane. This is referenced 23a in the DNP evidence base list (published at www.danburyneighbourhoodplan.com/uploads/1/0/3/9/103909068/23a_ccc_heritage_technical_notes_extract_danbury_-_2017_2019.pdf).

The assessment states:

“This was subject to a recent planning appeal for a care home, dismissed on the basis of the harm to the Conservation Area and the setting of the adjacent listed building. Previously, development of the eastern part of the site for the Danbury Medical Centre was justified on the basis of its design and the public benefits it delivered through provision of an essential healthcare facility. This western part of ‘Bay Meadow’¹ has a rural pastoral character, which provides a buffer between the historic core of the village and its modern expansion to the east. Its open character is an important feature within the Conservation Area. The harm through developing the site could not be adequately mitigated.” (page 14/para 2.5)

¹ Corrected from the original ‘Dawsons Field’ which was a typographic error

This Heritage Assessment played a major role in the decision not to allocate D12 for development. A key factor underpinning the assessment is the planning history and particularly a public inquiry in 2017 into construction of a care home on the site (decision in January 2018, Reference APP/W1525/W/17/3178243, attached to this letter).² The applicant in that case made a similar argument that the central open part of the site made a minimal contribution to the Conservation Area. This was not accepted by the inspector:

“The appeal site lies in the DCA (Danbury Conservation Area) rather than forming part of its setting, and thus the harm would be to the designated heritage asset itself, and I have found that the open spaces form an important part of the significance of the DCA.” (para 37)

“I therefore conclude on this issue that there would be harm to the DCA and this should be given considerable importance and weight and the proposal would be contrary to Policy DC17 of the CSDCP (Chelmsford City Council Core Strategy and Development Control Policies Development Plan Document 2008). The proposal would, however, comply with Policy CP5 of the FR (Chelmsford City Council Core Strategy and Development Control Policies Focused Review 2013). Within the terms of the Framework there would be less than substantial harm to the significance of the DCA as a designated heritage asset. Because of the loss of the appreciation of the open space I consider that the harm would lie at the upper end of less than substantial harm. This should be weighed against the public benefits of the proposal in line with paragraph 134 of the Framework.” (para 41)

Historic England also objected to the principle of developing the site, included within the appeal decision notice:

“... account should be taken of the views of Historic England, who on consultation at the application stage concluded that the proposal would represent less than substantial harm, albeit Historic England considered “that the site should not in principle be developed”. (para 34)

Further advice was given to the Steering Group by the City Council’s Principal Heritage Officer via e-mail on 31 March 2020, which is referenced 23b in the DNP evidence base list (published at www.danburyneighbourhoodplan.com/uploads/1/0/3/9/103909068/23b_heritage_report_31-3-2020.pdf).

“D12 – Bay Meadow

This site is within the Danbury Conservation Area and is adjacent to a group of listed buildings. The site forms part of a significant open space. Development here was considered at the appeal for a care home. Any development here would be harmful to the designated heritage assets, which is a matter of great weight. Even if the site

² Other documents relating to the original Planning Application and subsequent appeal can be viewed at <https://planning.chelmsford.gov.uk/planning/planning-documents?SDescription=16/01770/FUL>

were used for single storey almshouses this would not adequately mitigate the adverse heritage impacts.”

Whilst it can be acknowledged that delivering housing in a central village location would carry some weight as a public benefit, in the context of the site selection exercise and other sites within and adjacent to the village being available and deliverable with no or much less heritage harm, it is considered that the great weight and importance of protecting the significance of the Danbury Conservation Area is an important consideration, which ultimately led to the exclusion of the site.

Steps taken in response to Site D12 representations including the Built Heritage Assessment provided at the Regulation 14 stage (and at Regulation 16 reference DNP-131)

After the close of the Regulation 14 consultation, the Steering Group assessed all the responses received. This is set out in the Consultation Statement (published at www.danburyneighbourhoodplan.com/uploads/1/0/3/9/103909068/danburynp_consultation_statement_submission-final.pdf).

The Built Heritage Assessment submitted on behalf of Medical Services Danbury (reference DNP-131) was reviewed by the Steering Group and Chelmsford City Council as part of this process, however this constituted an informal discussion. It was considered that the Heritage Assessment Technical Note provided sufficient evidence, backed by the site's planning history including Historic England's objection, not to reconsider the decision to exclude the site; and further that the Built Heritage Assessment did not address these specific and significant concerns.

Chelmsford City Council and Danbury Parish Council, therefore, believe that considering all the candidate sites afresh would not overcome the reasons for not selecting this site and that the evidence to support this position is robust.

If either the City Council or Parish Council can provide further information, please let me know.

Yours sincerely,

Jenny Robinson

Jenny Robinson
Senior Planning Officer



Appeal Decision

Inquiry held on 12, 13, 14 & 15 December 2017

Site visit made on 15 December 2017

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 15 January 2018

Appeal Ref: APP/W1525/W/17/3178243

Land at Maldon Road, Danbury, Chelmsford CM3 4QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Oakland Primecare against the decision of Chelmsford City Council.
 - The application Ref 16/01770/FUL, dated 30 September 2016, was refused by notice dated 22 December 2016.
 - The development proposed is construction of a 72 bed care home, together with 22 car parking spaces and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council refused the application for six reasons. In lodging the appeal the appellant submitted reports relating to air and water quality and protected species on the site. The Council confirmed these reports overcame the reason for refusal relating to air and water quality and part of another dealing with ecological matters, although a local resident at the Inquiry continued to object on air quality grounds.
3. Following discussions between the main parties, the appellant submitted amended plans showing a turning head at the end of the parking area. This plan was subject to consultation and notification of interested parties who were able to make representations on the amendments. I am satisfied that there would be no prejudice or injustice if they were used in substitution for the equivalent plans in the original submission, and I have determined the appeal on this basis. The Council indicated that these plans overcame two further reasons for refusal relating to highway matters, although, again, third parties continued to object on these grounds.
4. At the opening of the Inquiry I advised those present that I had seen the site four weeks prior to that date from public land when I was in the area on other Planning Inspectorate business, and thus saw the site when some leaves remained on the deciduous trees around the perimeter of the appeal site. I also undertook an accompanied site visit after the evidence had been given but before closing submissions on behalf of the main parties.

Main Issues

5. In light of the above, the remaining main issues are:
- the relationship of the proposal to the development plan for the area;
 - the effect on the Danbury Conservation Area (the DCA) and on the setting of Hill House, a Grade II listed building;
 - the effect on matters of ecological interest;
 - whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposals should be determined otherwise than in accordance with the terms of the development plan.

Reasons

Planning policy

6. The development plan for the area includes the Chelmsford City Council Core Strategy and Development Control Policies Development Plan Document 2008 (the CSDCP), the Chelmsford City Site Allocations Development Plan Document 2012, and the Chelmsford City Council Core Strategy and Development Control Policies Focused Review 2013 (the FR).
7. Policy CP2 of the CSDCP sets out the borough wide spatial strategy. This includes that new development will follow a sequential approach to the sustainable location of development. This indicates that the main focus for development will be in the urban areas of Chelmsford and South Woodham Ferrers supported by appropriate development within the Key Defined Settlements, with remaining development taking place north of Chelmsford's Urban Area. Danbury is a Key Defined Settlement, although the appeal site lies outside, but immediately adjacent to, the defined settlement. In policy terms the appeal site therefore lies in the rural area beyond the Metropolitan Green Belt.
8. It was explained that the FR dealt with those development plan policies which could be readily amended to be consistent with the National Planning Policy Framework (the Framework), without the need to prepare further evidence. Policies CP5 and DC2 were considered as part of the FR. The amendments were considered at an Examination in Public and found sound.
9. Policy CP5 of the FR indicates that within the rural areas beyond the Metropolitan Green Belt the Council will protect the intrinsic character and beauty of the countryside whilst supporting rural communities and economies. The Council argued that, in the context of this appeal, consideration of the proposal against this policy related to the effect on the DCA and I will therefore consider this below.
10. Policy DC2 deals with managing development in the countryside beyond the Green Belt. It is stated that the countryside will be protected for its intrinsic character and beauty and that the proposal falls within a list of development categories.
11. The appellant sought to argue that the proposal fell within the list of categories of development permitted under Policy DC2. New buildings that are permitted

includes a building that "supports the sustainable growth and expansion of an existing, authorised and viable rural business or enterprise where it can be demonstrated that there is a justified need and there is no adverse impact upon the character, appearance and visual amenities of the countryside". The appellant's argument was that this element of the list was in two parts and that the "or" between "business" and "enterprise" was disjunctive. Under this interpretation, provided it could be demonstrated that there is a justified need, new buildings for any enterprise would be permitted if there is no adverse impact upon the character, appearance and visual amenities of the countryside.

12. In the reasoned justification for the policy¹ it is stated "This policy applies to the countryside beyond the Metropolitan Green Belt and seeks to protect the intrinsic character and beauty of the countryside whilst allowing rural communities and economies to thrive and prosper. This includes the sustainable growth and expansion of rural businesses and enterprises, including local shops and community facilities and services which support the rural community and serve their day-to-day needs."
13. Being part of the FR this policy would have been drawn up having regard to national policies and advice contained in the Framework. Paragraph 28 of the Framework, under the heading "Supporting a prosperous rural economy" at the first bullet point, refers to "support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through the conversion of existing buildings and well designed new buildings". I am therefore of the view that in the context of Policy DC2 the "or" is in fact conjunctive and that for this element in the list, the policy only supports a new building for an existing rural business or enterprise. This is not the case, and consequently the proposal is contrary to Policy DC2.
14. Policy DC13 of the CSDCP indicates that the Council will seek to restore, maintain and enhance biodiversity and geological conservation interests. It states that in determining planning applications appropriate weight will be attached to designated sites of international, national and local importance, and to biodiversity and geological interests within the wider environment. Within those sites, and subject to securing the wider objectives of sustainable development, planning permission will not be granted for development that would result in significant harm to biodiversity and geological conservation interests unless there is no appropriate alternative site available, all statutory and regulatory requirements have been satisfied, and appropriate mitigation and compensation measures are provided. I will discuss whether there is compliance with this policy below.
15. Under Policy DC17 of the CSDCP development proposals in conservation areas must preserve or enhance the character or appearance of the Conservation Area. The policy states that planning permission will be refused where various attributes of the building would harm the character and appearance of the conservation area; it would prejudice the appearance and surroundings of a conservation area or spoil any significant spaces or inward or outward views; or the use would be incompatible with the function or character of a conservation area; or finally relating to demolition, which is not material to this case.
16. The appellant argued, in line with paragraph 215 of the Framework, that this policy should be considered out-of-date as it does not involve any balancing of

¹ Paragraph 3.16

harm with the public benefits of the development in line with paragraphs 133 and 134 of the Framework. However, the policy is in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Listed Buildings Act) which requires that special attention has to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. In addition, as paragraph 132 of the Framework makes clear, great weight should be given to the conservation of a designated heritage asset, such as a conservation area or listed building. I therefore consider the policy is not out-of-date and, provided an appropriate balancing exercise is undertaken, any issue of consistency can be resolved satisfactorily. I will consider the effect of the proposals on the designated heritage assets below.

17. On the proposals map the appeal site is annotated as "Open Space". Policy DC39 of the CSDCP is entitled "Protecting and Enhancing Open Spaces and Indoor Sports Facilities". The policy is drafted in two sections dealing with "open spaces" and "indoor sports facilities". In the first section it is indicated that the change of use, or development for other purposes, of all existing public open space, private outdoor sports grounds, and school playing fields will be refused unless alternative and improved provision is made and the proposal would not result in the loss of an area important for its amenity or contribution to the character of the area in question.
18. The appeal site is not open to the public, being fenced off, and is in private ownership. It therefore does not represent public open space, and does not fall within the other categories of open space covered by this policy. Where the policies of a development plan and the map are not in accordance with each other preference should be given to the written text. I am therefore satisfied that Policy DC39 of the CSDCP is not engaged as the proposal does not involve the loss of public open space.
19. The Council adopted in March 2011 the Danbury Planning Framework (the DPF) as a Supplementary Planning Document. It is stated that it is a guidance document for designing new development, for maintaining and caring for the village and promoting enhancements. This was adopted following public consultation and is generally in accordance with paragraph 17 of the Framework, which indicates that planning should always seek to secure high quality design and, in the context of the appeal, conserve heritage assets in a manner appropriate to their significance. I therefore give the DPA significant weight.
20. Under DPF32² the remaining undeveloped part of Bay Green Meadow³, that is the appeal site, should be retained as a meadow and free of development in the future to protect the valuable open landscape character. In these terms the proposal is contrary to the DPF.
21. Since adoption of the FR the Council has been preparing the Chelmsford Local Plan (the CLP). However, this has not reached a stage whereby it could be given more than very limited weight and it was agreed that the proposal did not need to be assessed further against the policies of the CLP. This was

² The DPF has a number of highlighted boxes setting out criteria against which proposals will be judged. They are not annotated as "policies", and I will therefore refer to them as "DPF" with the relevant number rather than giving them any title.

³ The appeal site was also referred to as "Hitchcocks Meadow", but I was advised by local residents that this nomenclature related to a separate field to the south of Mill Lane.

because, for the purposes of this appeal, the relevant policies are similar to those in the adopted development plan.

22. Danbury Parish Council has indicated that it is intending to prepare a Neighbourhood Plan. At this stage no document has been published and therefore it cannot be material to this appeal. Certainly the Neighbourhood Plan has not reached the end of the local planning authority publicity period whereby, within the terms set out in the national Planning Practice Guidance (the PPG), it would be justifiable to refuse permission based on prematurity⁴.
23. In conclusion on this issue, the proposal is contrary to Policy CP2 of the CSDCP, Policy DC2 of the FR and DPF32 of the DPF. Policy CD39 of the CSDCP is not engaged. Whether there is compliance with Policies DC13 and DC17 of the CSDCP and Policy CP5 of the FR will be explored below.

Historic environment

24. The appeal site lies on the south side of Maldon Road (A414) in Danbury. It consists of an essentially triangular open area of land surrounded by vegetation, although there is a long 'spit' of land adjacent to Mill Lane to the east of the main body of the site. The vegetation consists of various trees, predominantly deciduous, with an understorey, mostly of brambles and other invasive species. The trees are protected either by a Tree Preservation Order⁵ or because they are in the DCA.
25. The site slopes up gently to the west. To the west of the site there is the junction of Maldon Road with Gay Bowers Lane, with Mill Lane providing the southern boundary of the appeal site. The junction of Maldon Road and Gay Bowers Lane provides a small open area. Gay Bowers Lane and Mill Lane in the vicinity of the appeal site are rural lanes with vegetation on either side, although there is a dwelling, Bay Lodge, at the junction of these roads set back from the highway. Together Gay Bowers Lane and Mill Lane mark the southern edge of the DCA in this vicinity.
26. To the east of the appeal site lies the Danbury Medical Centre. This was constructed following a planning permission granted, lastly, in 2013. This is a two storey apparently flat roofed building finished in brick. This building lies within but on the edge of the DCA, and is surrounded by an extensive open area of parking. To the immediate south is a further area of parking used as an overflow for the Danbury Mission Evangelical Church (the Mission Church) which lies to the east of the Medical Centre. The Mission Church itself lies outside the DCA, and is a two storey apparently flat roofed building finished in brick and render.
27. The Framework defines 'significance' as the value of a heritage asset to this and future generations because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
28. The majority of the DCA lies to the west of the appeal site and is located on either side of Maldon Road. Historically, there were two enclaves of development, one around the church, Danbury, and another, a short distance to the east, Eves Corner. The whole area is now known as Danbury with Eves

⁴ Reference ID: 21b-014-20140306

⁵ Reference TPO/2002/007

Corner being a part of Danbury. The two former enclaves are now mostly linked by development on the north side of Maldon Road but there are open spaces on the south side providing a sense of space, and thus providing an important part of the significance of the DCA. The DCA continues a short distance to the east of Eves Corner to the site of the Medical Centre.

29. The appeal site is one of these areas of open space on the southern side of Maldon Road. Before the Medical Centre was constructed this was a larger area, but was reduced through the building and the parking areas for that building and the Mission Church. The Council explained that it had granted planning permission for the Medical Centre on the basis that the public benefits of a replacement medical centre (the previous centre elsewhere in Danbury being no longer fit for purpose) had outweighed the harm to the DCA. This balance had been undertaken on the basis that the appeal site would remain open, but there were no restrictions on this other than the normal development management processes. That the Medical Centre created harm to the DCA was not in dispute, and it now forms part of the base-line for considering the effect of the proposal on the DCA and its significance.
30. The appeal site is surrounded by vegetation around its perimeter except on the eastern boundary facing the Medical Centre car park. During the autumn months, and thus in summer and later spring months, the leaves and understorey planting prevent any material views through to the appeal site apart from when the site is viewed through this gap. In winter, with the leaves gone, it was possible to see easily through the perimeter planting. Even taking into account the increased prominence of the surface of the appeal site from lying snow when I undertook the accompanied site visit, it was then possible to readily appreciate the separation between the vegetation strips on either side of the appeal site, and thus understand the openness of the appeal site when viewed from the continuous view of south, west and north.
31. The application submission was accompanied by an Arboricultural Report. To facilitate the erection of the proposed building this showed the removal of various trees across part of the appeal site and the cutting back of part of the understorey on both the northern and southwestern parts of the site. In addition, the proposals showed the removal of a number of trees in the northwestern corner for arboricultural reasons. Although there was some replacement planting in this area, this would further open up the appeal site to views from the northwest even in months when leaves would be on the trees. I also note that the Design and Access Statement noted this view as one of the two "Key Vantage Points into the site". The construction of a building would result in the loss of this open view and the appreciation of the open space which forms an important part of the significance of the DCA.
32. The other identified Key Vantage Point was from the gap between the Medical Centre and the start of the vegetation. This would be a relatively short view, both in length of appreciation and distance. Again there would be the loss of the appreciation of the open space.
33. In line with all the parties to the Inquiry I agree, therefore, that there would be harm to the character and appearance, and thus significance, of the DCA. As such the proposal would be contrary to Policy DC17 of the CSDCP, and considerable importance and weight should be given to this harm. However, the parties disagreed as to the level of harm, the appellant considering that the

- harm would represent less than substantial harm, and the Council considering it would represent substantial harm.
34. In addition, account should be taken of the views of Historic England, who on consultation at the application stage concluded that the proposal would represent less than substantial harm, albeit Historic England considered "that the site should not in principle be developed". In the event that the site was to be developed, on the basis that the public benefits would outweigh the harm, Historic England sought to have the design amended "to make the buildings form a more coherent composition relating more comfortably to the landscape".
35. The Council sought to finesse the view of Historic England. The Council being of the opinion that Historic England considered that the level of harm was at the upper end of less than substantial harm. In similar way the appellant also sought to finesse its argument that the harm would be minor in magnitude, sitting at the lower end of the continuum of less than substantial harm.
36. The PPG states⁶ that whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. The PPG also states works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.
37. The appeal site lies in the DCA rather than forming part of its setting, and thus the harm would be to the designated heritage asset itself, and I have found that the open spaces form an important part of the significance of the DCA. Be that as it may, it is the effect on the DCA as a whole that should be taken into account. Even with the loss of the open space the significance of the other open areas within the DCA would remain and would continue to ensure the overall significance of the heritage asset.
38. The Council also emphasised the cumulative effect of development particularly through the combination of the Medical Centre and its car park, the overflow car park to the Mission Church and the proposed development of the appeal site. Historic England also considered that the development would have a cumulative impact, through the loss of the appeal site and the green buffer it offered between the historic core of Danbury and later suburban development to the east.
39. The development of the appeal site would mean that there would be development along the eastern approach to Danbury along Maldon Road on both sides up to the western edge of the appeal site. However, there is an area of highway verge at the junction of Maldon Road with Gay Bowers Lane, which is further opened up by the junction with Copt Hill, and provides the immediate setting for the Grade II listed Hill House. This open space, along with the retained vegetation on the south side of Maldon Road, and the gaps between the Mission Church and the Medical Centre, and then the Medical Centre and the proposed building, would allow an appreciation of the

⁶ Reference ID: 18a-017-20140306

vegetation along the southern side of the appeal site. This would ensure that the wider significance of the DCA would remain.

40. Because of the strong vegetation along the southern side of the site and through the residential nature of the curtilage of Bay House on the south side of Mill Lane, the appeal site appears separate from the wider open countryside to the south. While Policy CP5 of the FR indicates that the Council will protect the intrinsic character and beauty of the countryside, the development of this site would not have an effect on the function of the appeal site as countryside. I am therefore satisfied the proposal would comply with Policy CP5.
41. I therefore conclude on this issue that there would be harm to the DCA and this should be given considerable importance and weight and the proposal would be contrary to Policy DC17 of the CSDCP. The proposal would, however, comply with Policy CP5 of the FR. Within the terms of the Framework there would be less than substantial harm to the significance of the DCA as a designated heritage asset. Because of the loss of the appreciation of the open space I consider that the harm would lie at the upper end of less than substantial harm. This should be weighed against the public benefits of the proposal in line with paragraph 134 of the Framework. I will do this below.
42. Objections were received about the effect of the proposal on the Grade II listed Hill House to the west of the appeal site on the opposite side of the junction of Maldon Road with Gay Bowers Lane. The listed building is within its own grounds and this together with the small area of open space in front of it to the east provides its immediate setting which would not be affected by the proposal. The Heritage Statement submitted with the appellant's Statement of Case considered the impacts on the extended setting of Hill House to be very limited indeed, having a negligible effect on its significance. The Council confirmed that it did not consider that the effect of the proposed development on the setting of the listed building was, of itself, an obstacle to the granting of planning permission.
43. The removal of the trees on the appeal site, although for arboricultural reasons, would open up the appeal site so that the proposed building would have an effect on the extended setting of the listed building. Therefore the setting of the listed building would not be preserved and special regard should be given to the desirability of preserving the setting of the listed building in line with Section 66(1) of the Listed Buildings Act. As a designated heritage asset any harm or loss should require clear and convincing justification. However, in the terms of the Framework this harm would be less than substantial. I will consider the benefits of the proposal against this harm below.

Ecology

44. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) provides a duty on public authorities, including me, to have regard, as far as is consistent with the proper exercise of their functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a type of habitat, restoring or enhancing a habitat. Section 41 of the NERC Act provides for a list of types of habitat that are of principal importance for the purpose of conserving biodiversity. One of these is Lowland Meadows, which is described as "most forms of unimproved neutral grassland across the enclosed lowland". The remaining areas of such

- unimproved lowland grassland are increasingly localised, fragmented and in small stands.
45. Paragraph 118 of the Framework indicates that in determining planning applications the aim should be to conserve and enhance biodiversity by applying various principles. Included within these is that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
 46. The appeal site has been the subject of ecological surveys, although it would appear that it was last comprehensively surveyed in 2008 to accompany the first application for a Medical Centre. In 2008 the site was being "heavily grazed" by horses meaning that in addition to the species identified "a few extra grasses were not identifiable from the very short rosettes". Since then the grazing has ceased and the site lightly maintained. In the report of the 2008 survey the site is described as "an old ridge and furrow pasture".
 47. The plan showing the area surveyed includes that now occupied by the Medical Centre and its car park as well as the majority of the appeal site, but not the extreme western end of the appeal site.
 48. As part of the input to this report a Grassland [National Vegetation Classification] NVC Assessment was undertaken. This identified the appeal site's plant community as "MG5 *Cynosurus cristatus-Centaurea nigra* grassland", and "there is no evidence to suggest that the site has been ploughed and reseeded, at least in the last 100 years. It is old grassland". It was agreed by the main parties that the site should be treated as a Lowland Meadow Priority Habitat and that the effects of the proposal would be significantly harmful to biodiversity and could not be mitigated on site. I have no reason to disagree with this.
 49. Subsequent submissions for later planning applications, including the appeal proposal, appear to have utilised the same survey data and consequently the Council argued that to confirm the exact ecological importance of the appeal site new surveys should be undertaken, and this could not be done until the summer months.
 50. The appellant accepted that the way that the proposal had been drawn up meant that of the three hierarchical steps set out in paragraph 118 of the Framework, the only way that biodiversity could be conserved or enhanced would be through compensation. It must be remembered that this is "a last resort" although the biodiversity on site is likely to be at the bottom of the hierarchy of sites; international, national and local.
 51. The appellant took the view that it could, reasonably, be assumed that the condition of the site was moderate and thus proposed that the biodiversity of the site could be compensated for off-site by off-setting in line with Defra guidance⁷. It was suggested that this could be secured by a *Grampian* condition.
 52. In my view such an approach would not provide the certainty necessary or be sufficiently precise. Firstly, while mitigation would not be possible on site, as I

⁷ Defra, Natural England: Biodiversity Offsetting Pilots – Technical Paper: the metric for the biodiversity pilot in England (March 2012)

find below it is not possible to confirm that an alternative site with less harmful impacts for the same development is not available. Secondly, until up-to-date surveys have been undertaken it is not possible to know what compensation needs to be provided, even assuming the “best case” that the site is in moderate condition, as this may or may not be the case. This is because there has been no ecological survey of the western end of the appeal site and the other surveys are all but a decade old. Planning decisions should be based on up-to-date evidence.

53. Thirdly, I do not think a planning condition would be an appropriate mechanism to ensure the delivery of any necessary compensation. Although the appellant argued to the contrary I believe that the delivery of any compensation would have to be through the mechanism of a Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) rather than a planning condition. This is because it would need to involve the long-term maintenance of the off-site land to deliver the compensation to ensure the enhancement of biodiversity of that site and this could not be undertaken with sufficient precision through a planning condition, particularly as the off-set site has not been identified.
54. The PPG makes clear⁸ that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. While such a use may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk, it could not be said that the appeal proposal meets any of these criteria.
55. As such the proposal would have a significant harmful effect on biodiversity, and would be contrary to Policy DC13 of the CSDCP as set out above. In line with paragraph 118 of the Framework permission should be refused, but, of course, this cannot be determinative and needs to be balanced against the benefits of the development and take account of all other material considerations. However, it is appropriate to give this harm very substantial weight against the proposal.

Benefits

56. The appellant pointed to a number of benefits of the proposal. Principal to these was the need for the development and, to demonstrate this, the appellant had commissioned a “Comprehensive Needs Assessment”. This showed that there was, and would be, a continuing demand at national and local level for (elderly) care and, while not confirming this, the Council did not deny it.
57. While the evidence of Mr Simmonds on behalf of the appellant was that the level of demand was high, and higher than other areas, this was not demonstrated by any documentary evidence. The needs assessment report was based on a notional catchment based on the appeal site, and it was not supported by higher level information to show that there was a particular demand in the local area, or that in the vicinity of the appeal site this need was particularly high. It may have been that the need would have been higher or

⁸ Reference ID: 21a-010-20140306

- lower based on a catchment from another site in the general proximity; there was no information on this.
58. It was not in dispute that the need for elderly care of the type proposed, including for those with dementia, as opposed to other forms of provision for the elderly would be growing, but the CLP would provide the opportunity to address this more widely. As paragraph 162 of the Framework makes clear the need for social care should be taken into account in drawing up local plans.
59. The provision of care is a public benefit and should be given significant weight, but on the information in front of me I can only give this proposal that level of benefit rather than anything greater. Specifically there is nothing to show that the same benefits could not be provided on another site.
60. The appellant argued that because the settlement boundary of Danbury was tightly drawn any site in the Danbury area would, inevitably as it saw it, be located outside the boundary. However, for the reasons I have explored above, there is nothing in front of me which shows that Danbury, as opposed to any other urban area or Key Defined Settlement, has a particular need for this facility, or that there is no alternative site with less harmful effects.
61. The appellant emphasised the synergies between a care home on the appeal site and the adjacent Medical Centre which would allow benefits for the medical professionals and care home operator. Local residents were concerned that bringing additional residents with a high level of medical needs would mean that the availability of medical services would be reduced for those living locally. However, the population served by the Medical Centre is over three-times the population of Danbury and, as the staff at the care home would act with some degree of "triage", I am satisfied that the effect would be marginal. The physical synergies would be there, but despite the NHS Property Services Primary Care Estates Advisor asking for an IT system link secured through a Planning Obligation the appellant did not offer to provide this.
62. This was because, the appellant argued, such a link would not meet the tests for Planning Obligations set out in the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 204 of the Framework. If the synergies are to be given the highest level of weight, then ensuring that communications networks are provided is necessary so that they can play a vital role in enhancing the provision of local services, as set out in paragraph 42 of the Framework. With full use of technology the physical distance between the Medical Centre and any proposed care home becomes less material.
63. Care homes of the type proposed can allow for those who would otherwise be in hospital to be discharged and reduce "bed-blocking", and the appellant noted that it had entered into contracts with Clinical Commissioning Groups in the vicinity of its other care homes to this effect. This is a public benefit for primary care services, but I can only give this benefit limited weight as there is nothing specific about this site which would make it more suitable when compared with any other site.
64. The provision of employment for around 100 staff on the appeal site would be a public benefit. I give this significant weight, both in economic and social terms.

65. Finally, the appellant noted that those moving into the care home would allow for the freeing up of housing in the local area. This would be the case, but in my view the effect in the wider community is likely to be only marginal and I therefore give this only very limited weight.

Other matters

66. As set out above, local residents continued to object to the proposal on the basis that the site would add to air quality issues in the vicinity, principally from vehicle emissions from those using Maldon Road. The objection related to the initial data provided by the appellant when lodging the appeal and concerns raised by the Council's Public Health and Protection Services. However, it seems to me that for the Council to later withdraw the reason for refusal it must have been satisfied over these concerns. I am therefore satisfied that the proposal would not have an adverse effect on air quality.

67. Similarly, there were objections concerned with the effect on highway safety, and in particular referenced a fatal accident in the vicinity of the appeal site after the period looked at in the Transport Assessment submitted with the application. There was also reference to the pedestrian crossing required to be installed as part of the Medical Centre proposals, but I noted at the site visit that this was in place and operational. The fatal accident was located further to the west than the appeal site and I do not believe that there is anything inherently unsafe about the proposed access point, which is already used by the Medical Centre. While there would be an increase in traffic occasioned by the proposal, in light of the Highway Authority raising no objection to the proposal, I am satisfied that the proposal would not have a harmful effect on highway safety or a severe residual cumulative effect, which is the test set out in the Framework if development is to be prevented on transport grounds.

68. Local residents have objected to the quantum of parking provided on the site, considering that there was insufficient provision, and the ability to manoeuvre vehicles was limited. In this regard I note that there is no objection from the Highway Authority and am satisfied that, given there is public transport along Maldon Road, sufficient parking would be provided. In addition, the HGV tracking diagrams show sufficient turning space would be available.

69. Local residents to the south were also concerned about the increase in noise and disturbance from the development compared with the current situation. I am satisfied that there is sufficient separation between the proposed building and all the adjoining residential properties so that the occupiers of those properties would retain a good standard of amenity as required in paragraph 17 of the Framework.

Planning Balance

70. As the Framework explains the planning system is to be plan-led with the determination following the development plan unless other material considerations indicate otherwise. In this regard the proposal would be contrary to the development plan taken as a whole. This is because it would be located outside either an urban area or a Key Defined Settlement, and does not fall within those categories of development allowed for in the rural area beyond the Green Belt. It would also be contrary to the site specific criterion set out in the DPF. The proposal would be harmful to the DCA and the setting of Hill House as a listed building, and thus the applicable policies and these

harms should be given considerable importance and weight, albeit in the terms of the Framework they would both result in less than substantial harm. In addition, the proposal would have a significant harmful effect on biodiversity to which I have given very substantial weight; again this proposal is contrary to the relevant policy.

71. Set against this are the benefits of the proposal which are all considered to be public benefits and I have given them significant weight. However, the totality of the presumption in favour of a determination in accordance with the development plan and the harm to the historic environment and ecology is not outweighed by the benefits of the proposal and other material considerations by a significant margin. As such the proposal does not represent sustainable development and the appeal should be dismissed.

Conclusion

72. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Emma Dring	of Counsel, instructed by the Legal Services Department, Chelmsford City Council
She called	
Mr Neil Harvey BSc MCIEEM	Natural Environment Manager, Place Services, Essex County Council
Mr Michael Hurst BSc (Hons) MSc RICS IHBC	Senior Conservation Officer, Chelmsford City Council
Ms Sally Rogers MPPP MRTPI	Senior Planning Officer, Chelmsford City Council

FOR THE APPELLANT:

Mr Clive Newberry	of Queens Counsel, instructed by Mr Daniel Simmonds, RPS
He called	
Mr Harnoop Atkar	Chief Executive, Oakland Care Homes
Ms Cyrise Wearie BSc MCIEEM	Principal Ecologist, Practical Ecology
Mr John Bell BA (Hons) BArch MSc RIBA	Director, ADG Architects
Mr Ben Wright BA (Hons) DipLA CMLI	Director, Aspect Landscape Planning Ltd
Mr Thomas Copp BA (Hons) MA AssocIHBC	Associate Director, CgMs
Mr Daniel Simmonds BA DipUPI MRTPI	Planning Director, RPS Planning, Transport and Environment

INTERESTED PERSONS:

Mr Michael Aves BSc FTCL Solicitor (retired)	Planning Consultant, on behalf of Sir Richard and Lady Olver
Mr Mark Scofield	Chair, Hands Off Danbury (Unincorporated Association)
Cllr Daniel Carlin	Vice Chairman, Danbury Parish Council Planning Committee

INQUIRY DOCUMENTS

ID1	Ecological Survey of appeal site by Robert Stebbings Consultancy Limited dated 31 January 2008
ID2	Ecological Survey (Re-survey 2013) of appeal site by Robert Stebbings Consultancy Limited dated 17 January 2013
ID3	Grassland NVC Assessment of appeal site by Robert Stebbings Consultancy Limited dated 20 June 2008
ID4	Photographs of appeal site dated 1 November 2016 and 22 September 2017
ID5	Note prepared by the Council relating to Evaluation of Grassland at Danbury
ID6	Defra, Natural England: Biodiversity Offsetting Pilots – Technical Paper: the metric for the biodiversity pilot in England (March 2012)
ID7	Consultation response by Essex County Council as Local Lead Flood Authority in respect of application reference 17/01606/FUL
ID8	Historic England Advice Note 1: Conservation Area Designation, Appraisal and Management
ID9	Extracts from websites of Oakland Primecare properties
ID10	Chelmsford City Council: Future homes for our growing older population – A Housing Strategy for Older People 2008 – 2012
ID11	Opening Statement on behalf of the Appellant
ID12	Proof of evidence, appeal decision, legal agreements and draft planning obligation relating to Land off Wedow Road, Thaxted (APP/C1570/A/13/2206357)
ID13	Opening Statement on behalf of the Council
ID14	Extracts from websites relating to Health and Social Care Commission in Essex
ID15	Policy DC39 of the Chelmsford City Council Core Strategy and Development Control Policies Development Plan Document 2008
ID16	Statement submitted by Mr Aves on behalf of Sir Richard and Lady Olver
ID17	Statement submitted by Mr Scofield and appendices
ID18	Statement submitted by Cllr Carlin on behalf of Danbury Parish Council
ID19	Tree Survey and revised landscape plan at A3 size
ID20	Suggested additional conditions submitted by the Council
ID21	Closing submissions on behalf of the Council
ID22	Closing submissions on behalf of the Appellant