



Appeal Decision

Inquiry Held on 24 - 27 November and 1 December 2020

Site visit made on 3 December 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Appeal Ref: APP/C1570/W/20/3256109

Land off Isabel Drive and Land off Stansted Road, Elsenham, 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 Wallace Land Investment and Management against Uttlesford District Council.
 - The application Ref UTT/19/2470/OP is dated 27 September 2019.
 - The development proposed is residential development of up to 99 homes including affordable homes, with areas of landscaping and public open space, including points of access off Stansted Road and Isabel Drive and associated infrastructure works.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 99 homes including affordable homes, with areas of landscaping and public open space, including points of access off Stansted Road and Isabel Drive and associated infrastructure works at land off Isabel Drive and land off Stansted Road, Elsenham, Essex in accordance with the terms of the application, Ref UTT/19/2470/OP, dated 27 September 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The application seeks outline planning permission with access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. The proposal involves the development of two parcels of land, each with separate accesses.
3. Uttlesford District Council (the Council) issued a screening opinion under the Town and Country Planning (Environmental Impact Assessment)(EIA) Regulations 2017, dated 10 July 2019, stating that the proposal constituted EIA development. The application was therefore accompanied by an Environmental Statement (ES). I have had due regard to the ES and other relevant environmental information in determining this appeal.
4. The draft Uttlesford Local Plan (2019)(dLP) was withdrawn from examination on 30 April 2020. The main parties agree that it now carries no weight.

Main Issue

5. Following submission of the appeal, the Council submitted four putative reasons for refusal. The second putative reason, relating to air quality, was withdrawn by the Council following publication of its Air Quality Annual Status

Report (September 2020)(ASR). The day before the inquiry opened, the Council confirmed that there was no reason for the proposal to be refused on highways grounds, relating to the third putative reason, subject to securing agreed mitigation. The fourth putative reason, relating to affordable housing and infrastructure, has been addressed by means of a completed planning obligation by deed of agreement which was submitted after the inquiry. I return to these matters later in this decision.

6. On that basis, the main issue is the effect of the location of the proposal on the character and appearance of the surrounding area, with particular regard to size, scale, siting in relation to Elsenham and Alsa Wood.

Reasons

Policy background

7. The development plan includes the Uttlesford Local Plan (2005)(LP). The appeal site, comprising separate parcels A and B (described below), is mostly detached from the settlement boundary of Elsenham shown on the LP inset map, with only small sections of the northernmost of the eastern boundary of parcel A adjoining. The intervening land between the settlement boundary and the appeal site contains the recent Isabel Drive and Oak Drive developments.
8. Saved policy S7 of the LP is the relevant locational policy in the only remaining putative reason for refusal, and is one of the most important policies for determining the application. The policy can be separated into three main sections. The first two state that the countryside will be protected for its own sake, with strict control on new building that is not within settlement boundaries. The third section, dealing with character and appearance, is broadly consistent with the National Planning Policy Framework (the Framework), which I return to later.
9. It is common ground that the first two sections are not consistent with the requirements of the Framework, which instead takes a less protectionist position requiring that the intrinsic character and beauty of the countryside be recognised, with development in the countryside to be determined on the basis of objectively assessed need. Therefore the locational aspects of saved policy S7 are out of date. Consequently, there is also no dispute that the proposal is in conflict with these first two sections of the policy, as a result of the proposal being outside the settlement boundary. The Council accept that the settlement boundaries must be flexible and that saved policy S7 must be breached in order for a sufficient supply of houses to be provided.
10. The dispute focuses on the weight to be given to saved policy S7 and the breach of it, with the Council attributing moderate weight and the appellant very limited weight. This matter was examined in detail at the inquiry, with reference to a number of appeal decisions. I have carefully considered these, although it has not been suggested that any one decision is directly comparable to the circumstances in this appeal. The Council refer primarily to the 2016 Secretary of State decision at land north east of Elsenham¹, which attributed significant weight to saved policy S7, as did the transferred appeal decision for Braintree Road² in 2017. However, both those decisions were taken when the Council could demonstrate a five year supply of housing and, accordingly, the

¹ Appeal decision APP/C1570/A/14/2219018

² Appeal decision APP/C1570/W/16/3156864

- Council accepts that its current lack of supply reduces the weight attributable from significant to moderate. The Flitch Green³ decision taken in August 2019, when the Council had a 3.29 year housing supply, also found moderate weight.
11. However, in September 2020, the Rush Lane⁴ appeal decision found a general pattern of diminishing weight being accorded to conflict with policy as the Council's level of supply reduced. This trend is acknowledged by the Council, and the appellant therefore considers the moderate weight afforded by the Council to be inflated.
 12. Indeed, since Flitch Green, the housing supply position has materially worsened, to 2.68 years supply, and the dLP withdrawn with no new local plan in place until 2024 at earliest. The Council also confirmed at the inquiry that all the 2005 housing allocations have been built out, with just 1 or 2 ongoing. Taken together, this suggests that the Council will continue to rely heavily upon breach of saved policy S7 to deliver the required number of new homes. Furthermore, whilst the Council can demonstrate substantial recent over-delivery under its Housing Delivery Test, given the circumstances on the ground that the Council currently finds itself in, this cannot be taken as a reliable indication of future delivery. Instead of plan-led housing delivery provided by a framework for addressing housing need, the Council relies on an incremental supply of sites coming forward. I return to the harm caused by the overall conflict with policy S7 later in this decision.
 13. Saved policy GEN2 of the LP is a general design policy that the parties agree is broadly consistent with the Framework, although its applicability to this outline appeal proposal is disputed. The Council rely on sections (a), (b) and (c) which respectively require design compatibility with surrounding buildings; safeguarding of important environmental features; and provision of an environment that meets the needs of potential users.
 14. In alleging harm to public confidence in the plan led system, the Council in opening cited the circumstances in Gladman⁵ as being similar to those here, arising from: an old plan, housing policies based on 1990s structure plan numbers, no replacement plan for some years, and settlement boundaries often exceeded to provide for housing growth. However, the conclusions about public interest in old policies retaining a role in decision making were agreed in closings to be judicial opinion incidental to but not part of the principle upon which that case was decided. In addition, the circumstances on the ground are different between the two; Daventry had a five year housing land supply, Uttlesford does not.
 15. A Strategic Land Availability Assessment concluded that parcel A was unsuitable for development because of its impact on ancient woodland, but that parcel B was suitable subject to mitigation. This document formed part of the evidence base for the withdrawn dLP and is a material consideration. However, it is of limited weight in this appeal; parcel B was not subsequently identified as an allocated site in the dLP and, in any case, I am required to determine the appeal on its merits.

³ Appeal decision APP/C1570/W/19/3226302

⁴ Appeal decision APP/C1570/W/19/3242550

⁵ Gladman Developments v Daventry District Council [2016] EWCA Civ1146

Character and appearance

16. The appeal site comprises two parcels of land located to the west of the village of Elsenham, totalling some 8.1 hectares of agricultural land, recently ploughed at the time of my visit. Parcel A is bounded by residential development to the east, with woodland to the west. Public right of way (PROW) 31 crosses the southern section of parcel A, and follows the western perimeter of the northern section. Parcel B is accessed directly from Stansted Road, with ancient woodland bounding the northern boundary, woodland to the east, residential development to the south and to the east, and the M11 to the west.
17. Although paragraph 170 of the Framework recognises the intrinsic character and beauty of the countryside, the appeal site is not a designated or valued landscape. Nonetheless, the adjacent Alsa Wood is designated as ancient woodland, with an additional area of woodland between parcels A and B and north of the recent Oak Drive development subject to a woodland tree preservation order. Both parcels of land relate closely to the existing settlement, with the urban influences of the recent developments at Elsenham readily visible through the vegetation and trees along the mutual boundaries.
18. The effect of the proposal would be to infill the open fields between the existing built development of the settlement, the M11 corridor and Alsa Wood. Parcel A is indicated to accommodate 61 units, with 38 units in Parcel B.
19. The wider landscape character context is agreed not to be a significant factor in this appeal, but it is still relevant. The Broxted Farmland Plateau Landscape Character Area⁶ is characterised by gently undulating farmland, and large open landscapes with tree cover appearing as blocks on the horizon. The site itself is well contained by the block of woodland at Alsa Wood and the motorway corridor, such that the site would not generally be visible from more distant viewpoints. In this wider context, the site would be understood as relating to the settlement of Elsenham, such that the proposal would not be materially harmful to the wider landscape character. Although the setting of the settlement would be changed from open countryside at this location, the adjacent woodland would ensure that a rural setting is nonetheless maintained.
20. The heart of the dispute centres around the local effects. Both parcels of land have enclosed characteristics. Parcel A relates primarily to the adjacent woodland, as a locally dominant landscape feature. However, the residential development to the east is clearly visible through the vegetation and treeline such that it provides a strong and unavoidable urban influence. Parcel B is visually contained by the motorway corridor, which although tree lined is audibly evident. The woodland to the north is a minor influence. The adjacent dwellings are also clearly visible here. Although visibility of dwellings at both parcels would be reduced when the vegetation and trees are in full leaf, from my observations and the evidence before me, this would not be so dense as to wholly divert awareness of the presence of the residential use.
21. The proposal would lead to total loss of agricultural land within the appeal site, with both parcels becoming dominated by development. Whilst the Council find that this would result in the unacceptable loss of the last pieces of open land to the west of the village, with a degree of change that would be high, my observations are that the containment of the sites provides little connection

⁶ Uttlesford Landscape Character Assessment CD 6.3

- with the wider agricultural context and, despite the presence of Alsa Wood, the urban influences at both parcels of land are very considerable, such that I find the Council's conclusion on the sensitivity of the sites to change to be somewhat overstated. Further, whilst the existing agricultural land would be lost, the development does not propose loss of any of the important environmental features in its setting. The most important such feature is the adjacent Alsa Wood, which would be retained, and only one tree, along the site frontage of parcel B, is proposed to be felled due to its poor condition.
22. Although the reason for refusal refers to the setting of Alsa Wood, both landscape witnesses agreed that this was not a useful concept. More accurately, the Council's concerns relate to the relationship between the wood, the settlement and the land in between. The argument is that the site provides a sense of space and separation between the woodland and the settlement, which allows the woodland to be perceived and appreciated as a landscape feature, and that being in the woodland gives the sense that residential development is remote.
23. However, at parcel A, a 20-metre-wide buffer with an associated area of public open space to the west of PROW 31 is proposed. Whilst appreciation of the woodland from the parcel would clearly be lessened, nonetheless this proposed linear open space between woodland and dwellings would provide an adequate degree of separation, even including the swale which would run alongside, given that Natural England and Forestry Commission standing advice suggests a minimum of 15 metres.
24. As experienced from the woodland, the existing dwellings to the east are not, from my observations, particularly remote. Instead, the existing development is contained within a relatively weak landscape boundary, notwithstanding the presence of a number of mature trees. Encroachment beyond that boundary would not, in my view, represent the leapfrog suggested by the Council. I am not persuaded that the increased proximity of residential development would adversely affect the sense of being in the woodland, although clearly that sense would be changed from the woodland peripheries.
25. PROW 31 nominally crosses the southern section of parcel A, although there was no evidence of this on the ground at the time of my site visit. The more northerly section of the footpath runs adjacent to the woodland. The parties agree that the visual effects of the proposal that would be experienced from this footpath would be at the higher end of the scale. The Council consider that the existing rural experience would be diminished such that the effect is significant, as a result of the development being a major discordant element in the view to the east. That may be the case, however this is offset to a considerable degree by the relationship between the footpath and the woodland to the west which would be maintained and indeed protected to some extent by the proposed buffer and open space, thereby providing an element of intervening undeveloped land.
26. PROW 32 offers views onto parcel B for only a limited length, which would change the existing rural vista, but this harm would be moderated by the unavoidable proximity of the motorway corridor at this point.
27. The visibility of the proposal from public roads around the site would be limited. From Stansted Road, views into parcel B would be mostly restricted by the motorway corridor and existing dwellings. The proposed acoustic bund

would be the most visible feature. From the existing access spur at Isabel Drive, some views across to the woodland edge would be likely to be maintained given the narrowness of this section of the site.

28. Residential properties adjacent to the site would also experience a change in aspect, and the Council's evidence considers these in detail, finding a number of properties that would experience high adverse effects. This is undoubtedly true, and those occupants' experience of the area would be subject to significant change, particularly in views from upper levels of those properties looking out over the site. Nonetheless, it is widely known and accepted that there is no right to a view from residential properties.
29. The dominating feature of the indicative proposals for parcel B is the proposed acoustic bund of up to 6 metres in height, potentially incorporating a 2 metre high acoustic fence, along the western boundary of the site. Although details of its design would be reserved, a similar bund and fence feature has recently been provided on land to the south of Stansted Road. That bund is still relatively new, although the landscaping on it will mature such that it is likely to be seen as a linear landscape feature that is not out of keeping in a location adjacent to the M11 corridor. Whilst at parcel B such a feature would be closer to the proposed houses, I see no compelling evidence to suggest that the bund and the layout of the scheme could not be appropriately designed in a way that would not adversely affect future occupiers of the dwellings, yet still establish a strong sense of place compatible with both the proposed and the existing surrounding buildings.
30. The density of development proposed could be reasonably comfortably accommodated within each parcel, such that it would readily relate to the existing adjacent developments. The indicative framework plan confirms my findings on this matter, notwithstanding that the individual buildings shown may comprise multiple units.

Conclusion on main issue

31. I conclude that the location of the proposed development would have a limited adverse effect on the character and appearance of the surrounding area, with particular regard to size, scale and siting in relation to Elsenham and Alsa Wood. The proposal complies with saved policy GEN2, which I find is relevant to this outline proposal. Even so, the proposal would result in what I conclude to be limited conflict with saved policy S7. I return to this matter in the planning balance.

Other considerations

Highways

32. The primary route for traffic heading east from Elsenham is through the Grove Hill junction with Lower Street at Stansted Mountfichet. The capacity of this junction and the surrounding road network was the subject of considerable discussion at the inquiry, with objections to increased use raised by both Elsenham Parish Council (EPC) and Stansted Mountfichet Parish Council (SMPC). In short, this junction is heavily constrained by an elongated pinch point along Grove Hill, which is regulated by traffic lights and also provides on-street parking, adjacent to a sloped hairpin turn into Lower Street.

33. Extensive evidence from interested parties was submitted regarding the effect of this arrangement, including; cars approaching the lights from Elsenham being unable to predict oncoming traffic due to the line of parked cars, and vice versa, which can result in gridlock; the narrow width resulting in vehicles mounting the pavement and obstructing pedestrians and damaging properties; large vehicles routinely breaching the 7.5 tonne vehicle traffic restriction; and slow turning manoeuvres by large vehicles around the hairpin bend obstructing traffic flow. Certainly, the junction is very awkward and constrained and that such issues arise was clear from my site visit. However, it is not the responsibility of the developer to resolve existing problems with highway capacity or remedy poor driver judgement.
34. Nonetheless, it is clearly essential that any additional traffic arising specifically from the development can either be suitably accommodated or appropriately mitigated. Following additional traffic modelling and negotiations leading up to the inquiry, Essex County Council (ECC) agreed to mitigation measures that would include additional wireless vehicle detection at Grove Hill and adjustment of signal times. In doing so, sensitivity analysis was undertaken incorporating potential cumulative impact with committed and currently undetermined sites, including a development for 350 houses at Henham Road⁷ currently subject to appeal.
35. This modelling shows that the westbound 2 km journey corridor at morning peak time would, as a result of the appeal proposal with mitigation, result in an increased journey time through Grove Hill of 19 seconds. This represents a relatively small percentage of the baseline journey time of 4 minutes 37 seconds and, as a consequence, I am satisfied that this does not represent a severe impact. In the scenario that all the developments considered in the sensitivity analysis were implemented, the mitigation for the appeal proposal would actually improve that overall journey time by 9 seconds, although the baseline journey time would have risen.
36. Whilst objections were raised on the basis of alleged failed previous attempts to adjust traffic controls, the current proposal differs in that it would additionally introduce vehicle detection. It is also suggested that, on the basis of residents' experience, the modelling has overestimated the capacity of the highway network at Stansted Mountfichet. However, as the appellant stated at the inquiry, the modelling can only consider traffic behaviour for the majority of the time, not unexpected or random behaviour such as that which may result in gridlock, nor can it account for drivers that may choose to take longer alternative routes. Furthermore, the baseline survey and final modelling outcomes have been verified and agreed by ECC, notwithstanding any comparison with modelling at other sites.
37. Therefore, for both the individual and cumulative scenario, I find that the appeal proposal would not result in severe residual cumulative impacts on the road network, subject to the mitigation being secured.
38. It is common ground that vehicular access to each parcel from the public road can be safely achieved. It is also agreed that financial contributions towards highways matters will be provided. Firstly, a sum towards improvement of the surface of the off-site PROW 32, given anticipated increased use. Secondly, a contribution towards an enhanced bus service to serve the increase in number

⁷ Appeal APP/C1570/W/19/3243744

of residents. Whilst both EPC and SMPC object on the grounds that more buses add to congestion, it is nonetheless necessary, not only as mitigation but also to encourage modal shift, as is the travel plan. Precisely how this contribution will be utilised to benefit service of the site will be agreed at a future stage.

39. Objections refer to the conclusions of the examining inspector of the withdrawn dLP in respect of highways concerns arising from its strategic housing allocation of some 2100 houses. However, that draft plan was never adopted and carries no weight and, in any case, I am required to assess the current appeal on its merits and on the evidence before me. It was suggested that certain routes be upgraded to cycle routes, however in the absence of any substantive evidence on this point I am not persuaded that this is necessary as a result of the proposed development.

Noise

40. The noise assessment indicates that the proximity of the proposal to the M11 corridor would result in a number of dwellings being subject to permanent moderate adverse impacts, even with the modelling incorporating the acoustic bund along the western boundary of parcel B. As such, the highest noise levels would exceed guideline levels.
41. Consequently, additional mitigation measures are proposed to the external building fabric, including use of glazing and mechanical ventilation, and acoustic barriers. The Council is content that these could be secured to ensure individual noise events would not exceed the required 45 dB L_{Amax}, with noise levels also not exceeding 55 dB L_{Aeq} in outdoor amenity areas. On that basis, the proposal would result in permanent adverse impacts being negligible at parcel A and minor at parcel B, with moderate impacts remaining in some gardens. Overall, therefore, the potential adverse effects can be mitigated, and no substantive evidence has been submitted to indicate otherwise.

Air Quality

42. Saved policy ENV13 of the LP sets out a zone 100 metres on either side of the M11 that may be subject to exposure to poor air quality. This is, in effect, a consultation zone requiring air quality assessments to be carried out and, where users would be exposed on an extended basis to poor air quality, development will not be permitted. The publication of the ASR, giving the 2019 air modelling data for Uttlesford, evidenced an improvement in air quality compared with the 2018 data at all locations, and led to the Council withdrawing its putative reason for refusal.
43. The precautionary air quality limit value⁸ for nitrogen dioxide measured as an annual mean is 40 µg/m³. However, monitoring at 5 locations within Parcel B recorded levels that were well below this, being between 22.0 and 25.4 µg/m³. Indeed the ASR states that no monitoring levels in Uttlesford exceeded the air quality objectives for nitrogen dioxide. In terms of potential effects of pollution on Alsa Wood, the Isopleth analysis⁹ concludes that any combustion sources from development traffic or boilers are likely to have an insignificant effect, and that any dust from construction activities would be managed through a Construction Environmental Management Plan.

⁸ Air Quality Standards Regulations 2010, Statutory Instrument 2010 No. 1001

⁹ Air Quality Technical Statement MS/AQ1, Isopleth (October 2020)

Ecology

44. The appeal site lies some 5 km from the Hatfield Forest Site of Special Scientific Interest and National Nature Reserve, which the National Trust states to be the finest surviving example of a small mediaeval royal hunting forest, with ecological significance for its veteran trees and old growth woodland on undisturbed soils. As a large and accessible outdoor space, the forest is facing unsustainable growth in visitor numbers such that the features for which it is designated are being damaged. A solution for mitigation has been finalised and was submitted to the Council as part of the dLP process. However, the intended Strategic Access Management and Monitoring plan has not yet been adopted.
45. In the meantime, a bespoke solution is proposed. To minimise the number of residents from the proposed development traveling to Hatfield Forest for recreational activities, the provision of a range of recreational facilities at the appeal site, including a dog-walking route, have been agreed. Furthermore, at Hatfield Forest, a scheme of visitor and botanical monitoring and mitigation would be introduced to prevent such visitors from the appeal development having a harmful effect on the designation. The proposal accords with the recommendations of Natural England.
46. Alsa Wood is also currently used and valued as a recreational facility by local residents, and would continue to be so. The wood is under the control of the appellants and a woodland management plan (WMP) is proposed to ensure that it is also not degraded by increased usage. It would do so by building upon an existing WMP approved as part of an earlier development, notwithstanding enforceability of that earlier WMP. The proposed WMP intends a more targeted approach for the promotion of a more biodiverse flora and fauna and natural ecological processes within the wood.
47. The Phase 2 Ecological Survey reveals a moderate potential for bat roosts within three trees in parcel A. These trees are all located along the woodland edge and, whilst the appeal is in outline, conditions are proposed to ensure that no development occurs at these locations. The trees are therefore not at risk of being felled. Accordingly, I am satisfied that the extent to which protected species may be affected by the proposed development has been adequately outlined and can be satisfactorily addressed. Finally, the minor loss of hedgerows or flora within the site will be compensated by biodiversity net gain.

Planning obligation

48. Saved policy H9 of the LP requires that an element of affordable housing of 40% will be sought on appropriate windfall sites, to address the scale of affordable housing need and retain mixed and balanced communities. The education contribution derives from saved policy GEN6 and is directly based on a multiplier of the number of children generated by the development to ensure adequate capacity at both primary and secondary school levels.
49. The highways contributions towards PROW surface improvement and bus service, as discussed above, are based on specific cost estimates and tenders, with the bus service contribution pooled with other currently committed and proposed development, and with adequate control over future delivery. These highways contributions arise from saved policy GEN6 and the mitigations required to comply with saved policy GEN1. The travel plan information pack seeks to promote modal shift, thereby complying with saved policy GEN1.

50. The Hatfield Forest contribution is necessary, for the reasons given above, as required by saved policy GEN7. The contribution towards healthcare provision stems from saved policy GEN6 and the lack of capacity for GP surgery growth, based on the capital cost for additional floorspace. Arrangements for maintenance of open space are also required, with implementation triggered by development of either parcel, to ensure that the space meets the reasonable needs of users, as set out in saved policy GEN2.
51. For these reasons, I am satisfied that all of the above obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. Whilst EPC would welcome a contribution towards their new community hall, there is no evidence before me that this is necessary as a direct result of this development, and this does not form part of the agreed obligation.

Other matters

52. In locational terms, the site is within what I found to be an acceptable walking distance of a village shop and post office, along largely level footpaths, notwithstanding its peripheral location. The village also contains a railway station, bus services, surgery, school, recreational facilities, pub and business park. Whilst employment opportunities may be limited in Elsenham, its train station provides relatively easy access to Cambridge and London. Although existing provision for cyclists is limited, other sustainable transport modes would be available by train, and from a bus stop adjacent to the access to parcel B. Taken together, I find that, overall, the site is in an accessible location and sufficiently close to a range of services and facilities.
53. Elsenham has seen a significant expansion of committed sites in recent years, however past delivery should not be taken as a cap on any future development. Given the size and constraints of the sites, I find that the proposal is not significant development of best and most versatile agricultural land, nor do the Council. Whilst the existing footpaths around the periphery of each parcel are not proposed to be protected, these are informal paths only, and the illustrative Framework Plan shows the connection to Orchard Crescent being retained. I see no reason why an adequate technical solution cannot be provided in terms of water supply and foul drainage, and neither the Council nor Thames Water raise any objection to the principle of development in this regard. Concerns about surface water drainage would be reserved for future consideration.

Planning balance and conclusion

54. I have found that the location of the proposal would have a limited adverse effect on the character and appearance of the surrounding area. Accordingly, whilst the proposal complies with saved policy GEN2, the proposal would nonetheless have a limited conflict with saved policy S7 and, as a consequence, the development plan as a whole.
55. As the Council is currently unable to demonstrate a five year supply of deliverable housing sites, the relevant policies for the supply of housing should be considered as out-of-date according to paragraph 11(d) of the Framework. The so called 'tilted balance' is therefore triggered, and planning 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.
56. The proposal would deliver a number of benefits. The Framework emphasises the importance of delivery of housing, and the provision of 99 new homes will contribute to meeting the current shortfall. This requires me to attach significant weight to provision of market housing. Of those new homes, 40% would be affordable housing, for which there is an undisputed need both locally and nationally, and this is also a significant benefit to be weighed in the planning balance.
57. Economic benefits would arise from expenditure on construction, in the supply chain, and in local spending from residents. The scheme would also deliver open space provision in excess of minimum policy requirements. These benefits would be of moderate weight. The proposed WMP would offer some additional benefits to the long-term management of the ancient woodland at Alsa Wood from those provided under the existing WMP. Proposed biodiversity net gain is also a benefit. These attract limited weight in the balance.
58. The provision of financial contributions and commitments towards education and healthcare facilities, bus service provision, play space, footpath improvements, sustainable drainage, travel plan, and recreational facilities are all required to mitigate the effects of the development and to meet minimum policy requirements. Similarly, that the site is agreed to be in a sustainable location is welcomed, but this could be repeated in other sites within and close to the settlement. Accordingly, these matters attract neutral weight.
59. On the other hand, the proposals would also result in harm. The proposal would result in the loss of an agricultural greenfield site which would be replaced by housing. It would also adversely affect the experience of using the public footpath network in the area. However, for the reasons given above, I have found the harm caused to be limited. Harm is also caused by the conflict with saved policy S7, and I accord this harm limited weight for the reasons given above.
60. Consequently, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is a material consideration of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan.
61. I conclude that outline planning permission should be granted subject to the conditions in the attached schedule.

Conditions

62. A list of agreed suggested conditions was submitted, which were subsequently updated by the appellant for discussion and subsequent agreement at the inquiry. Amendments have also been made to the wording of some conditions for clarity or brevity, and to ensure accordance with the tests set out in paragraph 55 of the Framework. Pre-commencement conditions have been agreed by the appellant.
63. The application was in outline, so Condition 1 for reserved matters is necessary to ensure that the development achieves satisfactory scale, layout, appearance, and landscaping, and to define the acceptable parameters of

- development. Condition 2 defining the plans is necessary in the interests of certainty. Conditions 3, 4 and 5 are required to ensure appropriate access is provided to both parcels within the appeal site. The scheme for provision of off-site highways mitigation measures at Grove Hill are secured by Condition 6.
64. Condition 7 is necessary to ensure continued use of the public right of way within the appeal site. A written scheme of investigation is required by Condition 8 to prevent loss of archaeological remains. Conditions 9 and 10 are necessary to protect the environment during construction. The proposed biodiversity net gain and necessary landscape and woodland enhancements are to be secured by Conditions 11, 12 and 15, and the protection of trees during construction is required by Condition 13. The on-site recreational facilities required by Condition 14 are justified to limit the effect on the designated Hatfield Forest. I have amended the proposed implementation requirements to reflect the scenario that the two parcels could be developed at separate times, in line with the planning obligation. Condition 16 seeks to control external lighting thereby protecting the habitat of protected species.
65. The proposed noise attenuation barrier and other sound insulation measures required by Condition 17 are justified due to proximity to the M11. Condition 18 is necessary to ensure that any ground contamination at the appeal site is appropriately remedied. Condition 19 is necessary to ensure that surface water drainage is adequately managed. The proposed condition requiring keeping of maintenance logs has been omitted as I am not satisfied it is relevant to planning, necessary or enforceable. Condition 20 ensures compliance with policy and guidance on accessibility of homes. Finally, Condition 21 was agreed as necessary to protect air quality and facilitate sustainable transport.

Patrick Hanna

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Richard Moules of Counsel, Landmark Chambers
(instructed by Burges Salmon)

He called:

Steven Kosky BA(Hons) DipTP MRTPI Turley Associates

Julian Clarke MCIHT TP Associates

James Atkin BSc(Hons) DipLM CMLI Pegasus Group

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Andrew Pankhurst BA(Hons) ACIEEM SES

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FOR UTTLESFORD DISTRICT COUNCIL

Josef Cannon of Counsel, Cornerstone Barristers
(instructed by Uttlesford District Council)

He called:

Alison Hutchinson BA MRTPI Hutchinsons

Jon Etchells MA BPhil CMLI Jon Etchells Consulting

INTERESTED PARTIES

Graham Mott PhD Elsenham Parish Council

Raymond Woodcock Stansted Mountfitchet Parish Council

DOCUMENTS

- 1 Site visit route prepared by the appellant, the Council and EPC
- 2 Rebuttal on Transport Matters, Julian Clarke
- 3 Rebuttal on Landscape and Visual Matters, James Atkin
- 4 Rebuttal on Planning Evidence, Steven Kosky
- 5 Further Rebuttal on Transport Matters, Julian Clarke
- 6 Written statement, EPC
- 7 Written statement, SMPC

- 8 Agreed schedule of matters of disagreement
- 9 Appellant opening statement
- 10 Council opening statement
- 11 Highways Statement of Common Ground
- 12 Statement of Community Involvement, UDC
- 13 Email dated 3 July 2020 from Cllr Geoffrey Sell (UDC) regarding ECC highways responsibility
- 14 Photographs of HGV traffic at Grove Hill
- 15 Core Document 3.1a saved policy GEN2
- 16 Core Document 5.11 replacement decision - APP/C1570/W/19/3243727 Land to the south of The Street, Takeley CM22 6LY
- 17 Draft s106 Planning Obligation by Deed of Agreement
- 18 Appellant's proposed conditions
- 19 Email dated 23 November 2020 from Katherine Wilkinson (ECC) regarding highways s106 justification
- 20 Email dated 1 October 2020 from Nina Crabb (National Trust) regarding Hatfield Forest s106 justification
- 21 Written comments on s106, Graham Mott
- 22 CIL compliance schedule
- 23 Policies to accompany CIL compliance schedule
- 24 Proposal Map (2005) showing settlement boundary for Elsenham
- 25 Council closing statement
- 26 Stansted Mountfitchet Parish Council closing statement
- 27 Elsenham Parish Council closing statement
- 28 Appellant closing statement
- 29 Completed s106 Planning Obligation by Deed of Agreement

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

The application for approval of reserved matters shall include a 20 metre buffer between the built development within the land off Isabel Drive and the ancient woodland at Alsa Wood (with the exception of sustainable drainage features and any surface improvement works to public right of way 31 which may be included within the buffer) and no dwelling shall be sited west of the said public right of way.

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.

The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18.1317.SK04 Rev E (Site Location Plan), 1804-51.PL01 (Isabel Drive Access Plan) and 1804-51.PL02/D (Stansted Road Access Plan).
- 3) Prior to the occupation of any dwelling on the land off Stansted Road the access shall be provided in accordance with submitted drawing 1804-51.PL02/D, including clear to ground visibility splays with dimensions of 2.4 metres x 120 metres to the west and 2.4 metres x 108 metres to the east, as measured from the nearside edge of the carriageway. The access works shall also include:
 - i) widening of the footway between the access and the M11 bridge to a minimum width of 2 metres or maximum width within the highway boundary if less than 2 metres; and
 - ii) relocation of the village entrance sign to the west of the access, ensuring it is clear of visibility splays.

The vehicular visibility splays shall be retained free from any obstruction at all times thereafter.

- 4) Prior to the occupation of any dwelling on the land off Stansted Road, a scheme for the relocation of the 30 mph speed limit sign to the west of the new access and the provision of a vehicle activated speed sign on Stansted Road to encourage the reduction of speed shall be submitted to and approved in writing by the local planning authority. The works shall be implemented as approved prior to the occupation of any dwelling.
- 5) Prior to the occupation of any dwelling on the land off Isabel Drive the modifications to the Isabel Drive access shall be provided in accordance with submitted drawing 1804-51.PL01, including clear to ground visibility splays with dimensions of 2.4 metres x 43 metres as measured from the nearside edge of the carriageway. The vehicular visibility splays shall be retained free from any obstruction at all times thereafter.
- 6) No dwelling shall be occupied until a scheme has been submitted to and approved in writing by the local planning authority for the signal enhancement scheme at Grove Hill Junction, such scheme to include additional wireless vehicle detection and adjustment of signal times as necessary. The approved scheme shall detail implementation and funding arrangements for the delivery of the scheme.
- 7) Public right of way 31 (Elsenham) shall be enhanced with surfacing works and any associated drainage work in accordance with a written scheme which has been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with such scheme prior to the occupation of any dwelling on land off Isabel Drive.
- 8) No development shall take place until an archaeological written scheme of investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:

- i) the programme and methodology of site investigation and recording;
- ii) the programme for post investigation assessment;
- iii) the provision to be made for analysis of the site investigation and recording;
- iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) the provision to be made for archive deposition of the analysis and records of the site investigation;
- vi) the nomination of a competent person or persons/organization to undertake the works set out within the written scheme of investigation.

No development shall take place other than in accordance with the approved written scheme of investigation.

- 9) Prior to the commencement of the development, a Construction Environmental Management Plan (CEMP) shall have been submitted to and approved in writing by the local planning authority, and the plan shall include:

- i) hours of operation, delivery and storage of materials;
- ii) vehicle parking, turning and loading arrangements;
- iii) management of traffic including a construction vehicle routing plan avoiding routes through Stansted Mountfitchet, including method of dissemination, any signing and information on route restrictions;
- iv) control of dust and dirt on the public highway and wheel washing;
- v) waste management proposals;
- vi) mechanisms to deal with environmental impacts such as noise and air quality;
- vii) a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution; and
- viii) monitoring and remedial measures.

The development shall be carried out in accordance with the approved CEMP throughout the construction period.

- 10) Prior to commencement of the development, a Construction Environmental Management Plan (CEMP: Biodiversity) shall have been submitted to and approved in writing by the local planning authority, and the plan shall include:

- i) risk assessment of potentially damaging construction activities;
- ii) identification of biodiversity protection zones;
- iii) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- iv) the location and timing of sensitive works to avoid harm to biodiversity features;
- v) the times during construction when specialist ecologists need to be present on site to oversee works;
- vi) responsible persons and lines of communication;

- vii) the role and responsibilities on site of an ecological clerk of works or similarly competent person;
- viii) use of protective fences, exclusion barriers and warning signs; and
- ix) monitoring and remedial measures.

The development shall be carried out in accordance with the approved CEMP: Biodiversity throughout the construction period.

- 11) Prior to the commencement of the development, a Biodiversity Enhancement and Management Plan (BEMP) shall have been submitted to and approved in writing by the local planning authority, and the plan shall include:

- i) description, evaluation and location of the ecological features and biodiversity enhancement measures to be created and managed;
- ii) ecological trends and constraints on site that might influence management;
- iii) aims and objectives of biodiversity enhancements and their management including for protected species;
- iv) appropriate management options for achieving the aims and objectives of the project;
- v) prescriptions for management actions;
- vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- vii) details of the body or organisation responsible for implementation of the plan;
- viii) on-going monitoring and remedial measures; and
- ix) details of the legal and funding mechanism by which the long-term implementation of the plan will be secured.

The development shall be implemented in accordance with the approved BEMP.

- 12) Prior to occupation of any dwelling, a Woodland Management Plan (WMP) shall have been submitted to and approved in writing by the local planning authority. The content of the WMP shall be substantially in accordance with the details contained in the submitted Woodland Management Plan (Southern Ecological Solutions, August 2019), and shall include on-going monitoring and remedial measures. The plan shall include details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management body responsible for its delivery. The development shall be implemented in accordance with the approved plan.

- 13) Prior to commencement of the development, an Arboricultural Method Statement (AMS) shall have been submitted to and approved in writing by the local planning authority. The AMS shall include a detailed tree protection plan indicating retained trees, trees to be removed, location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected, suitable space for access, site storage and other construction related facilities, and details of the role and responsibilities on site of a competent person responsible for monitoring and implementation of the approved AMS and reporting to the local planning authority. The

development shall be implemented in accordance with the approved plan, and the local planning authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

- 14) Prior to the occupation of any dwelling, a recreation strategy shall have been submitted to and approved in writing by the local planning authority. The strategy shall include recreation opportunities via suitable green infrastructure within and connecting to the site through the existing public rights of way and permissive pathways. The recreation strategy will include information to locate and deliver:
- i) suitable circular dog walking routes which may include links to the existing public rights of way and permissive path network offsite;
 - ii) suitably located provision of dog waste bins within the site; and
 - iii) suitably located signage onsite and leaflets to the first occupiers of the dwellings onsite promoting these areas for recreation.

The development shall be implemented in accordance with the approved strategy, with any on-site elements to be implemented prior to the occupation of 75% of the dwellings on each of the parcels.

- 15) Prior to occupation of any dwelling, a Landscape and Ecological Management Plan (LEMP) shall have been submitted to and be approved in writing by the local planning authority, and the plan shall include:
- i) description and evaluation of features to be managed;
 - ii) ecological trends and constraints on site that might influence management;
 - iii) aims and objectives of management;
 - iv) appropriate management options for achieving aims and objectives;
 - v) prescriptions for management actions;
 - vi) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - vii) details of the body or organisation responsible for implementation of the plan;
 - viii) ongoing monitoring and remedial measures; and
 - ix) details of the legal and funding mechanism by which the long-term implementation of the plan will be secured.

The development shall be implemented in accordance with the approved LEMP.

- 16) Prior to the installation of any external lighting in public areas, a lighting scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall identify those features in public areas on site that are particularly sensitive for bats and that are likely to cause disturbance to important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate technical specification) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. No external lighting in public areas shall be installed other than in accordance with the approved scheme. The development shall be implemented in accordance with the approved scheme and maintained thereafter.

- 17) Prior to the commencement of the construction of any dwelling, a scheme detailing sound insulation measures shall have been submitted to and approved in writing by the local planning authority, and the scheme shall include:
- i) details sufficient to achieve the internal noise levels recommended in BS 8233:2014 and for individual noise events to not normally exceed 45 dBLA_{max}, including the internal configuration of rooms, and the specification and reduction calculations for the external building fabric, glazing, mechanical ventilation, and acoustic barriers. If the internal noise limits can only be achieved with closed windows then enhanced ventilation should be provided to allow residents to occupy the properties at all times with windows closed, as required to maintain thermal comfort; and
 - ii) details sufficient to achieve a noise level not exceeding 55dBLA_{eq} in the outdoor amenity areas, including the position, design, height and materials of any acoustic barrier proposed, along with calculations of the barrier attenuation.

The development shall be implemented in accordance with the approved scheme prior to the occupation of any respective dwelling and maintained thereafter.

- 18) No development shall commence until a Phase 2 site investigation report on the risks posed by any contamination, carried out in accordance with the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11)(or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until all remedial and validation works are approved in writing.
- 19) No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
- i) verification of the potential for disposing of surface water by means of a sustainable drainage system, based on Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version);

- ii) limiting discharge rates to 4.9l/s (Parcel A) and 2 l/s (Parcel B) for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
 - iii) provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
 - iv) demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event;
 - v) final modelling and calculations for all areas of the drainage system;
 - vi) the appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753;
 - vii) detailed engineering drawings of each component of the drainage scheme;
 - viii) a final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
 - ix) a written report summarising the final strategy and highlighting any minor changes to the approved strategy; and
 - x) details of maintenance and management arrangements.
- The development shall be implemented in accordance with the approved scheme prior to the occupation of any dwelling.
- 20) 5% of the dwellings shall be built in accordance with requirement M4(3) (wheelchair user dwellings), and the remaining dwellings shall be built in accordance with requirement M4(2) (accessible and adaptable dwellings) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 21) Prior to first occupation, each dwelling hereby approved shall be provided with an electric charging point. Once provided, the charging points shall be retained thereafter.

End of Schedule