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## Appeal Decision

Inquiry held on 23 April 2014

Site visits made on 23 and 24 April 2014

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 22 May 2014**

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### **Appeal Ref: APP/C1570/A/13/2206357 Land off Wedow Road, Thaxted, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by A R Hoar, Z F Hoar, V R Hoar and A P Hoar against the decision of Uttlesford District Council.
  - The application Ref UTT/13/1170/OP, dated 3 May 2013, was refused by notice dated 6 August 2013.
  - The development proposed is residential development for up to 47 dwellings with access off Wedow Road.
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for residential development for up to 47 dwellings with access off Wedow Road at Land at Wedow Road, Thaxted, Essex in accordance with the terms of the application, Ref UTT/13/1170/OP, dated 3 May 2013, subject to the conditions set out in Schedule 1 of this decision.

### **Preliminary Matters**

2. Since the application was refused by the Council further work and the production of Planning Obligations now means that the Council's concerns in relation to its 2 reasons for refusal have been met; these related to biodiversity and the absence of a mechanism to make provision for affordable housing/education. At the time of determination of the application the Council acknowledged that it could not demonstrate a 5 year supply of housing land; it now states that it can.

### **Main Issues**

3. I consider that the main issues in this appeal are as follows;
  - Consideration of the 5 year supply of housing land and implications arising
  - The effects of the proposal on biodiversity.

### **Reasons**

#### ***Consideration of the 5 year supply of housing***

4. Notwithstanding its position at the time of determining the application, the Council now considers that it can demonstrate a 5 years' supply of housing

sites; this is also in contrast to the contents of the Statement of Common Ground (SoCG) which, although prepared in November 2013, was signed by a Council officer at the Inquiry. The change in the Council's position was contained in a general statement issued by the Council on 12 February 2014. The Officers' report in relation to the application acknowledged the absence of a 5 year supply of housing land and stated that such a matter is a material consideration which would outweigh the policy objection from the Uttlesford Local Plan (ULP) Policy S7. However, and to my mind rather confusingly, in the light of their statement that they can now demonstrate a 5 years supply, they maintain that the proposal accords with the ULP provisions.

5. The Council made the statement at the Inquiry that it is not necessary to examine the 5 year supply position as they consider that the development is in accordance with the development plan. However, Policy S7 states that the countryside will be protected for its own sake and that planning permission will only be given for development that needs to take place there or is appropriate to a rural area; the site is within the defined countryside and their original consideration of the proposal found that this was a matter outweighed by the absence of a 5 years' supply of housing land. The Council further warned that it would be unfair to try to come to any conclusions on the housing supply situation as it had presented no detailed evidence. Despite the Council's concerns, I see it as essential that some conclusion is reached on this matter as consideration needs to be given to Policy S7 and a subsequent examination of whether any matters outweigh that policy.
6. The Council's current position is set out in a paper entitled "5-Year Land Supply update" which was presented to the Council's Local Plan Working Group. It sets out that it is expected that there is a marginal surplus (2791 compared to a requirement of 2746; a surplus of 45 units). But the report acknowledges that the 5 year supply is a rolling target which moves forward a year each April. It adds that the current trajectory anticipates a shortfall in provision in 2013/2014, 2014/2015 and also in 2019/2020 (the figure for 2013/14 will not be confirmed until June 2014) "and so the Council is likely to find itself again with less than a 5-year supply of land". It then adds that this means that applications for sustainable development outside development limits may need to be granted where appropriate to ensure the level of housing supply is robust. In my judgement, this demonstrates the fragility of the Council's position, even by its own reckoning, and demonstrates the problems with providing a 'snapshot' of housing supply when completions are not yet confirmed.
7. For their part, the appellants criticise the Council's figures for the following reasons: windfall sites are included and there is no compelling evidence to do so; draft Local Plan allocations are included and it is inappropriate to do so as there are notable unresolved objections to it. None of these points given in evidence by the appellants were challenged by the Council and I agree that they are matters which should be taken into account. In examining all of these matters, including the Council's note of caution as they have not produced detailed evidence, on the basis of the evidence that has been presented to me, I consider it unlikely that the Council can realistically demonstrate a 5 years' supply of housing land (and its own report expects that it will shortly not be able to). Therefore, in the light of the advice in the National Planning Policy Framework (the Framework), the relevant policies for the supply of housing should be considered as not being up-to-date and planning permission for

sustainable development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### ***The effects of the proposal on biodiversity***

8. The appeal site has recently been managed to maintain a Common Lizard habitat and for the benefit of grassland by containing the invasion of scrub. This was in order to mitigate and compensate for the adjacent housing development, which was under construction at the time of the Inquiry. This maintenance will cease in 2017, according to the appellant, as there is no agreement or compulsion to continue it.
9. In order to provide for biodiversity, it is intended that the appeal site will cater for bats and hedgehogs and enhance their habitats and, as part of the Obligations, would provide for the management of a much larger site for wildlife. The larger compensation site is a few miles from the appeal site and would be managed to provide a habitat for the Common Lizard and assessment has indicated that its potential value as grassland is significantly greater than that of the appeal site. The Obligation would ensure suitable management for a 25 year period.
10. Whilst it is accepted that the proposed compensation site is not located next to or close to the appeal site, it seems clear that, with suitable management, it would provide a suitable habitat for the Common Lizard and would provide a grassland of greater value and size than the appeal site does or could. In these circumstances, I consider that the proposal would not have any unacceptable effects on biodiversity, when taken as a whole and would enhance it. As a consequence, the proposal complies with the provisions of Policy GEN7 of the ULP and with the advice in paragraphs 109 and 118 of the Framework.

### **The Planning Obligations**

11. The submitted Agreements would provide for: affordable housing; provision and transfer of public open space; an education contribution; a biodiversity scheme, with an option agreement and management agreement. Based on the evidence submitted to the Inquiry, I am satisfied that the matters contained in the agreements are necessary to make the proposal acceptable, are relevant and related to it in scale and nature and are consistent with the relevant ULP Policies and advice in the Framework. Therefore, the agreements comply with the provisions of Regulation 122 of the CIL Regulations and I will take them into account in reaching my decision.

### **Conditions**

12. In considering the suggested conditions regard has been had to the advice in the National Planning Policy Framework and the national Planning Practice Guidance. I shall impose the standard conditions relating to the submission of reserved matters and commencement of development. In order to prevent flooding from surface and foul water, conditions are necessary to ensure a strategy and suitable works are in place.
13. Taking account of the access to the site through an existing residential area, a condition relating to construction traffic parking, wheel washing and any resultant necessary repairs to the highway is necessary and reasonable. In order to comply with Policy ENV4 of the ULP it is necessary to include a

condition relating to archaeology. I shall also include a condition which would require that any contamination is appropriately dealt with.

14. The site lies under one of the flight-paths to/from Stansted Airport and aircraft noise is experienced in the area; I accept that a condition requiring details of noise mitigation for the proposed dwellings is necessary. In order to comply with Policy GEN7 of the ULP a condition requiring a biodiversity plan for the site and one requiring a mitigation plan for Common Lizards are necessary. I shall also include a condition which would require that external lights are the subject of approval, in order to preserve the environment for nocturnal wildlife.

### **Conclusions**

15. I have taken account of all other matters raised in writing and at the Inquiry. I have carefully examined the proposed access route through the existing residential area and find nothing to contradict the views of the Council, that it is safe and has the spare capacity to accommodate the appeal scheme.
16. It is concluded that the proposal represents sustainable development and that, on the basis of the evidence available to me, the provisions of Policy S7 are outweighed by other matters. Therefore, the appeal is successful.

*S T Wood*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

R Williams	of Counsel
He called	
K Mathieson	Senior Planning Officer

### FOR THE APPELLANT:

S Tromans	Queen's Counsel
He called	
G Kaddish	Bidwells LLP
R Bull	Bidwells LLP
M Wade	RPS Group Ltd

### INTERESTED PERSONS:

T Frostick	Parish Council
D Piper	Parish Council
W Brazier	Parish Council
M Culkin	Thaxted Society

## **DOCUMENTS**

- 1 Planning Agreement
- 2 Planning Agreement
- 3 Signed SoCG
- 4 Council's letter of notification of the Inquiry and list of recipients

**SCHEDULE 1; Conditions** (13 in number)

- 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 begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until details of the following matters have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be adhered to throughout the construction period. The details shall provide for:
  - i) the parking of vehicles of site operatives and visitors within the site
  - ii) loading and unloading of plant and materials within the site
  - iii) an appropriate construction access
  - iv) wheel/chassis washing facilities
  - v) a 'before' condition survey of Wedow Road to be undertaken by the developer with the Highways Authority present; to be followed by an 'after' condition survey to be undertaken by the developer with the Highways Authority present, after the completion of construction. Details of how and when the surveys shall be undertaken shall be agreed in writing by the Local Planning Authority. The developer shall be responsible for making good any damage occurring to the highway as a result of construction traffic, in accordance with a timetable to be agreed in writing by the Local Planning Authority.

The aforementioned provisions in items i) to iv) shall be provided at or before the commencement of development and maintained during the period of construction.
- 5) No development or ground preparation works shall take place until a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. A mitigation strategy detailing the excavation/preservation strategy shall be submitted to and approved by the Local Planning Authority following completion of this work. No development or ground-works shall take place on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the agreed mitigation strategy, and which has been signed off by the Local Planning Authority. A post-excavation assessment (to be submitted within 6 months of the completion of the field-work, unless otherwise agreed in writing and in advance by the Local Planning Authority) shall be submitted to the Local Planning Authority. This shall result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

- 6) Prior to the commencement of development, a scheme for the provision and implementation of surface water drainage, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved details, prior to the occupation of any part of the development.
- 7) No drainage works shall commence until a surface water management strategy has been submitted to and approved in writing by the Local Planning Authority. No hard-surfaced areas shall be constructed until the works have been carried out in accordance with the approved surface water strategy.
- 8) No development shall commence until a foul water strategy has been submitted to and agreed in writing by the Local Planning Authority. No dwelling shall be occupied until the works have been carried out in accordance with the agreed details.
- 9) Prior to the commencement of development details of the method of construction proposed in order for the dwellings to meet BS 8233:1999 in relation to noise from aircraft shall be submitted to and approved in writing by the Local Planning Authority. The dwellings shall be constructed in accordance with the approved details.
- 10) If, during the course of development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted to the Local Planning Authority, an assessment of the contamination undertaken by a competent person, to include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) an assessment of the potential risk to human health, adjoining land, ground waters and surface waters.

Where remediation is necessary a scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority and the scheme undertaken in accordance with those details. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority.
- 11) No development shall take place until a detailed mitigation plan for the common lizards identified including their breeding sites and resting places has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 12) No development shall take place until a detailed biodiversity plan has been submitted to and approved in writing by the Local Planning Authority. The biodiversity plan shall detail the on-site biodiversity measures forming part of the development. Subsequently the development shall be implemented in accordance with the approved details and any features thereafter retained.
- 13) No fixed external lighting shall be installed or erected until details of the location, height, design, sensors and luminance have been submitted to

and approved in writing by the Local Planning Authority. The lighting shall be designed to minimise any potential effects on nocturnal animals. The lighting shall thereafter be erected, installed and operated in accordance with the approved details.

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