
Decision Notice and Statement of Reasons

Site visits made on 20 June 2023 and 24 July 2023

Hearing held on 25 July 2023

By Susan Hunt BA (Hons) MA MRTPI

A person appointed by the Secretary of State

Decision date: 9 August 2023

Application Reference: S62A/2023/0016

Site address: Warish Hall Farm, Smiths Green Lane, Takeley, Essex
CM22 6NZ

- The application is made under section 62A of the Town and Country Planning Act 1990.
 - The site is located within the administrative area of Uttlesford District Council.
 - The application dated 11 November 2022 is made by Weston Homes PLC and was validated on 24 April 2023.
 - The development proposed is Erection of 40 no. dwellings, including open space landscaping and associated infrastructure.
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Decision

1. Planning permission is refused for the development described above, for the following reasons:
 - 1) It has not been adequately demonstrated that lighting and loss of vegetation, particularly in relation to access works and off-site proposals to improve the restricted byway Takeley 48/25 would not result in unacceptable harm to the established character and appearance of the surrounding area and to the significance of Smiths Green Lane (Warish Hall Road), a protected lane and non-designated heritage asset. This is contrary to policies S7, ENV9 and GEN2 of the Uttlesford Local Plan and paragraphs 130 c), 185 c) and 203 of the National Planning Policy Framework.
 - 2) It has not been adequately demonstrated that safe and suitable access to and from the site for pedestrians and cyclists could be achieved which meets highway design standards whilst responding to local character and biodiversity considerations, contrary to Uttlesford Local Plan policy GEN1 and paragraphs 92, 110 and 112 of the National Planning Policy Framework.

Statement of Reasons

Procedural Matters

2. The application was made under Section 62A of the Town and Country Planning Act 1990, which allows for applications to be made directly to the Planning Inspectorate where a Council has been designated by the Secretary of State. Uttlesford District Council (UDC) have been designated for major applications since February 2022.

3. Following screening by the Planning Inspectorate under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended), it was found that the proposed development would not be of a scale or nature likely to give rise to significant adverse effects. Therefore an Environmental Impact Assessment was not required and I am satisfied that the requirements of the Regulations have been complied with.
4. Consultation was undertaken on 27 April 2023 which allowed for responses by 1 June 2023. Responses were received from the parties listed in Appendix 1 of this statement. A number of interested parties and local residents also submitted responses.
5. UDC submitted an officer report and minutes following a planning committee meeting on 7 June. The consultation response summarises these documents and sets out the Council's objections to the proposed development on a number of grounds.
6. Some of the consultation responses raised issues that required further information and/or revised plans. These include responses from UDC Housing Strategy and Environmental Health officers, and Essex County Council (ECC) Place Services ecology team. Having regard to the Wheatcroft Principles, I accepted additional plans and information dated 2 June and 11 July in response to those comments and a targeted re-consultation of the relevant consultees only was carried out. The first of these additional submissions led to the agreement of an extension of time to the determination period to 15 August 2023.
7. I carried out two unaccompanied site visits, the first on 20 June and then for a second visit on 24 July, the day before the hearing, which enabled me to view the site, the surrounding area and the nearby roads and public rights of way.
8. On 17 July I published an Issues Report, prepared under the provisions of the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013. This included a description of the development, consultation details and material considerations, and explored the main issues to be considered in relation to the application. In addition to that report, I set out an agenda for the public hearing. This was held on 25 July at the Council's offices in Saffron Walden, attended by a local councillor, a representative from Takeley Parish Council, several local residents, officers of UDC and ECC, and representatives of the applicant. I accepted additional documents at the hearing, and I requested further documents, both of which are listed in Schedule 2 of this decision.
9. After the hearing I received a certified copy of a Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 from the applicant which covers a range of obligations including affordable housing, first homes, public open space, healthcare, highway improvements, sustainable transport, libraries, education and school transport. A CIL compliance statement with reference to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL regs) was supplied by UDC prior to the hearing. I consider whether the obligations in the UU meet the tests set out in the Framework and satisfy the requirements of the CIL regs later in this statement.

10. In determining this application, the Planning Inspectorate has worked with the applicant in a positive and proactive manner to seek solutions to problems arising in relation to dealing with the planning application. In doing so, the Planning Inspectorate gave clear advice of the expectation and requirements for the submission of documents and information, ensured consultation responses were published in good time, gave clear deadlines for submissions and responses, and accepted amendments submitted by the applicant in response to the matters raised during consultation.
11. I have taken account of all written and oral representations in reaching my decision.

Main Issues

12. Having regard to the application, the consultation responses, comments from interested parties, the Council's report and Committee resolution, together with what I saw on site and heard at the hearing, the main issues for this application are:
 - whether the location of the development is acceptable, having regard to the development strategy in the development plan, and its location in the countryside protection zone;
 - whether the proposed development is accessible for non-motorised users and would be acceptable in terms of highway safety;
 - the effects of the proposed development on the character and appearance of the area;
 - the effects of the development on the significance of designated and non-designated heritage assets; and
 - effects of noise on the living conditions of future occupiers.

Reasons

Planning History and Background

13. The application site previously formed part of a much larger development site known as Warish Hall Farm, extending west of Smiths Green Lane towards Parsonage Road and Roseacres. The larger development comprised three main land parcels known as Bull Field and 7 Acres to west of Smiths Green Lane, and Jacks parcel to the east which is the site before me for determination. The proposals included 188 dwellings, employment space, a medical facility building, land for an extension to Roseacres Primary School and extension and enhancement of Prior's Wood. The application was refused by UDC in December 2021 and an appeal¹ was dismissed in August 2022 (the appeal scheme).
14. During the determination period of this application, part of the appeal scheme site (7 Acres) has since been approved for employment buildings². I was provided with a copy of the relevant documents following the hearing.
15. An application has been made to the Planning Inspectorate under Section 62A of the Town and Country Planning Act 1990 for residential development on the

¹ APP/C1570/W/22/3291524 - dismissed 9 August 2022

² UTT/22/2744/FUL - approved 28 June 2023

land parcel at Bull Field³. At the time of the hearing the application was invalid. At the time of writing, consultation has recently commenced on the application. Given it is an early stage of consideration it has limited bearing on my decision.

16. An identical planning application (UTT/22/3126/FUL) to that before me has been submitted to UDC. I was informed that this application has been held in abeyance awaiting to the outcome of my decision.
17. Smiths Green Lane is also known as Warish Hall Road, and I use the former name in this statement. It is proposed to access the site from the east side of Smiths Green Lane, which is designated as a protected lane as set out in the Uttlesford Protected Lanes Assessment (2012). Protected lanes are referred to in Local Plan policy ENV9 'Historic Landscapes' and the parties agree that the lane is a non-designated heritage asset.
18. The verges alongside Smiths Green Lane are registered as a village green and Takeley Parish Council supplied me with a copy of the relevant documentation⁴. An access over the village green would require a separate application to the Secretary of State under section 16 of the Commons Act 2006. The applicant confirmed at the hearing that no such application has been made to date, pending the outcome of my decision.
19. Takeley Parish Council also provided me with a draft copy of Smiths Green Conservation Area Character Appraisal and Management Plan, dated May 2023. The proposed conservation area would cover the areas of low density and historic dwellings around the original hamlet of Smiths Green at the southern end of Smiths Green Lane, and incorporating the western end of Jacks Lane. The application site would not be within the conservation area or adjoin its boundaries. I was told at the hearing that consultation on designation of the Smiths Green conservation area is expected to commence shortly, completing in September. A final version of the appraisal would be produced for UDC approval later in the year. Given that there is currently no conservation area designation I am unable to give it any weight, however the appraisal provides useful background information about Smiths Green Lane and the heritage assets within the area.
20. Works are proposed to upgrade the adjacent restricted byway, the Takeley 48/25 between the proposed pedestrian/cycle access to the east of the site, via Jacks Lane to Burgattes Road at Priors Green. This does not form part of the application site so forms part of the UU. I return to this matter when considering the main issue of access.

Location and Principle of Development

21. The site is situated in the countryside where policy S7 of the Local Plan is restrictive of new development. Objections were not raised by the Council in principle in terms of its location immediately adjacent to the development limits of the settlement, indicating that the new built form would provide a logical relationship with the existing settlement. The officer report also states

³ S62A/2023/0019

⁴ Takeley Parish Council 15 May 2023 and 12 June 2023

that the siting would not be unreasonable taking into account its proximity to local services and facilities.

22. Numerous local residents put to me that local infrastructure and services are considered to be insufficient to support the development. Takeley is identified in the Local Plan as a key rural settlement by policy S3. It has a range of facilities and services commensurate to its status in the settlement hierarchy. In the past 20 years or so it has expanded considerably to the east into Little Canfield, following the build out of the Priors Green urban extension. Priors Green local centre includes a small supermarket, dental practice, restaurant, hairdressers, community hall, primary school and nursery. Further shops and services are located around the B1256 and Parsonage Road in Takeley.
23. There is limited evidence before me that the addition of 40 dwellings would result in a significant strain on local services, and where there is an identified capacity issue (including health, education and library provision) the contributions within the UU seek to address this. Overall, I find there are a sufficient range of services to meet day-to-day needs within a reasonable distance of the site. As such, I am satisfied that the development of the site is commensurate with the position of Takeley in the settlement hierarchy. I consider how such services could be accessed on foot later in this statement, in the section regarding highways and accessibility.
24. The site also lies within the countryside protection zone (CPZ) as shown on the Local Plan maps and as defined by policy S8, which controls development around Stansted Airport. Development is restricted by the policy if it would:
 - a) promote coalescence between the airport and existing development, or
 - b) adversely affect the open characteristics of the area.Given the proximity of the site to existing built development and the large areas of intervening open land between the site and the airport, and having regard to the decision on the appeal scheme (paragraphs 30 and 32), I am satisfied that there would not be conflict with part a) of policy S8. In terms of part b), I consider this as part of my subsequent considerations of character and appearance.
25. Many interested parties consider that the development is not needed, given the amount of recent and ongoing housebuilding locally, as well as the range of houses for sale nearby. On a district-wide basis the Council is currently unable to demonstrate a deliverable five-year housing land supply⁵. I acknowledge that the supply position is based on the position at 1 April 2022, and that a number of housing sites will have come forward since then. Nonetheless, it is the most up-to-date published position before me. The Council told me that an update to the supply position would be unlikely until the Autumn, around the same time that a draft of the new Local Plan is expected to be consulted on. Given that the replacement Local Plan is at an early stage in its preparation there is little to suggest that the deficit would be addressed anytime soon. The application of the 'tilted balance' under paragraph 11 d) of the National Planning Policy Framework (the Framework) will be addressed in my considerations of the planning balance later in this statement of reasons.

⁵ Uttlesford District Council 5-Year Land Supply Statement and Housing Trajectory Status at 1 April 2022, Published December 2022

26. Interested parties have also raised concerns about the loss of agricultural land and potential conflict with Local Plan policy ENV5. The applicant's Planning Statement indicates that the site is Grade 2 and is therefore classified as 'best and most versatile' (BMV) land, of which there would be a loss of around 2.3 ha. The land is currently laid to grass, and given its contained nature and awkward shape it is likely to be less suitable and accessible for large farm machinery. Nonetheless, the site represents a small proportion of the BMV land in the district as a whole and its loss would not be significant. I also acknowledge that this was not raised as a main issue in the much larger appeal scheme.
27. I also note the range of other housing proposals and ongoing development in the wider area, and the pending s62A application for Bull Field. Whilst the full details of these developments are not before me, I am satisfied that their existence should not prevent an assessment of an additional 40 dwellings in the settlement on its own merits.
28. The proposed development would be abutting but nonetheless outside of the settlement boundary for Takeley, and would not meet any of the criteria within policy S7 regarding development in the countryside. Notwithstanding this, the scale and location is broadly compatible with the Key Rural Settlement status of Takeley in the settlement hierarchy as defined in policy S3, having particular regard to its proximity to the existing settlement and local services. Furthermore, I am satisfied that the proposed development would not conflict with part a) of policy S8 in terms of avoiding coalescence between Stansted Airport and existing development in the surrounding countryside. Policies S3 and S7 also require development to be compatible with the settlement's character and countryside setting, and policy S8(b) the open characteristics of the CPZ. I consider such matters in the next sections.

Character and Appearance

29. Neither the site nor surrounding landscapes are subject to any national designations, nor is there any information before me to suggest that the landscape is valued in the context of paragraph 174 a) of the Framework. The protected lane and village green status of Smiths Green Lane are not specifically landscape designations, nonetheless the non-designated heritage asset status of the lane is of relevance in wider matters of character and appearance.
30. A Landscape and Visual Impact Assessment (LVIA) has been submitted in accordance with the third edition of the Guidelines for Landscape and Visual Impact Assessment. It has appropriately considered the relevant landscape character assessments (LCA) both on a national and local level. The site lies within character area B1 'Central Essex Farmlands' of Essex LCA, and within area B10 'Broxted Farmland Plateau' of the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford LCA.
31. I would agree with the key characteristics as set out in the documents, however I acknowledge that since both of the LCAs were produced (2003 and 2006 respectively) major development has taken place around Takeley and Little Canfield. Nonetheless the characteristics have been retained in this undeveloped part of Takeley, including the irregular field patterns of mainly

medium sized arable fields marked by sinuous hedgerows and ditches, the presence of small woods and copses, and network of narrow lanes which contribute to its mostly tranquil character. Consequently, I concur with the overall assessment of landscape sensitivity in the LVIA as moderate.

32. In terms of visual effects, sensitive receptors include residents of Smiths Green Lane and Jacks Lane, and users of the public rights of way. Visual sensitivity of walkers and residents in these locations is assessed in the LVIA to be moderate or high. However I note that the LVIA includes reference to effects on more distant receptors which relate to the dismissed appeal scheme. As such, the visual effects on some receptors have been overstated. I find that the effects pertaining to Jacks parcel alone are much more localised given its contained nature, and overall the sensitivity to change of such receptors would be moderate.
33. The site benefits from dense and mature screening to all boundaries including a heavily vegetated copse to the south west. I noted on my site visit that direct views of the site are restricted from most viewpoints, and that only limited glimpses are achievable from a few short-range locations where there are gaps in vegetation. The principal vista of the site is via the existing agricultural access onto Smiths Green Lane, and due to the limited width of the gap, the interior of the site can only be seen when directly passing.
34. Whilst the trees and hedgerows were in full leaf on my summer site visit, I note that the LVIA was undertaken in winter and the visuals indicate a greater visibility of the site in short range views, albeit still of a filtered nature. The photographs indicate that wider public views into the site were still limited. Nonetheless, the existing pastoral nature of the site and its vegetated boundaries undoubtedly form a positive feature in the landscape of the area.
35. Residents of many of the nearby dwellings on Jacks Lane directly face the site, but are well separated both by the road and vegetation. The dwellings on Smiths Green predominately benefit from large gardens which are well contained by trees and hedgerows, so enjoy good levels of privacy. Without the presence of development on the opposite Bull Field site, I find that the change in their views would be minor adverse rather than the moderate adverse affects noted in the LVIA and this would further reduce as additional boundary landscaping matures.
36. The Council confirmed that it does not raise objections in relation to the design or layout of the housing development, nonetheless a number of interested parties have voiced concerns that the suburban nature of the development would be out of keeping with its rural surroundings. I have had regard to the comprehensive Design and Access Statement and efforts made by the applicant in the evolution of the design and in having regard to the existing character of Takeley. The proposed development does not seek to replicate the low density grain of the historic core of the village, nor the higher density residential development at Priors Green. Rather, it would sit between these distinctly different areas of the settlement, responding in particular to the more positive aspects of the Priors Green development. It would appropriately include a mix of dwelling types and heights (including bungalows) and represent a relatively low density contemporary development, with a design which would not compete with either the historic core of the

village nor the more recent developments. As such, I find the design, scale, form and layout of the dwellings to be acceptable and in general accordance with Local Plan policy GEN2.

37. There is a historic absence of lighting in this area of Takeley, and as such there is potential for the appearance of the development to be more noticeable during hours of darkness. Lighting of the application site and the associated byway improvements would be required to meet Highway Authority requirements. However there is an inherent conflict between the need for lighting for reasons of safety, and its potential effect on area character and appearance. There are also potential effects on biodiversity, including bats (which I deal with later in this statement), the nearby Stansted Airport, and living conditions. There is no lighting scheme before me to consider. Instead, there are suggested conditions and obligations in the UU which expect details to be agreed by the UDC and ECC prior to the relevant works.
38. The applicant has indicated that no street columns are proposed, and that it would be likely to comprise low level bollard type lighting as requested by ECC Place Services' Ecological Consultant to reduce effects on bats. Such lighting would also be less harmful to area character. However, the Highway Authority indicated that their specifications may differ from this to meet safety and highway agreement requirements. The parties indicated at the hearing that an acceptable solution would be possible. Nonetheless without any lighting details before me, and the lack of detailed assessment in the LVIA, I am unconvinced that a lighting scheme should be agreed post-consent given that it forms a fundamental part of my considerations of effects on area character (and setting of heritage assets as set out in the next section).
39. Returning to Local Plan policy S8, I have already established that the proposed development would not result in coalescence with the airport, so would be in compliance with part a) of the policy. Part b) states that development would not be permitted if it would adversely affect the open characteristics of the area. The appeal scheme was partly dismissed against policy S8, however this refers specifically to Bull Field and Maggots Field on the opposite side of Smiths Green Lane. These are much larger more open fields than Jacks parcel, which is well-contained by its densely vegetated boundaries. Despite my concerns regarding the effects of lighting I do not consider that the open character of the area, and the aims of the policy as set out in supporting text paragraph 2.2.9 of the Local Plan, would be significantly comprised by the proposed development.
40. Overall on matters of character and appearance I consider the design and layout of the proposed development would broadly meet the Framework's aims for achieving well-designed places as set out in section 12. I am also satisfied that there would be no significant conflict with policy S8 in relation to both the coalescence and openness aspects of the CPZ. However, I am unconvinced that wider effects of the development and the associated byway improvements on landscape and visual character and appearance during hours of darkness have been adequately considered by the applicant. This is of particular importance given the historic lack of lighting in the vicinity of Jacks Lane and Smiths Green Lane. I am not persuaded that such matters should be left to a condition, and without an acceptable agreed lighting

scheme there would be harm to the character and appearance of the area in conflict with policy GEN2 of the Local Plan.

41. In terms of the conflict with the Framework, the proposed development would be contrary to paragraph 130 c) which requires developments to be sympathetic to local character and history including its landscape setting, and paragraph 185 c) which requires development to take into account the likely effects of pollution and limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

Heritage Assets

42. There are a number of heritage assets in the vicinity of the application site, both designated and non-designated. As the proposed development relates to the setting of listed buildings I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced, noting that the extent is not fixed and may change as the asset and its surroundings evolve.
43. Nearby listed buildings which have the potential to be affected include the Grade I listed Warish Hall and Moat Bridge (ref. 1169063), and closer to the site, the Grade II listed Hollow Elm Cottage (ref. 1112220), Cheerups Cottage (ref. 1112207) and Pump at Pippins (ref. 1112210).
44. Warish Hall is a timber framed late 13th century aisled hall house with later alterations, formerly the site of a Priory of St Valery in Picardy. Its significance is derived from its architectural and historic interest as a surviving building and its setting includes adjacent outbuildings on a moated site. The moated site and remains of the Priory are designated as a Scheduled Monument. The wider setting of both assets is limited by surrounding mature trees and the application site makes a neutral contribution to it. Historic England's response refers to potential effects of traffic on the Scheduled Monument. However I find that these concerns are unjustified given the much smaller level of development at Jacks Parcel than on the appeal proposals, the intervening distance and contained nature of the application site. Traffic from the application site both during construction and operation would primarily come from a southerly direction via the B1256 Dunmow Road. I am satisfied that the proposed development would not result in harm to the appreciation and experience of this heritage asset of the highest significance.
45. Hollow Elm Cottage is a thatched cottage located to the east side of Smiths Green Lane, and as the listed building in closest proximity to the site the proposed development has the potential to affect its setting. I consider its significance in more detail shortly. Cheerups Cottage is a 17th century single storey timber framed cottage which has historic, architectural and historic interest as evidenced in the surviving historic fabric. The Pump at Pippins is a 19th century cast iron water pump whose significance derives from its surviving historic fabric and historic association with daily life in the hamlet of Smiths Green. Both of these assets lie near to the junction with Smiths Green Lane and the wider verges here contribute to their setting. Both are set back from the road and there is no visual connection with the application site due to the presence of intervening dwellings, vegetation alongside the village green and a dense copse of trees further along Jacks Lane.

46. The applicant's heritage assessment has appropriately described the significance of the site as well as all heritage assets within a 1500 metre search area. An archaeological desk-based assessment and written scheme of investigation including the results of a geophysical survey have also been provided which appropriately assess the archaeological potential of the site. The level of detail is sufficient to understand the potential impact of the proposal on the significance of the identified heritage assets⁶, in accordance with paragraph 194 of the Framework.
47. ECC Conservation have assessed that there would be no harm to the significance of all but one of the listed designated heritage assets. Having regard to their comments, the heritage assessment and my observations on site, I concur that the effects on the setting of Warish Hall and Moat Bridge, Cheerups Cottage and Pump at Pippins would be neutral. This is by virtue of their distance from the site, intervening buildings and vegetation, and the contained nature of the site.
48. ECC Conservation have identified less than substantial harm (at the lower end of the scale) to Hollow Elm Cottage. The thatched timber framed cottage dates from the 17th century (with potentially earlier origins), and its significance is primarily derived from its historic, architectural and artistic interest with evidence of surviving traditional building construction and materials. The building is perpendicular to the road, with its steeply pitched thatched roof providing a glimpse of its historic construction. The building is well contained within its substantial gardens by mature vegetation. Hollow Elm Cottage makes a positive contribution to the character and appearance of the area and can be appreciated in its semi-rural and tranquil setting along this sparsely developed section of Smiths Green Lane. I note that the Inspector in considering the appeal scheme identified that the land opposite the site (Bull Field, Maggots Field and Priors Wood) particularly gives the setting of Hollow Elm Cottage a sense of tranquility which overall makes a positive contribution to its significance. Consequently he found that development there would fail to preserve its setting. However, the application site at Jacks Parcel was not similarly identified as causing harm to the setting of the listed building.
49. Having regard to the lack of direct interrelationship with Hollow Elm Cottage as a result of its separation by intervening land and a copse of trees, I would agree with the applicant that there would be no harmful effects arising from the proposed development on its wider rural setting, and that the heritage balance exercise in paragraph 202 of the Framework is therefore unnecessary.
50. In respect of non-designated heritage assets, paragraph 203 of the Framework requires effects on significance to be taken into account, and in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of harm or loss and the significance of the heritage asset. I have also had regard to Historic England advice⁷. Smiths Green Lane (also known as Warish Hall Road), is a protected lane and these are referred to in Local Plan policy ENV9 relating to historic landscapes. The policy states that development proposals

⁶ As listed on pages 14-15 and assessed within section 5.2, Heritage Assessment

⁷ Historic England Advice Note 7 – Local Heritage Listing: Identifying and Conserving Local Heritage

likely to harm such landscapes will not be permitted unless the need for the development outweighs the historic significance of the site.

51. Its significance is derived from its historic context in the village of Takeley, its narrow width and wide unlit grassed verges without footways and limited street furniture. It is punctuated in numerous locations to provide access to dwellings which line the lane, and around its junction with Jacks Lane. The part of the lane along which the application site is located has narrower verges which are restricted by dense vegetation. I saw on my site visit that the lane is very lightly trafficked, with a consequent a sense of tranquillity and rural character, notwithstanding the background noise arising from the nearby A120 and Stansted Airport. The contained nature of the application site means that only glimpses of the field are currently appreciable. The site makes a moderate contribution to the significance of the non-designated heritage asset, and this is largely due to its undeveloped and verdant nature.
52. The Council's response indicates that the protected lane is of particular concern, and this relates to the experience of the users of the lane and its historic significance in its open, pastoral setting. Historic England's response notes its importance as a historic lane and its contribution to the setting of numerous heritage assets. I note that Historic England welcome the reduction to the extent of the development to the northern edge of the site (as compared to the appeal scheme) and consider that there is some scope for new development on the site. Notwithstanding this, Historic England retain concerns regarding the suburban encroachment on the historic lane, including impacts of light spill. As set out in the previous section of this statement, I am not persuaded that lighting details could be left to a condition. This is made more pertinent by the potential effects of light spill on the historic significance of the lane and its tranquil nature which is enhanced by the current lack of any significant lighting.
53. I note that the decision on the appeal proposals identified a moderate level of harm which could be mitigated to some extent by the design characteristics of the proposals at Bull Field. It concluded that the harm would be outweighed by the significant benefit of the housing provision arising from the proposals. The lack of specific reference to the effects of the Jacks Parcel development on the significance of the protected lane in the appeal decision does not necessarily imply that the Inspector did not consider it in the overall balance. Nonetheless, I am considering the application before me on its own merits based on the evidence put to me in writing and at the hearing.
54. I acknowledge that the only part of the proposed development directly affecting the lane would be the single access road into the site, and this is proposed in the same location as the existing agricultural access. Here, there is a relatively small gap in the dense hedgerow boundary along Smiths Green Lane. The proposed access, together with the footway/cycleway link into the site, would be wider than the existing gap and involve a mass of hardstanding uncharacteristic of the lane. Furthermore, visibility splays required by ECC Highways would necessitate the removal and/or cutting back of some of the existing vegetation along the verge. The proposed areas of removal are shown in the Arboricultural Impact Assessment⁸ however it is unclear whether

⁸ Arboricultural Impact Assessment (Addendum) (February 2023) – Section 2: Tree Retention, Removal & Protection Plan BHA_1030_03 Rev A

the extent of removal would achieve ECC Highway's requirement for 2.4m x 43m visibility splays.

55. I asked how such splays would be maintained and was told this would be in the remit of the applicant's management company, however the plan⁹ indicates that achieving the splays would involve land outside of the application site. These uncertainties add to my concerns that there could be greater erosion of the village green and boundary vegetation than is indicated on the plans, and in turn this would result in harm to the significance of the Protected Lane as a non-designated heritage asset.
56. Matters of lighting, visibility splays and associated vegetation removal are matters which are capable of being resolved by conditions which require further details. However such details are fundamental to the effects of the development on both the character and appearance of the area and the significance of the lane as a non-designated heritage asset. I am unable to assess the scale of harm and weigh it against the need for the development, and as such there is conflict with Local Plan policy ENV9 relating to historic landscapes as well as paragraph 203 of the Framework.

Accessibility

57. ECC Highways have not raised objections to the access, internal road layout or parking provision subject to a number of conditions. The Transport Assessment indicates that there is sufficient capacity on the local highway network for the expected traffic movements, and National Highways have not raised objections. There is insufficient evidence to persuade me otherwise, and as such I concur that there would not be severe cumulative impacts on the road network.
58. My considerations on highway safety relate primarily to safe and suitable access for non-motorised users. Paragraph 92 of the Framework seeks for decisions to aim to achieve healthy, inclusive and safe places which include street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, that are safe and accessible (including well-designed, clear and legible pedestrian and cycle routes) and that enable and support healthy lifestyles. Paragraph 110 b) requires safe and secure access to the site to be achieved for all users, and paragraph 112 a) states that applications for development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas. Paragraph 112 c) goes on to say that places should be safe, secure and attractive, minimising the conflict between pedestrians, cyclists and vehicles whilst responding to local character and design standards.
59. The lane is not heavily trafficked and it is possible to walk along its wide grassed verges. However this is somewhat prohibitive to wheelchair users and pedestrians with prams and pushchairs, and to most users and when it becomes muddy in inclement weather. In hours of darkness safety implications are heightened given the lack of street lighting. I heard that users are forced off the verge into the lane itself, creating a highway safety hazard. Ordinarily, a safe footway towards the settlement of Takeley alongside the highway would be required as part of a major housing

⁹ Transport Assessment (April 2023) Appendix I: Drawing no. 2007045-SK37 Rev A

development to facilitate access to the main part of the settlement along the B1256 and its services including bus routes. However the protected lane/non-designated heritage asset and village green status of Smiths Green Lane and its verges mean that it is not feasible nor desirable in the interests of its character and historic interest to upgrade the road nor verges to safely accommodate pedestrians.

60. Public Right of Way Takeley 40 is broadly opposite the site, running from Smiths Green Lane along the edge of Bull Field and Priors Wood to Parsonage Road where it provides links to wider routes beyond the immediate environs of the site. This public right of way would have been incorporated as part of the wider development site on Bull Field, however as it presently exists it is a relatively overgrown unmade path through a field and is therefore not suitable for all users at all times of year.
61. Therefore an alternative pedestrian route is sought via the eastern edge of the site onto the adjacent public right of way. As a byway it is open to all types of user, not just pedestrians, and would include cyclists and horse riders. Motorists are restricted. The existing surface of the restricted byway is natural with compacted stones and I found it to be an easy and pleasant walk of less than five minutes between the site and Priors Green where is a local centre with a range of services. My walk took place on a dry summers day, and the surface was in generally good condition albeit some sections were overgrown and of more restricted width. It is of sufficient width to accommodate pedestrians however some sections may prove difficult for wheelchair users and pushchairs, and combined with cyclists and horse riders there is potential for conflict. It is unlit, and there is limited natural surveillance by nearby dwellings. I was told that users do not feel safe during hours of darkness and the surface is not always accessible with the route getting muddy and overgrown at numerous times of year, and that the ditches can overflow in times of heavy rain.
62. Given that this would comprise the sole dedicated route for walkers and cyclists, as well as continuing to serve existing local residents and equestrian users, in its current state the byway would be unacceptable as a safe, secure and attractive route for non-motorised users contrary to paragraphs 92, 110, and 112 of the Framework. The applicant therefore proposes to upgrade the byway by laying a new surface and installing lighting. This would inevitably involve cutting back and removing some of the vegetation which lines the route, with consequential environmental effects.
63. It appears that ECC Places Services' Ecological Consultant was initially unaware of the off-site proposals to upgrade the byway. In their revised consultation response¹⁰ they highlighted that the byway and its' surroundings include suitable habitat for foraging, commuting and roosting bats and therefore requested a pre-determination survey. The applicant subsequently submitted the results of a recent bat survey¹¹ which recorded significant usage of the byway by bats. The report indicates that mitigation would take the form of minimising losses to vegetation to conserve foraging

¹⁰ Essex County Council Ecological Consultant 31 May 2023

¹¹ Arboricultural Briefing Note – Offsite Byway Improvements (8 June 2023) and Briefing Note: Byway Improvements (June 2023) and Bat Survey Report (July 2023)

opportunities, and to install low-level bollard lighting¹² rather than higher columns.

64. Aims to retain vegetation and protect biodiversity have significant potential to conflict with the requirements of the Highway Authority in terms of making it a safe route which meets the relevant standards for a multi-user byway. However, there is limited information before me regarding details of how the byway would be upgraded to improve accessibility both for future occupiers and existing users whilst having regard to such environmental matters. A location plan¹³ has been provided with the UU, and a cross sectional drawing¹⁴ indicatively shows bollard lighting and timber edgings. However the exact extent and width of the surface is unclear therefore I am not convinced that the existing path is of sufficient width to accommodate a multi-user service and lighting without encroaching beyond its existing route.
65. It may be possible that full details could be secured by a scheme to be agreed via a suitably worded Grampian condition as recommended by the Highway Authority, but I am mindful of planning practice guidance¹⁵ and the prospect of the works being agreed by all parties to enable the housing development to be implemented in a reasonable time period. No part of the byway lies within the control of the applicant, therefore such matters are contained within the UU with a requirement for a Highway Works Agreement¹⁶. I was told at the hearing that the subsoil and surrounding land is in private ownership, with the owners being party to the UU. The exact extent and width of the path which is a public right of way within the jurisdiction of ECC as Highway Authority is, however, currently unknown.
66. Since the discussion at the hearing some further detail has been added to the definition of Highway Works within the UU so that the requirements are more aligned with the condition recommended by the Highway Authority. Nonetheless given the conflicting views between consultees and potential trade-offs between the environment and pedestrian safety, I am not persuaded that such a scheme should be agreed post-consent. This matter forms a fundamental part of my considerations. If a scheme cannot be agreed for any reason, there is a risk that a lack of safe pedestrian access could render the proposed development unimplementable.
67. Taking together the submissions by the Highway Authority and the interested parties, and my observations on site, from the submission before me I am not satisfied that a scheme to upgrade the byway could be dealt with post-consent, either through the UU or by Grampian type conditions. Without the link, I am unconvinced that the site could be safely and suitably accessed by non-motorised users, contrary to Policy GEN1 of the Local Plan and paragraphs 92, 110 and 112 of the Framework.

Noise

68. A noise assessment was submitted with the application which sets out the results of noise level surveys taken day and night from 6 to 10 April 2023

¹² Appendix 2, Briefing Note: Byway Improvements

¹³ WH202.WST.P1.ZZ.DR.PL.10.50 Priors Green Access Route

¹⁴ Briefing Note: Byway Improvements (June 2023) Appendix 2 - Typical footpath rejuvenation detail

¹⁵ Planning Practice Guidance: Use of Planning Conditions Paragraph 009 Reference ID: 21a-009-20140306

¹⁶ Unilateral Undertaking Schedule 2 Part 1

from two locations within the application site. Dominant noise is recorded to be road traffic (primarily from the A120), with aircraft noise from the nearby Stansted Airport being below the level of Significant Observed Adverse Effect Level in accordance with the Noise Policy Statement for England. Noise mitigation measures include noise reduction glazing in habitable rooms. No additional mitigation is currently proposed to amenity areas.

69. The Council's Environmental Health Officer pointed out in their response that the noise assessment did not consider impacts from the nearby Essex and Herts Shooting School which is within the 1.5km noise buffer zone. Further information was subsequently provided to demonstrate the distance that activities at the shooting school were taking place. The Environmental Health Officer continued to object, stating that a distance of approximately 750m from a shooting range is insufficient to conclude that there would be no impact on future residents, with reference to the relevant guidance¹⁷. They raised concerns that the applicant made assumptions and did not check if the shooting school were in operation during the noise monitoring period, so it was not possible for them to conclude one way or the other if the applicant's data included such noise sources.
70. At the hearing I was told that the applicant had since contacted the shooting school, who confirmed that shooting operations were in place during the noise monitoring period in April, so would have been included in their survey. I also acknowledge that no complaints have been received by the Environmental Health department in relation to noise from the shooting school in its 14 years of operation, and that this matter was not previously raised in respect of the appeal proposals and other residential proposals in the area. The A120 and the airport continue to represent the principal noise sources in the area.
71. Consequently, I am satisfied that the effects of noise on the future occupiers of the proposed development would be acceptable subject to conditions as recommended by Environmental Health relating to a noise mitigation scheme for both habitable rooms and external amenity spaces. In this respect I find no conflict with Local Plan policy ENV10 nor paragraphs 185 or 187 of the Framework.

Other Matters

Biodiversity

72. The habitat conditions of the site (including trees and hedges) and its surroundings, including the vegetation and drains which line the byway, have potential for the presence of protected species under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. I am obliged to consider the presence of protected species and the extent to which they may be affected by the proposed development before planning permission is granted¹⁸.
73. The site lies within the 10.4km Zone of Influence for recreational impacts at the Hatfield Forest Site of Special Scientific Interest and National Nature Reserve. The Ecological Consultant's response indicates that a Strategic

¹⁷ Chartered Institute of Environmental Health Clay Target Shooting Guidance on the Control of Noise 2003

¹⁸ Circular 06/2005, paragraph 99 and the Natural Environment and Rural Communities Act 2006

Access Management and Monitoring Strategy is being developed in the area, and Natural England's current interim advice is that only housing projects of 50 units or more should provide a mitigation contribution. This is therefore not applicable to the proposed development of 40 dwellings and I note that no objections have been raised by Natural England.

74. ECC Place Services' Ecological Consultant¹⁹ previously raised objections to the planning application to UDC on a number of grounds. Their concerns were initially addressed by a range of documents which have since been supplied with the s62A application²⁰. The site lies adjacent to a priority habitat, lowland mixed deciduous woodland, and the native boundary hedges are also considered by the Ecological Consultant to be priority habitats and potentially important for biodiversity under the Hedgerow Regulations 1997. Loss of hedgerows is expected to be compensated for through new or restored habitats, with such a compensation strategy being secured by condition. A biodiversity construction environmental management plan (CEMP) could also be secured by condition to ensure that retained trees and hedgerows which border the site are protected during construction. Potentially affected species within the site include bats, reptiles and birds which would require a pre-construction survey prior to removal of any habitat together with measures to protect species during construction. Biodiversity enhancement measures including bird and bat boxes, log piles, permeable fencing and creation of meadow grass margins are considered to be reasonable enhancement measures able to be secured by condition. A Landscape and Ecological Management Plan would also be expected to be secured by condition.
75. As I have previously noted, the byway also includes suitable habitat for foraging, commuting and roosting bats and this was demonstrated by the additional information²¹ with additional surveys recording significant usage of the byway by bats²². Mitigation would take the form of minimising losses to vegetation to conserve foraging opportunities, and to install low-level bollard lighting²³ rather than higher columns. However whilst this would be possible, such measures are in conflict with Highway Authority requirements for surfacing and lighting. Consequently, in respect of my duty under the Natural Environment and Rural Communities Act to have regard to the purpose of conserving biodiversity, without such details I cannot be certain that there would not be harm to protected species.

Flood Risk and Drainage

76. The site lies within flood zone 1, identified on the Environment Agency's flood map as being in an area with a low probability of flooding. The submitted Flood Risk Assessment and drainage report demonstrates that surface water runoff could be via infiltration methods. The Lead Local Flood Authority are content with the information subject to conditions. Interested parties have raised concerns about the sewage capacity and water supply in Takeley however this is not supported by representations from Thames Water and

¹⁹ Essex County Council Ecological Consultant 13 February 2023, 18 April 2023 and 24 May 2023 (responses to UTT/22/3126/FUL)

²⁰ Arboricultural Impact Assessment (Addendum) (February 2023), Ecology Documents Note (April 2023) – including Ecological Assessment (October 2021)

²¹ Arboricultural Briefing Note – Offsite Byway Improvements (8 June 2023) and Briefing Note: Byway Improvements (June 2023) and Bat Survey Report (July 2023)

²² Tables 1 to 3, Bat Survey Report

²³ Appendix 2, Briefing Note: Byway Improvements

Affinity Water. In the event that the application was approved the statutory undertakers would be obliged to ensure such matters were adequately dealt with. I am satisfied that the proposals would be in compliance with Local Plan policy GEN3 and paragraph 169 of the Framework in relation to requirements for sustainable drainage systems.

Planning Obligations and Conditions

77. The completed and signed UU includes a range of obligations, some of which I have considered above. It makes provision to secure on-site affordable housing (including first homes) and public open space (including management and maintenance), contributions to secondary education (including transport) and early years education, public library contribution, health care contribution, and the aforementioned highway works to the restricted byway.
78. Whilst not a signatory to the UU, the Council's CIL compliance statement sets out the policy basis for the obligations, their purpose and justifies the amount required for contributions. The Council's response considers each of the contributions against the tests and also indicates additional obligations that would be required, which have since been included in the final version (healthcare and public open space). I have considered the UU and the Council's response as well as the relevant consultation responses and policies, and I would agree that the obligations would meet the tests set out in paragraph 57 of the Framework and that the document is legally sound and enforceable.
79. The Council and a number of consultees have recommended and requested conditions to be imposed should the application be permitted. Having reviewed these conditions, in my view considering the application as a whole, imposing these conditions would not overcome or otherwise outweigh the harm I have found in my reasoning above.

The Planning Balance

80. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is such a material consideration. The Council does not dispute that paragraph 11 d) of the Framework and the 'tilted balance' is applicable, and that the policies most important for determining the application are out-of-date given that the Council is unable to demonstrate a five-year supply of deliverable housing sites. Furthermore, the Local Plan was adopted in 2005, prior to the publication of the 2012 Framework. The draft of a new Local Plan for the district is yet to be published for consultation, therefore I am unable to attribute weight to it.
81. In relation to the first limb of paragraph 11 d), there are no clear reasons for refusal in relation to the areas or assets of particular importance referred to in footnote 7 of the Framework. The test at paragraph 11 d)ii of the Framework is therefore engaged, such that 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.

82. Given the location of the site outside of the settlement boundary of Takeley and within the CPZ there would be a degree of conflict with the Local Plan. Although this carries weight in the planning balance its weight is reduced due to the application of the tilted balance and the fact that the policies are out of date. I have found in my reasoning above that the location of the site immediately adjacent to the development limits of Takeley and proximate to local services would not conflict with the settlement strategy for the area. I also find the design and layout of the dwellings, traffic impacts, effects on the setting of designated heritage assets, and effects of noise to be acceptable amongst a number of other matters.
83. Without details of a lighting scheme and vegetation removal to accommodate visibility splays before me I have concerns about the effects of the proposed development on the character and appearance of the area during hours of darkness, as well as on the significance of the protected lane as a non-designated heritage asset. I am also not persuaded that safe and suitable access for non-motorised users can be ensured whilst preventing significant harm to local character and biodiversity arising from surface and lighting proposals to the byway. Such matters lead to conflict with the Local Plan, specifically policies S7, ENV9, GEN1, and GEN2.
84. Notwithstanding the diminished weight to be given to a number of out-of-date Local Plan policies most important for determining the application, I find that these adverse impacts would also conflict with policies in the Framework as set out in each of the main issues above, specifically paragraphs 92, 110, 112, 130, 185 and 203. Such matters are significant adverse impacts which the Framework as a whole seeks to guard against.
85. In terms of benefits, the provision of 40 dwellings would represent a moderate benefit in the context of the housing land shortfall in the area and the Government's objective of significantly boosting the supply of homes. I give significant weight to the provision of 16 affordable dwellings, secured in the UU, which is consistent with the advice of the Council's housing strategy team. A suitable mix of housing, including bungalows, would be provided to meet the needs of a variety of occupiers.
86. Whilst I acknowledge that some biodiversity enhancements are proposed and that they could be appropriately secured by condition, this benefit would be neutral given the amount of currently undeveloped greenfield land and vegetation that would be lost to make way for the development and byway improvements. The provision of electric charging points to all dwellings would assist in mitigating against harmful impacts to air quality. Nonetheless, in itself this would not mitigate against the inaccessible location of the site for pedestrians and therefore the benefits would be neutral.
87. Construction related benefits such as use of modern building methods, improved insulation and energy efficient heating are standard building regulations requirements to which I give neutral weight. Provision of publicly accessible open space including a play area would benefit both future and existing residents to which I give moderate weight.
88. There would also be moderate economic benefits arising from employment during construction but these would be temporary in nature. Increased local

spending, as well as additional council tax and new homes bonus to UDC attract limited weight due to their generic nature.

89. In view of the limitations to such benefits, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.

Conclusion

90. The applicant has failed to demonstrate that there would not be harmful effects on the character and appearance of the area and setting of the protected lane as a non-designated heritage asset (specifically including its effects during hours of darkness and removal of vegetation), and there is a lack of an agreed scheme to secure safe pedestrian and cycle access to and from the site. This conflicts with the Local Plan and the policies within the Framework when taken as a whole. The application should therefore be refused for the reasons set out above.

Susan Hunt

Inspector and Appointed Person

Informatives

1. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final. This means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.
2. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>

Appendix 1: List of Consultee Responses

- Uttlesford District Council (UDC) including:
 - Environmental Health
 - Housing Strategy Enabling Development
- Essex County Council (ECC) including:
 - Highways
 - Lead Local Flood Authority
 - Minerals and Waste Planning AuthorityECC Place Services:
 - Ecology
 - Historic Environment/Archaeology
 - Infrastructure Planning
- Affinity Water
- Cadent Gas Ltd
- Essex Police – Designing out Crime
- Gigaclear
- Hertfordshire and West Essex Integrated Care Board
- Historic England
- London Stansted Airport Safeguarding Authority
- National Highways
- Natural England
- Takeley Parish Council
- Thames Water
- UK Power Networks

Appendix 2: Additional Documents received at or after the Hearing

- Applicant response to Environmental Health comments - Shooting School distances drawing ref. WH202C_05_P_05.200
- Uttlesford Protected Lanes Assessment March 2012
- Documents related to planning application UTT/22/2744/FUL: Location Plan, Masterplan, Committee report, Committee minutes, decision notice and s106 agreement
- Copy of Takeley Parish Council hearing speech and email trail regarding flooding on Jacks Lane
- Signed Section 106 Deed of Unilateral Undertaking dated 4 August 2023