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## Appeal Decision

Inquiry held on 21 March 2023

Site visit made on 21 March 2023

**by Philip Mileham BA(Hons) MA MRTPI**

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

**Decision date: 15<sup>th</sup> June 2023**

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### **Appeal Ref: APP/C1570/W/22/3311069**

#### **Land south of Bedwell Road, Elsenham**

- 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 Rochester Properties Limited, John F C Sergeant and Joan F M Anderson against the decision of Uttlesford District Council.
  - The application Ref UTT/20/2908/OP, dated 2 November 2020, was refused by notice dated 7 July 2022.
  - The development proposed is an outline application for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access.
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#### **Decision**

1. The appeal is allowed and outline planning permission is granted for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access at land south of Bedwell Road, Elsenham in accordance with the terms of the application, Ref UTT/20/2908/OP, dated 2 November 2020, subject to the conditions in the schedule at Annex A.

#### **Preliminary Matters**

2. The appeal has been made in outline form with all matters reserved except access. An indicative layout has been provided and I have had regard to this in reaching my decision.
3. The description of development utilised by the Council in its decision notice differs from that on the application form. The appellant formally sought a change to the description of development to include the words 'up to' before the proposed number of dwellings. Due to an administrative oversight, there is no written confirmation of the change to the description on file. However, at the Inquiry the parties agreed that the description had been amended during determination to which there is no dispute and I have therefore adopted the revised description in my decision.
4. The Council's decision notice cited three reasons for refusal. At the Case Management Conference (CMC) held on 26 January 2023, the Council indicated that it would not be seeking to defend the second reason for refusal in respect of air quality. The Council also indicated that the third reason for refusal was a technical matter which resulted from a legal agreement not being reached with the appellant at the time of determination. A legal agreement was being drafted to accompany this Inquiry and as a result, there was no longer a

disagreement between the parties in respect of infrastructure provision. As such, the third reason for refusal was no longer being pursued. Nonetheless, I have taken these matters into account in reaching my decision. The Council also indicated that it would not be seeking to provide witnesses to the Inquiry, further proofs of evidence or undertake any cross examination. As a result, the Inquiry proceeded on the basis of round table sessions focussing on noise and disturbance and other planning matters.

5. A signed legal undertaking has been submitted along with this appeal which secures a number of planning obligations and I discuss these later in my decision and I have taken them into account.
6. The sitting day of the Inquiry was 21 March 2023. It was agreed by the parties that following the close of the Inquiry, further time was required to allow for the completion of the legal undertaking. The legal undertaking was resolved on 31 March 2023 as agreed.

### **Main Issue**

7. Taking the above into account, and the agreed position between the main parties, the main issue is as follows:
8. The effect of the proposed development on the living conditions of potential future occupiers having particular regard to noise and disturbance.
9. I am also required to consider the benefits that would arise from the proposed development and this forms part of the planning balance as set out below.

### **Reasons**

10. The appeal site is an area of pastoral land located to the south of Bedwell Road. The site is surrounded by mature trees to the south and west which separate the site from the M11 motorway. The principal source of potential noise and disturbance emanates from traffic using the nearby M11 motorway. The M11 in the vicinity of the site is a dual carriageway and is elevated above the ground level of the appeal site.
11. As design is a reserved matter, the appellants' evidence utilises the indicative planning layout to assess the potential noise impacts of the proposal. The indicative planning layout shows that 3 storey flatted development would be located to the west and south west of the site. The appellant has indicated that the proposed 3 storey development could be around 12 metres in height and would serve to provide an acoustic 'barrier block' from the motorway which would have the effect of acoustically shielding the remainder of the development.
12. The appellant confirmed that other forms of noise mitigation were considered during the development of the indicative planning layout. However, due to the elevated position of the M11 relative to the ground level of the appeal site, the appellants' confirmed other forms of mitigation such as acoustic barriers adjacent to the road or located between the proposed dwellings and the M11 would not be effective and would be logistically complex. I agree with the appellant in this regard particularly in light of the physical circumstances of the site, its relationship to the M11 and its elevation.

13. The submitted Acoustic Report (Figures B1-B3)<sup>1</sup> shows the predicted noise model contour plots for the site and more granular versions of these contours were included within the appellants Acoustic Report Addendum<sup>2</sup>. The Acoustic Report utilised noise testing figures which were taken from a nearby scheme north of Bedwell Road as at the time of the appellants' assessment in 2020, traffic levels were lower than expected due to Coronavirus restrictions. Whilst concerns were raised that the appellants had not undertaken any noise testing themselves, the use of data collected pre-Coronavirus would represent a more robust assessment as set out above. Furthermore, the Acoustic Report indicates a high level of correlation between the collected data and the modelled output. As such, the noise modelling represents sufficiently robust evidence upon which the Acoustic Report has been carried out.
14. The daytime noise contour map<sup>3</sup> illustrates that within the envelope of the developed part of the site, the predicted external noise level at 1.5 metres above ground (which is intended to reflect the height of ground floor living accommodation) would be up to around 55 dB  $L_{Aeq,16hr}$ . The night-time noise contour map at Figure B-2 indicates that within the developed part of the site at 4 metres above ground (which is intended to represent a first floor bedroom level), the predicted external noise level would also be up to around 55 dB  $L_{Aeq,8hr}$ .
15. Having regard to the external noise environment at the increased height of the proposed 3 storey flats, during the Inquiry the appellants' indicated that the predicted noise levels at the height of the third storey of the proposed flats (around 8-10 metres above ground level) would not be expected to be significantly greater than at the 4 metre level at around 1 dB higher which was not disputed. As such, any rooms within the top floor of the proposed 3 storey flats would not experience significantly different conditions than those on the first floor and I am therefore satisfied that the 3 storey element of the proposal has been adequately considered in respect of the noise environment.
16. The indicative planning layout shows that each dwelling would have one relatively quiet façade shielded from the M11 which the Planning Practice Guidance (PPG)<sup>4</sup> advises can partially offset noise impacts. This could be secured by a condition which would require all dwellings to have dual aspect and thereby ensuring at least one elevation that would not be exposed to the M11. The daytime external noise contour maps (Figures 1-3 of CD6.1) show all of the proposed dwellings would have an external noise level of up to 55 dB in the external space of the quieter facades, albeit many of the dwellings would have at least part of their private gardens or communal outdoor areas below this, including within both the up-to 52 dB and the up-to 50 dB contours.
17. Whilst the external noise levels on the western and south-western extents of the site would be higher beyond the built form of the proposal, the indicative layout shows the proposed dwellings would have at least one quieter façade within the envelope of the developed part of the site. In addition, the indicative layout shows that the detached and semi-detached properties would have relatively quiet external outdoor amenity space for their sole use and that potential future occupants of the proposed flats would have a quiet external

<sup>1</sup> CD1.7 Acoustic Report (September 2020) - WSP

<sup>2</sup> CD2.6i - Acoustic Report Addendum (2021) - WSP

<sup>3</sup> CD1.7 Acoustic Report (September 2020) - WSP - Fig B-1

<sup>4</sup> Paragraph: 011 Reference ID: 30-011-20190722

amenity space for a limited group of residents. The proposal would therefore accord with the PPG as at least two of the measures outlined above would be available to partially offset the identified noise impacts.

18. The predicted outdoor noise levels would be higher to the west of the scheme and the more granular contour maps shown in Figures 1-3 of the Acoustic Report Addendum<sup>5</sup> show that beyond the proposed 3 storey flatted element levels would be up to 62.5 dB  $L_{Aeq, 16hr}$  at 1.5 metres above ground during the daytime and up to 60 dB  $L_{Aeq, 8hr}$  at 4 metres during the night time. The appellants' indicated that internal noise levels would be expected to be reduced by around 10-15 dB compared to externally. This amount of reduction would enable internal noise levels to decrease to a level that would accord with the ProPG which reflects and extends British Standard BS8233:2014 and to which paragraph 2.32 of the ProPG<sup>6</sup> indicates is also supported by the WHO Noise Guidelines (2000).
19. It is common ground between the parties that the potential effects on the living conditions of potential future occupiers having regard to noise could be addressed via conditions. The first of these conditions would require a further assessment as part of future reserved matters to demonstrate that internal noise levels within the proposed dwellings would not exceed 45 dB  $L_{Amax,T}$  during the night time and 55 dB  $L_{Aeq, 16 hr}$  during the daytime. The condition reflects noise levels set out in the relevant British Standard<sup>7</sup> as well as in the ProPG good practice document.
20. Paragraph 3.4.6 of the Acoustic Report states that it is likely that the western elevations of the proposed flats would require acoustic trickle ventilation and standard to high-performance glazing. Furthermore, having regard to table 2 of the same report, the other elevations not facing the M11 in the majority of the proposed dwellings would either require standard glazing with trickle ventilation or no other specialised glazing or ventilation requirements. The appellants' noise impact proof of evidence indicates that whilst the windows on the western elevations may need to be kept closed during night time hours based on the worst-case external noise levels, ventilation would still be possible utilising acoustically-rated trickle ventilation. Furthermore, windows on the elevations not facing the M11 would be able to be open and have internal noise levels which would be considered reasonable in line with the guidance contained within British Standard BS 8233:2014.
21. Notwithstanding the above, I recognise that keeping some windows closed at night time may not present an optimal arrangement for future occupiers. This is particularly notable during periods of warmer weather where the use of acoustic trickle ventilation may be necessary to ensure that future living conditions in any bedrooms in the western elevations of the proposed flats would not be oppressive during times of higher temperatures and that acceptable ventilation would be possible. However, the appellants' indicated that through the reserved matters process, detailed designs and internal layouts could locate habitable rooms away from the M11 thereby minimising any need for such measures. Therefore, overall, I am satisfied that the suggested approach to glazing and ventilation in the Acoustic Report would be

<sup>5</sup> CD2.6 – Acoustic Report Addendum (2021) – WSP

<sup>6</sup> Association of Noise Consultants, Chartered Institute of Environmental Health, Institute of Acoustics. ProPG: Planning and Noise Professional Practice Guidance on Planning and Noise. New Residential Development. May 2017

<sup>7</sup> BS 8233:2014

capable of minimising the internal noise impacts on future occupiers and avoid unacceptable living conditions.

22. Turning to noise in outdoor spaces, the appellants' evidence indicates that predicted noise levels for the external gardens and communal outdoor areas for the proposed flats would predominantly not exceed 55 dB  $L_{Aeq,16hr}$  during both daytime and night time hours which is within the guidance in the British Standard BS 8233:2014 in respect of external areas. Across the wider scheme the evidence within the Acoustic Report indicates at Figure B1 that there would be a limited portion of the garden spaces of proposed plots 4, 11 and 16 exceeding this by less than 1 dB. However, as these would be very small proportions of the outdoor space within the developed part of the site, I find that the exceedances of the guidance in these areas would only have a limited impact on the living conditions of potential future occupiers and would therefore be at a level that would be acceptable.
23. Concerns were raised regarding the extent of noise that would be experienced in public areas. However, no substantive evidence was presented to the Inquiry that there is a set threshold for noise in public areas. Furthermore, whilst higher levels of noise may be experienced whilst using the nearby footpaths, these would be experienced by walkers and cyclists more briefly than by people utilising an area such as a playpark where activity might be focussed on a static area such as play equipment. Although concerns were raised that a fully detailed layout and design should have been modelled as part of the proposals, having regard to the indicative planning layout, I am satisfied that these plans have been modelled. This provides sufficient demonstration that an acceptable scheme could be brought forward as part of a detailed design and through the reserved matters stage in compliance with the proposed conditions.
24. My attention has been drawn to nearby appeal decisions of relevance to my decision. The first of these is a site to the north of Bedwell Road which was dismissed at appeal in 2021<sup>8</sup>. The parties agree that the appeal proposal is materially different from the site north of Bedwell Road as it identifies a single source of noise (the M11) unlike the scheme north of Bedwell Road which would be subject to noise from both the M11 and the nearby rail line.
25. Concerns were raised by interested parties that there would be similar noise levels on the appeal site as in centre of the scheme to the north of Bedwell Road which had been dismissed on noise grounds. However, the Inspector in that appeal did not consider that future residents would have access to any of the measures that would offset noise impacts as set out at paragraph 11 of the PPG. As I set out above, that would not be the case with this appeal proposal which would enable at least one quiet façade per dwelling and quieter private outdoor space.
26. Furthermore, the Inspector for the scheme to the north of Bedwell Road noted that the ProPG states that schemes should not be granted without first being satisfied that good acoustic design principles will be able to overcome the acoustic challenges. This is not the case for the appeal proposal which the Council does not dispute follows good acoustic design principles. Furthermore, the implementation of a 'barrier block' design approach would not result in unacceptable living conditions across the appeal site. The circumstances are therefore materially different.

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<sup>8</sup> Appeal Ref: APP/C1570/W/21/3274573

27. A further decision brought to my attention covered two parcels of land off Stanstead Road and off Isabel Drive<sup>9</sup> which is locally known as the 'Dandara site'. This scheme was allowed subject to a condition which required a scheme detailing sound insulation measures to achieve internal noise levels to not normally exceed 45 dB  $L_{Amax}$  and not exceeding 55 dB  $L_{Aeq}$  in the outdoor amenity areas including details of the position, design, height and materials of any acoustic barrier proposed. This condition contains similar requirements to those which I have imposed in the appeal scheme.
28. In the case of the Dandara scheme, interested parties indicated that noise was proposed to be baffled by a bund along the motorway. Concerns were raised by the Parish Council during the Inquiry that the Dandara scheme has struggled to meet the requirements of the noise condition. However, I do not have full details of the noise modelling undertaken for that scheme and I am satisfied that based on the submitted Acoustic Report and Acoustic Report addendum, these provide sufficient confidence that the noise conditions can be met on the appeal site.
29. The appellants' confirmed during the Inquiry that a range of noise mitigation measures were considered during the initial development of the scheme. The appellant indicated that the use of a bund would not be appropriate in this instance due to the elevation of the M11 when compared to ground level of the site and that any bunding or acoustic fencing would need to be excessively tall in order to be effective. As a result, the 'barrier block' design was adopted utilising 3 storey development which would provide more effective noise attenuation as demonstrated by the modelled noise contours. I concur with the appellant in this regard and when taking into account the change in levels between the site and the M11, the extent of fencing or bunding would be incongruous in its own right.
30. Concerns have been raised that the affordable housing units would be positioned within the 3 storey flats and would therefore be located within the noisiest part of the site, and that future occupants of the affordable housing would have less choice of accommodation than those seeking market housing. Whilst I note that this was a concern expressed by the Inspector in the land north of Bedwell Road decision, the appeal scheme is materially different to the circumstances in that case. Furthermore, as the layout and appearance of the scheme is not yet finalised, the location of the affordable housing units is not yet fixed and may be subject to change.
31. Whilst the appellants' had not provided a detailed internal noise model as part of the outline scheme, having regard to the submitted evidence, the indicative layout and the conditions agreed between the main parties, I am satisfied the proposal would be capable of providing acceptable living conditions for potential future occupiers.
32. In light of the above, the proposed development would provide acceptable living conditions for potential future occupiers having particular regard to noise and disturbance. It would therefore accord with policy ENV10 of the Uttlesford Local Plan (2005) (ULP) which seeks to prevent future occupants from experiencing significant noise and disturbance. I also find it would accord with policy GEN2 of the ULP which states that development will not be permitted unless, amongst other things, its design meets the criteria in adopted

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<sup>9</sup> APP/C1570/W/20/3256109

Supplementary Planning Documents and it would not have a materially adverse effect on the reasonable occupation and enjoyment of a residential or other sensitive property.

33. The proposal would also accord with paragraph 185 of the Framework which states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions and the need to avoid noise giving rise to significant adverse impacts on health and the quality of life. It would also accord with the ProPG and the PPG for the reasons set out above.

### **Legal Undertaking**

34. The submitted legal undertaking would secure 40% of the scheme as affordable housing including First Homes. Further contributions would also be made to secure Primary and Secondary Education, sustainable transport measures, mitigation for the avoidance of harm to the Hatfield Forest Site of Special Scientific Interest (SSSI), primary healthcare, libraries and public open space and its accompanying management.
35. Whilst an obligation has been proposed for a contribution to a new Community Hall for Elsenham, there was no substantive evidence presented as to how the contribution would be necessary to make the proposed development acceptable in planning terms. Whilst the proposal would result in additional residents, no clear evidence was presented as to how this related to the scale of the Community Hall which might ultimately be delivered, nor was there any substantive evidence to justify the amount of contribution sought other than via a basic proportional calculation based on the amount of money other schemes had provided towards the scheme. As a result, the community hall contribution does not meet the tests for planning obligations as set out at paragraph 57 of the Framework.
36. Having regard to the evidence before me, including the Council's Community Infrastructure Levy (CIL)<sup>10</sup> compliance statement, notwithstanding the Community Hall contribution, I am satisfied that the rest of the submitted legal undertakings are necessary to make the development acceptable, are directly related to the proposal and fairly and reasonably related in scale and kind to the development. As such, they would accord with the requirements of paragraph 57 of the Framework and Regulation 122 of the CIL Regulations (2010).
37. As the legal agreement would secure the necessary infrastructure to support the development, I am satisfied that the Council's third reason for refusal is addressed and the proposal would accord with policies GEN6, ENV7 and H9 of the ULP.

### **Other Matters**

#### *Air Quality*

38. The Council identified air quality as the second reason for refusal in the decision notice. However, the signed Statement of Common Ground (SoCG)<sup>11</sup> indicates at paragraph 2.19 that the use of recorded air quality levels to the

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<sup>10</sup> CD5.11 – Community Infrastructure Levy (CIL) compliance statement

<sup>11</sup> CD5.9 – Statement of Common Ground (SoCG) (Feb 2023) – Executive summary

north and south of the site represent a robust assessment case and significant confidence that no further air quality mitigation measures are required to meet air quality objectives. Whilst the site is located within 100 metres of the M11 where policy ENV13 of the ULP seeks to protect residents from exposure to poor air quality outdoors near ground level, the use of the 100 metre threshold is a consultation zone rather than a designation which would preclude development.

39. Furthermore, the Uttlesford Air Quality Annual Status Report (2022)<sup>12</sup> states that average nitrogen dioxide concentrations in the District are on a downward trend and below air quality objectives. On this basis, the Council did not seek to pursue this matter during the Inquiry. Having regard to the evidence and subject to the imposition of a condition to secure a construction management plan to control the air quality impacts arising from construction, I am satisfied that the proposal would not result in harm to human health as a result of air quality. It would therefore accord with policies ENV10 and GEN2 of the ULP.

#### *Local services and facilities*

40. Concerns have been raised by interested parties regarding the burden that would be placed on local services and facilities as a result of the appeal proposal, including the merger of local GP surgeries in the area. Elsenham is identified as a key rural settlement and according to the appellants' evidence, contains a shop, public house, post office, school and GP surgery. I note there is also a rail station in Elsenham which is on the mainline to London and Cambridge as well as local bus services. Noting submissions from interested parties regarding the merger of GP surgeries, the decision for any mergers or reorganising is outside the control of this appeal. However, the submitted planning obligation makes a contribution to primary care in the area in order to address any effects arising from future occupiers of the proposal. I am therefore satisfied that there are a range of services and facilities in the village that would support future residents and that there would be opportunities to access to a wider range of facilities elsewhere in larger settlements by public transport.

#### *Transport and access*

41. Concerns have been raised by Elsenham Parish Council that the proposal would conflict with policy GEN1 of the ULP in relation to transport and access. However, no concerns have been raised by the Local Highway Authority or the District Council in this regard. The appeal scheme identifies an appropriate access point and would also provide a contribution to local footpaths. The planning obligation would also secure a package of sustainable transport measures to minimise the potential impacts of additional traffic and as such, I am satisfied that the proposal would not have an adverse effect on the local highway network.

#### *Character and appearance*

42. Concerns were raised from interested parties regarding the impact of the proposal on the character and appearance of the area, including the 3 storey flatted development on the edge of the village. As set out above, the site is bounded to the west and south-west by the M11 which is elevated. As a result,

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<sup>12</sup> CD7.4 – Uttlesford Air Quality Status Report (2022)

there are no long views of the site from open countryside and the development would be visibly contained by the road in this direction. There are also a number of retained mature trees to the west and south-west of the site which provide further screening. Whilst the proposed 3 storey element of the proposal would be visible from Bedwell Road and other nearby streets, these would be partially screened by the intervening development to the northern and eastern parts of the appeal site.

43. My attention has been drawn to other examples of 3 storey development in the village. There is no dispute that 3 storey development has been allowed within the village. However, these examples are not directly comparable to the appeal proposal as they are integrated within their respective sites rather than on the edge. However, having regard to the mixture of two and three storey dwellings that are now found within the village, the extent of public views, the visual impact of the M11 and the intervening screening, I do not find that the 3 storey element would be harmful to the character and appearance of the area. Furthermore, matters of appearance are not fixed and I am satisfied that the indicative layout demonstrates that an acceptable design would be capable of being secured as part of future reserved matters.
44. Concerns have been raised regarding the loss of biodiversity and wildlife as a result of the proposal. The proposal would provide for a net gain in biodiversity which would be identified through a biodiversity net gain report. There would also be a reptile management strategy, a biodiversity enhancement strategy and a landscape and ecological management plan (LEMP) and a wildlife sensitive lighting design scheme which could be secured by planning conditions to avoid harm to biodiversity. As a result, I am satisfied there would be no harm in this regard.
45. My attention has been drawn to concerns regarding water flooding on local roads. However, this matter would be addressed via the imposition of conditions relating to the control of water discharge on to the highway.
46. I have been directed to concerns regarding light pollution from the scheme albeit this could be addressed via planning conditions to control external lighting. Interested parties consider there are insufficient school places to support the proposal, however contributions to primary and secondary education in the area would be secured by the planning obligation which would address this concern.

### **Planning balance**

47. There is common ground between the parties that the Council cannot currently demonstrate a 5 year housing land supply, and that the current position is that 4.89 years land supply can be demonstrated. As such, the presumption in favour of sustainable development at paragraph 11(d) of the Framework is engaged and the policies most important for determining the proposals are deemed to be out of date<sup>13</sup>.

### *Benefits*

48. The appeal proposal would provide a significant contribution to the Council's current housing land supply shortfall. The proposal would also deliver 40% of

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<sup>13</sup> National Planning Policy Statement, footnote 8.

the scheme as affordable housing, including First Homes in an area where there is a demonstrable need for affordable housing.

49. There is no disagreement between the parties that progress on a new Local Plan to replace the ULP is not very far advanced and that a new plan which would include an updated housing requirement and spatial strategy is several years away. I therefore apportion substantial weight to the provision of market and affordable housing that the appeal scheme would deliver.
50. The proposal would also provide a benefit through the reduction in noise from the M11 to a number of existing nearby properties on Bedwell Road whose outdoor space would experience reduced noise levels as a result of the intervening development<sup>14</sup>.
51. Social benefits would arise as a result of enhancements to local footpath number 29 to the west of the site through the delivery of a 'trim trail' and accompanying links to footpath number 31 and the delivery of sustainable travel measures.
52. Environmental benefits would occur through the provision of wildlife and biodiversity enhancements and the provision of public open space which would be secured through appropriate conditions and the planning obligation.
53. Economic benefits would arise as a result of the jobs created through the construction of the proposed development as well as in the accompanying materials supply chain.

#### *Adverse effect of the proposed development*

54. The appeal proposal would be located outside of the settlement boundary of Elsenham. Policy S7 of the ULP seeks to protect the countryside for its own sake and that planning permission is only given for development that needs to take place there or is appropriate to a rural area, including infilling in accordance with paragraph 6.13 of the ULP. As a result of its location outside the settlement boundary, the proposal would fall within the countryside in policy terms and would therefore conflict with the provisions of policy S7.

#### *Conclusion*

55. I have identified that the appeal proposal would conflict with policy S7 of the ULP, although due to the engagement of the Framework's tilted balance, the weight afforded to this conflict would be reduced. However, the proposal would accord with policy ENV10 and GEN2 which are identified as most important policies in the determination of this appeal. The completion of the legal agreement means that it would also accord with policies GEN6, ENV7 and H9 of the ULP which collectively seek to ensure the provision of infrastructure to support development, protect the natural environment and secure affordable housing.
56. The parties agree that the Council cannot demonstrate a 5 year supply of deliverable housing sites and therefore paragraph 11(d)(ii) of the Framework and the presumption in favour of sustainable development is engaged. Paragraph 11(d) states that where the most important policies for determining the application are out of date, planning permission should be granted unless

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<sup>14</sup> CD1.7 – Acoustic Report (Figs B-1 and B3)

any adverse impacts of doing so would significantly and demonstrably outweigh the benefits which assessed against the Framework and the Development Plan when taken as a whole. I have found that the proposal would conflict with the Development Plan, albeit the conflict would be limited. However, I have also identified that the proposal would accord with the Framework overall.

57. In this case several benefits would arise. These include a substantial benefit through the provision of housing including affordable housing which would make a positive contribution to addressing the shortfall in housing land supply. The proposal would also provide moderate economic, social and environmental benefits. There would also be a moderate benefit to the living conditions occupiers of nearby properties as a result of reduced external noise due to the barrier effect of the proposal.
58. I have also found that the proposal would accord with relevant Development Plan policies concerning noise and disturbance and infrastructure. The adverse effects as a result of the conflict with policies for the supply of housing are not sufficient to significantly and demonstrably outweigh the benefits of the scheme.
59. As a result, the material considerations arising from benefits of the proposal are such that a decision that is not in accordance with the Development Plan is justified in this instance.

### **Conditions**

60. I have considered the conditions included in the schedule<sup>15</sup> which were discussed and updated following a round table session during the Inquiry against the tests set out at paragraph 56 of the Framework, only including those which meet those tests subject to any minor amendments for clarity, consistency and enforceability. There are a number of pre-commencement conditions necessary which the appellant has agreed to in writing as required by the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
61. In addition to the standard requirements for the identification of the approved plans, and the timing of commencement of development, a condition requiring the submission of Reserved Matters is necessary in order to provide an acceptable form of development.
62. Conditions 3 and 4 are necessary in the interests of the living conditions of future occupiers having regard to noise and disturbance.
63. A condition was sought to require samples of the colours and details of the materials to be used for the construction of the dwellings. However, as the appearance of the proposed development is not included within the outline scheme, this would be dealt with as future reserved matters and is therefore not imposed.
64. Conditions 7 and 8 are necessary to secure the details of hard and soft landscaping works and adherence to the agreed works, albeit I have amended condition 7 to remove an erroneous reference to cricket balls from the recreation ground as the site is not located in close proximity to the recreation

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<sup>15</sup> CD5.10 – Draft conditions

- ground and to ensure the details are provided prior to any development above slab level.
65. In order to ensure the management of the wider infrastructure within the site, condition 9 is necessary to secure a management plan for roads and footpaths, common areas and lighting.
66. The Council sought a condition requiring 5% of the homes on site to be built as wheelchair adaptable dwellings, with the remainder of the dwellings as accessible and adaptable dwellings under Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations. This requirement is set out within the Council's Accessible Homes and Playspace Supplementary Planning Document (2005) (SPD) and is justified. However, the requirement for the remainder of the site to be provided as accessible and adaptable dwellings is not supported by the Council's policies or the SPD. As such, this element of the condition was not justified and has thereby been removed.
67. Condition 11 is required in order to secure a Construction Management Plan in the interests of highway safety.
68. Two further proposed conditions 13 and 15 related to noise and the implementation of mitigation measures as set out in the WSP Acoustic Report and Acoustic Report addendum. However, these were included erroneously in the schedule and either duplicate or work at cross purposes to the requirements of conditions 3 and 4, particularly as condition 4 requires a further detailed sound insulation measures that have not yet been submitted and details of the predicted internal noise levels. They are therefore not necessary and are not imposed.
69. The Council proposed a condition relating to a requirement for electric vehicle charging points for each dwelling. However, since June 2022 this requirement has been covered by the Building Regulations. As such, it is not necessary and is therefore not imposed.
70. The Council sought to impose a condition to remove Permitted Development rights for development falling within Schedule 2, Part 1, Classes A-F of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, no evidence was provided by the Council to justify why this was necessary to make the development acceptable in planning terms. As such, I find no reasons why such a condition is necessary and as such, it is not imposed.
71. A condition was sought to control dust and smoke clouds during construction. However, this matter would be addressed by condition 11 which requires the preparation and submission of a Construction Management Plan. As such, a separate condition is not necessary and is not imposed.
72. In the interests of aircraft and flight safety, conditions 12, 13, 14 and 15 are required to prevent birdstrike risk, to control the use of any upward lighting, reflective materials and photovoltaics. Condition 12 has been amended to reflect the potential for any drainage swales rather than an expectation that such measures would be used as these matters are not yet finalised.
73. In the interests of ecology and biodiversity, conditions 16, 17, 18, 19, 20, 21, 22 and 23 require the retention of identified trees and their condition, that light sensitive species are protected from disturbance, a construction environmental

management plan, a reptile mitigation strategy, a biodiversity net gain report, a biodiversity enhancement strategy, a landscape and ecological management plan (LEMP) and a wildlife sensitive lighting design scheme. Condition 17 has been amended to remove references to the prior agreement of ecological mitigation measures as submitted with the planning application as the decision has been made via this appeal. Furthermore, I have amended condition 18 to remove an unnecessary tailpiece. The Council's submitted schedule of conditions also included duplicate conditions requiring a lighting scheme for biodiversity and I have deleted the duplicate as it is not necessary.

74. The conditions have been amended to remove condition 'headers' found in the schedule which also indicate they must be produced concurrently with reserved matters approvals. Whilst it may be practical for these requirements of conditions to be addressed alongside reserved matters, there is no evidence before me of any express need to do so and a clear and precise reference to these being pre-commencement conditions is sufficient to meet the tests. As such, I have amended them to this effect in order that they are precise as paragraph 56 of the Framework expects.
75. In order to address the potential effects of surface water drainage, conditions 24 and 25 are necessary to ensure water discharge is appropriately modelled and measures secured and that offsite flooding is minimised. For the same reasons conditions 26 and 27 are necessary to ensure that maintenance arrangements for these measures and the responsible body for maintenance is identified and that maintenance logs will be completed and available for inspection.
76. In the interests of archaeology, conditions 28 and 29 are necessary to secure a programme of archaeological investigation will be secured and that a post-excavation assessment is carried out.

### **Conclusion**

77. In light of the above, I conclude that the appeal should be allowed.

*Philip Mileham*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ms Megan Thomas KC, of Counsel, who called:

|                   |                                           |
|-------------------|-------------------------------------------|
| Mr Tobias Lewis   | Technical Director, WSP                   |
| Mr Edward Durrant | Associate Planner, Pegasus Planning Group |

### **FOR THE COUNCIL:**

|                |                                             |
|----------------|---------------------------------------------|
| Ms Femi Nwanze | Interim Team Leader, Development Management |
|----------------|---------------------------------------------|

### **INTERESTED PARTIES:**

|                 |                                                                           |
|-----------------|---------------------------------------------------------------------------|
| Councillor Lees | Ward Member for Elsenham and Leader of the Council.                       |
| Dr Graham Mott  | Chairman, Elsenham Parish Council also representing Ugley Parish Council. |

## **DOCUMENTS**

Received during or after the Inquiry:

1. Uttlesford Air Quality Status Report (2022) – CD7.4
2. Opening submissions on behalf of the appellant – CD8.1
3. Statement by Cllr Lees
4. Statement by Dr Graham Mott
5. Closing submissions on behalf of the appellant – CD8.2
6. Completed copy of the legal undertaking

## **Annex 1**

### **Schedule of conditions**

- 1) Approval of the details of layout, scale, landscaping, and appearance (hereafter called "the Reserved Matters") must be obtained from the Local Planning Authority in writing before development commences and the development must be carried out as approved.
- 2) Application for approval of the Reserved Matters must be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.
- 3) As part of any Reserved Matters application (layout) a scheme detailing internal layout shall be submitted for approval in writing by the local planning authority and the scheme shall include details showing all dwellings with dual aspect.
- 4) As part of any Reserved Matters application, a scheme detailing sound insulation measures shall be submitted for approval in writing by the local planning authority and the scheme shall include:
  - i) details sufficient to demonstrate that the internal noise levels recommended in BS 8233:2014 will be achieved and for individual noise events to not normally exceed 45 dB LA<sub>max,T</sub> during the night-time. The scheme will include the internal configuration of rooms and the specification and reduction calculations for the external building fabric, glazing, mechanical ventilation, and acoustic barriers, and
  - ii) details sufficient to demonstrate that a noise level not exceeding 55 dB LA<sub>eq,16h</sub> in the outdoor amenity areas will be achieved, 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 dwelling and retained thereafter.
- 5) The development hereby permitted must be begun no later than the expiration of two years from the date of approval of the last of the Reserved Matters to be approved.
- 6) The development hereby permitted shall be carried out in accordance with the approved plans as follows:

BEE.SLP.000 (17th November 2020)  
BEE.IPL.001 (17th November 2020)
- 7) Prior to any development above slab level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved and thereafter be retained as such. These details shall include: -
  - i. means of enclosure including details of the proposed walls and fencing
  - iii. vehicle and pedestrian access and circulation areas.
  - iv. hard surfacing materials.

v. details of the safety measures proposed  
vi. minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, street lighting, etc.);  
Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

- 8) All hard and soft landscape works shall be carried out in accordance with the approved details shall thereafter be retained as such. The works shall be carried out before any part of the development is occupied or in accordance with the programme agreed with the local planning authority.
- 9) Prior to the commencement of development, a management plan for the site shall be submitted to and approved in writing by the local planning authority to detail arrangements for the provision, maintenance and retention of:
- i. All roads and footpaths.
  - ii. All common areas; and
  - iii. Lighting.

Thereafter, the development shall be implemented and retained in accordance with the management plan.

- 10) 5% of the dwellings approved by this permission shall be built to Category 3 (wheelchair user) housing M4(3)(2)(a) wheelchair adaptable of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 11) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for;
- i. vehicle routing,
  - ii. the parking of vehicles of site operatives and visitors,
  - iii. loading and unloading of plant and materials,
  - iv. storage of plant and materials used in constructing the development,
  - v. wheel and underbody washing facilities.
  - vi. Before and after condition survey to identify defects to highway in the vicinity of the access to the site and where necessary ensure repairs are undertaken at the developer expense where caused by developer.
- 12) During construction, robust measures to be taken to prevent birds being attracted to the site. No pools of water should occur and prevent scavenging of any detritus.

Any drainage swales must be designed to be generally dry (with an underdrain if necessary) and hold water only during and immediately after an extreme rainfall event. Any changes to the drainage scheme must be discussed with the aerodrome safeguarding authority prior to construction.

- 13) No lighting directly beneath any installed roof lights that will emit light upwards – only downward facing ambient lighting to spill from the roof lights upwards – ideally, automatic blinds to be fitted that close at dusk.

All exterior lighting to be capped at the horizontal with no upward light spill.

- 14) No reflective materials to be used in the construction of these buildings.
- 15) No solar photovoltaics to be used on site without first consulting with the aerodrome safeguarding authority for STN.
- 16) No tree shown as retained on the approved drawings shall be cut down, uprooted, destroyed, or damaged in any manner during the development phase and thereafter within 5 years from the date of occupation of the building for its permitted use, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 17) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Final Mitigation and Enhancement Strategy (based on Geosphere, September 2021). This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 18) Prior to the commencement of the development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
  - a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection zones".
  - c) 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) to include: protection of Badger, nesting birds, Bluebell and retained habitat as well as sensitive lighting during the construction phase.
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
  - h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 19) No development shall take place until a Reptile Mitigation Strategy addressing the mitigation and translocation of reptiles has been submitted to and approved in writing by the local planning authority. The Reptile Mitigation Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance of the Receptor area(s).
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The Reptile Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 20) Prior to the commencement of development, a Biodiversity Net Gain Design Stage Report, in line with Table 2 of CIEEM Biodiversity Net Gain report & audit templates (July 2021) shall be submitted to and approved in writing by the local planning authority which provides biodiversity net gain, using the DEFRA Biodiversity Metric 3.0 or any successor. The content of the Biodiversity Net Gain Design Stage Report should include the following:
- a) Baseline data collection and assessment of current conditions on site;
  - b) A commitment to measures in line with the Mitigation Hierarchy and evidence of how BNG Principles have been applied to maximise benefits to biodiversity;
  - c) Provision of the full BNG calculations, with detailed justifications for the choice of habitat types, distinctiveness and condition, connectivity and ecological functionality;
  - d) Details of the implementation measures and management of proposals;
  - e) Details of any off-site provision to be secured by a planning obligation;
  - f) Details of the monitoring and auditing measures.

The proposed enhancement measures shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

- 21) Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
- a) Purpose and conservation objectives for the proposed enhancement measures;
  - b) detailed designs to achieve stated objectives;
  - c) locations of proposed enhancement measures by appropriate maps and plans;
  - d) timetable for implementation;
  - e) persons responsible for implementing the enhancement measures;
  - f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

- 22) Prior to the occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed including the retained woodland and grassland habitats.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 23) Prior to the occupation of the development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 24) No works except demolition 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:

Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.

Limiting discharge rates to 2.07l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change subject to agreement with the relevant third party. All relevant permissions to discharge from the site into any outfall should be demonstrated.

Demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.

Final modelling and calculations for all areas of the drainage system.

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. Detailed engineering drawings of each component of the drainage scheme.

A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation. It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

- 25) No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
- 26) Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.

- 27) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
- 28) No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

- 29) The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will 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.

End of Schedule

Richborough Estates