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## Decision Notice and Statement of Reasons

Site visit made on 25 October 2023

Hearing held on 2 October and 13 November 2023

**By Grahame Kean B.A.(Hons) Solicitor, MIPROW, MRTPI**

A person appointed by the Secretary of State

Decision date: 15 December 2023

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**Application Reference: S62A/2023/0019**

**Site Address: Land to the north of Roseacres, between Parsonage Road and Smiths Green Lane, Takeley, Essex, CM22 6NZ (Land known as Bull Field, Warish Hall Farm, Takeley, Essex)**

- The application is made under s62A Town and Country Planning Act 1990.
  - The site is located within the administrative area of Uttlesford District Council.
  - The application dated 12 June 2023 is made by Weston Homes PLC (Applicant)
  - The development proposed is: Access to/from Parsonage Road between Weston Group Business Centre and Innovation Centre buildings leading to: 96 dwellings on Bulls Field, south of Prior's Wood, including associated parking, landscaping, public open space, land for the expansion of Roseacres Primary School, pedestrian and cycle routes to Smiths Green Lane together with associated infrastructure.
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### Decision

1. Planning permission is refused for the development described above, for the following reasons.

### Statement of Reasons

#### Procedural matters

2. The application was made pursuant to s62A Town and Country Planning Act 1990 by which applications can be made directly to the Secretary of State (SoS) where a local authority has been so designated. Uttlesford District Council (Council) has been designated for major applications from 8 February 2022.
3. A section 106 obligation was completed and has been considered.
4. I made an unaccompanied site visit on 25 October 2023 which included observation of the traffic conditions in the area around the application site. The temporary nature of some roadworks has been factored into my decision. I was able to see the application site and surroundings from public vantage points including from the public footpaths in the immediate vicinity.
5. The hearing and procedural rules for this type of application should give interested persons reasonable time to consider representations made by the

applicant which are published on the government web site in advance of the hearing. However, late on the Friday before the hearing scheduled for the following Monday, several documents from the applicant, making responses to consultation replies were received within the Planning Inspectorate.

6. The late submission ran to several hundred pages. Mostly it was new and potentially relevant material. The other parties and interested persons were not given adequate time to consider it before they were scheduled to speak. Therefore, I opened and then adjourned the hearing. The new material was placed on the government web site to allow further written representations to be made thereon before the hearing resumed.
7. It is a matter of regret that no rules exist by which applications for costs awards may be made by relevant parties in hearings such as these which are conducted under the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013. That said I should clarify, if it were at all necessary, that the late submission has not affected my consideration of all the evidence that has been considered on its planning merits. The application has been determined on the basis of the revised and additional documents and drawings.

### **The proposal and relevant planning history**

8. The proposal is similar to part of a previous scheme known as Warish Hall Farm (Ref UTT/21/1987/FUL) refused by UDC and dismissed on appeal in August 2022. The current scheme seeks to address issues in that appeal decision including identified adverse impacts on heritage assets in the area. Dwellings previously envisaged in the east of the site have been removed and the proposed development is set back from the edge on Smiths Green Lane.
9. The site is in the area of Takeley Parish Council (TPC), south of Prior's Wood, on the west side of Smiths Green Lane and with vehicular access from Parsonage Road. The proposal would form an extension to Takeley delivering 96 new residential dwellings including affordable housing, public open space, play space, a woodland extension and associated parking and infrastructure.
10. Access to the site would be from Parsonage Road via the site known as 7 Acres, granted planning permission in April 2023 (Ref UTT/22/2744/FUL) for commercial units and provision for a medical centre with related parking and landscaping. The new access road would give vehicular access for dwellings, servicing and visitor parking via a network of private drives and mews courts but terminate at the open space. Cycle paths and footways would be provided.
11. The Council considered the application at its Planning Committee meeting on 30 August 2023. Members agreed that had the application been submitted to the committee it would have been refused. The officer's report was to the effect that the proposal accorded with Policy GEN2 of Uttlesford District Local Plan 2005 (LP) in terms of layout, design, amenity space and separation distances, the housing mix was acceptable, as was the proposal in terms of highway safety, parking provision and appropriate mitigation. However the report considered the proposal to be in conflict with LP policies S7 and S8, as harmful to the character and appearance of the area. This was in terms of its adverse effect on landscape character and visual impact, and that it would reduce the open character of the Countryside Protection Zone (CPZ).

12. The Council confirmed, which went unchallenged at the hearing, that a five-year housing land supply (5YHLS) now existed, as evidenced in the 5YHLS Statement and Housing Trajectory Status at 1 April 2023 (9 October 2023).

### **Planning policy and legal framework**

13. Decisions on planning applications are determined in accordance with the development plan unless material planning considerations indicate otherwise. The development plan includes the Uttlesford District Local Plan 2005 (LP). The LP policies I consider most important and relevant to this application are Policies S7, S8, GEN1, GEN6, ENV2, ENV3, ENV7, ENV8, ENV9 and H9.
14. The National Planning Policy Framework (NPPF) contains national planning policies and is an important material consideration. Its foremost purpose is to achieve sustainable development: economic, social, and environmental.
15. The draft Regulation 18 local plan (ELP) is a draft for consultation and does not include proposed settlement boundaries which will be included with the Regulation 19 version when proposed site allocations are more certain. Future boundaries may include the Takeley 007 provisional site allocation. Despite the agreed statement I requested on factual matters (ie not opinion) from the Council and applicant, it is clear to me that any future boundary revision has yet to be decided. For the record therefore, I do not give any credence to the assertion in that statement<sup>1</sup> regarding the probability that a revised settlement boundary would include "*the full extent*" of built development within the application site as currently proposed. In any case I have noted that the application site is largely but not in fact to its full extent proposed for allocation, because the southern portion of the currently proposed housing is not shown as a development plot, indicative or otherwise.
16. The ELP is still at early stage and the weight to be given to it is not agreed between the applicant and the Council. The Regulation 18 consultation is scheduled to take place from 3 November to 15 December 2023. Without public consultation responses it carries no appreciable weight at this stage. Nor would it be conducive to the proper planning of the area to attempt to fetter the Council's plan making process by stipulating or predicting (as the agreed statement appears to do) whether the ELP will or should retain the settlement boundaries and allocated areas for built development there set out.
17. After the hearing concluded Smith's Green conservation area was formally designated in accordance with procedures set out in s69 Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA90). However, I was given sufficient information beforehand to enable my decision to take due account of the potential effect of designation on the proposed development.

### **The main issues**

18. These are:

- 1) whether having regard to national and local planning policies, the proposed development is in a sustainable location;

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<sup>1</sup> Bullfield (Settlement Boundary) Final Agreed Version

- 2) the effect of the development on the character and appearance of the area, including the effect on the significance of heritage assets;
- 3) the effect that the development would have on the ancient woodland adjacent to the application site;
- 4) the impacts of the proposed development on highway safety and the road network, including by reason of cumulative impacts of other developments;
- 5) whether adequate provision would be secured for any additional need for facilities, including transport, education, community and health facilities, and open space arising from the development; and
- 6) Whether having regard to the supply of housing the tilted balance set out in NPPF paragraph 11(d) applies, and if so the effect of sub-paragraphs (i) and (ii) on the acceptability of the proposal.

**Whether a sustainable location.**

19. The site is in the open countryside, outside the development limits of Takeley. LP Policy S7 states *"in the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area"*. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.

20. Policy S7 aimed to protect countryside outside settlement boundaries formed to accommodate housing growth as part of the former structure plan. The allocations made in LP Policy H1 identified housing needs to 2011, but all such allocations have been built out. Insofar as Policy S7 fixed the settlement boundary for Takeley it is accepted that this needs to be reviewed. Granting permission for the scheme would in effect extend the built up area.

21. The applicant emphasises that the Council must rely on sites outside development boundaries to meet its housing need. This may be so over time, but it is noteworthy that the 5YHLS statement of 9 October 2023 states:

*"an Uttlesford Housing Trajectory 2021 – 2041 will be published separately which lists all the sites which are considered to provide housing during the period up to 2041, including the draft allocations proposed within the Regulation 18 Local Plan. These sites are NOT included within this 5YHLS Statement."*

22. LP Policy S7 also seeks to protect the countryside "for its own sake" by only permitting development that needs to take place there or is appropriate to a rural area. I disagree that this part is out of date, it is not inconsistent with the desire to recognise "the intrinsic character and beauty of the countryside" (my emphasis), as reflected in NPPF paragraph 174(b). That sub-paragraph seeks development that contributes to and enhances the natural and local environment, precisely by such recognition, as well as considering economic and other benefits of trees and woodland. Whether the proposal protects or enhances local countryside character is considered below.

23. Takeley is a key rural settlement in the LP, and benefits from several facilities including primary schools, shops and other services. Bull Field abuts the settlement edge to the north of Takeley, is mostly flat and level and reasonably close to these facilities. Impacts from the development would be felt on some local infrastructure such as demand for school spaces and local surgeries. The s106 obligation responds to these demands as described below.
24. NPPF at paragraph 12 encourages development that prioritises pedestrian and cycle movements within the scheme and neighbouring areas. Paragraph 105 advises that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Concerns are raised as to transport sustainability in terms of connectivity and access, however in overall terms the site is, or could be developed as an accessible and sustainable location.
25. I find that the proposed development would be reasonably accessible to a range of facilities and in compliance with NPPF, paragraph 93, and would enhance the sustainability of community and residential environments in Takeley and nearby. The measures secured in the s106 obligation would meet LP Policy GEN1 by encouraging movement by means other than driving a car. The development would also comply with paragraphs 105 and 108(a), NPPF by providing a genuine choice of transport modes.
26. There is a clear conflict with LP Policy S7 in that the proposal would be new built development in the countryside. However the site provides in general terms an accessible and sustainable location for some additional new dwellings adjacent to the built up area of Takeley.

### **Character and appearance**

27. The application site is in the Broxted Farmland Plateau Landscape Character Area (LCA) as defined in the District level Uttlesford Landscape Character Assessment, ie typically undulating farmland and large open landscapes with tree cover appearing as blocks on the horizon, assessed as having a moderate to high sensitivity to change. The area was found not to be a valued landscape within the meaning of paragraph 174(a), NPPF in the previous appeal decision although I recognise its community value which is clearly appreciated in the locality, not least as an expansive open field across which views extend from public rights of way to what the Inspector in the previous appeal scheme called the "grandeur" of Priors Wood.
28. The site is in the CPZ where LP Policy S8 states that planning permission will only be granted for development required to be there or appropriate to the rural area. New development would be prevented which promotes coalescence between Stansted Airport and existing development in the surrounding countryside, or adversely affects the open characteristics of the CPZ.
29. The findings of the applicant's landscape and visual impact assessment (LVIA) are that the site is contained within the wider landscape, and due to the high-quality nature of the intervening landscaping within the proposal and limited visibility, as a result of nearby existing and approved development the proposals would not lead to a demonstrable loss of openness or contribute to

any perceived coalescence of the settlements of Takeley and Little Canfield or coalescence with the airport.

30. Although the ELP appears to contemplate removal of areas of CPZ surrounding Takeley and Little Canfield south of the A120, including the application site, the ultimate fate of the CPZ cannot be predicted. It was limited to the area around the airport as a larger area was thought more difficult to defend. Past decisions have granted permission for built development in the CPZ but as to this particular site, having regard to its essentially open agrarian character, its character would alter due to the new housing and reduce the open character of the countryside surrounding the airport.
31. However, there is significant open countryside between the airport and the A120. Given the proximity to built development and large areas of open land between the site and the airport, when taken together with the location of Priors Wood, the physical and visual role that the site plays in preventing coalescence is limited. There would nonetheless be an adverse effect on the open characteristics of the CPZ in conflict with LP Policy S8.
32. The verge adjoining Smiths Green Lane is designated as a village green and north of its junction with Jacks Lane the lane is designated as a Protected Lane under LP Policy ENV9. The development would be some 150m from the Protected Lane to the driveways, with planting mitigation and reinstatement of historic hedgerows and tree planting so that the dwellings would be less likely to be seen from the Protected Lane. Ridgelines on the eastern edge of the proposed development would be visible but only glimpsed once vegetation is established. The boundary hedge along Smiths Green Lane would be kept to an appropriate height to attenuate views in the direction of the new dwellings.
33. The applicant points to the contained nature of the site and revisions made since the previous scheme, including provision of over 5ha of open space, which I agree would assist in maintaining an open character to much of the site. Whether the agrarian character would subsist in areas omitted from the previous scheme, is somewhat doubtful. There would be no vehicular access from the Protected Lane and a gradation of informal play space and hay meadow is proposed. However, there would be accessible open space with pedestrian and cycle movement across it connecting the dwellings to the edges of the site at Smiths Green Lane. The amenity value provided by open space that functionally operates as an agricultural field and clearly retains its agrarian character is somewhat different. A transitory effect is claimed between open countryside and new housing. This is arguable in the case of the open field next to the north east part of the site but much of the area that would be left open connects eastward to the lane and buildings within the tranquil "micro" environment, as I found it, of Smiths Green.
34. Moreover, although there is a set-back of the development from the south-eastern edge of Prior's Wood, it is insufficient in my view to retain the grandeur of the wood as suggested by the applicant, when viewed from the visual receptors of the Protected Lane and PROWs. A more or less continuous line of dwellings would obtain parallel to the southern boundary of the wood for almost all its length. A relatively thin strip of landscaping would separate the public right of way from the new vehicular access on the north side of the dwellings.

35.I find that the urbanising effect identified in the previous scheme would be reduced but not significantly so. Overall, the layout, form, and mass of the several dwellings on the northern edge and in the central area of the site would combine to erode the open agrarian features of the landscape and would result in harm to local character and appearance, including the woodland.

*Effect on significance of heritage assets*

- 36.The previous appeal decision envisaged a substantially greater amount of proposed built development on a larger site, some of which was closer to the listed buildings potentially affected. I do not propose to go through this matter in great detail. Suffice it to say that it was found that the majority of significance for each heritage asset derived from their surviving historical form and fabric which those proposals would not affect. Where harm to their setting was identified this was considered to be less than substantial. Areas of contention related to the previous scheme on the eastern edge of Bull Field have been removed from the current proposal.
- 37.Historic England has noted that the changes made to the earlier scheme have reduced the harm to highly graded heritage assets, although there would still be some impact on the setting of the non-designated Prior's Wood as a result of the loss of open space to the south which contributes to its prominence. There would also be impacts on the setting of the listed buildings on Smith's Green, particularly Goar Lodge and Beech Cottage, as a result of the proximity of the development. The Council identifies harm to Beech Cottage, Goar Lodge and Hollow Elm Cottage, as to which the previous appeal decision found that the degree of less than substantial harm was at a medium level in the case of Goar Lodge and Beech Cottage, and of a low level in the case of Hollow Elm Cottage.
- 38.From what I have seen and read I see no reason to disagree with those assessments. A finding of harm to the setting of a listed building is a consideration to which the decision-maker must give considerable importance and weight. Under NPPF, paragraph 202 harm should be weighed against any public benefits of the proposal, including securing the asset's optimum viable use.
- 39.Conservation areas are defined in s69 PLBCAA90 as areas of special architectural or historic interest, whose character or appearance it is desirable to preserve or enhance. I was provided with details of and representations about the effect of the scheme on the now designated conservation area (CA) to include properties to the east and west of Smiths Green Lane and bounded at the south by the B1256 with the Flitch Way country park beyond. By s72 PLBCAA90 special attention is to be paid to the desirability of preserving or enhancing the character or appearance of a CA.
- 40.The applicant emphasises that the setting of a CA is not statutorily protected as for listed buildings. However a CA is a designated heritage asset. The setting of a heritage asset is the surroundings in which a heritage asset is experienced and the setting of a designated heritage asset can contribute to its significance.
- 41.The application site lies outside the CA save for two small areas at the north-eastern and south-eastern edge of the site where cycle and pedestrian accesses are proposed to run along or by FP40 and FP41 and onto Smiths Green Lane.

The areas are part of the protected verges registered as a village green. The applicant recognises that an application to the Secretary of State may be required to surface these small areas where the proposed new pathways would cross over the verge. Although potential impediments to development as noted by TPC, this matter is not significant enough to withhold permission.

42. The CA appraisal states that the rural characteristics of the CA are drawn from the wide-open village green with mature hedgerows and trees throughout. Medieval origins and a connection to the agricultural landscape are appreciable, but recent development has intruded on the setting of Smiths Green. However, the small rural hamlet retains its distinctiveness with the open village green and historic structures. To the north, the agricultural land with views across it permits the rural character to be appreciated and understood.
43. The historical analysis to which I was referred, although interesting does not persuade me of any particular significance that the application site itself had; although Bull Field and Priors Wood may historically have enjoyed a close functional relationship with Smiths Green, the association of agriculture with the historic and economic development of settlements is not unique to Smiths Green. Of more relevance it seems to me are the characteristics of the Protected Lane where the lack of formalised footpaths and road markings is a positive feature. Undoubtedly there would be an increase in non-motorised users along it to get to the B1256 Dunmow Road. However the proposal would not in my view undermine to any significant extent the character of the Protected Lane, or otherwise impinge unacceptably on the setting of the CA.

#### *Summary*

44. I find on this issue that the harm identified to the setting of listed buildings would be at the low to medium level of "less than substantial" and there would be no harm caused by proposed development to the CA or its setting.
45. However, the proposed development would cause demonstrable harm to the open and agrarian character of the application site through a permanent loss of an open space and a built form that would unacceptably detract from the amenity value of Priors Wood contrary to LP Policy ENV3 which seeks to protect open spaces and visually important spaces, including groups of trees and as reflected in NPPF paragraph 174 which references the intrinsic character and beauty of the countryside, including economic and other benefits of trees and woodland. There would in addition be an urbanising effect contrary to LP Policies S1, S7 and S8, and the aims of NPPF, including paragraph 124 that seek to maintain an area's prevailing character and setting.

#### **Ancient woodland**

46. HE refers to Prior's Wood as a non-designated heritage asset yet the applicant points out that the wood has never been identified as such by it, various Council officers, or the Inspector in the previous appeal. Non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions because of their heritage interest but which do not meet the criteria for designated heritage assets (as defined in Annex 2 of the NPPF). Prior's Wood is identified by the Council and TPC as having considerable local and historical

interest. It clearly has more than limited heritage significance and I have no hesitation in considering it to be a non-designated heritage asset.

47. Furthermore, it is clear from the wording of LP Policy ENV7 that ancient woodlands within the district are "*local areas of conservation significance*". Development likely to affect such areas will not be permitted unless the need for the development outweighs the local significance of the site to the biodiversity of the district. Ancient woodland is also protected by LP Policy ENV8 that seeks to manage adverse effects by conditions and planning obligations.

48. The proposal would enclose the woodland along its southern boundary, with a minimum buffer of 15m. However the access would have a "pinch-point" with the light industrial land at the 7 Acres scheme. The previous appeal decision found that:

*"neither the proposed road or cycleway within the buffer or proposed housing in the vicinity, would lead to indirect effects on the ancient woodland as identified in the Standing Advice, given the proposed measures set out in the Prior's Wood Management Plan."*

49. The new access through the pinch point and the road alignment running to the south of Priors Wood, would be no closer to the woodland than in the previous appeal scheme. A woodland management scheme is submitted which is consonant with that produced for the previous appeal scheme.

50. However, the Woodland Trust although not a statutory consultee, raised detailed concerns that whilst the number of dwellings proposed is reduced, there was still potential for human activity and recreational disturbance, fragmentation of the ancient woodland from adjacent semi-natural habitats, noise, light and dust pollution, threats to long-term retention of trees from increased safety concerns, and long-term deterioration of the woodland resulting from the cumulative effects of these impacts.

51. Clearly the new development would be adjacent or in very close proximity to an area of ancient woodland. A woodland management plan would assist in preventing gradual and irreversible deterioration and the extension to the east of the existing woodland is noted, but Natural England and Forestry Commission's standing advice is that whilst the minimum 15m buffer zone aims to avoid root damage, a larger buffer zone may be required where other impacts would extend beyond this distance.

52. The applicant urges in its Arboricultural Response Note that paragraph 180c of NPPF controls, in the sense that it sets the test against which applications must be judged, not the standing advice. However, paragraph 180c is a high level proscription of development "*resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees)*". The standing advice contains a detailed and relevant explanation of the sort of considerations that should in my view inform a judgement as to whether there would indeed be likely to be such a loss or deterioration. Moreover it is still the statutory default position that the development plan, which the response note omits to address, controls unless material considerations such as the NPPF indicate otherwise.

53. Examples in the standing advice of where larger buffer zones are likely to be needed include proximity to residential areas and further, that a buffer zone should consist of semi-natural habitats such as woodland or a mix of scrub, grassland, heathland and wetland.
54. There was disagreement as to whether the appropriate buffer was satisfactorily addressed in the previous appeal although I have taken account of those parts of the evidence previously submitted that were put before me for consideration. It seems to me that the Inspector's findings focussed more on direct impacts and the level of incursion due to development proposed within the buffer, in particular with regard to impacts on the root protection system (paragraphs 73-77) than on indirect impacts. My own view is that more weight should be given to the potential indirect impacts of the proposed development. Although the proposed dwellings are in the region of 15m to 20m from the woodland canopy edge, a new vehicular route would cross the buffer, to afford access for two-way traffic to the current scheme for up to 96 dwellings. There would be a significant increase in movements of motorised (as well as non-motorised) traffic in close proximity to the woodland which clearly have the potential to cause indirect effects including air pollution. This demands in my view a larger buffer than the minimum 15m set out in the standing advice for root protection.
55. Ancient woodland is an irreplaceable habitat, once lost it is gone forever. The proposal would breach the standing advice and having regard to the nature and layout of the proposals I am of the view that without a larger buffer zone than is proposed it would be likely to lead to the loss or deterioration of the ancient woodland at Priors Wood contrary to NPPF, paragraph 180c, and the aims of Policy ENV7 to protect ancient woodlands as areas of conservation significance.

### **Highways and Transport**

56. Under LP Policy GEN1 development will only be permitted if the access is appropriate, traffic generation would not have a detrimental impact on the surrounding road network, it is designed to meet the needs of people with disabilities and it would encourage sustainable modes of transport.
57. The site is reasonably close to several local services and transport routes including the M11 which gives access to London from the south and Cambridge from the north. Essex County Council (ECC) has no objection to the present proposal, provided conditions are attached to any eventual permission. These would secure a construction management plan, improvements to passenger transport and other highways related measures.
58. These requirements are reflected in the completed s106 obligation. They would be necessary in the interests of highway safety, accessibility, reducing the need for car travel and promoting sustainable development and transport. Accordingly, the design of the site including the parking provision proposed takes account of the needs of motorised and non-motorised users.
59. The development does not have its own designated access from Parsonage Road, however the TA assessed cumulative impacts from the proposal and the approved industrial units on 7 Acres and the adjoining business centre, as well as the safety of the proposed access onto Parsonage Road, to which ECC has not objected.

60. In addressing concerns for a safe and sustainable foot and cycle link onto Smiths Green Lane, east-west connectivity for pedestrians and cyclists was a key part of the design principles, influenced by input from the ECC team. Connections have been designed to provide the most appropriate and sufficient footpath/shared links. ECC has not raised any concerns in this regard.
61. I have had regard to the comments from interested persons concerning development in the area, and the traffic conditions on the local network. However, there was no information that persuaded me that the highway network would not have the capacity safely to accommodate the additional vehicular movements arising from the implementation of the scheme.
62. Subject to details submitted pursuant to the proposed conditions, safe and suitable access to the site could be achieved for all users with any significant impacts on the transport network in terms of capacity and congestion, or on highway safety, being cost effectively mitigated. In these respects the scheme would comply with NPPF, paragraph 110 and LP Policy GEN1.

#### **Provision for additional need for facilities**

63. Under ULP Policy GEN6 development will not be permitted unless it:

*"makes provision at the appropriate time for community facilities, school capacity, public services, transport provision, drainage and other infrastructure that are made necessary by the proposed development. In localities where the cumulative impact of developments necessitates such provision, developers may be required to contribute to the costs of such provision by the relevant statutory authority."*

64. A s106 obligation was submitted. It provides for land adjacent to Roseacres Primary School to be transferred for education purposes, and index linked contributions by the applicant/owner including Early Years and Childcare; Primary School and Secondary School; Post-16 Education – Employment and Skill Plan, School Transport Contribution and Libraries Contribution.
65. The delivery of affordable housing is a Council priority. LP Policy H9 seeks on a negotiated site-to-site basis, an element of affordable housing of 40% of the total provision of housing on appropriate allocated and windfall sites, having regard to the up-to date Housing Needs Survey, market and site considerations. Accordingly, the proposal would meet this requirement.
66. The NPPF contains policy tests for planning obligations; they must be necessary to make the development acceptable in planning terms; directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests are found in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010.
67. The additional need for facilities and infrastructure identified as arising from the proposed development could be adequately secured by a combination of the conditions proposed by the Council and ECC as the local highway authority, and through the completed s106 obligation.

68. I am satisfied that the s106 obligation would meet NPPF requirements in paragraph 57 and Regulation 122 of the CIL Regulations 2010, as necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The s106 obligation would address the impacts of the proposed development and generally comply with LP Policy GEN6.

### **Housing land supply and the tilted balance**

69. As noted above, and which is undisputed, a 5YHLS now exists, evidenced in the 5YHLS Statement and Housing Trajectory Status at 1 April 2023, published on 9 October 2023.

70. Section 38(6) of the 1990 Act requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. There is a five-year housing land supply, and on that score alone important policies for determining the application are not necessarily treated as out of date under NPPF, paragraph 11(d).

71. Besides other policies that would restrict housing supply, there are several development plan policies that are important for determining the application and remain relevant, namely Policies LP GEN1, GEN6, ENV3, ENV7, ENV8, ENV9 and H9 which are consistent in my view with the NPPF's aims to promote sustainable transport (chapter 9), ensure necessary infrastructure is in place for new development (paragraph 34), to protect listed buildings and their settings (chapter 16), and to protect the natural environment including nature conservation, woodland and protected lanes (chapter 15).

72. On the above basis, the tilted balance in paragraph 11(d) would not apply because I think that here the non-housing policies are more important in determining the application given the bearing they have on the decision to be made. Their aims would be intended to continue beyond the plan period.

73. However the applicant argues that the tilted balance is engaged under paragraph 11(d), ie national policy is that permission should be granted, subject to s38(6), unless sub-paragraph (i) or (ii) of paragraph 11(d) NPPF applies.

74. The applicant's statement was predicated on the lack of a 5YHLS, but it maintained its position as to the tilted balance "*that still applies due to the out of date nature of the plan*". This seems too simplistic a conclusion, given the importance and relevance of the non-housing policies identified. The applicant focusses more on the second limb, sub-paragraph (ii), ie whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, but both limbs would need to be considered.

### **Planning balance**

75. I continue to afford considerable importance and weight to any heritage harm. However, the less than substantial harm identified to the heritage assets discussed above, judged against the public benefits of the proposal detailed below produces no clear reason for refusal.

76. There would be no unacceptable impacts on highway safety and the road network, and adequate provision would be secured for necessary transport, education, community and health facilities, and open space needs arising from the development.
77. Overall there would be economic, social and environmental benefits, chiefly moderate in terms of the weight to be accorded them. Among the claimed economic benefits Council tax receipts should not be included since they correspond to the increase in the demand that would be made on services. The additional publicly accessible open space proposed would not be a purely positive gain given the demands placed on such facilities by the new occupants, however the land to be made available would be a moderate benefit overall. The healthcare contribution and land available for the primary school expansion are substantially matters that would be exacted from the developer as a direct result of the scheme and neutral in weight. The location of the site on the edge of the settlement but reasonably close to a range of services and facilities, has sustainable benefits which carry moderate weight.
78. Applications for this number of dwellings (96) attract a specific policy requirement for 40% affordable housing provision. The applicant proposes to provide 39 affordable housing units which meets but does not exceed the 40% requirement. The 40% requirement is set out in the supplementary planning document on developer contributions (SPD) which is underpinned by LP Policy H9 and has regard to the up to date housing needs survey, market conditions and site considerations. None of these factors or the methodology that may have underpinned production of such a figure was disputed by the applicant.
79. Therefore it is difficult to see why the provision of a compliant level of affordable housing, without which the scheme would be unlikely to be acceptable in planning terms, should be treated as other than neutral in the planning balance. The same goes for the requirement for First Homes within the Uttlesford district. With the introduction of First Homes, the Council validly seeks an affordable housing split of 70% affordable rent, 25% First Homes and 5% shared ownership. That said, I note the applicant's submissions regarding past delivery of affordable housing. Overall, and considering the need to boost the supply of housing generally, but conscious of the fact that the 5YHLS does not include this site, I give the benefits of additional housing and in particular affordable housing moderate to significant weight.
80. Most of the list of claimed environmental credentials of the proposed development amounts to no more than policy-compliant measures and are neutral factors in the planning balance. The net biodiversity gain in excess of 10% I put at moderate only, given there was uncertainty over the estimated net gain for the watercourse units.
81. The scheme is well-designed in several respects and Paragraph 134 of NPPF states that significant weight should be given to development that reflects local and national design guidance and codes.
82. However the proposal would cause significant harm to the open and agrarian character of the site by a permanent loss of open space where the new dwellings would detract from the character and appearance of Priors Wood contrary to LP Policy ENV3 and NPPF paragraph 174. Further harm would be

caused by an urbanising effect contrary to LP Policies S1, S7 and S8, and the aims of NPPF, including paragraph 124 in failing to maintain the prevailing character and setting of the area. In addition less than substantial harm at a lower end of the scale would be caused to heritage assets as described.

83. The proposal would be likely to lead to the loss or deterioration of the ancient woodland at Priors Wood contrary to NPPF, paragraph 180c, and the aims of Policy ENV7 to protect ancient woodlands as areas of conservation significance. The harm caused would be considerable unless a different design and enlarged buffer zone were in place, given the irreplaceable nature of the habitat concerned, however no amendment to the layout of the scheme or condition that would satisfactorily resolve the issue was advanced.
84. I have taken due account of the benefits of the proposal. However, these considerations taken individually or in combination, do not clearly outweigh the harms that I have identified and the proposal would be in conflict with the development plan taken as a whole. Hence, in terms of sub-paragraph (ii) of paragraph 11 of NPPF the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits and the proposal would not benefit from the presumption in favour of sustainable development.
85. However, there is a particular concern with regard to the harm that would be occasioned to ancient woodland adjacent to the built development and road infrastructure. This type of harm is one that, because it affects irreplaceable habitats, is in my view one which is capable of providing a clear reason for refusing the development proposed in the tilted balance, based on the clear and demonstrable protection of such assets by NPPF in paragraph 180c.
86. Thus, sub-paragraph (i) of paragraph 11(d) would also apply and having regard to footnote 7 which includes irreplaceable habitats among matters subject to the application of NPPF policies that protect areas or assets of particular importance, the harm that would be occasioned to ancient woodland provides a clear reason for refusing the development proposed.

### **Other matters**

87. The proposal would secure a biodiversity net gain (BNG). The ecological assessment found that the proposed development would result in an on-site increase of 15.53% in habitat units, an increase of 68.04% in hedgerow units, and an increase of 2.48% in watercourse units.
88. The applicant accepted that its claim of a BNG of 10% was incorrect. BNG is measured using the a "biodiversity metric", a tool used by a competent person, normally an ecologist. It stretches credulity a little to suppose that the assessment was signed off as it would have been by an expert in the field who was not conscious that the net gain for the river units was well below 10%, yet the overall picture produced and presented in the assessment was maintained that there was indeed more than a 10% net gain.
89. Prior to January 2024 when mandatory biodiversity net gain (BNG) requirements are scheduled to be effective, the net gain requirement for a project depends on local plan and expectations in NPPF, paragraph 174(d) of which seeks to minimise "impacts on and *providing net gains for biodiversity*,

including by establishing coherent ecological networks that are more resilient to current and future pressures". No doubt this causes the applicant to state that *"it has been established that a net gain of 1% is compliant with the NPPF"*, (and as presumably the corrected net gain assessment shows a net change in river units of +2.48%, the proposal complies with the NPPF).

90. Technically the applicant may be correct but such a defence of the figures is clearly against the direction of travel of the policy and legislation about to come into force.

91. The application site is in Flood Zone 1 where there is a low probability of flooding. Concerns raised by ECC as lead local flood authority could be satisfactorily addressed through conditions ensuring a satisfactory drainage system, include details of future maintenance and management.

92. I have had regard to the suggested planning conditions together with the comments thereon, which I have considered against the advice in Planning Practice Guidance. None of the conditions taken individually or in combination would adequately remediate the planning harm I have found that would arise as result of the proposed development.

### **Overall conclusion**

93. For the reasons given above I conclude that permission should be refused.

*Grahame Kean*

INSPECTOR

For information:

- i. In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so, the Planning Inspectorate gave clear advice in advance of, and during the application of the expectation and requirements for the submission of documents and information, ensured consultation responses were published timeously, and gave clear deadlines for any additional submissions and responses.
- ii. 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 ("the Act") is final, which 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.
- iii. 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>.