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## Appeal Decision

Hearing held on 30 January 2024

Site visit made on 31 January 2024

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2024

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Appeal Ref: APP/C1570/W/23/3322904

Land West of Colehills Close, Middle Street, Clavering, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Artisan (UK) Developments Limited and Turnwood Heritage Limited against the decision of Uttlesford District Council.
  - The application Ref UTT/22/1718/FUL, dated 15 June 2022, was refused by notice dated 6 April 2023.
  - The development proposed is Full planning application for the erection of 10 no. dwellings, with associated landscaping, access and parking.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues for the appeal are:
  - The effects of the proposal on the character of the area and the significance of heritage assets including the Clavering Conservation Area.

Whether the proposal is in an appropriate location having regard to the impacts of flood risk.

### Background Matters

3. The status of Middle Street as a Protected Lane within the Local Plan was a subject of dispute at the hearing. To allow the Council the opportunity to review background information I allowed a period after the hearing for the submission of further evidence on this point. All parties have now had the opportunity to review and comment on this submission and I have taken these comments into account in reaching a decision.
4. The Development Plan for the District is the Uttlesford Local Plan 2005 (ULP). The appellant and the Council agree that the emerging Local Plan is at an early stage of preparation and so can be afforded no more than very limited weight in the decision-making process.
5. The address refers to Middle Street. This section of road is also referred to on mapping as Lower Way. For clarity, throughout my decision, I have referred to the address as "Middle Street".

## Reasons

### *Character of the Area and Impact on Heritage Assets*

6. The Clavering Conservation Area lies to the south of the site, the boundary of which runs along the route of the River Stort. Within the Conservation Area, a short distance from the site, lies a cluster of listed buildings. These include Leatside Cottage (Grade II), Willow Thatch (Grade II), The Wheelhouse (Grade II), Danceys (Grade II) and the annexe to west of Chesnut Cottage, (Grade II). The non-designated heritage assets of Chestnut Cottage and Brook Cottage also lie close to the site. In addition, Middle Street is identified as a Protected Lane on the Local Plan Map and so could also be considered to be a non-designated asset.
7. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Policy ENV1 and ENV2 of the Local Plan (LP) reflect the statutory duty in the Act.
8. This duty is reflected in the Framework which categorises any harm to the **significance of a heritage asset as either 'substantial harm to or total loss of significance of an asset' or 'less than substantial harm to the significance of an asset'.** The Framework also requires decision makers to take account of the effects of development on the significance of non-designated heritage assets and advises that a balanced judgement will be required having regard to the scale of any harm or loss. Policy ENV9 of the LP relates to development which affects historic landscapes, including Protected Lanes and states that development proposals which would lead to harm in this regard will not be permitted unless the need for the development outweighs the historic significance of the site.
9. The site comprises a grassed field which lies between two areas of housing on the outskirts of Clavering village. The site has formerly been used as a gravel extraction site and so the front portion lies at a significantly lower level than the rear. The site rises away from Middle Street and as it is laid to grass, and adjoined to the rear by other open fields, it forms a notable gap in the frontage. The open appearance of the site, the mature hedging and the relatively narrow width of the carriageway adjoining the open watercourse all contribute to the rural character of this part of the village.
10. The site lies adjacent to the conservation area and is visible in views from within it. The proposal would comprise the erection of 10 dwellings on the site. These would be located towards the rear of the site, with the access located towards the eastern edge of the frontage. In order to provide the necessary visibility splays and to widen the road in the vicinity of the site, the existing mature hedge to the front would be removed and a suitable replacement set back from the existing site boundary. Although the replacement hedging could replicate the species within the existing boundary, its new position, and the

width of the proposed access would have the visual effect of opening up this section of Middle Street.

11. The conservation area appraisal<sup>1</sup> identifies the backdrop of small open fields as reinforcing the rural character of the centre of the village. Insofar as the proposal would open up of the frontage, and due to the introduction of substantial built form which would cause a loss of openness on the appeal site itself, the development would **have a "suburbanising" effect on the character of** this part of the village and of the adjoining conservation area. This would cause less than substantial harm to the significance of the conservation area as a heritage asset.
12. I have considered whether this harm would also extent to the various listed buildings, identified above, which lie within this part of the conservation area. These assets form part of a historic core to the village. Those closest to the appeal site, Willow Thatch and Leatside Cottage, are visible in some shared views of the site. Whilst both may have been originally constructed and occupied in association with the agricultural use of the wider hinterland, I have no evidence that either has an historic association with the appeal site. Both buildings are domestic in scale and have relatively small defined curtilages. Their wider setting comprises both the other historic buildings that make up the core of the conservation area, and other modern residential dwellings. Therefore, although the introduction of further development would erode the rural character of the setting of both these assets, this would be very limited and on the lesser end of a notional scale of less than substantial harm.
13. With regard to the other listed assets along Middle Street, along with Willow Thatch and Leatside Cottage these form a cluster of vernacular buildings which together provide an attractive street scene. Their domestic scale and relative positioning indicate that their setting is largely defined by their immediate vicinity and relationship to each other. Taking into account the greater removal and therefore lesser visibility of the appeal site from the other identified listed assets, the proposal would have a broadly neutral effect on these assets.
14. Chestnut Cottage is a non-designated heritage asset that that lie to the west of the appeal site, removed from it by existing residential development. Within its curtilage lies the listed Annexe which has the appearance of a small thatched cottage and sits immediately adjacent to the roadside. The significance of these assets lies in the **unusual form of the "smallest cottage"** and the contribution it, Chestnut Cottage and the listed assets to the south of the river make to the streetscene as part of a group. Due to their scale and domestic character, their wider rural setting makes only a very limited contribution to their significance and the proposal would have a broadly neutral effect on these assets.
15. In relation to Brook Cottage, due to its position the visual connection with the appeal site is more immediate. It faces onto the appeal site, across the river, and the introduction of development on the site would erode the rural character of part of the **asset's setting, which also includes modern infill** development to the west. I am not advised that Brook Cottage has an historic association with the site and note that its curtilage and immediate setting is

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<sup>1</sup> Para 1.66 Uttlesford District Council Clavering Conservation Area Appraisal and Management Proposals, Approved June 2007

strongly defined by its proximity to the river. I am therefore of the view that only very limited harm would occur to the significance of this non-designated heritage asset as a result of development.

16. The section of Middle Street to the front of the development is identified as a Protected Lane in the Local Plan. The Council have disputed that this is the case, as updated GIS mapping does not include the relevant section of lane. The Local Plan Map, as adopted, is intended to show the physical disposition of the policies within the Plan. It **cannot be "updated" without a Local Plan Review**, as to do so would alter the Plan and how it is to be applied. Therefore, as the Lane is identified on the Local Plan Map it remains subject to policy ENV9 which seeks to protect such assets.
17. I have been provided with limited information as to the attributes which contribute to its status as a Protected Lane. The supporting text in the Local Plan refers to broad byways and narrow enclosed high-banked lanes as important elements in the character of the countryside to which protected lanes contribute. Middle Street in the vicinity of the appeal site is not enclosed, the open waterway running alongside the lane, being separated only by a grass verge and small retaining wall. Whilst it is relatively narrow, it is also adjoined by a significant amount of built form. Therefore, whilst I accept that the Protected Lane, which will extend to some distance, can be considered to be a non-designated heritage asset, I consider that the effects of the proposed development as it would extend to the asset as a whole, would lead to only very limited harm to the attributes that contribute to the significance of that asset.
18. Some residents have identified concerns in relation to the appearance of some of the dwellings. The appellant has indicated their agreement that changes to the proposed materials<sup>2</sup> could be secured, if necessary, by way of a planning condition. I am satisfied that these materials would provide an acceptable appearance for the development and this matter does not therefore add to my concerns. I have also considered the extent to which the height of the dwellings seen in association with domestic boundary treatment would be visually prominent. In views from the north the development would be seen in the context of existing residential development which lies to the west and to a lesser extent, the east. Taking into account the potential to provide boundary planting along the development edge, secured by condition, I am satisfied that although the development would be clearly visible in views from the north, it would not appear intrusive in these views.
19. The Framework identifies that where less than substantial harm is identified to heritage assets it should be weighed against the public benefits of the scheme. Amongst other things the proposal would provide 10 dwellings, including 4 affordable dwellings, in a district with no 5-year supply of housing land. This benefit alone would outweigh both the individual and collective harm identified to both designated and non-designated heritage assets. Furthermore, in relation to Protected Lanes, I find no conflict with Policy ENV 9 which directs that development proposals which would lead to harm in this regard will not be permitted unless the need for the development outweighs the historic significance of the site.

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<sup>2</sup> As shown on Plan ref 1169 04 B

### *Flood Risk*

20. The Flood Risk Assessment accompanying the scheme identifies that the site is shown on the Environment Agency Flood Map for Planning as lying mostly in Flood Zone 2, with the higher northern part of the site shown as Flood Zone 1, and the land along to the southern boundary and adjacent road carriageway lying within Flood Zone 3.
21. The Framework aims to ensure that decisions on where development is located are taken with a view to directing development away from areas of flood risk. It requires that development which falls within an area at risk of flooding should be subject to a Sequential Test to identify whether such development could be carried out in an area at lower risk of flooding. Only when other sites are not available, is the proposal subject to a further Exception Test to demonstrate that the sustainability benefits of the development would outweigh flood risk and that the site is safe from flooding for its lifetime.
22. The Council and appellant are of the view that the development passes the Sequential Test. This was carried out using the village of Clavering as the area of search. Guidance in Planning Practice Guidance<sup>3</sup> indicates that whilst it is for the local planning authority as decision maker and not the Environment Agency to define the area of search for a sequential test, this will depend upon the type of development proposed and local circumstances. The development is for open-market housing. In this regard it is not restricted to a specific local area, as, for example, local needs housing or an infrastructure project might be. I have been provided with no justification as to why other sites in the district which lie outside the village would not be equally suitable for consideration for this type of development and it therefore appears to me that the area of search used is overly restrictive. Accordingly, I have no confidence that residential development in the district would be unable to take place on a site that was less at risk from flooding. In this regard, the development fails the Sequential Test.
23. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the Sequential Test still needs to be satisfied and having failed the Sequential Test it is not necessary to apply the Exceptions Test. Nonetheless, in reviewing the scheme, I take into account the concerns of local residents, that the scheme would fail to provide an acceptable means of escape. The scheme has been designed to ensure that properties would be located on higher ground, outside Zone 2 or 3, and so would not be at risk in a 1:100 year event accounting for climate change. Furthermore, as designed, the scheme would not increase the risk of flooding elsewhere and would provide a small amount of additional flood storage within the scheme.
24. Nevertheless, the access to the site would be at risk of flooding. Residents have provided photographic and written evidence of Middle Street under water, including the access to Coleshill Close. During a flood event, which I am advised<sup>4</sup> occurs in most years during winter months, the road is impassable by most vehicles. The appellant does not dispute that this occurs, although does not agree with residents' assessments of the depth and duration of these events.

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<sup>3</sup> PPG Paragraph: 027 Reference ID: 7-027-20220825 and Paragraph: 029 Reference ID: 7-029-20220825

<sup>4</sup> KCR Analysis of EA Flood Data

25. I take into account that flood events along Middle Street are typically less than 24 hours and although the road would be impassable by a conventional car for at least part of that period, the flood waters would not be fast flowing. Residents could shelter at home and the site would be likely to be reachable by emergency services if required. An escape route would be provided from the site onto the public footpath to the east. This is a rutted country lane which lies at a lower level than the appeal site. I noted during my site visit that parts of it were boggy even though the surrounding roads and verges were dry and so I have concluded that the lane would be similarly boggy during a flood event. **It isn't clear to me that access to the road network to the south would be available in a flood event**, as the lower part of the lane would also be likely to be flooded and residents would be obliged to travel some distance on foot to the north along the lane to reach a main road.
26. Therefore, whilst there would, in theory, be a means of leaving the site on foot in an emergency, it would not be straightforward and would be unsuitable for the less mobile. Whilst I note that existing properties along Middle Street are similarly affected, the purpose of guidance in the Framework is to avoid developing areas at risk of flooding so that such eventualities are not replicated. In this regard, notwithstanding the fact that the dwellings themselves would be safe from the risk of flooding, and the development would not increase flood risk, insofar as it would involve the provision of dwellings which could not be easily accessed during a flood event, the scheme would also fail to demonstrate that the scheme would be safe throughout its lifetime.
27. Accordingly, on the second matter, I conclude that the proposal would fail to comply with national policy in the Framework, which seeks to ensure that new development is directed away from areas at risk of flooding.

#### Other Matters

28. **The Council's second reason for refusal related to the provision of infrastructure, including affordable housing.** I have been provided with a completed planning obligation which the Council is satisfied would make appropriate provision for affordable housing and public open space. Accordingly, the Council did not defend the second reason for refusal at the hearing.
29. In the absence of any evidence to the contrary, I also find that the S106 would make appropriate provision for infrastructure and I find no conflict with Policies H9, ENV3 and GEN6 of the ULP which together seek to provide appropriate infrastructure for new development, including affordable housing and the retention of open spaces within development. Accordingly, this matter does not add to my concerns.
30. I note the concerns of local residents in relation to highway safety. Having regard to the scale of development proposed and the nature of the highways in the vicinity of the site, I am satisfied that the development would not be likely to generate significant levels of traffic and so have a material impact on either local character or highway safety in the area. In this regard I share the view of the Local Highways Authority who have no objections to the proposal and this matter does not add to my concerns.
31. Some residents have raised concerns in relation to the ecological impacts of the development. The proposal is supported by appropriate survey work which



adequately assess the likely impacts of the scheme and identify appropriate mitigation measures and enhancements which could be secured by planning conditions. This matter does not therefore add to my concerns.

32. The Council and appellant agree that at the time of the hearing the Council could not demonstrate a five-year supply of housing land and that the likely supply in the district was between 3.51 and 4.5 years. The Council have provided no cogent evidence to support their assumptions in relation to supply from windfall sites and provision from small sites. Furthermore, the Council were unable at the hearing to provide any persuasive evidence to support their assumptions in relation to assumed rates of delivery at Woodlands Park Great Dunmow, Former Friends School Saffron Walden or Woodside Way Dunmow. In addition, in relation to self-build plots at Land North of Braintree Road, Dunmow I was provided with no evidence to support the contention that these would be deliverable within 5 years. In light of these factors, I am of the view that the housing supply in the district is likely to be closer **to the appellant's** assumption of around 3.51 years than the Council's contention that the supply is around 4.5 years.

### The Planning Balance

33. The proposal would provide 10 homes of which 4 would be affordable. There is a deficit in supply both within the district and nationally and the emerging local plan identifies Clavering as a sustainable location, suitable for accommodating a proportion of future housing need. **Even if I were to accept the Council's** contentions in relation to housing land supply in the district, this is a benefit which carries significant weight.
34. The development would provide an additional amount of flood storage within the site. This has been quantified as providing capacity for around of 66.28m<sup>3</sup><sup>5</sup> additional cubic metres of water. It is difficult to quantify the effects of this on flooding along Middle Street, although it was acknowledged at the Hearing that Middle Street would still be subject to flooding after the development. Nevertheless, insofar as the additional storage would lead to a small reduction in flooding downstream, this benefit carries some limited weight, commensurate with the scale of flood storage to be provided.
35. The proposal would bring some economic benefits during construction and future residents would help sustain local services. These economic benefits carry some moderate weight.
36. The appellant contends that the design of the proposed development should be considered a public benefit. The Framework directs that high quality design should be a requirement of all new development. Furthermore, as set out above, I consider that the development would lead to some limited harm to heritage assets, albeit harm that would be outweighed by the benefit that would accrue to housing supply. Accordingly, I attribute this matter no weight as a public benefit.
37. There is no requirement for the appellant to provide biodiversity net gain as part of the proposals as the scheme was submitted prior to the relevant changes in legislation. Nevertheless, the council and the appellant agree that appropriate biodiversity gain could be secured by biodiversity enhancements

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<sup>5</sup> Appellants Flood Risk Assessment

within the site which could be secured by way of imposing planning conditions. Accordingly, I attribute this benefit some moderate weight.

38. The proposal would provide an area of public open space to the front of the site. This requirement of the development is primarily intended to serve the needs of new occupiers but would be usable by all local residents. I have no evidence that there is a deficit of public open space in the village and so I therefore give this benefit some limited weight commensurate with the scale of public open space to be provided.

#### Conclusion

39. The Framework is clear that planning permission should not be granted where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This includes areas at risk from flooding. Furthermore, I add to this the limited harm that would arise in relation to designated and non-designated heritage assets. Overall, I find that the proposal would conflict with the development plan as a whole.
40. Even if I were to accept the **council's** submissions in relation to the deficit in housing land supply, the matters which weigh in favour of the proposal, whilst substantial, do not provide firm grounds for departing from national policy in paragraph 11d(i) of the Framework in relation to flood risk.
41. Accordingly, for the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

*Anne Jordan*

INSPECTOR



## APPEARANCES

### For the Council:

Matt Kolaszewski	Principal Planning Officer Uttlesford District Council
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### For the Appellant:

Geoff Armstrong	Armstrong Rigg Planning
David Jones	Armstrong Rigg Planning
Thomas Copp	RPS Heritage
Mike Brindley	MTC Flood Risk

### Interested Parties:

Councillor Stephanie Gill	Clavering Parish Council
Phillip Kratz	Solicitor
Peter Walter	Keep Clavering Rural
Dr Richard Hoggett	Richard Hoggett Heritage
Frank Woods	Keep Clavering Rural
Gareth Stainer	Resident Brook Cottage
Michelle Bolger	Michelle Bolger Landscape
Councillor Francis Smitter	Clavering Parish Council

## APPEAL DOCUMENTS

Doc 1	Statement of Common Ground
Doc 2	Ms Gill Parish Council Statement
Doc 3	Richard Hoggett – Heritage Statement
Doc 4	Michelle Bolger – Landcape Statement
Doc 5	KCR – Analysis of EA Data – Flooding
Doc 6	Mr Walters – Statement
Doc 7	Mr Woods – Statement
Doc 8	Mr Stainer – Statement
Doc 9	Appeal Decision APP/C1570/W/22/3311069

Richborough