



Appeal Decision

Hearing held on 4 December 2024

Site visit made on 16 December 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th of March 2025

Appeal Ref: APP/C1570/W/24/3344534

Land north of Baynard Avenue, Flitch Green Essex CM6 3FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Baker and Metson Limited against the decision of Uttlesford District Council.
 - The application Ref is UTT/22/3470/OP.
 - The development proposed is Hybrid Planning Application - Outline Application for up to 72 dwellings (Use Class C3) together with a building for use falling within Class E (a) or (b) or (cii) or (ciii) or (d) or (e) or (f) or (g i) with all matters reserved, except access and structural landscaping. Full application for access and structural landscaping.
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Decision

1. The appeal is allowed and Hybrid Planning Application - Outline planning permission is granted for up to 72 dwellings (Use Class C3) together with a building for use falling within Class E (a) or (b) or (cii) or (ciii) or (d) or (e) or (f) or (g i) with all matters reserved, except access and structural landscaping. Full application for access and structural landscaping at land north of Baynard Avenue, Flitch Green, Essex CM6 3FD, in accordance with application Ref UTT/22/3470/OP and subject to the Schedule of Conditions attached to this Decision.

Applications for costs

2. An application for costs was made by Baker and Metson Limited against Uttlesford District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In part, this planning application is submitted in outline for the construction of up to 72 dwellings, together with a building for use falling within Use Class E (a) or (b) or (c ii) or (c iii) or (d) or (e) or (f) or (g i). The details of layout, scale and appearance for this part of the scheme are reserved for future consideration. As such, and for the purposes of my Decision. I have treated any information relating to these matters as illustrative only.
4. The emerging Local Plan¹ was submitted to the Secretary of State on 18 December 2024 but due to this having not yet been tested at examination, I afford this limited weight.

¹ Uttlesford Local Plan 2021-2041

5. As agreed at the Hearing, I undertook my unaccompanied site visit after the date of the event, this included walking the route suggested by the main parties.
6. At the Hearing a S106 Agreement was provided, the main parties agreed that subject to some very minor alterations, the detail of this was sufficient for consideration and discussion at the event and a timescale was agreed for the submission of a signed and completed S106 Agreement along with evidence in support of the bus services financial contribution. Duly, I have been provided these. The signed and completed S106 Agreement is dated 13 December 2024, I shall return to this in my Decision.
7. Since the application was determined, the revised version of the National Planning Policy Framework (as amended) ('the Framework') was published in December 2024. The main parties were given an opportunity to comment on the appeal in light of the Framework. Based on this consultation, the conclusions I draw are that:
 - i) The Council's 5 year housing land supply ('5YHLS') is now lower at about 3.46 years;
 - ii) Whilst there is some dispute between the main parties in respect of the Council's latest 2023 Housing Delivery Target ('HDT'), even if I were to accept the Council's position of 69%, this still indicates that the delivery of housing was less than the 75% of the housing delivery target, as set out in the Framework.

Background and main issues

8. The Council's decision includes four reasons for refusal. Following the lodging of this appeal, the Council reconsidered these reasons and concluded that reasons for refusal 2 and 4, which relate to the site having a single point of access and its accessibility, respectively, should not be defended at appeal. The Council is therefore only defending reasons for refusal 1 and 3.
9. Accordingly, and as indicated at the Hearing, the main issues are:
 - i) The effect of the proposal on the character and appearance of the area, and;
 - ii) The effect of the proposal on Bayleys, a Grade II listed building.

Reasons

Character and appearance

10. The appeal site ('the Site') is part of a larger arable field. This comprises relatively flat land with a slight fall in level towards the southeast corner.
11. The northern site boundary is delineated by a hedge consisting of native trees and shrubs within the grounds of the residential property known as Bayleys. Beyond this is Flitch Way, which is bound by landscaping on either side and follows the line of a former railway. Flitch Way is also a County Wildlife Site, a Public Right of Way ('PRoW') and a non-designated heritage asset.
12. The eastern boundary of the Site adjoins a belt of semi-mature woodland that separates this from Flitch Green (a relatively new settlement of about 1000 dwellings). The semi-mature woodland belt also extends along the southern

boundary of the Site (partly on a low bund) and includes a denser understorey of planting. The Site extends through a section of the plantation to the south to connect with Baynard Avenue within Flitch Green, from where the Site and development is proposed to be accessed.

13. The western boundary of the Site is not denoted by any feature on the ground but to the further west of this is a band of planting which broadly follows the line of PRoW Little Dunmow 25.
14. The built extent of the village of Little Dunmow is broadly located to the north of the Site, beyond Bayleys, the Flitch Way and a further field. The village boundary comes closest to the appeal site at the railway bridge on Brook Street.
15. Based on the above observations and having regard to Policy S7 of the Uttlesford Local Plan (2005) ('LP') the Site forms part of the countryside.
16. LP Policy S7 seeks to apply strict control on new building in the countryside, unless it needs to take place there, or is appropriate to the rural area. As such, this Policy takes a more restrictive approach to development in the countryside compared to the Framework. This Policy also seeks the protection of the countryside for its own sake. The Framework seeks protection for valued landscapes, not 'ordinary' countryside, recognising the intrinsic character and beauty of the latter. Despite this, the Framework has a general objective of protecting the natural environment and recognition of the attributes of the countryside implies a level of protection, albeit lower than that provided to valued landscapes. LP Policy S7 is the main policy mechanism for achieving this at a local level. As such, LP Policy S7 is partly consistent with the Framework and, in my view, should be afforded moderate weight.
17. The submitted Landscape Visual Impact Assessment ('LVIA') assesses the likely landscape and visual effects of the proposed development. Given the size and location of the Site, the influence of this is largely limited to the local landscape.
18. At a local level, the Site falls within landscape character area ('LCA') LCA A6: Upper Chelmer River Valley. The key characteristics of LCA A6, most relevant to the Site are: Narrow valley with a restricted valley floor, arable valley sides with a fairly open character.
19. The Site is located on the upper valley side and because this is part of an arable field, it is typical of the wider landscape character area.
20. Within the local area the historic integrity of the landscape has been weakened by the residential development associated with Flitch Green and the sugar beet factory which preceded this.
21. On the information before me, a number of historic hedgerows within the site and its immediate surroundings have been lost. The planting of woodland belts has further altered the historic field pattern.
22. As such, the local landscape has undergone a considerable amount of alteration that has weakened its historic integrity. Notwithstanding this, and whilst the Site is not a valued landscape for the purposes of paragraph 187 of the Framework, the Upper Chelmer River Valley is a predominantly rural river valley and because the Site is typical of the local landscape character, this forms and makes a positive

contribution to the countryside. Also, and because of the Site's proximity to footpaths its Landscape sensitivity: the susceptibility to change is high.

23. The proposed housing development would be less characteristic of the area than the field it would replace, resulting in a negative and adverse effect on its character. In particular, the effect on the character of the Site and its immediate surroundings is assessed as major-moderate adverse. The Site is however relatively well contained to the north, east and south and the proposed development would relate to Flitch Green. Consequently, the effects would occur within a contained and localised area and against the backdrop of existing development.
24. The proposal includes a substantial woodland buffer (about 20m wide) to the western boundary of the site. Although this would take some time to establish, this would lead to a moderate beneficial effect on the area.
25. As part of the LVIA a number of viewpoints were agreed between the main parties. These are representative of the range and scope of views, as experienced by visual receptors in the surrounding landscape. Based on this and having regard to the overall content of the LVIA, I am satisfied with the reliability of this approach for the consideration and reporting of visual effects.
26. It is common ground between the main parties that in respect of views from LVIA viewpoints A, B, C, D, F, G, H, I, J, K and M, receptors would, by year 15, experience no changes or changes of minor significance or less. These include a short section of the Flitch Way where the proposed development would be visible from during winter months. Even so, these views would be filtered through vegetation. There would be no change to these views in summertime. Having visited the area, I have no reason to disagree with the main parties.
27. From the informal footpath to the east of the site within the vegetated edge to Flitch Green (LVIA viewpoint E) there would be winter views through trees to the new development. In summer the change would be limited to a glimpsed views and the significance of the change is assessed as moderate adverse.
28. The introduction of a new site access road in place of woodland would cause a large change to views from a short section of Baynard Avenue and associated properties. The effect on views from the road and the dwellings which overlook the site would be major adverse.
29. Views from public footpath Little Dunmow 25, vary along its route. The path generally runs inside a woodland, but sections of this path offer open and uninterrupted views towards the Site. The proposed housing would be seen at about 180m and would stretch across a portion of the view, causing an effect of major-moderate significance in Year 1. By Year 15 the proposed woodland would have reached a height of about 6m or more and the significance of the effect would be reduced to moderate adverse. The effectiveness of the mitigation proposed to reduce the landscape and visual effects would take time to establish and even then, the proposed development would appear as an appreciable encroachment of the countryside.
30. In longer-distance views from the opposite valley side the proposed development would form an addition to the views which include the existing Flitch Green

development. As a consequence of this and the context of the existing Flitch Green development, the effects are judged to be of minor significance.

31. The Site is separated from Little Dunmow by Flitch Way. Moreover, intervisibility between the Site and Little Dunmow is restricted by the established vegetation along Flitch Way and landscaping associated with Bayleys.
32. Based on my observations, there are no points within Little Dunmow where the proposed development would have a material effect on views from this settlement. There are also limited points in the surrounding landscape where both the Site and Little Dunmow could be appreciated clearly and together.
33. The immediate landscape setting to Flitch Green includes the existing woodland buffer between this and the Site. Other than to facilitate the proposed access, this woodland would be largely retained. Beyond this, the Site forms part of the countryside setting to Flitch Green. Even so, views of the Site to the north and west are filtered and limited due to the woodland buffer.
34. In more distant views, the proposed development would round off the Flitch Green settlement with development of a similar character (subject to reserved matters). Whilst the existing settlement pattern of Flitch Green is not historic, the proposed development would appear as a logical extension to this.
35. As such, I am unpersuaded that the proposal would result in the coalescence or a reduced perception of separation between the settlements of Little Dunmow and Flitch Green.
36. Nevertheless, in light of the above reasons, the proposal would result in encroachment of the countryside with a negative effect on the landscape character of the Site. This impact of the development would be localised and perceptible from sections of nearby footpaths.
37. Consequently, the proposal would result in harm to the character and appearance of the area. As such, the proposal conflicts with Policy S7 of the LP. However, because the Site is not a valued landscape in the context of the Framework and the impact on the landscape character would be localised and largely contained, the extent of such harm would be moderate.

Heritage Asset

38. Bayleys is a detached property (formerly an historic farmhouse) which is presently occupied as a dwellinghouse and located within a generous plot. This is designated as a Grade II listed building. This, largely originates from the sixteenth century. Over subsequent centuries the building has been the subject of various additions and alterations. In the present day it comprises a two storey, timber framed property with brick plinth and plain red tile roof. The fenestration includes seventeenth century, square leaded casements. Within the grounds of Bayleys there is a cart lodge which has been converted and extended.
39. As well as its historic interest as a farmstead, Bayleys is one of the oldest properties in the local area, providing insight into the historic pattern of settlement and illustrating vernacular building practices. Therefore, Bayleys derives its significance from its considerable age, history and the quality of its architecture.

40. The setting of Bayleys includes most immediately its outbuilding to the rear, as well as its domestic grounds. These verdant grounds are enclosed by mature boundary planting and it is within this immediate setting that Bayleys is most directly experienced in the present day and understood as a historic private residence. Beyond this, the setting of the listed building, comprises Flitch Way, agricultural fields to the south and west and housing to the east at Flitch Green. Those elements of its setting which remain in agricultural use contribute positively to the setting of Bayleys, providing insight into its rural origins.
41. Even so, the ability to appreciate and understand the former use of Bayleys as part of a farmstead is now diminished by the loss of various outbuildings (with one surviving but extended and converted to office use) and by the loss of functional associations with the surrounding land.
42. In the present day the historic functional connection between Bayleys and the appeal site can only be fully understood with reference to historic mapping, rather than through any experience on site. As such, the historic association between the Site and Bayleys makes no more than a limited contribution to the listed building's setting and significance.
43. The route by which Bayleys is approached, as part of its wider setting, makes a contribution to how this is experienced. This includes walking through and out of the settlement of Little Dunmow along Brook Street and experiencing Bayleys as an outlying property, within verdant rural surroundings. Glimpsed views are available of Bayleys across adjacent fields from the public footpath to the south, although these views are restricted in places by the density of intervening planting.
44. Moreover, in such views the housing at Flitch Green is also experienced in conjunction with Bayleys, which reduces this experience of Bayleys as a separate historic rural building, although its effects are mitigated due to the density of the mature field boundaries.
45. The proposed housing development would represent an appreciable change in land use, eroding the agrarian landscape to the south of Bayleys. The proposed development and Bayleys would be viewed together from nearby footpaths, resulting in a further erosive effect on the sense of tranquillity and remoteness. However, the grounds and landscaped buffer associated with Bayleys would maintain the verdant character of the listed building's surroundings and over time the proposed woodland buffer, would reduce intervisibility with the new built form. Furthermore, in the context of the existing development at Flitch Green, such impacts would not be unduly harmful.
46. The experience of Bayleys as an outlying rural building outside of Little Dunmow, would be largely retained due to its location, expansive grounds and associated planting. This would be reinforced by the proposed woodland buffer, which at the very least would soften the presence of the proposed development in views towards Bayleys from Brook Street.
47. Drawing on the above reasons, whilst the proposal would result in harm to the setting and significance of Bayleys in terms of diluting its rural origins, this would be a low level of less than substantial harm. Even so, there would be an adverse effect on the setting of a listed building and this conflicts with LP Policy ENV2.

48. LP Policy ENV2 includes a blanket restriction on development that adversely affects listed buildings and their settings. In contrast, the Framework requires the decision maker, in cases where there is less than substantial harm to designated heritage assets, to weigh that harm against the public benefits of the proposal. Even so, this Policy is not materially at odds with the statutory duty of having special regard to the desirability of preserving a listed building or its setting, which is also reflected in the Framework. As such, LP Policy ENV2 is partly consistent with the Framework and should be given limited weight. Accordingly, I attribute limited weight to the conflict with this Policy.
49. Irrespective, in this case, the public benefits arising from the proposal are set out below, which include the provision of market and affordable housing. Cumulatively, these public benefits are sufficient to outweigh the less than substantial harm identified, even when attaching great weight to such harm in accordance with the Framework.

Other Matters

50. A number of third parties have made representations to the application and the appeal, including at the Hearing. In addition to the above main issues, concerns have been raised about other matters.
51. The design and density of the built development and any impacts of this on neighbouring occupiers would be considered at reserved matters stage, subject to this appeal succeeding.
52. The effects of the proposal in respect of its access, parking, additional traffic, including that associated with the construction of the development were considered in detail as part of the Council's second report to planning committee. On the basis of this and the evidence submitted, I am satisfied that the proposal does not raise any unacceptable highway safety issues.
53. Nevertheless, I acknowledge that the construction works and activity associated with the scale of development proposed, would inevitably result in some level of inconvenience, noise and disturbance but to an extent this could be managed by requiring a Construction Method Statement.
54. Based on the submitted Flood Risk Assessment and subject to securing the requirements therein by a condition if the appeal succeeds, a satisfactory drainage solution could be achieved for the development without any adverse effect on the surrounding area.
55. In light of the submitted Ecological Appraisals and subject to the implementation of the proposed mitigation and enhancement measures, the proposal would not result in any impacts on designated sites, protected and priority species / habitats.
56. Infrastructure and services required to support the development would be provided through the S106 Agreement. In addition, the proposed building for uses within Use Class E, would also be a form of local infrastructure. On this basis and the lack of any substantive evidence to the contrary, I am unpersuaded that the proposal is unsupported by sufficient infrastructure and services.
57. On the information before me and based on the discussions at the Hearing, the existing sewage infrastructure would be sufficient to deal with the proposed development. Also, there is limited evidence that the occupiers of the proposed

development would be adversely affected by odours associated with the local sewage works.

58. I have assessed the proposal before me on its merits and having regard to the specific circumstances of the Site, the proposal, the revised Framework and the Council's current 5YHLS position. For these reasons, the nearby sites and appeal decisions referred to me, do not alter my findings on the main issues. Accordingly, my Decision should not set a precedent.
59. Individually or cumulatively, the above matters are not sufficiently forceful to justify dismissal of this appeal.

Other considerations

60. Because the Council cannot demonstrate a five-year supply of deliverable housing sites, paragraph 11 d) of the Framework applies.
61. In respect of paragraph 11d) i) of the Framework, the policies that provide a clear reason for refusing permission include those that relate to designated heritage assets. In this case, the less than substantial harm to the heritage asset would be outweighed by the public benefits derived from up to 72 dwellings. Therefore, the policies of the Framework in respect of heritage assets do not provide a clear reason for refusing permission.
62. Consequently, Paragraph 11d) ii) of the Framework applies. This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
63. On the evidence before me, Uttlesford is a generally unaffordable area to live in, within a national and regional context. The latest Local Housing Needs Assessment report (October 2023) for Uttlesford identifies a need of 261 net affordable dwellings in the period 2023 to 2033. This need has more than doubled since the previous 2017 assessment of affordable housing needs in the District. Also, insufficient affordable completions have been forthcoming to meet this need.
64. Against the above background, the proposal would deliver up to 72 new homes, of which 43 would be market houses. These would help to ameliorate the current projected shortfall of homes and make up for past shortfalls, including the Council's general under performance in respect of the HDT.
65. The S106 Agreement includes a covenant agreeing that 40% (29) of the proposed dwellings permitted by the planning permission shall constitute affordable housing, including First Homes for first time buyers. Because LP Policy H9, seeks to negotiate up to 40% affordable housing, this is not a minimum requirement and therefore the provision of this is a significant benefit.
66. Overall, the proposed housing provision, in light of the Council's current and worsening 5YHLS position, would be more than a significant benefit of the proposal having regard to the Framework for supporting the Government's

objective of significantly boosting the supply of homes. Moreover, the proposal supports the provision of affordable homes, which is a key policy of the Framework.

67. The proposal includes the construction of a building with flexible uses falling within Use Class E. This will support the local community and result in economic and social benefits in accordance with the Framework, which supports the sustainable growth and expansion of all types of business in rural areas.
68. As already stated, the proposal includes a woodland buffer along the western boundary of the Site, two new ponds are also proposed which would provide marginal wetland habitat. The Site's baseline is mostly an arable field and the proposed development would increase the ecological value of the Site beyond the 10% net gain requirement for this type of development.
69. The landscape strategy would also result in opportunities to introduce recreational facilities at a site that does not allow any formal public access as well as the provision of a new footpath link to the Flitch Way. The gains in biodiversity, provision of public open space and improving public access to the countryside all support aims of the Framework.
70. It is common ground between the main parties that the Site is in a sustainable and accessible location for housing. This is because of its proximity to Flitch Green, which includes some facilities. There is also a nearby bus stop, which would allow residents access to further services and facilities in other settlements. This also supports a key policy of the Framework.
71. The construction of this major development (up to 72 dwellings) and the infrastructure associated with this, would generate considerable economic activity. The new residents would also support existing shops, services and facilities in the area. As such, there would be significant economic benefits arising from the proposal.
72. Whilst the obligations in the S106 Agreement, as set out below are necessary to make the development acceptable in planning terms, some of these would also benefit the wider area.
73. Cumulatively, the above and in particular the provision of new housing (including affordable housing) together with a building for uses falling within Use Class E, would deliver significant social, economic and environmental benefits in support of the proposal to which I attach substantial weight.

S106 Agreement

74. The provision of up to 72 additional dwellings in the proposed location would result in an increase in the local population, with subsequent impacts on schools and other local infrastructure. Accordingly, the S106 Agreement includes financial contributions towards secondary education, school transport, libraries, health services and bus services.
75. Other obligations require the provision, maintenance and management of the proposed public open space and that 5% of the affordable units are wheelchair accessible and adaptable houses. In addition, a monitoring fee would be payable to cover the reasonable and proper administrative costs of monitoring compliance with the obligations.

76. Based on the evidence before me, including consultee responses, the Council's committee reports, its further submission in respect of the contribution towards bus services and from discussions at the Hearing, it has been demonstrated that the obligations in the submitted S106 Agreement are necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended). I have taken these factors into account when determining the appeal.

Conditions

77. In imposing conditions, I have had regard to the Framework and the Planning Practice Guidance. I have included the standard timescale condition for the implementation of part of the scheme which seeks full planning permission. I have also imposed conditions for the submission of reserved matters and the implementation of the part of the scheme for which outline permission is sought.
78. A condition specifying the relevant plans, drawings and documents is necessary as this provides certainty. However, I have not included the submitted parameters plans as these are only illustrative.
79. Details of a Site Wide Housing Mix Strategy is necessary to ensure that a range of housing is secured by the development.
80. To ensure that any proposed landscaping is provided and maintained in the interests of the quality of the development and area and to secure ecological enhancements and benefits, I have specified a condition requiring a Landscape and Ecological Management Plan.
81. A condition requiring a Written Scheme of Investigation is necessary to record any archaeological interests of the Site. In the interests of health and safety, a condition to deal with any on-site contamination is necessary.
82. A condition requiring that a certain percentage of the new dwellings meet the optional Building Control requirements for 'accessible and adaptable dwellings' is necessary to ensure that suitable housing is provided for households in need of accessible or wheelchair housing.
83. I have specified a condition requiring details for the delivery, management and maintenance of the proposed building for uses under Use Class E. This is reasonable and necessary in the interests of certainty and to ensure that the proposed housing is supported by such infrastructure.
84. To protect and enhance biodiversity, I have imposed a number of conditions requiring a Biodiversity Enhancement Strategy for protected and priority species; the delivery of Biodiversity Net Gain, a Farmland Bird Mitigation Strategy, and a condition requiring that all ecological mitigation and enhancement measures as identified in the approved Ecological Appraisal are implemented, including a requirement that the submitted Ecological Appraisal is updated in the event that the development is not commenced within 12 months of this Decision.
85. For the reasons already stated and concerns raised by third parties, it is reasonable and necessary to require a Construction Management Plan.

86. To promote sustainable forms of development, conditions requiring electric vehicle charging points, the provision of water efficiency measures, the promotion of low-emission transport, a scheme to provide Residential Travel Information Packs and requirement for an Energy and Sustainability Statement, are reasonable and necessary.
87. Conditions requiring the submission of a Surface Water Drainage Scheme and a Management and Maintenance Plan for this are necessary to avoid local pollution and manage flood risk. In addition, the details of the creation of any water bodies in association with the proposed Surface Water Drainage Scheme are also relevant for considering glare and glint in respect of air traffic safety in this particular location.
88. A condition requiring a lighting scheme and control over external lighting is necessary to safeguard ecology, the character and appearance of the area, the living conditions of neighbours and for air traffic safety reasons.
89. Conditions requiring the further details and construction of the approved access for the development and the provision of the 3m combined shared footway/cycleway link to provide access to Flitch Way are necessary to ensure accessibility and safety of highway users.
90. Although layout is a reserved matter, to ensure that all the proposed buildings are suitably and safely accessible. I have specified a condition requiring the details and provision of carriageway between any building and the adopted highway, and any footpath from which it gains access.
91. The only noise source in the area identified by the Council is the A120. The Site is considerably setback from this road by intervening fields and landscaping. As the use of the proposed non-residential building is unknown at this stage there is nothing to suggest that this would result in any unacceptable noise. Therefore, a condition requiring noise mitigation measures over and above building control requirements is not reasonable or necessary.
92. I have not specified a condition requiring details of external materials for the construction of the development and the design and specification of any proposed ventilation and air cooling and heating systems as these can be dealt with under the submission of the reserved matters.
93. The suggested condition restricting the use of reflective materials on any building hereby permitted for air traffic safety reasons is imprecise and is likely to be difficult to enforce. Therefore, this condition is not reasonable and I have not imposed this.
94. Where necessary and in the interests of clarity, precision and flexibility, I have altered the conditions to better reflect the relevant guidance.

Planning balance and conclusion

95. I have found that although the proposal would result in less than substantial harm to a heritage asset, this is outweighed by the identified public benefits. As such, this would be consistent with the aims of the Framework in respect of heritage assets.

96. The proposal would also result in encroachment of the countryside and harm to the landscape character of the area, to which I have attached moderate weight.
97. On the other hand, the proposal would provide considerable benefits which are consistent with the Framework and are afforded substantial weight.
98. As a result, when assessed against the policies in the Framework, the adverse impacts associated with the proposal, would not significantly and demonstrably outweigh the benefits arising from this. Consequently, the presumption in favour of sustainable development applies and this indicates that planning permission should be granted, and the appeal is allowed.

M Aqbal

INSPECTOR

Richborough

Schedule of Conditions

1. Full Application - The Access and Structural Landscaping hereby approved shall be begun before the expiration of 3 years from the date of this decision.
2. Outline Application - Approval of the details of layout, scale 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.
3. Outline Application - 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.
4. Outline Application - 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.
5. The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Plan - 21012-01A;
Western Tree Belt - E21858-TLP 400;
Access Plan - 03/003 Rev K, and
Update Preliminary Ecological Appraisal, Updated April 2024.
6. No later than the submission of the first reserved matters application, a Site Wide Housing Mix Strategy for the proposed mix of dwellings (defined by number of bedrooms) shall be submitted to and approved by the local planning authority. The development shall be implemented in accordance with the approved Site Wide Housing Mix Strategy.
7. No later than the submission of the first reserved matters application, a Landscape and Ecological Management Plan ('LEMP') for the entire development site (including a timetable for implementation) shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be undertaken in accordance with the approved LEMP and timetable.
The LEMP shall include the following:
Location, description and evaluation of all landscape features to be provided and managed;
Ecological trends and constraints on site that might influence its management;
Aims and objectives of management;
Appropriate management options for achieving aims and objectives;
Prescriptions for management actions;
Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
Details of the body or organisation responsible for implementation of the plan.
Ongoing monitoring and remedial measures.
8. No development including any preliminary groundworks shall take place until, a timetable for the implementation of all ecological mitigation and enhancement

measures and/or works in accordance with the details contained in the approved Ecological Appraisal (Skilled Ecology, July 2022) has been submitted to and approved in writing by the local planning authority.

If the development hereby permitted does not commence within 12 months from the date of this planning consent, the approved ecological mitigation measures secured through the approved Ecological Appraisal (Skilled Ecology, July 2022) shall be reviewed and where necessary, amended and updated.

The review shall be informed by further ecological surveys commissioned to:

- i. establish if there have been any changes in the presence and/or abundance of Badger and;
- ii. identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and a scheme for new or amended measures, and a timetable for their implementation shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. Thereafter, the new mitigation and enhancement measures and/or works shall be carried out in accordance with the approved scheme and timetable.

9. No development including any preliminary groundworks shall take place until:
 - a) A programme of archaeological investigation has been secured in accordance with a written scheme of investigation ('WSI') which has been submitted and approved in writing by the local planning authority.
 - b) The completion of the programme of archaeological evaluation identified in the WSI has been confirmed by the local planning authority.
 - c) The developer 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 local 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.
10. No development including any preliminary groundworks shall take place until:
 - a) Phase 1 Desk Study report documenting the ground conditions of the site with regard to potential contamination has been submitted to and approved in writing by the local planning authority. This report shall adhere to BS10175:2011.
 - b) Where shown to be necessary by the Phase 1 Desk Study, a Phase 2 Site Investigation adhering to BS 10175:2011 shall be submitted to and approved in writing by the local planning authority.
 - c) Where shown to be necessary by the Phase 2 Site Investigation a detailed Phase 3 remediation scheme shall be submitted for approval in writing by the

local planning authority. This scheme shall detail measures to be taken to mitigate any risks to human health, groundwater and the wider environment. Any works which form part of the Phase 3 scheme approved by the local planning authority shall be completed in full before any permitted building is occupied.

- d) The effectiveness of any remediation scheme shall be demonstrated to the local planning authority by means of a validation report (to incorporate photographs, material transport tickets and validation sampling). Any such validation should include responses to any unexpected contamination discovered during works.

11. Prior to the commencement of the development hereby permitted, details for the building falling within Use Class E (a) or (b) or (c ii) or (c iii) or (d) or (e) or (f) or (g i), including a timetable for the delivery of this and a scheme for its future maintenance and management shall be submitted to and agreed in writing with the local planning authority. Thereafter, this building shall be provided in accordance with the approved details and timetable.

12. Prior to the commencement of the development hereby permitted, a timetable and specification of external finishes for the provision of the approved access to the development site off Baynard Avenue, as shown on drawing no. 2276-03/003 Rev K. Thereafter, the access shall be provided in accordance with the agreed specification of external finishes and timetable. The approved visibility splays shall be retained free of any obstruction at all times.

13. Prior to the commencement of the development hereby permitted, a Biodiversity Enhancement Strategy for protected and priority species (including a timetable for its implementation) shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

Purpose and conservation objectives for the proposed enhancement measures;
Detailed designs or product descriptions to achieve stated objectives;
Plans and drawings showing the locations, orientations, and heights of proposed enhancement measures;
Persons responsible for implementing the enhancement measures;
Details of initial aftercare and long-term maintenance (where relevant).

The Biodiversity Enhancement Strategy shall be implemented in accordance with the approved details and timetable.

14. Prior to the commencement of the development hereby permitted, a Biodiversity Net Gain (BNG) Design Stage Report, in line with Table 2 of CIEEM Biodiversity Net Gain report and audit templates (July 2021) shall be submitted to and approved in writing by the local planning authority which provides a measurable biodiversity net gain, using the DEFRA Biodiversity Metric 3.0 or any subsequent measure. The content of the Net Gain BNG Design Stage Report should include:

Baseline data collection and assessment of current conditions on site;

A commitment to measures in line with the Mitigation Hierarchy and evidence of how Biodiversity Net Gain (BNG) principles have been applied to maximise benefits to biodiversity;
Provision of the full BNG calculations, with plans for pre and post development and detailed justifications for the choice of habitat types, distinctiveness and condition, connectivity and ecological functionality;
Details of the implementation measures and management of proposals;
Details of any off-site provision to be secured by a planning obligation;
A Timescale for the implementation;
Details of the monitoring and auditing measures.

The proposed BNG measures shall be implemented in accordance with the approved details and timetable and thereafter maintained.

15. Prior to the commencement of the development hereby permitted, a Farmland Bird Mitigation Strategy shall be submitted to and approved in writing by the local planning authority to compensate the loss or displacement of any Farmland Bird territories identified as lost or displaced. The Farmland Bird Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained for a minimum period of 10 years.
16. Prior to the commencement of the development hereby permitted, a Construction Method Statement ('CMS') shall be submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide details for:
 - Construction/operational hours;
 - The parking of vehicles of site operatives and visitors;
 - Storage, loading and unloading of plant and materials required in the construction of the development;
 - The control of noise and dust from construction;
 - Safe access to the development site and construction route(s);
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during construction;
 - A scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works.
17. Prior to the commencement of the development hereby permitted, an Energy and Sustainability Statement (including a timetable for implementation) shall be submitted to and approved in writing by the local planning authority. The measures identified in the Energy and Sustainability Statement shall be implemented in accordance with the approved details and timetable.
18. Prior to the commencement of the development hereby permitted, a 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 shall be 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 2.9l/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.
- Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event OR, if impracticable.
- Demonstrate that features are able to accommodate a 1 in 10 year storm event 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;
- A timetable for the implementation of the surface water drainage scheme.

The measures identified in the Surface Water Drainage Scheme shall be implemented in accordance with the approved details and timetable.

19. Prior to the first occupation of any building hereby permitted, a Maintenance and Management Plan for the surface water drainage system shall be submitted to and approved in writing by the local planning authority. The surface water drainage system shall be maintained and managed in accordance with the approved Maintenance and Management Plan.
20. No development above slab level shall commence until an 'Access Scheme' to ensure that all the dwellings hereby permitted are built in accordance with requirement M4(2) (Accessible and adaptable dwellings) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition and 5% of the dwellings hereby approved shall be wheelchair accessible and adaptable dwellings in accordance with requirement (M4(3) – Building Regulations 2010. The development shall be undertaken in accordance with the approved Access Scheme and thereafter retained.
21. No development above slab level shall commence until details (including a timetable for implementation) for the provision of a 3m combined shared footway/cycleway link to provide access to Flitch Way have been submitted and approved in writing with the local planning authority. The approved footway/cycleway link shall be provided in accordance with the agreed timetable and maintained for the lifetime of the development.

22. No building hereby approved shall be occupied until the carriageway between it and the adopted highway, and any footpath from which it gains access, have been constructed in accordance with a scheme that has been submitted to and approved in writing by the local planning authority.

23. Prior to the first occupation of any dwelling hereby permitted, a scheme for the provision of Residential Travel Information Packs to promote sustainable transport, shall be submitted to and approved by the local planning authority. The Residential Travel Information Packs shall include six one day travel vouchers for use with a relevant local public transport operator. Thereafter, a Residential Travel Information Pack shall be provided to the first occupier(s) of each dwelling hereby permitted.

24. a) Prior to the first occupation of the development hereby permitted, a lighting scheme (including a timetable for its implementation) shall be submitted to and approved in writing by the local planning authority. The lighting scheme shall be designed to:

- i) Safeguard nearby bat sensitive areas including routes used for foraging and demonstrate that areas to be lit will not disturb or prevent bats using their territory;
- ii) To prevent distraction and confusion to pilots travelling in aircraft from and to Stansted Airport; and,
- iii) Safeguard the living conditions of neighbours and the character and appearance of the area.

The approved lighting scheme shall be installed in accordance with the approved timetable and thereafter maintained.

c) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), and with the exception of the approved lighting scheme, no other external lighting shall be installed at the development site without written approval from the local planning authority.

25. Prior to the first occupation of any dwelling hereby permitted, details of measures to maximise the use of low-emission transport modes (including a timetable for its implementation) shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in accordance with the agreed timetable and thereafter maintained.

26. Each dwelling hereby permitted shall be constructed to meet the optional requirement under Part G of the Building Regulations 2010 for the maximum potential consumption of wholesome water of 110 litres per person, per day. The measures necessary to achieve this shall be provided prior to the first occupation of each dwelling and thereafter retained.

27. Prior to its first occupation, each dwelling hereby permitted shall be fitted with an electric vehicle charging point and thereafter retained.

APPEARANCES

FOR THE APPELLANT

Jennie Bean
Wayne Beglan KC
Harry Bennet
Jonathon Cage
Charmain Hawkins
Simon Neesam

FOR THE LOCAL PLANNING AUTHORITY

Rachel Beale
Carolyn Forster
Caroline Sones
Marie Shoesmith
Peter Radmall

THIRD PARTIES

Andrew Blackwell
Michael Harman
Colin Harris
Councillor Kevin French
Councillor Stephanie Harris
Councillor Phillipa Wyndham-Pearce
Councillor Joanna Pratt

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Updated list of correct plans from appellant.
2. Appeal Decision Ref: APP/C1570/W/19/3226302.
3. Appeal Decision Ref: APP/C1570/W/21/3282098.
4. Copy of signed and completed S106 Agreement, dated 13 December 2024 and supporting documents.
5. Consultation responses from the main parties on the revised National Planning Policy Framework.



Costs Decision

Hearing held on 4 December 2024

Site visit made on 16 December 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th of March 2025

Costs application in relation to Appeal Ref: APP/C1570/W/24/3344534

Land north of Baynard Avenue, Flitch Green, Essex CM6 3FD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Baker and Metson Limited for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for Hybrid Planning Application - Outline Application for up to 72 dwellings (Use Class C3) together with a building for use falling within Class E (a) or (b) or (cii) or (ciii) or (d) or (e) or (f) or (g i) with all matters reserved, except access and structural landscaping. Full application for access and structural landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('PPG') advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for the reasons considered below.
4. On two occasions the applicant's planning application was supported by officers of the local planning authority. On both these occasions the determination of the application was a matter for the Planning Committee.
5. On both occasions Planning Committee went against the recommendation of the Council's professional officers. Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
6. Although the LPAs decision includes four reasons for refusal ('RfR'), following the lodging of the applicant's appeal, the Council reconsidered these reasons at a further meeting of its Planning Committee, at which it was agreed that RfR 2 and 4 would not be defended at appeal.
7. RfR 2 suggests that because the development site incorporates a single access, this would be a poor form of development. RfR 4 relates to the accessibility of the

- development site. Although RfR 2 and 4 were not formally withdrawn, it is clear that the LPA decided not to defend these at appeal.
8. To mitigate costs to the applicant in the appeal, the Council notified the applicant before and after seeking ratification from Planning Committee not to defend RfR 2 and 4.
 9. Nevertheless, no reasoning has been provided to support the Council's decision to introduce and then not defend RfR 2 and 4. From this the only conclusion I can draw is that RfR 2 and 4 are unsustainable and were as good as withdrawn. The PPG says that examples of unreasonable behaviour which may result in an award of costs include withdrawal of any reason for refusal. Accordingly, I consider that by introducing and effectively withdrawing RfR 2 and 4 without any cogent explanation is an example of unreasonable behaviour on the part of the Council.
 10. RfR 1 refers to the effects of the proposal on character and appearance and RfR 3 relates to the effects of the proposal on the setting of a nearby heritage asset.
 11. Whilst I have noted that there are matters of common ground between the main parties as set out in the Statement of Common Ground ('SoCG') and highlighted in the applicant's costs submissions, the SoCG also identifies 'Matters not Agreed' between the main parties and these support the Council's case in respect of RfR 1 and 3. These matters were also discussed at the Hearing.
 12. The members' consideration of the effects of the proposal on character and appearance and a heritage asset are matters of planning judgement. This involves some subjective analysis having regard to the context of the site, the proposal, the development plan and other material considerations.
 13. Similarly, the interpretation of planning policy is a matter of judgement for the decision maker. In my view, because Policy S7 of the Uttlesford Local Plan (2005) seeks to protect the countryside, there is nothing to suggest that the consideration of coalescence or the perception of this in respect of settlements is not a consideration which is outside the broad ambit of this Policy.
 14. Based on the Officer Reports to Planning Committee on the planning application, members of Planning Committee would have been aware of the relevant planning issues, development plan policies, the Council's five-year housing land supply position, local housing needs and the benefits of the proposal. The application was also considered and discussed at two separate meetings. Also, as to how much weight is attached to relevant policies of the development plan and whether or not this is outweighed by any benefits and other considerations are matters of judgement for the decision maker, in this case Planning Committee.
 15. Moreover, RfR 1 and 3, as set out in the Council's decision notice are complete, specific and relevant to the application. These also refer to relevant development plan policies. The Council's conclusions about the impact of the proposal, as set out in its appeal statement in respect of RfR 1 and 3 are clear and supported by sufficient analysis. The Council and third parties were also able to support these RfR at the Hearing and therefore properly substantiate the concerns identified.
 16. In light of the above, I am satisfied that RfR 1 and 3, albeit contrary to officers' professional advice were based on reasonable planning grounds.

17. I am also mindful that since Planning Committee determined the application, the National Planning Policy Framework ('the Framework') has been revised and this has also changed the Council's 5-year housing land supply position. These factors have influenced my decision in the appeal. Consequently, and whilst I have found in favour of the applicant's appeal, I cannot be certain that this would have been the case prior to the revision of the Framework. Therefore, I cannot support the applicant's assertion that the Council prevented or delayed development which should have clearly been permitted.
18. Nevertheless, as already stated, the Council acted unreasonably with regard to RfR 2 and 4. Despite the efforts of the Council to forewarn the applicant about its decision not to defend RfR 2 and 4, and whilst these RfR were not the basis of discussion at the Hearing, the applicant did address these RfR in its Statement of Case to the appeal and would have incurred expense in doing so.
19. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of RfR 2 and 4 and that a partial award of costs is justified.

Costs Order

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Baker and Metson Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending RfR 2 and 4 only.
21. The applicant is now invited to submit to Uttlesford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR