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## Appeal Decision

Site visit made on 9 September 2021

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

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

**Decision date: 01 NOVEMBER 2021**

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**Appeal Ref: APP/C1570/W/21/3268990**

**Land to the east of the Old Elm, Tilekiln Green, Great Hallingbury, CM22 7TH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Nigel Bush against Uttlesford District Council.
  - The application Ref UTT-20-1098-FUL, is dated 12 May 2020.
  - The development proposed is construction of 15 new dwellings including 6 affordable, vehicular access, parking and landscaping and other associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for construction of 15 new dwellings including 6 affordable, vehicular access, parking and landscaping and other associated works at land to the east of the Old Elm, Tilekiln Green Great Hallingbury CM22 7TH, in accordance with the terms of the application, Ref UTT-20-1098-FUL, dated 12 May 2020, and the plans submitted with it, subject to the conditions included in the schedule attached to this letter.

### Procedural Issues

2. As the appeal is against non-determination, the Council has identified 3 putative reasons for refusal which relate to landscape character and appearance, the setting of designated heritage assets and a lack of affordable housing.
3. The appeal was accompanied by a completed Section 106 agreement in respect of the provision of affordable housing. I refer to this agreement in the body of this decision.
4. Between the time when the appeal was lodged and the date of this decision the Government issued a revised National Planning Policy Framework, (the Framework). References to the Framework in this decision are to the recently adopted version.

### Main Issues

5. The effect of the proposals on:
  - The area's landscape character and appearance,
  - The setting of the Old Elm, a Grade II listed building, and

- Whether or not the proposed development would make adequate provision for affordable housing.

## **Reasons**

### *Landscape character*

6. The area surrounding the appeal site does not have a clearly defined landscape character. Low density residential and commercial uses are interspersed between occasional paddocks.
7. The Council has, in response to increasing development pressures associated with the expansion of Stanstead Airport designated a Countryside Protection Zone (CPZ) which is subdivided into 'Parcels' of land. This is supported by Policy 8 of the Uttlesford Local Plan 2005 (ULP). The CPZ, acts as a green lung or unofficial mini green belt around Stanstead airport and has 2 objectives related to the prevention of coalescence between existing development and the airport and to preserve the area's open character.
8. The appeal site falls within Parcel 1 – Tilekiln Green, located on the south western edge of the CPZ. The Council's overall assessment of the importance of Parcel 1 to the CPZ indicates particular concerns over the potential adverse impact of new development on its open characteristics, the spread of new development from the airport, the rural character of the countryside and changes to the rural settlement pattern.
9. The Council's overall assessment of the potential harm resulting from the release of Parcel 1 from the CPZ is 'moderate'. In respect of the release of the appeal site for housing the Council consider that this would erode the sense of openness and further extend the overall form of linear development along the B1256, Dunmow Road.
10. The pattern of existing development along Dunmow Road together with the amount and speed of traffic using the road has largely compromised the area's 'rural characteristics'.
11. However, the site's development would lead to an extension of the linear pattern of development westwards along Dunmow Road. Despite the site being well treed with a slope away from the road, its development would adversely impact on Parcel 1 within the CPZ.
12. For these reasons, I conclude that in respect of this main issue, the proposed development would be in conflict with Policy 8 of the ULP 2005.

### *Designated Heritage Asset*

13. The Old Elm is a Grade II listed timber framed dwelling with pantile roof dating from the sixteenth century. It has been compromised by the rough cast façade treatment and modern casement windows. It occupies a prominent location at the junction of Bedlar's Green Road (Tilekiln Green) which rises to Dunmow Road.
14. In respect of the impact of the proposed scheme on the setting of the Old Elm, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers, to have regard to the desirability of preserving the listed building or its setting.

15. The Framework defines 'setting' as the surroundings in which a heritage asset is experienced.
16. The Council's case rests on the retention of the appeal site as part of the rural landscape required to preserve the building's setting. However, no records are included in the Council's evidence which ascribe a functional or historic relationship between the two although it is understood that historic cartographic records indicate that the Old Elm has remained in an isolated position.
17. The proposed dwellings would have a height which would not adversely impact on the Old Elm, given their separation distance. They would be designed with traditional materials including pantile roofs, weather boarding and brick to reflect local character. These measures would minimise the likely impact on the setting of the Old Elm.
18. Paragraph 11d)i, requires consideration of the impact of the proposal on the designated heritage asset, the Grade II listed, Old Elm with regard to those policies within Chapter 16 of the Framework.
19. Policy ENV2 of the ULP seeks to ensure that development affecting a listed building should be in keeping with its scale, character and surroundings. Given the separation distance between the proposed development on the site and the nature of the proposed housing with the Old Elm, I conclude that the appeal scheme would result in some conflict with Policy ENV2 but that the resulting harm would not be substantial and would be outweighed by public benefits in the provision of additional housing and affordable housing.

#### *Affordable Housing*

20. The completed Section 106 agreement includes provision for a policy compliant amount of affordable housing. In the absence of a Community Infrastructure Levy compliance statement submitted by the Council I am satisfied that the obligations are compliant with adopted Policy GEN6 which requires development to be accompanied by appropriate infrastructure and Policy H9 of the ULP which requires the provision of 40% affordable housing.
21. Overall, I am satisfied that the obligations included in the Agreement are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraph 57 of the Framework 2021.

#### **Other matters**

22. An interested party has raised concerns regarding the possibility of overlooking from the appeal site into their property. There would be an adequate separation distance between the development within the proposed scheme and the Old Stables which would not result in an unacceptable level of overlooking between the properties.
23. Furthermore, reference has been included in the representations indicating that amendments were required to an approved scheme on the Old Stables to reduce the impact on the Old Elm. I do not have the full details of this matter before me but consider that the Old Stables lie closer to the boundary of the Old Elm than development within the appeal scheme.

24. The appeal was accompanied by ecological and reptile surveys. I have included a condition in respect of a requirement for further surveys in line with these ecological reports.

### **Planning balance and conclusions**

25. Both parties agree that the Council does not have a policy compliant housing land supply. The Council estimate this to be 3.11 years and the appellant with reference to recent appeal decisions identifies a slightly lower figure. In these circumstances its policies are considered out of date and the 'tilted balance' is engaged with the determination of this appeal being made against the policies in the Framework when considered as a whole.
26. Where adopted policies do not accord with the Framework the degree of weight to be attached to any conflict between them and the appeal scheme will be reduced.
27. Paragraph 11d)i, requires consideration of the impact of the proposal on the designated heritage asset, the Grade II listed, Old Elm with regard to those policies within Chapter 16 of the Framework.
28. Policy ENV2 is consistent with the Framework in affording protection to listed buildings. Paragraph 199 of the Framework requires that great weight should be given to the asset's conservation. In making my consideration above I have found that the nature of the appeal scheme would result in less than substantial harm.
29. Paragraph 202 identifies that where development proposals will lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal. In this case the amount of housing and affordable housing is a considerable public benefit which weighs significantly in favour of the scheme.
30. Paragraph 11d)ii, requires that there is a presumption in favour of development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
31. Policy 8, in seeking to restrict development within the countryside, goes beyond Paragraph 174 of the Framework as it seeks to protect land within the CPZ from housing, other than required for the rural area. Accordingly, although the appeal scheme conflicts with this policy, I only accord this conflict limited weight.
32. Other policies including GEN6 and H9 seek appropriate infrastructure and a sufficient amount of affordable housing are broadly compliant with the policies included in the Framework. This will in part address the social dimension of sustainable development identified by the Framework.
33. The scheme will bring economic benefits including employment in the short term during its construction and in the longer term through the increased spend resulting from 15 additional households in the local area.
34. I conclude that the proposal accords with the policies of the Framework when considered as a whole. The benefits of allowing the appeal scheme, given the

state of the Council's housing land supply position, outweigh potential harms which could arise.

### **Conditions**

35. I have considered the representations of the appellant and imposed conditions in line with the Framework. These include conditions in respect of specifying the individual plans on which this decision is based, materials and hard and soft landscaping for reasons of certainty.
36. Given the location of the site on Dunmow Road, I have included a condition to ensure adequate sight lines to enable safe access/egress to and from the site. For the same reason any gates to the appeal site should be inward opening in order to avoid the potential for the backing up of traffic as vehicles access the site.
37. To encourage future occupants to use local bus services I have imposed a condition requiring improvements to existing bus stops along Dunmow Road. For the same reason a condition requires a travel pack for residents of the new development, in line with the County Council's advice.
38. Although the appeal site does not lie in an area of high flood risk a condition has been imposed requiring a series of measures which would reduce surface water flooding through a drainage strategy with appropriate maintenance regime.
39. I have included a condition in respect of the provision of vehicle electric charging points in line with national and local policy designed to encourage more sustainable modes of travel.
40. I have imposed other conditions requiring the application of a range of ecological mitigation and enhancement measures in advance of construction activities proceeding. For the same reason, a condition is included requiring a detailed lighting scheme in order to protect bat foraging areas around the site.
41. Although this is a greenfield site, I have imposed a condition in respect of a requirement for a contaminated land survey in order to protect the living conditions of future occupiers. I have also imposed a planning condition in respect of hours of construction activities in order to protect the living conditions of surrounding occupiers.
42. I have included a condition regarding obscured glazing in the flank wall of Plot 1 to protect the living conditions to restrict the possibility of overlooking of the adjoining occupiers.
43. I have considered the 4 conditions (27, 28, 29 and 30 included in the Councils statement) which refer to specific measures designed to reduce impacts on operations at Stanstead Airport. I consider that these measures would be largely covered by other conditions which I have imposed. However, I have retained the Council's suggested conditions in respect of the PV Solar power panels and lighting as these would not necessarily be covered by other conditions and are required to maintain safety related to the operation of the airport.
44. Finally, a condition has been imposed to ensure that the dwellings are built to Category 2 status as defined by M4(2) of the Building Regulations 2010

Approved Document M, Volume 1 2015 edition. This is required by adopted policy and would enable the provision homes designed to meet need.

*Stephen Wilkinson*, INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DAPA\_1257\_001\_00; DAPA\_1257\_002\_00; DAPA\_1257\_300\_00; DAPA\_1257\_301\_00; DAPA\_1257\_302\_00; DAPA\_1257\_303\_00; DAPA\_1257\_304\_00; DAPA\_1257\_305\_00; DAPA\_1257\_306\_00; DAPA\_1257\_307\_00; DAPA\_1257\_310\_00; DAPA\_1257\_600\_00.
- 3) Prior to commencement above slab level full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. Subsequently, these works shall be carried out as approved. The landscaping details to be submitted shall include:
  - Proposed finished levels
  - Means of enclosure
  - Car parking layout
  - Vehicle and pedestrian access and circulation areas
  - Hard surfacing and other hard landscape features and materials
  - Existing trees, hedges, or other soft features to be retained
  - Planting plans, including specifications of species, sizes, planting centres, number, and percentage mix
  - Details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife
  - Details of siting and timing of all construction activities to avoid harm to all nature conservation features
  - Location of service runs, and
  - Management and maintenance details.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. All planting seeding or turfing and soil preparation comprising the above details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings. The completion of the development or in agreed phases whichever is sooner, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British standards.
- 5) Prior development proceeding above slab level, samples of materials be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be implemented using the approved materials. subsequently the approved material shall not be charged changed without the prior written consent of the local planning authority.

- 6) Prior to occupation of any dwelling, the provision of an access formed at right angles to the B1256, Dunmore Rd, to include but not limited to: minimum 6m carriageway width with appropriate radii, pedestrian crossing points, 2No. 2m wide footways and clear to ground visibility splays with dimensions of 2.4m by 120m in both directions, as measured from and along the nearside edge of the carriageway shall be provided. Such vehicular displays shall be retained free of any obstruction at all times.
- 7) The gradient of the proposed vehicular access shall be no steeper than 2.5% within 10m of the highway boundary.
- 8) Prior to occupation of the development the provision of 2 pedestrian crossing points across B1256 Dunmow Road (with appropriate tactile paving as necessary) shall be provided.
- 9) Prior to occupation of the development, improvements to the passenger transport infrastructure at the bus stops located adjacent to the appeal site on both sides of Dunmow Road shall be provided. These are required to include appropriate relocation of the bus stops (if deemed necessary), to a suitable location in the vicinity of the existing bus stops. Works are required to include raised kerbs, hard standings, flags, and any other related infrastructure as deemed necessary by the Highway Authority. Details to be agreed with the Highway Authority and shall be implemented prior to occupation.
- 10) No dwelling shall be occupied until the associated parking and/or turning head indicated on the approved plans has been provided. The vehicle parking turning heads should be retained in this form at all times.
- 11) Any gates provided at the vehicular access, shall be inward opening only and shall be set back a minimum of 6m from the back edge of the carriage way.
- 12) Cycle parking shall be provided in accordance with the EPOA parking standards. the approved facility shall be secure convenient covered and provided prior to occupation and retained it all times.
- 13) Prior to occupation of the proposed development the developer shall be responsible for the provision and implementation of a residential travel information pack per dwelling for sustainable transport approved by Essex County Council to include six one day travel vouchers for use with the relevant local public transport operator.
- 14) No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
  - Verification of the suitability of infiltration of surface water for the development. This should be based on detailed 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. If infiltration is found to be viable then the scheme will have to be updated accordingly.



- Limiting discharge rates to 2.1 litres/second for all storm events up to and including the 1:100 year plus 40% climate change event
  - Demonstrate that all storage features can half empty within 24hours for the 1 in 30 plus 40% climate change critical storm event
  - 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 system
  - 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.
- 15) No work shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run off and groundwater during construction works and prevent pollution has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented as approved.
- 16) Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies has been submitted to and agreed in writing by the local planning authority. Should any part be maintainable by a maintenance company details of a long-term funding arrangements should be provided.
- 17) The applicant and or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved maintenance plan. These must be available for inspection upon request by the local planning authority.
- 18) The dwellings approved by this permission shall be built to Category 2: Accessible and Adaptable dwellings M4(2) of the Building Regulations 2010 approved Document M, Volume 12015 edition.
- 19) Prior to occupation, all of the dwellings shall be provided with electric vehicle charging points. The charging points shall be fully wired and connected ready for you first use and retained for occupant use thereafter.
- 20) All ecology mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the letter from MLM updating the Preliminary Ecological Appraisal (MLM Group June 2020), Reptile Survey Letter/report (MLM Group September 2020) and Ecological Impact Assessment (MLM Group September 2019) as already

submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This should include but is not limited to, clearance of all vegetation and spoil heaps under the supervision of an ecological clerk of works, the presence of a suitably qualified bat worker during the soft felling of tree T4 (Field Maple), strictly following the Reptile Biodiversity Working Method Statement outlined in section 7 of the reptile survey letter/report (MLM Group September 2020). Due diligence for mobile species during the construction phase, installation of integrated bat boxes, bird boxes Hedgehog nesting boxes, logpile and creation protection of habitats for reptiles.

- 21) Prior to slab level a biodiversity enhancement layout providing the finalised details and locations of the enhancement measures contained within the Reptile Survey letter/report (MLM Group September 2020) and updating those contained within the Ecological Impact Assessment (MLM Group September 2019) shall be submitted to and approved in writing by the local planning authority.

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

- 22) A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used foraging, and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory

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

- 23) No development or preliminary groundworks shall commence until the programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with the written scheme of investigation which has been submitted by the applicant and approved by local planning authority.
- 24) No above ground development shall take place into a scheme for protecting the proposed dwellings from noise from road and air traffic has been submitted to and approved in writing by the local planning authority. The scheme shall follow the recommendations identified in the db Consulting Ltd Environmental Noise Assessment report (ref: dB/Start Hill/10027/SR/001 dated 30 May 2019). None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved details and should be effective, and it shall be retained in accordance with those details thereafter.
- 25) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be

undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 26) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.
- 27) All exterior lighting for the development shall be capped at the horizontal.
- 28) No PV solar power shall be used as either part of the construction or as part of the final state without prior submission of details to the local planning authority in consultation with the aerodrome safeguarding authority for Stansted Airport.
- 29) The development hereby permitted shall not be occupied until the flank window at plot 1 has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

- 30) Demolition or construction works shall only take place on weekdays between 08:00 – 18:00 hours and Saturday's 0800- 13:30 hours and shall not take place at any time on Sundays or on Bank or Public Holidays.