

HUTCHINSONS

Appeal by Southern & Regional Developments Ltd

Land south of Vernon's Close, Mill Road, Henham

PROOF OF EVIDENCE OF



MRTPI

**ON BEHALF OF
UTTLESFORD DISTRICT COUNCIL**

**LPA Ref: UTT/20/0604/OP
PINs Ref: APP/C1570/W/21/3272403**

August 2021

HUTCHINSONS
15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

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1 STATEMENT OF EXPERIENCE

- 1.1 My name is [REDACTED]. I have a degree in Town and Country Planning and I am a Member of the Royal Town Planning Institute. I am a Partner in Hutchinsons, a planning practice that operates from Kimbolton in Cambridgeshire. I have over 35 years' experience of town and country planning.
- 1.2 Hutchinsons was set up in 1991 and advises clients in both private and public sectors on a wide variety of planning issues. I have acted, and continue to act, on behalf of a number of private clients, Local Planning Authorities and Parish Councils on planning matters including providing advice on planning applications and enforcement matters and acting as their expert witness at appeals. I acted on behalf of Welwyn Hatfield Council in the 'Welwyn case', which was decided in the Supreme Court.
- 1.3 Before joining Hutchinsons in 1996 I was Associate Partner in The Development Planning Partnership (DPP), acting on behalf of such clients as Tesco Stores Ltd and the former Commission for the New Towns as well as District Councils.
- 1.4 I have experience in dealing with a wide range of Development Management issues throughout the country. I started my career working in Local Government for eight years where I gained extensive experience in development control with responsibility for dealing with all types of planning applications including housing.
- 1.5 I have acted on behalf of District Councils, including Uttlesford, for many years and have acted as their expert planning witness at a large number of their appeals. I have also been retained to help process major applications at Uttlesford, Braintree and Tendring District Councils as well as act as planning witness.
- 1.6 I have been instructed by Uttlesford District Council to present the planning evidence in relation to this appeal. I have visited the site and surrounding area on more than one occasion and am familiar with the issues involved.
- 1.7 The evidence which I have prepared and provide for this appeal reference APP/C1570/W/21/3272403 (in this proof of evidence) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2 INTRODUCTION AND BACKGROUND

- 2.1 The application the subject of this appeal was submitted in March 2020 and sought outline planning permission with all matters reserved except for access for residential development of up to 45 dwellings including 40% affordable homes on land to the south of Vernons Close, Mill Road, Henham.
- 2.2 The application was supported by a number of plans and supporting documents including a Design and Access Statement, a Planning Statement and a Landscape and Visual Appraisal (LVA). An indicative Masterplan was submitted showing how the applicants envisaged the site would be developed. A single vehicular access was shown from Mill Road with a single footpath on the northern side.
- 2.3 The application was subject to extensive consultations. The Highway Authority wrote on the 7 September 2020 that the application did not contain sufficient information for the highway authority to determine whether the impact on the highway network was acceptable and set out the additional information that was required.
- 2.4 The application was also subject to objections from Henham and Stansted Parish Councils and was the subject of a large number of letters of objection from third parties. Copies of all the consultation responses have been enclosed with the Council's questionnaire response for this appeal.
- 2.5 The applicant submitted additional information in respect of Highways in October 2020 and the Local Highway Authority confirmed subsequently in its letter of 25 November 2020 that, from a highway and transportation perspective the impact of the proposal was acceptable subject to conditions and mitigation. However, the Highways Authority also stated that the location of the site is such that access to key facilities, shops, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option will be the car. The Highway Authority advised that this factor should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the application proposals.
- 2.6 The application was reported to the Uttlesford District Council Planning Committee on the 17 February 2021 with a recommendation of approval. The Committee

resolved to refuse the application for the grounds set out in the decision notice dated 24 February 2021 and set out below (paragraph numbers from the revised NPPF published in July 2021 have been inserted in square brackets):

1. *Paragraph 78 [79] of the National Planning Policy Framework (the Framework) states that; "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services". Paragraph 108 [110] of the Framework adds that; "In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that...(a) appropriate opportunities to promote sustainable transport modes can be, or have been, taken up given the type of development and its location, whilst paragraph 110(a) [112a] of the Framework states that applications for development should; "Give priority to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second - so far as possible - to facilitating access to high quality public transport...". ULP Policy GEN1(e) of the Uttlesford Local Plan (adopted 2005) states that development will only be permitted if it encourages movement by means other than driving a car.*

Henham village possesses a limited range of local services and also has limited public transport provision and it would therefore be necessary for occupants of the proposed development to be mainly reliant upon the motor car to access a wider range of local services which are available elsewhere, such as those found in the larger nearby settlements of Elsenham, Stansted or Thaxted. As such, it is considered that the site lies within an unsustainable location relative to these larger settlements and the wider local services they provide. Accordingly, the proposed development would not represent a presumption in favour of sustainable development being contrary to the Framework and contrary to ULP Policy GEN1(e) of the Uttlesford Local Plan (adopted 2005) whereby this lack of locational sustainability is a material consideration to the acceptance of the proposal.

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2. Paragraph 170 [174] of the National Planning Policy Framework (the Framework) states that; "Planning policies and decisions should contribute to and enhance the natural and local environment by...(b) recognising the intrinsic character and beauty of the countryside", whilst Paragraph 127 [130] of the Framework states that; "Planning policies and decisions should ensure that developments...(c) are sympathetic to local character and history, including the surrounding built environment and landscape setting...". ULP Policy S7 of the Uttlesford Local Plan (adopted 2005) states that the countryside will be protected for its own sake and that planning permission will only be given for development that needs to take place there or is appropriate to a rural area, adding that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.

The proposed development by reason of the site's exposed edge of settlement location comprising open plateau farmland extending out into the countryside along Mill Road on the southern side of the village would have a significant and demonstrable adverse effect on the rural character of the area whereby the indicated estate layout of the development as shown on the submitted Masterplan drawing accompanying the application would be incongruous with the historically evolved general linear pattern of the village, whilst the indicated skyline and built form of the development would be clearly visible from wider public views, including from the surrounding local public footpath network.

Accordingly, the proposed development would not represent a presumption in favour of sustainable development whereby this degree of assessed environmental harm combined with the site's lack of accessibility as cited in refusal reason 1 above is such that the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the proposal, including the provision of new housing, when assessed against the policies contained in the Framework taken as a whole and would also be contrary to ULP Policy S7 of the Uttlesford Local Plan (adopted 2005) as the development would fail to

protect or enhance the particular character of the part of the countryside within which it is set and as the applicant has not demonstrated special reasons as to why the development in the form proposed needs to be there.

- 2.7 The appeal was submitted on the 1 April 2021.
- 2.8 A Planning Statement of Common Ground (SoCG) between the Appellant, the Local Planning Authority and the Rule 6 party has been completed and signed by the parties on the 9 August 2021. It provides a description of the appeal site and surrounding area together with a description of the development proposals, and identifies relevant planning policies and planning history. The SoCG also sets out the areas where the parties agree and disagree.
- 2.9 The Statement of Common Ground also refers to the new NPPF and confirms that the parties will refer to any relevant changes in the NPPF in the respective evidence of the parties' witnesses.
- 2.10 The Appellant has submitted a draft Section 106 Agreement and is in discussion with the District and County Councils on its contents. The S106 Agreement is due to be submitted in draft by the 13 September 2021 in accordance with the Inspector's timetable. A CIL justification which justifies the need for the agreed requirements of the S106 will also be prepared in accordance with the timetable.
- 2.11 In my evidence I explain the Council's case in respect of the reasons for refusal and consider whether there are any material considerations to justify the grant of planning permission, contrary to the development plan. In doing so, I am mindful of the main issues identified by the Inspector in his Case Management Conference Summary note. In preparing my evidence I draw upon that of Mr Drummond who is giving evidence on Landscape matters. I conclude my evidence with a consideration of the benefits of the proposal and the planning balance.

3 PLANNING HISTORY & BACKGROUND

3.1 The appeal site has no history of planning applications.

Call for Sites 2015 & 2018

3.1 The appeal site was put forward for development by the then owners of the site in the Council's 2015 Call for Sites under reference 05Hen15 where they suggested that the site could accommodate between 120 to 150 dwellings. The Council's SHLAA assessment was based on 120 dwellings.

3.2 The Council's 2015 assessment concluded the site was not suitable for development because it would not contribute to sustainable patterns of development. This was on the basis that it would introduce a large housing estate which would link the development at Vernons Close to Mill Pond Nursery, and which appear prominent in the landscape and unrelated to the village.

3.3 The site was carried through into the 2018 Call for Sites and was assessed in the 2018 SHLAA which adopted a classification system A to E. The site was classified as Class E in the 2018 Assessment which was the lowest classification of suitability and the site was not therefore put forward as a proposed allocation in the 2018 draft Local Plan.

4 THE DEVELOPMENT PLAN

- 4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. It follows therefore that where proposals are contrary to policies of the Development Plan, then development should be refused unless there are material considerations that indicate otherwise.
- 4.2 I therefore assess the proposals against the relevant policies of the development plan.
- 4.3 The development plan comprises the Uttlesford Local Plan 2005 (CD6.1) and the Essex Minerals Local Plan 2014. The current Local Plan made provision for housing within the district between 2001 and 2011.
- 4.4 In this case, the proposals are contrary to policies of the development plan and the reasons for refusal refer specifically to Policies S7 and GEN1 of the Uttlesford Local Plan 2005.
- 4.5 The appeal site is located within open countryside outside the identified development limits of the settlement of Henham. The development limits of the settlement are identified by the Proposals Maps contained in the 2005 Local Plan (CDE1).
- 4.6 Development within the countryside is subject to Policy S7 – The Countryside - which seeks to protect the countryside for its own sake and confirms that planning permission will only be given for development that needs to take place there or is appropriate to a rural area. The policy also states that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed should take place there.
- 4.7 The appeal site is located to the south of Henham and the proposals involve the development of up to 45 dwellings. They represent a significant extension of the urban area and the introduction of a relatively large new modern housing estate within the open countryside. The site's location beyond the settlement boundary and the harm the proposal causes to the character and appearance of this part of the countryside (which is addressed by Mr Drummond) is such that it does not accord

with the requirements of Policy S7 and it is therefore contrary to Policy S7. I deal with the implications of the NPPF in relation to this policy in Section 5 of my evidence.

- 4.8 Policy GEN1 – Access requires development to meet the criteria set out in that policy which includes that traffic generated by the development must be capable of being accommodated on the surrounding transport network , that the design of the site must not compromise road safety and take account of the needs of cyclists, pedestrians, public transport users horse riders and people whose mobility is impaired, and that the development encourages movement by means other than a car.
- 4.9 Although the Local Highway Authority has confirmed that from a highway and transportation perspective, the impact of the proposal is acceptable to the Highway Authority subject to the mitigation and conditions outlined in its consultation letter dated 25 November 2020, it also stated that the location of the site is such that access to key facilities, shops, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option will be the car.
- 4.10 Henham is a small rural village served by rural roads and contains few facilities that would serve residents' day to day needs. The few that do exist are some distance from the site. Furthermore, the bus service serving Henham is limited in where it goes and when it operates such that it would not fulfil the needs of residents to access necessary facilities by bus. I therefore agree with the Highway Authority that for the vast majority of journeys the only practical option will be the car. Policy GEN1 requires development to meet the criteria set out in that policy including Criterion e). The proposals will not encourage movements by means other than the car and it is considered that the appeal proposals are clearly contrary to this aspect of GEN1 and therefore the policy as a whole.
- 4.11 The draft conditions and the S106 Obligation are intended to mitigate some of the otherwise harmful effects of the proposed development but they do not address the harm to the countryside or make the development more sustainable in terms of accessibility. The proposed development breaches Policy S7 and GEN1 and the appeal proposal is therefore contrary to the Development Plan.

5 MATERIAL CONSIDERATIONS

5.1 I have concluded in the previous section that the appeal proposals do not comply with the Development Plan and in this section I examine whether there are any material considerations which would justify the grant of planning permission other than in accordance with the Plan. I consider that the main issues of this case are:

- a) Implications of Paragraph 11 of the NPPF
 - i. Most Important Policies
 - ii. Five Year Housing Land Supply
 - iii. Consistency of Policies
 - iv. Footnote 7
- b) Emerging Local Plan
- c) Impact of Development upon Character and Appearance of Area
- d) Impact upon Local Infrastructure
- e) Impact upon Biodiversity

a) Implications of Paragraph 11 of the NPPF

5.2 The application was refused planning permission because it was contrary to the Policies of the Uttlesford Local Plan 2005 as listed in the reasons for refusal and referred to in my previous section. In accordance with Paragraph 38 (6), these policies remain the relevant policies against which to assess the application.

5.3 The NPPF is also a material consideration and Paragraph 11 provides for a presumption in favour of sustainable development which, in the case of decision making, means approving proposals which accord with an up to date development plan or, where there are no relevant development plan policies or the policies which are the most important for determining the application are 'out-of-date', granting permission unless application of policies in the Framework that protect assets provide a clear reason for refusing development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

5.4 I consider that Paragraph 11 raises four issues; i) to identify which policies are 'most important for determining the application', ii) whether the most important policies may be deemed to be out of date due to Footnote 8 and the housing land supply

position, iii) to assess the extent to which they are consistent with the NPPF, and iv) whether there are any policies of the NPPF which protect areas of assets of particular importance and benefit from Footnote 7. I propose to address these issues in that order.

i. Most important Policies

5.5 The application was refused because it was contrary to Policies S7 and GEN1. There has been no agreement in the Statement of Common Ground as to which policies are the 'most important policies'. However, I consider that the policies set out in the reasons for refusal are the most important policies.

5.6 I have noted that the Appellant does not set out in their Statement of Case which policies they consider are the most important policies in the determination of this appeal and find nothing in their statement that contradicts my conclusions.

ii. Five Year Supply of Housing

5.7 Uttlesford District Council published its April 2020 Housing Trajectory and 5 Year Land Supply Statement in January 2021 (CDF1) and confirmed that the Council was unable to demonstrate a 5 year supply of housing land.

5.8 The Statement confirmed that the Council could provide a 3.11 year supply. This is an agreed position between the parties as set out in the Statement of Common Ground. I consider that this is a significant shortfall in supply and accept that it has been some time since the Council has been able to demonstrate a five-year supply of housing land.

5.9 The supply calculations apply a 5% buffer in accordance with the Housing Delivery Test (HDT). The recently published Housing Delivery Test has confirmed that the Council should continue to apply a 5% buffer as a consequence of its housing delivery which increased significantly over recent years as set out in the HDT. In the 2018 HDT the Council had delivered some 147% of its requirement, increasing to 153% in the 2019 HDT (February 2020) but dropping to 129% in the 2020 HDT (January 2021).

5.10 Paragraph 11 of the NPPF confirms that the policies that are the most important for determining the application are deemed to be out of date if the local planning

authority cannot demonstrate a five-year supply of deliverable housing sites (Footnote 8).

5.11 As I have already stated, the Council accepts that it cannot demonstrate a 5 year supply of housing land. As a consequence, the most important policies of the Development Plan may be considered to be out of date by virtue of paragraph 11, Footnote 8 of the NPPF.

5.12 However, the NPPF does not suggest that the policies of the Development Plan (including Policy S7 and GEN1) should be ignored or disapplied in such circumstances, instead requiring that the 'tilted balance' in paragraph 11 must be applied. It remains a matter of planning judgment for the decision-maker to determine the weight that should be given to the policies, including whether that weight may be reduced taking account of other material considerations that may apply, including the degree of any shortfall in the five year housing supply. As the Inspector in the Takeley¹ (CDG14) inquiry said, at paragraph 77:

The Council cannot at this point demonstrate a 5YHLS, but this does not override the development plan, nor does it confer approval at all costs. Planning is fundamentally about managing change in a sustainable way, and the principles of good planning must be retained. The Framework therefore sets out the Presumption of Sustainable development and the tilted balance, where a measure of harm may be accepted for schemes that provide a sustainable delivery in light of need.

5.13 I consider further the weight to be attached to the most important policies below in my assessment of the consistency of the most important policies where I take account of the fact that there is a significant shortfall in supply but also that recent delivery has been good. My overall conclusions on weight take all these factors into account.

iii. Consistency and weight of Policies of the Development Plan with the NPPF

5.14 Paragraph 219 of the NPPF confirms that existing policies should not be considered out of date simply because they were adopted or made prior to the publication of the NPPF. Instead it states that due weight should be given to them according to their

¹ Ref: APP/C1570/W/18/3213251: Land west of Great Canfield Road, Takeley

degree of consistency with the Framework and that the closer the policies in the plan to the Framework, the greater the weight that may be given.

- 5.15 The Uttlesford Local Plan 2005 remains the operative Local Plan and is relevant to this proposal and therefore the starting point for decision making. The most important policies which the Council asserts the application is contrary to, are assessed below as to their consistency with the provisions of the Framework.

Policy S7

- 5.16 Policy S7 specifies that the countryside will be protected for its own sake and planning permission will only be given for development that needs to take place there or is appropriate to a rural area. There will be strict control on new building. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there. The location of the appeal site within open countryside results in the proposal being assessed against Policy S7 of the Local Plan.
- 5.17 Paragraph 174 of the NPPF requires that planning policies should contribute to and enhance the natural and local environment by, amongst other matters, recognising the intrinsic beauty and character of the countryside. The Framework therefore reflects the objective that protection of the countryside is an important principle in the planning system and is one that has been carried forward from previous guidance.
- 5.18 The fundamental aim of Policy S7 is to protect the countryside from unacceptable development. The supporting text at paragraph 2.2.8 recognises that the particular character of the countryside comes from the relationship between a large number of physical aspects and that any development beyond limits must be consistent with national policy. It confirms that the countryside needs to be protected for its own sake (and I accept that these words are now considered outdated) but it does not do so in such a way as to prevent economic activity that is part of life in a rural area and is in sympathy with its character.
- 5.19 The Council recognises that S7 is partially consistent with the NPPF in its decision making. There can be no doubt that aspects of it are not consistent as agreed in the

Statement of Common Ground. The policy could be read as *prohibiting* housing development beyond settlement boundaries and in that respect it is plainly out of date and not consistent with the NPPF. However, in my view it still attracts weight as the only countryside protection policy in the Plan. The last section, referring as it does to protecting or enhancing the particular character of the part of the countryside concerned, is the part that remains consistent with the NPPF. I do not advance any case that these proposals should be dismissed because they are beyond the settlement boundary *per se*. My case – in reliance on Mr Drummond’s findings as to harm – is that they cause harm to the character of this particular part of the countryside, and are thus contrary to S7. That the Council has taken this approach to S7 in the past is confirmed by the Inspector at the Takeley appeal² (CDG14) at paragraph 74:

“The relative weights to be given to the adverse effects and the positive benefits are to some extent dependant on the housing need, the extent of the shortfall and its likely persistence, as well as the steps an authority may be making to address it. It is agreed that the 5YHLS currently stands at 3.29 years. This represents a significant shortfall. However, the evidence is indicative that the Council have made positive efforts to address housing need, with significant delivery above targets in the last few years. A proportion of this delivery has been on sites outside of settlement boundaries; to my mind it is clear that the Council, either positively, or through the appeal process, has had to acknowledge that the settlement boundaries need to be applied flexibly in the absence of a robust 5YHLS. “

- 5.20 The same point was made by the Inspector at the Wicken Road, Newport inquiry³ (CDG8), at paragraph 58.
- 5.21 In 2012 the Council commissioned a Compatibility Assessment of the Local Plan policies (CDE2) which assessed the policies against the NPPF. It found that Policy S7 was partly consistent with the previous NPPF in that it sought to protect and enhance the natural environment, an important part of the environmental dimension of sustainable development in the Framework. However, the Assessment also commented that the NPPF took a positive approach, rather than a protective one, to

² APP/C1570/W/18/3213251. Land west of Great Canfield Road, Takeley

³ APP/C1570/W/19/3223694: Land to the North of Wicken Road, Newport

appropriate development in rural areas. Policy S7 strictly controls new building whereas the NPPF supported well designed new buildings to support sustainable growth and expansion of business and enterprise in rural areas.

- 5.22 The Policy seeks to protect the countryside and reflects the different roles and character of different areas and in this respect, this part of the policy was considered to be consistent with the 2012 NPPF, a factor which has been largely accepted in various subsequent appeal decisions and by the Secretary of State in interpreting his own policy.
- 5.23 The extent to which Policy S7 is consistent (and inconsistent) with the Framework has been considered at many inquiries over many years with Inspectors concluding generally that it is at least partly consistent. The SoCG refers to 2 of the most recent appeal decisions. In what follows, I refer to those decisions as the Fairfield and the Isabel Drive, Elsenham decisions.
- 5.24 The Secretary of State also considered – albeit in the context of what was then a sufficient five-year supply of housing land - that the policy was sufficiently consistent with the NPPF to attract significant weight in 2016. His decision letter in respect of the earlier Fairfield Elsenham Appeal for some 800 houses⁴ was dated August 2016 (CDG17). The Secretary of State disagreed with his Inspector (who considered that Policy S7 was inconsistent) and instead stated that:

The Secretary of State has considered the Inspector's conclusions on Policy S7 at IR15.32. However, he disagrees, as he considers that the policy aim of LP Policy S7, to protect the countryside, is consistent with the fifth bullet of Paragraph 17 of the Framework, that indicates the intrinsic character and beauty of the countryside should be recognised, while supporting thriving communities within it. He therefore attaches significant weight to this.
(Paragraph 34)

- 5.25 The weight he attributed was 'significant', whereas I consider now it should be 'moderate', effectively to recognise that while the question of consistency with the aims of the NPPF has not changed, the housing land supply position has, and has worsened. In terms of the former question, the Secretary of State decision was considered against the policy guidance contained in the 2012 NPPF and was 6

⁴ APP/C1570/A/14/2219018: land north east of Elsenham

years on from the date of the Compatibility Study and therefore well into the lifetime and application of the NPPF. The new NPPF, published in July 2018, updated in February 2019 and then again in July 2021, largely follows the principles of its predecessor in terms of requiring sustainable development and it continues to require that planning policies and decisions should contribute to and enhance the natural and local environment. Although the Core Principles have been removed, the requirement and wording for '*recognising the intrinsic character and beauty of the countryside*' has been retained through the various iterations and now forms part of Paragraph 174 which requires planning policies to contribute to and enhance the natural and local environment, a requirement that was formerly contained in paragraph 170 of the 2019 Framework and, before that, paragraph 109 of the 2012 Framework.

- 5.26 Therefore, whilst the Framework has been reorganised, its basic requirements relating to the countryside remain the same and it is not considered that there is any substantive difference between the old and new NPPF in this respect. The two recent appeal decisions at Elsenham⁵ both issued in December 2020 following public inquiries, and both determined in circumstances where the Council could not demonstrate a five-year supply, were determined against the policy framework of the 2019 NPPF.
- 5.27 The Inspector in the Fairfield decision (GDG3) was faced with two different arguments in respect of the consistency of Policy S7 and three different views on weight. He was also provided with 13 appeal decisions in Uttlesford by the Appellant and 18 decisions by the Rule 6 party and I have included both lists at my Appendix 1 for information. The lists overlap on some decisions. The Inspector for the Fairfield appeal perceived that there appeared to be a trend of less weight given to policy S7 as the Council's HLS position worsened. However, he did not consider that it was particularly helpful to compare or assess these previous decisions in detail which all related to different sites and proposals but he did consider that some useful pointers could be gleaned from the approach of the Inspectors in some of these previous appeal decisions. In particular he shared the view of his colleague Inspector in the north of Wicken Road, Newport⁶ appeal in December 2019 (CDG8) and who characterised Policy S7 as having 3 main elements. The Fairfield Inspector

⁵ APP/C1570/W/19/3243774 – Land east of Elsenham (the Fairfield Decision) & APP/C1570/W/20/3256109 – Land off Isabel Drive and Stansted Road, Elsenham

⁶ APP/C1570/W/19/3223694 – Appendix 4

summarised it as follows:

The first of these, in effect, identifies settlement boundaries as ‘development limits’, beyond which land is considered to be countryside; the second element seeks to protect the countryside ‘for its own sake’, with strict control on new building in such areas; and the third element makes it plain that development will only be permitted if its appearance protects or enhances the particular character of the countryside within which it is set, or if there are special reasons why such development needs to be in that location. (paragraph 149)

5.28 He continued at paragraphs 150 to 152:

As a whole, the wording of this policy goes beyond that set out in paragraphs 127 and 170 of the Framework which do not, explicitly, seek to protect countryside for its own sake. Moreover, as the settlement boundaries in the adopted ULP were aimed at accommodating housing numbers in the Essex Structure Plan 2001, for the period up to 2011, they are patently well out of date, restraining development and causing Policy S7 to be in clear tension with the Framework’s objective of significantly boosting the supply of homes, set out in its paragraph 59.

Nevertheless, the SoS made it clear, in his 2016 decision relating to the previous application on this site, that that the policy aim of S7, ‘to protect the countryside’, was consistent with the Framework’s principle, at that time, of ‘recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it’. Although the 2019 version of the Framework has now replaced the original 2012 version, current at the time of this previous appeal, the same broad objective of ‘recognising the intrinsic character and beauty of the countryside’ still features, such that the SoS’s view still stands.

Drawing these points together, the only reasonable conclusion is that Policy S7 can only be considered as being partially consistent with the Framework, and cannot therefore be given full weight. The first 2 elements of the policy can attract very limited weight in the context of this appeal. Settlement boundaries are clearly not inviolable as a matter of principle, nor is it reasonable to consider a blanket prohibition on new development in the countryside, particularly in a district where there is a very acute HLS deficit and – in the absence of an up-to-

date Local Plan - no short or medium term strategy for alleviating this situation.

- 5.29 It is clear from the above that, following public inquiries where Policy S7 has been rigorously scrutinised and tested through cross examination by the parties, Inspectors have found the policy to be at least partially consistent with the policies of the NPPF, and (in its role as the protector of the character of the countryside) afforded weight. The Inspector for the Isabel Drive, Elsenham⁷ inquiry came to the same conclusion. Policy S7 remains (and has been recognised to be) the only policy in the Local Plan that deals with development in the countryside and it has continued to be afforded weight at public inquiries when considering planning proposals located within the countryside (including when there is no 5-year housing land supply).
- 5.30 The question of weight was also addressed by the Inspector at the Fairfield, Elsenham inquiry where he stated at paragraph 154:

In terms of what that weight should be, I place little store by the JPC's view that it should still carry significant weight, for the reasons just set out. Moreover, the appellant's assertion that the sheer scale of the shortfall in the 5 year HLS only serves to underline the very limited weight that can be attributed to Policy S7, seems to me to underplay the important safeguarding role that this policy can still play, in line with the SoS's comments set out above. These points lead me to favour the Council's position that when its different roles and functions are considered the policy should, overall, attract moderate weight. I share that view.

- 5.31 The Isabel Drive Inspector did not attribute a specific weight to Policy S7.
- 5.32 The Council's position in respect of its 5 year supply has improved somewhat since the two 2020 Elsenham decisions (CDG3 & G4) and is now 3.11 years supply of housing rather than the 2.68 years which was the position before the Elsenham Inspectors. Nevertheless, I continue to be of the opinion that Policy S7 should continue to attract moderate weight overall for its role in protecting the countryside in accordance with the NPPF and as agreed by the Fairfield, Elsenham Inspector above.

⁷ APP/C1570/W/20/3256109 : Land off Isabel Drive and Land off Stansted Road, Elsenham dated 31 December 2020

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- 5.33 I note that in their Statement of Case the Appellant appears to agree with my assessment in that they also consider that Policy S7 should be afforded moderate weight (Statement of Case paragraph 4.16). I also note that they appear to apply the same approach as the Fairfield Inspector in accepting that part of the policy is consistent with the NPPF. However, whilst there appears to be a consensus of agreement on the weight to be applied to Policy S7, this differs in the Statement of Common Ground where I and the Rule 6 party agree on moderate weight but the Appellant considers reduced weight and has not clarified how 'reduced' that weight should be.
- 5.34 The Council does not regard development boundaries as inviolate and as a matter of principle, sustainable development is not resisted simply because it is located in the countryside. It has long been accepted that some development in the district will take place outside development limits and within areas of countryside. That point has been accepted at previous appeals and is referred to by various Inspectors, including the Fairfield Inspector above. There is no 'in principle' objection to development in countryside nor is one being advanced at this appeal. In this case however, the development has an unacceptable impact on the countryside and is harmful as demonstrated by Mr Drummond. The NPPF does not provide carte blanche to develop in the countryside (and in unsustainable locations) despite the fact that the Government has an objective of significantly boosting the supply of homes. In this matter I consider that there is a tension between paragraph 60 and paragraph 174 of the NPPF. As a consequence, it is a matter of planning judgement as to the weight that is given to the respective policies and the merits of the case.
- 5.35 In summary therefore, the consistency and weight to be given to Policy S7 has been the subject of scrutiny and cross examination at inquiries and Inspectors still find that Policy S7 is partially consistent with the NPPF. I agree that it should attract less than full weight, but I maintain that it should continue to attract moderate weight overall for its role in protecting the countryside in accordance with the NPPF and in view of the lack of a five year supply of housing land.

Policy GEN1

- 5.36 The Council's 2012 Compatibility Assessment found Policy GEN1 to be generally consistent with the NPPF but it considered that the NPPF placed more emphasis on

sustainable transport modes although it recognised this would vary between urban and rural areas. The Assessment considered that the policy's five criteria covered the considerations, but the 2012 NPPF was more positively worded in seeking to minimise the need to travel and maximise cyclist and pedestrian and public transport opportunities.

- 5.37 The later NPPFs, including the latest version, have continued to place emphasis on promoting sustainable forms of transport and ensuring that the impacts of development on transport networks are addressed. It requires that opportunities to promote walking, cycling and public transport are actively identified and pursued. When considering development proposals, it should be ensured that appropriate opportunities to promote sustainable transport modes have been taken up, that safe and suitable access to the site can be achieved for all users and that any significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated to an acceptable degree. The latest version has also introduced a reference to the National Design Guide (NDG). The NDG recognises at paragraph 75 that patterns of movement for people are integral to well-designed places. They include walking and cycling, access to facilities, employment and servicing, parking and the convenience of public transport
- 5.38 Policy GEN1 generally accords with these requirements and it continues to be in general conformity with the current Framework and has similar aims as the NPPF in promoting road safety and sustainable forms of transport. It is considered that GEN1 can be afforded significant weight at this appeal.

iv Footnote 7

- 5.39 Even where there is no five-year housing land supply, the presumption in favour of granting planning permission can be overridden by Paragraph 11d)i. However, it is common ground at this appeal that there are no areas or assets of particular importance that would justify refusal under Paragraph 11d)i.

b) Emerging Local Plan

- 5.40 Uttlesford submitted its Regulation 19 Plan (eLP) to the Secretary of State for independent examination in January 2019. However the Examining Inspectors concluded following the Stage One Examination that there were significant concerns

as to its soundness and the Council withdrew the Local Plan in March 2020 with a view to preparing a new Local Plan.

- 5.41 The Council published its Local Plan Development Scheme 2020 (LPDS) in October 2020 which outlined the timetable for the preparation of the new Local Plan. The Council completed an extended consultation of the Issues and Options starting from 11 November 2020 until April 2021 with an intention of consultation on preferred Options in early 2022 and on the submission Local Plan in 2023. The LPDS confirms that this timetable could change in the event that the Government's proposals set out in the White Paper come into effect.
- 5.42 No weight therefore is given to the proposals of the now withdrawn local plan, although the evidence base remains relevant; and there is as yet no replacement plan.
- 5.43 As referred to in Section 3, the appeal site was not identified as a proposed allocated site in the Submission Local Plan although the site was assessed through the 2015 call for sites and in the Council's Strategic land Availability Assessment (SLAA) in 2018.
- 5.44 The Council's 2018 SLAA concluded that the appeal site was not suitable for development and classified it as Class E.
- 5.45 The methodology for the 2018 Assessment introduced the classifications A to E and advised that sites which fell within Classification A-B were likely to come forward during the plan period and therefore would contribute towards the overall housing supply in the district. The appeal site was not brought forward as a proposed allocation in the now withdrawn 2018 Local Plan.
- 5.46 I note that the Appellant has referred to the fact that Henham was classified as a Type A village in the 2018 draft Local Plan (Statement of Case paragraph 4.21). This is correct and it was one of 19 villages identified as containing a primary school together with some local services: such as a village hall, public house or shop. Type A villages were considered suitable for a scale of development that would reinforce its role as a local centre. The draft Plan proposed 134 new homes in new allocations to be distributed between all 19 villages and clearly envisaged limited development taking place in these villages. Henham had no allocations.

5.47 The Council has issued a Call for Sites for its next Local Plan which ended in April 2021. I understand that some 299 sites have been submitted including the appeal site (Ref: Henham 0009 RES). The Council intends to assess the sites over this summer and to carry out a technical consultation for town and parish councils in the autumn to help ensure that factual information for each site is correct. The draft (Regulation 18) Local Plan is scheduled for consultation in March 2022.

c) Impact of Development upon Character and Appearance of Area

5.48 Reason No 2 is concerned with the impact of the development on the countryside and alleges that the appeal proposal is contrary to Policy S7 of the Local Plan in that the site's exposed edge of settlement location comprising open plateau farmland extending out into the countryside along Mill Road on the southern side of the village would have a significant and demonstrable adverse effect on the rural character of the area. Mr Drummond addresses this reason for refusal in his evidence.

5.49 Mr Drummond has considered the landscape and visual impacts of the development in his evidence. He finds that the appeal site has a rural character in keeping with the surrounding landscape. It forms an important and integral part of the wider landscape to the south of the village of Henham.

5.50 Mr Drummond considers that the proposed development will cause significant harm to the Appeal Site landscape receptor and that it will cause significant harm to the Broxted Farmland Plateau LCA landscape receptor.

5.51 Mr Drummond also considers that the Appeal Site and the wider area share key landscape characteristics identified in the LCA. He considers that the essence of Henham is as a nucleated settlement and that:

'The construction of a new residential settlement area tacked onto the village's southern edge will result in a linear form of development at odds with its current nucleated character. The proposal will result in an urbanisation of this location and does not respond to the historic settlement pattern. This will cause significant harm to the landscape character area.'

5.52 Mr Drummond has commented on particular features of the design approach of the illustrative scheme and raises concerns in respect of the single access road

and lack of linkage to the adjacent Vernons Close, the location and impact of the proposed play area at the southern edge of the built form, the proposed creation of a farmstead which he considers will appear as a contrived pastiche, out of keeping with the character of a rural village and the suggested parkland type landscape which will also detract from the village character and create a very hard landscape edge.

- 5.53 Mr Drummond has also identified where his views differ from those contained in the LVA produced by the Appellant in support of the application. He concludes that:

Overall, the irrevocable change to the landscape character of the Appeal Site – which forms an integral and important part of the landscape character area to the south of the village – would be permanent and irreversible. There would be significant harm to the existing character of both the site and the wider landscape character area.

- 5.54 Mr Drummond's assessment of the Visual Receptors identified by both the Appellant and himself confirms his view that:

'the proposed development and associated mitigation would negatively impact on them by causing significant harm to VP's 2, 3, 6, 7, 8, 9, 10, 17 and 18. The likely skyline and built form of the development would be clearly visible from some of these wider views. These viewpoints are representative and illustrate the effect which will be experienced by those using the network of PRoWs and vehicular routes identified. They are best assessed on a site view with the benefit of the visualisations and the views of the parties.

- 5.55 He continues:

In my view, the proposed development will cause harm both to Landscape and Visual Receptors, and it can therefore be reasonably concluded that significant harm will be caused to the countryside. The harm to the landscape would be in conflict with the intrinsic character and beauty of the countryside (para. 174(b) of the NPPF), and the proposed development would not be sympathetic to local character and history, including the surrounding built environment and landscape setting (para. 130(c) of the NPPF). It would also neither protect nor enhance the

particular character of this part of the countryside, contrary to Policy S7 of the Local Plan.

- 5.56 It is clear from Mr Drummond's evidence that the development will give rise to significant harm to the character of the countryside in this location and significant harm to visual amenity. It is out of character and the suggested landscaping is designed in such a way that it would also be out of keeping with the pattern and nature of existing vegetation within the area, leading to further harm to the character of the area, contrary to Policy S7 of the Local Plan. He also considers that the development would not be sympathetic to local character and history including the surrounding built environment and landscape setting.
- 5.57 I note that the Appellant refers to the 2017 appeal for 36 dwellings on land south of School Lane, Henham⁸ in their Statement of Case. They comment that the Inspector found that the proposals would not have a significant adverse effect on the character and appearance of the area, subject to the imposition of appropriately worded conditions and that while some conflict with Policy S7 was nonetheless identified, it was considered by the Inspector that the proposals would not conflict with the broad objective of S7 which is to seek and protect the intrinsic character and beauty of the countryside.
- 5.58 I do not consider that the School Lane site is comparable to the current appeal site in either location or impact. The 2017 appeal site was located to the south and east of the properties on Vernon's Close and was surrounded on two sides by those properties and on a third by the school. The illustrative layout plan included at my Appendix 2 shows that the built form did not project further south than the existing southern limits of the village formed by Vernons Close which was developed in the 1960's. It therefore had a totally different impact on the countryside to the one indicated by Mr Drummond for the current appeal proposals. It is clear from the 2017 appeal decision that the Council's principal concern in terms of character and appearance, related to the loss of the line of trees along the southern edge of the school field which was to be lost to facilitate the proposed school playing field extension. The arguments in that appeal did not relate to extending residential development into the more open countryside south of the village, which is the case in the current proposals. As a consequence, the Inspector commented:

⁸ APP/C1570/W/16/3162954: Land South of School Lane, Henham, Essex

'I acknowledge that the proposal would extend the built form of the village into the existing countryside. The boundary to the open countryside to the south would be softened and interspersed with soft landscaping. There are also limited views into this area. I am mindful that views of the site from the south would be seen against this backdrop and the school playing fields to the east and existing residential development to the north and west. I am unable to agree that the proposal would result in material harm to this area abutting the built edge of the village. The proposal would have a localised effect on this area, which would not cause harm to the wider character and appearance of the area.' (paragraph 29)

5.59 That is not the case with the current site which, as Mr Drummond argues, is subject to a greater number of views, only abuts the existing built edge on one side and extends a considerably greater depth into the open countryside. In this case, I can appreciate why Mr. Drummonds concludes that the proposals cause a significant harm to the wider character and appearance of the area and are unacceptable as a result.

5.60 The more recent Chickney Road appeal decision⁹ (9 June 2020) (CDG7) related to 16 dwellings which would have extended the village into open countryside to the east of Henham. I have included the location plan at my Appendix 3. Although for a smaller number of dwellings than the current appeal proposal, I consider that there were greater similarities on key points between these two proposals than with the School Lane proposal. The Chickney Road Inspector commented that that site extended beyond the built form of the village and that due to the incomplete hedge along the road, the site is visible from locations along Chickney Road. Furthermore, that:

Whilst the site is relatively enclosed by vegetation, it is highly prominent as you enter the village of Henham from the east along Chickney Road. The gaps in the hedgerow and the alignment of this road in relation to the site means it is visible from some distance outside of the village on this eastern approach. Furthermore, it was apparent from my site visit that given the open nature of the surrounding countryside the appeal site was also highly visible from a number of viewpoints, which includes public footpaths towards the east. From these viewpoints, the

⁹ APP/C1570/W/19/3239905: Land at Chickney Road, Henham dated 9 June 2020.

development of Maitland Close was also visible beyond the appeal site, with the roofline appearing through the existing vegetation. (paragraph 6)

5.61 He further commented at paragraphs 8 and 9 that:

The introduction of 16 new dwellings in this location would create a significant urbanising effect into the open countryside. The proposal would extend the built form of the existing village into an open field both towards the east and the north. Given the sites prominence, the proposal would be highly visible from both Chickney Road and surrounding public footpaths, and this erosion of the rural open plot would conflict with the neighbouring large arable fields. This is not in keeping with the undeveloped nature of the countryside in this location, and conflicts with the aims of the LCA to maintain its undeveloped character.

I note that the proposals include a package of landscaping measures, including a new landscape buffer between the boundary of the site and the farmers track along the south eastern edge. Whilst this buffer would help to soften the impact of the proposal when viewed from along Chickney Road, it is my view that this would not be able to fully ameliorate the harm from development in this location. The landscaping would take many years to reach full maturity, and in my view, it would not be able to fully screen the development from Chickney Road. Furthermore, whilst the screening is likely to break up the appearance of built form, the site would still sit beyond the existing built form of neighbouring development and be a noticeable erosion of the open rural character of the site.

5.62 The Inspector concluded that the development would significantly harm the character and appearance of the area and as such it conflicted with policy S7 (and GEN2).

5.63 As Mr Drummond has demonstrated in his evidence, the current appeal proposal extends considerably further into the open countryside than the Chickney Road proposals and is also visible from the road and public footpaths. Neighbouring development is also visible but, as set out in this appeal decision, that does not mean that it provides a precedent for additional development where that development extends into the open countryside.

5.64 The current proposals would considerably extend the development into the

countryside and would fail to contribute to or enhance the natural and local environment by recognising the intrinsic character and beauty of this part of the countryside, contrary to the requirements of paragraph 174b) of the NPPF and also contrary to Policy S7. The proposed development also is not sympathetic to local character and history, including the surrounding built environment and landscape setting and is therefore also contrary to paragraph 130c) of the NPPF.

Conclusions on Character

- 5.65 Paragraph 174 of the NPPF requires that planning decisions should contribute to and enhance the natural and local environment and should also recognise the intrinsic character and beauty of the countryside (an aspiration that local policy S7 shares). In this case, development would have a detrimental impact on the rural character of the area as demonstrated by Mr Drummond, providing unacceptable built development on the edge of Henham and intruding into the open countryside. The proposed development will cause harm both to Landscape and Visual Receptors, and Mr Drummond therefore concludes that significant harm will be caused to the countryside. The harm to the landscape would be in conflict with the intrinsic character and beauty of the countryside (para. 174(b) of the NPPF), and the proposed development would not be sympathetic to local character and history, including the surrounding built environment and landscape setting (para. 130(c) of the NPPF). It would also neither protect nor enhance the particular character of this part of the countryside, contrary to Policy S7 of the Local Plan.

d) Accessibility

- 5.66 The first reason refers to the limited range of local services and facilities in Henham and also to the limited public transport provision available to existing and future residents. As a result it would be necessary for occupants of the proposed development to be mainly reliant upon the motor car to access a wider range of local services which are available elsewhere, referring to those found in the larger nearby settlements of Elsenham, Stansted or Thaxted.
- 5.67 Policy GEN1 e) requires that development encourages movement by means other than the car and in this respect is consistent with the requirements of Paragraph 110(a) of the NPPF which also requires that appropriate opportunities are taken up to promote sustainable transport modes, given the type of development. Paragraph

112 of the NPPF also requires that applications for development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas and second and – so far as possible – to facilitating access to high quality public transport. It is considered that the development does not satisfy these requirements due primarily to its location on the southern edge of Henham which has limited accessibility (which is not enhanced in any way by the current proposals).

5.68 The 2015 SHMA assessment of the site stated that the site was ‘well related to the village facilities’ noting that it was approximately 210m from Henham and Ugley Primary and Nursery School but that it was more than 1000m from a GP surgery and over 800m from any significant shopping facilities. I disagree with that assessment as clearly the agreed distances in the Statement of Common Ground show that the site is considerably more than these distances from the school and the small village shop and that there is no significant shopping facility or GP surgery in Henham. The site was considered further in the 2018 SHMA when the same assessment was repeated but the conclusion stated: ‘*The site is considered unsuitable as development on this site would not contribute to sustainable patterns of development*’ and the site was given the classification E.

5.69 The issue of accessibility has become an increasing concern to the District Council due to the increasing pressure of large numbers of dwellings being proposed in the small, more remote villages in the district such as Henham which have constrained access to limited facilities within the villages and limited public transport services. This concern has led to a greater level of scrutiny, particularly by the Planning Committee due in part to the consultation responses of the Local Highway Authority which have flagged up matters relating to the issue of accessibility in various applications in these locations. The highway authority flagged up this issue for this proposal when it stated in its consultation response of the 25 November 2020 that:

‘It is noted that the location of the site is such that access to key facilities, shops, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option will be the car. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability’.

5.70 The Officer’s Report (CDC2) drew attention to this advice and the officer recognised

that:

Henham has a fairly limited range of local services compared to say the adjacent villages, Elsenham and Thaxted, although it does have a village shop, a post office, a public house and a thriving primary school as well as having a generally healthy village vibrancy.

- 5.71 The Officer's Report also commented that the development was not particularly large and would not have a significant impact upon existing local services within the village and referred to the No7 Bishops Stortford to Stansted Airport bus route and also that there was a school bus route with a bus stop at Vernons Close. However, while the officer noted that the Inspector in the recent appeal decision for Chickney Road (CDG7) concluded that the frequency of the bus service through Henham would mean that most trips would still be made by motor car, the report did not comment further on this matter but concluded that: *'it is considered that the social objective of the NPPF for the current proposal is met'*. The Officer Report did not therefore consider the accessibility of the site in respect of public transport, cycling or walking or in Section B of the Report which sought to consider the proposals against the requirements of GEN1. Section B was concerned primarily with vehicular generation and safety and the need to connect the site to the footpath on the eastern side of Mill Road. Matters which the Highway Authority had confirmed were acceptable. There was no consideration of GEN1(e) in this part of the report.
- 5.72 It should also be noted that the Chickney Road appeal for 16 dwellings was refused on similar grounds as the current appeal proposal, namely that the proposal represented development at an unsustainable location. The reason for refusal cited the same comment from the local highway authority as that received in respect of the current proposals and quoted above (paragraph 5.66) in respect of the remote location of the site, the limited access to key local services and facilities, public transport, employment and leisure opportunities resulting in the car being the only practical option for the vast majority of journeys. In considering the Chickney Road appeal, the Inspector referred to the walking distances within Manual for Streets (MFS) and the Chartered Institution of Highways and Transportation (CIHT) document 'providing for journeys on foot' and considered that the distances in the latter could be used as a good metric to consider walking distances to other day to day facilities.

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- 5.73 The Statement of Common Ground for the current appeal sets out the agreed walking distances to the facilities contained in Henham and I accept that there are some differences between the respective sites. For example, the primary school is closer to the current appeal site at 700m compared to 1.5km for the Chickney Road site and 400m to a bus stop compared with 700m. However, the shop is similar distance from both sites at 1km. The Inspector found that access to these facilities were via rural unlit roads, with no pedestrian facilities, which would present a barrier for pedestrians wishing to walk to these facilities.
- 5.74 I accept that the facilities in Henham are all within the acceptable walking distances of the CIHT document and Manual for Streets for the current appeal site and that the facilities are mostly accessible along footpaths, in contrast to the Chickney Road site. Nevertheless, many of these footpaths are narrow (eg along the green) and there is no lighting in the village as highlighted by the Parish Council's representations. I do not consider that the nature of the available footpaths are conducive to encouraging walking. In my view, they are not likely to be used in the autumn / winter months when there is not as much daylight. More broadly, they are not likely to be regularly used by parents with young children with pushchairs/prams or people with disabilities given their narrowness. This is of particular relevance given the housing mix suggests a majority of family sized units on the appeal site.
- 5.75 The facilities in Henham are limited. The shop is small for a village of this size and sells a limited range of basic goods. It really caters for some top-up shopping. It is also open for limited hours from 09.00 to 13.00 and 14.00 to 16.30 Mondays to Fridays and is only open on Saturday and Sunday mornings. The shop also contains the post office which is open three mornings a week only (Mondays, Wednesdays and Fridays between 09.00 to 12.00). The limited opening hours of the shop and post office mean that these facilities can only be available for a limited number of residents.
- 5.76 Henham also contains a public house (The Cock) and the church. The village has four village halls (Henham Village Hall, OSCA, Church Hall and HUSCH which is located in the school hall). There is also a gym (Fitness Gym) at Parsonage Farm near the church. However, as highlighted in the Statement of Common Ground, there is no doctor's surgery, secondary school (which is in Stansted Mountfitchet) or any larger shop. There is also very limited employment in the village and therefore,

as highlighted by the Highway Authority, even basic 'services' such as employment, secondary schooling, retailing and leisure are not available to residents in the village and access to the majority would, of necessity, be by car.

- 5.77 Henham is served by the No 7/7a bus service which runs between Stansted Airport and Bishops Stortford via Henham and Elsenham as set out in the Statement of Common Ground (paragraph 3.6) and referred to by the Chickney Road Inspector. The Inspector commented on the frequency of the bus service at paragraph 15:

The nearest bus stop from the development is located approximately 700 metres from the site which provides a bus service to Bishops Stortford and Stansted Airport. Whilst this has a broadly hourly service, this is not at regular times during the day and there are notable gaps in the timetable which means, in my view, this would not represent a realistic alternative to the private vehicle, especially for trips for employment use.

- 5.78 He continued:

I recognise that Paragraph 103 of the National Planning Policy Framework (the Framework) considers that in rural areas options for sustainable transport solutions may be less available than in urban areas. Whilst I appreciate there are a number of facilities within walkable distance of the appeal site, the rural nature of the site and its location means that in order to access the majority of day to day facilities such as employment, secondary schools, doctors surgeries and larger retail sites residents would be dependent on private vehicles. I note that whilst the local highway authority did not object to the planning application, in their consultation response they raised concerns that the site was not in a sustainable location, which would lead to a reliance on the private car. Based on the evidence before me and my observations made on site, I am of the view that the occupiers of the proposal would be reliant on private vehicles to access the majority of day to day facilities. As such the proposal is not considered to be in an appropriate sustainable location. (paragraph 16)

- 5.79 I do not consider that the nature of the facilities and circumstances have changed since the Chickney Road appeal decision in 2020. As before, the new NPPF also considers options for sustainable transport solutions in rural areas may be less available than in urban areas at Paragraph 105. The bus service still operates on

the same timetable as it did when considered by the Inspector. None of the facilities in Henham have changed. Although the current appeal site is closer to the bus stop at Vernon's Close (400m), I consider that the same considerations in respect of the frequency of the buses and their likely use by residents also applies to the current appeal site, as does the limited accessibility that both existing and future residents have to services and facilities. In my view, and bearing in mind the recent findings of the Inspector for the Chickney Road appeal, I do not consider that there is any significant difference between the two sites in respect of accessibility. The occupiers of the current proposed dwellings would also be reliant on private vehicles to access the majority of day to day facilities and therefore, like the Chickney Road site, the current appeal site cannot be considered to be in an appropriate sustainable location.

- 5.80 In their Statement of Case, the Appellant argues that the proposal would provide cycle parking in line with the adopted standards and that this would promote the use of bicycles referring to the site's proximity to a connecting link to the National Cycle Network Route 50 which runs along Mill Road. The Sustrans route does extend along Mill Road but I do not consider that this is a route which would encourage daily cycling or a daily commute. It is more for recreational use. Mill Road leads south and connects with the B1051. The Sustrans route heads east along the B1051 whilst Elsenham lies in the opposite direction to the west. I agree with the Parish Council's comment that it is unlikely that residents would seek to cycle to the village of Elsenham to access services and facilities. There are some small shops/takeaways and a small Tesco Express in the centre, but Elsenham also offers limited services and attractions for shoppers and cyclists.
- 5.81 Elsenham does however, contain a station on the main rail line between Cambridge and London, but the route to Elsenham station is not direct and is not one which I consider would encourage a greater take up of cycling. The relative narrowness of the rural lanes mean that there is limited room for cars and bicycles, particularly when there is two way traffic. They are also generally unlit. As a consequence, I do not consider that the provision of cycle parking, (which in my experience is normally provided within a garage or shed in existing and new developments), means that the development encourages movement by means other than the car as required by Policy GEN1(e) and also the NPPF. The route to and from a required destination has to be sufficiently attractive to encourage cyclists to use it. I do not consider that

the routes into and out of Henham are of that nature, being relatively narrow rural roads, often with poor visibility, limited widths and no lighting.

- 5.82 The Appellant has referred to the Manuden appeal decision¹⁰ (CDG2) in their Statement of Case at paragraph 5.13 and suggest similarities between both villages. I accept that at face value, the facilities appear similar but there are clear differences between the two appeals in that accessibility enhancements were proposed in the Manuden appeal, including upgrading existing footpaths to cycleways, the provision of an electric pool bikes as part of the development as well as the provision of a new nursery and resource centre. The Inspector in that case concluded that:

Overall, taking account of the services available in the village, proximity to other settlements, and the efforts the proposal makes to encourage sustainable transport choices that are detailed in the Appellants evidence, I am satisfied that the proposal encourages movement by means other than driving a car and therefore accords with Policy GEN1(e) of the Local Plan. (paragraph 41)

- 5.83 There are no such efforts of benefits in the current appeal. The Appellant does not seek to argue that the development will provide any other enhancements that would assist in encouraging movement other than the car. No improvements are being proposed to increase the availability and frequency of the buses, and the site is located at the edge of the village and therefore at the furthest point from most of the facilities within the village. There are no direct pedestrian routes to any of the facilities other than along Mill Road. Henham Primary School is located only a relatively short distance from the development but there is no direct shorter public footpath route to the school other than walking along Mill Road and then into School Lane and none being proposed by the Appellant.

- 5.84 The Appellant refers to enhancement of existing footpath links with the existing network of rights of way to provide effective access for pedestrians in accordance with Policy GEN1(e) (Statement of Case paragraph 5.8) but this appears to be limited to the footpath link required by the Highway Authority from the development to public right of way 25/2 to provide additional opportunities for walkers. PROW 25/2 extends outside the site along its southern boundary and connects up to PROW 25/4 to the east. Whilst that connection will allow access to some of the

¹⁰ APP/C1570/W/20/3242024: Land to the north of Stewarts Way, The Street, Manuden

PROW network that extends around Henham, it is primarily a recreational network and does not lend itself to greater accessibility into the village or to any facilities in Henham or elsewhere. The only pedestrian access for residents will be via the new single access into the site from Mill Road. The proposals show a footpath on its northern side connecting to the existing one on Mill Road. However, I do not regard this as an enhanced link but as a fundamental requirement being the only public footpath available for future residents to walk into the village.

- 5.85 I therefore conclude that the proposals do not take the opportunity to promote sustainable transport modes as required by paragraph 110 of the NPPF, nor do they give priority to pedestrian and cycle movements contrary to paragraph 112(a), and do not facilitate access to high quality public transport. I fully accept that rural locations do not tend to experience high quality public transport and there is the recognition in the NPPF that opportunities to maximise sustainable transport solutions will vary between urban and rural locations and that this should be taken into account in decision making. That factor was taken into account in the Chickney Road appeal decision and the Inspector was of the view that the occupiers of that proposal would be reliant on private vehicles to access the majority of day to day facilities. As such he did not consider that proposal to be in an appropriate sustainable location. I do not consider that factors are so different on the current appeal site to justify a different view. The site is not an appropriate sustainable location and is not located where it will enhance or maintain the vitality of this rural community contrary to paragraph 79 of the NPPF. For those reasons, in my view the proposal is contrary to Policy GEN1(e) as well as the NPPF.

e) Impact upon Local Infrastructure

- 5.86 Adopted Uttlesford Local Plan Policy GEN6 requires the provision of infrastructure to support development. The consultations to the application advised that the development would have adverse impacts upon education provision in the area and that contributions were required to mitigate these impacts.
- 5.87 The Appellant has advised that they intend to provide a Section 106 Agreement to address this requirement. Furthermore, they have also indicated that the proposal would include 40% affordable housing consistent with Policy H9 of the Local Plan and that this would be secured by the S106 Agreement.

- 5.88 The Appellant and the Council are in discussions and the Appellant has provided a draft Section 106 agreement which makes provision for the required education affordable housing contributions, and provision and future maintenance of the open space and SUDs.
- 5.89 In the event that the Agreement makes acceptable provision for these matters and is signed, the Council confirms that the impacts of the development would be adequately mitigated.

6 WHETHER THE DEVELOPMENT REPRESENTS SUSTAINABLE DEVELOPMENT

- 6.1 Reason No 1 asserts that the site is an unsustainable location where occupants of the proposed development would have access to limited facilities and would be mainly reliant upon the motor car to access a wider range of local services. Reason for refusal No 2 refers to the fact that the development scheme will result in the loss of open countryside outside the development limits of Henham where it will have a significant and demonstrable adverse effect on the rural character of the area. The reasons for refusal allege that the development is contrary to Policy GEN1e) and S7 of the Uttlesford Local Plan (adopted 2005) and the NPPF.
- 6.2 The NPPF places a presumption in favour of sustainable development. By implication, it therefore does not support development that is not considered to be sustainable. Paragraph 8 sets out the three overarching objectives of achieving sustainable development which are interdependent and need to be pursued in mutually supportive ways whilst paragraph 9 confirms that they are not criteria against which every decision can or should be judged.
- 6.3 Whilst it is accepted that the development would contribute towards the economic objective by generating short term construction employment and, in the longer term, bringing in additional occupants who could contribute towards the local economy, by contrast, the development would add to the demands of local infrastructure requiring that additional school places are created to accommodate the children. These impacts require to be mitigated. Other demands on infrastructure such as on doctors surgeries, have not been quantified due to the development being under 50 dwellings and no mitigation is therefore being proposed. Nevertheless, I do not consider that the site meets the NPPF requirement of sufficient land being available in the "right places and at the right time" (Paragraph 8a).
- 6.4 The NPPF identifies the social role as supplying required housing and creating high quality built environment with accessible local services that reflect the community's need and support its health, social and cultural well-being. It is already accepted that the proposal would make a contribution towards the delivery of the housing needed for the district and would provide much needed affordable housing. However, Henham provides very few services and facilities and does not have accessible local services to cater for the community's need. Both existing and

future residents will need to travel out of the village to cater for everyday needs.

- 6.5 Furthermore, the development would read as a stand-alone housing estate development which would intrude into the open countryside to the south of the wider community of Henham. Access is focussed through a single access point off Mill Road and the site has limited connection with the existing settlement. Although open space is proposed as part of the proposals, this limited linkage of the site with the rest of the village, combined with the indicative location of the open space, suggests that it is likely to be used only by residents of the new estate. The proposed area of SuDs is closer to the relatively few houses on Mill Road, but it is currently unclear how usable that may be for open space/play space. It is considered therefore, that the development would not contribute or support a strong, responsive and healthy community as a result.
- 6.6 Similarly, as Mr Drummond explains, the proposed development is such that it would have an adverse impact on the character and visual amenity of the area. The development would be a large urbanising feature within a largely rural area. It is clear from his assessment that the site would not contribute to protecting and enhancing the natural environment and does not contribute towards the environmental objective of sustainability.
- 6.7 Overall, in my view, the proposed development does not meet the overarching objectives of the NPPF and does not achieve sustainable development, particularly when the local circumstances are taken into account as set out in paragraph 9 of the Framework.

7 THE PLANNING BALANCE

7.1 As I have set out above, the appeal scheme conflicts with policies S7 and GEN1 of the adopted Local Plan and the development plan taken as a whole. Within that, I attach moderate weight to Policy S7 and significant weight to GEN1. Of course the conflict with the development plan means that, unless material considerations indicate otherwise, a refusal of permission should follow.

7.2 I now turn to consider whether other material considerations justify determining the appeal scheme otherwise than in accordance with the plan.

7.3 The Council accepts that it is not able to demonstrate a 5 year supply of housing and therefore the policies that are most important to the determination of this application may be deemed to be out of date.

7.4 The 'tilted balance' within the presumption in favour of sustainable development set out in paragraph 11 of the NPPF, requires the grant of planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted. I accept that this tilted balance is a material consideration in this appeal.

7.5 The Appellant has advanced a number of benefits of the proposed development. I therefore consider those benefits advanced by the Appellant and whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Benefits of the Proposals

7.6 Housing Supply: The development proposes up to 45 new dwellings to be added to the Council's supply and I accept that this would represent a benefit of the proposals. I consider that the delivery of housing in the context of an existing significant shortfall of housing carries significant weight.

7.7 Affordable Housing: The Appellant has also confirmed that the proposal would include the provision of 40% affordable housing in accordance with Policy H9 of the adopted Local Plan. The suggested provision of 18 new affordable homes would therefore be compliant with the Local Plan and I consider that this would assist in

the delivery of the Council's aims in securing additional affordable housing.

- 7.8 I accept that the provision of affordable housing is a significant benefit and attach significant weight to its provision.
- 7.9 Economic Benefits: It is recognised that the building of houses generates economic benefits both through the construction process and also from the spending power of the residents who occupy them. I also accept that the proposals have the potential to provide some temporary employment opportunities during construction. I afford these benefits moderate weight.
- 7.10 Social Benefits: The development will also provide open space and I note that the Appellant states that some 50% of the site area will be given over to open space and will include play areas. I note that the provision of open space can be considered a benefit although I consider in this case that it is far more to mitigate the harmful impacts of the development and the location and the extent of it is largely as a result of the greater adverse impact that building houses on this land would generate as well as the need to provide an acceptable level of amenity for future residents of the site. I do not consider that the provision of this additional open space should attract any more than moderate weight.
- 7.11 Environmental Benefits: I have noted that the Appellant states that the proposal will result in a net gain in biodiversity and is in accordance with paragraph 175 (now 180) of the NPPF. I accept that there may be net gain in biodiversity, but the extent of it has not been made known. I therefore attach limited weight to this suggestion.
- 7.12 I have accepted that the development will provide a number of public benefits as set out above, particularly in relation to the provision of market and affordable housing which would contribute to the Council's housing supply and to which I attach significant weight. The provision of affordable housing is a significant benefit, the level of provision is in compliance with the development plan and the site is not being advanced as an exception site where additional provision over and above the policy requirement is proposed.
- 7.13 I do not consider that the benefits in relation to Public Open Space, and ecology should be over-stated. As I have already set out, the site is currently open and the loss of the majority of the site for housing is not compensated for or outweighed by

the provision of open space/improved diversity/SUDs on part. The provision of open space which includes the swales associated with SUDs and landscape planting are requirements to mitigate the impacts of the scheme. Mr Drummond raises concerns about the suggested landscaping and considers it to be out of keeping with the character of the area and the surrounding countryside and therefore harmful in its own right. I therefore give them limited weight as benefits of the scheme.

The Planning Balance

- 7.14 The site is located within the countryside, and Mr Drummond has demonstrated that the proposals would result in significant harm to the rural character and appearance of the area in landscape and visual terms. I consider that that level of harm alone significantly and demonstrably outweighs the benefits of the scheme.
- 7.15 However, the proposals also result in further harm through locational unsustainability and would result in the likelihood of high dependency on the use of the private car for access to day to day services and facilities. I attach significant weight to this also and, combined with the harm to the character and appearance of the area, consider that the proposal does not represent sustainable development and would be contrary to the aims of the Local Plan and the Framework to protect and enhance the natural environment and to encourage movement by means other than driving a car, the latter reflecting the NPPF requirement to support the transition to a low carbon economy (paragraph 8c)).
- 7.16 From my assessment of the benefits that would flow from this development, I do not consider that they, are of such a scale and significance as to outweigh the harm to the plan-led system, to the character and appearance of the area and to the locational unsustainability of the appeal proposal.
- 7.17 I consider that, even with the 'tilted balance' applied these adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, so that they should prevent the grant of planning permission.
- 7.18 The appeal scheme conflicts with the development plan taken as a whole and causes demonstrable harm. For the reasons I have given, I do not consider the



NPPF, or any other material consideration provides a basis to determine the appeal scheme otherwise than in accordance with the development plan in this instance. I therefore consider that the planning balance favours withholding permission and dismissing the appeal.

8 CONCLUSIONS AND SUMMARY PROOF OF EVIDENCE

- 8.1 The application is an outline application with all matters reserved, except for access. It relates to the development of land for the provision of up to 45 dwellings including affordable homes, with areas of landscaping and public open space.
- 8.2 S 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. I have demonstrated in Section 4 of my evidence that the proposals are contrary to the policies of the development plan cited in the reasons for refusal, namely Policies S7 and GEN1. The application involves development that is located outside the development envelope of Henham within countryside where Policy S7 seeks to protect the countryside and the settings of towns and villages in the district from harmful development. The evidence of Mr Drummond, on which I rely, identifies significant harm to the character and appearance of this part of the countryside. The development also leads to an unacceptable form of development and the proposal is therefore contrary to Policy S7 of the Development Plan.
- 8.3 I have also demonstrated that Henham is an unsustainable location for this number of dwellings. The village contains limited facilities and public transport is also limited. As a result, the proposal would result in the likelihood of high dependency on the use of the private car for access to day to day services and facilities, contrary to Policy GEN1 e) of the Development Plan.
- 8.4 In Section 5 I consider if there are any material considerations that that justify the grant of planning permission other than in accordance with the Plan.
- 8.5 I consider that policies S7 and GEN1 contained in the decision notice are the most important policies for determining this appeal in Paragraph 11d terms.
- 8.6 The policies of the Local Plan have been independently assessed for consistency with the previous NPPF and were found to be broadly compliant and have been found to be so in numerous appeal decisions. That particularly includes Policy S7. The new NPPF carries through the same policies in relation to countryside and enhancing the environment. I consider that the Policies are in broad conformity with the current Framework and find nothing in that document to suggest that the policies

of the Development Plan (including Policy S7 and GEN1) should be ignored or disapplied, rather that the weight that should be given to the policies may be reduced taking account of other material considerations that may apply, including consistency with the NPPF, the aims of the policy in question, and the degree of any shortfall in the five year housing supply. I consider that the Local Plan policies are broadly compliant with the new NPPF and on that basis – and taking into account the five-year supply position Policies S7 should attract moderate weight and GEN1 should attract significant weight.

8.7 The Council accepts that it does not have a 5 year supply of housing land. The Council's most recent assessment of its 5 year supply of housing states that it currently has a 3.11 year supply. It is accepted therefore that as a result of Footnote 8, the most important policies for the determination of this appeal are deemed to be out of date and that reduced weight should be afforded to the breach of them, in the planning balance. That is factored in to my assessment of the weight to be attached to each policy.

8.8 Turning to the reasons for refusal, they raise two main issues – the impact of a large, modern, free-standing housing estate on the character of the countryside in this location and the accessibility sustainability issues for future residents.

Landscape and Character

8.9 Mr Drummond's evidence considers that impact of the development on the rural landscape and concludes that it will have an unacceptable adverse impact on the rural character and visual amenity of the local landscape, contrary to the findings of the submitted LVIA which was submitted to support the planning application.

8.10 In reliance on his evidence, I consider therefore that the development is unacceptable and contrary to Local Plan Policy S7 as well as the NPPF (paras. 130 and 174).

Accessibility

8.11 I have concluded that the proposals do not offer the opportunity to promote sustainable transport modes to be taken up as required by Paragraph 110 of the NPPF, they do not give priority to pedestrian and cycle movements, nor do they facilitate access to high quality public transport. I fully accept that rural locations do

not tend to experience high quality public transport but consider that factors in this case will place a heavy reliance on the motorcar and that the site is not an appropriate sustainable location. As such, and in conclusion, the proposal is contrary to Policy GEN e) as well as the NPPF (paras. 79, 110, and 112(a)).

Infrastructure

- 8.12 Mitigation is required in respect of the impact of the development upon local infrastructure. Contributions are required in respect of education as well as the provision of the affordable housing.
- 8.13 I understand that the Appellant is in discussion with the local planning authority and that there is a draft Section 106 addressing matters. The Council accepts that the impacts of the development on education and affordable housing can be appropriately mitigated.

Benefits of the Proposals

- 8.14 The Appellant has argued that the development will provide considerable public benefits and I acknowledge that the delivery of some 45 new dwellings would make a positive contribution towards the Council's housing supply which is in a state of deficit. I consider the delivery of housing in the context of an existing significant shortfall of housing carries significant weight.
- 8.15 The Appellant has also confirmed that the proposal would include the provision of 40% affordable housing in accordance with Policy H9 of the adopted Local Plan. The provision of 18 new affordable homes would therefore be compliant with the Local Plan and I consider that this would assist in the delivery of the Council's aims in securing additional affordable housing. I accept that the provision of affordable housing is a significant benefit and attach significant weight to its provision.
- 8.16 I recognise that the building of houses generates economic benefits both through the construction process and also from the spending power of the residents who occupy them. I afford these benefits moderate weight.
- 8.17 The development will also provide open space and landscaping and I accept their provision can be considered a benefit and I attach moderate limited weight to its provision together with the opportunity to secure ecological enhancements on the

site.

The Planning Balance

- 8.1 The site is located within the countryside, and Mr Drummond has demonstrated that the proposals would result in significant harm to the rural character and appearance of the area. I consider that that level of harm alone significantly and demonstrably outweighs the benefits of the scheme.
- 8.2 However, the proposals also result in further harm through locational unsustainability and would result in the likelihood of high dependency on the use of the private car for access to day to day services and facilities. I attach significant weight to this also and, combined with the harm to the character and appearance of the area, consider that the proposal does not represent sustainable development and would be contrary to the aims of the Local Plan and the Framework to protect and enhance the natural environment and to encourage movement by means other than driving a car reflecting the NPPF requirement to support the transition to a low carbon economy
- 8.3 From my assessment of the benefits that would flow from this development, I do not consider that they, are of such a scale and significance as to outweigh the harm to the plan-led system, to the character and appearance of the area and to the locational unsustainability of the appeal proposal.
- 8.4 I consider that, even with the 'tilted balance' applied these adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, so that they should prevent the grant of planning permission.
- 8.5 The appeal scheme conflicts with the development plan taken as a whole and causes demonstrable harm. For the reasons I have given, I do not consider the NPPF, or any other material consideration provides a basis to determine the appeal scheme otherwise than in accordance with the development plan in this instance. I therefore consider that the planning balance favours withholding permission and dismissing the appeal.