



Decision Notice and Statement of Reasons

Site visit made on 6 July 2023

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

A person appointed by the Secretary of State

Decision date: 8 September 2023

Application Reference: S62A/2023/0018

Site Address: Land East of Pines Hill, Stansted Mountfitchet, CM24 8EY

- The application is made under s62A Town and Country Planning Act 1990.
 - The site is located within the administrative area of Uttlesford District Council.
 - The application dated 21 April 2023 is made by Luxus Homes Stoney Common Limited (Applicant)
 - The development proposed is: outline planning application with all matters reserved except for the primary means of access for the development of up to 31 no residential dwellings.
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Decision

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

Statement of Reasons

Procedural matters

2. The application was made pursuant to s62A Town and Country Planning Act 1990 by which applications can be made directly to the Secretary of State (SoS) where a local authority has been so designated. Uttlesford District Council (Council) has been designated for major applications from 8 February 2022.
3. A section 106 obligation has been completed which has been fully considered.
4. I made an accompanied site visit on 6 July 2023 which included observation of the traffic conditions at Pines Hill where the proposed new access for the development would be sited.
5. The Council considered the proposal at its Planning Committee meeting on 7 June 2023. The minutes were approved at the meeting of the committee on 21 June 2023. Members resolved to object to the application. The Council wrote to the Planning Inspectorate on 9 June 2023, to add that:
 - While the proposal scheme does provide planning benefits, the development does not constitute very special circumstances as set out

in paragraph 147 of the National Planning Policy Framework 2021 (NPPF); and

- The proposal will result in an urbanising effect of the open character of the site, in conflict with the aims of Policy S6 of Uttlesford District Local Plan 2005 (LP) and paragraph 138 of the NPPF.
6. The applicant submitted further information in reply to consultation responses. The further information was published on the government web site and available for comment. All written representations were considered in reaching my decision. The application has been determined on the basis of the revised and additional documents and drawings.

Background

Relevant planning history

7. An application for outline planning permission Ref UTT/21/2730/OP with all matters reserved except access, for up to 31 no. dwellings was refused on 2 December 2021, on grounds of inappropriate development within the Green Belt (GB).
8. An outline application, with all matters reserved except for access, for the demolition of existing buildings and redevelopment of the site for approximately 68 residential dwellings with access from Pines Hill together with landscaping, infrastructure and ancillary works, Ref UTT/14/0151/OP, was refused on 17 April 2014, for reasons including inappropriate development within the GB.

Planning policy and legal framework

9. Decisions on planning applications are determined in accordance with the development plan unless material planning considerations indicate otherwise. The development plan includes the Uttlesford District Local Plan 2005 (LP). The emerging local plan is still at early stage and has no appreciable weight for the purposes of consideration of this application.
10. The NPPF contains national planning policies and is an important material consideration. Its central aim is to achieve sustainable development: economic, social, and environmental. Planning Practice Guidance (PPG) supports the NPPF.

The application site and surroundings

11. The application site is vacant and overgrown scrubland, an area of some 0.99 hectares, in the GB. It adjoins the settlement boundary of Stansted Mountfitchet to the north of the site along Stoney Common Road. To the north of Stoney Common Road is the residential area of Old Bell Close. To the south-east are commercial premises and to the east are Stansted Brook and the main railway between Bishops Stortford and Stansted Mountfitchet. The site is within Flood Zone 1. A strip of land on the Pines Hill frontage of the site is classed as "Important Woodland" on the LP's Proposals Map.

The proposal

12. The proposal is for up to 31 dwellings comprising 25 houses and 6 flats. An indicative mix of accommodation was submitted with the application and amended to show an affordable tenure mix of: 4 First Homes, 11 affordable rent and 1 shared ownership units. 52% of the housing would be affordable.

13. With the exception of access, all matters of detail shown in the submitted plans are illustrative. A vehicular access is proposed off Pines Hill to the western side of the application site, between a pair of semi-detached properties and a detached house, all in spacious plots. The layout would allow for access to these properties. The detailed plans demonstrate how a safe vehicular access could be created with required visibility splays onto Pines Hill.

The main issues

14. These are:

- whether the proposal would be inappropriate development in the GB having regard to any relevant development plan policies and to the NPPF, the effect on the openness and purposes of the GB;
- character and appearance of the area;
- highway safety and the road network
- whether adequate provision would be secured for any additional need for facilities, including affordable housing, arising from the development; and
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations amounting to very special circumstances required to justify the proposal.

Whether inappropriate development and effect on openness

15. Paragraph 147 of NPPF advises that inappropriate development is by definition harmful to the GB and should not be approved except in very special circumstances. The applicant does not argue that any of the exceptions apply as set out at paragraph 149, but accepts that there would be a need to demonstrate very special circumstances.

16. Paragraph 137 of NPPF states that the essential characteristics of green belts are their openness and permanence. The applicant's case is that there would be limited and localised harm to the openness of the GB arising from the proposal, as set out in a GB Impact Assessment, and a Landscape and Visual Impact Assessment (LVIA).

17. The Inspector's report on the LP before it was adopted found this site to be:

"on the edge of the village to read as part of the settlement and if there were a need for more housing I consider that subject to a satisfactory access the site would be suitable for the purpose. However, unless the Council identifies a local need I am otherwise satisfied with what I have recommended that sufficient land will come forward for development during the Plan period."

18. Once green belts have been defined, the NPPF at paragraph 145 aims to enhance their beneficial use, including to retain and enhance landscapes, visual amenity and biodiversity. I note what is said about the 2016

independent review of the Council's GB, and the applicant's proposed revised "scoring" of the relative value of GB land commensurate with the function of green belts. However, it is not for me to revisit the GB boundaries, including in relation to the application site. By definition, inappropriate development is harmful to the GB, and paragraph 148 of the NPPF states that substantial weight should be given to any GB harm.

19. As to considerations of appropriateness, preservation of openness and conflict with GB purposes, these should be applied in light of the nature of a particular type of development. Whether a proposed facility would preserve the openness of the GB is largely a matter of planning judgement.

20. Several factors could be relevant in applying "openness" to the facts of a case, notably, how built up the GB is now and how built up it would be if redevelopment occurred, and the visual impact on the aspect of openness which the GB presents. PPG paragraph 64-001-20190722 advises that matters which may need to be considered include, but are not limited to the following:

- spatial and visual aspects (the visual impact of the proposal may be relevant, as could its volume);
- the duration of the development, and its remediability; and
- the degree of activity likely to be generated, such as traffic generation.

21. I accept that other land nearby may have more value in preserving openness and contributing to the purposes of the GB including maintenance of the gap between the settlements of Stansted Mountfitchet and Bishop's Stortford. Nevertheless, considered primarily in terms of the absence of development, the additional new built residential accommodation would clearly have a significant impact on openness. The site was previously a Christmas tree plantation, is undeveloped open land and heavily treed in some areas. The visual impact on openness would be significant in my opinion due to the additional traffic likely to be generated from new permanent development. Land which may begin on the edge of a built-up area within a mix of urban and rural land uses, before giving way to the wider countryside, may still make a positive contribution to preventing encroachment into the countryside.

22. In addition, because Stoney Common Road would not be appropriate to link traffic through the site, a turning head would have to be provided within the site, which together with the 72 proposed parking spaces and the spine road would increase the permanent built form on the site.

23. The LVIA assessment makes its own comments on the applicant's GB assessment of the site, however it appears to contradict the applicant's planning statement in places. For example, the LVIA has it that the proposals are an "infilling site within the village context" and that "the site is in the Green Belt and therefore inappropriate development will be avoided". As described above, the applicant does not argue that the proposal would be inappropriate development in terms of national GB policy, nor that the limited infilling in villages exception in NPPF, paragraph 149(g) applies. The site is not in the village, it is outside the settlement boundary. The context is a transitional area between the village and a more rural character beyond.

24. The edge of the built-up area here is not especially strongly defined; there is a small amount of building on Pines Hill southwest of the dwellings between which the proposed development would gain access, but they have relatively spacious plots. Moreover, there is an absence of any development on the other side of Pines Hill. GB is not designated on the basis of environmental quality but on planning grounds. Its essential role in Uttlesford seems to be to maintain the historic settlement pattern and prevent encroachment into open countryside, including around Bishop's Stortford and Stansted Mountfitchet. In my view the proposal would inappropriately consolidate a linear form of urbanised development along Pines Hill transforming the open character of the site.
25. I find that the loss of openness would cause additional harm and conflict with GB purposes in assisting to safeguard the countryside from encroachment and preventing neighbouring towns from merging into one another.

Character and appearance

26. The application site and surroundings are of a semi-urban character, on the edge of the settlement. LP Policy S1 seeks to direct development within the limits of the main settlements including Stansted Mountfitchet. If development is proposed on the edge of a built-up area, it should be compatible with the countryside setting. LP Policy S7 has several objectives, among them to seek development that recognises the intrinsic character and beauty of the countryside. The aim is reflected in NPPF paragraph 174 in recognising the intrinsic character and beauty of the countryside, including economic and other benefits of trees and woodland.
27. There is no saved LP policy that reflects exactly the aims of national GB policy viz a viz the site, I suspect due to the fact that the previous structure plan policy C2 fulfilled that purpose but is no more. LP Policy S6, whilst the Council maintains the scheme is in conflict with it, strictly applies only to certain land excluded from the GB, and specific major developed sites (not the instant site) in the GB. That said, Policy S6 notes the boundaries of the GB in Uttlesford on the Proposals Map, and elsewhere in the supporting text it is clear that GB development will only be permitted if it accords with national planning policy.
28. The design and access statement and other documents propose a high-quality development that has paid attention to national and local guidance, however detailed matters of scale, layout, external appearance and landscape considerations would be reserved for future consideration.
29. The proposal would have an impact on the immediate rural landscape setting and a detailed landscaping scheme would need to be approved as part of the reserved matters details. Whilst no significant open space provision is proposed there would be new tree and hedgerow planting that would consolidate screening to the boundaries of the site. The urbanisation would be somewhat visually contained and unlikely to result in a significant level of harm to the wider landscape setting.
30. LP Policy ENV3 which seeks to protect open spaces, visually important spaces, including groups of trees, would permit development if the need for the development outweighs their amenity value. The Proposals Map clearly delineates the full length of the Pines Hill frontage to the application site as

important woodland, subject to LP Policy ENV8 but Policy ENV3 is also relevant. The gardens of 1 and 2 Stoney Common Road are enclosed by mature trees on Pine Hills that are included as important woodland. The area has a distinctive wooded and rural feel to it, and whilst retention of boundary trees where possible might retain the discrete nature of much of the site, the new entrance at Pines Hill would create a visible extension to the village. The effects on landscape receptors would have at least a moderate impact in my view due to the change of land use and loss of some mature trees.

31. However I am not persuaded that the proposal would sufficiently respect the edge of settlement location. The applicant describes the scheme as an "infill nature site". I agree with the Council that the open character of the site is appreciated from Stoney Common Road and the frontage from Pines Hill. It is important to the character of the locality. Whilst north of the site there is a fairly tight urban grain appropriate within the development limits, to the south obtain detached houses, well-separated in spacious plots. The proposal seeks to introduce significant built form to the rear of the existing homes that face onto Pines Hill. The overall density, scale and mass of the new dwellings would create an undesirable urbanisation of the site that would harm the character and appearance of the site and surrounding area.

32. I find on this issue that the proposed development would cause substantial and material harm to the transitional character of the settlement edge through a permanent loss of an open space and a built form that would produce an urbanising effect contrary to LP Policies S1, S7 and S6, and the aims of NPPF, including paragraph 124 that seeks to maintain an area's prevailing character and setting.

Highway safety and road network

33. Under LP Policy GEN1 development will only be permitted if the access is appropriate, traffic generation would not have a detrimental impact on the surrounding road network, it is designed to meet the needs of people with disabilities and it would encourage sustainable modes of transport.

34. The site is reasonably close to several local services and transport routes including the M11 which gives access to London from the south and Cambridge from the north. Stansted Mountfitchet station is a short walk away, allowing links to London Liverpool Street and Cambridge North Stations. Pines Hill (B1383) links Newport in the north and Bishops Stortford to the south.

35. A transport statement dated April 2023 was submitted with a detailed vehicular access drawing with visibility splays for the proposed access onto Pines Hill. At the time of the previous 2021 application for 31 dwellings, Essex County Council (ECC) as local highway authority advised against a vehicular access onto Stoney Common Road and that any vehicular access should be provided off Pines Hill.

36. ECC has no objection to the present proposal, provided conditions are attached to any eventual planning permission. These would secure a construction management plan, adequate inter-visibility between vehicles using the access and the existing highway, minimum 5.5m carriageway width,

with details to be approved of junction radii to accommodate the swept path of vehicles accessing the site, and 2m wide footways around radius kerbs.

37. A 2-metre footway along the entire site frontage and improvements to the existing footway would also be required to maximise the width between the north of the site frontage and The Old Bell PH, with alterations to Stoney Common Road and the B1383 junction to regularise pedestrian access, including full depth reconstruction and surfacing. Works would also be required to secure adequate inter-visibility between pedestrians and cyclists using the shared pedestrian cycleway access onto Stoney Common Road.
38. Improvements to the passenger transport infrastructure at the northbound bus stop adjacent to Sanders Close would need to be secured, and the existing southbound bus stop would be relocated south of the site access and improved. Residential Travel Information Packs would also be provided and implemented for each dwelling, to include six one-day travel vouchers for use with the local public transport operator.
39. These requirements are reflected in the completed s106 obligation. They would be necessary in the interests of highway safety, accessibility, reducing the need for car travel and promoting sustainable development and transport. Details regarding the parking provision for this scheme would be considered at reserved matters stage. Accordingly, the design of the site takes account of the needs of motorised and non-motorised users.
40. I have had regard to the comments from interested persons concerning development in the area, and the traffic conditions on the local network. However, there was no information that persuaded me that the highway network would not have the capacity safely to accommodate the additional vehicular movements arising from the implementation of the scheme.
41. Subject to details submitted pursuant to the proposed conditions, safe and suitable access to the site could be achieved for all users with any significant impacts on the transport network in terms of capacity and congestion, or on highway safety, being cost effectively mitigated. In these respects the scheme would comply with NPPF, paragraph 110 and LP Policy GEN1.

Provision for additional need for facilities

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

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

43. A s106 obligation was submitted. It provides for several obligations to be performed by the applicant/owner as follows:

- provision of 52% of the housing units as affordable housing: 4 First Homes, 11 affordable rent and 1 shared ownership units;

- to make available plots for a self-build and custom housebuilding scheme;
 - sporting contributions of c£1000 per residential unit for indoor sporting purposes, and c£1392 per residential unit toward outdoor playing pitches, for the residents of the development and of the parishes of Stansted Mountfitchet and Birchanger;
 - creation of biodiversity units on land known as the Biodiversity Net Gain (BNG) Land in compliance with the offsite habitat creation and management plan (OHCMP), plus a monitoring contribution;
 - an education financial contribution comprising an early years and child care contribution, secondary school transport contribution, and secondary education contribution which latter contribution includes facilities for the education or care of children aged 11-19 including those with special educational needs, or towards new secondary school provision;
 - financial contribution for library provision at £77.80 per housing unit;
 - implementation of an employment strategy (to be approved) that would facilitate employment and training of local people within the development.
44. The NPPF contains policy tests for planning obligations; they must be necessary to make the development acceptable in planning terms; directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests are found in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010.
45. Developer contribution figures referred to are calculations only, and final payments would be based on the actual dwelling unit mix and subject to indexation. The education contributions are supported by ECC as education authority, calculated by a standard formula, and would be fairly and reasonably related to the development proposed and meet the statutory tests.
46. In relation to providing off-site Biodiversity Net Gain (BNG) in excess of 10%, as part of the s106 agreement, the applicant has included an obligation that provides for off-site BNG on an area of land adjoining Dowsett Farm, Dowsett Lane, nr Latchford and Colliers End, Hertfordshire, within East Hertfordshire District Council. The applicant has, subject to planning permission being granted, agreed a BNG management plan with the owner over a period of time. There would be no development involved to create the new habitat, which is not part of the planning application red line boundary.
47. The delivery of affordable housing is a Council priority. LP Policy H9 seeks on a negotiated site-to-site basis, an element of affordable housing of 40% of the total provision of housing on appropriate allocated and windfall sites, having regard to the up-to date Housing Needs Survey, market and site considerations. Accordingly, the proposal would meet this requirement.
48. Broadly speaking, the additional need for facilities and infrastructure identified as arising from the proposed development could be adequately secured by a combination of the conditions proposed by the Council and the local highway authority, and through the completed s106 obligation.
49. However I have some concerns as follows. Firstly, LP Policy H10 requires developments on sites of more than 0.1ha or 3 or more dwellings to have a

significant proportion of market housing comprising small (2 or 3 bed) properties. The applicant states that provision of smaller house types ensures that this policy is complied with, proposing 6 market and 3 self-build units as 3 bed properties and all 16 affordable dwellings as 1, 2 or 3 bed properties. 5 units were shown in an apartment building which must therefore be for affordable housing, as confirmed in an amended layout but this is not relevant to policy H10. The illustrative layouts do not indicate that a significant amount of smaller market housing is likely to be proffered in the final mix and importantly, the size of the open market units is not dealt with in the s106 obligation. A condition would be necessary to ensure such provision.

50. The indicative schedule of accommodation proposes that the private tenure homes including self-build would be 9 x 3 bed units which is at the upper end of the definition of small properties, and 6 x 4 bed units, which falls outside the definition. Overall, therefore whilst arguably meeting the terms of the policy, this would not be a development that seeks to provide a generous proportion of small market housing.
51. Secondly, the supporting text to LP Policy ENV3 (open spaces and trees) refers to spaces including agricultural land or woodland which sometimes may have been left in a state of untidiness but *"the existence of the space may be important to the character of the locality. Retention of the space would also enable its full environmental potential to be realised through an enhancement project."* This is also relevant to the NPPF aims in paragraph 145 noted above.
52. There is no provision for amenity or public open space other than that the illustrative layout in the design and access statement shows two very small areas of "green amenity space" at either side of the junction between Pines Hill and the new spine road to be constructed, and a third where this road turns to go through the rest of the site. The Council referred to the possible components of the s106 as including provision and long-term on-going maintenance of public open space. Its reasons for refusal of the similar scheme in 2021 included that the development does not provide for adequate mitigating infrastructure and a concern in the accompanying report had been the lack of any on-site open space.
53. The Council's Open Space Assessment Report 2019 (2019 Report) states that Stansted Mountfitchet Parish Council considers there to be a need for more open space provision in the settlement. The draft neighbourhood plan's view is that there is a deficit of open space across the village. The Developer Contributions Supplementary Planning Document (SPD) 2023, refers to the Open Space Standards Paper (OSSP) 2019 which, for Stansted Mountfitchet, finds shortfalls against the recommended quantity standard across all open space provision types (allotments, amenity greenspace, natural and semi natural, and parks and gardens) save for natural greenspace, and prioritises provision or by ensuring contributions to enhance existing provision. The OSSP approach sets out that a new residential development may not warrant on-site provision but contribution to an existing site within close proximity could do so.
54. Whereas a site for outdoor sports but available for wider community use, appears to be classifiable as open space for certain purposes in the 2019 report, need for open space differs from need for sports and recreation facilities. The contributions are based on data from the Council's playing pitch

strategy and national demand data relative to the local population, apparently showing that the scheme generates costs towards grass and changing rooms of £43,160. Indoor facilities based on the development and average unit occupation would cost £31,034 through the Sports England toolkit. The applicant has engaged with Sport England and the Council does not seem to have been involved in this process and has not commented in detail on it.

55. Whilst it can be accepted for present purposes that the sports contributions obligations may be necessary for the development to go ahead in planning terms, the level of amenity open space within the site is a concern and should be confirmed at detailed matters stage.

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

Other considerations

57. In summary the very special circumstances sought to be recognised as such by the applicant were the provision of affordable housing, market housing, self-build housing, sustainable credentials of the site, biodiversity net gain and socio-economic benefits. The first three factors individually were argued to bear "very substantial weight" and each of the last three, "substantial weight".

58. I deal firstly with the appeal decisions cited in support. The Colney Heath appeal decisions (Ref APP/B1930/W/20/3265925, APP/C1950/W/20/3265926) involved two local authority areas with acute housing delivery shortages and affordable housing need. Very substantial weight was given to the provision of market and self-build housing and affordable housing, factors that demonstrated very special circumstances. However, in those cases, the housing land supply positions were 2.58 years and 2.4 years and the scheme was for up to 100 dwellings. In my view those are material differences with the instant proposal.

59. The appeal decision of March 2023 Ref APP/C1570/W/22/3296064, found after an inquiry that on the evidence presented to it, deliverable housing land supply was around 4 years and it concluded that providing 200 new homes, considerably more than are proposed here, was a benefit to be given very significant weight.

60. Appeal decision Ref APP/C1570/W/21/3268990 granted permission for 15 dwellings including 6 affordable, outside the GB. The Council's policies were found to be out of date, the tilted balance was engaged and a presumption in favour of development applied where the adverse impacts on the area's landscape character and a designated heritage asset did not significantly and demonstrably outweigh the benefits of 40% affordable housing. Such factors make the decision less relevant to this application for GB development.

61. Appeal Ref APP/C1570/W/22/3296426 was also a development outside the GB, where permission was granted for up to 233 dwellings including affordable

housing, the 5-year housing land supply shortfall was acknowledged and limited weight was attached to LP Policy S7. Apart from whether the proposal adequately provided for services and infrastructure (which was found to be the case) the main issue was the adequacy of sustainable transport measures. The benefits of housing delivery and various forms of provision carried substantial weight individually. Together with the off-site highways benefits and sustainable transport measures, economic benefits and moderate weight given to biodiversity net gain, and a significant amount of publicly accessible open space provision at the site, the Inspector concluded there were no adverse impacts that significantly and demonstrably outweighed those benefits. The scale of proposed housing and its location outside the GB makes the decision less relevant for present purposes.

62. Appeal Ref APP/A2280/W/20/3259868 was a Secretary of State's decision outside Uttlesford, yet again not in the GB, where permission was granted for a very significant amount of new housing (up to 1200 units). The appeal was dismissed. The Inspector at paragraph 12.204 of her report may have given substantial weight to a lower net biodiversity gain in terms of units than is associated with the present proposal, however I read that finding as pertaining to all the benefits summarised in the paragraph cited, which included significant on-site planting and landscaping, and significant ecology improvements in or around the site.

63. In short, none of the decisions provide a compelling reason for me to decide the present application other than on its own planning merits.

64. The site is a sustainable location on the edge of the settlement which is a benefit. Provision of 52% affordable housing would exceed the local policy requirement and it is understood that no affordable dwellings are currently proposed in Stansted Mountfitchet over the next 5 years (2022/23 to 2026/27). The scheme would provide some much-needed affordable housing in a sustainable location and this should carry substantial weight.

65. The Council's housing land supply currently falls short of the required 5-year supply and stood at 4.89 years (Five Year HLS update April 2022). Additional evidence arising or discovered after the base date of the five-year period can inform judgements on deliverability. An addendum to the consultant's local housing need assessment was submitted and I have considered the particular situation at Stansted Mountfitchet as far as concerns identified local need.

66. LP Policy H1 is out of date insofar as it would restrict the supply of housing by directing new development to within development limits such as Stansted Mountfitchet. As such, the provision of a total of 31 dwellings, including 11 No. private dwellings would be a substantial social benefit and an added benefit in an area where a disaggregated approach to analysing the housing market shows an above average deficit in supply.

67. Curiously however, the consultant's housing needs assessment prays in aid the fact that 45% of all households in Stansted Mountfitchet had at least 2 bedrooms that were unoccupied, according to the 2021 census estimates. According to the consultants this is down to older people having no financial reason to move due to a lack of locally alternative accommodation, or that they simply do not want to leave their home. That may be so but I am not

persuaded that the proposal would effectively relieve pressure for under-occupied homes to be occupied by younger families with children, when providing more smaller homes in the first place to incentivise purchase or rental by older people, or indeed anyone living in a property that is too large for them, would seem a more straightforward and logical response.

68. The 52% affordable housing, 25% of the affordable housing units as First Homes and plots for a self-build and custom housebuilding scheme would all be secured by the s106 obligation. The Levelling-up Bill has not been enacted and little weight is given to the proposed amendment whereby a duty is proposed to grant sufficient permissions for this type of housing. Nevertheless, there would be a particular benefit to providing self-build units since Stansted Mountfitchet appears to have an identified need for them.
69. Overall however, the shortfall in the housing land supply is far from substantial and the trajectory shows an improvement in recent years. Therefore I disagree with the applicant that the weight to be given individually to these matters should be "very considerable".
70. The required biodiversity net gain cannot be delivered on-site, therefore off-site arrangements are proposed. Land at Dowsetts Farm, Ware, some 2.42 hectares, currently in arable use, would become appropriate grassland to create the net gain. The OHCMP would be implemented through the s106 as described above, between the applicant and owners of the application site and the offsetting land.
71. The proposals vaunt a significant net gain, with an increase of +58.43% in area units and +29.76% in linear units. The ecological assessment finds that such gains represent a significant increase in ecological value being delivered by the proposals. However, as the assessment itself points out, the development proposals would see the large-scale loss of habitats within the application site, with the majority of grassland and scrub lost to facilitate development. As much of the habitat present within the site would be lost, the enhancement measures described do not appear to me to provide a significant amount of mitigation. The proposals on the other hand would deliver a 6-acre area of land, enhanced from arable use to wildflower meadow. Yet I also consider, having regard to Natural England's biodiversity user guide that given the important ecosystem services value provided by trees, they should be subject where possible to like for like compensation rather than be replaced by other habitats.
72. Where a project cannot achieve a net gain in biodiversity units on-site, off-site units can be used. A "spatial risk multiplier" adjusts the biodiversity units by penalising an off-site habitat located at distance from the impact site. The metric does not override or undermine existing planning policy or legislation, and the user guide notes that the mitigation hierarchy, which should always be considered, aims to retain habitats in situ, avoiding or minimising habitat damage so far as possible, before looking to enhance or recreate habitats.
73. For the purposes of the BNG offsetting exercise both application and mitigation sites may be in the same national character area if not the same local planning authority, therefore no spatial risk multipliers are applied to reduce the calculation of net gain. However, the purpose of the guidance is to

encourage offsetting within a reasonable radius of the impact site. Whilst technically, the calculations may show an impressive increase in net gain biodiversity, the ecological and social drivers for off-site habitat close to where losses occur are in effect to avoid depleting biodiversity in local areas or to recognise the cultural ecosystem services provided to a local community, as recognised in the user guidance.

74. For the above reasons I am not persuaded that the particular compensatory approach proposed to habitat loss on the site overcomes policy concerns. LP Policy ENV8 which underpins the protection of important woodland, states that development will only be permitted if the need for it outweighs the importance of the given features and mitigation would *"compensate for the harm and reinstate the nature conservation value of the locality"*. Thus retaining the nature conservation value of at least the locality is a policy requirement, and it is unclear how conversion of an arable field outside the district and some way distant to achieve a net biodiversity gain, would meet this criterion effectively.

75. As to the socio-economic benefits of 31 new dwellings these should be weighed as moderate in my view, given the moderate scale of the development and lack of detail supplied in the assessment to substantiate the figures advanced in favour of the scheme. These are only summarised in the local housing need assessment, from which I cannot be confident that such figures are achievable or could be precisely measured in terms of outputs.

76. The applicant does not put forward any of the other matters contained in the s106 obligation as a positive benefit, and by and large they would be neutral in weight as tending to make the development acceptable in planning terms. However, improvements to the passenger transport infrastructure in the locality would represent more direct benefits for the wider local community and I give these benefits moderate weight. For the avoidance of doubt I have considered the proposed employment strategy to facilitate local employment and training, however the arrangements are vague, limited to construction of the development which one would expect to be principally sourced locally, and their inchoate nature prevents me from giving it more than limited weight as part of the socio-economic benefits of the scheme.

77. There are potential benefits to be had through good design and paragraph 134 of NPPF states that significant weight should be given to development that reflects local and national design guidance and codes, however since the application is for outline permission, limited weight is given to good design.

Whether any harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposed development

78. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the GB. Very special circumstances will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

79. Substantial harm would result from inappropriateness. In addition, the harm from the loss of openness, and conflict with two of the five GB purposes, would

be significant. The harm referred to in paragraph 148 of NPPF is not limited to harm to the GB. There would in addition be substantial harm to the character and appearance of the area which also carries considerable weight.

80. Substantial weight is given to the provision of affordable housing, as it is to the market housing, although as a component of the market housing, the self-build/custom units proposal, whilst fulfilling an important part of the government's strategy to boost the supply of housing, is modest in scale and attracts only moderate weight. There would be moderate socio-economic benefits and the location of the site on the edge of the settlement but reasonably close to a range of services and facilities, has sustainable benefits which carry moderate weight. For the reasons given above limited weight is given to the off-site arrangements that would not increase biodiversity in the locality or realise the full environmental potential of the habitat on the site itself which I consider to be important to the character of the locality. However given that in numerical units the biodiversity net gain would quantitatively appear to exceed requirements, the benefit to biodiversity gain overall is given moderate weight.
81. I have had regard to these other considerations, and also given slight additional weight to the benefit arising from the s106 matters discussed above, and to the potential for a well-designed scheme at reserved matters stage. However, these considerations taken individually or in combination, do not clearly outweigh the harms that I have identified. Accordingly, the very special circumstances necessary to justify the proposed development do not exist. The proposed development would therefore conflict with the requirements of section 13, NPPF as described above, and LP Policy S6 insofar as it aligns with national GB policy.
82. Section 38(6) of the 1990 Act requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. There is no five-year housing land supply, although the extent of the shortfall is disputed. At any rate the acknowledged shortfall means that paragraph 11(d) of NPPF applies and the most important policies for determining the application are deemed to be out-of-date. Therefore, where the development plan policies, most important for determining the application are out-of-date, national policy is that permission should be granted, subject to section 38(6), unless sub-paragraph (i) or (ii) applies.
83. In this case, sub-paragraph (i) of NPPF, paragraph 11(d) applies. Having regard to footnote 7 which notes that GB land is included among matters subject to the application of NPPF policies that protect areas or assets of particular importance, the absence of very special circumstances to justify inappropriate development in the GB in my view provides a clear reason for refusing the development proposed.
84. The proposed scheme has several positive aspects to it, however the very special circumstances do not clearly outweigh the conflict with the development plan and national policy in the NPPF with regard to the totality of harm. It would also conflict with the development plan as a whole, given its substantial adverse effect on the character and appearance of the area in conflict with the aims of key LP Policies S1, S6, S7, ENV3, ENV8, and paragraphs 124, 148 and 174 of the Framework, as set out above.

Other matters

85. The application site is in Flood Zone 1 where there is a low probability of flooding. Concerns raised by ECC as lead local flood authority could be satisfactorily addressed through conditions ensuring a satisfactory drainage system, include details of future maintenance and management.
86. The applicant submitted a heritage statement that assessed the impact of the scheme on the setting of a Grade II listed building, Fairfield, to the north of the application site on Silver Street. I am satisfied that the impact of the proposed development would be negligible on its setting and comply with the aim of LP Policy ENV2 to protect the setting of listed buildings.
87. The conditions recommended by the Council did not include conditions related to noise mitigation highlighted by the applicant's noise consultants to mitigate impact on the proposed properties in the south-eastern corner of the application site. I have considered the consultants' proposed conditions and note they would secure the necessary mitigation through subsequent approval of reserved matters and discharge of the limitations in those conditions.
88. I have had regard to the suggested planning conditions together with the comments thereon, which I have considered against the advice in PPG. None of the conditions taken individually or in combination would adequately remediate the planning harm I have found that would arise as result of the proposed development.

Overall conclusion

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

Grahame Kean

INSPECTOR

For information:

- i. In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so, the Planning Inspectorate gave clear advice in advance of, and during the application of the expectation and requirements for the submission of documents and information, ensured consultation responses were published timeously, and gave clear deadlines for any additional submissions and responses.
- ii. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 ("the Act") is final, which means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.
- iii. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>.