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## Appeal Decision

Site visit made on 4 October 2021

by **Peter D Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2021.

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### Appeal Ref: APP/C1570/W/21/3271985

### May Walk, The Stables, Elsenham Road, Stansted CM24 8SS.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Stuart Richardson (NB Investments UK Ltd) against the decision of Uttlesford District Council.
  - The application Ref UTT/20/1643/FUL, dated 26 June 2020, was refused by notice dated 2 March 2021.
  - The development proposed is improvements to existing site access, formation of new internal road, tree planting and landscaping, construction of 11 dwellings and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have been copied into correspondence from Essex County Council acting as Lead Local Flood Authority regarding surface water drainage matters in respect of this appeal. The information was not requested by myself as Inspector and has been submitted late. In any event in response to a submission by the agent in response to this late submission the evidence would suggest that the LLFA had already indicated in December 2020 in response to additional information from the appellant that, subject to the imposition of conditions, the LLFA were satisfied regarding the proposal. I have therefore discounted this late submission from the LLFA dated 20<sup>th</sup> October 2021 and have not considered it in my decision.
3. In the period since the appeal was submitted the Government has published a revised version of the *National Planning Policy Framework* (The Framework). The revised Framework has not brought me to any different decision on the appeal and therefore I have not considered it necessary to invite the appeal parties to comment on the new document.

### Main Issues

4. The main issues are:
    - whether the location is an appropriate one for housing;
    - the effect of the proposed development on the character and appearance of the rural setting and surroundings and
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- whether development of the site for housing would require a planning obligation to secure affordable housing.

## Reasons

5. The appeal site is located in countryside between the settlements of Stansted Mountfitchet and Elsenham and is outside the settlement boundaries to each. It is not identified as a valued landscape. The site takes the form of a large open paddock with post and rail fencing bounded by the B1051 road between Stansted and Elsenham to the south, some residential stable and barn conversions to the north and May Walk public right of way and bridleway to the west. The boundaries are generally well screened by trees and hedgerows. The previous use of the site was as a livery business although at the time of my visit it was not in use for equestrian purposes.
6. The site is about 1.8 kilometres from the centre of Stansted Mountfitchet and about 0.75 kilometres from the shops and services in Elsenham but slightly further from the school in Elsenham. It is on a bus route between the two villages with the nearest stops in Elsenham, about 300metres from the site access road.

### *Whether the location is an appropriate one for housing*

7. *Uttlesford Local Plan (ULP) Policies S1 and S3* define the settlement boundaries for Stansted Mountfitchet and Elsenham respectively. The site lies outside both. The ULP at Policy S7 attaches strict control over development in the countryside. However, a focussed review of the ULP to assess it in the light of the Framework was carried out and revisions made. It was found that Policy S7 was only partially consistent with the Framework in that the Framework does not protect the countryside in its own right and, where Policy S7 is used to restrict housing, it cannot be seen to be consistent with the language of the Framework. It has been put to me that the Framework adopts a much more flexible approach to development in the countryside. Whilst this is undoubtedly true in respect of the sustainable growth and expansion of business and economic development in rural areas a slightly different approach is taken to housing development.
8. The Framework encourages sustainable housing development in rural areas where it would enhance or maintain the vitality of a rural community and particularly where it offers opportunities which will support local services in a village or a group of settlements. In respect of the appeal site and its distance and separation from both Stansted Mountfitchet and Elsenham I am not persuaded that this would be the case. Although the site is reasonably close to Elsenham, the M11 acts as a physical and visual boundary separating the main built-up area of Elsenham from the appeal site and with intervening countryside between the motorway and the site it does not relate well to the built form of the settlement, its character and function. Moreover, the links by sustainable transport modes are not well developed between the settlements with only a narrow footpath on one side of the B1051 and approximately a 300 metre walk from the proposed site entrance to the nearest bus stops in Elsenham east of the M11.
9. I acknowledge that there is already housing adjacent to the site at its north end. However, this was predominantly a result of conversions of existing barns and stable buildings from the former use as a livery yard and rabbit breeding unit. What is now being proposed is, in the main, the greenfield development of paddock land on the rest of the Eastfield Stables site albeit at a low density. Location of the development on the appeal site would not therefore comply with

either the Framework intent at Paragraph 79 or the spatial strategy of the ULP.

*Character and appearance*

10. I have been invited to conclude that because the paddocks at Eastfield Stables are well screened from the surrounding landscape by earth bunding, mature hedgerows and trees that the site does not relate to the open countryside and therefore the impact of the development on the countryside will be minimal. However, the fact that the site is screened does not mean that it plays no part in the flow of open countryside separating Elsenham and Stansted and preventing their coalescence. Nor does it mean that just because the site is well-screened it can be considered a candidate for development. The impact of development on the rural character of an area is not simply restricted to whether it can be seen or not or its detailed design but about how that use would impact on the rural setting
11. As stated above I acknowledge that there has been residential development through conversion to the north of the site but this is contained in a relatively compact grouping similar to the pattern of other development in the countryside in the vicinity. The appeal proposal of 11 dwellings and access road would introduce development over a much wider area of greenfield paddocks not just restricted to the manege.
12. I note that the appellant has selected a design that would echo equestrian style buildings and limits the design to single storey using materials typically employed in stabling. Nevertheless, this would not overcome the problem of spreading development over the wide area of the site and I am not therefore persuaded by the argument that the design would retain the openness of the site.
13. It has been put to me that the design is to an exceptionally low density in a well-landscaped parkland setting and that were the site to end up being developed as a housing allocation in the future the density could be much higher. This though presupposes that the site would be deemed an appropriate area for housing expansion which, in its current context, I have already concluded that it would not.
14. The proposed development would therefore amount to a material and adverse change to the character of the rural parkland as a result of the new access road, the housing units themselves and the ancillary domestic structures and buildings that would inevitably follow. The Framework at paragraph 174 requires that development contributes to and enhances the natural and local environment and that it should recognise the intrinsic character and beauty of the countryside. For the above reasons, I am not persuaded that it would. The ULP at Policy GEN2 requires development to be compatible with the scale, form, layout and appearance and materials of its surroundings, amongst other things, and is consistent with the Framework in this respect. Whilst I acknowledge that some tests within Policy GEN2 would be met, this first test would not. Moreover, although the restrictive element on housing in the countryside in Policy S7 is no longer consistent with the Framework, the Policy requires development, where it does take place in the countryside, to ensure the appearance protects or enhances the character of the part of the countryside in which it is set. This element is consistent with the Framework. For the above reasons i.e. principally the spread of development across the paddock there would be an unacceptable impact on the established rural character and openness of the site.

15. I note that the access proposals have been designed to provide a new access from the B1051 into the site for both the proposed and existing development on the stable site and in doing so would allow the May Walk bridleway to be relieved of motorised vehicular traffic. I acknowledge that this would improve the rural character of May Walk but would not of itself be sufficient of a benefit to offset the wider harm from the development on the rural character of the site itself.

### *Securing Affordable Housing*

16. Policy H9 of the ULP requires that housing sites over 0.5 hectares or 15 units make provision for 40% of the proposed number of units to be affordable housing and the appellant has indicated that 4 units of affordable accommodation will be provided. Although the policy does not specifically state that this will be achieved through a S106 planning obligation it states that the provision will be negotiated on a case by case basis and this is not a matter that can be satisfactorily controlled through a condition. The provision and ongoing management restrictions need to be applied through a legal agreement.

17. Policy H9 reflects the significant scale of affordable housing need in the District and, given this, the Council's aspiration is that as many allocated and windfall residential developments as possible should provide affordable housing. There is no other material consideration that in this case would warrant removing the provision. The need for a legal agreement in this case would meet the tests for Planning Obligations set out in Paragraph 57 of the Framework in that it would be directly and fairly and reasonably related to the development and would be necessary to make it acceptable in terms of Policy H9.

18. The appellant does not dispute the need for such provision and indeed has provided a draft heads of terms for an agreement to deliver the affordable housing. However, an executed and certified copy of the planning obligation is not before me. As this would be necessary to make the development acceptable in planning terms and as it would not be appropriate to secure the obligation by way of a condition, there is no mechanism before me that would guarantee the necessary provision and management of affordable housing. As a result there would be conflict with Policy H9 of the ULP.

19. Even if the planning obligation had been completed and whilst acknowledging that the provision of 4 affordable housing units would be a benefit, this of itself would not be reason to allow the appeal and would not outweigh the harm arising from the development in respect of the location of the housing development and its impact on the character and appearance of the rural area which would be contrary to ULP Policies S7 and GEN2.

### *Other Matters*

20. I acknowledge that the proposal would result in the provision of a mix of new housing. In that way the 11 units would make a contribution to meeting housing needs in the district as a whole. However, I do not accept the argument that the site is a small previously developed site and therefore benefits from the support of Paragraph 69 of the Framework. Other than the small portion that was previously the manege, the site is not previously developed land and, as it extends to over 3 hectares, nor is it a small site in the context of Paragraph 69.

21. It has been put to me that the Council has a housing shortfall and, although I note that the published *Housing Delivery Target* (HDT) results for Uttlesford in 2020 show that in the last 3 years the council achieved a delivery rate in excess of the requirement, there is a shortfall in housing land supply. The Council cannot provide a 5 year supply and currently provision for only just over 3 years is available. I accept that in this context, the supply of further housing is an important material consideration.
22. Although the Council was well advanced in preparing its replacement local plan this was withdrawn along with proposed site allocations and whilst work is progressing on a revised version of the plan it has not progressed to the extent that there is certainty over when or how the housing requirement will be met. The adopted ULP housing delivery policies and spatial strategy are therefore out of date and the Framework's 'tilted balance' at Paragraph 11 is triggered. Accordingly, it is important to apply that balance.
23. It has been put to me that because the existing policies and spatial strategy of the adopted ULP cannot deliver the necessary housing requirement it is inevitable that sites such as the appeal site outside settlements will ultimately be developed. I accept that in the context of the housing supply position the settlement boundaries cannot be considered to be inviolable and that the call for sites as a result of preparing a new local plan will probably result in extensions to existing settlement areas. However, it is less likely that sites, such as the appeal site, at some distance from existing settlement boundaries and particularly where they would result in coalescence of existing settlements will be chosen. I have been referred to a recent appeal at Rush Lane Elsenham (ref APP/C1570/W/19/3228484) where the Inspector allowed the appeal. However, having carefully considered this appeal decision and, whilst I concur with the Inspector's view regarding the seriously out of date ULP and the fact that the 'tilted balance' is engaged, in two major respects the sites are very different. First the Elsenham site immediately adjoined the built-up area of Elsenham and secondly it was already identified in the emerging replacement local plan (since withdrawn) to be removed from the Countryside Protection Zone and allocated for housing development. There was therefore already an acceptance that the site could be developed.
24. The 'tilted balance' at Paragraph 11d) of the Framework provides that the presumption in favour of sustainable development should apply other than in two circumstances. The second of these is relevant in this case, namely whether the harm from the development would significantly and demonstrably outweigh the benefits of the development against the policies in the Framework taken as a whole. For the reasons above namely the location of the site poorly related to nearby settlements and the harm to character and appearance of the countryside together with the inability to guarantee delivery of the necessary affordable housing provision to meet identified local needs there would be conflict with the policies of the Framework. Whilst I acknowledge that there is some benefit in terms of a modest contribution of 11 units to the housing shortfall the harm would significantly and demonstrably outweigh this benefit.

## **Conclusion**

25. In reaching my decision I have had regard to the matters before me. Notwithstanding the benefit the development would bring in adding to housing supply and the benefit of reducing traffic on the bridleway, for the reasons above

this proposal conflicts with Framework and Development Plan policies. Moreover, the above assessment in terms of Paragraph 11 of the Framework shows that the presumption in favour of development would not apply in this case and would not therefore be a material consideration that would justify a departure from the Development Plan policies. For the reasons above the appeal should be dismissed.

*P. D. Biggers*

INSPECTOR