



Phillips Planning Services Ltd.
Town Planning and Development Consultants

**LAND WEST OF ROBIN HOOD
ROAD
ELSENHAM**

PLANNING STATEMENT

**OUTLINE APPLICATION FOR THE ERECTION OF UP TO 40
DWELLINGS WITH ALL MATTERS RESERVED EXCEPT FOR
ACCESS**

SEPTEMBER 2023

1.0 INTRODUCTION

- 1.1 The following Planning Statement is submitted in support of an Outline Application for the erection of up to 40 dwellings with all matters reserved except for access, at Land West of Robin Hood Road, Elsenham, formerly referred to as Land south of Rush Lane.
- 1.2 The proposed development comprises up to 40 dwellings, of which up to 16 units (40%) will be affordable housing. A new access will be created off Robin Hood Road. The site is approximately 2.25Ha in size comprising open grassland. The proposals include for new informal open space and enhanced Public Right of Way through the site.
- 1.3 Outline approval was granted for the erection of up to 40 dwellings with all matters reserved except for access, at Appeal (UTT/19/0437/OP and APP/C1570/W/19/3242550) in September 2020. A Reserved Matters application (UTT/23/2028/DFO) for this development was submitted in August 2023 and at the point of submission is pending determination.
- 1.4 The general form of development of this proposal is very similar to the approved scheme, i.e., the areas to be developed, and that set aside for open space, sustainable drainage, reptile mitigation, and integration with the public right of way. This new proposal seeks to secure approval for an alternative access point, which is now proposed to be from Robin Hood Road, rather than from Rush Lane.
- 1.5 The Planning Statement forms part of a suite of supporting documents submitted in support of the proposals; these include:
 - Air Quality Statement
 - Design and Access Statement
 - Ecological Assessment
 - Flood Risk Assessment and Drainage Strategy
 - Heritage Statement
 - Landscape And Visual Appraisal
 - Noise And Vibration Assessment
 - Transport Statement
 - Travel Plan

- Tree Report

1.6 This statement is set out as follows:

1.0 Introduction

2.0 Site Description

3.0 Planning History

4.0 Planning Policy

5.0 Planning Analysis

6.0 Conclusions

Appendix A – Appeal Decision

APP/C1570/W/19/3242550

2.0 SITE DESCRIPTION

- 2.1. The site is located in Elsenham, Essex, in the district of Uttlesford. Elsenham is a large village, located 7km northeast of the historic Market Town of Bishops Stortford. To the south lies London Stansted Airport, and the village is served directly by the M11 Motorway which skirts the western boundaries of the parish.
- 2.2. The village benefits from a range of facilities and services including a primary school, convenience store, post office, public house, GP Surgery, and a train station with services to London and Cambridge (including access to Bishop Stortford and Harlow). The village is a highly sustainable settlement.
- 2.3. The site comprises of land bounded by Robin Hood Road to the east, and Rush Lane to the north. To the south the site adjoins residential development to the west, and to the south is a train line and Stansted Brook, a water course that runs along part of the southern boundary.



Aerial View of the site and context

- 2.4. This is a greenfield site which slopes down from north to south with undulating contours, allowing views out to the south and southeast. The site is bounded by

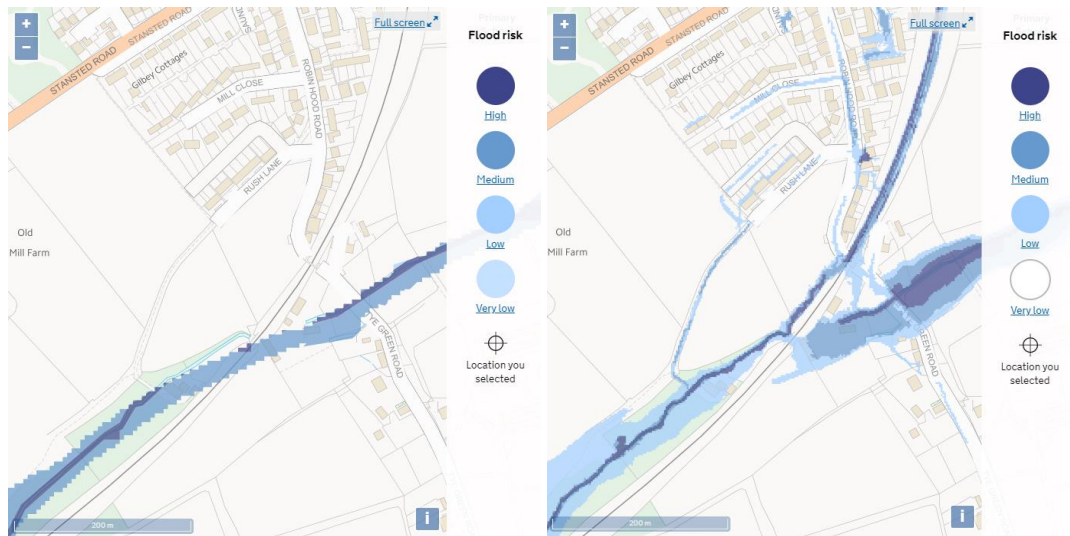
numerous mature trees and hedgerows which screen views from Robin Hood Road and Rush Lane.

- 2.5. There is a public right of way which runs across the southern boundary of the site, and there is also a pedestrian railway crossing on the eastern boundary at the end of Robin Hood Road, which provides pedestrian access across to Tye Green Road.
- 2.6. The site is not located within or adjacent to a Conservation Area, or an Area of Outstanding Natural Beauty. The site is also not within the Metropolitan Green Belt, although it is part of a Countryside Protection Zone which encircles the Airport.
- 2.7. In respect of designated Heritage Assets, there are four Grade II Listed buildings to the northeast of the site, but no known non-designated heritage assets.



Extract from the Historic England List Map

- 2.8. The Environment Agency's Flood Map identifies that the site is within Flood Zone 1 and is therefore considered to be at low risk of flooding, but there are some risks to be assessed in respect of surface water flood risk from the field ditches and Stansted Brook to the south.



Flood Risk Map and Surface Water Flood Risk Map (EA)

2.9. The above observations show a relatively unconstrained site offering great scope for residential development, that would be sited adjacent to the village envelope, while sitting in amongst existing established residential development. In spatial terms the development of the site is a logical extension of the village.

3.0 PLANNING HISTORY

3.1. The Council's website shows the following planning history for the site. The application refers to the site as Land west of Robin Hood Road to provide clarity on the way in which this site is to be served. The land has previously been referred to as Land south of Rush Lane, as the approved access was from Rush Lane. They are the same site:

UTT/23/2028/DFO Details following outline application UTT/19/0437/OP (allowed on appeal reference APP/C1570/W/19/3242550) for erection of 40 dwellings - details of appearance, landscaping, layout, and scale.

Decision Pending

UTT/23/1968/DOC Application to part discharge condition 16 (Written Scheme of Investigation for Archaeology) attached to UTT/19/0437/OP (Approved under Appeal APP/C1570/W/19/3242550).

Part-discharged: 26/09/2023

APP/C1570/W/19/3242550 Outline application for the erection of up to 40 dwellings with all matters reserved except for access.

Appeal Allowed: 04/09/2020

UTT/19/0437/OP Outline application for the erection of up to 40 dwellings with all matters reserved except for access.

Refused: 14/11/2019

UTT/0042/77 Outline application for 2 storey housing

Refused: 21/03/1977

4.0 PLANNING POLICY

4.1. The following national and local planning policies are considered relevant to this proposal.

NATIONAL PLANNING POLICY

4.2. The National Planning Policy Framework sets out government's planning policies for England and how these are expected to be applied. As set out in paragraph 2, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions.

4.3. The Framework should be read as a whole, and therefore all policies within the Framework are relevant to the determination of an application; however, some parts are more relevant than others, and the following paragraphs are considered most relevant to this application:

4.4. **NPPF Paragraph 8**

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) an economic objective – to help build a strong, responsive, and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation, and improved productivity; and by identifying and coordinating the provision of infrastructure.
- b) a social objective – to support strong, vibrant, and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open

spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

- c) an environmental objective – to contribute to protecting and enhancing our natural, built, and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

4.5. **NPPF Paragraph 11**

Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

4.6. **NPPF Paragraph 15**

The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social, and environmental priorities; and a platform for local people to shape their surroundings.

4.7. **NPPF Paragraph 60**

To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

4.8. **NPPF Paragraph 61**

To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

4.9. **NPPF Paragraph 79**

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. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

LOCAL PLANNING POLICY

4.10. S38 (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. The adopted Development Plan for this location is the Uttlesford Local Plan 2005. Policies relevant to this proposal are set out below. Given the age of the adopted plan, which pre-dates the National Planning Policy Framework, the policies of the plan must be weighted accordingly against any conflict with the Framework.

4.11. For further clarification, in a review of the Council's Planning Policy, it is also our understanding that the village of Elsenham does not have a Neighbourhood Plan, and is not a "designated area", so no plan is being progressed. We also note that the Local Plan is being reviewed following the withdrawal of an earlier review from 2019. The Regulation 18 plan was published on Wednesday 27th September, but has not yet been approved by Local Plan Leadership Group (4th October) nor Cabinet (16th October). The intended dates for consultation are 3rd November - 15th December. However, any emerging policy at this early stage would not carry weight within the planning balance.

Uttlesford Local Plan 2005

4.12. **Policy S3: Other Development limits**

Elsenham, Great Chesterford, Newport, Takeley and Thaxted are identified as Key Rural Settlements. Their boundaries, including village extensions at Takeley and Thaxted, and the boundaries of other settlements are defined on the Proposals Map. Development compatible with the settlement's character and countryside setting will be permitted within these boundaries.

4.13. **Policy S7: The Countryside**

The countryside to which this policy applies is defined as all those parts of the Plan area beyond the Green Belt that are not within the settlement or other site boundaries. In the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there or is appropriate to a rural area. This will include infilling in accordance with paragraph 6.13 of the Housing Chapter of the Plan. 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.

4.14. **Policy S8: The Countryside Protection Zone**

The area and boundaries of the Countryside Protection Zone around Stansted Airport are defined on the Proposals Map. In the Countryside Protection Zone planning permission will only be granted for development that is required to be there or is appropriate to a rural area. There will be strict control on new development. In particular development will not be permitted if either of the following apply:

- a) New buildings or uses would promote coalescence between the airport and existing development in the surrounding countryside;
- b) It would adversely affect the open characteristics of the zone.

4.15. **Policy Gen1: Access**

Development will only be permitted if it meets all of the following criteria:

- a) Access to the main road network must be capable of carrying the traffic generated by the development safely.
- b) The traffic generated by the development must be capable of being accommodated on the surrounding transport network.

- c) The design of the site must not compromise road safety and must take account of the needs of cyclists, pedestrians, public transport users, horse riders and people whose mobility is impaired.
- d) It must be designed to meet the needs of people with disabilities if it is development to which the general public expect to have access.
- e) The development encourages movement by means other than driving a car.

4.16. **Policy Gen2: Design**

Development will not be permitted unless its design meets all the following criteria and has regard to adopted Supplementary Design Guidance and Supplementary Planning Documents.

- a) It is compatible with the scale, form, layout, appearance, and materials of surrounding buildings.
- b) It safeguards important environmental features in its setting, enabling their retention and helping to reduce the visual impact of new buildings or structures where appropriate;
- c) It provides an environment, which meets the reasonable needs of all potential users.
- d) It helps to reduce the potential for crime;
- e) It helps to minimise water and energy consumption;
- f) It has regard to guidance on layout and design adopted as supplementary planning guidance to the development plan.
- g) It helps to reduce waste production and encourages recycling and reuse.
- h) It minimises the environmental impact on neighbouring properties by appropriate mitigating measures.
- i) It would not have a materially adverse effect on the reasonable occupation and enjoyment of a residential or other sensitive property, as a result of loss of privacy, loss of daylight, overbearing impact, or overshadowing

4.17. **Policy Gen3: Flood Protection**

Within the functional floodplain, buildings will not be permitted unless there is an exceptional need. Developments that exceptionally need to be located there will be permitted, subject to the outcome of flood risk assessment. Where existing sites are to be redeveloped, all opportunities to restore the natural flood flow areas should be sought.

Within areas of flood risk, within the development limit, development will normally be permitted where the conclusions of a flood risk assessment demonstrate an

adequate standard of flood protection and there is no increased risk of flooding elsewhere.

Within areas of the floodplain beyond the settlement boundary, commercial industrial and new residential development will generally not be permitted. Other developments that exceptionally need to be located there will be permitted subject to the outcome of a flood risk assessment.

Outside flood risk areas development must not increase the risk of flooding through surface water run-off. A flood risk assessment will be required to demonstrate this. Sustainable Drainage Systems should also be considered as an appropriate flood mitigation measure in the first instance.

For all areas where development will be exposed to or may lead to an increase in the risk of flooding applications will be accompanied by a full Flood Risk Assessment (FRA) which sets out the level of risk associated with the proposed development. The FRA will show that the proposed development can be provided with the appropriate minimum standard of protection throughout its lifetime and will demonstrate the effectiveness of flood mitigation measures proposed.

4.18. **Policy Gen7: Nature Conservation**

Development that would have a harmful effect on wildlife or geological features will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation. Where the site includes protected species or habitats suitable for protected species, a nature conservation survey will be required. Measures to mitigate and/or compensate for the potential impacts of development, secured by planning obligation or condition, will be required. The enhancement of biodiversity through the creation of appropriate new habitats will be sought.

4.19. **Policy ENV2: Development Affecting Listed Buildings**

Development affecting a listed building should be in keeping with its scale, character, and surroundings. Demolition of a listed building, or development proposals that adversely affect the setting, and alterations that impair the special characteristics of a listed building will not be permitted. In cases where planning permission might not normally be granted for the conversion of listed buildings to alternative uses, favourable consideration may be accorded to schemes which

incorporate works that represent the most practical way of preserving the building and its architectural and historic characteristics and its setting.

4.20. **Policy ENV8 – Other Landscape Elements of Importance for Nature Conservation** Development that may adversely affect these landscape elements.

Hedgerows	Plantations
Linear tree belts	Ponds
Larger semi natural or ancient woodlands	reservoirs
Semi-natural grasslands	River corridors
Green lanes and special verges	Linear wetland features
Orchards	Networks or patterns of other locally important habitats.

will only be permitted if the following criteria apply:

- a) The need for the development outweighs the need to retain the elements for their importance to wild fauna and flora.
- b) Mitigation measures are provided that would compensate for the harm and reinstate the nature conservation value of the locality.

Appropriate management of these elements will be encouraged through the use of conditions and planning obligations.

4.21. **Policy ENV10 - Noise Sensitive Development and Disturbance from Aircraft**

Housing and other noise sensitive development will not be permitted if the occupants would experience significant noise disturbance. This will be assessed by using the appropriate noise contour for the type of development and will take into account mitigation by design and sound proofing features.

4.22. **Policy H9- Affordable Housing**

The Council will seek to negotiate on a 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.

4.23. **Policy H10 – Housing Mix**

All developments on sites of 0.1 hectares and above or of 3 or more dwellings will be required to include a significant proportion of market housing comprising small properties. Affordable Housing on “Exception Sites”

5.0 PLANNING ANALYSIS

- 5.1. This is an outline proposal for the erection of up to 40 dwellings with all matters reserved except for access.
- 5.2. Outline approval was granted for the erection of up to 40 dwellings with all matters reserved except for access, at Appeal (UTT/19/0437/OP and APP/C1570/W/19/3242550) in September 2020. The general form of development in this proposal has many similarities to the approved scheme, i.e., the areas to be developed, and that set aside for open space, sustainable drainage, reptile mitigation, and integration with the public right of way. The primary difference is the proposed location of the access, which is now proposed to be from Robin Hood Road, rather than from Rush Lane.
- 5.3. The issues for consideration are:
- Principle of Development
 - Affordable Housing
 - Layout
 - Access & Highways
 - Landscape
 - Heritage
 - Flood Risk & Drainage
 - Trees
 - Ecology
 - Noise & Vibration
 - Air Quality

PRINCIPLE OF DEVELOPMENT

- 5.4. 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.
- 5.5. The adopted Development Plan is the Uttlesford Local Plan 2005. The site is located outside the settlement boundary and within the Countryside Protection Zone (CPZ) around Stanstead Airport. As such, the proposed development conflicts with

policies S7 (The Countryside) and S8 (Countryside Protection Zone). However, as discussed in further detail below, this Plan is significantly out of date, and does not address the present and future housing needs of the district and can only be given limited weight in the planning balance.

- 5.6. This site had previously been allocated for the development of 40 dwellings in the Pre-Submission Local Plan 2019 under policy ELS 1 (Land South of Rush Lane). This emerging plan was withdrawn on 30th April 2020, prior to the determination of the Appeal. The Council are now preparing a new Local Plan, but this is in the very early stages.
- 5.7. The withdrawal of the Local Plan 2019, and the fact that the new plan is in the early stages means that this proposal does not currently meet the strategy of the adopted Development Plan, or any emerging plan. However, there are a number of important and significant material considerations which weigh in favour of the proposed development and indicate that Planning Permission should be granted. These are:
- Adopted Development Plan Out of Date
 - 5 Year Land Supply
 - Extant Planning Permission
 - Previous Assessments of The Site

Adopted Development Plan Out of Date

- 5.8. The Uttlesford Local Plan was adopted in 2005 and predates the NPPF by seven years. The Plan was also adopted late in the plan period as it only covered the period from 2000 until March 2011. There has not therefore been an up-to-date Development Plan in Uttlesford for over 12 years. Policies such as S7 (The Countryside) and S8 (Countryside Protection Zone) which seek to protect particular areas do not address the present and future housing needs of the district. This is demonstrated by the fact that the Council's Countryside Protection Zone Study indicated that some of the land should be removed from the CPZ. This includes the removal of all of the land within the application site.
- 5.9. Policy S8 is therefore from an out-of-date plan, and it is not consistent with the NPPF.

as this document does not include any associated policies. Furthermore, the CPZ policy has never been independently tested for consistency with the NPPF. As the policy is inconsistent with the NPPF it can only be given limited weight.

5.10. The Inspector made several comments with regards to the Development Plan being out of date in the 2020 Appeal Decision:

14. *“The Development Plan for the District comprises the “Uttlesford Local Plan” 2005 (the LP). This was adopted seven years before the original Framework at a time when there was no requirement to boost significantly the supply of housing, no requirement to identify an Objectively Assessed Need and no presumption in favour of sustainable development. The LP only covered the period to 2011 and consequently expired nearly ten years ago. As the Appellants point out, the LP has now been out of date for longer than it was in date.*
15. *As is made clear at the beginning of Section 6 of the LP, one of its key components was to deliver the housing requirements which were based upon those in the “Essex and Southend-on-Sea Structure Plan to 2011” and the “Regional Spatial Strategy for the Southeast of England”. The LP housing requirements were derived from household projections which are now about three decades out of date. The policies in the LP, including settlement boundaries, allocations, were formulated and predicated upon the constrained supply set out in the Structure Plan. From the evidence I heard, it seems that most, if not all, the allocations in the LP have long since been built out.*
16. *Based on the foregoing, there can be little doubt that the LP is now painfully out of date in terms of its purpose, its strategy, its content, and its housing delivery policies. It does not meet the requirement for the Council to have an up-to-date plan and it is clearly not a strong foundation upon which to refuse planning permission.”*

(Appendix A, paragraphs 14-16)

5.11. With regards to the weight to be afforded to policies S7 and S8, the Inspector stated that:

20. *“The Framework does not contain specific policies relating to CPZs. However, many of the points made above are relevant to Policy S8. Whilst the overall landscape aims of the policy could be seen as being partially consistent with advice in paragraph 170(b), the policy is couched in the same protectionist language as Policy S7 which is at odds with the more positive approach adopted in the Framework.*

21. *From the evidence before me, most notably the Council’s Committee Reports pertaining to the appeal scheme and land west of Hall Road1, it is evident that the Council has, in some cases, adopted the positive approach advocated by the Framework rather than the strict application of Policies S7 and S8. As numerous large developments have been consented or built within the CPZ in recent years, it is also the case that existing settlement and CPZ boundaries bear little resemblance to the situation on the ground. This is particularly apparent in Elsenham.*

22. *At the Hearing, the Council accepted that its housing land supply situation would be significantly worse if the Council had applied Policies S7 and S8 in the same manner as it has done in this case. In other words, applying the restraints of Policies S7 and S8 will continue to compromise the Council’s ability to meet its future housing requirements. Overall, these matters lead me to conclude that settlement/CPZ boundaries in Uttlesford are not inviolable.”*

(Appendix A, paragraphs 20-23)

5.12. The adopted Development Plan is therefore significantly out of date and carries very limited weight. This would remain to be the case even if the Council were able to demonstrate a 5-year supply of housing land.

5 Year Housing Land Supply

5.13. The Council’s latest 5-Year Land Supply Statement and Housing Trajectory (published December 2022) confirms that as of 1st April 2022, the Council has a housing supply of 4.89 years for the period 2022-2027. The Council is therefore unable to demonstrate a five-year supply of housing land.

5.14. None of the exceptions in footnote 7 of NPPF Paragraph 11 (d) (i), are relevant to the site and so the “*tilted balance*” is therefore engaged and the presumption in favour of sustainable development applies.

5.15. The Council were also unable to demonstrate a 5-year supply of housing land during the Appeal. With regards to this the Inspector stated that:

“In light of the Council’s 5YHLS position, those policies that are most important for determining the application are to be considered out-of-date. Along with my findings in relation to consistency, this strictly limits the weight I attach to the conflict with LP Policies S7 and S8. It also engages the default position identified in paragraph 11(d) of the Framework.”

(Appendix A, paragraph 38)

5.16. With regards to the benefits of the proposal, the Inspector stated that:

“The provision of up to 40 dwellings comprising of market and affordable housing carries substantial weight in a district with an acknowledged acute shortage of market and affordable housing. This is the weightiest factor in the overall balance. Beyond the public footpath, there is currently no public access to the appeal site and therefore the opportunity for the local community to use the areas of open space created by the development, is also a benefit, albeit one that is primarily intended to address the needs of the occupants of the appeal scheme itself. Collectively, the social benefits attract substantial weight.”

(Appendix A, paragraph 40)

5.17. The Inspector concluded that:

“Based on the foregoing, it is clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from this development. I am thus satisfied that the appeal scheme would constitute sustainable development. This is a significant material consideration sufficient to outweigh the limited development plan conflict.”

- 5.18. The Council's current land supply position is a significant material consideration. The Appeal Decision confirmed that the proposal constituted sustainable development, and the benefits previously identified by the Inspector still stand.

Extant Planning Permission

- 5.19. The extant Planning Permission, granted at Appeal (UTT/19/0437/OP and APP/C1570/W/19/3242550) in September 2020, means that the principle of the development of this site has already been established. A Reserved Matters application (UTT/23/2028/DFO) was submitted in August 2023 and is currently pending determination. The extant permission is a significant material consideration.
- 5.20. It is important to note that the Inspector allowed the Appeal after the previous emerging plan had been withdrawn and confirmed in paragraph 5 of the decision (Appendix A) that it carried no weight in the determination of the Appeal. The withdrawal of the previous emerging Plan, and lack of a replacement beyond the early stages does not therefore indicate that the proposed development should now be refused.
- 5.21. The extant planning permission is the most significant of all the material considerations and carry's the most weight in assessing the principle of development.

Previous Assessments of The Site

- 5.22. The sites suitability for accommodating a development of 40 dwellings has also previously been assessed in detail, both through the preparation of the Local Plan 2019, and by the Inspector when determining the Appeal in 2020.

Local Plan 2019

- 5.23. The Council's assessment of the site as part of the Local Plan process stated that it is well related to the village, within walking distance of the shops, school, and surgery, and would contribute towards a sustainable pattern of development.
- 5.24. Policy ELS 1 stated that detailed proposals which comply with other relevant policies will be permitted provided subject to site specific development requirements

including that the development; provides 40 residential dwellings and recreational open space; is designed to mitigate adverse effects upon existing residential and community interests; and a Transport Assessment, Landscape and Visual Impact Assessment, and Ecological Appraisal will be required to support a planning application.

- 5.25. The Council therefore previously accepted that the site was suitable for the proposed development.

Appeal Decision

- 5.26. The Inspector stated that the main issue for consideration was the effect of the development on the character and appearance of the countryside (paragraph 6).
- 5.27. The site was independently assessed as part of the LUC study in 2016, which sought to assess the extent to which land within the CPZ was meeting its purposes as set out in Policy S8, to enable the Council to make informed decisions about its continuing validity through the emerging Local Plan. With reference to this, this Inspector stated that:

“The study found that development of the appeal site for housing would result in a moderate level of harm due to its low rating against purpose 4 (restricting coalescence). This was partly because of the dispersed nature of the nearest settlement and the site’s relative distance from the airport. The study concluded that the CPZ/settlement boundary should be moved to the railway line which itself could prevent coalescence between the airport and Elsenham. The appeal site was subsequently recommended for removal from the countryside and CPZ in the eLP. In my view the LUC study is a significant material consideration in favour of the appeal scheme.”

(Appendix A, paragraph 27)

- 5.28. The Inspector went on to state that:

“The site is currently enclosed behind mature landscaping on its boundaries. Except for the removal needed to create the site access, the hedges and trees would be retained and supplemented with new planting. Significantly, the Council accept that the development would not be readily visible over the

wider area. Where the dwellings might be visible, they are likely to be seen against the general townscape of Elsenham and would not be unduly intrusive in the wider landscape.”

(Appendix A, paragraph 30)

5.29. The Inspector concluded that:

“I have found that the development would result in limited harm to the open characteristics of the CPZ and countryside. There would be no significant coalescence either between Elsenham and the airport or surrounding settlements. Overall, there would be limited conflict with the countryside protection aims of LP Policies S7 and S8.”

(Appendix A, paragraph 37)

5.30. Therefore, both the Council and the Appeal Inspector have previously considered the site to be suitable for a development of 40 dwellings, both in terms of sustainability and the impact on the character of the area. This again, is a significant material consideration.

Summary

5.31. Although there is some conflict with the adopted Development Plan, this is now significantly out of date and can only be afforded limited weight. There are also numerous material considerations which significantly weigh in favour of the proposed development. The most significant of these is the extant Planning Permission, which was allowed at appeal, and has already established the principle of the proposed development.

5.32. It was confirmed by the Council in the preparation of the previous Plan, and by the Inspector that the site is suitable for a development of 40 dwellings, both in terms of sustainability, and landscape and character impact. The Council are also unable to demonstrate a five-year supply of housing land, and the tilted balance is engaged meaning that the presumption in favour of sustainable development applies. The Inspector confirmed that the proposal constituted sustainable development. He found only limited harm to adopted development Plan and confirmed this was outweighed by the substantial benefits of the proposal. All of these benefits still stand.

- 5.33. The proposed development is therefore acceptable in principle. All of the supporting technical reports have been updated and are discussed below. These documents confirm that the proposed development will not result in any adverse impacts.

OTHER MATERIAL CONSIDERATIONS:

AFFORDABLE HOUSING

- 5.34. Policy H9 (Affordable Housing) states that the Council will seek to negotiate on a 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.
- 5.35. The proposed development comprises up to 40 dwellings, of which up to 16 units (40%) will be affordable housing, in accordance with Policy H9.

LAYOUT

- 5.36. This outline application is supported by an indicative layout which demonstrates that the site can deliver the 40 dwellings, in a manner that is consistent with the Essex Design Guide. The indicative layout has been designed to provide sufficient space for the dwellings to comfortably sit on the site, and for adequate parking and amenity areas. The layout ensures there will be no amenity issues such as overlooking, overbearing, or loss of light between existing or proposed properties. The layout makes use of the existing screening around the site and new planting is provided in the middle of the site to soften the appearance of the development.
- 5.37. The built development has been kept away from the southern part of the site which will be used for public open space, and for an attenuation pond. This serves several purposes. It keeps the dwellings away from the railway line which is the main source of potential noise. There are rights of way across this part of the site, which the scheme will integrate, and the layout enables these to pass through the attractive open space area, whilst avoiding the need to divert them. The site slopes from the north to the southwest so the attenuation pond has been situated in the

southwest corner as this is the most logical location to make use of the natural site levels.

ACCESS & HIGHWAYS

- 5.38. The application seeks detailed approval of the proposed access arrangements and is supported by a Transport Statement prepared by Savoy Consulting. This has been prepared following extensive pre-application consultation with the highway authority, and this has informed the access design submitted for the Council's approval.
- 5.39. The site will be accessed via a new priority junction on Robin Hood Road, on the eastern boundary of the site. The junction has been designed in accordance with the Essex Design Guide Highways Standards and is intended to allow easy access into and out of the site by delivery vehicles and a large refuse lorry. The internal road layout complies with the County Council's Residential Design Guide and is provided as indicative to show that the requirements can be accommodated.
- 5.40. The proposal also includes off site road improvements to Robin Hood Road. This comprises of the widening of Robin Hood Road to 5 metres; provision of a 2-metre-wide footway on the western side of Robin Hood Road for its entire length from the site access to the junction with Rush Lane; and the introduction of a short length of one-way working on Robin Hood Road south of Rush Lane.
- 5.41. A Stage 1 Road Safety Audit was undertaken by Alpha Consultants in January 2022, to examine the road safety implications of the proposed development. The Audit Team acted independently of the Design Team and had no prior involvement in the scheme. Three issues were raised and recommendations provided. A Designers Response was then subsequently prepared to address these issues.
- 5.42. Data from TRICS was used to calculate the expected traffic generation created by the development. The assessment found that the traffic generation is modest, with on average one new vehicle movement every three minutes in the peak hours and will therefore not have a material impact on the operation of the local highway network.

- 5.43. An examination of personal injury collision records on Robin Hood Road and the local highway network in the vicinity of the application site confirm that no personal injury collisions have been recorded during the last five-year period.
- 5.44. Savoy Consulting conclude that the proposed development will not have a material detrimental impact on the operation of the local highway network, and there is no material or overriding highway or transport reasons why the proposed development should not be granted planning permission.

LANDSCAPE

- 5.45. A Landscape and Visual Appraisal has been prepared by FPCR Environment and Design Ltd.
- 5.46. The indicative Site Layout shows how an appropriate edge to the settlement can be created, addressing the interface with Rush Lane and Robin Hood Road, neighbouring properties and also with Stansted Brook and the railway to the south, with new homes facing onto the public realm in order to present a “fair face” and to maximise passive surveillance.
- 5.47. The proposed development would alter the character of the site from an undeveloped pasture field to a medium density built residential development.
- 5.48. The proposed development is considered to have overall negligible effects on the landscape character of the area at a national level. At the County and District level it is considered that landscape effects would be no worse than minor adverse, due to the small scale of the development in relation to the extensive nature of the relevant character areas/types and because of its relatively contained location adjacent to the existing settlement edges of Elsenham. The proposals would also give rise to some minor benefits for the landscape of the area in the longer term.
- 5.49. In terms of landscape effects caused by the proposed development at a site wide scale it is considered that the loss of a short length of hedgerow (to enable access) together with an area of poor quality grassland and open space would constitute a moderate landscape effect at the site wide scale upon completion; however this adverse effect would be reduced to minor – moderate adverse in the longer term offset by the beneficial effects arising from the maturing of the GI proposals

- 5.50. FPCR conclude that despite the inevitable adverse effects of built development upon the local landscape character and on a limited number of visual receptors immediately adjacent to the site, it is considered that there would be no unacceptable adverse effects that should preclude the proposed development in landscape and visual terms.
- 5.51. The previous Landscape and Visual Appraisal work was the subject of scrutiny during the 2020 Appeal and was examined during the Hearing. The conclusions were considered to be robust by the Inspector.

HERITAGE

- 5.52. A Heritage Statement has been prepared by Landage Heritage. The proposal retains the existing screening along the northern and northeastern boundaries which would preserve the existing character of the setting of the Listed buildings on Robin Hood Road. These buildings are already located in a sub-urban setting and historically associated with the roadside, forming part of the initial development of settlement at Elsenham. As such, the site is not considered to contribute to their significance in any other contextual way.
- 5.53. The southern part of the site remains as open space, with new trees planted. This, combined with the presence of the railway and mature vegetation to the south of the study site, would ensure that the proposed development would not be readily discernible from the setting of the listed cottages on Tye Green Road.
- 5.54. The site has a general potential for the presence of prehistoric remains, which are likely to be of no more than local significance. These potential archaeological remains would be lost as a result of the proposed development but could be adequately mitigated by a programme of archaeological works, secured via planning condition.
- 5.55. Landage Heritage concludes that the proposed development accords with the requirements in Section 16 of the NPPF, and with policies ENV2 and ENV4 of the Uttlesford District Council Local Plan 2005.

- 5.56. In addition, a Written Scheme of Investigation for the Archaeological work has recently been approved in consultation with Place Services (ECC).

FLOOD RISK & DRAINAGE

- 5.57. A Flood Risk Assessment and Drainage Strategy has been undertaken by Travis Baker.
- 5.58. The site is within Flood Zone 1 and is therefore considered to be at low risk of flooding.
- 5.59. Travis Baker assess that the proposed development would result in an increased flood risk to the site and surrounding area without mitigation. They have proposed a range of mitigation measures including a drainage system designed to ensure that storage volumes are retained onsite for critical storm events up to the 1 in 100-year return period; surface levels designed to ensure that flood flows are not directed toward dwellings; and the design taking due consideration of the existing surface water flow paths from off site that traverse to the application site.
- 5.60. Based on the impermeable catchment of the 9300m², the enclosed hydraulic analysis allows for an additional 10% to allow for the effects of urban creep. The required storage volume of 593m³, for the 100yr critical storm also accommodates a 40% increase in predicted rainfall due to the future effects of climate change.
- 5.61. Travis Baker conclude that the proposed development will not result in any detrimental impact onto the existing surrounding properties, and the proposed drainage system will not increase the flood risk to surrounding properties or the development site.

TREES

- 5.62. A Tree Survey has been prepared by B J Unwin Forestry Consultancy. This is an update to the original survey.
- 5.63. The Tree Survey found that there are a minimal number of trees within the site, only a handful of self-sown sapling ash and alder in the wet area on the north-east corner of the paddocks. There is an overgrown hedge on the north-west and eastern

boundaries, and a copse of riparian trees in the southern corner along the Stanstead Brook.

- 5.64. B J Unwin consider that the proposal respects most trees, but a length of the eastern-boundary hedge is replaced by a new roadside footpath. It is proposed to coppice almost all of the ash on Rush Lane in order to restore the hedgerow running along the north-western site boundary. The proposal to accommodate a new 2m footway on the road edge requires extensive pruning to the Robin Hood Lane hedge, and the removal of the rest north of the access. The proposal requires a section of hedgerow removing so additional planting is needed, particularly to provide re-screening along Robin Hood Road.
- 5.65. B J Unwin have made a series of recommendations to protect the trees during the construction phase. This includes the provision of tree protection fencing; a fenced off Construction Exclusion Zone; minimal dig construction for new access drives, parking, and paths if required near trees; and no plant, machinery, or vehicles to enter Root Protection Areas without temporary ground protection.

ECOLOGY

- 5.66. A Preliminary Ecological Appraisal has been undertaken by Ecology Solutions Limited.
- 5.67. There are no statutory or non-statutory designated sites of nature conservation interest on or adjacent to the application site.
- 5.68. The majority of the development footprint comprises species-poor semi-improved grassland which is of limited ecological significance. Features of relatively greater interest associated with boundaries will largely be retained and enhanced under the development proposals. Where losses are required, these will be offset through the delivery of enhancements to retained habitats, the provision of new species-rich native habitats, and the implementation of a long-term management plan designed to maximise the ecological value of the application site.
- 5.69. The application site also currently provides opportunities for foraging and commuting bats, birds, and reptiles. Appropriate mitigation measures have been proposed in order to avoid harm and to safeguard existing opportunities for protected and

notable species, particularly reptiles. In the proposal and approved previously as part of the 2020 Appeal, a reptile mitigation zone is to be designated along the boundary with the rail line.

- 5.70. Ecology Solutions conclude that the development proposals for the site will avoid potential adverse ecological effects, and deliver significant enhancements compared to the existing situation. On this basis, the development proposals accord with all legislation and planning policy of relevance to ecology and nature conservation.

NOISE AND VIBRATION

- 5.71. A Noise and Vibration Assessment has been undertaken by Resound Acoustics.
- 5.72. The dominant noise sources during the survey were trains from the railway line to the south of the site, and distant road traffic from the M11 motorway. The survey found that the majority of the site has sound levels between 55 and 63dB in the daytime, and between 45 and 55dB during nighttime. These are in the upper range of values considered to be above the LOAEL but below the SOAEL. A small strip along the south-eastern boundary is predicted to have noise levels between 55 and 66dB, but it is noted from the illustrative site layout that no properties are proposed in this area.
- 5.73. The illustrative layout shows that there will no properties in the area above the SOAEL. The site is therefore subject to sound levels above the LOAEL but below the level at which an unacceptable adverse effect would occur and is considered to be a low to medium risk. As such, the site is considered acceptable for residential use, subject to the incorporation of suitable mitigation.
- 5.74. Resound Acoustics assessed that the indicative layout means that noise levels within the dwellings and gardens will comply with British Standard 8233: 2014.
- 5.75. The survey found that daytime and nighttime vibration levels are significantly below the requirements of BS6472: 2008. Vibration is not therefore considered to be a material constraint.
- 5.76. Resound Acoustics concluded that noise and vibration will not have an adverse impact on the proposed development.

AIR QUALITY

- 5.77. An Air Quality Statement has been prepared by Kairus Ltd.
- 5.78. Kairus assess that construction activities would cause some disturbance to those nearby and predict a minor to major adverse impact prior to the implementation of any on-site mitigation. However, they assess that following the implementation of appropriate mitigation measures, impacts associated with the construction of the development are likely to be insignificant.
- 5.79. Kairus have set out a range of measures to mitigate against the impacts of dust and pollution during the construction phase. It is recommended that these measures be incorporated into a Construction Management Plan.
- 5.80. A baseline assessment of local air quality has concluded that concentrations of NO₂ and PM₁₀ are meeting the relevant air quality objective limits at the site. Therefore, the impact of the scheme in terms of new exposure would be negligible.
- 5.81. Kairus conclude that air quality does not pose a constraint to development of the Site for residential purposes.

6.0 CONCLUSIONS

- 6.1. This is an outline proposal for the erection of up to 40 dwellings, of which up to 16 units (40%) will be affordable housing. A new access will be created off of Robin Hood Road. The proposals include for new informal open space and enhanced Public Right of Way through the site. All matters reserved except for access.

The Planning Balance

- 6.2. Outline approval was granted for the erection of up to 40 dwellings with all matters reserved except for access, at Appeal (APP/C1570/W/19/3242550) in September 2020. The general form of development of this proposal is very similar to the approved scheme, i.e., the areas to be developed, and that set aside for open space, sustainable drainage, reptile mitigation, and alignment with the public row of way. The primary difference is the location of the access, which is now proposed to be off Robin Hood Road.
- 6.3. Although there is some conflict with the adopted Development Plan, this is now significantly out of date and can only be afforded limited weight. There are also numerous material considerations which significantly weigh in favour of the proposed development. The most significant of these is the extant Planning Permission, which was allowed at appeal, and has already established the principle of the proposed development.
- 6.4. It was confirmed by the Council in the preparation of the previous Plan, and by the Inspector that the site is suitable for a development of 40 dwellings, both in terms of sustainability and landscape and character impact. The Council are also unable to demonstrate a five-year supply of housing land, and the tilted balance is engaged meaning that the presumption in favour of sustainable development applies.
- 6.5. The Inspector confirmed that the proposal constituted sustainable development. He found only limited harm to adopted development Plan and confirmed this was outweighed by the substantial benefits of the proposal. All of these benefits still stand. The proposed development is therefore acceptable in principle.

- 6.6. The Transport Statement concludes that the proposed development will not have a material detrimental impact on the highway network, and there are no highway related reasons why planning permission should not be granted.
- 6.7. The Landscape and Visual Appraisal concludes that despite the inevitable adverse effects of built development upon the local landscape character and on a limited number of visual receptors immediately adjacent to the site, it is considered that there would be no unacceptable adverse effects that should preclude the proposed development in landscape and visual terms.
- 6.8. The Heritage Statement concludes that the proposed development will preserve the existing character of the setting of the nearby Listed buildings. These are potential archaeological remains which would be lost as a result of the proposed development, but this could be adequately mitigated by a programme of archaeological works, secured via planning condition.
- 6.9. The Flood Risk Assessment concludes that the proposed development will not result in any detrimental impact onto the existing surrounding properties, and the proposed drainage system will not increase the flood risk to surrounding properties or the development site.
- 6.10. The Tree Report considers that the proposal respects most trees, but a length of the eastern-boundary hedge is replaced by a new roadside footpath so additional planting is needed.
- 6.11. The majority of the development footprint comprises species-poor semi-improved grassland which is of limited ecological significance. The Ecology Report concludes that the development proposals for the site will avoid potential adverse ecological effects, and deliver significant enhancements compared to the existing situation.
- 6.12. The Noise and Vibration Assessment concludes that noise and vibration will not have an adverse impact on the proposed development.
- 6.13. The Air Quality Statement concludes that air quality does not pose a constraint to development of the Site for residential purposes.

6.14. Taking all matters into account: the Development Plan policies, and all material considerations, the proposed development is acceptable in principle. The site can accommodate up to 40 dwellings without harm to the landscape and character of the area, and the detailed access proposals from Robin Hood Road are appropriate in design and will not result in an adverse impact on highway safety. We therefore commend these proposals to the Council, and kindly request that planning permission is granted.

Appendix A

Appeal Decision APP/C1570/W/19/3242550



Appeal Decision

Hearing Held on 6 August 2020

Site visit made on 18 July 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 4 September 2020

Appeal Ref: APP/C1570/W/19/3242550

Land south of Rush Lane, Elsenham CM22 6TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Rosconn Strategic Land Limited, Nigel John Burfield Holmes, Rosemary Holmes, Mark Burfield Holmes, Robert Murton Holmes, Sasha Renwick Holmes and Tanya Renwick Cran (the Appellants) against the decision of Uttlesford District Council.
 - The application Ref UTT/19/0437/OP, dated 18 January 2019, was refused by notice dated 14 November 2019.
 - The development proposed is an outline application for the erection of up to 40 dwellings with all matters reserved except for access.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 40 dwellings with all matters reserved except for access at land south of Rush Lane, Elsenham CM22 6TF in accordance with the terms of the application, Ref UTT/19/0437/OP, dated 18 January 2019, subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by an proposed Masterplan, a Landscape and Visual Assessment and a raft of supporting technical documentation in relation to highways, ecology, noise, air quality and surface water drainage. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation.
3. With the agreement of both parties, the description of development was amended during the application process from 44 dwellings to 40. I have therefore taken the description provided on the Appeal Form rather than the version provided on the Application Form.
4. There is no dispute between the parties that the Council cannot demonstrate a five-year housing land supply (5YHLS). In such situations paragraphs 11 and 73 of the "*National Planning Policy Framework*" (the Framework) state that those policies which are most important for determining the application are to be considered out-of-date. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh

the benefits, when assessed against the policies in the Framework taken as a whole. I have approached my decision on that basis.

5. The Council withdrew the emerging Uttlesford Local Plan (eLP) on the 30 April 2020, it therefore carries no weight my determination of the appeal. Both main parties agree that the evidence base, in particular the 2016 "*Uttlesford Countryside Protection Zone Study*", (the LUC study) which formed part of the evidence base for the eLP, is a material consideration in this appeal.

Main Issue

6. This is the effect of the development on the character and appearance of the countryside.

The appeal site

7. The appeal site is a plot of pastureland located on the southern edge of Elsenham some 2.25 hectares in size. The field is subdivided into two paddocks by a post and rail fence and is visually contained behind hedgerows interspersed with a number of mature trees. Save for a small field shelter located near the access point in the south west corner, there are no large permanent structures or buildings on the site.
8. The site is bounded to the north by Rush Lane, a residential cul-de-sac and to the north-west by a Public Footpath (PROW28). The former contains a mix of terraced and semi-detached properties that front towards the appeal site. Public Footpath (PROW29) bisects the southern section of the site from the south west corner to the south east corner connecting Rush lane (via PROW 13-29) and Robin Hood Road.
9. Robin Hood Road is located to the east of the appeal site which again is a residential cul-de-sac that terminates at the level crossing. The road is narrow and there are no pedestrian footways. The houses on the eastern side of Robin Hood Road face towards the appeal site. The majority of the southern site boundary is flanked by the West Anglian Mainline Railway. To the south-west of the site is a large detached residence known as Mill House.
10. The site lies just outside the settlement boundary for Elsenham. A parade of local shops lies along the high street to the north of the site. The primary school and the village surgery lie a little further afield. The nearest bus stop is located approximately 800m north of the site on Stansted Road.
11. There are a number of other new developments in the immediate area. To the north-west is a development under construction of 165 houses to the south of Stansted Road. On the southern side of the railway line is a development of five houses at the old Sawmill, Fuller's End. To the east is the Hall Road site which has the benefit of an as yet unimplemented planning permission for 130 dwellings.

Background and policy context

12. The appeal site is located outside the settlement boundary and within the Countryside Protection Zone (CPZ) around Stanstead Airport. It is therefore in the countryside for planning purposes. Within such areas, Policy S7 of the LP states that planning permission will only be granted for development that "*needs to be there or is appropriate to a rural area*". It goes on: "*Development*

will only be permitted if it 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."

13. Policy S8 takes a similarly restrictive approach towards development in the CPZ. Only development that is required to be there, or is appropriate to a rural area, will be permitted. Development will not be permitted if a) new buildings or uses would promote coalescence between the airport and existing development in the surrounding countryside, or b) it would adversely affect the open characteristics of the zone.
14. The Development Plan for the District comprises the "*Uttlesford Local Plan*" 2005 (the LP). This was adopted seven years before the original Framework at a time when there was no requirement to boost significantly the supply of housing, no requirement to identify an Objectively Assessed Need and no presumption in favour of sustainable development. The LP only covered the period to 2011 and consequently expired nearly ten years ago. As the Appellants point out, the LP has now been out of date for longer than it was in date.
15. As is made clear at the beginning of Section 6 of the LP, one of its key components was to deliver the housing requirements which were based upon those in the "*Essex and Southend-on-Sea Structure Plan to 2011*" and the "*Regional Spatial Strategy for the South East of England*". The LP housing requirements were derived from household projections which are now about three decades out of date. The policies in the LP, including settlement boundaries, allocations, were formulated and predicated upon the constrained supply set out in the Structure Plan. From the evidence I heard, it seems that most, if not all, the allocations in the LP have long since been built out.
16. Based on the foregoing, there can be little doubt that the LP is now painfully out of date in terms of its purpose, its strategy, its content and its housing delivery policies. It does not meet the requirement for the Council to have an up-to-date plan and it is clearly not a strong foundation upon which to refuse planning permission.
17. The appeal site was allocated for housing in the eLP (Policy ELS1) with the Council finding "*Elsenham is a key village with a range of services and facilities. Development of the site is considered suitable because it would contribute to a sustainable pattern of development*". The eLP was withdrawn in response to the Examining Inspectors' letter dated 10 January 2020. In that letter "*significant concerns*" were raised in relation to the soundness of the plan. In particular, the Inspectors were not satisfied that the proposed Garden Communities had been adequately justified and reliance on them would likely result in a worsening affordability problem in the District. The Inspectors were also critical of the strategy to deliver sufficient housing over the short and medium term and recommended that the Council would need to allocate more small and medium sites to bolster its 5YHLS. As previously mentioned, the appeal site was one of those medium sized sites that was to be allocated for housing in the eLP.
18. Although the Framework stresses the desirability of local planning authorities having up to date development plans, paragraph 213 states that policies should not be considered out of date simply because they were adopted prior to the publication of the Framework. It is therefore incumbent on me to apply

paragraph 213 which states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan to those in the Framework, the greater the weight that may be given.

19. The first point to make in assessing what weight should be given to Policy S7 is that in seeking to protect all countryside, the policy patently goes some way beyond the advice in paragraph 170(b) of the Framework, which, inter alia, seeks recognition of the intrinsic character and beauty of the countryside. Other than '*valued landscapes*' the Framework does not seek to protect the countryside outside defined settlements. Instead it advocates a more cost/benefit approach where the merits of the proposal are weighed in the balance. The balancing of harm against benefit is a defining characteristic of the Framework's overall approach embodied in the presumption in favour of sustainable development. This more positive approach was acknowledged in the Council's 2012 Compatibility Assessment which found S7 to be partially consistent with the Framework. In light of the above, where Policy S7 is used to restrict housing, it cannot be seen to be consistent with the language of the Framework.
20. The Framework does not contain specific policies relating to CPZs. However, many of the points made above are relevant to Policy S8. Whilst the overall landscape aims of the policy could be seen as being partially consistent with advice in paragraph 170(b), the policy is couched in the same protectionist language as Policy S7 which is at odds with the more positive approach adopted in the Framework.
21. From the evidence before me, most notably the Council's Committee Reports pertaining to the appeal scheme and land west of Hall Road¹, it is evident that the Council has, in some cases, adopted the positive approach advocated by the Framework rather than the strict application of Policies S7 and S8. As numerous large developments have been consented or built within the CPZ in recent years, it is also the case that existing settlement and CPZ boundaries bear little resemblance to the situation on the ground. This is particularly apparent in Elsenham.
22. At the Hearing, the Council accepted that its housing land supply situation would be significantly worse if the Council had applied Policies S7 and S8 in the same manner as it has done in this case. In other words, applying the restraints of Policies S7 and S8 will continue to compromise the Council's ability to meet its future housing requirements. Overall, these matters lead me to conclude that settlement/CPZ boundaries in Uttlesford are not inviolable.
23. There is little before me to explain why the Council's approach to Policies S7 and S8 in this case is so contrasted with other schemes in and around Elsenham. I appreciate that some of those sites were approved because they were allocations in the previous 2014 emerging Local Plan. However, that is little different to the situation here. At the time the Council made its decision, the site was an allocation in the eLP. I do not find the Council's explanation that the application may have been refused due to concerns about the fragility of the eLP to be particularly persuasive.

¹ LPA Ref: UTT/19/0462/FUL

24. Irrespective of how the Council arrived at its decision, its witness accepted that development of greenfield sites in the Countryside and CPZ will be necessary if the Council are to meet its housing targets over the next few years before a new local plan can be prepared and adopted. Whilst I appreciate the Council has met its housing targets in each of the last 3 years, there is little before me to demonstrate whether this represents a fundamental shift or an ephemeral eddy of appeal-based delivery. Given that the Council's witness accepted it does not have a credible short or medium-term strategy for addressing its 5YHLS deficit, I suspect the latter.
25. I have carefully considered the appeal decisions brought to my attention by the main parties. These confirm that between 2015 and 2019 Inspectors have come to differing views on the issue of consistency and the subsequent weight to be applied to Policy S7. Most of those decisions preferred by the Council², including the Secretary of State's decision³, were made in the context of the Council being able to demonstrate a 5YHLS, albeit marginally. There also appears to me to be a general pattern of less weight being ascribed to Policy S7 as the Council's 5YHLS has deteriorated⁴. Notwithstanding the above, there was no suggestion at the Hearing that the facts of any one of the previous cases were so aligned with the facts here that the previous decision indicated that this appeal should be either allowed or dismissed. I have therefore had regard to the various decisions insofar as they are relevant to my consideration of this appeal.

Character and appearance

26. The appeal site was independently assessed as part of the LUC study in 2016. The overall aim of which was to assess the extent to which land within the CPZ is meeting its purposes as set out in Policy S8 which would enable the Council to make informed decisions about its continuing validity through the eLP.
27. The study found that development of the appeal site for housing would result in a moderate level of harm due to its low rating against purpose 4 (restricting coalescence). This was partly because of the dispersed nature of the nearest settlement and the site's relative distance from the airport. The study concluded that the CPZ/settlement boundary should be moved to the railway line which itself could prevent coalescence between the airport and Elsenham. The appeal site was subsequently recommended for removal from the countryside and CPZ in the eLP. In my view the LUC study is a significant material consideration in favour of the appeal scheme.
28. From my own observations I saw that the appeal site contributes to a pleasant, open, albeit visually contained, rural setting to the south-west of Elsenham. The site however has few redeeming features and is not designated or part of a 'valued landscape' in the terms set out in the Framework. As I saw on my site visit, the site has a number of urbanising influences such as the railway line with overhead cables, new development at the former sawmill, new development to the north-west, and the constant hum of traffic from the M11. On that basis I would be hard pushed to describe the site as some have as 'open countryside'.

² APP/C1570/A/14/2222958, APP/C1570/W/16/3156864 and APP/C1570/W/18/3209655

³ APP/C1570/A/14/2219018

⁴ APP/C1570/W/19/3226302

29. Those opposing the development did so primarily on the basis that the open nature of the site contributes positively to the local area and particularly for users of the footpath. The extent to which the proposed dwellings would be visible beyond the site and the public footpath would depend on details which have been reserved for future determination. Nonetheless, I accept that whatever its final form the development would result in an irreversible loss of openness and would have a significant visual effect from within the site boundaries. However, as that would be the case with any greenfield site, it is not a reason to dismiss the scheme out of hand.
30. The site is currently enclosed behind mature landscaping on its boundaries. Except for the removal needed to create the site access, the hedges and trees would be retained and supplemented with new planting. Significantly, the Council accept that the development would not be readily visible over the wider area. Where the dwellings might be visible, they are likely to be seen against the general townscape of Elsenham and would not be unduly intrusive in the wider landscape.
31. There would of course be a more pronounced visual effect from those properties on Rush Lane located opposite the site access. Whilst I have some sympathy with those residents who might experience a change to their outlook, there is no right to a view. Given the likely distance between the houses on Rush Lane and those proposed, I do not consider the resulting outlook for these residents would be unacceptable in normal planning terms. In any event, the scale and layout of the houses are issues which the Council would have control over at the reserved matters stage.
32. Bearing in mind the likely layout with houses set back from the south site boundary as well as the alignment of the railway and existing development along Robin Hood Road, I do not consider that the development would result in a significant degree of coalescence between Elsenham and Fuller's End. The houses would also relate well to the existing built form and bearing in mind those consented developments in the immediate area, would read as a logical extension to the village.
33. I accept that the houses would be visible from PROW29. However, the Masterplan shows how it might be possible to develop the site and to divert the footpath through areas of open space rather than along estate roads. Whilst it would inevitably be a different experience, this has to be offset against the benefits arising from new public access to areas of open space around the footpath. These maintained areas would provide a pleasant stopping point where users could sit and enjoy the view over to Fuller's End, have a picnic or simply watch the trains go by. Whilst I understand that some would prefer to retain the footpath's open aspect, it has to be recognised that some, particularly the less mobile and perhaps those with pushchairs and young children, would benefit significantly from the proposed footpath and connectivity improvements.
34. Overall, there would be some localised visual effects arising from the loss of the appeal site's open and undeveloped character. There would also be some erosion of the amenity value derived from views across the appeal site from the public footpath. However, in my view the overall level of harm would be limited. Nonetheless there would still be conflict with Policies S7 and S8 and this weighs against the development in the overall planning balance.

Other Matters

35. Local residents have expressed a wide range of concerns including but not limited to the following: loss of wildlife habitats, drainage, air quality, the effect on highway safety, congestion and local infrastructure. However, it is evident from the Committee Report that these matters were carefully considered by the Council at the application stage. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.

Conclusion and Planning Balance

36. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore the development plan.
37. I have found that the development would result in limited harm to the open characteristics of the CPZ and countryside. There would be no significant coalescence either between Elsenham and the airport or surrounding settlements. Overall, there would be limited conflict with the countryside protection aims of LP Policies S7 and S8.
38. As to whether material considerations indicate that the permission should be allowed, the Framework is one such consideration. In light of the Council's 5YHLS position, those policies that are most important for determining the application are to be considered out-of-date. Along with my findings in relation to consistency, this strictly limits the weight I attach to the conflict with LP Policies S7 and S8. It also engages the default position identified in paragraph 11(d) of the Framework.
39. The effect of this is that the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused. The key issue is therefore whether the development would satisfy the other relevant requirements of the Framework and thus benefit from the presumption in favour of sustainable development.
40. The provision of up to 40 dwellings comprising of market and affordable housing carries substantial weight in a district with an acknowledged acute shortage of market and affordable housing. This is the weightiest factor in the overall balance. Beyond the public footpath, there is currently no public access to the appeal site and therefore the opportunity for the local community to use the areas of open space created by the development, is also a benefit, albeit one that is primarily intended to address the needs of the occupants of the appeal scheme itself. Collectively, the social benefits attract substantial weight.
41. The purchase of materials and services in connection with the construction of the dwellings, employment during the construction period, an increase in local household expenditure are economic benefits that weigh in favour of the scheme.
42. In environmental terms, there would inevitably be some dis-benefits. In the sense that the development of open countryside is such a disbenefit, this cannot carry significant weight because of the Council's 5YHLS position which can only realistically be remedied by the release of greenfield sites in the

countryside and/or the CPZ. There would inevitably be landscape harm arising from a loss of openness across the appeal site. However, given the site's high level of visual containment and close relationship to the existing built form of Elsenham, these are not factors that weigh heavily against the scheme.

43. The environmental benefits include small biodiversity gains. The appeal site is also located in an accessible and sustainable location on the edge of Elsenham, a town with a reasonable range of shops and services. The public transport contribution which aims to increase the frequency of bus services through the village has the potential to benefit the local community. Taking these benefits into account, I find the development would result in minor environmental harm.
44. Based on the foregoing, it is clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from this development. I am thus satisfied that the appeal scheme would constitute sustainable development. This is a significant material consideration sufficient to outweigh the limited development plan conflict.
45. Accordingly, I conclude that the proposal should be allowed, subject to the imposition of a number of conditions, as discussed at the Hearing and set out in the schedule below.

Planning Obligations

46. The Framework sets out policy tests for planning obligations; obligations 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. The same tests are enshrined in the statutory tests set out in regulation 122 of the CIL regulations.
47. The education contribution comprises an Early Years and Childcare contribution of £17,422.00, a local primary school contribution of £15,281.00 and a local secondary school education contribution of £23,214.00. These contributions are supported by a response from the Education Authority which identifies a potential future deficit at local education providers which would serve the development. I consider the education obligation, which is calculated via a standard formula, would be fairly and reasonably related to the development proposed and it would as a result meet the statutory tests.
48. The clauses under Schedule 2/Part 1 reflect these requirements of LP Policy H9 contains to provide 40% affordable housing. I have received further information from the Council regarding the bus service contribution of £118,000. Schedule 2/Parts 4 and 5 contain drainage and open space obligations. In all cases I am satisfied that the obligations meet the statutory tests.

Conditions

49. The parties have suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (PPG). In some instances I have amended the conditions in the interests of brevity or to ensure compliance with the PPG.
50. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. To ensure a suitable and safe access, I have imposed a condition relating to the

highway works^[4]. However, I have simplified the condition given that the relevant details are already shown on the approved plan. To ensure a satisfactory level of permeability I have imposed a condition regarding a pedestrian link to PROW28^[5]. Conditions regarding the provision of a satisfactory drainage system are necessary to ensure drainage of the site in the interests of flood prevention^[6&7]. In the interests of local ecology and to ensure a net-gain for biodiversity, I have attached various ecology conditions^[8-10]. In some cases, I have simplified the conditions suggested by the Council as some of the detailed requirements were patently excessive for a development of this size. Given that the Council would retain overall control for the approval of these schemes, I am satisfied they would not be prejudiced by these changes.

51. To protect the living conditions of local residents, I have imposed conditions relating to noise mitigation and restrictions upon construction hours^[11&12]. A land contamination condition is necessary to ensure the land is suitable for its intended use^[13]. Beyond the provision of electric charging points to each dwelling, the Council was unable to explain what other measures might be required under the suggested air quality scheme. I have therefore imposed a more specific condition relating to electric charging points to mitigate the impact on air quality^[14]. To ensure compliance with the Council's SPD⁵, I have imposed a condition relating to accessible homes^[15]. Finally, to protect any archaeological assets that may be present I have imposed an archaeology condition^[16].
52. The suggested condition regarding the diversion of Footpath 29 is unnecessary as footpath diversions are covered by other legislation namely s257 of the Town and Country Planning Act. I have amended the requirements of the suggested drainage condition so as to include details of maintenance and management arrangements. A separate condition covering these matters is therefore unnecessary. I am not persuaded that a condition requiring the applicant to keep a maintenance log work is relevant to planning, necessary or enforceable, I have omitted it accordingly.
53. The ecological information submitted with the application does not support the presence of bats. That conclusion has not been challenged by cogent evidence. Accordingly, I am not persuaded that the suggested lighting condition is necessary. Finally, I am satisfied that the requirements of the two birdstrike avoidance conditions, are capable of being dealt with as part of 'landscaping' at the reserved stage and/or through the drainage scheme (condition 6). I have omitted the suggested conditions accordingly as they are unnecessary.
54. Conditions 6, 7, 9, 10 and 16 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.

D. M. Young

Inspector

⁵ Full title: Supplementary Planning Document - Accessible Homes and Playspace 2005

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access works shown on drawing number DWG-04 Rev B shall be provided prior to first occupation of any dwelling.
- 5) Prior to first occupation of any dwelling, a pedestrian connection between the development and Public Footpath 28 (Elsenham), details of which shall first have been submitted to and agreed in writing with the local planning authority, shall be provided and retained thereafter.
- 6) No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753;
 - Limiting discharge rates to 6.5 l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
 - Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
 - Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event;
 - Final modelling and calculations for all areas of the drainage system;
 - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753;
 - Detailed engineering drawings of each component of the drainage scheme;
 - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
 - A written report summarising the final strategy and highlighting any minor changes to the approved strategy, and

- Details of maintenance and management arrangements

The development shall be carried out in complete accordance with the approved details.

- 7) No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
- 8) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Cotswold Wildlife Surveys, September 2019) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.
- 9) No development shall take place until a Reptile Mitigation Strategy has been submitted to and approved in writing by the local planning authority. The Reptile Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.
- 10) No development shall take place until a Biodiversity Enhancement Strategy has been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.
- 11) Prior to first occupation of the development a scheme for protecting the proposed dwellings from rail noise shall be submitted in writing to the local planning authority for approval. The scheme shall follow the recommendations identified in the Resound Acoustics Noise & Vibration Assessment report (Ref: RA00562-Rep 1) dated January 2019. None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved measures which shall be retained thereafter.
- 12) Construction work shall only be carried out on site between 8:00am and 6:00pm Monday to Friday, 9:00am to 5:00pm on a Saturday and no work on a Sunday or Public Holiday. The term "work" will also apply to the operation of plant, machinery and equipment.
- 13) The dwellings hereby permitted shall not begin until a scheme to deal with contamination of land/ground gas/controlled waters has been submitted to and approved in writing by the local planning authority. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement in writing:
 - A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175: 2011 Investigation of Potentially Contaminated Sites – Code of Practice.
 - A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report shall

include a detailed quantitative human health and environmental risk assessment.

- A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
 - If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the local planning authority.
 - A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.
- 14) Prior to first occupation, each dwelling hereby approved shall be provided with an electric vehicle charging point. Once provided the charging points shall be retained thereafter.
- 15) 5% of the dwellings approved by this permission shall be built to Category 3 (wheelchair user) housing M4 (3)(2)(a) wheelchair adaptable. The remaining dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4 (2) of the Building Regulations 2010 Approved Document M, Volume 2015 edition.
- 16) No development or preliminary groundworks can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority prior to reserved matters applications being submitted.
- A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following the completion of this work.
 - No development or preliminary groundworks can commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been signed off by the local planning authority through its historic environment advisors.
 - The applicant will submit to the local planning authority a post-excavation assessment (to be submitted within three months of the completion of fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

APPEARANCES

FOR THE APPELLANTS

Thea Osmund-Smith LLB

Frazer Hickling BA (Hons) DipUD MRTPI

Gary Holliday CMLI BA(Hons) M.Phi

Appellants' Barrister

Appellants' Planning Consultant

Appellants' Landscape Witness

FOR THE LOCAL PLANNING AUTHORITY

Alison Hutchinson MRTPI

Planning Consultant

INTERESTED PERSONS

Dr A Mott

Elsenham Parish Council



Phillips Planning Services Ltd.
Town Planning and Development Consultants

LAND WEST OF ROBIN HOOD ROAD
ELSENHAM