



## UTTLESFORD DISTRICT COUNCIL

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Mr M Pearce  
Baya Group  
Nine Hills Road  
Cambridge  
CB2 1GE

Date: 26 April 2023

Our Ref: UTT/23/0664/PA

Please ask for: [REDACTED]

Dear Sir/Madam

### LOCATION: Land West of Clatterbury Lane, Clavering, Essex.

Thank you for your recent request for planning advice which was received on 14th March 2023.

**PROPOSAL:** 9 no. dwellings.

### CONSTRAINTS

Outside Development Limits.  
Setting of Listed Buildings (The Cricketers – Grade II).  
Setting of Conservation Area (Clavering Church).  
Public Right of Way (Footpath – West).  
Road Classification (Clatterbury Lane/Arkesden Road – Class III).  
Road Classification (Stickling Green – Class III).  
Within 500m of Pollution Control Site.

### HISTORY:

#### Planning Applications History (if any):

Reference No.	Status	Decision Date	Proposal
UTT/13/2228/OP	R	06/12/2013	Outline permission for erection of 9 dwellings with some matters reserved except access, and scale (amended scheme to planning application UTT/0507/12/OP).
SWR/0039/70	R	02/04/1970	Use of land for residential development.
UTT/0507/12/OP	R	23/08/2012, <b>Appeal dismissed</b> 24/05/2013	Outline permission for erection of 31 dwellings with some matters reserved except access, layout and scale.

### PLANNING POLICIES:

Policy	Local Plan	Local Plan Phase
S7 - The Countryside	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005

GEN1 - Access	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN2 - Design	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN3 - Flood Protection	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN4 - Good Neighbours	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN5 - Light Pollution	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN7 - Nature Conservation	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN8 - Vehicle Parking Standards	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV1 - Design of development within Conservation Areas	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV2 - Development affecting Listed Buildings	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV3 - Open spaces and trees	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV4 - Ancient Monuments and Site of Archaeological Importance	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV5 - Protection of agricultural land	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV8 - Other landscape elements of importance for nature	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV10 - Noise sensitive development and disturbance from aircraft	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV11 - Noise generators	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV12 - Groundwater protection	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV13 - Exposure to poor air quality	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005

ENV14 - Contaminated land	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV15 - Renewable Energy	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
NPPF4 - National Planning Policy Framework July 2021		
SPD2 - Accessible homes and playspace		
Interim Climate Change Policy		
ECP - ECC Parking Standards (Design & Good Practice) September 2009		
Uttlesford Local Parking Standards		
EDG - Ecology and Biodiversity	Essex Design Guide	
H9 - Affordable Housing	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
H10 - Housing Mix	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
EDG - Garden Size	Essex Design Guide	
EDG - Private Amenity Space	Essex Design Guide	
EDG - Rear Privacy	Essex Design Guide	
EDG - Visibility Vehicle and Pedestrian Sight Splays	Essex Design Guide	

## **APPRAISAL:**

The planning issues to consider in the determination of this application are:

- 1) Principle (S7, GEN1, ENV5, NPPF);**
- 2) Design, scale, layout, landscape (S7, GEN2, ENV3, SPD Accessible Homes and Playspace, Essex Design Guide, NPPF);**
- 3) Residential amenity (GEN2, GEN4, ENV10, ENV11, GEN5, Essex Design Guide);**
- 4) Access and parking (GEN1, GEN8, parking standards, NPPF);**
- 5) Ecology (GEN7, ENV8, NPPF);**

- 6) Contamination (ENV14, ENV12, ENV13, NPPF);
- 7) Archaeology (ENV4, NPPF);
- 8) Flood risk (GEN3, NPPF);
- 9) Housing mix and affordable housing (H9, H10, NPPF).

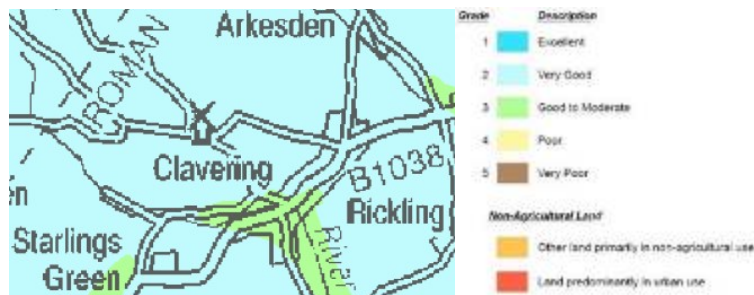
The above issues are analysed and assessed as follows:

**1) Principle (S7, GEN1, ENV5, NPPF);**

With the Council unable to demonstrate a 5YHLS<sup>1</sup>, paragraph 11(d) of the NPPF applies, which states that 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 Framework policies that protect areas or assets of particular importance provides a clear reason for refusal or (ii) any adverse impacts would ‘significantly and demonstrably’ outweigh the benefits. Due to the 5YHLS shortfall, some residential development must be directed outside development limits where appropriate and the Council’s approach to ‘windfall development’ is effective given the gradual increase.

**Applying policy ENV5**

The site comprises Class 2 (‘Very Good’ quality) agricultural land (see Agricultural Land Classification 2010, Natural England), being part of the district’s best and most versatile agricultural land (BMV). Despite the loss of BMV land, contrary to policy ENV5, good quality agricultural land is plentiful within the locality, meaning this policy conflict holds limited weight.



**Applying policies S7 and GEN1(e) in conjunction with paragraph 8 of the NPPF**

In **economic** terms, the proposal provides a small contribution towards the wider local economy during construction via employment for local builders and suppliers of materials, and post-construction via reasonable use of local services.

<sup>1</sup> Currently at **4.89 years** in Apr 2022 (from 3.52 years, Apr 2021, and 3.11 years in Jan 2021 and 2.68 years before that).

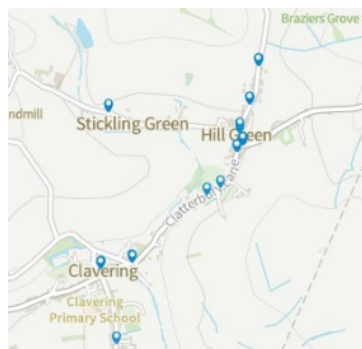
In **social** and **environmental** terms:

Location – Isolation:

The site is not isolated, as it is part of Clavering (Hill Green) with residential and commercial developments to its north. Therefore, paragraph 80 of the NPPF is not applicable.

Location – Services and facilities:

Clavering and Hill Green have some services and facilities, with more services provided in Saffron Walden, Newport and Stansted. The nearest serviced bus stop (Brent Pelham Corner stop – 15' walk) is 1.2km to the south-west of the application site (see image). The nearest school (Newport Primary School – 55' walk) is 4.6km from the site and the nearest supermarket (Nisa Local – 21' walk) is 1.8km from the site. There are no continuous pedestrian footpaths, lit and maintained, that link the application site to the bus stop and most of the above services and facilities.



The sustainability credentials of the site are unsatisfactory in NPPF terms, and the development fails paragraphs 104(c), 110(a) of the NPPF, and policy GEN1(e) of the Local Plan.

Previously developed land:

The site is not previously developed land (in the context of the NPPF glossary and a Court of Appeal decision<sup>2</sup>), as there is no planning record to suggest otherwise. The site comprises greenfield land.

Effective use of land:

The proposed 9 no. dwellings on a site that covers 1.2ha would fail to make more effective use of the land. The site cannot be characterised as under-used land given its greenfield nature. Therefore, paragraphs 119 and 120(d) of the NPPF are not supportive of the development.

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<sup>2</sup> Dartford Borough Council v Secretary of State for Communities and Local Government & Anor [2017] EWCA Civ 141.

### Infill:

Paragraph 6.14 of the Local Plan allows “*sensitive infilling of small gaps in small groups of houses outside development limits but close to settlements*” if the development is in character with the surroundings and have limited impacts on the countryside. The applicant suggests that “*by projecting the edges of the existing settlement boundary, there is natural infilling*”<sup>3</sup>. However, by reason of the development’s shape, size, scale and position in relation to the neighbouring dwellings and buildings, the site does not comprise an infill opportunity.

### Character and appearance – Countryside:

The local character contains a distinct rural feel and countryside setting with views to the wider landscape and an intrinsic sense of openness. Notwithstanding the green screening on its northern boundary, the development is not tucked away from the public realm nor self-contained; a public footpath runs to the west of the site. The development introduces unnecessary and unjustified built form in the countryside with urbanising effects<sup>4</sup>. Therefore, the development is contrary to policy S7 and paragraph 174(b) of the NPPF. The element of policy S7 that seeks to protect or enhance the countryside character within which the development is set is fully consistent with paragraph 174(b) that recognises the intrinsic character and beauty of the countryside.

The site, by reason of its rural, open and verdant appearance, plays an important role in the character and appearance of the area, including the rural setting of the Conservation Area. Therefore, the countryside impacts of the development are unacceptable (see photographs).

### Character and appearance – Pattern of development:

The pre-app scheme does not include any proposed drawings, and as such, based on the submitted information, no comments can be made here.

### Other material considerations:

It is well-established law that previous decisions can be material considerations because like cases should be decided in a like manner, to ensure consistency in decision-making. However, previous Secretary of State or LPA decisions do not set a precedent for the assessment of similar developments; the benefits and harm, and the levels of each, will depend on the specific characteristics of a site and scheme.

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<sup>3</sup> Draft Document for Pre-app Meeting, p.14.

<sup>4</sup> Domestic appearance of built form and domestic paraphernalia with which housing is associated.

On this occasion, development has been refused on the same site on repeated occasions, including a dismissed appeal for 31 no. units (see below) and a refused application for 9 no. units.

The most significant decision is the dismissed appeal<sup>5</sup> for 31 no. dwellings (including 13 no. affordable units). The Inspector confirmed the following:

- Most of the main facilities are on the southern end of the village, not the northern one where the site is located.
- Car is a basic necessity in this village. Conflict with policy GEN1(e).
- The site is beyond the main built-up parts of the village.
- The site and scale of the site, the number of buildings and hard surfaces proposed would radically change the rural character of the area.
- The appeal scheme is not sustainable development.
- The location is not sufficiently sustainable.

The applicant noted the following approvals in the area (see images respectively):

- **UTT/22/0355/FUL:** An Inspector had previously found that this site was an infill opportunity. The proposal would not harm the rural character of the area to the south of the site or the streetscene. The then case officer considered that the proposal would give the impression of forming part of the village and in character with the linear development rather than the surrounding countryside.
- **UTT/21/2720/FUL:** The same as above.
- **UTT/21/2016/FUL:** This site was considered infill and did not relate to the open countryside.
- **UTT/18/3326/PIP:** In allowing the appeal, the Inspector identified harm to countryside character and appearance of the area, contrary to policy S7 of the Local Plan. However, the Inspector considered that *“given the location of the site along the road side, its position adjacent to built development and the close proximity to existing residential development on the opposite side of the road, subject to careful consideration of technical details the harm would be limited”*. This appeal site was located opposite a supermarket (Nisa Local).
- **UTT/20/2639/OP:** Following revisions to address the tests set out by a previous Inspector, the applicant for this site concentrated development to the lower areas of the site, increased setback on its western part, added landscaping enhancements and changed some of the properties to bungalows.

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<sup>5</sup> APP/C1570/A/12/2184181.



As it stands at pre-app stage, the planning balance of paragraph 11(d)(ii) of the NPPF tilts against the principle of the development. The benefits include:

- Modest contribution to the 5YHLS.
- Limited economic benefits.
- Modest (potential) ecological enhancements.

The adverse impacts include:

- Significant countryside harm / urbanising effects.
- Sustainability credentials of the location / reliance on private car.
- (Potential) harm to the setting and significance of heritage assets.

Overall, the principle of the development is **not acceptable**.

## **2) Design, scale, layout, landscape (S7, GEN2, ENV3, Neighbourhood Plan, SPD Accessible Homes and Playspace, Essex Design Guide, NPPF);**

- **Heritage impacts:**
  - Advice from Conservation was not sought as part of the pre-app.
  - Conservation would be consulted in any formal application.



- A Heritage Statement should be submitted with any formal application, discussing the significance of the heritage assets and the impact of the proposal on that significance.
- **Size and scale:**
  - The proposed 9 no. dwellings on a site that covers 1.2ha would fail to make more effective use of the land.
- **Design and form:**
  - Based on the information submitted, no comments can be made.
- **Layout:**
  - Based on the information submitted, no comments can be made.
- **Landscape, trees, boundaries:**
  - Based on the information submitted, limited comments can be made.
  - The features shown on p.16 of the Draft Document for Pre-app Meeting propose additional soft landscaping measures. However, the Inspector previously concluded that such measures would not be enough to mitigate the impact on the countryside character and appearance of the area.
- **Materials:**
  - Based on the information submitted, no comments can be made.

### 3) Amenity (GEN2, GEN4, ENV10, GEN5, Essex Design Guide);

Based on the information submitted, no comments can be made.

In terms of the residential amenity of the occupants, the proposed dwellings, based on their floor and the bedrooms/persons occupancies, would need to have gross internal areas of more than the minimum standards as per the table below (see Nationally Described Space Standard<sup>6</sup>). Studies may count as bedrooms depending on their size.

Table 1 - Minimum gross internal floor areas and storage (m<sup>2</sup>)

Number of bedrooms(b)	Number of bed spaces (persons)	1 storey dwellings	2 storey dwellings	3 storey dwellings	Built-in storage
1b	1p	39 (37) *			1.0
	2p	50	58		1.5
2b	3p	61	70		2.0
	4p	70	79		
3b	4p	74	84	90	2.5
	5p	86	93	99	
	6p	95	102	108	
4b	5p	90	97	103	3.0
	6p	99	106	112	
	7p	108	115	121	
	8p	117	124	130	
5b	6p	103	110	116	3.5
	7p	112	119	125	
	8p	121	128	134	
6b	7p	116	123	129	4.0
	8p	125	132	138	



In terms of private amenity space (gardens), there shall be at least 100m<sup>2</sup> for a property of 3+ bedrooms and 50m<sup>2</sup> for 1-2 bedroom properties (see Essex Design Guide).

In terms of noise, odours, vibrations, dust, light pollution and other disturbances, a positive response from the Environmental Health Officer may be required to see if there will be a material increase that could harm the amenity of neighbouring occupiers. The commercial uses nearby may require a noise assessment and noise protection measures to be submitted to and approved in writing by the local planning authority.

In terms of the amenity of neighbouring occupiers, application of the design and remoteness tests (see Essex Design Guide) and the 45-degree tests (see SPD Home Extensions) would be conducted for a full submission to see whether there is material overshadowing, overlooking (actual or perceived) and overbearing effects. Based on the submitted information, no conclusions can be reached at this stage. Side facing windows should be avoided.

#### **4) Access and parking (GEN1, GEN8, parking standards, NPPF);**

The Highway Authority will be consulted. Even if the proposed vehicular access is existing, it shall be scrutinised by ECC Highways due to the intensification of use of the site for residential purposes. Appropriate visibility splays must be secured on the applicant's or highway land. If any visibility splays cut across any third party owned land, the applicant must secure a legal agreement with that third party and provide this information to the Council. If a legal agreement is necessary, this should be submitted with any formal application. The appropriate dimensions would be 5.5m x 2.9m for each parking space and 6m for turnings areas. Visitors' parking spaces are required on this occasion (0.25 parking spaces x 9 no. units = 2 no. parking spaces). For more than 3 no. bedrooms, a dwelling would require 3 no. parking spaces of appropriate dimensions; for 2-3 no. bedrooms, 2 no. parking spaces would suffice. The Parking Design Essex Design Guide section<sup>7</sup> should be the starting point for the delivery of parking, turning, and visitors' parking. Pre-application advice is available directly from ECC Highways<sup>8</sup>.

#### **5) Ecology (GEN7, ENV8, NPPF);**

A positive recommendation from the Ecology Officer may be required, to ensure no harm to protected and priority species and habitats and to secure biodiversity mitigation and enhancement measures. Any loss of hedges/trees should be

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<sup>7</sup> [REDACTED]

<sup>8</sup> <https://www.essex.gov.uk/planning-advice-guidance/highways-planning-advice>

specifically acknowledged. A Preliminary Ecological Appraisal is recommended to be submitted with any formal application and any other information/surveys required by law. The surveys must identify any protected and priority species and habitats within, and in the wider area of, the site, and appropriately assess the impact of the development on them. In addition, appropriate and proportionate biodiversity mitigation and enhancement measures must be proposed. The local planning authority must be able to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 and s40 of the NERC Act 2006 in order to be able to support a formal application on this site.

The necessary ecological surveys must be submitted prior to determination of any formal application, as per government guidance.

The applicant should demonstrate compliance with paragraphs 43, 174(d) and 180(a), 180(d) of the NPPF.

#### **6) Contamination (ENV14, ENV12, ENV13, NPPF);**

In terms of contamination, the Environmental Health Officer will be consulted to ensure protection of human health and the environment. A contamination survey (and remediation scheme if found to be necessary) is recommended to be submitted with any formal application.

#### **7) Archaeology (ENV4, NPPF);**

The Archaeology Officer may be consulted to ensure protection of potential archaeological remains.

#### **8) Flood risk (GEN3, NPPF);**

The site falls within Flood Risk Zone 1, and as such, a Flood Risk Assessment (FRA) is not required and no material increase in flood risk is considered<sup>9</sup>. The following images show the extent of flooding from rivers and from surface water.

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<sup>9</sup> Standing advice from, and contact information of, the Environment Agency can be found here: <https://www.gov.uk/guidance/flood-risk-assessment-local-planning-authorities>.



## 9) Housing mix and affordable housing (H9, H10, NPPF).

Policy H10 is applicable on sites of 0.1ha and above or of 3 no. or more dwellings; the site is more than 0.1ha and for 9 no. dwellings, thus H10 is relevant. Paragraph 62 of the NPPF states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. As such, notwithstanding policy H10 requiring smaller properties, more recent evidence in the UDC Strategic Housing Market Assessment points towards the need for a significant proportion of 3 and 4-bedroom market housing instead of 2 and 3-bedroom properties. The development should demonstrate compliance with the above policies.

The 40% affordable housing contribution is not triggered. The site exceeds 0.5ha but it does not comprise 'major development' for the purposes of the NPPF<sup>10</sup> as it proposes less than 10 no. units. Paragraph 64 of the NPPF states that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).

## CONCLUSION

In conclusion, **the development cannot be supported in principle** as per the advice contained in this pre-app letter.

## MAKING AN APPLICATION:

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<sup>10</sup> 'Major development' is defined in the NPPF Glossary (p.68): For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000m<sup>2</sup> or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Should you wish to submit an application for planning permission, please ensure that you review the advice on completing an application form and the appropriate checklist to ensure that the correct documents are included.

Further guidance on information requirements can be found in the Planning Practice Guidance, and at [www.uttlesford.gov.uk/planningapplicationforms](http://www.uttlesford.gov.uk/planningapplicationforms).

**IMPORTANT:**

Please note the following:

The advice given in this letter is based only on the information that has been submitted as part of the pre-application and it may not apply to any subsequent changes.

The application would be assessed against the national and local policies in force at the time the application is submitted.

**This letter is for guidance only: You will appreciate that the views expressed above are those of an Officer which will be no way binding upon the Council or any of its Committees when considering any formal application.**

The letter relates only to planning and your client will need to seek professional advice for guidance relating to building regulations.

Planning permission does not overrule your client's other statutory responsibilities, such as, but not limited to, complying with any restrictive covenants. The Council does not have access to this information so if your client is unsure about the existence of these issues, then your client should seek independent legal advice before an application is submitted.

Yours faithfully



Avgerinos Vlachos  
Senior Planning Officer