

Our ref: F185291
Appeal ref: S62A/2023/0026

Mark Boulton
Operations Manager
The Planning Inspectorate
3rd Floor
Temple Quay House
2 The Square
Bristol
BS1 6PN

12th January 2024

SENT VIA EMAIL

Dear Mr Boulton,

RE: S62A/2023/0026 - Land West of Robin Hood Road, Elsenham

I am the agent for the above application and I write on behalf of the applicants, Rosconn, Nigel John Burfield Holmes, Rosemary Holmes, Mark Burfield Holmes, Robert Murton Holmes, Sasha Renwick Holmes, and Tanya Renwick Cran. We wish to make an additional statement addressing the recent changes in planning policy, through the publication of an updated National Planning Policy Framework (NPPF) in December 2023, and to respond to the objections that have been raised by statutory consultees.

Updated National Planning Policy Framework (December 2023)

The updated NPPF was published on the 19th December 2023. In a statement to Parliament by Michael Gove, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, the minister introduced the update by stating that the updated policy *“provides clearer protection for the Green Belt, clarity on how future housing supply should be assessed in plans, certainty on the responsibility of urban authorities to play their full part in meeting housing need and protections for the character of precious neighbourhoods, safeguarding the gentle density of suburbs and ensuring family homes are there for the next generation.”*

Within the updated document, there are several changes that are material in the determination of this application, primarily relating to housing supply and housing delivery.

Paragraph 76 of the updated NPPF states:

“Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing for decision making purposes if the following criteria are met[footnote 40]:

a) their adopted plan is less than five years old; and

b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.”

Footnote 40 states that *“Transitional provisions relating to the application of this paragraph are set out in footnote 79”,* and Footnote 79 states, *“As an exception to this, the policy contained in paragraph 76 and the related reference in footnote 8 of this Framework should only be taken into account as a material consideration when dealing with applications made on or after the date of publication of this version of the Framework.”*

Paragraph 77 goes on to state:

“In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years’ worth of housing[footnote 41], or a minimum of four years’ worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old[footnote 42]. Where there has been significant under delivery of housing over the previous three years[footnote 43], the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period). National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.”

Footnote 41 states that *“For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.”*

Footnote 42 states, *“Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance”,* and

Footnote 43 states *“This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. For clarity, authorities that are not required to continually demonstrate a 5 year housing land supply should disregard this requirement.”*

Paragraph 226 states:

“From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old [footnote 80], instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and

proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.”

What does this mean in respect of Uttlesford District Council?

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.”

The Development Plan for the site is the Uttlesford District Local Plan, which was adopted in 2005. Most of these policies are still in force but since the National Planning Policy Framework was first published in 2012 some of these policies are now out of date and inconsistent with the policies set out in the Framework.

A new Local Plan for Uttlesford was published for consultation under Regulation 18 on the 11th November 2023. However, at such an early stage in the process, the policies carry only limited weight when considering the proposed development, in that they indicate an emerging strategy. The application site was previously identified in an earlier iteration of the Local Plan, but in the emerging plan published in 2023, there are no proposed allocations for the village of Elsenham, and the site is no longer specifically allocated. However, this emerging plan was formulated assuming that the sites that have some form of permission in Elsenham will be coming forward in due course, which includes this site, which has an extant outline approval and was the subject of a reserved matters application at the time of the Regulation 18 consultation.

The Council contends that at the 1st April 2023, it can demonstrate a Housing Supply of 5.14 years, and has submitted a Position Statement accordingly, dated 9th October 2023. However, whether we do or don't agree with this position, it has now been superseded by the aforementioned policy update in the NPPF (December 2023).

The emerging Local Plan has been consulted on in the manner set out under Regulation 18 (Town and Country Planning (Local Planning) (England) Regulations 2012), however, the plan does not include both a policies map and proposed allocations towards meeting housing needs. The provisions in NPPF paragraph 226, therefore, do not apply, and Uttlesford is required to demonstrate a 5-year supply of housing sites, with a buffer if applicable, as set out in paragraph 77 of the NPPF.

When considering the requirements under paragraph 77, in the published updated Housing Delivery Test figures released on the 19th December 2023, the “Housing Delivery Test: 2022 measurement” is confirmed as being only 58%. This calculation is derived from only 1055 new homes being delivered in the period where the required number of homes to be delivered was 1824. Therefore, in accordance with paragraph 77, the delivery rate is below the minimum 85% target set out in footnote 43, and therefore, a 20% buffer must be added to the 5-year housing supply target to compensate for under-delivery over the past 3 years.

The calculation of housing supply is, therefore, as follows:

Calculation of 5-year housing supply (based upon the UDC 5-Year Land Supply Statement And Housing Trajectory (Status At 1 April 2023) Published 9th October 2023)						
Annual target:	N/A					684
Target Years 1 – 5	684 x 5					3420
Buffer – 20% of target	3420 x 20%					684
Overall target:	3420 + 684					4104
Supply*	Yr1	Yr2	Yr3	Yr4	Yr 5	
	534	697	916	837	711	3695
% of target available on deliverable sites:	$(3695 / 4104) \times 100$					90%
Supply in years:	$(3695 / 4104) \times 5$					4.5 years
Shortfall:	4104 - 3695					409

* Forecast completions for the next 5-year period taken from UDC 5YHLS Position Statement

Based on the above calculation, using the Local Planning Authority's own data, they are unable to demonstrate a sufficient supply of housing sites. NPPF paragraph 11(d) is therefore engaged.

In respect of NPPF paragraph 11(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date:

- Paragraph 11(d)(i) is not relevant as there are no policies in the NPPF that, in respect of this site, protect areas or assets of particular importance which provide a clear reason for refusing the development;
- Paragraph 11(d)(ii) states that planning 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 NPPF taken as a whole.

In conclusion, this tilts the planning balance such that there is a presumption in favour of approval, which was also the case in 2020 when the previous appeal was allowed.

Environment Agency Consultation Response (19th December 2023)

The Environment Agency has raised an objection stating that the:

“The submitted planning application and associated documents indicate that a new SuDs Pond within 10 metres of the river, and a new outfall discharging into the Stansted Brook will be required as part of the proposed development. This activity will require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016 which is unlikely to be granted for the current proposal.

We do not have enough information to know if the proposed development can meet our requirements for nature conservation, ecology and physical habitats, and flood risk management, because no assessment of the risks has been provided. We therefore object to the proposal and recommend that the planning application is refused.”

In explaining its reasoning, it states:

“It is currently unclear how close the proposed SuDs Pond and associated infrastructure will be to the Stansted Brook. This activity has the potential to remove natural riparian buffer zone habitat. Land alongside watercourses is particularly valuable for wildlife and it is essential this is protected. Natural river corridors can provide a filtering effect on runoff to ‘clean’ runoff before it enters the watercourse. Natural river corridors provide habitat for many riverine animals including fish, invertebrates and macrophytes through the provision of refuge areas and diversity of available habitat. Additionally, there are no details provided of the proposed outfall.”

Applicant’s Response:

The application contains information sufficient to determine the impacts in respect of ecology and flood risk, this information is supplied in the Ecological Assessment prepared by Ecology Solutions and the Flood Risk Assessment and Drainage Strategy by Travis Baker Ltd.

The submission includes details of the indicative Drainage Strategy and the cross-section of the proposed SUDS basin. While this specific application seeks outline approval, the strategy is based on a detailed assessment of the drainage requirements using a preferred design approach, which is the same approach that has been applied for in the applicant’s Reserved Matters application UTT/23/2028/DFO, submitted to Uttlesford District Council under the extant outline planning permission.

Your attention is drawn to the Environment Agency’s response to UTT/23/2028/DFO (contained in Appendix A of this statement), in which they raise no objection to the detailed proposals. This response is material to the determination of the revised outline. The requirement to obtain an Environmental Permit for Flood Risk Activities is identified for information, and the applicants are aware that a permit will be required. However, the Environmental Permitting (England and Wales) Regulations 2016 is a separate regulatory procedure, and the consultation response recognises this. As far as we are aware, there is no requirement to secure an Environmental Permit or indeed satisfy the requirements of that permitting system prior to the grant of planning permission. This is a separate regulatory process, and while a condition is not technically required to impose a requirement set by other legislation, if it were felt necessary a “Grampian” style condition could be imposed to require that an Environmental Permit is secured before the development commences.

In respect of paragraphs 174 and 180 of the NPPF (September 2023), now paragraphs 180 and 186 respectively of the NPPF (December 2023), the applicants contend that the Ecological Assessment by Ecology Solutions along with the Landscape and Visual Appraisal prepared by FPCR, robustly assess

the relevant impacts, and set out mitigation where necessary in conformity with the national policies.

MAG Aerodrome Safeguarding Authority Consultation Response (11th December 2023)

The MAG Aerodrome Safeguarding Authority Officer has raised an objection to the current SuDS plans because:

“they would increase the risk of Birdstrike to aircraft using Stansted Airport.

The drainage scheme will include a flood attenuation basin, designed to be normally dry, but will also incorporate a permanent pond within its design. Ideally, at this short distance from the aerodrome, there would not be any permanent waterbody as it has the potential to attract species of birds that are hazardous to aircraft e.g. waterfowl, including Mallard and feral geese.”

It goes on to state:

“In order to prevent the creation of an attractive site for hazardous waterfowl, it is imperative that the pond is designed in a way that will help to deter these birds by including steep-sided banks, planted with dense marginal aquatic vegetation to help obscure the water. There should not be an island included in the final design and the pond should either be netted or surrounded by a goose-proof fence with signs to ensure that residents do not feed birds. The developer should also commit to maintaining the SuDs as per the ‘SuDS maintenance plan’ to ensure the drainage outlets of the attenuation basin continue to work effectively.”

Applicant’s response:

Please find enclosed in Appendix B a Technical Response note from Travis Baker Ltd dated 3rd January 2024. The note clarifies that the Planning Policy for Flood Risk and Drainage requires all development to provide at least 2 stages of treatment for development run-off and the permanent pond performs an essential part of that treatment train. It will therefore not be possible to remove this vital element from the submitted scheme.

Therefore, to mitigate the risk of the wet area becoming a habitat for waterfowl, the margins of the basin will be planted with rushes. Self-seeding bull rushes will then populate the water body, discouraging use by waterfowl.

Scrutiny and oversight of the proposed landscaping to the basin appear to be an acceptable form of mitigation to the Safeguarding Authority, and it is noted that both in the original outline application and as part of the determination of the current reserved matters application, no objection has been raised subject to the imposition of conditions controlling landscaping.

On the basis of the Technical Note, and the Authority’s consultation responses, this matter can be addressed through a suitable and appropriate landscaping scheme, which is a matter reserved for future determination in this application.

Essex County Council - Green Infrastructure and Sustainable Drainage Consultation response (5th January 2024)

Essex County Council at the Lead Local Flood Authority has raised a holding objection seeking additional information. It states:

“Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we wish to issue a holding objection to the granting of planning permission based on the following:

- *The LLFA does not accept QBar, therefore, the discharge rate should be equivalent to the 1 in 1 Greenfield Rate.*
- *Indices tables should be provided for pollution and treatment.*
- *Small sites should minimise the areas of hardstanding, where hard surfaces are necessary unlined permeable paving should be used. On sites with gradients permeable paving can utilise check dams to slow flows.”*

Applicant’s Response:

Since the grant of outline planning permission, the LLFA has updated their flood risk policy and altered the required drainage rates. We recognise that this was not picked up within the update, but in liaising with the applicant’s drainage engineer, it does not represent an adverse constraint on the proposals and can be accommodated. A revised Drainage Strategy is being prepared and the FRA will be updated to include the requested tables for pollution and treatment. Travis Baker Ltd are currently preparing this revision, which will be issued later next week. We trust his revision can be accepted.

Summary

The most recent policy changes in the NPPF only strengthen the support for the delivery of housing in this district and tilt the balance in favour of granting planning approval.

In respect of objections raised by consultees, we believe that the issues raised in their response can be suitably addressed through the provision of supplementary information as part of those matters reserved for approval, or by the imposition of a suitably worded condition, which is an approach that is consistent with the determination of the extant outline planning permission, and the pending reserved matters application.

We trust the above is useful to the determination of this application.

Yours faithfully

A large black rectangular redaction box covering the signature and name of the official.

Frazer Hickling
Director
PHILLIPS PLANNING SERVICES LTD

Enc.

Appendix A – Environment Agency Consultation Response 8th December 2023 – Application
UTT/23/2028/DFO

Appendix B – Technical Response note from Travis Baker Ltd 3rd January 2024

Appendix A – Environment Agency Consultation Response 8th
December 2023 – Application UTT/23/2028/DFO

Rachel Beale
Uttlesford District Council
Development Control
Council Offices London Road
Saffron Walden
Essex
CB11 4ER

Our ref: AE/2023/128687/01-L01
Your ref: UTT/23/2028/DFO
Date: 08 September 2023

Dear Rachel,

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

SOUTH OF RUSH LANE ELSENHAM HERTFORDSHIRE

Thank you for your consultation dated 14 August 2023. We have reviewed the documents as submitted and we have no objection to this planning application. Please find information on permitting and drainage strategy in the Flood Risk section below.

Flood Risk

Environmental Permit for Flood Risk Activities

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- On or within 8 metres of a main river (16 metres if tidal)
- On or within 8 metres of a flood defence structure or culvert (16 metres if tidal)
- On or within 16 metres of a sea defence
- Involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- In a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission.

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities->

[environmental-permits](#) or contact our National Customer Contact Centre on 03702 422 549.

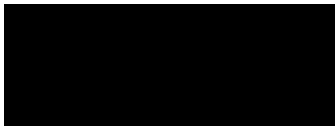
Additional Advice- Drainage Strategy

Within the document 'Indicative Drainage Strategy' the applicant has proposed discharging into Stansted Brook at Greenfield runoff rate, we advise it is necessary that it is confirmed that surface water is discharged at this rate or below at all storm events to ensure there is no increase to fluvial flood risk.

In addition to this we advise it may be necessary for the applicant to provide a method in which water will enter Stansted Brook when the SuDS basin is full, and the discharge rate of this to ensure there will be no increase to flood risk both on site and in the surrounding area.

We trust this advice is useful.

Yours sincerely,



Ms Megan Turnpenney
Sustainable Places - Planning Advisor

Team e-mail: Planning.Eastanglia@Environment-agency.gov.uk
Team number: 02084 745242

Appendix B – Technical Response note from Travis Baker Ltd
3rd January 2024

**TECHNICAL RESPONSE NOTE TO MAG CONSULTATION RESPONSE TO PLANNING INSPECTORATE
DATED 11th DECMEBER 2023.**

This technical note is in response to the MAG consultation response 2023/313 Dated 11/12/23.

The consultation response makes reference to the Flood Risk Assessment and Drainage Strategy document 18165-OUT submitted with the current outline planning application.

The MAG response states that :

The drainage scheme will include a flood attenuation basin, designed to be normally dry, but will also incorporate a permanent pond within its design. Ideally, at this short distance from the aerodrome, there would not be any permanent waterbody as it has the potential to attract species of birds that are hazardous to aircraft e.g. waterfowl, including Mallard and feral geese.

In order to prevent the creation of an attractive site for hazardous waterfowl, it is imperative that the pond is designed in a way that will help to deter these birds by including steep-sided banks, planted with dense marginal aquatic vegetation to help obscure the water. There should not be an island included in the final design and the pond should be either be netted or surrounded by a goose-proof fence with signs to ensure that residents do not feed birds.

The response correctly highlights that the basin will be dry under normal conditions, but includes a section of permanent pond. This has been included to aid water quality improvement of any collected run-off by allowing sediments to settle in the basin prior to discharge to the Stansted Brook. Planning Policy for Flood Risk and Drainage requires all development to provide at least 2 stages of treatment for development run-off and the permanent pond performs an essential part of that treatment train. It will therefore not be possible to wholly remove this vital element from the submitted scheme.

It should be highlighted that the pond in question is circa 100m² and less than 1m deep. It has side slopes of 1 in 3 which is considered the maximum acceptable gradient for unreinforced earth slopes giving due consideration for long term stability and future maintenance of the surrounding landscaping. The pond area will undoubtedly become self-seeded by native bull rushes, removing any expanse of open water and thereby discouraging its use as habitat for waterfowl.

The submitted Landscaping Plans reflect the marginal planting around the basin and the rushes over the permeant pond, negating the need for warning signs or netting that might detract from the desire to integrate the SUDS as an amenity space for the benefit of the future residents.

We trust that the above statement provides sufficient comfort to MAG such that their objection to the development can be removed.