



The Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013

ISSUES REPORT

Application Reference No: S62A/2023/0025

Applicant: Mr David Rich-Jones, Richstone Procurement Ltd

Description of proposal: Outline planning application with all matters reserved except access for up to 28 dwellings (class C3) including public open space, sustainable drainage systems, landscaping and associated infrastructure and development.

Site address: Land North of Eldridge Close, Stickling Green, Clavering, Essex CB11 4FZ

Report prepared by: Luke Simpson BSc MSc MRTPI

Hearing to be held on: Thursday 01 February 2024 at the Council Chamber, Uttlesford District Council, London Road, Saffron Walden, CB11 4ER.

Introduction/Background

1. Local planning authorities (LPAs) can be 'designated' where the Secretary of State considers there are aspects in which an authority is not adequately performing its function of determining planning applications. Where a LPA is designated an applicant can choose to submit certain types of application to the Planning Inspectorate. Uttlesford District Council (the Council) was designated on 8 February 2022 in respect of applications for planning permission for major development.
2. This report sets out the main issues relevant to the consideration of the application. These issues will be discussed during a Hearing to be held at 10.00am on Thursday 1 February 2024 at the Council Chamber, Uttlesford District Council, London Road, Saffron Walden, CB11 4ER.

Planning History

3. The site has a reasonably extensive planning history. Of particular relevance is an appeal decision which was issued 23 August 2021, under reference APP/C1570/W/21/3267624 (the Previous Appeal). This related to a proposal for nine dwellings. The appeal was dismissed.
4. In addition, the Council recently refused planning permission for 32 dwellings under reference UTT/22/1578/OP. The applicant has lodged an appeal with the Planning Inspectorate. The appeal is awaiting determination.

Procedural Matters

5. The application was valid on 7 November 2023. The Inspectorate consulted on the planning application up until 15 December 2023. Responses were received from the following consultees:
 - Essex County Council (ECC) Lead Local Flood Authority

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- National Highways
 - Clavering Parish Council
 - ECC Infrastructure Planning Officer
 - NHS Herts and West Essex Integrated Care Board
 - Natural England
 - Environment Agency
 - Heritage and Conservation Officer
 - Environmental Health
 - Housing Strategy, enabling and development officer
 - ECC Highway Authority
 - Place Services Ecology
 - Affinity Water Ltd
 - Essex Police
 - SSE Utility Solutions Ltd
 - ESP Utilities Group Ltd
 - NATS Safeguarding
 - ECC Minerals and Waste
 - MAG Highways and Safeguarding
 - UK Power Networks
 - Cadent Gas
 - Landscape Officer
 - Thames Water
 - Historic England

6. In addition, 27 responses were received from local residents all either outlining concerns or explicitly objecting to the proposed development. Furthermore, several representations have been received from Keep Clavering Rural.

Revised Framework

7. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The Applicant and the Council have both been provided with an opportunity to make further representations with regard to the Framework.

Council's Response

8. The Council has submitted an Officer's report which was considered by the Planning Committee on 13 December 2023. In applying the test at Framework Paragraph 11dii the Planning Officer concluded that the alleged harm caused by

the proposed development would not significantly and demonstrably outweigh the overall benefits of the scheme, when assessed against the policies in the Framework. However, the minutes of the committee meeting advise that Members, having considered and discussed the Officer Report, retained the same objections as outlined in the decision notice of the previously refused planning application (reference UTT/22/1578/OP). These reasons are as follows:

- The proposal introduces a sizeable residential development to an area of open countryside. The development would appear out of character with the site and street scene within Clavering, and therefore and be harmful to the rural character of the area. The development would not be appropriate in the rural area and there are no justifiable reasons as to why the development, in the form proposed, needs to take place there. As such the proposals are contrary to Uttlesford Local Plan Policies S7, GEN2 (adopted 2005) and the NPPF.
- The proposals by reason of its inappropriate size and scale would amount to the significant loss to best and most versatile ('BMV') agricultural land contrary to Policy ENV5 of the Uttlesford District Council Adopted Local Plan and Paragraph 174(b) of the National Planning Policy Framework.
- The application does not include a mechanism such as a S106 legal agreement to secure:- i. 40% Affordable Housing, ii. 25% of Affordable housing being First Homes iii. ECC Education Contribution, iv. Provision and management of Public Open Space, v. Pay the Council's reasonable legal costs, vi. Pay the monitoring fee, As such the proposal is contrary to Policies H9 and GEN6 of the Uttlesford Local Plan (adopted 2005) and the National Planning Policy Framework.

Screening Direction

9. On 27 October 2023 the Planning Inspectorate, in exercise of the powers conferred on the Secretary of State by Regulation 12(1) and 7(2) to (8) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, issued a screening direction confirming that the proposal is not EIA Development.

Hearing

10. The appointed person to determine the application is Luke Simpson BSc MSc MRTPI. The Hearing will take place on Thursday 01 February 2024.

Main issues

11. The following are the main issues to be considered in respect of the application:
- Whether the site is a suitable location for the proposed development with particular regard to the Council's strategy for the location of residential development and the access of the site to services and facilities.
 - The effect of the proposed development on the character and appearance of the area.
 - The effect of the proposed development on best and most versatile agricultural land.

- Whether sufficient provision would be made for affordable housing, an education contribution, provision and management of open space and other contributions to be controlled by s106 agreement.
- The planning balance to be applied with specific regard to Framework Paragraph 11d.

Location

12. The application site is located outside of, but adjacent to, the settlement boundary of Clavering (Hill Green) as defined within the Local Plan¹. As such, for planning purposes, the proposed development would be located within the countryside.

13. Local Plan² Policy S7 applies to development in the countryside. It states in full:

'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'

14. The Council considers that the proposal would conflict with Policy S7 as it would 'not be appropriate in the rural area and there are no justifiable reasons as to why the development, in the form proposed, needs to take place there.'

15. The previous appeal related to a lower quantum of residential development albeit in the same location. The conclusions reached by the previous Inspector, in relation to the location of residential development, are therefore relevant. However, it should be noted that this previous decision was made in the context of a Housing Land Supply (HLS) shortfall. The Council's latest published HLS position is 5.14 years³.

16. Notwithstanding the HLS position, Policy S7 takes a more restrictive and less positive approach to residential development in the countryside than is advocated within the Framework. In particular, Framework Paragraph 83 states in full:

'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'

17. Whilst the Framework does recognise that housing can be located in rural areas it also emphasises the importance of ensuring that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

¹ Clavering (Hill Green) Inset Map - Uttlesford District Council Local Plan 2005

² Saved policies of the Uttlesford District Council Local Plan 2005

³ Published 09 October 2023

Within this context Framework Paragraph 109 also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

18. Furthermore, the Local Plan text which precedes Policy S7 sets out the overall strategy for the location of new development, effectively identifying a hierarchy of locations for new development having regard in part to existing services and facilities.

19. In considering the compliance of the previous appeal proposal with Framework Paragraph 79 (now Revised Framework Paragraph 83), the Inspector concluded at paragraph 9 of the appeal decision that *'residents would contribute financially to local shops and services in the long term and the investment required to build the houses would provide benefits in the short term. This is a location where development in one village is also likely to support services in villages nearby'*. Furthermore, the Inspector also concluded at paragraph 10 that *'this is not a highly accessible location for new housing. Despite this, given the range of services available locally and the benefits of these services that would accrue, the likelihood of a high reliance on private vehicles is not a matter that would weigh against the proposal in this case.'*

20. Within this context, it will be necessary to establish the following:

- Would the proposal conflict with Local Plan Policy S7?
- What services and facilities are available in Clavering and how accessible are they?
- What services and facilities are available in nearby settlements and how accessible are they?
- To what extent (if any) would these services and facilities benefit from the increase in the local population which would result from the proposal?
- What sustainable transport options currently exist and how would these be utilised?

21. Whilst the broad conclusions of the previous Inspector are noted, the appeal decision does not provide sufficient information to allow conclusions to be drawn in relation to all of the questions outlined above. As such, these matters require further exploration in relation to this current application.

Character and Appearance

22. The applicant has submitted a Landscape and Visual Impact Assessment with the application. The LVIA accepts that there would be a change to local landscape character but asserts that this change would be limited to the immediate area. The LVIA also outlines that over time these effects would be reduced by existing and proposed vegetation and the weathering of building materials.

23. In terms of the relationship between the proposal and existing settlement character, the LVIA concludes that the site represents an opportunity to provide additional dwellings that would consolidate the existing layout pattern in the village and help prevent the cumulative effects of *'creeping settlement out into the wider landscape'*.

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24. In providing a response to the proposal, the Council's Landscape Officer deferred to their previous comments on planning application reference UTT/22/1578/OP, where it was concluded that *'there is no dispute that the proposed development with the introduction of built forms would have a major adverse impact on the existing rural character of the site itself. However, the site is well contained by existing boundary vegetation and the proposed development would have medium/low impact on the wider landscape'*
25. The Council's Planning Committee concluded that the development would appear out of character with the site and street scene within Clavering, and therefore would be harmful to the rural character of the area.
26. In relation to the Previous Appeal the Planning Inspector concluded that the proposed development, comprising nine dwellings, would detract from the open character of the countryside which forms the setting for the settlement. In describing the existing settlement character the Inspector found that Clavering is a rural settlement characterised by often loose knit linear development along roads through the village. The Inspector noted that Eldridge Close is an exception to this character but also noted that this site was previously-developed land prior to its residential development. Ultimately, the Inspector found that the proposal would be at odds with the traditional development which forms the overall character of the village as well as the modern, higher density, development on Eldridge Close.
27. Taking all of these factors into consideration, it will be necessary to establish the following:
- What is the existing settlement character of Clavering?
 - What effect would the proposal have on the existing settlement character of Clavering?
 - What is the existing character of the landscape?
 - What effect would the proposal have on the existing landscape character?
 - Where would any alleged harm be visible from (including PRow)?
 - What effect would existing and proposed planting have?
28. In reaching a conclusion on the effect of the proposal on the character and appearance of the area, it will be necessary to conclude whether the proposed development accords with saved Local Plan Policies S7 and GEN2, as well as the relevant provisions of the Framework.

BMV

29. The applicant and the Council both considered the site to comprise grade 2 agricultural land⁴. The Framework definition of Best and Most Versatile Agricultural Land (BMV Land) is 'land in grades 1, 2 and 3a of the Agricultural Land Classification.' As such, the site comprises BMV agricultural land.
30. Saved Local Plan Policy ENV5 states in full:

⁴ Agricultural Land Classification

'Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.'

31. Framework paragraph 180b states in part that plans and decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land.

32. Framework Paragraph 181 states:

'Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework⁶²; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.'

33. Framework Footnote 62 clarifies that, for plan making purposes, where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.

34. The Council object to the application on the grounds that *'the proposals by reason of its inappropriate size and scale would amount to the significant loss to best and most versatile ('BMV') agricultural land contrary to Policy ENV5 of the Uttlesford District Council Adopted Local Plan and Paragraph 174(b) of the National Planning Policy Framework⁵.*

35. The applicant asserts that the site is small and constrained for the purposes of modern agricultural machinery and that much of the land within the district comprises BMV land.

36. Within this context, it is necessary to establish the following:

- Would the proposal conflict with saved Local Plan Policy ENV5?
- Would the proposal conflict with the Framework?
- What is the extent of BMV land within the district.
- Is the site suitable for modern agricultural methods
- Do the aforementioned factors (suitability and extent of BMV) provide material considerations which indicate a decision other than in accordance with the development plan (in the event that a conflict is identified)?

Planning Obligation

⁵ Note the Council's Framework paragraph reference is to the previous version of the Framework

37. The Planning Inspectorate is not a signatory to planning obligations. It is the responsibility of the applicant and the LPA to ensure that a completed agreement is in place so that it can be taken into account in reaching a decision. It is understood that a s106 agreement is at an advanced stage and that a signed and dated version will be submitted at the Hearing. If this is the case, and the Council does not contend any of the obligations included within it, then the sole focus of this matter will be whether the obligations comply with the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).

38. If the Council intends to contend any of the obligations then it should notify the Planning Inspectorate prior to 30 January 2024.

Planning Balance

39. The Council's latest published position on Housing Land Supply (HLS) asserts a HLS position of 5.14 years. In this instance Framework Paragraph 11d would not be engaged by virtue of a HLS shortfall. However, the Council's Planning Officer report considers that *'the Council's Development Plan cannot be viewed as being fully up to date as such NPPF paragraph 11(d) of the National Planning Policy Framework (NPPF) is still engaged.'*

40. Framework Paragraph 11 requires that Plans and decisions should apply a presumption in favour of sustainable development. Framework Paragraph 11d explains how this should be applied in decision-taking. It states in full:

'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'*

41. It will therefore be necessary to establish the following:

- Which policies are the most important for determining the application and are these policies out-of-date?
- In the event that the most important policies are out-of-date, are there any policies in the Framework which provide a clear reason for refusing planning permission?⁶
- If there are no Framework policies (of the type specified in Footnote 7) which direct refusal, then Framework Paragraph 11dii would be engaged. In this scenario, would any adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole?

⁶ These policies are identified in Footnote 7 of the Framework.

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- What weight should be given to any conflict with the development plan policies within this context, having regard to factors including the consistency of the development plan policies with the Framework⁷?

42. The applicant asserts that there are many benefits associated with the proposal. Indeed, there are also benefits set out within the Council's Officer Report. These benefits will need to be considered under the planning balance.

Other Matters

Interested Parties

43. Local residents have raised a number of matters, some of which do not fall within the main issues. Nonetheless, interested parties will have the opportunity to raise those matters if they wish to do so during the hearing. Matters include (but are not limited to): parking and highway safety; protected species (bats); and drainage.

Heritage

44. The Council's Heritage Officer responded to the consultation stating in part that *'the principle of the development could be supported if further work to show an understanding of the local context is provided. To be considered acceptable the proposal requires a bespoke, well detailed design in response to setting, including a materials palette that is reflective of local character'*.

45. The applicant provided a written response on 07 December 2023 which asserts that the heritage assets referred to by the Heritage Officer are over 100 metres from the site and that their setting would not be affected by the proposal.

46. There is an obligation under section 66 (1) and section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, for the decision-taker to have special regard to the desirability of preserving the listed buildings, their settings and any features of special architectural or historic interest. As such, this matter will require consideration.

Conditions

47. The Council has provided a list of suggested planning conditions. These will be discussed at the hearing. However, discussion of the conditions is standard procedure and will not prejudice the decision.

Site Visit

48. An unaccompanied site visit will be undertaken on the day of the hearing⁸. This will either take place prior to the hearing, or after the hearing has been closed.

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⁷ Even where development plan policies are out-of-date, they are still capable of being afforded weight

⁸ Weather permitting (if not possible the appointed person will visit the site on another day)