

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

**ISSUES REPORT**

**Application Reference No:** S62A/2023/0023

**Applicant:** Stuart Richardson, NB Investments UK Ltd

**Description of proposal:** Erection of 5 residential dwellings and associated infrastructure.

**Site address:** Eastfield Stables, May Walk, Elsenham Road, Stansted, Essex CM24 8SS

**Report Prepared by:** Ben Plenty

**Hearing to be held on:** Tuesday 20 February 2024

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**Introduction/Background**

*The Site*

1. The application site is approximately 1.95 hectares in area. It is part of a larger field that contains converted barns to the north, now in residential use, and a wellness hub in the south. The site is between the settlements of Stansted Mountfitchet and Elsenham, close to the M11, within the open countryside. The larger field is largely enclosed by tree and hedge field boundaries. Access would be gained to the proposed development by an existing access from the B1051.
2. A public right of way (PROW) 45-25 Bridleway extends along the western boundary of the site. PROW 45-19 footpath and to the northwest/west of the site. The site is screened by tree and hedge screening along the PROW.

*Planning policy and designations*

3. The statutory development plan for the area is the Uttlesford Local Plan [2005] (LP). National policy and guidance is contained in the National Planning Policy Framework (the Framework) and the National Planning Policy Guidance (PPG).
4. The site is outside the development limits of Elsenham, the nearest settlement, where limited infilling can be allowed by LP policy H3, subject to certain criteria. The site does not contain designated heritage assets and is not within a conservation area. It is outside any landscape or Green Belt

designations. The site is within the proximity of Down Farmhouse, a grade II listed building.

### *The proposal*

5. Full planning permission is sought for the erection of 5 residential dwellings and associated infrastructure. A vehicle access is proposed through the centre of the site connecting to the access onto the B1051 in the south. Dwellings would be identical in design, consisting of large footprints and set in large plots.

### *Procedural matters*

6. The application was made under section 62A of the Town and Country Planning Act 1990, which allows for applications to be made directly to the Planning Inspectorate where a Council has been designated by the Secretary of State.
7. As the proposal is a major application, raising multiple issues including matters of a technical nature, the decision was taken that it would be appropriate to hold a hearing. This is to be held 20 February 2024 at Uttlesford District Council on London Road in Saffron Walden, in the Council Chamber.
8. A screening direction was issued by the Planning Inspectorate on 28 September, which concluded that the proposed development would not be of a scale and nature likely to result in significant environmental impact and is therefore not development requiring Environmental Impact Assessment.
9. The application was made on 22 August 2023 and validated 18 October. Notifications were made on 19 October and allowed for initial response by 20 November. Responses were received from:
  - Cadent Gas
  - Gigaclear Diversionary Works
  - Highway Agency
  - National Highways
  - Environment Agency
  - Health and Safety Executive
  - Natural England
  - UK power Networks
  - Essex County Council (ECC):
    - Highways and Transportation
    - Infrastructure Planning
    - Place Services – Historic Environment

- Lead Local Flood Authority (LLFA)
  - Waste Planning Authority
  - Crime Prevention Tactical Adviser
  - Affinity Water
  - Thames Water
  - NATS Safeguarding
  - East Midlands Airport (MAG) Highways
  - East Midlands Airport (MAG) Safeguarding
  - Uttlesford District Council:
    - Conservation Officer
    - Housing Strategy
    - Environmental Health
10. In addition, Elsenham Parish Council, Stansted Mount Fitchet Parish Council and seven local residents (five of which are in support) also submitted responses to the consultation.
  11. The applicant submitted further information on 14 November in response to a holding objection made by the LLFA on 20 October and a financial viability assessment (FVA) in response to the comments of the Council's Housing Officer.
  12. During the consultation process the LLFA was reconsulted following the receipt of the revised Flood Risk Assessment. The LLFA replied on 22 November removing its objection and identified it had no objection subject to the imposition of conditions for a detailed surface water scheme, a scheme to minimise off-site flooding, details of maintenance arrangements and a record of maintenance. Accordingly, the Council no longer considers this as a matter of dispute, and this has been resolved to my satisfaction through ongoing discussion.
  13. With respect to the applicant's FVA, the Council's Housing Officer identified that the proposal would require an affordable housing provision of 40%, equating to two dwellings. The comment states that the offered off-site contribution would be acceptable in principle (rather than an onsite provision) but would need to be subject to a FVA.
  14. The applicants have submitted a draft Section 106 Legal Agreement, in the form of a Unilateral Undertaking, to secure the offered affordable housing sum.
  15. A list of suggested conditions has been submitted by the Council.
  16. Uttlesford District Council has submitted an Officer's Report which was considered by Planning Committee on 22 November. The Committee resolved

to express objection to the proposal with four reasons identified. These related to the suitability of the location for residential development, the proposed density of the scheme, the risk of flooding and the failure to provide a suitable mechanism to secure an affordable housing contribution.

Accordingly, the Council would have refused the application.

17. The responses to the consultation including issues raised by interested parties, the officer report and the Council's response have informed the main issues which are set out below.

### **Main issues**

18. The following are the main issues to be considered in respect of the application:
- whether the location of the development would accord with local and national policy;
  - the effect of the development on the character and appearance of the area;
  - whether the proposed density of housing would accord with local and national policies; and
  - whether the proposal would make sufficient provision for affordable housing.

### *Location of development*

19. The site is located within the countryside. LP policy S7 establishes that land outside settlement boundaries is deemed to be countryside and where new development is substantially restricted. In the countryside the policy states that planning permission will only be given for development that needs to take place there or is appropriate to its rural context. Furthermore, LP policies GEN 1 and GEN 2 relate to access and design. These seek to guide development to locations in areas which can encourage movement by means other than the private car.
20. With respect to infilling, LP paragraph 6.14 states that there are no specific policies for infilling outside development limits due to the restrictions of policy S7. However, it also states that if there are opportunities for sensitive infilling in small gaps in small groups of houses outside development limits, these will be acceptable if development would be in character with its surroundings and have a limited impact on the countryside.
21. The Council has identified that LP policy S7 is only partially consistent with the Framework. This is because the Framework supports well designed new buildings, sustainable growth and the expansion of enterprise in rural areas, rather than seeking to protect the countryside for its own sake.
22. The Council identifies that Stansted and Elsenham have access to a wide range of goods and services. The site is around 700 metres from the nearest

bus stop, 1.2kms from the nearest school and 900 metres from the nearest supermarket. The site is connected to Elsenham and Stansted Mountfitchet by a footway, although this is not illuminated. The Council asserts that occupiers would not be able to safely access sustainable transport and would be likely to undertake most journeys by private car, resulting in poor accessibility. The applicant identifies that the site is close to Stansted and Elsenham, both of which have a main line railway station, and offer excellent connectivity for cycling and walking.

23. The applicant states that the Council has approved multiple development proposals, some for more than 5 dwellings, where no additional services or facilities were provided. It is asserted that any car journeys to Elsenham or Stansted would be relatively short. The applicant refers to sites approved for housing at appeal, via Isabel Drive, to the west of Elsenham where the Inspector found access to goods and services to be acceptable (Appeal Reference APP/C1570/W/3256109). The applicant also states that a recent development south of Stansted Road, required new bus stops to be installed, being 200 metres from the site entrance. The applicant also asserts that the site is within a 15-minute walk of the doctor's surgery in Elsenham and 17-minute walk to the primary school. It is also stated that the Memorial Halls sports ground is within a reasonable walking distance of the site.
24. The applicant also states that the proposal would represent infilling, being between housing to the north and the Wellness Hub to the south. The Council contends that it is not an infill site, due to the site's size and position, in regard to neighbouring dwellings and that infilling relates to road frontages rather than backland development sites.
25. The applicant identifies that the Council's recent 'Call for Sites' identified the site for residential development. The applicant questions some of the Council's reasoning in choosing to eliminate the site. The applicant has also referred to two other sites [no's 9 and 10], near Stansted. These are shown to be outside of Stansted and divorced from the main centre, although these may be adjacent to the settlement boundary. The applicant states that future residential occupiers of these plots would have to rely on the private car for journeys.
26. Interested parties have raised concerns that the proposed scheme would not relate well to the nearby settlements and the development would be piecemeal. However, other interested parties see the benefits of bringing an underused area of land into productive use with sympathetic housing design.

#### *Character and appearance*

27. The site is within the River Valley Landscape area as designated by the Essex County Landscape Character Assessment [2003]. This character area consists of a range of topographical types including intimate tree lined valleys and organic field shapes. The Council's Landscape Character Assessment [2006] identifies the site as being within the Broxted Farmland Plateau, which is one of eleven farmland plateau types in the district. Key characteristics include gently undulating farmland, large open landscapes and dispersed

settlements. The site contributes to this open landscape with a largely undeveloped form and with perimeter trees that visually connect it to woodland areas to the west.

28. The applicant's Landscape and Visual Appraisal (LVA) finds that whilst the site contains a number of features which make a positive contribution to the character of the site and its surroundings, it is considered to have a low to medium landscape value. The applicant's LVA finds that the site has a medium-to-low visual value, offering some views from the adjacent public bridleway. It concludes that the proposal would have a very limited effect on the identified landscape and on local residents and users of the bridleway. Nonetheless, it finds minor adverse effects to pedestrians of Elsenham Road and to the occupiers of the converted dwellings in Eastfield Stables.
29. The applicant states that the LVA illustrates the care and attention employed in the scheme to ensure the local and natural environment remains firmly at the forefront of development. It is also asserted that the illustrative landscape masterplan would provide a parkland setting for the proposed dwellings and that garden trees would increase biodiversity and provide amenity for residents. Although the scheme would be seen in views from the B1051 causing a 'Minor Adverse Effect', the applicant asserts that this will reduce to 'Neutral' once the proposed hedge and tree screening matures.
30. LP Policy S7 seeks to protect or enhance countryside character. This part of the policy is generally consistent with the Framework which seeks development to recognise the intrinsic character and beauty of the countryside. The Council identify that the site has a distinct rural character and affords some views of the wider landscape. It contends that the proposal would introduce built form into an open area, having an urbanising effect by spatially and visually merging the dwellings to the north with the Wellness Hub in the south. The Council is concerned that the proposal would significantly harm sensitive receptors (consisting of residents of Eastfield Stables, the bridleway and footpath users) due to the loss of tranquillity through noise, lighting, movements and other environmental factors.
31. The applicant states that the dwellings have been designed as single storey buildings to limit their visual impact outside the site. The buildings are modelled as stables to assist them being perceived as converted units. The applicant also states that the parkland setting, of the estate, would enhance the natural environment.
32. The Council is concerned that the proposed dwellings would be of monotonous design, with large roofs that would dominate the buildings. The Council considers that their scale would relate poorly to existing buildings, with a poor combination of forms with no clear hierarchy. It concludes that these components would result in a suburban layout in contrast with the rural character of the area. The applicant states that the large footprint allows room within the dwellings for a home office enabling home working, which is common to other units to the north of the site in Eastfield Stables.

### *Density*

33. The Framework seeks development to make efficient use of land and makes optimal use of the potential of each site. The Council finds that the proposal would have a density of 2.5 dwellings per hectare, out of keeping with local density and representing an inefficient use of land.
34. The applicant has stated that the open space retained between the proposed dwellings is of greater benefit than a high-density development, providing future occupiers with a calmer, more relaxed setting. The applicant also identifies that the Council's recent 'Call for Sites' found that the site could accommodate 99 dwellings. The applicant states that there is no intention to build to such a density as this would not respect the local area.
35. Interested parties, in support of the proposal, have raised concern that if the scheme is refused a less sympathetic development could be granted which would be detrimental to local residents.

### *Affordable housing*

36. LP policy H10 seeks a 40% affordable housing provision on sites of 0.5ha or greater or those consisting of major development. The Council is content that an off-site contribution is provided in this case. The Council's Developer Contributions SPD [2023] identifies a number of methods to calculate off-site affordable housing contribution. These establish the uplift that a developer would gain by selling the affordable homes on the open market in comparison to selling them to a registered provider as affordable homes. Main parties agree that 'method 4' is the most appropriate in this case. Method 4 is calculated by taking the open market sum of all houses on site and deducting the value of the affordable houses to a Registered Provider, their acquisition fees and any additional costs to the developer.
37. The applicant's FVA has considered that if it were to provide on-site affordable units these would be two smaller units (one being 70sqm and the other 86sqm) than currently proposed. This identifies that the open market cost of these two reduced dwellings, would be £950,200 (each being reduced by 50% of Open Market Value (OMV)). The Gross Development Value (GDV) minus the deductions would create an off-site contribution of £759,201. The FVA suggests that this sum cannot be provided without the proposal becoming unviable. As such, a reduced sum of £140,000 has been offered in the draft UU. This would enable the Council to provide equivalent affordable housing elsewhere in the district.
38. Altair Consultancy and Advisory Services Ltd (Altair) have been commissioned to comment on the applicant's FVA. This finds the applicant's GDV to be reasonable, taking into account local comparable values. Furthermore, the Report concurs with the applicant's suggested development fees of 7%, its legal and agent fees and its build costs. In calculating the cost to the developer of providing on-site affordable housing, the Report suggests that this should derive from the proposed 3 bedroom dwellings, rather than to replace these with smaller units. It determines that two of the 5 units

proposed, for assessment purposes, would be an affordable rent home and a shared ownership property. This would generate values of £196,844 and 65% of OMV respectively. The Report concludes that a contribution of £604,990 can be provided by the applicant.

39. The applicant responds to this Report with an addendum to the FVA. The applicant considers that Altair has only determined the maximum amount that the Council might have expected to receive, rather than how much the applicant can afford for the project to be financially viable and does not comment on the viability of the scheme.
40. The financial matters will be explored further at the meeting.

### **Other issues**

41. Other matters raised in the submission and in consultation responses are set out below.
42. The dismissal of previous appeal decisions on the site and within the local area has been referred to by all parties, this includes two previous schemes for residential development for parts of the site or adjacent parcels of land.

### Five-year Housing Land Supply

43. The applicant claimed, in the planning statement, that the Council could not demonstrate it has a 5-year Housing Land Supply (HLS), with a supply in December 2022 of 4.89 years. Nonetheless, the Council then indicated that it had a 5-year supply. Its position statement, published 9 October 2023, demonstrated that it had a HLS figure of 5.14 years, including a 5% buffer. Although acknowledging this, the applicant found the Council's 5-year HLS position was marginal in some areas and the lack of progress on some sites is alarming. With a surplus of only 104 dwellings, the applicant found the supply figure to be at risk.
44. Nonetheless, the most recent Housing Delivery Test (published December 2023) demonstrates that the Council delivered housing at a rate of only 58% of its required supply. The Framework explains that where delivery falls below 75% of the requirement over the previous three years, the presumption in favour of sustainable development applies and a 20% buffer must now be applied. Based on these matters the Council can now only provide a 4.5 year HLS and the presumption in favour of sustainable development is therefore engaged.

### Agricultural land classification

45. The site is Grade 2 ('very good' quality) arable land and is part of the district's best and most versatile (BMV) agricultural land. LP Policy ENV5 seeks to retain BMV land and only allows its loss where opportunities have been assessed for accommodating development on previously developed land. Nonetheless, the Council has attributed limited weight to this conflict on the understanding that there is a substantial quantity of BMV land in the



vicinity. The applicant has questioned the sites value as BMV due to its small size.

#### Heritage assets

46. The site is to the north of the grade II of Down Farmhouse, on the opposite side of the B1051. The Council's Conservation Officer has raised no objection to the proposal as the setting of the listed building has been found to be preserved due to the separation distance.

#### Highway matters

47. Interested parties have raised concerns with respect to the effect of the proposal on highway safety. A resident has commented that the traffic survey does not take into account the 1000 homes approved in Elsenham. However, the Highway Authority has raised no objection to the scheme subject to the imposition of conditions.

#### Wildlife

48. Local residents have referred to the wildlife value of the site, noting that it is important for wildlife with buzzards, red kites, sparrow hawks and kestrels seen hunting on this land. The applicant's Preliminary Ecological Appraisal found that the habitats found on-site are common and widespread throughout the UK. It concluded that the likelihood of protected species being found on site is negligible and no further investigation would be needed. It makes a number of recommendations to protect wildlife during construction and suggests that a range of ecological enhancement measures be included. The Council has identified that comments from its ecologist are to follow when available.

#### Benefits of the proposal

49. The applicant has demonstrated that the site enables direct access, via the PROW, to the local nature reserve. It is also contended by the applicant that the plots of the proposed dwellings are of sufficient size to allow for the provision of kitchen gardens, which if undertaken would relieve pressure on land elsewhere being made available for allotments.
50. The applicant identifies that the site is previously developed land (PDL) due to the land having been previously part of a commercial equestrian and rabbit breeding activity. Whereas, the Council say the land is greenfield paddocks, thereby not PDL, as the former agricultural use has ceased and been replaced by more recent approvals.
51. The applicant states that the development is designed to meet the challenges of climate change and responds favourably to the Council's Climate Change Emergency declaration by reducing energy demand, water usage, reliance on fossil fuels, and enhanced biodiversity.
52. Benefits arising from the proposals will be considered in the planning balance. The applicant has listed the economic, social and environmental benefits in section 8 of their Design and Access Statement.

## **Conditions**

53. The Council and a number of consultees have suggested, on a without prejudice basis, a number of conditions in the event that the application is to be permitted. The applicant has been asked for comments on these conditions and this will form the basis for discussion at the hearing. Inclusion of a condition does not necessarily indicate that it should be retained if the application were to be approved, either as worded or as amended.
54. Any discussion on their merits will be on a without prejudice basis, and they will be assessed as to whether they meet the tests for conditions as set out in paragraph 56 of the Framework.

## **Planning obligation**

55. The draft Unilateral Undertaking provides a sum of £140,000 towards off-site affordable housing provision. Notwithstanding the ongoing discussion as to the suitability of the sum, discussion on the planning obligation will be on a without prejudice basis and with regard to paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
56. For the draft UU to be a material consideration in the determination of the application it would need to be a certified, executable document. This will be discussed at the meeting.

## **Site Visit**

57. The inspector intends to carry out an accompanied visit to the application site and its surroundings, on 19 February 2023. The inspector will consider whether a further visit to the site will be necessary following the hearing, and whether such a visit will be accompanied or unaccompanied.

*Ben Plenty*

INSPECTOR