

UTT/23/2682/PINS | S62A/2023/0027- Full planning application for Erection of 40 no. dwellings, including open space landscaping and associated infrastructure. | Land At Warish Hall Farm North of Jacks Lane Smiths Green Lane Takeley

STATEMENT BY CLLR RICHARD HAYNES

1.0 Introduction

- 1.1 My name is Richard Haynes.
- 1.2 I am an Uttlesford District councillor and sit on the Council's Planning Committee.
- 1.3 I am ward member for Thaxted and the Eastons, a neighbouring ward to Takeley.
- 1.4 My background is as a Chartered Surveyor in private practice acting almost exclusively for Central and Local government. My principal clients included the Ministry of Defence and English Heritage for whom I regularly appeared as an expert witness in planning inquiries.
- 1.5 I would like, in this brief statement, to provide my views on the development proposed. I will concentrate principally on the planning policy context against which this application should be judged with particular reference to both national and Local Plan policy as it relates to the impact the proposed development would have on the surrounding countryside, heritage assets and habitats.
- 1.6 It will be appreciated that this site and neighbouring parcels representing the residual elements of the Warish Hall estate have been the subject of various other applications and appeals and I will reference other decisions to the extent that they are relevant to the application currently under consideration. Specifically, another almost identical application on this same site was considered and determined by Uttlesford's Planning committee last week and that decision is of particular relevance. The planning committee voted unanimously to refuse permission and a copy of the decision notice will, no doubt, be provided by the Uttlesford planning officer.

2.0 The paragraph 11 presumption

2.1 In respect of my own statement I will refer to both local and national planning policy as well as other appeal decisions and cases decided by the courts. It is perhaps appropriate to first consider the paragraph 11 presumption as set out in the most recent version of the NPPF. Uttlesford currently has a 4.14 years housing land supply but falls foul of the required buffer. As such we are required to consider the application of the presumption in favour of sustainable development under NPPF para. 11. There are two exceptions to the presumption indicated as i) and ii). Exception i) relates to those policies in the Framework which deal with the protection of areas or assets of particular importance. The definition is expanded in Footnote 7

where it is stated that those areas to be protected include 'irreplaceable habitats' and 'designated heritage assets'. It is clear that the habitats that would be lost if this development was to go ahead would be irreplaceable. They would in fact, be destroyed by hard surfacing and by artificial lighting. Equally there would be harm to designated heritage assets, specifically, the setting of Smith's Green Conservation Area and the Grade II listed Hollow Elm Cottage. Para. 205 of the NPPF clearly states that great weight should be given to the conservation of heritage assets irrespective of the level of harm. The latter point was reinforced by the courts in the recent statutory review decision in respect of Berden Hall where the judge said that even minimal harm should attract great weight. I would suggest therefore that given the loss of irreplaceable habitats and the harm to designated heritage assets both of which are afforded protection under the Framework, the exception at i) is satisfied. If however, it was found that that was not the case we would have to consider the second exception based on the balancing exercise as set out under ii). Here we would be considering a wider range of adverse impacts beyond those related just to areas and assets protected by the Framework and decide whether they significantly and demonstrably outweigh the development benefits. This would include breaches of the policies of the Local Plan.

3.0 Local Plan policies

3.1 Policy S7

Perhaps of greatest significance would be the breach of policy S7. There has been much debate around Policy S7 and its degree of consistency with the NPPF but in numerous appeal decisions inspectors have found that it is entirely consistent with the aims and objectives of the NPPF. A selection of those decisions is set out below:

Appeal ref.: APP/C1570/W/22/3313839) Spare Penny Lane, Great Sampford where the inspector, in considering S7 said ***'I conclude that the proposal would not be consistent with policies of the development plan relating to housing in rural areas, with particular regard to the protection of the countryside. Hence, the appeal scheme would not accord with the aims of ULP Policy S7 to protect and strictly control new building in the countryside'***. He went on to highlight the development's conflict with the NPPF stating ***'There would also be conflict with Framework paragraphs 130 and 174 in respect of the effect of the development on the countryside.'***

Appeal Ref: APP/C1570/W/18/3205631 Land East of Dunmow Road Thaxted

The Planning Inspector concluded in clause 16 ***'that - the proposal would cause significant harm to the character of the area and to the setting of the Thaxted Conservation Area contrary to Policies S7 and ENV1 of the LP which amongst other matters seek to preserve or enhance the character of the countryside and conservation areas. It would also conflict with the conservation and environmental aims of the Framework.'***

Appeal Ref: APP/C1570/W/19/3241109 Monk Street Thaxted

The Planning Inspector stated in clause 12 that ***'Policy S7 also states that development will not be allowed unless its appearance would protect or enhance the particular character of the countryside. In this respect the policy is consistent with paragraph 170(b) of the framework which seeks to recognise the***

intrinsic character and beauty of the countryside. I therefore consider Policy S7 should be accorded significant weight when considering matters of character and appearance in the countryside.'

Appeal Ref: APP/C1570/W/20/3259894 Bardfield End Green Thaxted

The Planning Inspector stated in clause 17 that - '***the appellant contends that Policy S7 has 'no relevance' and 'should have no bearing' on the decision but that is not the correct approach as confirmed by recent caselaw. Policy S7 pre-dates the framework but the fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purpose of assessing consistency with the framework and the weight to be attached to any conflicts with it.'***

Appeal Ref: APP/C1570/W/19/3241109 Sibleys Lane Thaxted

The Planning Inspector stated - '***Policy S7 goes on to say that development will not be allowed unless it would enhance or protect the particular character of the countryside. In this respect the Policy is consistent with para 170(b) of the NPPF which seeks to recognise the intrinsic character and beauty of the countryside. Therefore, I consider it should be afforded significant weight when considering development proposals in the countryside.'***

Appeal Ref: APP/C1570/A/14/2222958 Land off Walden Road Thaxted where the inspector stated in clause 7 - '***The appellant argues that this policy is out of date/inconsistent with the NPPF. The provision of the settlement boundary clearly is to constrict development to within the boundary and to that extent LP Policy S7 is a housing policy and this has to be considered in the light of the aims of the framework. However, that does not mean that this part of the policy is not in compliance with the framework. The aim to protect the landscape is clearly consistent with the Framework principle that indicates the intrinsic character and beauty of the countryside should be recognised, while supporting thriving rural communities within it and I attach considerable weight to this aspect of the policy.***

Perhaps of greatest significance however, because of its proximity to the Jack's Lane site is the inspector's comment in relation to Bull Field where he said specifically in response to the applicant's suggestion that S7 was non-compliant with the NPPF '***LP Policy S7 also seeks to protect the countryside "for its own sake" by only permitting development that needs to take place there or is appropriate to a rural area. I disagree that this part is out of date, it is not inconsistent with the desire to recognise "the intrinsic character and beauty of the countryside" (my emphasis), as reflected in NPPF paragraph 174(b). That sub-paragraph seeks development that contributes to and enhances the natural and local environment, precisely by such recognition, as well as considering economic and other benefits of trees and woodland.'***

It is clear therefore that policy S7 is very significant in terms of determining an application that is in the countryside and neither protects nor enhances the appearance of the local area nor needs to be there. It is a policy that has been deemed by several appeal inspectors to be entirely consistent with the objectives of the Framework and, as such its breach would attract considerable weight

3.2 Policy GEN 2

Policy GEN 2 is a design policy which seeks to ensure that development is consistent with its surroundings. Whilst this development is very much in keeping with Priors Green to the east, it bears no relationship to the qualities of Smith's Green Lane to the west from which it takes its principal and vehicular access.

3.3 Policy GEN 7

Policy GEN 7 relates to nature conservation and it will be apparent from the comments to be made by local residents that habitats would be seriously affected by this development with changed surfaces and very significant amounts of artificial lighting no matter what form of lighting column is ultimately agreed upon.

3.4 Policy ENV 2

ENV 2 relates to development affecting listed buildings and states that development should be in keeping with existing scale, character and surroundings. The only inconsistency with the NPPF in this case is that it is more specific in referring to 'buildings' rather than 'assets'. In this instance there is harm as confirmed by the statutory consultees, in relation to listed buildings principally Hollow Elm Cottage.

3.5 Policy ENV 5

The land here is Best and Most Versatile. ENV 5 states that BMV land should only be used for development where alternative options of poorer quality land have been assessed. No evidence appears to have been provided by the applicants to suggest that alternative options have been sought and assessed.

3.6 Policy ENV 9

ENV 9 seeks protection for historic landscapes. The subject site is very much a part of an historic landscape having been a significant element of the Warish Hall estate whose history dates back to the Norman Conquest when the estate was given to the monks of St. Valery's, a Cluniac abbey in Picardy. It is important to note however, that Policy ENV 9 specifically includes Protected Lanes. Smith's Green Lane is a Protected Lane.

4.0 The Planning Balance

In the event that the harm to 'irreplaceable habitats' and 'heritage assets' under Footnote 7 were not considered sufficient to exclude the application of the para. 11 presumption then it would be necessary to undertake the balancing assessment. In terms of the harms inherent in this proposal are the conflicts with National policy in relation to both heritage and the natural environment but also and very significantly, the breaches of several Local Plan policies. In terms of the weight to be applied to the harm side of the equation we know that 'great weight has to be applied to heritage harm because the NPPF specifically states that it should be (para. 205). Harm to habitats then, represents a breach of both Local Plan policy

GEN 7 and the Framework and again therefore, considerable weight must be applied. Landscape harm then, including harm to a 'Protected Lane' is covered specifically under LP policy ENV9 and coupled with the loss of BMV land contrary to policy ENV5 it is apparent that a very considerable amount of weight has built up on the harm side of the balance. When compared to the relatively minor benefit that this development would bring there can be little doubt that the harm would significantly and demonstrably outweigh the benefit.

5.0 The Previous Decision

In her decision notice for the previous application on this site the inspector stated her view that access to satisfy Highways requirements conflicted with the objective to maintain the character of the area. It is very much my view and the view of Uttlesford's planning committee that the safe access required by the Highways authority cannot be provided without a dramatic change to the character of the area, a change from entirely rural to 'suburban' as described by Historic England. The two objectives identified by the inspector are, in fact, mutually exclusive and irreconcilable.