

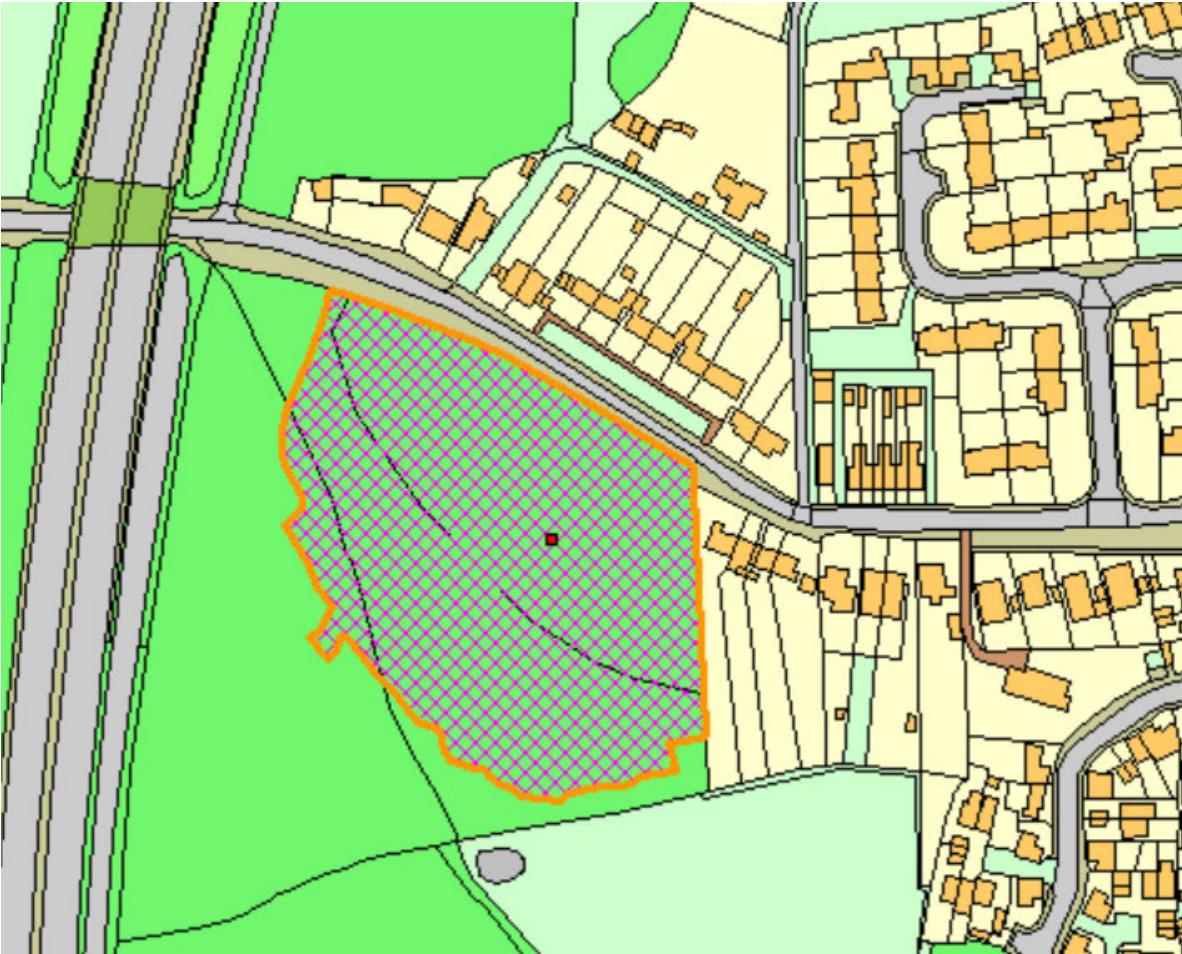
**ITEM NUMBER:**

**PLANNING COMMITTEE DATE:** 24 July 2024

**REFERENCE NUMBER:** S62A/2024/0049 & UTT/24/1618/PINS

**LOCATION:** Land South of Bedwell Road, Elsenham

**SITE LOCATION PLAN:**



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Organisation: Uttlesford District Council      Date: 4 July 2024

**PROPOSAL:** Consultation on S62A/2024/0049 & UTT/24/1618/PINS - Application for approval of matters reserved (layout, scale, landscaping, and appearance) pursuant to Appeal Decision ref: APP/C1570/W/22/3311069 (up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure – all matters reserved except for access

**APPLICANT:** Rochester Properties Limited, John F C Sergeant and Joan F M Anderson

**AGENT:** Pegasus Group

**DATE CONSULTATION RESPONSE DUE:** 30<sup>th</sup> July 2024

**CASE OFFICER:** Timothy Cakebread

**NOTATION:** Outside Development Limits  
Minerals Safeguarding Area  
Archaeological Area  
M11 Consultation Zone  
SSSI Consultation Zone

**REASON THIS CONSULTATION IS ON THE AGENDA:** This is a report in relation to a major planning application submitted to the Planning Inspectorate (PINS) for determination.

Uttlesford District Council (UDC) has been designated by Government for poor performance in relation to the quality of decisions making on major applications.

This means that the Uttlesford District Council Planning Authority has the status of a consultee and is not the decision maker. There is limited time to comment. In total 21 days.

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1. **RECOMMENDATION**

That the Strategic Director of Planning be authorised to advise the Planning Inspectorate that Uttlesford District Council make the following observations on this application:

Details are to be outlined by the Planning Committee.

## **2. SITE LOCATION AND DESCRIPTION**

- 2.1** The application site measures approximately 1.4ha and is located on the southern side of Bedwell Road, to the east of the M11. It is located adjacent to the settlement boundary of Elsenham which is identified as a key rural settlement due to being one of the larger villages in the district. Elsenham train station is located to east of the site along Bedwell Road.
- 2.2** The site is a former agricultural field now comprising scrubland. To the east and north of the site are existing residential properties. To the west is Alsa Wood which contains a Public Right of Way (PROW) running north to south, beyond which is the M11 which is elevated over Bedwell Road, while to the south is Alsa Wood and scrubland.
- 2.3** Beyond the houses to the north (to the east of the M11 and west of the railway line) there is an outline planning application pending (Ref UTT/24/0543/OP) for up to 240 units. This site had a previous application refused and dismissed on appeal. To the south of the site on scrubland to the east of Alsa Wood planning consent (Ref UTT/19/2470/OP) was granted on appeal in 2021 for 99 dwellings.
- 2.4** The application site is located outside of the development limits, within a minerals safeguarding area and is an archaeological site. The application site is also within the M11 motorway consultation area and the SSSI consultation area. The part of Alsa Wood located to the south of the site is designated as an Important Woodland and ancient woodland.

## **3. PROPOSAL**

### **3.1 Background**

- 3.2** The site obtained outline planning consent (Ref UTT/20/2908/OP) on appeal (see Appendix 1 for the decision notice) on 15 June 2023 for '*Outline application for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access*'. This included a section 106 agreement and condition 2 states that the approval of Reserved Matters must be submitted no later than 3 years from the date of this consent, so by 14 June 2026.

- 3.3** The outline planning application was refused at the 6 July 2022 planning committee after been recommended for approval by officers. The planning application had originally been considered at the 8 June 2022 planning committee (with a recommendation for approval) but a decision had been deferred to enable a Member's site visit to place and further discussion/clarification on noise, air pollution and the Parish Council request for a financial contribution.

3.4

The outline planning application decision notice listed 3 reasons for refusal and the table below provides the Inspectors assessment of these:

<b>Reason for Refusal</b>	<b>PINS Assessment</b>
<p>1. Due to the location of the development being in close proximity to the M11 Motorway it will result in a significant noise disturbance to the occupiers of the development, giving rise to significant adverse impacts on health and the quality of life. This is contrary to Paragraph 185 (a) of the NPPF, ULP Policies ENV10 and GEN2.</p>	<p>Concerns were raised that the affordable housing would be within the 3 storey flats (noisiest part of the site) but as the layout and appearance is not fixed it maybe subject to change. While a detailed internal noise assessment has not be provided (not expected at outline stage) the evidence submitted and the conditions agreed, the Inspector was satisfied that the proposal would have acceptable living standards. The Inspector considered the proposed development would provide acceptable living conditions in regard to noise and disturbance and is in accordance with the Development Plan and NPPF.</p>
<p>2. Due to the location of the development being in close proximity to the M11 Motorway it will result in the future occupiers being exposed to poor air quality. This is contrary paragraph 186 of the NPPF and ULP Policies ENV13 and GEN2.</p>	<p>At the Case Management Conference (26 January 2023), the Council stated they would not defend this reason for refusal</p>
<p>3. The proposed development fails to deliver appropriate infrastructure to mitigate any impacts and support the delivery of the proposed development. The proposal is therefore considered contrary to the implementation of Policies GEN6 - Infrastructure Provision to Support Development, ENV7 - The Protection of the Natural Environment – Designated Sites, and Policy H9 - Affordable Housing, of the Adopted Uttlesford Local Plan 2005, and the National Planning Policy Framework 2021.</p>	<p>The Council stated this was a technical matter which had not been reached during the determination of the outline planning application, however as a legal agreement was drafted as part of this appeal there is no longer a disagreement between parties and this reason for refusal is no longer pursued.</p>

**3.5** The Inspector considered that while the proposal would conflict with Policy S7 as it is located outside of a settlement boundary given that the Council cannot demonstrate a 5-year supply of housing sites the presumption in favour of sustainable development is engaged. The Inspector considered the proposal would conflict with the Development Plan, but this would be limited and there would be substantial benefit from the delivery of housing (including affordable housing). The proposal would also comply with the relevant policies concerning noise and disturbance.

**3.6** Reserved Matters Proposal

**3.7** The outline planning application included the full details of the access into the site. This application seeks the approval of the details of the layout, scale, landscaping and appearance of the site for 50 dwellings. This is summarised as follows:

- Layout – the layout plan is based on the outline approved layout plans which had no objections (other than being in the countryside) as demonstrated in Figure 1 overleaf.
- Scale – the layout plan has a permitter block of three-storey apartments to the northwest of the site and two-storey detached, semi-detached and terrace dwellings to the east. The development comprises of 1, 2, 3- and 4-bedroom properties with dwellings providing active frontages along Bedwell Road. The proposal delivers 20 affordable housing (40% of total) and 5% of all the units will be built to Category 3 (wheelchair user) housing M4(3)(2)(a).
- Landscape – Figure 2 (overleaf) demonstrates the landscaping proposed which includes a trim trail path, access to Alsa Wood and the species of vegetation proposed. Condition 7 (hard & soft landscaping), Condition 20 (Biodiversity Net Gain Design Stage Report), Condition 21 (Biodiversity Enhancement Strategy), Condition 22 (Landscape and Ecological Management Plan), and Condition 24 (detailed surface water drainage scheme) need to be submitted and approved and will provide further details for the landscaping.
- Appearance – the heart of the site is the main tree lined boulevard, with large detached/semi-detached dwellings fronting Bedwell Road and a 3 storey apartment block to the northwest. The design is based on other architectural designs within the village and will be finished in brickwork, using local red bricks (orange red), white or coloured render and either dark brown or slate grey pantiles.

**3.8** In addition to the above details, conditions 3 & 4 specifically mention that the details within each needed to be agreed as part of a Reserved Matters application, these relate to the following and these details have been included within this application:

- Condition 3 – details of the internal layout of the dwellings including details demonstrating that all dwellings are dual aspect,

- Condition 4 – details demonstrating the detailing of the sound insulation matters (internal and external).

### 3.9

Lastly the distribution of affordable housing is controlled by Schedule 2 Part 2 paragraph 3 within the section 106 (s106) which requires them to be in clusters of no greater than 18 dwellings. The s106 states that the type and mix of affordable housing needs to be agreed with the Council prior to the submission of a Reserved Matters application. The applicant submitted a letter to the Council on 5 January 2024 setting out the proposed number and tenure of the affordable units with a 70/30 split between affordable rent and shared ownership (this letter is in Appendix 3 of the applicants Planning Statement Appendices). The applicant states within paragraph 4.44 of the Planning Statement that UDC does not object to the type or mix of affordable housing and that the Council raised matters not related to the type of mix of affordable housing in emails dated 13 February 2024 and 11 March 2024. This is factually true however the applicant has not included the details of the Council response which are relevant to the proposal. This are summarised as follows:

- Percentage of first homes increased from 5% to 25% to be policy compliant
- Two cluster of 10 affordable housing units would meet the policy test over a block of 18 units. A cluster of 18-20 units would not be acceptable on the edge of the village
- While the affordable block was within the illustrative scheme this as never an acceptable location especially as this would be a sound barrier to the M11
- Condition 6 includes illustrative layout plans and we consider this condition will need to be removed or amended.

In conclusion the Council considered that the proposed layout of the affordable units was not acceptable and in particular the clustering of the affordable units. The applicant provided no response to the last email issued to them on the 11 March 2024.

3.10



Figure 1 – Demonstrating proposed layout of the site from Planning Layout (BEE-PL-001)





Figure 2 – Demonstrating the proposed Landscaping Plan for the site (Ref PR194 Rev 01)

#### 4. ENVIRONMENTAL IMPACT ASSESSMENT

4.1 The application does not include an Environmental Statement as an Environmental Impact Assessment ('EIA') is not required as per the Request for a screen opinion (Ref. UTT/24/0277/SCO).

**5. RELEVANT SITE HISTORY**

<b>Reference</b>	<b>Proposal</b>	<b>Decision</b>
UTT/20/2908/OP	Outline application for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access.	Refused and granted on appeal – 15 June 2023

**6. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION**

6.1 The applicant has not undertaken any pre-application and/or community consultation prior to the submission of this planning application.

**7. STATUTORY CONSULTEES**

7.1 All statutory consultees are required to write directly to the Planning Inspectorate (PINS) (and not the Local Planning Authority).

7.2 Accordingly, it should be noted that a number of considerations/ advice normally obtained from statutory consultees to assist the Local Planning Authority in the consideration of a major planning application have not been provided and are thereby not included within this report.

7.3 It is noted no statutory consultee comments have been received.

**8. PARISH COUNCIL/TOWN COUNCIL COMMENTS**

8.1 These should be submitted by the Parish Council directly to PINS within the 21-day consultation period and are thereby not informed within this report.

**9. CONSULTEE RESPONSES**

9.1 These should be submitted by the Parish Council directly to PINS within the 21-day consultation period and are thereby not informed within this report.

**10. REPRESENTATIONS**

10.1 The application was publicised by sending letters to adjoining and adjacent occupiers and by displaying a site notice. Anyone wishing to make a representation (whether supporting or objecting) are required to submit their comments directly to PINS within the 21-day consultation period ending the 30 July 2024. All representations should be submitted directly to PINS within the 21-day consultation period.

**10.2** UDC has no role in co-ordinating or receiving any representations made about this application. It will be for PINS to decide whether to accept any representations that are made later than 21 days.

**11. MATERIAL CONSIDERATIONS**

**11.1** In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the “Considerations and Assessments” section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.

**11.2** Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to

- a) The provisions of the development plan, so far as material to the application:
  - (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
- b) any local finance considerations, so far as material to the application, and
- c) any other material considerations.

**11.3** Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, or, as the case may be, the Secretary of State, in considering whether to grant planning permission (or permission in principle) for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses or, fails to preserve or enhance the character and appearance of the Conservation Area.

**11.4 The Development Plan**

- 11.4.1** Essex Minerals Local Plan (adopted July 2014)  
Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)  
Uttlesford District Local Plan (adopted 2005)  
Felsted Neighbourhood Plan (made Feb 2020)  
Great Dunmow Neighbourhood Plan (made December 2016)  
Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)  
Thaxted Neighbourhood Plan (made February 2019)  
Stebbing Neighbourhood Plan (made July 2022)  
Saffron Walden Neighbourhood Plan (made October 2022)  
Ashdon Neighbourhood Plan (made December 2022)  
Great and Little Chesterford Neighbourhood Plan (made February 2023)

## **12. POLICY**

### **12.1 National Policies**

12.1.1 National Planning Policy Framework (2023)

### **12.2 Uttlesford District Plan 2005**

S7 – The Countryside

GEN1- Access

GEN2 – Design

GEN3 -Flood Protection

GEN4 - Good Neighbourliness

GEN5 –Light Pollution

GEN6 - Infrastructure Provision

GEN7 - Nature Conservation

GEN8 - Vehicle Parking Standards

H9 - Affordable Housing

H10 - Housing Mix

ENV3 - Open Space and Trees,

ENV4 – Archaeology

ENV5 - Protection of Agricultural Land

ENV10 -Noise Sensitive Development,

ENV13 - Exposure to Poor Air Quality

ENV14 - Contaminated Land

### **12.4 Supplementary Planning Document or Guidance**

- Energy Efficiency and Renewable Energy (October 2007)
- Essex County Council Adopted Parking Vehicle Standards (2009)
- UDC Local Parking Standards (2009)
- Uttlesford Interim Climate Change Policy (February 2021)
- BNG – Planning Practice Guidance
- Developer Contributions SPD (March 2023)
- Statement of Community Involvement (March 2021)

## **13. CONSIDERATIONS AND ASSESSMENT**

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

- 13.2
- A) Layout of the development**
  - B) Scale & Appearance**
  - C) Landscaping**
  - D) Dual Aspect & Sound Insulation**
  - E) Archaeology**
  - F) Other Matters**

13.3 **A) Layout of the development**

- 13.3.1** The layout of the site reflects the two indicative plans (Ref BEE.SLP.000 and BEE.IPL.001) listed as the approved plans within condition 6 of the appeal decision notice. The layout retains the design principles of the site as highlighted in the approved outline planning application which includes:
- Built form set back from Bedwell Road.
  - Respect the building line from the eastern boundary.
  - Sensitive response to the back gardens of existing properties along the eastern boundary.
  - Sympathetic response to landscape assets along the western edge.
  - Continuous three-storey built form to provide noise mitigation from the M11 at the northwestern part of the site.
  - Incorporate the desire lines of the existing public footpaths.
  - Provide connectivity across the site through provision of additional link to the Public Right of Way network.
  - Linear natural play running along trim trail path along the western boundary and an incidental pocket park located at the heart of the development.
- 13.3.2** The proposal has been designed following place making principles to create two-character areas. The formal centre of the site is centred around the main tree lined boulevard and to the north (including the apartment block) and the neighbourhood is focused on the southern part of the site which has large detached and semi-detached dwellings.
- 13.3.3** The layout has been designed to optimise the site while being considerate to the surrounding residential properties. The 3-storey apartment block will help to provide noise mitigation from the M11 to the rest of the site and to the adjacent residential uses to the east of the site.
- 13.3.4** UDC Design Officer has been consulted on the proposed layout but as the proposed layout follows the approved plans within the outline planning consent this seems to comply with this. No comments have been received and any comments received are required to be submitted directly to PINS.
- 13.3.5** ULP Policy GEN3 considers the development regarding flood protection. The site falls within Flood Zone 1 and has a low risk of flooding. The outline planning application included a flood risk report (which wasn't included within this application) and at the time ECC Flood Authority had no issues with this assessment subject to planning conditions. The proposal will be subject to the same conditions from the outline planning application.
- 13.3.6** Access and parking
- 13.3.7** The access to the site was approved as part of the outline planning application in accordance with Policy GEN1 of the Local Plan.
- 13.3.8** The internal layout of the site is focused on a tree lined boulevard (primary street) connecting from Bedwell Road running to the southwest. From this

main road a shared surface street (secondary street) runs to the southeast (which includes a pocket park) and a courtyard neighbourhood (tertiary street) runs to the north which includes the 3 storey apartment block (which includes a private courtyard for the flats). The streets have been designed to be safe for pedestrians and cyclist, with road surfaces raised, paved or coloured to keep drivers aware of the residential surroundings and a 20mph zone.

**13.3.9** The Table below demonstrates the amount of car and cycle parking that will be delivered within the scheme in accordance with Policy GEN8 of the Local Plan.

	Amount	Car Parking Standards	Number of car parking spaces	Cycle Parking Standards	Number of cycle parking spaces
<b>1 bed</b>	3	1	3	1	3
<b>2/3 bed</b>	42	2	84	2	84
<b>4/5 bed</b>	5	3+	16	3	15
<b>Visitor</b>	50	0.25	12.5	1	50
<b>Total</b>			115		152

**13.3.10** The applicant states the above complies with the ECC Parking Standards Design Guidance 2009 but doesn't mention whether this also complies with UDC Parking Standards in respect of the garages for the 4 bed units. The visitor car parking should be rounded it up to the nearest whole number so this should include 13 car parking spaces.

**13.3.11** ECC Highways has been consulted in regard to proposed parking and the location of the spaces. No comments have been received and any comments received are required to be submitted directly to PINS.

**13.3.12** In respect of refuse, bin lorries will enter the site from the main entrance and use the main boulevard and southern road to access all of the properties. The semi-detached and detached dwellings will have individual waste storage (located close to driveways where possible), the terraced houses will have waste storage to the rear will refuse either collected in front of the dwelling or from a collection point and the apartment block will have a singular bin storage room on the ground floor with one refuse collection point. UDC Environmental Services has been consulted regarding the refuse strategy. No comments have been received and any comments received are required to be submitted directly to PINS.

## **13.4 B) Scale & Appearance**

**13.4.1** Policy GEN2 considers the design of the development to ensure the development is compatible with its surroundings. The design rationale in regard to the appearance of the development is ensuring a scheme that

respects the local vernacular and scale of the existing and surrounding areas using high quality building materials from sustainable sources.

- 13.4.2** The scale of the dwellings is considered appropriate and will include a mix of apartments, terraced, semi-detached and detached houses comprising of 1, 2, 3- and 4-bedroom properties. The scale of the dwellings is not dominant or intrusive in the setting of the site or its surroundings. The heights of the dwellings are demonstrated in Figure 5 and the Inspector considered within his assessment that the 3-storey element of the proposal would not be harmful to the character or appearance of the area.
- 13.4.3** ULP Policy GEN2 also considers the impact to neighbouring properties regarding loss of light, over shadowing, overlooking and loss of privacy. To ensure there will be no loss of amenity from overlooking of habitable rooms, there will be a minimum of 25m 'back-to-back' separation between properties. None of the dwellings are sited near enough to the eastern boundary to result in overlooking or overbearing impacts on existing properties on Bedwell Road and this is in accordance with Policy GEN4 of the Local Plan.
- 13.4.4** The Design and Access Statement (DAS) provides details of the appearance of the proposal. The semi and detached dwellings will exhibit formal, cottage vernacular design, which will include; stone sills & voussoir brick window heads, gauged arch window heads/ archways, gable feature. They will be finished mainly in brick (using local orange red bricks), ashlar/ smooth through white & colour rendering, limited black timber boarding and plain tiles (dark brown or slate grey). The colour scheme is based on the surrounding residential properties within Elsenham. There is no specific mention within the DAS over whether the apartment block will have the same appearance and materials as the houses. The details with the DAS demonstrate that the proposal will use high quality materials delivering dwellings which fit into the appearance of dwelling within the historic core of Elsenham.
- 13.4.5** There is no planning condition relating to the approval of the materials as part of the outline planning application as the Inspector considered that the Reserved Matters application should deal with the appearance. Details of materials have been submitted for consideration.
- 13.4.6** The scale of the proposal is identical to the scheme considered as part of the outline planning application. The details of the appearance of the scheme only seem to specifically relate to the houses and not the apartments, this should be clarified.
- 13.4.7** UDC Design Officer has been consulted regarding the scale and appearance of the application. No comments have been received and any comments received are required to be submitted directly to PINS.

**13.4.8** The proposal includes secured by design principles which have been incorporated into the design. The applicant will need to consult with Essex Police directly to achieve the Secured by Design award.

**13.4.9** Housing Mix

**13.4.10** The proposal includes a mix of linked apartments, terraced, semi-detached and detached houses comprising of 1, 2, 3- and 4-bedroom properties as demonstrated on Figure 3 below. This relates back to the two-character areas for the site, the formal centre along the main street and to the north and the neighbourhood to the south which forms the semi and detached dwellings.

**13.4.11**



Figure 3 – Demonstrating the mix of dwelling types across the site (Section 6.5 of the Design and Access Statement).

**13.4.12** Affordable Housing

**13.4.13** Policy H9 states that the Council will seek 40% affordable housing on sites with 15 or more dwellings. This equates to 20 dwellings which will be located within the site as demonstrated on Figure 4 overleaf.



#### 13.4.14



Figure 4 – Demonstrating the location of the affordable housing units on the site (Section 6.6 of the Design and Access Statement).

**13.4.15** The Inspector stated that he had concerns that the affordable housing would be located within the 3 storey apartment block which is the noisiest part of the site. They went on to state that the layout and appearance of the proposal was not fixed (in the outline consent) and it could be subject to change within a Reserved Matters application. There is no change in the location of the affordable housing within this proposal and in general there is no deviation away from any aspects of the proposed development considered at the outline stage.

**13.4.16** The distribution of affordable housing is controlled by Schedule 2 Part 2 paragraph 3 within the s106 which requires them to be in clusters of no greater than 18 dwellings. The s106 states that the type and mix of affordable housing needs to be agreed with the Council prior to the submission of a Reserved Matters application. The applicant submitted a letter to the Council on 5 January 2024 setting out the proposed number and tenure of the affordable units with a 70/30 split between affordable rent and shared ownership (this letter is in Appendix 3 of the applicants Planning Statement Appendices). The applicant states within paragraph 4.44 of the Planning Statement that UDC does not object to the type or mix of affordable housing and that the Council raised matters not related to the type of mix of affordable housing in emails dated 13 February 2024 and 11 March 2024. This is factually true however the applicant has not

included the details of the Council response which are relevant to the proposal. This are summarised as follows:

- Percentage of first homes increased from 5% to 25% to be policy compliant
- Two cluster of 10 affordable housing units would meet the policy test over a block of 18 units. A cluster of 18-20 units would not be acceptable on the edge of the village
- While the affordable block was within the illustrative scheme this as never an acceptable location especially as this would be a sound barrier to the M11
- Condition 6 includes illustrative layout plans and we consider this condition will need to be removed or amended.

In conclusion the Council considered that the proposed layout of the affordable units was not acceptable and in particular the clustering of the affordable units. The applicant provided no response to the last email issued to them on the 11 March 2024.

**13.4.17** The 20 affordable housing units are broken down as follows:

- Shared ownership: 1x2 beds house and 4x2 bed apartments
- Affordable rent: 3x1 bed apartments and 11x2 bed apartments
- First Home: 1x2 bed house

**13.4.18** In consideration of the number of units, size of the affordable housing seems to be acceptable (noting that the number of first homes needs to increase to 25%) and in accordance with aims of the ULP Policy H9. However, the location of the affordable housing and the clustering of them is not acceptable and it disappointing that the applicant has submitted this application without taking onboard the comments received from officers on either the 13 February or 11 March emails.

**13.4.19** UDC Housing Officer has been consulted regarding the breakdown of the affordable housing and location of the market housing. No comments have been received and any comments received are required to be submitted directly to PINS.

**13.4.20** Sustainability

**13.4.21** Following the recently adopted UDC Interim Climate Change Policy 2021 due consideration should be made by developer to demonstrate the path that their proposals take towards achieving net – zero carbon by 2030, and all the ways their proposal are working towards this in response to planning law, and also to the guidance set out in the NPPF and planning policy guidance. Policy GEN2 of the Local Plan seeks to ensure that the design of new development It helps to minimise water and energy consumption.

**13.4.22** There are no planning conditions on the outline planning consent specifically relating to climate change and/or sustainability proposals.

**13.4.23** The DAS states the scheme will provide the following considerations (noting that these are identical to what was proposed within the DAS for the outline planning consent): The applicant has proposed the following sustainability measures: fabric first principles, energy efficient appliances and lighting, water efficiency measures. It is observed that no renewable energy sources are proposed however the proposal will need to meet minimum building regulation requirements which were updated on 15th June 2022.

**13.4.24** UDC Environmental Health has been consulted regarding sustainability proposals. No comments have been received and any comments received are required to be submitted directly to PINS.

### **13.5 C) Landscaping**

**13.5.1** The proposed landscaping strategy within the DAS is identical to the landscaping strategy within the outline planning application DAS. This includes the following:

- 100 sqm of natural play space is on the periphery of the site adjacent to the woodland. This will be along a trim trail path.
- The PROW is proposed to be enhanced and there would be provision of a direct link to Alsa Woods.
- Communal and private amenity space is compliant with the ECC Design Guide guidance
- Retention and enhancement of the existing boundary hedgerow
- New trees are proposed throughout the public areas of the site, such as the main boulevard and car parking areas.
- Provision of bird boxes throughout
- Hard landscaping will feature a simple palette of macadam and block paving materials to complement the surrounding buildings

**13.5.2** In addition to the landscape strategy the application includes the Landscape Plan (see Figure 2 above) which provides details of the hard landscaping, green landscaping and the features within it. Notwithstanding this Condition 7 (hard & soft landscaping), Condition 20 (Biodiversity Net Gain Design Stage Report), Condition 21 (Biodiversity Enhancement Strategy), Condition 22 (Landscape and Ecological Management Plan), and Condition 24 (detailed surface water drainage scheme) need to be submitted and approved as part of the outline conditions and will provide further details of the landscaping.

**13.5.3** UDC Landscape Officer has been consulted in respect to the proposed hard and soft landscaping proposals but noting that many of these details are conditioned and will need to be discharged. ECC Ecology Officer has also been consulted in respect of the proposed impact onto wildlife and

biodiversity. No comments have been received and any comments received are required to be submitted directly to PINS.

### 13.6 D) Dual Aspect & Sound Insulation

13.6.1 The layout ensures that all areas are overlooked by dwellings and all dwellings have dual aspect to comply with Condition 3 of the appeal decision notice.

13.6.2 Figure 5 overleaf demonstrates the range of heights within the site, which focuses on the 3-storey apartment block in the north west and predominantly 2 storey houses throughout the remainder of the site with predominantly 1 storey garages.



Figure 5 – Demonstrating the different heights of the buildings within the proposal (Section 6.4 of the Design and Access Statement).

13.6.3 As part of the determination of the outline planning consent there was a considerable assessment of the acceptable of the 3 storey apartments due to their location to the M11. The Inspector considered that the noise and disturbance impact onto these flats would be acceptable and that details of the internal and external sound mitigation measures should be included within this (Reserved Matters) application as part of condition 4. This application includes a Condition Discharge Acoustic Report which has the following conclusions (under paragraphs 5.1.3 and 5.1.4):

*This noise assessment has demonstrated that the plots in the northern portion of the site along the western boundary closest to the M11 are exposed to the highest noise levels. For these plots, three storey apartment blocks numbered two to seven, there are no habitable rooms*

*fronting onto the M11, hence these areas of the façade would be specified with standard double glazing (27 dB Rw + Ctr) and ventilation. An uprated ventilation specification is required for façades of plots exposed to higher noise levels, with a minimum performance of 38 dB Dn,e,w*

*Noise levels in all garden spaces are predicted to fall below the 55dB LAeq,1hr limit, with the exception of three garden spaces with noise levels of up to 56dB. This is considered to be insignificant in terms of a potential exceedance, particularly given that the noise model is overpredicting by up to 2dB compared to the daytime measured data. 1.8m high fences / walls have been specified for all plots, with the exception of one which is specified with a 2.0m high fence and another with a 2.2m high wall.*

- 13.6.4** UDC Environmental Health has been consulted regarding the Acoustic Report and how the applicant considers this complies with Condition 4. They have also been consulted on regarding the dual aspect layout of all of the units and how the application considers this complies with Condition 3. No comments have been received and any comments received are required to be submitted directly to PINS.

## **13.7 E) Archaeology**

- 13.7.1** Policy ENV4 of the adopted Local Plan states the preservation of locally important archaeological remains will be sought unless the need for development outweighs the importance of the archaeology. It further highlights that in situations where there are grounds for believing that a site would be affected, applicants would be required to provide an archaeological field assessment to be carried out before a planning application can be determined, thus allowing and enabling informed and reasonable planning decisions to be made.

- 13.7.2** A number of conditions were placed onto the outline planning consent decision notice and these conditions will be placed onto this application too.

## **13.8 F) Other matters**

- 13.8.1** From 1 October 2013 the Growth and Infrastructure Act inserted two new provisions into the Town and Country Planning Act (1990) ('the Act'). Section 62A allows major applications for planning permission, consents and orders to be made directly to the Planning Inspectorate (acting on behalf of the Secretary of State) where a local planning authority has been designated for this purpose.

- 13.8.2** The Planning Inspectorate will appoint an Inspector to determine the application. The Inspector will be provided with the application documents, representations and any other relevant documents including the development plan policies. Consultation with statutory consultees and the designated LPA will be carried out by the Planning Inspectorate.

- 13.8.3** The LPA also must carry out its normal notification duties, which may include erecting a site notice and/or writing to the owners/occupiers of adjoining land.
- 13.8.4** The LPA is also a statutory consultee and must provide a substantive response to the consultation within 21 days, in this case by 30th July 2024. This should include a recommendation, with reasons, for whether planning permission should be granted or refused, and a list of conditions if planning permission is granted.
- 13.8.5** The Planning Inspectorate will issue a formal decision notice incorporating a statement setting out the reasons for the decision. If the application is approved the decision will also list any conditions which are considered necessary. There is no right to appeal.

**14. CONCLUSION**

- 14.1** Due to the nature of this application process, it is not possible to provide a detailed assessment of the proposal due to the lack of input from all consultees. Due to this application process no neighbour responses can be factored into the assessment of the proposal.
- 14.2** Many of the details submitted within this application seem to be identical to the details considered as part of the outline planning application which was deemed to be acceptable. It seems that on balance the majority of the outstanding points have been resolved (other than the location and clustering of the affordable housing units), but without feedback from consultees it is difficult to provide a comprehensive assessment over the acceptability of these. On the face of the proposals, they seem to be broadly acceptable.
- 14.3** The unique application process that is presented by this submission, requires the Local Planning Authority to advise the Planning Inspectorate whether or not it objects to this proposal. Having regard to the limited opportunity to consider the proposals the Planning Committee is invited to provide its comments on this proposal.

## Appendix 1 – Appeal Decision Notice



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### Appeal Decision

Inquiry held on 21 March 2023

Site visit made on 21 March 2023

by **Philip Mileham BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15<sup>th</sup> June 2023

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**Appeal Ref: APP/C1570/W/22/3311069**

**Land south of Bedwell Road, Elsenham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Rochester Properties Limited, John F C Sergeant and Joan F M Anderson against the decision of Uttlesford District Council.
  - The application Ref UTT/20/2908/OP, dated 2 November 2020, was refused by notice dated 7 July 2022.
  - The development proposed is an outline application for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access.
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#### Decision

1. The appeal is allowed and outline planning permission is granted for up to 50 market and affordable dwellings, public open space and associated highways and drainage infrastructure - all matters reserved except access at land south of Bedwell Road, Elsenham in accordance with the terms of the application, Ref UTT/20/2908/OP, dated 2 November 2020, subject to the conditions in the schedule at Annex A.

#### Preliminary Matters

2. The appeal has been made in outline form with all matters reserved except access. An indicative layout has been provided and I have had regard to this in reaching my decision.
3. The description of development utilised by the Council in its decision notice differs from that on the application form. The appellant formally sought a change to the description of development to include the words 'up to' before the proposed number of dwellings. Due to an administrative oversight, there is no written confirmation of the change to the description on file. However, at the Inquiry the parties agreed that the description had been amended during determination to which there is no dispute and I have therefore adopted the revised description in my decision.
4. The Council's decision notice cited three reasons for refusal. At the Case Management Conference (CMC) held on 26 January 2023, the Council indicated that it would not be seeking to defend the second reason for refusal in respect of air quality. The Council also indicated that the third reason for refusal was a technical matter which resulted from a legal agreement not being reached with the appellant at the time of determination. A legal agreement was being drafted to accompany this Inquiry and as a result, there was no longer a

disagreement between the parties in respect of infrastructure provision. As such, the third reason for refusal was no longer being pursued. Nonetheless, I have taken these matters into account in reaching my decision. The Council also indicated that it would not be seeking to provide witnesses to the Inquiry, further proofs of evidence or undertake any cross examination. As a result, the Inquiry proceeded on the basis of round table sessions focussing on noise and disturbance and other planning matters.

5. A signed legal undertaking has been submitted along with this appeal which secures a number of planning obligations and I discuss these later in my decision and I have taken them into account.
6. The sitting day of the Inquiry was 21 March 2023. It was agreed by the parties that following the close of the Inquiry, further time was required to allow for the completion of the legal undertaking. The legal undertaking was resolved on 31 March 2023 as agreed.

### **Main Issue**

7. Taking the above into account, and the agreed position between the main parties, the main issue is as follows:
8. The effect of the proposed development on the living conditions of potential future occupiers having particular regard to noise and disturbance.
9. I am also required to consider the benefits that would arise from the proposed development and this forms part of the planning balance as set out below.

### **Reasons**

10. The appeal site is an area of pastoral land located to the south of Bedwell Road. The site is surrounded by mature trees to the south and west which separate the site from the M11 motorway. The principal source of potential noise and disturbance emanates from traffic using the nearby M11 motorway. The M11 in the vicinity of the site is a dual carriageway and is elevated above the ground level of the appeal site.
11. As design is a reserved matter, the appellants' evidence utilises the indicative planning layout to assess the potential noise impacts of the proposal. The indicative planning layout shows that 3 storey flatted development would be located to the west and south west of the site. The appellant has indicated that the proposed 3 storey development could be around 12 metres in height and would serve to provide an acoustic 'barrier block' from the motorway which would have the effect of acoustically shielding the remainder of the development.
12. The appellant confirmed that other forms of noise mitigation were considered during the development of the indicative planning layout. However, due to the elevated position of the M11 relative to the ground level of the appeal site, the appellants' confirmed other forms of mitigation such as acoustic barriers adjacent to the road or located between the proposed dwellings and the M11 would not be effective and would be logistically complex. I agree with the appellant in this regard particularly in light of the physical circumstances of the site, its relationship to the M11 and its elevation.



13. The submitted Acoustic Report (Figures B1-B3)<sup>1</sup> shows the predicted noise model contour plots for the site and more granular versions of these contours were included within the appellants Acoustic Report Addendum<sup>2</sup>. The Acoustic Report utilised noise testing figures which were taken from a nearby scheme north of Bedwell Road as at the time of the appellants' assessment in 2020, traffic levels were lower than expected due to Coronavirus restrictions. Whilst concerns were raised that the appellants had not undertaken any noise testing themselves, the use of data collected pre-Coronavirus would represent a more robust assessment as set out above. Furthermore, the Acoustic Report indicates a high level of correlation between the collected data and the modelled output. As such, the noise modelling represents sufficiently robust evidence upon which the Acoustic Report has been carried out.
14. The daytime noise contour map<sup>3</sup> illustrates that within the envelope of the developed part of the site, the predicted external noise level at 1.5 metres above ground (which is intended to reflect the height of ground floor living accommodation) would be up to around 55 dB  $L_{Aeq,16hr}$ . The night-time noise contour map at Figure B-2 indicates that within the developed part of the site at 4 metres above ground (which is intended to represent a first floor bedroom level), the predicted external noise level would also be up to around 55 dB  $L_{Aeq,8hr}$ .
15. Having regard to the external noise environment at the increased height of the proposed 3 storey flats, during the Inquiry the appellants' indicated that the predicted noise levels at the height of the third storey of the proposed flats (around 8-10 metres above ground level) would not be expected to be significantly greater than at the 4 metre level at around 1 dB higher which was not disputed. As such, any rooms within the top floor of the proposed 3 storey flats would not experience significantly different conditions than those on the first floor and I am therefore satisfied that the 3 storey element of the proposal has been adequately considered in respect of the noise environment.
16. The indicative planning layout shows that each dwelling would have one relatively quiet façade shielded from the M11 which the Planning Practice Guidance (PPG)<sup>4</sup> advises can partially offset noise impacts. This could be secured by a condition which would require all dwellings to have dual aspect and thereby ensuring at least one elevation that would not be exposed to the M11. The daytime external noise contour maps (Figures 1-3 of CD6.1) show all of the proposed dwellings would have an external noise level of up to 55 dB in the external space of the quieter facades, albeit many of the dwellings would have at least part of their private gardens or communal outdoor areas below this, including within both the up-to 52 dB and the up-to 50 dB contours.
17. Whilst the external noise levels on the western and south-western extents of the site would be higher beyond the built form of the proposal, the indicative layout shows the proposed dwellings would have at least one quieter façade within the envelope of the developed part of the site. In addition, the indicative layout shows that the detached and semi-detached properties would have relatively quiet external outdoor amenity space for their sole use and that potential future occupants of the proposed flats would have a quiet external

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<sup>1</sup> CD1.7 Acoustic Report (September 2020) - WSP

<sup>2</sup> CD2.6i - Acoustic Report Addendum (2021) - WSP

<sup>3</sup> CD1.7 Acoustic Report (September 2020) - WSP - Fig B-1

<sup>4</sup> Paragraph: 011 Reference ID: 30-011-20190722

amenity space for a limited group of residents. The proposal would therefore accord with the PPG as at least two of the measures outlined above would be available to partially offset the identified noise impacts.

18. The predicted outdoor noise levels would be higher to the west of the scheme and the more granular contour maps shown in Figures 1-3 of the Acoustic Report Addendum<sup>5</sup> show that beyond the proposed 3 storey flatted element levels would be up to 62.5 dB  $L_{Aeq, 16hr}$  at 1.5 metres above ground during the daytime and up to 60 dB  $L_{Aeq, 8hr}$  at 4 metres during the night time. The appellants' indicated that internal noise levels would be expected to be reduced by around 10-15 dB compared to externally. This amount of reduction would enable internal noise levels to decrease to a level that would accord with the ProPG which reflects and extends British Standard BS8233:2014 and to which paragraph 2.32 of the ProPG<sup>6</sup> indicates is also supported by the WHO Noise Guidelines (2000).
19. It is common ground between the parties that the potential effects on the living conditions of potential future occupiers having regard to noise could be addressed via conditions. The first of these conditions would require a further assessment as part of future reserved matters to demonstrate that internal noise levels within the proposed dwellings would not exceed 45 dB  $L_{Amax,T}$  during the night time and 55 dB  $L_{Aeq, 16 hr}$  during the daytime. The condition reflects noise levels set out in the relevant British Standard<sup>7</sup> as well as in the ProPG good practice document.
20. Paragraph 3.4.6 of the Acoustic Report states that it is likely that the western elevations of the proposed flats would require acoustic trickle ventilation and standard to high-performance glazing. Furthermore, having regard to table 2 of the same report, the other elevations not facing the M11 in the majority of the proposed dwellings would either require standard glazing with trickle ventilation or no other specialised glazing or ventilation requirements. The appellants' noise impact proof of evidence indicates that whilst the windows on the western elevations may need to be kept closed during night time hours based on the worst-case external noise levels, ventilation would still be possible utilising acoustically-rated trickle ventilation. Furthermore, windows on the elevations not facing the M11 would be able to be open and have internal noise levels which would be considered reasonable in line with the guidance contained within British Standard BS 8233:2014.
21. Notwithstanding the above, I recognise that keeping some windows closed at night time may not present an optimal arrangement for future occupiers. This is particularly notable during periods of warmer weather where the use of acoustic trickle ventilation may be necessary to ensure that future living conditions in any bedrooms in the western elevations of the proposed flats would not be oppressive during times of higher temperatures and that acceptable ventilation would be possible. However, the appellants' indicated that through the reserved matters process, detailed designs and internal layouts could locate habitable rooms away from the M11 thereby minimising any need for such measures. Therefore, overall, I am satisfied that the suggested approach to glazing and ventilation in the Acoustic Report would be

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<sup>5</sup> CD2.6 – Acoustic Report Addendum (2021) - WSP

<sup>6</sup> Association of Noise Consultants, Chartered Institute of Environmental Health, Institute of Acoustics. ProPG: Planning and Noise Professional Practice Guidance on Planning and Noise. New Residential Development. May 2017

<sup>7</sup> BS 8233:2014

capable of minimising the internal noise impacts on future occupiers and avoid unacceptable living conditions.

22. Turning to noise in outdoor spaces, the appellants' evidence indicates that predicted noise levels for the external gardens and communal outdoor areas for the proposed flats would predominantly not exceed 55 dB  $L_{Aeq,16hr}$  during both daytime and night time hours which is within the guidance in the British Standard BS 8233:2014 in respect of external areas. Across the wider scheme the evidence within the Acoustic Report indicates at Figure B1 that there would be a limited portion of the garden spaces of proposed plots 4, 11 and 16 exceeding this by less than 1 dB. However, as these would be very small proportions of the outdoor space within the developed part of the site, I find that the exceedances of the guidance in these areas would only have a limited impact on the living conditions of potential future occupiers and would therefore be at a level that would be acceptable.
23. Concerns were raised regarding the extent of noise that would be experienced in public areas. However, no substantive evidence was presented to the Inquiry that there is a set threshold for noise in public areas. Furthermore, whilst higher levels of noise may be experienced whilst using the nearby footpaths, these would be experienced by walkers and cyclists more briefly than by people utilising an area such as a playpark where activity might be focussed on a static area such as play equipment. Although concerns were raised that a fully detailed layout and design should have been modelled as part of the proposals, having regard to the indicative planning layout, I am satisfied that these plans have been modelled. This provides sufficient demonstration that an acceptable scheme could be brought forward as part of a detailed design and through the reserved matters stage in compliance with the proposed conditions.
24. My attention has been drawn to nearby appeal decisions of relevance to my decision. The first of these is a site to the north of Bedwell Road which was dismissed at appeal in 2021<sup>8</sup>. The parties agree that the appeal proposal is materially different from the site north of Bedwell Road as it identifies a single source of noise (the M11) unlike the scheme north of Bedwell Road which would be subject to noise from both the M11 and the nearby rail line.
25. Concerns were raised by interested parties that there would be similar noise levels on the appeal site as in centre of the scheme to the north of Bedwell Road which had been dismissed on noise grounds. However, the Inspector in that appeal did not consider that future residents would have access to any of the measures that would offset noise impacts as set out at paragraph 11 of the PPG. As I set out above, that would not be the case with this appeal proposal which would enable at least one quiet façade per dwelling and quieter private outdoor space.
26. Furthermore, the Inspector for the scheme to the north of Bedwell Road noted that the ProPG states that schemes should not be granted without first being satisfied that good acoustic design principles will be able to overcome the acoustic challenges. This is not the case for the appeal proposal which the Council does not dispute follows good acoustic design principles. Furthermore, the implementation of a 'barrier block' design approach would not result in unacceptable living conditions across the appeal site. The circumstances are therefore materially different.

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<sup>8</sup> Appeal Ref: APP/C1570/W/21/3274573

27. A further decision brought to my attention covered two parcels of land off Stanstead Road and off Isabel Drive<sup>9</sup> which is locally known as the 'Dandara site'. This scheme was allowed subject to a condition which required a scheme detailing sound insulation measures to achieve internal noise levels to not normally exceed 45 dB  $L_{Amax}$  and not exceeding 55 dB  $L_{Aeq}$  in the outdoor amenity areas including details of the position, design, height and materials of any acoustic barrier proposed. This condition contains similar requirements to those which I have imposed in the appeal scheme.
28. In the case of the Dandara scheme, interested parties indicated that noise was proposed to be baffled by a bund along the motorway. Concerns were raised by the Parish Council during the Inquiry that the Dandara scheme has struggled to meet the requirements of the noise condition. However, I do not have full details of the noise modelling undertaken for that scheme and I am satisfied that based on the submitted Acoustic Report and Acoustic Report addendum, these provide sufficient confidence that the noise conditions can be met on the appeal site.
29. The appellants' confirmed during the Inquiry that a range of noise mitigation measures were considered during the initial development of the scheme. The appellant indicated that the use of a bund would not be appropriate in this instance due to the elevation of the M11 when compared to ground level of the site and that any bunding or acoustic fencing would need to be excessively tall in order to be effective. As a result, the 'barrier block' design was adopted utilising 3 storey development which would provide more effective noise attenuation as demonstrated by the modelled noise contours. I concur with the appellant in this regard and when taking into account the change in levels between the site and the M11, the extent of fencing or bunding would be incongruous in its own right.
30. Concerns have been raised that the affordable housing units would be positioned within the 3 storey flats and would therefore be located within the noisiest part of the site, and that future occupants of the affordable housing would have less choice of accommodation than those seeking market housing. Whilst I note that this was a concern expressed by the Inspector in the land north of Bedwell Road decision, the appeal scheme is materially different to the circumstances in that case. Furthermore, as the layout and appearance of the scheme is not yet finalised, the location of the affordable housing units is not yet fixed and may be subject to change.
31. Whilst the appellants' had not provided a detailed internal noise model as part of the outline scheme, having regard to the submitted evidence, the indicative layout and the conditions agreed between the main parties, I am satisfied the proposal would be capable of providing acceptable living conditions for potential future occupiers.
32. In light of the above, the proposed development would provide acceptable living conditions for potential future occupiers having particular regard to noise and disturbance. It would therefore accord with policy ENV10 of the Uttlesford Local Plan (2005) (ULP) which seeks to prevent future occupants from experiencing significant noise and disturbance. I also find it would accord with policy GEN2 of the ULP which states that development will not be permitted unless, amongst other things, its design meets the criteria in adopted

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<sup>9</sup> APP/C1570/W/20/3256109

Supplementary Planning Documents and it would not have a materially adverse effect on the reasonable occupation and enjoyment of a residential or other sensitive property.

33. The proposal would also accord with paragraph 185 of the Framework which states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions and the need to avoid noise giving rise to significant adverse impacts on health and the quality of life. It would also accord with the ProPG and the PPG for the reasons set out above.

### **Legal Undertaking**

34. The submitted legal undertaking would secure 40% of the scheme as affordable housing including First Homes. Further contributions would also be made to secure Primary and Secondary Education, sustainable transport measures, mitigation for the avoidance of harm to the Hatfield Forest Site of Special Scientific Interest (SSSI), primary healthcare, libraries and public open space and its accompanying management.
35. Whilst an obligation has been proposed for a contribution to a new Community Hall for Elsenham, there was no substantive evidence presented as to how the contribution would be necessary to make the proposed development acceptable in planning terms. Whilst the proposal would result in additional residents, no clear evidence was presented as to how this related to the scale of the Community Hall which might ultimately be delivered, nor was there any substantive evidence to justify the amount of contribution sought other than via a basic proportional calculation based on the amount of money other schemes had provided towards the scheme. As a result, the community hall contribution does not meet the tests for planning obligations as set out at paragraph 57 of the Framework.
36. Having regard to the evidence before me, including the Council's Community Infrastructure Levy (CIL)<sup>10</sup> compliance statement, notwithstanding the Community Hall contribution, I am satisfied that the rest of the submitted legal undertakings are necessary to make the development acceptable, are directly related to the proposal and fairly and reasonably related in scale and kind to the development. As such, they would accord with the requirements of paragraph 57 of the Framework and Regulation 122 of the CIL Regulations (2010).
37. As the legal agreement would secure the necessary infrastructure to support the development, I am satisfied that the Council's third reason for refusal is addressed and the proposal would accord with policies GEN6, ENV7 and H9 of the ULP.

### **Other Matters**

#### *Air Quality*

38. The Council identified air quality as the second reason for refusal in the decision notice. However, the signed Statement of Common Ground (SoCG)<sup>11</sup> indicates at paragraph 2.19 that the use of recorded air quality levels to the

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<sup>10</sup> CD5.11 – Community Infrastructure Levy (CIL) compliance statement

<sup>11</sup> CD5.9 – Statement of Common Ground (SoCG) (Feb 2023) – Executive summary

north and south of the site represent a robust assessment case and significant confidence that no further air quality mitigation measures are required to meet air quality objectives. Whilst the site is located within 100 metres of the M11 where policy ENV13 of the ULP seeks to protect residents from exposure to poor air quality outdoors near ground level, the use of the 100 metre threshold is a consultation zone rather than a designation which would preclude development.

39. Furthermore, the Uttlesford Air Quality Annual Status Report (2022)<sup>12</sup> states that average nitrogen dioxide concentrations in the District are on a downward trend and below air quality objectives. On this basis, the Council did not seek to pursue this matter during the Inquiry. Having regard to the evidence and subject to the imposition of a condition to secure a construction management plan to control the air quality impacts arising from construction, I am satisfied that the proposal would not result in harm to human health as a result of air quality. It would therefore accord with policies ENV10 and GEN2 of the ULP.

#### *Local services and facilities*

40. Concerns have been raised by interested parties regarding the burden that would be placed on local services and facilities as a result of the appeal proposal, including the merger of local GP surgeries in the area. Elsenham is identified as a key rural settlement and according to the appellants' evidence, contains a shop, public house, post office, school and GP surgery. I note there is also a rail station in Elsenham which is on the mainline to London and Cambridge as well as local bus services. Noting submissions from interested parties regarding the merger of GP surgeries, the decision for any mergers or reorganising is outside the control of this appeal. However, the submitted planning obligation makes a contribution to primary care in the area in order to address any effects arising from future occupiers of the proposal. I am therefore satisfied that there are a range of services and facilities in the village that would support future residents and that there would be opportunities to access to a wider range of facilities elsewhere in larger settlements by public transport.

#### *Transport and access*

41. Concerns have been raised by Elsenham Parish Council that the proposal would conflict with policy GEN1 of the ULP in relation to transport and access. However, no concerns have been raised by the Local Highway Authority or the District Council in this regard. The appeal scheme identifies an appropriate access point and would also provide a contribution to local footpaths. The planning obligation would also secure a package of sustainable transport measures to minimise the potential impacts of additional traffic and as such, I am satisfied that the proposal would not have an adverse effect on the local highway network.

#### *Character and appearance*

42. Concerns were raised from interested parties regarding the impact of the proposal on the character and appearance of the area, including the 3 storey flatted development on the edge of the village. As set out above, the site is bounded to the west and south-west by the M11 which is elevated. As a result,

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<sup>12</sup> CD7.4 – Uttlesford Air Quality Status Report (2022)

there are no long views of the site from open countryside and the development would be visibly contained by the road in this direction. There are also a number of retained mature trees to the west and south-west of the site which provide further screening. Whilst the proposed 3 storey element of the proposal would be visible from Bedwell Road and other nearby streets, these would be partially screened by the intervening development to the northern and eastern parts of the appeal site.

43. My attention has been drawn to other examples of 3 storey development in the village. There is no dispute that 3 storey development has been allowed within the village. However, these examples are not directly comparable to the appeal proposal as they are integrated within their respective sites rather than on the edge. However, having regard to the mixture of two and three storey dwellings that are now found within the village, the extent of public views, the visual impact of the M11 and the intervening screening, I do not find that the 3 storey element would be harmful to the character and appearance of the area. Furthermore, matters of appearance are not fixed and I am satisfied that the indicative layout demonstrates that an acceptable design would be capable of being secured as part of future reserved matters.
44. Concerns have been raised regarding the loss of biodiversity and wildlife as a result of the proposal. The proposal would provide for a net gain in biodiversity which would be identified through a biodiversity net gain report. There would also be a reptile management strategy, a biodiversity enhancement strategy and a landscape and ecological management plan (LEMP) and a wildlife sensitive lighting design scheme which could be secured by planning conditions to avoid harm to biodiversity. As a result, I am satisfied there would be no harm in this regard.
45. My attention has been drawn to concerns regarding water flooding on local roads. However, this matter would be addressed via the imposition of conditions relating to the control of water discharge on to the highway.
46. I have been directed to concerns regarding light pollution from the scheme albeit this could be addressed via planning conditions to control external lighting. Interested parties consider there are insufficient school places to support the proposal, however contributions to primary and secondary education in the area would be secured by the planning obligation which would address this concern.

### **Planning balance**

47. There is common ground between the parties that the Council cannot currently demonstrate a 5 year housing land supply, and that the current position is that 4.89 years land supply can be demonstrated. As such, the presumption in favour of sustainable development at paragraph 11(d) of the Framework is engaged and the policies most important for determining the proposals are deemed to be out of date<sup>13</sup>.

### *Benefits*

48. The appeal proposal would provide a significant contribution to the Council's current housing land supply shortfall. The proposal would also deliver 40% of

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<sup>13</sup> National Planning Policy Statement, footnote 8.

the scheme as affordable housing, including First Homes in an area where there is a demonstrable need for affordable housing.

49. There is no disagreement between the parties that progress on a new Local Plan to replace the ULP is not very far advanced and that a new plan which would include an updated housing requirement and spatial strategy is several years away. I therefore apportion substantial weight to the provision of market and affordable housing that the appeal scheme would deliver.
50. The proposal would also provide a benefit through the reduction in noise from the M11 to a number of existing nearby properties on Bedwell Road whose outdoor space would experience reduced noise levels as a result of the intervening development<sup>14</sup>.
51. Social benefits would arise as a result of enhancements to local footpath number 29 to the west of the site through the delivery of a 'trim trail' and accompanying links to footpath number 31 and the delivery of sustainable travel measures.
52. Environmental benefits would occur through the provision of wildlife and biodiversity enhancements and the provision of public open space which would be secured through appropriate conditions and the planning obligation.
53. Economic benefits would arise as a result of the jobs created through the construction of the proposed development as well as in the accompanying materials supply chain.

*Adverse effect of the proposed development*

54. The appeal proposal would be located outside of the settlement boundary of Elsenham. Policy S7 of the ULP seeks to protect the countryside for its own sake and that planning permission is only given for development that needs to take place there or is appropriate to a rural area, including infilling in accordance with paragraph 6.13 of the ULP. As a result of its location outside the settlement boundary, the proposal would fall within the countryside in policy terms and would therefore conflict with the provisions of policy S7.

*Conclusion*

55. I have identified that the appeal proposal would conflict with policy S7 of the ULP, although due to the engagement of the Framework's tilted balance, the weight afforded to this conflict would be reduced. However, the proposal would accord with policy ENV10 and GEN2 which are identified as most important policies in the determination of this appeal. The completion of the legal agreement means that it would also accord with policies GEN6, ENV7 and H9 of the ULP which collectively seek to ensure the provision of infrastructure to support development, protect the natural environment and secure affordable housing.
56. The parties agree that the Council cannot demonstrate a 5 year supply of deliverable housing sites and therefore paragraph 11(d)(ii) of the Framework and the presumption in favour of sustainable development is engaged. Paragraph 11(d) states that where the most important policies for determining the application are out of date, planning permission should be granted unless

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<sup>14</sup> CD1.7 – Acoustic Report (Figs B-1 and B3)



any adverse impacts of doing so would significantly and demonstrably outweigh the benefits which assessed against the Framework and the Development Plan when taken as a whole. I have found that the proposal would conflict with the Development Plan, albeit the conflict would be limited. However, I have also identified that the proposal would accord with the Framework overall.


57. In this case several benefits would arise. These include a substantial benefit through the provision of housing including affordable housing which would make a positive contribution to addressing the shortfall in housing land supply. The proposal would also provide moderate economic, social and environmental benefits. There would also be a moderate benefit to the living conditions occupiers of nearby properties as a result of reduced external noise due to the barrier effect of the proposal.
58. I have also found that the proposal would accord with relevant Development Plan policies concerning noise and disturbance and infrastructure. The adverse effects as a result of the conflict with policies for the supply of housing are not sufficient to significantly and demonstrably outweigh the benefits of the scheme.
59. As a result, the material considerations arising from benefits of the proposal are such that a decision that is not in accordance with the Development Plan is justified in this instance.

### Conditions

60. I have considered the conditions included in the schedule<sup>15</sup> which were discussed and updated following a round table session during the Inquiry against the tests set out at paragraph 56 of the Framework, only including those which meet those tests subject to any minor amendments for clarity, consistency and enforceability. There are a number of pre-commencement conditions necessary which the appellant has agreed to in writing as required by the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
61. In addition to the standard requirements for the identification of the approved plans, and the timing of commencement of development, a condition requiring the submission of Reserved Matters is necessary in order to provide an acceptable form of development.
62. Conditions 3 and 4 are necessary in the interests of the living conditions of future occupiers having regard to noise and disturbance.
63. A condition was sought to require samples of the colours and details of the materials to be used for the construction of the dwellings. However, as the appearance of the proposed development is not included within the outline scheme, this would be dealt with as future reserved matters and is therefore not imposed.
64. Conditions 7 and 8 are necessary to secure the details of hard and soft landscaping works and adherence to the agreed works, albeit I have amended condition 7 to remove an erroneous reference to cricket balls from the recreation ground as the site is not located in close proximity to the recreation

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<sup>15</sup> CD5.10 – Draft conditions

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management plan, a reptile mitigation strategy, a biodiversity net gain report, a biodiversity enhancement strategy, a landscape and ecological management plan (LEMP) and a wildlife sensitive lighting design scheme. Condition 17 has been amended to remove references to the prior agreement of ecological mitigation measures as submitted with the planning application as the decision has been made via this appeal. Furthermore, I have amended condition 18 to remove an unnecessary tailpiece. The Council's submitted schedule of conditions also included duplicate conditions requiring a lighting scheme for biodiversity and I have deleted the duplicate as it is not necessary.

74. The conditions have been amended to remove condition 'headers' found in the schedule which also indicate they must be produced concurrently with reserved matters approvals. Whilst it may be practical for these requirements of conditions to be addressed alongside reserved matters, there are no evidence before me of any express need to do so and a clear and precise reference to these being pre-commencement conditions is sufficient to meet the tests. As such, I have amended them to this effect in order that they are precise as paragraph 56 of the Framework expects.
75. In order to address the potential effects of surface water drainage, conditions 24 and 25 are necessary to ensure water discharge is appropriately modelled and measures secured and that offsite flooding is minimised. For the same reasons conditions 26 and 27 are necessary to ensure that maintenance arrangements for these measures and the responsible body for maintenance is identified and that maintenance logs will be completed and available for inspection.
76. In the interests of archaeology, conditions 28 and 29 are necessary to secure a programme of archaeological investigation will be secured and that a post-excavation assessment is carried out.

### **Conclusion**

77. In light of the above, I conclude that the appeal should be allowed.

*Philip Mileham*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ms Megan Thomas KC, of Counsel, who called:

Mr Tobias Lewis	Technical Director, WSP
Mr Edward Durrant	Associate Planner, Pegasus Planning Group

### **FOR THE COUNCIL:**

Ms Femi Nwanze	Interim Team Leader, Development Management
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### **INTERESTED PARTIES:**

Councillor Lees	Ward Member for Elsenham and Leader of the Council.
Dr Graham Mott	Chairman, Elsenham Parish Council also representing Ugley Parish Council.

## **DOCUMENTS**

Received during or after the Inquiry:

1. Uttlesford Air Quality Status Report (2022) – CD7.4
2. Opening submissions on behalf of the appellant – CD8.1
3. Statement by Cllr Lees
4. Statement by Dr Graham Mott
5. Closing submissions on behalf of the appellant – CD8.2
6. Completed copy of the legal undertaking

## Annex 1

### Schedule of conditions

- 1) Approval of the details of layout, scale, landscaping, and appearance (hereafter called "the Reserved Matters") must be obtained from the Local Planning Authority in writing before development commences and the development must be carried out as approved.
- 2) Application for approval of the Reserved Matters must be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.
- 3) As part of any Reserved Matters application (layout) a scheme detailing internal layout shall be submitted for approval in writing by the local planning authority and the scheme shall include details showing all dwellings with dual aspect.
- 4) As part of any Reserved Matters application, a scheme detailing sound insulation measures shall be submitted for approval in writing by the local planning authority and the scheme shall include:
  - i) details sufficient to demonstrate that the internal noise levels recommended in BS 8233:2014 will be achieved and for individual noise events to not normally exceed 45 dB LAmax,T during the night-time. The scheme will include the internal configuration of rooms and the specification and reduction calculations for the external building fabric, glazing, mechanical ventilation, and acoustic barriers, and
  - ii) details sufficient to demonstrate that a noise level not exceeding 55 dB LAeq,16hour in the outdoor amenity areas will be achieved, including the position, design, height and materials of any acoustic barrier proposed, along with calculations of the barrier attenuation.

The development shall be implemented in accordance with the approved scheme prior to the occupation of any dwelling and retained thereafter.
- 5) The development hereby permitted must be begun no later than the expiration of two years from the date of approval of the last of the Reserved Matters to be approved.
- 6) The development hereby permitted shall be carried out in accordance with the approved plans as follows:

BEE.SLP.000 (17th November 2020)  
BEE.IPL.001 (17th November 2020)
- 7) Prior to any development above slab level, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved and thereafter be retained as such. These details shall include: -
  - i. means of enclosure including details of the proposed walls and fencing
  - iii. vehicle and pedestrian access and circulation areas.
  - iv. hard surfacing materials.

- v. details of the safety measures proposed
  - vi. minor artefacts and structures (e.g. furniture, refuse or other storage units, signs, street lighting, etc.);
- Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.

- 8) All hard and soft landscape works shall be carried out in accordance with the approved details shall thereafter be retained as such. The works shall be carried out before any part of the development is occupied or in accordance with the programme agreed with the local planning authority.
- 9) Prior to the commencement of development, a management plan for the site shall be submitted to and approved in writing by the local planning authority to detail arrangements for the provision, maintenance and retention of:
- i. All roads and footpaths.
  - ii. All common areas; and
  - iii. Lighting.

Thereafter, the development shall be implemented and retained in accordance with the management plan.

- 10) 5% of the dwellings approved by this permission shall be built to Category 3 (wheelchair user) housing M4(3)(2)(a) wheelchair adaptable of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 11) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for;
- i. vehicle routing,
  - ii. the parking of vehicles of site operatives and visitors,
  - iii. loading and unloading of plant and materials,
  - iv. storage of plant and materials used in constructing the development,
  - v. wheel and underbody washing facilities.
  - vi. Before and after condition survey to identify defects to highway in the vicinity of the access to the site and where necessary ensure repairs are undertaken at the developer expense where caused by developer.
- 12) During construction, robust measures to be taken to prevent birds being attracted to the site. No pools of water should occur and prevent scavenging of any detritus.
- Any drainage swales must be designed to be generally dry (with an underdrain if necessary) and hold water only during and immediately after an extreme rainfall event. Any changes to the drainage scheme must be discussed with the aerodrome safeguarding authority prior to construction.
- 13) No lighting directly beneath any installed roof lights that will emit light upwards – only downward facing ambient lighting to spill from the roof lights upwards – ideally, automatic blinds to be fitted that close at dusk.

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- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location/area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance of the Receptor area(s).
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The Reptile Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 20) Prior to the commencement of development, a Biodiversity Net Gain Design Stage Report, in line with Table 2 of CIEEM Biodiversity Net Gain report & audit templates (July 2021) shall be submitted to and approved in writing by the local planning authority which provides biodiversity net gain, using the DEFRA Biodiversity Metric 3.0 or any successor. The content of the Biodiversity Net Gain Design Stage Report should include the following:

- a) Baseline data collection and assessment of current conditions on site;
- b) A commitment to measures in line with the Mitigation Hierarchy and evidence of how BNG Principles have been applied to maximise benefits to biodiversity;
- c) Provision of the full BNG calculations, with detailed justifications for the choice of habitat types, distinctiveness and condition, connectivity and ecological functionality;
- d) Details of the implementation measures and management of proposals;
- e) Details of any off-site provision to be secured by a planning obligation;
- f) Details of the monitoring and auditing measures.

The proposed enhancement measures shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

- 21) Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).



The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

- 22) Prior to the occupation of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP shall include the following:


- a) Description and evaluation of features to be managed including the retained woodland and grassland habitats.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 23) Prior to the occupation of the development, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 24) No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

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- 29) The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

End of Schedule