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## Appeal Decision

Site visit made on 5 October 2021

by **P. D. Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021.

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**Appeal Ref: APP/C1570/W/21/3269464**

**Claypits Farm, Bardfield Road, Thaxted CM6 2LW.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Barnard (Salacia Ltd) against the decision of the Uttlesford District Council.
  - The application Ref UTT/20/0614/OP, dated 6 March 2020, was refused by notice dated 14 January 2021.
  - The development proposed is outline application for demolition of existing buildings and erection of 14 no. dwellings with all matters reserved except access and layout.
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### Decision

1. The appeal is allowed and outline planning permission is granted for demolition of existing buildings and erection of 14 no. dwellings with all matters reserved except access and layout at Claypits Farm, Bardfield Road, Thaxted CM6 2LW in accordance with the terms of the application, Ref UTT/20/0614/OP, dated 6 March 2020 and subject to the conditions at Schedule A below.

### Procedural Matters

2. The description of development on the application form wrongly refers to 15 dwellings and does not refer to demolition of existing buildings despite the fact that the site is partly within the Thaxted Conservation Area. I have therefore taken the description of development as that set out in the decision notice and appeal form.
3. In the period since the appeal was submitted the Government has published a revised version of the *National Planning Policy Framework* (The Framework). The revised Framework has not brought me to any different decision on the appeal and therefore I have not considered it necessary to invite the appeal parties to comment on the new document.

### Main Issues

4. The main issues are whether the proposed development would:
  - Adversely affect highway safety on Bardfield Road as a result of the proposed location of the access.
  - Harm the usability of the public footpath No 105 as a result of the proposed layout and consequent need for diversion of the footpath.

## Reasons

5. The appeal site is located on the edge of Thaxted just outside but adjacent to the Thaxted settlement boundary on the south side of Bardfield Road and comprises the former farm buildings and barns to Claypits Farm. The listed original farmhouse lies adjacent to the site to the west and shares the same access as proposed for the development. This access and western section of the site also lies within the Thaxted Conservation Area.
6. The farmyard site rises to the east away from the farmhouse and sits above the level of Bardfield Road.
7. The site is allocated for housing in the 'made' *Thaxted Neighbourhood Plan* (TNP) and the principle of development on the site has already been secured with outline permission granted (access and layout not reserved) for 15 units under ref UTT/18/0750/OP. Since that time a footpath which crossed the site on the diagonal from south-west to north-east through the yard has been confirmed in a Definitive Order as a public footpath (No 105) and the revised scheme the subject of the appeal was submitted in part to accommodate the proposed diversion of Footpath No 105. Other than this change and a consequent reduction in the number of units from 15 to 14 the proposal is largely the same as that approved.

### *Highway Safety*

8. The appeal proposal would gain access in exactly the same way as the previous permitted scheme namely via the existing access to Claypits Farm upgraded to meet all Highway Authority requirements. This access arrangement has an extant and specific permission by virtue of the fact that access was not a reserved matter in application UTT/18/0750/OP. As such it could be implemented with immediate effect.
9. It has been put to me that because the TNP makes provision for access to the Claypits site via the coach park further east from the proposed access that this should be the preferred access to the site.
10. I accept that TNP Policy TXHD5 in allocating the site for housing refers to the fact that access via the coach park may be necessary to respect the proximity to the listed Claypits farmhouse. Similarly, I note that TNP Policy TXHD7 allows for the use of the site to facilitate access and infrastructure arrangements for the Claypits site.
11. Notwithstanding the provisions set out in the TNP, the fact that the site has an extant permission utilising the access as proposed in the appeal proposal and in respect of which there has neither been Conservation or Highway Authority objections is a material consideration of considerable weight.
12. This consideration would outweigh what is after all only aspirations in the TNP. The policies do not specifically require the access to the site to be via the coach park, they merely indicate this would be facilitated if required. Moreover, there are two further reasons why I am not persuaded by this reason for refusal. First, the TNP makes it clear that the coach park is not an allocated site because owner intentions are unclear – it is presented as a development opportunity. Thus, there is no certainty for the allocated Claypits site as to when and in what form access may be provided. Second, the physical relationship of the coach park to the Claypits Farm site involves a difference in levels which may affect access.
13. For all of the above reasons but most importantly because there is a fully designed

access scheme which has been accepted and permitted by the Council, I am not satisfied that refusal on the grounds that it would not accord with the Neighbourhood Plan would be justified. For the avoidance of doubt my conclusion on this matter does not undermine TNP Policy TXHD7. The policy in respect of the coach park is a facilitating and aspirational one and given the approved access arrangement there would be no need to pursue the coach park option. Moreover, the proposal would be in accordance with Policy GEN1 of the *Uttlesford Local Plan* (ULP) which requires development to be capable of being accessed safely and in a manner which does not compromise road safety in respect of more vulnerable users. The appeal proposal would be no different in terms of access to that which has already been considered under this policy and found to be acceptable. Thus the concerns of third parties in respect of highway safety, traffic congestion, adequacy of emergency access, impacts on the listed building etc are not raising matters that have not already been assessed and addressed through conditions. Relevant conditions would be reapplied in the event this appeal is allowed.

#### *Usability of the Public right of Way*

14. It has been put to me that the confirmation of the Definitive Order for Public Footpath No 105 as a Public Right of Way (PROW) in 2019 considerably constrained the development of the site as the route of the footpath ran diagonally through the centre of the site. As a result the appeal proposal was submitted as a revised application and proposed the rerouting of the footpath along the southern boundary of the site and then along the eastern boundary to pick up the original route.
15. I took the opportunity of walking both the current definitive route of Footpath No 105 and the proposed diverted route whilst on the site visit in order to assess whether the proposed diversion would reduce enjoyment and experience and constitute a circuitous and unsafe diversion.
16. The existing route runs up through the site between the barns before exiting onto open fields to the east. The route is largely enclosed by buildings and trees with no distant views and poor levels of natural surveillance once the route enters the site. In comparison, the proposed diversion although still running between the southernmost buildings and the tree screen on the southern edge of the site would afford glimpsed views of Thaxted Church referred to by some third parties as important. Having walked both routes I saw nothing to suggest that the diverted route would reduce enjoyment or experience.
17. The appellant in submitted documents has calculated that the diversion would be some 31 metres longer than the current route and from my observations I have no reason to dispute that figure and am satisfied that this is not significantly longer than the definitive route. The Council also considers the diverted path would be unsafe, presumably because it runs along the garden boundaries of the houses. However, the path would be bounded by open countryside to the south and east and could be designed to avoid enclosure that would be detrimental to user or resident safety.
18. The Council during the consideration of the application suggested that the path was diverted to run along the access road through the estate exiting onto the field at the east end via the turning head. Whilst this would be possible, it would be a shared access with vehicles, not a dedicated footpath and would not meet the criteria of being an enjoyable experience walking through a small housing estate. I have been referred to the Essex Works Advice Note which clearly states that

footpaths should not be routed along estate roads unless there is no other option and, in this case, there is clearly another option. Moreover, the evidence before me indicates that the Essex County Council Public Rights of Way Team in considering the proposed diversion raised no in principle objection to the southerly route.

19. Section 257 of the *Town and Country Planning Act 1990* allows that an order can be made for the stopping up of a public footpath or bridleway where it is necessary to allow development to be carried out in accordance with a valid and relevant planning permission. S 257 as amended by the *Growth and Infrastructure Act 2013* allows for an order to be made in advance of permission although the order would not be confirmed until permission is granted. It is not a matter of dispute between the parties that no objection from statutory consultees has been raised to the proposed diversion and that the order to stop up and divert can be made in the event that the appeal is allowed and permission is granted. I am satisfied that due process is being followed in respect of Public Footpath No 105.
20. I note the objective of TNP Policy TX IFS3 to protect footpaths and maintain the rural character and views that the footpath provides. Whilst the supporting text in the TNP states that exceptions will only be made where it would lead to an improved experience for the walker, the policy itself does not include this. The Policy states that applications are to consider the impact of development on footpaths and take opportunities to provide appropriate footpath access. For the reasons above, I am satisfied that the development proposal has considered Footpath No 105 and the proposal to route it south and east rather than run it up the estate road would be consistent with achieving a better experience for the walker.

#### *Other Matters*

21. Even if I were to take the view that there would be some harm in respect of the footpath diversion this is an allocated site in the TNP for which there is already permission granted. It is a small redundant site in a sustainable location and its development would make efficient use of land as encouraged in the Framework at Section 11 and a contribution to meeting housing needs in Uttlesford District.
22. Although the published *Housing Delivery Target* (HDT) results for 2020 for Uttlesford show that in the last 3 years the District delivered housing in excess of the requirement it is also clear that the Council does not have a 5 year Housing Land supply (currently there is only just over 3 years of supply).
23. The Framework's 'tilted balance' at paragraph 11 is therefore triggered and must be applied. Paragraph 11d) of the Framework provides that the presumption in favour should apply other than in two circumstances. The first of these, namely where the development would conflict with Framework policies to protect areas or assets of particular importance, would not be the case here and, in respect of the second circumstance, the potential harm from diverting the footpath would not outweigh the benefits of the development.
24. A third party has raised concerns regarding the impact of the proposed layout and in particular Plot 9 on the living conditions for The Swallows on Bardfield Road. I took the opportunity of the site visit to consider the relationship between the proposed house on Plot 9 and the Swallows. The revised application being considered in this appeal was redesigned to move the house on Plot 9 slightly southwards and turn it through 90° so that the main windows of the house would face east and west and not north towards the Swallows. The separating distances involved would be adequate (around 30 metres at the closest point) and, whilst I

accept that the house on Plot 9 would be at a higher level than the Swallows based on current ground levels, the relationship would not be such as to be overbearing. In any event the detail of the design, fenestration, levels and landscaping will be subject to control by the Council at the reserved matters stage.

### **Conditions and Conclusion**

25. The Council suggested a significant number of conditions, the need for some of which have been challenged by the appellant. I have considered these in the light of the advice in the Framework and *Planning Practice Guidance*. Standard conditions in respect of outline permissions are required in order to control the submission of reserved matters. The appellant has requested that a condition requiring development to be carried out in accordance with the submitted plans is added as not all matters are reserved and I agree that it is necessary in the interest of certainty that the approved access and layout plans are included in a plans condition.
26. Control of a number of elements relating to the access (vehicular and pedestrian), parking provision and footpath access is necessary in the interests of highway and pedestrian safety. Also, in the interests of sustainable travel, I agree that a requirement to provide electric vehicle charging points is necessary. These access conditions are as follows and need to be discharged before the development is first brought into use or occupied:
- Provision of the access and visibility splays on Bardfield Road.
  - Provision of footway on the south side of Bardfield Road.
  - Provision of appropriate surface treatment to the diverted footpath.
  - Provision of vehicle and cycle parking in accordance with standards.
  - Provision of electric vehicle charging points.
27. It is important in the interests of sustainable drainage and the avoidance of surface water flooding that an appropriately designed surface water drainage scheme and its ongoing maintenance is the subject of conditions.
28. Given the potential for pollutants associated with the previous uses of the site and the presence of a secondary aquifer and Drinking Water Protected Area it is important that conditions requiring contamination risk assessments and, if necessary, remediation works and appropriate foundation design are imposed. These conditions are as follows:
- Contamination risk assessment. (This has to be a pre-commencement condition and the appellant has agreed in writing to this in their final comments).
  - Verification, monitoring and maintenance in respect of contamination.
  - Piling and foundation design to avoid using penetrative methods
  - Remediation if unforeseen contamination is identified.
- The appellants challenged the need for a condition in respect of this last matter on the grounds it was already covered by the other contamination conditions. However, having reviewed the proposed wording I am not persuaded the matter is satisfactorily covered and, as it is a fairly standard condition to deal with unidentified contamination, I am satisfied it is necessary. The Council also proposed a condition 16 regarding long term monitoring and maintenance but I am satisfied this is adequately addressed in other conditions relating to contamination.
29. The Council suggested the imposition of a noise mitigation condition relating specifically to the new dwellings. However, as the design of the new dwellings is a matter to be controlled at reserved matters stage I am not persuaded of the need for this condition on this outline permission.

30. Given that access works are approved by this outline permission and demolition could take place on the site it is important that a construction management plan is conditioned to ensure that works do not give rise to noise and nuisance. This has to be a pre-commencement condition and the appellant has agreed in writing to this in their final comments.
31. The Council has proposed six conditions relating to aspects of biodiversity. The appellant has questioned the need for these in that they are repetitive in their scope and some are unnecessary. Having reviewed the proposed conditions I agree that whilst it is vital that biodiversity is both protected and enhanced and therefore some conditions are necessary this could be achieved with fewer conditions. I am satisfied that the Council's suggested conditions Nos 22 and 25 can be subsumed into condition 24 with the appellant's proposed modifications. However, in respect of condition 26 and external lighting design the detail in the proposed condition provides important guidance to the developer which would not be satisfactorily provided by the proposed amended condition 24. With regard to suggested condition 27 requiring a resurvey of on-site ecology in the event of delay in demolition I am not satisfied this is necessary. Suggested condition 23 prevents demolition without the necessary licence being in place from Natural England and to obtain this licence will necessitate survey work being up to date. Accordingly, the condition is unnecessary.
32. Finally, the Council suggested three other conditions requiring a residents' sustainable transport guide to be in place; for the design to be compliant with M4(2) of the building regulations to ensure delivery of accessible and adaptable dwellings; and to control removal of any asbestos from the site. In respect of the former, inasmuch as there is no current requirement for this in the policies of the Development Plan and although the objective is laudable, I am not persuaded that the requirement is reasonable in all respects. In respect of the two latter suggestions, advice is that conditions should not be used where the subject matter is subject to control through other legislation or regulation. This is the case in these instances where Building Regulation control and the Control of Asbestos Regulations 2012 are in place to control the matters referred to in the conditions. The conditions are not therefore necessary.
33. I have considered the matters before me and, for the reasons given above, I conclude that the appeal should be allowed and outline permission granted for residential development on the Claypits Farm site subject to the conditions set out in Schedule A below.

*P. D. Biggers*

INSPECTOR

#### SCHEDULE A – CONDITIONS

1. Approval of the details of scale, appearance and landscaping (hereafter called "the Reserved Matters") shall be obtained from the Local Planning Authority in writing before development commences and the development shall be carried out as approved.

2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission.
3. The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the submitted documents and the following approved plans: 216498 DWG 001 Rev A, 216498 DWG 102, 216498 PL 104 Rev B, and IT1431/SK/04/Rev C.
5. Prior to first occupation, the eastern access shall be provided as shown in principle on drawing number IT143/SK/04 REV C with a minimum width of 5.5m and associated visibility splays of 2.4 by 43m in both directions. The visibility splays for both the eastern and western accesses and the access road as shown in principle on the drawing, shall be provided before the first use by vehicular traffic associated with the development and retained free of any obstruction at all times.
6. Prior to first occupation a footway of minimum width 1.5m shall be provided to link the western access with the existing footway on the southern side of Bardfield Road.
7. Prior to first occupation the surface treatment of the diverted Public Footpath No 105 shall be agreed with the Highway Authority and then implemented as agreed.
8. The number of vehicle and cycle parking spaces shall be in accordance with those standards set down within Essex County Council's Parking Standards Design and Good Practice, September 2009 and Uttlesford Local Residential Parking Standards February 2013 and shall be provided prior to first occupation of the development
9. Prior to occupation the dwellings shall be provided with electric vehicle charging points. The charging points shall be fully wired and connected, ready for first use and retained for occupant use thereafter.
10. 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:
  - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
  - Limiting discharge rates to 2 l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change subject to agreement with the relevant third party.
  - Final modelling and calculations for all areas of the drainage system.
  - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.

- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The approved scheme shall be implemented prior to occupation. It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

11. Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.  
Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.  
The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
12. No development approved by this planning permission shall take place (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
  - 1) A preliminary risk assessment which has identified:
    - a) all previous uses
    - b) potential contaminants associated with those uses
    - c) a conceptual model of the site indicating sources, pathways and receptors potentially unacceptable risks arising from contamination at the site.
  - 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
  - 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.
13. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

14. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.
15. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
16. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The statement shall specify the provisions to be made for the control of noise and dust emanating from the site and shall be consistent with the best practicable means as set out in the Uttlesford Code of Development Practice. The approved Statement shall be adhered to throughout the construction period.
17. Works to demolish existing buildings shall not in in any circumstances commence unless the Local Planning Authority has been provided with either:
  - a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or
  - b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
18. No development shall take place (including any demolition, ground works, site clearance) until a Biodiversity Mitigation and Enhancement Plan, has been submitted to and approved in writing by the Local Planning Authority. The content of the Plan shall include the finalised details and locations of the mitigation and enhancement measures/works contained in the Ecology Walkover Update and great crested newt (*Triturus Cristatus*) eDNA survey results (MHE Consulting, August 2020), Outline Bat Mitigation Strategy (MHE Consulting, January 2018), and Preliminary Ecological Appraisal Report (Practical Ecology Ltd, September 2017), as well as precautionary measures for protected and priority species, including hedgehog and amphibians. The works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter. This may include the appointment of an appropriately competent person e.g. an Ecological Clerk of Works (ECoW,) to provide on-site ecological expertise during construction.
19. 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, Isolux 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.