



Appeal Decision

Site visit made on 26 April 2022

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Appeal Ref: APP/C1570/W/21/3282082

Land at Old Mead Road, Henham, CM22 6JL

- 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 Elsenham Nurseries & Poultry Farm against the decision of Uttlesford District Council.
 - The application Ref UTT/21/1666/OP, dated 17 May 2021, was refused by notice dated 12 July 2021.
 - The development proposed is an outline planning application, with all matters reserved except scale & access, for the erection of up to 6 dwellings and associated work.
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Decision

1. The appeal is allowed and planning permission is granted for Outline planning application, with all matters reserved except scale & access, for the erection of up to 6 dwellings and associated work at Land at Old Mead Road, Henham, CM22 6JL in accordance with the terms of the application, Ref UTT/21/1666/OP, dated 17 May 2021, subject to the conditions set out in the attached schedule at Annex A.

Applications for costs

2. An application for costs has been made by Elsenham Nurseries & Poultry Farm against Uttlesford District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal proposal has been made in outline with all matters reserved except for scale and access. The proposal includes indicative site plans and elevations and I have had regard to these in reaching my decision.
4. The Council's decision notice indicated that the proposed development would result in harm to highway safety. However, as part of their appeal evidence, the appellant has submitted a highways technical note which indicated that adequate visibility could be achieved. Following receipt of that document, the Council, in consultation with Essex County Council as Local Highway Authority are satisfied that highway matters can be successfully resolved subject to the imposition of conditions and that highway matters were not contested. Therefore, as this matter is no longer in dispute between the parties, I have not addressed the matter of highway safety as a main issue in this appeal.
5. Since the Council determined the original proposal, the Government has published a revised National Planning Policy Framework (the Framework) in July 2021. As such, a number of paragraph numbers have changed and new

paragraphs inserted. The parties have been able to comment on the revised Framework through their appeal statements. I have determined this appeal against the latest iteration of the Framework utilising the latest paragraph numbers where relevant.

Main Issue

6. The main issue is whether the proposed affordable housing contribution would be justified.

Reasons

7. The appeal site is an area of paddock land located off Old Mead Road, Henham. The principle of whether residential development would be acceptable on the site is not in dispute between the parties as a result of an earlier approved planning permission for 6 dwellings on the site (UTT/19/2692/OP) which serves as a fallback to the appeal proposal.
8. The proposed development differs from the fallback in that the appeal proposal seeks to mirror the approved scheme albeit with the removal of a previously agreed obligation towards footpath improvements. That obligation has, since permission was granted, subsequently been demonstrated not to meet the tests for planning obligations as set out in the Framework as it was agreed between the parties that it would not be deliverable. Furthermore, the fallback permission does not include any requirement for an obligation to provide affordable housing.
9. The Council's evidence indicates that the appeal site was part of a wider site in the same ownership 11 months prior to the proposed development and would thereby trigger an affordable housing contribution under Policy H9 of the Uttlesford Local Plan (2005) (ULP). Policy H9 of the ULP states that the Council will seek to negotiate affordable housing on appropriate allocated and windfall sites. The supporting text to Policy H9 indicates that in areas elsewhere (other than at Great Dunmow, Saffron Walden and Stanstead Mountfitchet), the Council will seek to negotiate affordable housing on sites over 0.5 hectares or 15 dwellings or more which would apply in Henham.
10. Paragraph 64 of the Framework indicates that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. This is echoed in the Planning Practice Guidance (PPG) which indicates that planning obligations for affordable housing should only be sought for residential developments that are major developments¹.
11. The appeal proposal would provide for 6 dwellings and have a site area of approximately 0.44 hectares according to the application form. As a result, the site would fall below the threshold for major development set out in the PPG, but also the threshold for seeking affordable housing set out in Policy H9 of the ULP. There is no evidence before me that Henham is within a designated rural area under the Housing Act 1985 which the Framework provides as an exception to its threshold for seeking affordable housing.
12. The appellant has indicated in their appeal statement that the nearby site referred to in the Council's evidence (a separate scheme for 9 dwellings

¹ Paragraph: 023 Reference ID: 23b-023-20190901

approved by UTT/18/3370/OP) is no longer in their ownership, would not have a common boundary with the appeal site and would be separated by third party land. There is no evidence to suggest that the proposal would continue to form part of a wider site to the extent that it would have otherwise been a major development or comprise a site capable of delivering 15 dwellings.

13. Therefore, having regard to the expectations of the PPG and the Framework which were published after the adoption of the ULP, I consider there would be no justification for seeking of affordable housing on the appeal site as it would fall below both the PPG and Policy H9 thresholds. As a result, it would not be an appropriate site to seek affordable housing that Policy H9 expects.
14. In light of the above, I conclude that the proposed affordable housing contribution would not be justified. As such, the proposal would accord with Policies H9 and GEN6 of the ULP which respectively seek to ensure development provides affordable housing on appropriate sites and that development will not be permitted unless it makes provision for infrastructure at the appropriate time.
15. The proposal would also accord with the Framework for the reasons set out above.

Other Matters

16. The appellant has provided an amended highways technical note which includes revised calculations for the visibility splay on to Old Mead Road in accordance with amendments to the Design Manual for Roads and Bridges (DMRB). The submitted evidence indicates that the road is lightly trafficked and that vehicle speeds in the vicinity of the site are within the 85th centile of the speed limit in force at the site (40 miles per hour). The submitted drawings indicate that suitable visibility can be achieved in both directions to the edge of the carriageway or within highway land. In light of this, the Council and the Local Highway Authority have no further concerns subject to the imposition of suitable conditions. From my site visit, having regard to traffic speed and volumes, I concur with the appellant's evidence that that the proposed visibility splay would be acceptable and thereby sufficient to alleviate the concerns in regard to highway safety.
17. Third parties have raised concerns regarding the absence of footpath provision due to the road width at the appeal location. However, due to the absence of footpath adjacent to the proposed development in the direction of the main part of the settlement, there would be no footpath to link to even if this were sought. However, I consider the distances involved in reaching nearby footpaths, the low volume of traffic and road speed would not result in harm to pedestrian safety nor adversely affect the desirability of walking into Henham from the site.
18. The proposed development would result in a number of benefits. Economic benefits would arise as a result of the construction of the development and in the accompanying material supply chain. Social benefits would arise through future occupiers utilising local services and facilities and engaging in community activities. Environmental benefits would also be secured through the implementation of measures set out the Landscape and Ecological Management Plan (LEMP) which includes the provision of a wildflower meadow as well as the Biodiversity Enhancement Strategy which would be secured

through planning conditions. The proposal would also make a positive contribution to meeting housing needs in the area through the provision of 6 additional dwellings.

Conditions

19. The Council has suggested conditions which the appellant has had the opportunity to comment on. I have considered these against the advice in the Framework and the PPG and have only imposed them where I consider them to meet the tests, amending them where necessary for the sake of clarity and precision.
20. In addition to the standard time limit, in the interests of certainty I have imposed a condition specifying that the development is carried out in accordance with the submitted plans.
21. In the interests of highway safety, conditions are required to specify the extent of visibility splays, the length and width of the proposed private drive, to specify the use of unbound surface treatment of the vehicular access, to restrict any vehicle access gates to be inward opening and to restrict surface water discharge to the highway.
22. A condition was sought that the vehicle parking and turning area be provided prior to the occupation of any dwellings. However, the parking and turning area does not form part of the site access plans, only the main access point. The plan showing the parking area is only included on an indicative plan. As such, this is a matter that would be considered as part of the development layout which would be a reserved matter and therefore should not be included within a condition at this stage. Therefore, this condition is not imposed.
23. A condition is required to secure the provision of a pedestrian access on to Old Mead Road.
24. A further condition requiring a residential travel information pack including public transport vouchers had been sought; however, there is no accompanying justification to support its imposition nor any policy support provided. As such, I do not consider it a condition necessary to make the development acceptable in this specific instance.
25. In the interests of ecology and in order to enhance protected and priority species and habitats, conditions are required to secure the mitigation and enhancement measures set out in the Preliminary Ecological Appraisal Report, the preparation and submission of a Biodiversity Enhancement Strategy and a Landscape and Ecological Management Plan. I have amended the Preliminary Ecological Appraisal condition to ensure that the mitigation measures are retained thereafter.
26. Having regard to the proximity of the appeal site to Stanstead Airport, in the interests of the living conditions of future occupiers, a condition is required for the preparation of a noise impact assessment and that any works are completed prior to the occupation of development.
27. A condition has been sought by the Council requiring the provision of electric vehicle charging points. However, the requirement to provide charging infrastructure is now part of the building regulations and this takes effect from 15th June 2022 in England. As such, the suggested condition is not imposed as

it would not be necessary due to the requirement being set out in other legislation.

28. In the interests of safety and avoidance of harm to human health, a pre-commencement condition is required to provide a written preliminary risk assessment in relation to potential ground contamination. This is necessary to be undertaken prior to commencement in order to protect future occupiers.
29. In order to protect potential archaeologic deposits, a pre-commencement condition is required for the submission of a written scheme of archaeological investigation and the subsequent completion of a programme of investigation and reporting. The condition is required to be pre-commencement due to the potential for disturbance of any features or deposits as part of the commencement of the scheme.
30. In the interests of the protection of human health, a pre-commencement condition is required in order to secure a preliminary environmental risk assessment, and if required, a scheme of investigation has been submitted to the Local Planning Authority.
31. In the interests of aircraft safeguarding having regard to the proximity of London Stanstead Airport, a condition is required to restrict exterior lighting to prevent upward light spill. For the same reason, the Council has requested a condition seeking consultation with the airport before the installation of any photovoltaic cells. However, the suggested condition is imprecise and would therefore not meet the tests set out at paragraph 56 of the National Planning Policy Framework (the Framework). Matters of appearance are not included as part of this outline scheme and would be addressed at the subsequent reserved matter stage. Therefore the condition is not imposed.
32. Conditions are required in order to comply with adopted policy and guidance in relation to accessible homes and playspace. A further condition is required to secure the provision of low-carbon renewable technology having regard to the Energy Efficiency and Renewable Energy Supplementary Planning Document (SPD) and this is necessary to be a pre-commencement condition as the condition requires a design SAP or SBEM rating for the proposed development which is required to be undertaken before the final design is then implemented.
33. In the interests of highway safety, promoting non-car modes of transport and the accordance with adopted policies for parking, conditions are required to address vehicle parking for the benefit of future occupants only, cycle parking to be provided in accordance with the appropriate standards and the timing of completion of a service road to the proposed dwellings.

Conclusion

34. The proposal would also provide a number of economic, social and environmental benefits as set out above, a number of which will be secured through planning conditions. The proposed development would also accord with the Development Plan when read as a whole as well as the requirements of the Framework.
35. Therefore, for the reasons given above I conclude that the appeal should be allowed.

Philip Mileham

INSPECTOR

Annex A

Schedule of Conditions

- 1) Details of the appearance, landscaping, and layout, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 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 following approved plans:

218069 PL 001 – Site Location Plan

- 5) Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 100 metres to the north and 2.4 metres by 79 metres to the south (with a 1 metre off-set), as measured from and along the nearside edge of the carriageway, as shown on principle on DWG no. F19096/02 Rev. B (dated 09/08/2021). Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 6) Prior to the occupation of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of highway boundary and provided with an appropriate vehicular crossing of the verge.
- 7) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 8) Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.
- 9) There shall be no discharge of surface water onto the Highway.
- 10) Prior to occupation of the development, at the southern edge of the site, a 2-metre wide pedestrian access shall be provided onto Old Mead Road, with any necessary dropped kerbs and pedestrian warning signs.
- 11) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal

Report (T4ecology Ltd, July 2019) and retained thereafter. This includes due diligence for transitory mammals and nesting birds.

- 12) Prior to any development 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 following the recommendations made within the Preliminary Ecological Appraisal Report (T4ecology Ltd, July 2019).

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) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

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

- 13) Prior to the occupation of the development, a Landscape and Ecological Management Plan (LEMP) for the creation of a wildflower meadow to the rear of the application site on land owned by the applicant shall be submitted to, and be approved in writing by, the local planning authority prior occupation of the development. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- 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

- 14) 1. Prior to the first occupation of the proposed development, a noise impact assessment and scheme providing for the specification of building envelope & facade insulation & associated ventilation of the proposed development against the transmission of externally generated transportation noise shall be submitted to and approved in writing by the local planning authority. The scheme shall demonstrate compliance with the levels detailed in table 4 detailed in section 7.7.2 of BS8233:2014 Guidance on sound insulation and noise reduction for buildings, detailed below. Any works which form part of the scheme shall be completed in accordance with the approved details before the dwellings are occupied.

07:00 to 23:00

Resting - Living room 35 dB LAeq, 16hour & Dining - Dining room/area 40 dB LAeq, 16hour, Sleeping/Daytime Resting - Bedroom 35 dB LAeq, 16hour

23:00 to 07:00

Sleeping/Night-time Bedroom 35 dB LAeq, 8hour

2. BS8233 also recommends that regular individual noise events (for example, scheduled aircraft or passing trains) can cause sleep disturbance. A guideline value may be set in terms of SEL or L_{Amax,F}, depending on the character and number of events per night. UDC Technical guide on noise requires noise events (measured with F time-weighting should not normally exceed 45dB L_{Amax} several times in any one hour during the night (23.00-07.00)

3. Acoustic ventilators, which can be passive ventilators, should meet the minimum background ventilation requirements of the Building Regulations 2000 Approved Document F "Ventilation".

4. Amenity Spaces - The acoustic environment of external amenity should ideally not be above the range 50 - 55dB LAeq,16hr. It may be necessary to carefully locate and design amenity areas and/or to provide acoustic screening in order to meet this goal. Where the upper limit cannot be achieved due to aircraft noise, developers must design amenity space areas to achieve the lowest level practicable.

Where external amenity areas are exposed to "dominant" industrial and/or commercial noise, the impact of the noise should be assessed in accordance with BS4142:2014 over the time period that the amenity area is likely to be used.

15) Phase 1 Contaminated Land

a) No development approved by this permission shall be commenced prior to the submission to, and agreement of the Local Planning Authority of a written preliminary environmental risk assessment (Phase I) report containing a Conceptual Site Model that indicates sources, pathways and receptors. It should identify the current and past land uses of this site (and adjacent sites) with view to determining the presence of contamination likely to be harmful to human health and the built and natural environment.

b) If the Local Planning Authority is of the opinion that the report which discharges condition (a), above, indicates a reasonable likelihood of harmful contamination then no development approved by this permission shall be commenced until a Site Investigation (Phase II environmental risk assessment) report has been submitted to and approved by the Local Planning Authority which includes.

- i) A full identification of the location and concentration of all pollutants on this site and the presence of relevant receptors, and
- (ii) The results from the application of an appropriate risk assessment methodology

c) No development approved by this permission (other than that necessary for the discharge of this condition) shall be commenced until a Remediation Method Statement report; if required as a result of (b), above; has been submitted to and approved by the Local Planning Authority

- d) This site shall not be occupied, or brought into use, until:
- (i) All works which form part of the Remediation Method Statement report pursuant to the discharge of condition (c) above have been fully completed and if required a formal agreement is submitted that commits to ongoing monitoring and/or maintenance of the remediation scheme.
 - (ii) A Remediation Verification Report confirming that the site is suitable for use has been submitted to, and agreed by, the Local Planning Authority. The verification report shall include disposal records, waste transfer receipts etc, to ensure that all waste disposal is traceable.

e) In the event that contamination is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken by a competent person, in accordance with Land contamination risk management published by the Environment Agency. A written report of the findings should be forwarded for approval to the Local Planning Authority. Following completion of remedial measures, a verification report shall be prepared that demonstrates the effectiveness of the remediation carried out. No part of the development should be occupied until all remedial and validation works are approved in writing.

16) All exterior lighting to be capped at the horizontal with no upward light spill.

17) No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.

No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the written scheme of investigation defined above.

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.

18) All of the dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.

19) The development hereby approved shall incorporate on-site renewable or low-carbon energy technologies to provide 10% of the annual energy needs of the approved development in-use.

The applicant will provide the planning authority with a design SAP or SBEM rating of the proposed development carried out by an accredited assessor before work commences on-site, as well as technical details and estimated annual energy production of the proposed renewable or low carbon technologies to be installed.

Within four weeks following its completion, the applicant will provide a SAP or SBEM rating of the as-built development and details of the renewable or low carbon technologies that were installed.

- 20) The garage/car spaces to be provided shall be kept available for the parking of motor vehicles at all times. The garage/car spaces shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.
- 21) No dwelling shall be occupied until space has been laid out within the site in accordance with standards for bicycle parking.
- 22) No dwellings shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved plans.