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# Appeal Decision

Site visit made on 8 June 2023

**by J Downs BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> September 2023**

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**Appeal Ref: APP/C1570/W/22/3302413**

**Land Rear of De Vigier Avenue, Saffron Walden CB10 2BN**

- 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 Turnstone St Neots Ltd against the decision of Uttlesford District Council.
  - The application Ref UTT/20/2105/OP, dated 10 September 2020, was refused by notice dated 5 January 2022.
  - The development proposed is outline planning permission with all matters reserved except for access for the erection of up to 12 dwellings with associated landscaping, parking and supporting infrastructure.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 12 dwellings with supporting infrastructure at Land Rear of De Vigier Avenue, Saffron Walden CB10 2BN in accordance with the terms of the application, Ref UTT/20/2105/OP, dated 10 September 2020 in accordance with the attached schedule of conditions.

## Preliminary Matters

2. The appeal is made in outline with access to be considered at this stage. Two access points to the development are shown from Russell Green Gardens and Mapletoft Avenue, but no further details have been submitted. Appearance, landscaping, layout and scale fall to be considered at the reserved matters stage. I have amended the description of development in my decision to remove aspects that would be addressed as part of the reserved matters and to remove wording that is not part of the description of development.
3. Since the application was determined, the Saffron Walden Neighbourhood Plan (October 2022) (SWNP) has been made. I have sought further comments on this from the main parties and I have taken these into account in my determination of this appeal.
4. The Council confirmed in their statement that the submitted drainage strategy overcame their second reason for refusal and they no longer wished to defend it. I have no reason to disagree and have not considered this as a main issue.
5. A completed planning obligation, dated 1 December 2022 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted which sought to address off-site highway improvements, education, affordable housing, public open space, ecological mitigation land and biodiversity net gain. I will return to this in due course.

## **Main Issues**

6. The main issues are:

- the effect of the proposed development on biodiversity with particular regard to calcareous grassland and common lizard; and
- the need to secure contributions towards off-site highway improvements, education, affordable housing, public open space and biodiversity.

## **Reasons**

### *Biodiversity*

7. The appeal site is a triangular area of land, bounded by agricultural fields and residential development, through which access would be taken. An updated ecological survey was submitted as part of the appeal. This was carried out in June 2022 and was necessary given the passage of time since the documentation supporting the application was prepared.
8. The site contains an area of calcareous grassland, although this has been encroached upon by scrub since the previous surveys were carried out. It also hosts a population of Common Lizards, a Species of Principal Importance designated by the Natural Environment and Rural Communities Act 2006 (NERC) and protected by The Wildlife and Countryside Act 1981. It is proposed to translocate 500sqm of calcareous grassland and the population of Common Lizards to a nearby site which has supported similar works to mitigate the effect of the proposed development. Details of how these would be carried out can be secured by condition.
9. The completed s106 agreement makes provision for the submission of an ecological mitigation land management scheme (EMLMS) and which would confirm the timing for these works to be carried out and arrangements for the management and maintenance of the Ecological Mitigation Land (EML), having regard to the ecological mitigation measures for which the proposed mitigation site is presently in use. It also secures the EML in perpetuity. This would allow for consideration of these measures alongside the existing ecological mitigation measures.
10. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations) and paragraph 57 of the National Planning Policy Framework (the Framework) set out three tests that planning obligations must meet.
11. The above measures are necessary to make the proposed development acceptable in planning terms and with regard to the duty set out in s40 of the NERC to have regard to the purpose of conserving biodiversity. It is directly related to the development and would be fairly and reasonably related in scale and kind to the development proposed. I am therefore satisfied that the planning obligation would meet the requirements of the CIL Regulations and the Framework in respect of this issue. I therefore give it significant weight in the determination of this appeal.
12. The potential effects of the development on other aspects of biodiversity were also assessed. The updated ecological survey made recommendations related to further mitigation measures which could be secured by condition.

13. The Council's officer report expresses concern at the hedgerow being positioned within the rear gardens of dwellings as it could not be controlled and could be severed by fences reducing its value as a habitat. There is no evidence before me that this hedge is a priority habitat, nor has the Council suggested a condition be imposed requiring the hedge to be retained. The landscaping of the site would be considered at the reserved matters stage.
14. For these reasons, I consider there would be an acceptable effect from the proposed development on biodiversity with particular regard to calcareous grassland and the common lizard. It would therefore be in accordance with Uttlesford Local Plan 2005 (ULP) Policy GEN7 and the policies in section 15 of the National Planning Policy Framework (the Framework) which, amongst other things, seek to conserve and enhance biodiversity.

### *Contributions*

15. The parties have completed a s106 agreement in conjunction with Essex County Council which includes a number of obligations to come into effect if planning permission is granted. It is not unusual for such agreements to come forward during the appeal process. I have considered these in light of the statutory tests referred to above. In addition to biodiversity mitigation, the agreement also contained provision in relation to the following matters.
16. Highways: The Council's third reason for refusal specifically related to a lack of contribution towards off-site highway improvement works. While the submitted s106 agreement makes provision for this contribution, the appellant disputes the need for it. It is identified a contribution is required for safety improvements or provision of pedestrian crossing facilities to Ashdon Road. Although I observed a steady flow of traffic on Ashdon Road, there is no substantive evidence before me of the need for such safety improvements or where they would be delivered. As such I cannot be certain that this would be necessary to make the development acceptable in planning terms. Furthermore, there is no evidence before me as to how the sum of £46,500 has been arrived at. I therefore cannot be satisfied that the contribution would be fairly and reasonably related in scale and kind to the development. While such a contribution could be directly related to the development to promote means of travel other than by the private car, I am unable to be sure that this obligation meets all of the statutory tests.
17. Education: The Council has advised it cannot justify the need for the obligation and there is no substantive evidence before me. I am therefore unable to conclude that it would be necessary to make the development acceptable, directly related to the development or fairly and reasonably related in scale and kind to the development. It therefore does not comply with the statutory tests.
18. Affordable Housing: The appellant has confirmed that policy SW2 of the SWNP would apply were more than 10 dwellings to be provided through the submission of reserved matters. Such provision would be directly related to the development and would be fairly and reasonably related in scale and kind due to the proportional nature of the contribution. It would be necessary to make the development acceptable in planning terms and would be reasonable in all other respects. As such, it complies with the statutory tests.
19. Public Open Space: ULP Policy GEN2 requires development to provide an environment that meets the reasonable needs of all potential users and ULP

Policy GEN6 seeks to secure the infrastructure made necessary by the development. Paragraph 98 of the Framework confirms the importance of access to high quality open spaces and opportunities for sport and physical activity. As the proposal is in outline other than access, the details of the provision of open space would fall to be considered as part of the reserved matters. However, as the principle of development is established through the outline, it is reasonable for the future arrangements for the management of that land to be secured. I therefore consider that the relevant clauses are necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. It therefore complies with the statutory tests.

20. Biodiversity Net Gain (BNG): ULP Policy GEN7 and paragraph 179 of the Framework both seek, amongst other things, the enhancement of biodiversity. The appellant has put forward a scheme demonstrating how BNG could be delivered through a combination of on- and off-site measures. The precise nature of the on-site measures, and their resultant contribution to BNG, could not be quantified given the proposal before me is in outline. Further assessment, which could be secured by condition, would be necessary at the reserved matters stage to assess the effects of the eventual development and ensure that a net gain was delivered. Notwithstanding, should off-site measures be required, it would be necessary to secure this at the outline stage. I am therefore satisfied that the proposed development would meet the statutory tests in that it would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind.
21. The obligations relating to highways and education fail to meet one or more of the tests set out in the CIL Regulations and paragraph 57 of the Framework. I am therefore unable to take them into account in determining the appeal. I give significant weight to the obligation with respect to protected species and affordable housing, and moderate weight to the obligations with respect to BNG and public open space.

### **Other Matters**

22. It is not in dispute between the main parties that the site is outwith the development limit for Saffron Walden. No argument has been put before me that the proposal would comply with ULP Policy S7 which sets out criteria for allowing development in the countryside. The Council has not identified any harm with respect to this policy and the officer report describes the site as being 'tacked on' to Saffron Walden and would support its growth. No substantive evidence of harm to the character of the countryside or the spatial strategy has been put to me and I have no reason to find otherwise.
23. Drawing number SO67/pl3004 provides an indicative land use and landscape parameter plan while drawing SO67/pl3005 indicates a range of finished floor levels and a maximum height and number of storeys for the proposed development. The Council has not sought to include these as approved plans, and I have no reason to think these issues could not be adequately addressed at the reserved matters stage.
24. At my site visit I observed a bus stop on the access road to the site. While I have not been provided with details of any services and their frequencies, I

have no reason to dispute the appellant's statement that contributions to secure a bus service were provided as part of the wider development in the area.

25. It is a matter for the relevant providers to address issues related to water pressure and foul water connections. There is no substantive evidence that an additional twelve dwellings, even alongside other approved development, would give rise to an adverse effect on highway safety where drivers exercise due care and attention. Matters related to the junction of Ashdon Road and damage to highways could be addressed using powers available to the local highways authority. The use or otherwise of public transport and sustainable transport facilities on the neighbouring development would not merit dismissing the proposed development.
26. There is no reason the proposed development would give rise to an undue level of noise or levels of additional traffic that would be adverse to the living conditions of surrounding occupiers. Further effects on living conditions, such as loss of privacy or overshadowing, would be addressed at the reserved matters stage. Disruption during construction would be short term and could be managed via a condition. Other legislation exists to ensure safety on development sites.
27. Anti-social behaviour on the land could be addressed using existing powers available to other authorities, as could issues in relation to waste on the site. While the land may be used for recreation, there is no substantive evidence before me it is designated as such. The management of the public open space would be addressed at the reserved matters stage. Matters relating to the public open space at the existing development are beyond the scope of this appeal, as are matters related to any covenants on the site or agreements between landowners and developers beyond the s106 I have considered above.

### **Planning Balance**

28. The proposal conflicts with the development plan as it lies outwith the development limit for Saffron Walden and does not conform to ULP Policy S7 regarding development in the countryside. The Council cannot demonstrate a five year supply of deliverable housing land and the policies of the development plan most important for determining the appeal are therefore considered to be out of date. There are no policies in the Framework that would provide a clear reason for refusing the development proposed therefore paragraph 11(d)(i) of the Framework is not engaged.
29. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The Framework seeks to significantly boost the supply of housing. The appeal proposal would contribute to this, immediately adjacent to an existing settlement. There would also be the associated economic benefits that would arise from the development. The Framework seeks to deliver net gains for biodiversity which are also put forward by the proposal. I attach moderate weight to these benefits.

31. When assessed against the policies in the Framework, the adverse effects of the proposed development would be limited and therefore would not significantly and demonstrably outweigh the benefits. The appeal proposal therefore benefits from the presumption in favour of sustainable development.

### **Conditions**

32. Both parties have suggested conditions in the event that the appeal were to be allowed. I have had regard to these in light of the tests set out in paragraph 56 of the Framework and I have made amendments to some of them for consistency and clarity purposes. Although not suggested by either party, in the interests of certainty, I have imposed conditions setting the terms of the grant of outline permission and subsequent reserved matters, related time limits and stipulating the approved plans. As appearance and landscaping are reserved matters, it is not necessary to impose separate conditions.
33. Given the proximity of the site to existing dwellings, a construction management condition is considered to be reasonable and necessary. As full details of the access to the site have not been provided, it is reasonable and necessary to set out details of how the site accesses should be provided. As the site is for a sensitive end use, a condition should unexpected contamination be encountered is both reasonable and necessary. I have amended the proposed condition to ensure that it is effective.
34. It is reasonable and necessary for a condition to be imposed to ensure that appropriate provision is made for surface water drainage.
35. It is reasonable, necessary and related to the development to ensure that the translocation of the calcareous grassland and reptiles is carried out in an appropriate manner. Further mitigation measures set out in the Preliminary Ecological Appraisal were re-confirmed in the July 2022 update and it is reasonable and necessary for there to be a programme of works to implement these measures. This also recommended that updates to the biodiversity mitigation and enhancement plan and wildlife protection plan should be provided prior to the development commencing. The wildlife protection plan should also include the measures related to great crested newts set out in the update. These measures are reasonable and necessary given the passage of time and, along with the measures secured in the planning obligation, to ensure there would not be an adverse effect on biodiversity. To secure biodiversity net gain, a condition is also considered to be reasonable and necessary. It is necessary for these to be pre-commencement to ensure that proposed measures would be effective.
36. There is a bus stop on the access road to the wider site which would be readily apparent to future occupiers and so would encourage movement by means other than the private car. As a result, I do not find a condition requiring residential travel information packs to be reasonable or necessary to meet the requirements of ULP Policy GEN1.
37. Paragraph 130 of the Framework and footnote 49 are clear that the use of standards for accessible and adaptable housing in planning policies should only be where there is an identified need for such properties. The LP pre-dates the Framework by some margin. As such, even if it had been supported by such evidence, it is unlikely it would reflect the current circumstances, nor has any more up-to-date evidence been provided. It therefore would not be reasonable

to impose such a condition. The provision of electric vehicle charging points is addressed through the building regulations and so is not necessary.

38. While it has been suggested that chalk substrate could be used to improve other roadside verges, there is not sufficient information before me to demonstrate that this would be reasonably related to the development to be permitted. Nor can I be certain that there is a mechanism that would ensure any such material could be used. As such, a condition on this matter would not meet the tests set out in paragraph 56 of the Framework.

### **Conclusion**

39. The proposed development conflicts with the development plan when read as a whole. For the reasons given above, I have attached limited weight to this conflict, and there are no other material considerations which would weigh against the proposal. The policies of the Framework are a material consideration which weigh strongly in support of the appeal as the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposed development.
40. I therefore consider that in the specific circumstances of this case, the material considerations indicate that the decision should be taken other than in accordance with the development plan. Accordingly, the appeal should be allowed.

*J Downs*

INSPECTOR

### **Schedule of conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (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 plan: SO67/pl3001 Rev pl1.
- 5) 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 and shall provide for the following all clear of the highway:
  - i. Safe access to the site;
  - ii. The parking of vehicles of site operatives and visitors;
  - iii. Loading and unloading of plant and materials;
  - iv. Turning of vehicles;
  - v. Storage of plant and materials used in constructing the development;
  - vi. Wheel and underbody washing facilities.
- 6) Prior to occupation of the development hereby approved, a 6-metre shared surface, to connect into Mapletoft Avenue and Russell Green Gardens, shall be provided.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged

- from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 9) Before the development commences, a method statement for the translocation of calcareous grassland to the agreed receptor site shall be submitted to and approved in writing by the Local Planning Authority. The translocation shall be carried out in accordance with the agreed method statement.
- 10) Before the development commences, details of a scheme for the translocation of reptiles from the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the temporary fencing that shall be erected during the translocation works, the method statement for the translocation of reptiles and the method statement for the destructive search that will follow these works. The translocation shall be carried out in accordance with the agreed scheme prior to commencement of the development.
- 11) Before the development commences, a programme of works to implement the ecological mitigation and enhancement measures set out in recommendations 2-7 of the MKA Ecology letter dated 1st July 2022 shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved programme.
- 12) Before the development commences, an updated Wildlife Protection Plan, and Biodiversity Mitigation and Enhancement Plan shall be submitted to and approved in writing by the Local Planning Authority. The updated documents should, as appropriate, include a method statement of measures to ensure ecologically sensitive working practices for great crested newts. The development shall be carried out in accordance with the approved plans.
- 13) Before the development commences, a baseline biodiversity assessment of the site (utilising Defra Biodiversity Metric 3.0) shall be undertaken together with a baseline assessment of the development as approved by the reserved matters. These assessments shall confirm if any biodiversity net loss is to occur as a result of this development and if so, the scale of any off-site biodiversity enhancements that are required to ensure a biodiversity net gain is achieved as a result of this development. Any off-site biodiversity enhancements shall be secured prior to commencement of the development.