

## UTT/17/1533/FUL – (ELSENHAM)

(MAJOR APPLICATION)

**PROPOSAL:** Variation of condition 14 ("No waste other than those waste materials defined in the application details shall enter the site") of planning permission UTT/16/1066/FUL (modernisation of Elsenham Golf and Leisure to include the creation of a chipping green and adventure golf area, driving range refurbishment, extension to car park, creation of a reservoir for the purposes of sustainable on-site irrigation and landscape / ecological enhancements) in order to allow the importation of waste material from additional sites

**LOCATION:** Elsenham Golf and Leisure, Hall Road, Elsenham

**APPLICANT:** Mr Pharoah

**AGENT:** Mr J Seed

**EXPIRY DATE:** Extension of time 13 April 2018

**CASE OFFICER:** Mrs Madeleine Jones

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### **1. NOTATION**

1.1 Outside Development Limits. Public Right of Way. Within 6KM of Stansted Airport. Within 250m of Landfill Site. Within 2km of SSSI. Contaminated Land. Tree Preservation Order. Adjacent Historic Park/Garden. Countryside Protection Zone.

### **2. DESCRIPTION OF SITE**

2.1 The site is located to the north of Hall Road in Elsenham and is accessed by a single track (with passing points) that is shared with Elsenham Quarry. The application site comprises a golf course with associated clubhouse and golf driving range. There is a car park to the west of the clubhouse providing parking for approximately 100 vehicles. There is a certified caravan club to the north west of the driving range. To the north and north east of the site is Elsenham quarry. Adjacent to the site are important woodlands (Lady Wood and Park Wood which are adjacent to Pledgdon Wood which is a SSSI. There are residential properties to the west of the access road. Stansted Airport is approximately 1.8 km to the south of the site.

### **3. PROPOSAL**

3.1 Variation of condition 14 ("No waste other than those waste materials defined in the application details shall enter the site") of planning permission UTT/16/1066/FUL (modernisation of Elsenham Golf and Leisure to include the creation of a chipping green and adventure golf area, driving range refurbishment, extension to car park, creation of a reservoir for the purposes of sustainable on-site irrigation and landscape / ecological enhancements) in order to allow the importation of waste material from additional sites

## 4. APPLICANT'S CASE

- 4.1 The variation is required to facilitate the construction programme as detailed within the Statement.

The variation is necessary to address two identified problems which have arisen since the original approval. With this in mind, we are eager to work with the LPA to seek a solution to this problem in accordance with Paragraph 187 of the National Planning Policy Framework (NPPF) which states that LPAs should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Paragraph 188 continues, stating that LPAs should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

- 4.2 Permission was granted for the following development:  
*'Proposed modernisation of Elsenham Golf and Leisure to include the creation of a chipping green and adventure golf area, driving range refurbishment, extension to car park, creation of a reservoir for the purposes of sustainable on-site irrigation and landscape / ecological enhancements at Elsenham Golf And Leisure Limited Hall Road Henham CM22 6FL'*

Condition 14 of the permission seeks to control the source of material which is to enter the site, stating as follows:

*'No waste other than those waste materials defined in the application details shall enter the site.'*

*Reason: Waste material outside of the aforementioned would raise alternate, additional environmental concerns which would need to be considered afresh and to comply with Policies W3A, W3D, W4A, W5A, W8A, W8B, W8C, W9A, W9B, W0E from the Essex County Council Waste Local Plan and Policy GEN2 of the Uttlesford Local Plan (adopted 2005)'*

- 4.3 The need to apply for a variation of this condition is considered to be two-fold. Firstly, there would appear to be some confusion as to which materials are actually to be permitted into the site, and by which protocol

The Planning Statement which was submitted with the application, with particular reference to Sections 9, 11 and Appendix 3 demonstrated that the material would be imported from a local 'donor' site under the CL:AIRE protocol. Using such a protocol, the acquiring of an Environmental Permit is not required.

However, Informative 4 attached to the decision notice states:

*'The applicant is informed that a bespoke permit under the Environmental Permitting Regulations 2010 is required for this proposal'*

Whilst it is fully acknowledged that this is an informative rather than a condition, the applicant is keen to ensure that the processes by which the required materials are to be brought to the site are fully agreed with the LPA for the avoidance of doubt and to ensure full compliance with the Authority's expectations.

- 4.4 In addition to addressing this matter, it has come to the applicant's attention that the proposed donor site may not be able to provide all of the material which is required to create the improvements, and certainly not within an acceptable timeframe. This has raised concerns in respect of both commercial and deliverability considerations which this application seeks to remedy. In order to address the material shortfall / delivery delay, it is required to import material from additional sites in the likely event that this would be required.

At present, it is estimated, following conversations between the applicant and the owner of the donor site, that 35,000m<sup>3</sup> of material will be made available within the development period. However, no assurances have been made with respect to delivery timescales which will undoubtedly affect the construction programme in terms of finances, planting schedules and staffing matters.

In researching options to address these matters, the applicant has commissioned an expert on the 'CL:AIRE Definition of Waste: Development Industry Code of Practice' protocol to provide an enhanced understanding of the process and to begin compiling a list of other potential donor sites for the project.

- 4.5 The document, attached as Appendix 2 to this Statement, concludes the following: *'The type of development works approved by Uttlesford District Council (application ref. UTT/16/1066/FUL) for the proposed development at Elsenham Golf and Leisure Limited, Hall Road, Henham CM22 6FL are ideally suited to be constructed re-using clean naturally occurring soil and mineral material from another development site in strict accordance with the CL:AIRE Definition of Waste: Development Industry Code of Practice via the Direct Delivery Scenario. As such a suitable donor site can be identified which will meet the requirements of the both the construction schedule and the Code of Practice and a MMP can be prepared for assessment by a Qualified Person. When approved, the QP may register the project with CL:AIRE and a declaration made to the EA to allow the lawful transfer of material from one development site to another'*

On the basis of the above, and with reference to the matters covered within Section 5 of this document, it is proposed that the new condition be worded as follows:

*'No imported materials other than those which are subject to a CL:AIRE-approved Materials Management Plan shall enter the site. The development will be carried out in accordance with the Supporting Statement hereby approved'*

The condition was imposed for the following reasons:

*'Reason: Waste material outside of the aforementioned would raise alternate, additional environmental concerns which would need to be considered afresh and to comply with Policies W3A, W3D, W4A, W5A, W8A, W8B, W8C, W9A, W9B, W0E from the Essex County Council Waste Local Plan and Policy GEN2 of the Uttlesford Local Plan (adopted 2005)'*

When reviewing these policies, it is questionable as to whether any of the Saved Essex County Council Waste Local Plan policies are relevant to the proposal and existing condition, given that from the outset, the intention to use the CL:AIRE protocol was clear and, subject to strict compliance with the Code of Practice, the material used should not be considered waste at all.

This matter notwithstanding, the proposed amended condition will not conflict with any of these strategic waste policies and will fulfil the aim of creating a sustainable form of development.

- 4.6 With respect to Policy GEN2 of the Uttlesford Local Plan, it is considered that a number of the points require careful consideration against the proposed amendment to Condition 14. These are considered, in so far as they are relevant to this particular application, within the following sections.

***Development will not be permitted unless its design meets all the following criteria:***

- ***It minimises the environmental impact on neighbouring properties by***

***appropriate mitigating measures;***

- ***It would not have a materially adverse effect on the reasonable occupation and enjoyment of a residential or other sensitive property, as a result of loss of privacy, loss of daylight, overbearing impact or overshadowing.***

It is considered that due to the requirement to import materials from a location other than the identified local donor site, the variation would result in a different pattern of vehicle movements outside of those which would otherwise have been expected.

The site is well located with regards to its proximity with the M11 to the west. It is envisaged that vehicles will be instructed to access the site via the blue route from Junction 8 and / or 8A of the M11.

This route into the site has been chosen for a number of reasons such as:

- Ease of access for the required vehicle types;
- Widths and capacity of the roads leading into the site;
- It minimises the need to pass sensitive uses from the M11 to the facility, and;
- It is an established route for similar vehicle types when accessing the area.

Drivers delivering to the site will be issued with a routing map which clearly states that all arrivals must come via the approved route. Measures will be put in place within contracts obliging delivery firms to take agreed sanctions against any drivers reported to be using other (non-approved) routes.

In addition to these measures, signage will be placed inside the site exit, reminding drivers that they are only permitted to turn left out of the site.

It is considered that the combined measures, in conjunction with the road network's existing capacity, will ensure that the limited number of trips which take place outside of those from the donor site will ensure that the proposal will not adversely impact upon the road network or any sensitive surrounding uses.

- 4.7 The uncertainty around what is the approved source / protocol in respect of the material to be imported, along with uncertainties with regards to the volume of material available from the donor site / certainty of timescales has led the applicant to re-consider how this aspect of the project can be delivered.

The applicant has commissioned the services of an expert on the 'CL:AIRE Definition of Waste: Development Industry Code of Practice' protocol to assist with the identification and management of other acceptable donor sites to address the potential shortfall in material. This process will require the compliance with a regulatory regime outside of the planning process and as such, should this application be permitted, it is considered that no further submissions would need to be made to the LPA. As the materials that are to be used are not considered to be waste, the application does not require the engagement of the County Waste Authority and / or their planning policies.

The instructing of the proposed routing into the site for the additional delivery vehicles is securable under the proposed condition in so far as is reasonable, and these instructions will ensure that the vehicles use an acceptable section of the road network that will not adversely impact upon the highway. The roads are all built and designated as such that their use by tipper lorries is to be anticipated and expected.

It is considered that the proposed variation will ensure that the project can be delivered without resulting in any adverse impacts over and above those of the approved planning permission. It is further considered that the condition meets with the aims and objective of the NPPF and the 6 'tests' of planning conditions.

## **5. RELEVANT SITE HISTORY**

- 5.1 SWR/0015/58 – Extension of permission for extraction of sand and gravel. Approved with conditions
- 5.2 UTT/0644/94/FUL – Retention of mobile home for security purposes. Approved with Conditions
- 5.3 SWR/0450/71 – Proposed filling of 10 acres approx. with brick, rubbish, topsoil and factory maintenance rubbish. Approved with conditions.
- 5.4 UTT/0461/77 – Withdrawn
- 5.5 UTT/0948/12/FUL – External deck to first floor side elevation. Approved with conditions.
- 5.6 SWR/0007/58 – Development of land for sand excavations. Approved with conditions
- 5.7 UTT/1801/08/FUL – Construction of a new health facility, swimming pool, squash courts, badminton courts, reception, restaurant, 40 parking spaces and ancillary works. Refused
- 5.8 UTT/15/0819/FUL – Proposed demolition of single storey rear addition and erection of single storey extension plus new conservatory, including insertion of three new roof windows in the existing roof. Approved with Conditions
- 5.9 UTT/0007/99/FUL – Extension to existing storage building, enclosure of open bays and erection of terrace. Approved with Conditions
- 5.10 UTT/0182/95/FUL – Change of use of agricultural land after sand extraction and landfill to nine hole golf course and three academy (practice holes). Conditionally approved.
- 5.11 UTT/1251/09/FUL – Siting of portacabin for period of 18 months. Approved with Conditions
- 5.12 UTT/0728/11/FUL – Temporary siting of portacabin for two years. Approved with conditions.
- 5.13 UTT/0814/03/FUL – Construction of new health facility, swimming pool, reception, cafe extension, 5 new bays, 40 car parking space. Approved with conditions
- 5.14 UTT/0041/78 – Reinstatement of existing sand and gravel pits to agricultural land. Approved with conditions
- 5.15 UTT/1021/09/FUL – Construction of a new health facility, swimming pool, squash courts, sports hall, reception, restaurant, 40 parking spaces and ancillary works. Approved with Conditions

- 5.16 UTT/1581/11/FUL – Variation of condition C.90c (The proposed portacabin structure hereby permitted shall remain assembled and be used in accordance with the boundaries of condition 4 above for a period of no more than 18 months from the date of this permission. After the expiry of this period the portacabin structure shall be completely dismantled and removed from site in its entirety and the ground returned to its previous condition, unless otherwise agreed in writing by the local planning authority) on planning application UTT/1251/09/FUL
- 5.17 UTT/1774/90 – Construction of golf driving range with associated parking facilities and alteration to existing access. Approved with conditions.
- 5.18 UTT/13/2539/FUL – Removal of existing portacabin and link corridor and erection of new single storey extension, to create larger gymnasium suite. Approved with Conditions
- 5.19 UTT/1400/87 – Change of use of agricultural land (restored after sand extraction and landfilling) to a 9 hole golf course. Conditionally approved.
- 5.20 UTT/14/2973/FUL – Construction of new external bar and 2 no. external toilets, located beneath the existing first floor balcony. Approved with Conditions
- 5.21 UTT/0187/94/FUL – Temporary stationing of mobile home, erection of machinery store. Approved with conditions
- 5.22 UTT/1218/96/FUL – Erection of two storey extension to clubhouse including employees flat.
- 5.23 UTT/0984/91 – Change of use of farmland to 18 hole golf course. Withdrawn
- 5.24 UTT/16/1066/FUL – Proposed modernisation of Elsenham Golf and Leisure to include the creation of a chipping green and adventure golf area, driving range refurbishment, extension to car park, creation of a reservoir for the purposes of sustainable on-site irrigation and landscape / ecological enhancements. Approved with conditions
- 5.25 UTT/17/1673/FUL – Application to vary Condition Number(s): 2(Netting of reservoir and ponds), 3(Bird Hazard Management Plan), 9(Site Contamination Investigation), and 10 (Remediation Scheme) of planning permission UTT/16/1066/FUL to exclude the construction of the adventure golf area as illustrated by drawing number CP01 C. Approved.

## **6. POLICIES**

### **National Policies**

- 6.1 - National Planning Policy Framework

### **Uttlesford Local Plan (2005)**

- 6.2 S7 – The Countryside  
S8 – The Countryside Protection Zone

GEN2 – Design

Policy GEN1 – Access

Policy GEN8 – Vehicle Parking Standards  
Policy GEN7 – Nature Conservation  
Policy ENV3 – Open Spaces and Trees  
Policy GEN6 - Infrastructure Provision to Support Development  
Policy ENV14 – Contaminated Land  
Policy LC4 – Provision of outdoor sport and recreational facilities beyond settlement limits  
Policy GEN3 – Flood Protection

## **7. PARISH COUNCIL COMMENTS**

7.1 No further comments.

## **8. CONSULTATIONS**

### **Environmental Health**

8.1 Measures to control harm to human health and pollution of the environment from the importation of material from an alternative source are incorporated in the CL:AIRE protocol, or otherwise would be controlled by a permit issued by the Environment Agency if the EA decide that the material does not meet the terms of the protocol. As the alternative source will result in more extensive use of the local highway network, the potential for loss of amenity to residential areas along the routes should be considered in conjunction with advice from the Highway Authority.

### **Environment Agency**

8.2 24<sup>th</sup> July 2017

We are unable at this stage to support the approval of the proposed variation of condition 14 of planning permission UTT/16/1066/FUL. We consider that the proposal is in breach of waste regulation and current legislation. Our response letter (ref: AE/2016/120385) to the planning application dated 6 May 2016 advised that the use of CL:AIRE protocol was not appropriate and if material is identified as waste they must secure an environmental permit for this operation. They have failed to meet this requirement.

We also consider that the proposal does not satisfy, in relation to waste material importation, Policy 10 Development Management Criteria in the Essex Replacement Waste Local Plan. This Plan has recently been found sound by a planning inspector following an examination in public and in accordance with paragraph 216 of the National Planning Policy Framework, considerable weight should be given to it. The developer has recognised this material is waste, therefore fundamentally it fails to meet the requirements of DoWCoP (CL:AIRE Code of Practice). As no authorisation from the Environment Agency is in place for the site to accept waste, we regard the site as an illegal waste site and will now consider what enforcement action we will take against in line with our Environment Agency enforcement, sanctions and offences.

8.3 We have reviewed the planning agent's response, logged onto the Council's planning page on 16 August 2017, to the comments made by us in our earlier dated 24 July 2017, and offer the following comments.

We maintain our position that the applicant's proposed use of CL:AIRE CoP (now referred to as DoWCoP) is not acceptable at this site. Development proposals which include the import and deposit of soil forming material on land must be

undertaken in a way to ensure it poses an acceptable level of risk to the environment. To ensure the activity is adequately controlled, it must comply with the conditions of an Environmental Permit issued and regulated by the Environment Agency. We regard all excavated and exported soil forming material (which are not products) as a waste. There is no recognised “end of waste” test for contaminated or uncontaminated soil. This is due to the need to assess the sensitivity of the receiver site on a site specific basis to ensure the environment is appropriately protected, this assessment is completed through an Environmental Permit Application.

- 8.4 These activities can pose a significant risk to the environment, potentially introducing pollutants to uncontaminated sites. In this area, we are taking a local enforcement position where we will not agree to the use of DoWCoP for direct transfer of material to a receiver site. We have come to this position due to the problems encountered with the inappropriate application of this code of practice and the scale of abuse on some of sites. We believe regulatory control is required over the operation of such activities which the DoWCoP scheme does not provide.

The reuse of site derived soils in line with DoWCoP may be acceptable in certain lower risk situations. Reuse on site of material in small quantities, in a similar geological setting and where previous contaminative uses have not been identified may be acceptable. However, if the site is located:

- On Groundwater Source Protection Zone
- On a Principal Aquifer
- On Historic Landfill
- Within 50m of the boundary of human occupation or presence
- Within 50m of Habitats or Local Wildlife Site
- Within 50m of a surface water feature
- Within 500m of a Site of Special Scientific Interest (SSSI)
- Within an Air Quality Management Area (AQMA)

Or where

- The deposit is more than 60,000m<sup>3</sup>
- The site has been subject to previous contaminative uses,

we will not agree, in any of these situations, to the reuse under DoWCoP. Given the development site lies over a historic landfill, it is within the excluded situations and therefore the applicant is unable to take advantage of DoWCoP in relation to condition 14.

- 8.5 We have offered to meet with the applicant and/or his own advisors in order to discuss the position. So far our offer has not been taken up. The costs of meeting us may well be substantially lower than the likelihood of further delays to the re-opening of the golf course. Although there is no guarantee that a meeting would lead to a workable solution, it should provide clarity on what is acceptable and what is not acceptable in terms of material for reuse. In the event of the golf course operator importing material that does not benefit from the DoWCoP, there is the possibility of enforcement action, as alluded to in our earlier letter dated 24 July 2017.

- 8.6 5<sup>th</sup> October 2017

We refer to the agent's comments in his email dated 25 September 2017. With regard to the applicability of DoWCoP, we have clarified this is a voluntary scheme which the Environment Agency are not required to accept if we have a specific environmental concern. We have identified our specific concerns and the potential risks to the environment. We have suggested a solution that the activity will need to



be undertaken in line with an Environmental Permit. We generally recommend twin tracking in such situations, that is seeking planning permission and an environmental permit parallel to each other.

Due to the risks posed, it is to be expected that a standard rules permit would not cover this activity. The applicant would either need to complete this development as a recovery of waste activity or an inert landfill. To determine which type of activity this would be, they will need to submit a Waste Recovery Plan to our National Permitting Service who will confirm whether this appears to be a genuine recovery operation or a disposal activity. We would recommend the applicant utilising the services of an experienced environmental consultant familiar with applying for bespoke environmental permits.

8.7 20<sup>th</sup> February 2018

I have been in touch with the EA Installations team based in our Welwyn Garden City office and am advised that the review of their permitting position on material importation to the Elsenham golf course remains ongoing. It looks unlikely there will be an immediate response.

As I am no longer working within the Sustainable Places team I feel it would be inappropriate, without authority to do so, to offer any specific comments on the wording of the proposed variation of condition along the lines you have suggested. However, having seen Tom McCarthy's recent letter on UDC's website I would say as an informal observation that his comments, running from the top of page 2, on the proposed variation of condition appear to set out a useful view of the wording including a reference to a CL:AIRE approved material management plan.

As an aside, my understanding is that the DoWCoP scheme allows for excavated material, within the terms of the scheme, to be exported and re-used on land external from the donor site. Given the focus on excavated material, the DoWCoP scheme should not be thought about in terms of the re-use of 'green' waste. Although I stand to be corrected, the term 'green waste' does not, as far as I am aware, appear in the DoWCoP.

8.8 27<sup>th</sup> March 2018

We maintain our position that the use of CL:AIRE CoP, now referred to as DoWCoP is not acceptable at this site. Development proposals which include the import and deposit of waste/material on land must pose an acceptable level of risk to the environment. For this specific development, we believe this must be controlled and regulated, in line with an Environmental Permit issued under the Environmental Permitting (England and Wales) Regulations 2016.

Referring specifically to the variation of condition 14. The amendment proposed by the applicant would make the development undeliverable as we do not accept the scheme can proceed in line with DoWCoP.

8.9

In addition the proposed variation of condition 14 no longer identifies the source of waste/material and therefore would not provide the certainty afforded by the current condition. This undermines the original reason for the inclusion of this condition; to ensure "additional environmental concerns," were not raised by the development. Considering the condition in Tom McCarthy's email appears to address the issue of the regulatory regime and we propose a slight amendment and an additional condition. This should exclude reference to "made ground consisting of the above materials" as this contradicts the waste/material should be "clean and naturally occurring mineral and soil" and introduces the potential for contaminated material to

enter the site, particularly as there is no proposal to treat the waste/material on the site.

If a variation to condition 14 is granted, we would encourage you to include an additional condition requiring *“an assessment of the proposals in line with the current Waste Local Plan undertaken prior to commencement of the development”*. This would be to ensure whatever regime this development is progressed under, it doesn't conflict with current strategic documents. Ultimately, whether this is a waste activity which should have been determined by the Waste Planning Authority or an engineering operation is a matter for you and the county to resolve..

### **Essex County Council- Highways**

- 8.10 31<sup>st</sup> July 2017  
The Highway Authority has considered the additional information submitted as UTT/17/1533/FUL for the variation of condition n 14 ("No waste other than those waste materials defined in the application details shall enter the site") of planning permission of planning consent UTT/16/1066/FUL and is happy for this condition to be varied as, although there will be an impact upon the highway, it is limited to the construction period, which as stated in the additional information is likely to be about 13 weeks.
- 8.11 5<sup>th</sup> July 2017  
From a highways perspective, there is insufficient information provided within the application to determine what the impact of varying condition 14 would be on the highway. Further information is required on the likely amount of waste material that will be brought in via the public highway, the number of vehicles that will be required to bring it in, how these trips will be distributed through the day and the likely time period that this operation will continue for. The highway authority cannot make a recommendation until this information has been provided and considered.

### **ECC Minerals and Waste**

- 8.12 20<sup>th</sup> June 2017  
As the principle of the development, including the importation of waste, has already been established and the Statement accompanying the application confirms no change in the overall tonnage to be imported, the Waste Planning Authority has no comments.
- 8.13 20<sup>th</sup> February 2018  
The permitting regime is separate to planning and as suggested in the NPPF (paragraph 122) Local Planning Authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes.

In terms of the two regimes – only one would be followed i.e. under DoWCoP the operator would self-certify imported material and monitoring whereas with a Permit this would be issued by the EA and they would effectively monitor the operations through this. Whether DoWCoP is appropriate, in this instance, as previously suggested will nevertheless be determined by the EA.

I would stress that Uttlesford District Council is the determining authority for this application and therefore you need to consider the original reasons why the condition was imposed and if you are content with the variation proposed. As

referred in the letter previously sent, dated 13 February 2018, I personally don't think the condition as proposed to be worded is appropriate and meets the six tests. The reference to CL:AIRE and MMP makes the condition confusing in the event that the operator requires a permit, noting the requirement above not to duplicate the pollution control regime through planning. Mindful of the original reasoning for the condition, which forms part of the decision notice, I would suggest that the condition simply be re-worded to define the type of material which is permitted to be imported without reference to particular permitting regime and/or source locations for the material to be imported.

8.14 15<sup>th</sup> February 2018

The WPA previously sought to suggest, by email dated 20/06/2017, that as no change to the overall tonnage of material was proposed, the WPA has no specific comments to make on the variation to which this application relates.

Since these comments were issued, additional information has been submitted by the applicant which relates to concerns received from the Environment Agency and the use of DoWCoP (CL:AIRE). The decision of whether a proposal, involving the importation of material/waste, can be undertaken under CL:AIRE (rather than via Environmental Permit) resides solely with the Agency. To confirm, the WPA has no input in this determination process and accordingly maintains the above position on the application – no comments to make.

8.15 As detailed in the email of 20/06/2017, it is considered that the principle of development/importation has already been established in this case. Contrary to opinion previously expressed by the WPA, when this development was first considered, Uttlesford determined this application as an engineering operation rather than passing the application to the WPA as waste disposal (and a County Matter). Without prejudice, the WPA did nevertheless offer some guidance on potential conditions as part of the consultation response provided, mindful that this position may be taken, but these suggestions were offered on an advisory basis only.

In context of this, the WPA offers the following comments on the proposed revised wording of condition 14 in a similar vein (i.e. on an advisory basis only): It is not considered that specific reference to CL:AIRE is appropriate within the condition, as there is no guarantee that the project will be undertaken this way. It is considered that if clarification is required on what is meant by condition 14 that this should be amended to explicitly define the type of material permitted to be imported (with no reference to its source). The definition used should seek to ensure, irrespective of protocol followed, that the material permitted to be imported is that which formed the basis of the application appraisal and acceptance of the development as an engineering operation. The definition should furthermore seek to ensure that material to be imported is suitable and fit for purpose and does not require further on-site processing (unless this has been approved as part of the original application).

8.16 The WPA with regard to the above would also like to confirm that the Essex and Southend-on-Sea Waste Local Plan (adopted 2017) now replaces the Essex and Southend Waste Local Plan (2001) and policies referred in the decision notice of this application. In respect of this, and landraising, the policy position (Policy 13 - Landraising) within the WLP (2017) confirms that the test of whether such a development should be determined by the district or county is whether the proposal constitutes waste disposal or is a genuine engineering operation.

- 8.17 Email 13<sup>th</sup> March 2018 (Informal advice) I would recommend the condition is worded with specific reference to the importation of 'clean naturally occurring soil and mineral materials' – which was the basis on which the application was originally determined.

Option 1: No materials other than clean naturally occurring soil and mineral, as defined in ??? (*document submitted with the application*), shall be imported to the site. Such materials must be capable of direct use as part of the development, hereby permitted, without the need for treatment.

If there is no reference to a definition within the approved details I would suggest reference simply be made to the definitions of such materials within the DoWCoP and for inert waste the definition within the Landfill Directive:

Option 2: No materials other than clean naturally occurring soil and mineral including top and sub soils; underlying rock from which constituent parts make up part of the soil; clays, silts, sands and gravels; underlying geology; and made ground consisting of the above materials shall be imported to the site. No contaminated materials and/or waste that will undergo any significant physical, chemical or biological transformations and/or dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact shall be imported to the site. All materials imported must be capable of direct use as part of the development, hereby permitted, without the need for treatment.

For reference, below are links to the aforementioned definitions:

DoWCoP – see [Appendix 2](#).

Landfill Directive and inert waste – see [Section 4](#).

## **9. REPRESENTATIONS**

- 9.1 This application has been advertised and 68 neighbouring properties notified. Expiry date 21<sup>st</sup> July 2017. One representation has been received.
- 9.2 I understand that you are the case officer for the planning application registered under reference UTT/17/1533/FUL, which is for the variation of condition 14("No waste other than those waste materials defined in the application details shall enter the site") of planning permission UTT/16/1066/FUL in order to allow the importation of waste material from additional sites.

As you are aware, the Hall Road entrance is also utilised in association with the Elsenham Landfill Site. The landfill site is operated under permission ESS/38/14/UTT. Conditions 18 and 19 of this permission state the following:

18. The use of the Henham Road access shall only be restricted for trips to and from the parishes of Henham, Broxsted, Elsenham and Chickney, Stansted Mountfitchet only and shall not exceed 40 movements (20 in 20 out) per day and 20 movements (10 in and 10) out on Saturdays. All other associated vehicle movements shall be via the main entrance off Hall Road in accordance with condition 20 and 21 below.

*Reason: In the interest of highway safety and safeguarding the local environment, in accordance with Policies W3C, W9A, and W10E of The Essex and Southend Waste Local Plan (adopted 2001), Policies GEN4, ENV11 and ENV13 of Uttlesford District Local Plan (adopted 2005) and Policies S1, S10, S11, S12 and DM1 of the Minerals Local Plan (adopted 2014).*

19. The maximum number of vehicle movements in excess of 3.5 tonnes gross vehicle weight using the main access (Hall Road) shall not exceed the following limits:

- 400 movements (200 in and 200 out) Monday to Friday,
- 200 movements (100 in and 100 out) on Saturdays,
- 80,000 movements (40,000 in and 40,000 out) in a calendar year.

*Reason: In the interest of highway safety and safeguarding the local environment, in accordance with Policies W4C, W9B and W10E of The Essex and Southend Waste Local Plan (adopted 2001), Policy GEN4 of the Uttlesford District Local Plan (adopted 2005) and Policy SP1 of the emerging Uttlesford Local Plan – pre-submission consultation document (2014) and Policies S1, S10, S11, S12 and DM1 of the Minerals Local Plan (adopted 2014).*

These conditions need to be carefully considered before any further application is approved. It would be helpful to understand how vehicle numbers associated with the current proposal will be managed. In particular, how will vehicle numbers from the approved donor site be recorded? How will vehicle numbers from alternative sites be monitored? What times are the vehicle movements permitted from each?

It appears that work may of commenced on site at the Golf Course, with tipper vehicle movements and mud on the haul road having already being reported by the Viridor site team. There is obvious concern that issues such as the mud on the haul road and the additional HGV movements could be perceived as emanating from the Viridor/ Brett site. I note that under reference UTT/17/1224/DOC, conditions 7(construction method statement) and 16(details of wheel and underside chassis) attached to UTT/16/1066/FUL have been discharged. Please could a copy of the approved details be provided. We are particularly interested in the wheel-wash details, as there seems to be an increase of muck on the road.

9.3 8<sup>th</sup> November 2017: I note that the above mentioned planning application has not yet been determined. We would welcome confirmation of whether conditions dealing with traffic movements have been considered in light of the conditions already attached to permission ESS/38/14/UTT? In addition, as requested in my email dated 25 July, please could you provide us with copies of details approved pursuant to conditions 7(construction method statement) and 16(details of wheel and underside chassis) attached to UTT/16/1066/FUL.

## 10. APPRAISAL

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

- A Whether it would be justifiable in policy terms to vary Condition 14 (No waste other than those waste materials defined in the application details shall enter the site) of UTT/16/1066/FUL (NPPF; ULP Policies GEN2,ENV14)

The Planning Practice Guidance states that, *“In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.”* (Paragraph: 031 Reference ID: 21a-031-20140306)

Paragraph 206 of the NPPF states that, *“Planning conditions should only be imposed where they are:*

- 1. Necessary;*
- 2. Relevant to planning and;*
- 3. To the development to be permitted;*
- 4. Enforceable;*
- 5. Precise and;*
- 6. Reasonable in all other respects.”*

Condition 14 stated “No waste other than those waste materials defined in the application details shall enter the site”

Reason: Waste material outside of the aforementioned would raise alternate, additional environmental concerns which would need to be considered afresh and to comply with Policies W3A, W3D, W4A, W5A, W8A, W8B, W8C, W9A, W9B, W0E from the Essex County Council Waste Local Plan and Policy GEN2 of the Uttlesford Local Plan (adopted 2005).

The agent has suggested that the above condition is varied to read *“No imported materials other than those which are subject to a CL:AIRE-approved Materials Management Plan shall enter the site. The development will be carried out in accordance with the Supporting Statement hereby approved”*.

*Reason: Waste material outside of the aforementioned would raise alternate, additional environmental concerns which would need to be considered afresh and to comply with Policies W3A, W3D, W4A, W5A, W8A, W8B, W8C, W9A, W9B, W0E from the Essex County Council Waste Local Plan and Policy GEN2 of the Uttlesford Local Plan (adopted 2005).*

The reasons to vary the condition are:

The need to apply for a variation of this condition is considered to be two-fold. Firstly, there would appear to be some confusion as to which materials are actually to be permitted into the site, and by which protocol.

The Planning Statement (submitted under application UTT/16/1066/FUL) which was submitted with the application, with particular reference to Sections 9, 11 and Appendix 3 demonstrated that the material would be imported from a local ‘donor’ site under the CL:AIRE protocol. Using such a protocol, the acquiring of an Environmental Permit is not required.

However, Informative 4 attached to the decision notice states:

*'The applicant is informed that a bespoke permit under the Environmental Permitting Regulations 2010 is required for this proposal'*

The applicant is keen to ensure that the processes by which the required materials are to be brought to the site are fully agreed with the LPA for the avoidance of doubt and to ensure full compliance with the Authority's expectations.

The proposed donor site sited within UTT/16/1066/FUL may not be able to provide all of the material which is required to create the improvements, and certainly not within an acceptable timeframe. This has raised concerns in respect of both commercial and deliverability considerations which this application seeks to remedy. The uncertainty around what is the approved source / protocol in respect of the material to be imported, along with uncertainties with regards to the volume of material available from the donor site / certainty of timescales has led the applicant to re-consider how this aspect of the project can be delivered.

Paragraph 187 of the National Planning Policy Framework (NPPF) states that: *'Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area'*.

In order to address the material shortfall / delivery delay, it is required to import material from additional sites in the likely event that this would be required. As such the varying of the condition is considered to be reasonable.

At present, it is estimated, following conversations between the applicant and the owner of the donor site, that 35,000m<sup>3</sup> of material will be made available within the development period. However, no assurances have been made with respect to delivery timescales which will undoubtedly affect the construction programme in terms of finances, planting schedules and staffing matters.

In researching options to address these matters, the applicant has commissioned an expert on the *'CL:AIRE Definition of Waste: Development Industry Code of Practice'* protocol to provide an enhanced understanding of the process and to begin compiling a list of other potential donor sites for the project.

The document, submitted concludes the following:

*'The type of development works approved by Uttlesford District Council (application ref. UTT/16/1066/FUL) for the proposed development at Elsenham Golf and Leisure Limited, Hall Road, Henham CM22 6FL are ideally suited to be constructed re-using clean naturally occurring soil and mineral material from another development site in strict accordance with the CL:AIRE Definition of Waste: Development Industry Code of Practice via the Direct Delivery Scenario. As such a suitable donor site can be identified which will meet the requirements of the both the construction schedule and the Code of Practice and a MMP can be prepared for assessment by a Qualified Person. When approved, the QP may register the project with CL:AIRE and a declaration made to the EA to allow the lawful transfer of material from one development site to another'*

Advice received from Essex County Council is that the reference to CL:AIRE and MMP is confusing and recommend the condition is worded with specific reference to the importation of clean naturally occurring soil and mineral materials which was the

basis on which the application was originally determined.

The applicants requested regime is controlled under DowCoP in which the operator would self-certify imported material and monitor. The Environment Agency has advised this is not acceptable because the site consists of previously contaminated land. As a result alternative wording of the condition has been explored and The Environment Agency have confirmed that the condition can be varied to *“No materials other than clean naturally occurring soil and mineral including top and sub soils; underlying rock from which constituent parts make up part of the soil; clays, silts, sands and gravels; underlying geology; shall be imported to the site. No contaminated materials and/or waste that will undergo any significant physical, chemical or biological transformations and/or dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact shall be imported to the site. All materials imported must be capable of direct use as part of the development, hereby permitted, without the need for treatment”*. They also recommend a further additional condition that recommends *“an assessment of the proposals in line with the current Waste Local Plan undertaken prior to commencement of the development”*

The Environment Agency believe that an Environmental Permit issued under the Environmental Planning (England and Waste) Regulations 2016 is required. This is separate to planning. In view of the time elapsed since this application has been submitted, and that the proposed donor site may not be able to provide all of the material which is required to create the improvements, and certainly not within an acceptable timeframe under the original condition, it is considered reasonable that the condition can be varied. The principle of the application has been accepted under UTT/16/1066/FUL and there would be no changes to the amount of to the volume of material to be imported to the site.

The suggested condition would then allow the applicant to deal directly with the Environment Agency as to whether a permit for the works is required and which is separate to planning. The additional condition recommended is not considered to be reasonable, as this would have been considered within UTT/16/1066/FUL application.

A further consideration is that as the materials to be imported may be imported materials from a location other than the identified local donor site listed within planning application UTT/16/1066/FUL, the variation may result in a different pattern of vehicle movements outside of those which would otherwise have been expected. Essex County Council Highways authority have therefore been consulted and they state that although there will be an impact upon the highway, it is limited to the construction period, which is likely to be about 13 weeks and therefore they have no objections to the varying of the condition.

## **11. CONCLUSION**

The following is a summary of the main reasons for the recommendation:

- A** In view of the uncertainty around what is the approved source / protocol in respect of the material to be imported, along with uncertainties with regards to the volume of material available from the donor site / certainty of timescales it is considered to be reasonable to allow a vary of condition 14 to allow the material to be imported come from other sites that that listed in documents submitted with UTT/16/1066/FUL. The applicant should liaise separately with the Environment Agency in respect of the need for a bespoke permit.



## **RECOMMENDATION – APPROVAL WITH CONDITIONS**

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.

REASON: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Development shall be carried out in accordance with the information submitted and discharged under UTT/17/2046/DOC.

REASON: To avoid endangering the safe movement of aircraft and the operation of Stansted Airport through the attraction of Birds and an increase in the bird hazard risk of the application site, in accordance with ULP policy GEN2.

- 3 Development shall be carried out in accordance within the submitted revised Bird Hazard Management Plan submitted and discharged under UTT/17/2046/DOC.

REASON: It is necessary to manage the development in order to minimize its attractiveness to birds which could endanger the safe movement of aircraft and the operation of Stansted Airport in accordance with ULP policy GEN2.

- 4 The works shall be undertaken in accordance with all recommendations in the Ecological Assessment Report (October 2015). Any deviation from the recommendations should be communicated to the Local Planning Authority and project ecologist immediately.

REASON: To ensure all habitats and species identified as being present on / or adjacent to the site are protected appropriately in accordance with ULP policy GEN7.

- 5 The proposal shall be carried out in accordance with the mitigation strategy in respect of Great Crested newts submitted and discharged under UTT/17/2046/DOC.

REASON: To ensure great crested newts (a European Protected Species) are protected throughout works in accordance with ULP policy GEN7.

- 6 The proposal shall be carried out in accordance with the mitigation strategy submitted and discharged under UTT/17/2046/DOC.

REASON: To ensure reptiles(nationally protected species) are protected throughout works in accordance with ULP policy GEN7.

- 7 No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. wheel and underbody washing facilities

REASON: To ensure that on-street parking of these vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway in the interests of highway safety in accordance with ULP policy GEN1.

- 8 No floodlighting or external lighting shall be installed until details of lighting including lux levels has been submitted to and approved in writing by the local planning authority. Thereafter the lights shall be installed in accordance with the approved details.

REASON: In the interest of visual amenity and airport safety in accordance with ULP policies GEN2 and GEN5.

- 9 No development including groundworks to exclude the construction of the adventure golf area as illustrated by drawing number CP01 C submitted with UTT/16/1066/FUL shall take place until a site investigation of the extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This investigation must be undertaken by a competent person and be based on the findings of the phase 1 desk study submitted with the application and must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) a conceptual model of the site indicating sources, pathways and receptors
- (iii) an assessment of the potential risks to: human health, property (existing or proposed), service lines and pipes, adjoining land, the water environment and ecological receptors

REASON: To ensure that the proposed development does not cause harm to human health, the water environment and other receptors in accordance with policies GEN2, ENV12 and ENV14 of the Uttlesford Local Plan (adopted 2005).

- 10 If found to be necessary, excluding the construction of the adventure golf area as illustrated by drawing number CP01 C submitted with UTT/16/1066/FUL, as a result of part 1 (condition 9 above), a detailed remediation scheme to bring the site to a condition suitable for the intended use shall be submitted to and approved in writing by the council prior to commencement of development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme 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.

REASON: To ensure that the proposed development does not cause harm to human health, the water environment and other receptors in accordance with Policy GEN2, ENV12 and ENV14 of the Uttlesford Local Plan (adopted 2005).

- 11 The remediation scheme shall be implemented in accordance with the approved timetable of works. Within 2 months of the completion of measures identified in the approved scheme, a validation report to demonstrate the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Council. 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. If a requirement for longer term monitoring is identified by the remediation scheme, a final report on completion of the monitoring demonstrating that all long-term remediation works specified in the scheme have been carried out and confirming that remedial targets have been achieved shall be submitted to and approved in writing by the Council.

REASON: To ensure that the proposed development does not cause harm to human health, the water environment and other receptors in accordance with Policy GEN2, ENV12 and ENV14 of the Uttlesford Local Plan (adopted 2005).

- 12 In the event that contamination that was not previously identified is found at any time during development, development must be halted on that part of the site affected by the unexpected contamination. The contamination must be reported in writing within 3 days to the Local Planning Authority. An assessment must be undertaken in accordance with the requirements of condition 12, and where remediation is necessary a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority in accordance with condition 9.

REASON: To ensure that the proposed development does not cause harm to human health, the water environment and other receptors in accordance with Policy GEN2, ENV12 and ENV14 of the Uttlesford Local Plan (adopted 2005).

- 13 No drainage systems for the infiltration of surface water drainage into the ground is permitted other than with the express written consent from the Local Planning Authority.

REASON: To prevent pollution of the water environment, in accordance with Policy ENV12 of the Uttlesford Local Plan (adopted 2005).

- 14 No materials other than clean naturally occurring soil and mineral including top and sub soils; underlying rock from which constituent parts make up part of the soil; clays, silts, sands and gravels; underlying geology shall be imported to the site. No contaminated materials and/or waste that will undergo any significant physical, chemical or biological transformations and/or dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact shall be imported to the site. All materials imported must be capable of direct use as part of the development, hereby permitted, without the need for treatment.

REASON: Waste material outside of the aforementioned would raise additional environmental concerns which would need to be considered afresh and too comply with ULP policy GEN2 of the Uttlesford Local Plan (adopted 2005).

- 15 No crushing and/or screening of stone, concrete, brick rubble or hardcore shall take place on the site.

REASON: To protect residential amenity from adverse impacts from such operations, to control waste processing operations and to comply with Policies... *WLP Policies: W3A, W8A, W8B, W8C, W10E* from the Essex County Council Waste Local Plan and Policy GEN2 of the Uttlesford Local Plan (adopted 2005)

- 16 No development shall take place until the details of wheel and underside chassis cleaning facilities have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be installed in accordance with the approved details and implemented and maintained for the duration of the development hereby permitted. Without prejudice to the foregoing, no commercial vehicle shall leave the site unless the wheels and the underside chassis are clean to prevent materials, including mud and debris, being deposited on the public highway.

REASON: In the interests of highway safety, safeguarding local amenity and to comply with Policies W3A, W4C, W8A, W8B, W8C, W10E from the Essex County Council Waste Local Plan and Policy GEN1 of the Uttlesford Local Plan (adopted 2005).

- 17 No development shall take place until a scheme to minimise dust emissions has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The development shall be implemented in accordance with the approved scheme with the approved dust suppression measures being retained and maintained in a fully functional condition for the duration of the development hereby permitted.

REASON: To reduce the impacts of dust disturbance from the site on the local environment and to comply with Policies W3A, W8A, W8B, W8C, W10E from the Essex County Council Waste Local Plan and Policy GEN4 of the Uttlesford Local Plan (adopted 2005)

- 18 No aggregate shall be exported from the site.

REASON: To control the level of operations so as to minimise the impact of the resultants traffic on the local/environment, in accordance with Policies GEN1, GEN2 and GEN7 of the Uttlesford Local Plan (adopted 2005).

- 19 No topsoil, subsoil and/or soil making material shall be stripped or handled unless it is a dry and friable condition<sup>1</sup> and no movement of soils shall take place:

- (a) During the months November and March (inclusive) unless otherwise approved in writing by the Local Planning Authority.
- (b) When the upper soil has a moisture content which is equal to or greater than that at which the soil becomes plastic, tested in accordance with the 'Worm Test' as set out in BS 1377:1977 – 'British Standards Methods Test for Soils for Civil Engineering Purposes'; or
- (c) When there are pools of water on the soil surface.

REASON: To minimise the structural damage and compaction of the soil, to aid the final restoration of the site in compliance with Policies W3A, W10C, W10E from the Essex County Council Waste Local Plan.

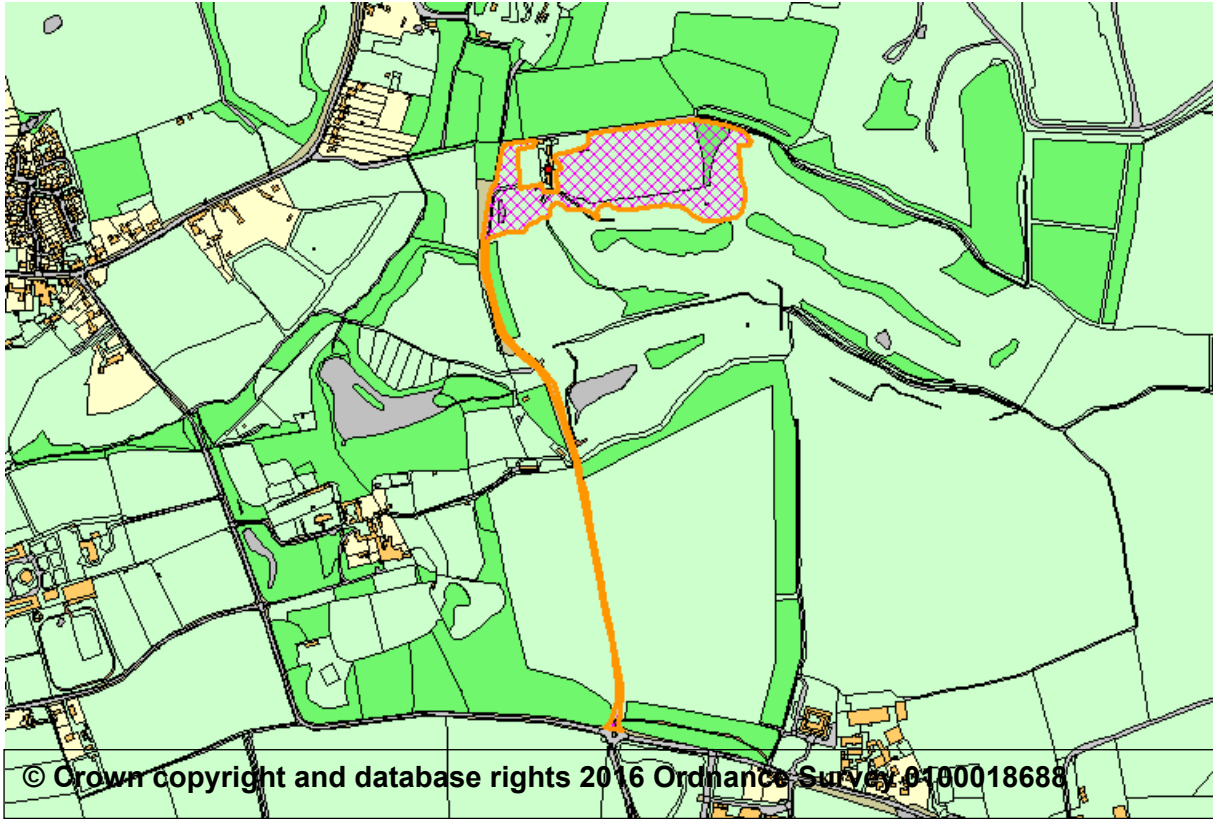
Note<sup>1</sup> The criteria for determining whether soils are dry and friable involves an assessment based on the soil's wetness and lower plastic limit. This assessment shall be made by attempting to roll a ball of soil into a thread on the surface of a clean glazed tile using light pressure from the flat of the hand. If a thread of 15cm in length and less than 3mm in diameter can be formed, soil moving should not take place until the soil has dried out. If the soil crumbles before a thread of the aforementioned dimensions can be made, then the soil is dry enough to be moved.

20 The proposal hereby permitted excludes the use of solar photovoltaic (PV) installations to power the drainage and irrigation system.

REASON: The installation can have an impact on aerodrome safeguarding and would be contrary to ULP policy GEN2

Application: UTT/17/1533/FUL

Address: Elsenham Golf and Leisure, Hall Road, Elsenham



Organisation: Uttlesford District Council

Department: Planning

Date: 29 March 2018