

## UTT/19/2692/OP

*(Referred back to Planning Committee from 1 July 2020 meeting for consideration of clarification of brownfield status together with possible S106 contributions in respect of affordable housing and possible highway links).*

**PROPOSAL:** Outline planning application, with all matters reserved except access & scale, for the erection of up to 6 dwellings and associated works.

**LOCATION:** Land at Old Mead Road, Henham.

**APPLICANT:** Elsenham Nurseries & Poultry Farm.

**AGENT:** C/o Sworders.

**EXPIRY DATE:** Extension of time agreed to 09 October 2020.

**CASE OFFICER:** Clive Theobald

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### **1. NOTATION**

1.1 Outside Development Limits.

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

2.1 The site lies on the east side of Old Mead Road to the north of the Elsenham railway level crossing and comprises for the purposes of the land edged in red a parcel of flat post and railed paddock land consisting of 0.44 ha which fronts onto the road, although described in the application as "*Part vacant railway, part vacant poultry farm*" whereby the southernmost part of the site comprises the curved alignment of a former branch railway line which is now long since vegetated. Further paddock land not within the application site lies to the immediate rear.

2.2 The site is framed on either side by dwellings, whilst a former poultry farm with farmhouse lies further to the north and east and a storage and distribution centre lies further to the south. A long row of recently constructed dwellings designed in somewhat harsh contemporary style stand at right angles to Old Mead Road opposite the site running parallel with the main railway line, whilst a shorter row of established dwellings extend along Old Mead Road on the north side of this new housing development.

### **3. PROPOSAL**

3.1 This outline application relates to the erection of up to 6 dwellings with all matters reserved except access and scale with associated works. Indicative drawings have been submitted which show how up to six dwellings with detached garages, hardstandings and shared service road from Old Mead Road could be accommodated at the site and the type of dwellings envisaged, which are shown indicatively as two pairs of semi-detached dwellings and two chalet style detached dwellings comprising two house types as 3 and 4 bedroomed units. It is indicatively stated that the dwellings would be externally clad in brick, render and cladding, although appearance is a reserved matter.

- 3.2 A wildflower meadow is shown indicated on the drawings extending as a very long “buffer strip” eastwards from the rear boundary of the site, although this shown feature does not form part of the application site itself (but see section on ecology further in this report).

#### **4. ENVIRONMENTAL IMPACT ASSESSMENT**

- 4.1 The proposal amounts to “Schedule 2” development (10. Infrastructure Projects - (b) Urban development projects...) for the purposes of the Town and Country Planning (Environmental Impact Regulations) 2017. However, as the development proposal by reason of its nature, size or location (i) does not exceed 1 hectare of urban development which is not dwelling-house development; (ii) does not exceed 150 dwellings and (iii) the overall area of the development does not exceed 5 hectares, the proposal is not EIA development and an environmental assessment is not required to assess the environmental impacts of the development whereby the site does not fall within a “sensitive area”.

#### **5. APPLICANT’S CASE**

- 5.1 The application is accompanied by a planning supporting statement (Sworders, October 2019) which describes the site and its surroundings, the submitted scheme, the planning merits of the proposal with reference to the relevant planning issues, including consideration of the principle of development, access and scale, national and local planning policy and other material considerations. The statement concludes as follows,

“In conclusion, it is clear that in the context of paragraph 11 of the NPPF the adverse impacts of the proposal would not ‘significantly and demonstrably’ outweigh the benefits when assessed against the policies in the NPPF as a whole, and as such the proposal benefits from the presumption in favour of sustainable development and outline planning permission should be granted”.

- 5.2 The application is also accompanied by a Highway Impact Statement (Bancroft - revised November 2019) and a Preliminary Ecological Assessment (T4 Ecology Ltd, July 2019).

#### **6. RELEVANT SITE HISTORY**

- 6.1 There is no relevant planning history relating to this undeveloped site. However, relevant to the current application is approved application ref; UTT/18/3370/OP for the erection of up to 9 no. frontage dwellings involving the demolition of existing poultry buildings on “Land South Of The Farmhouse, Old Mead Road, Henham” situated to the immediate north of the current proposal site, save for a dividing frontage dwelling within separate ownership positioned in between.

- 6.2 The committee report for that approved housing scheme remarked that the site was located within a five minute walk of Eisenham train station within reasonably close walking distance to village services and amenities, notwithstanding that the site was outside development limits and ULP Policy S7 applied. As such, it was considered that that the site could be regarded as being within a reasonably sustainable location relative to this sustainable transport mode and local services, albeit that the site lay north of the railway crossing. The report added that local combined bus and rail provision was deemed to provide a sufficient level of sustainable modes of choice for local residents and that other existing residential

properties within the vicinity of the site were located a similar distance away and therefore this locational benefit should be seen favourably.

- 6.3 Whilst the same report accepted that the proposed dwellings would encroach into a rural area, it was considered that a line of appropriately scaled dwellings along Old Mead Road which would be “book-ended” by The Farmhouse at the northern end of the site to provide a “stop” to the development and a dwelling at the southern end, with the rear boundary line of the development site being strongly landscaped would have less environmental impact in relative terms than the existing poultry building complex and was therefore a material consideration of weight in the tilted planning balance for that proposal.

## **7. POLICIES**

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

ULP Policy S7 – The Countryside  
ULP Policy H1 – Housing Development  
ULP Policy H9 – Affordable Housing  
ULP Policy H10 – Housing Mix  
ULP Policy ENV10 – Noise  
ULP Policy ENV14 – Contaminated Land  
ULP Policy GEN1 – Access  
ULP Policy GEN2 – Design  
ULP Policy GEN3 – Flood Risk  
ULP Policy GEN6 – Infrastructure Provision to Support Development  
ULP Policy GEN7 – Natural Conservation  
ULP Policy GEN8 – Vehicle Parking Standards

### **National Policies**

NPPF

### **Other Material Considerations**

Essex Design Guide  
ECC Parking Standards  
UDC Parking Standards

## **8. PARISH COUNCIL COMMENTS**

### **8.1 Henham Parish Council:**

- The speed survey results of the highways impact assessment are unsound due to the sample size being too small and the limited sample time chosen is not representative as the majority of vehicle movements are in morning and evening peak times.
- Concerns regarding the chosen access point to the development due to safety and visibility of vehicles when leaving the site.

### **Elsenham Parish Council:**

- It is essential that the developer adheres to UDC’s own local parking standards and enough parking spaces are allotted, including visitor/unallocated parking. There should be no parking allowed on the

road, which is close to the railway station, and is a rural, narrow and winding road.

- The access point is of concern; the visibility is very limited when leaving the site.
- It is noted that there are no garden sizes shown on the planning application. It is expected that the Essex Design Guide will be adhered too.

## **9. CONSULTATIONS**

### **Network Rail**

9.1 No objections.

### **NATS**

9.2 The proposed development has been examined from a technical safeguarding aspect and does not conflict with NATS safeguarding criteria. Accordingly, NATS (En Route) Public Limited Company ("NERL") has no safeguarding objection to the proposal.

### **MAG Stansted Airport**

9.3 The Safeguarding Authority for Stansted Airport has assessed this proposal and it's potential to conflict aerodrome Safeguarding criteria and has no aerodrome safeguarding objections to this proposal.

### **ECC Highways**

9.4 The impact of the proposal is acceptable to the Highway Authority from a highway and transportation perspective subject to highway conditions. It can confirm that it has no additional comments to add to the receipt of the revised highway impact statement (Bancroft) dated November 2019.

### **ECC Ecology**

9.5 No ecology objections subject to securing biodiversity mitigation and enhancement measures as referenced in the submitted Preliminary Ecological assessment.

### **ECC Archaeology**

9.6 Recommendation: An Archaeological Programme of Trial Trenching followed by Open Area Excavation. Reason: The proposed development lies within an area of known sensitive archaeological deposits.

### **UDC Environmental Health Officer**

9.7 This is an outline application for the development of a site, parts of which have links to use for poultry farming and as a former railway line, to provide up to 6 new dwellings. The site lies some 40m to the east of an existing railway line and some 30-35m north of a small industrial estate which accommodates several different commercial units.

### Land Contamination:

- 9.8 No contaminated land assessment has been submitted in relation to this site. The site has a history associated with use as a commercial poultry farm, with the southern part of the site comprising land which was formerly part of a railway line. Both uses have the potential to give rise to historic contamination risks and therefore in the absence of at least a detailed Phase I Desk Top Study the assertion in the Planning Statement that the site has a low risk of contamination is at best presumptive and premature without robust evidence to support it. It should also be remembered that there is an existing industrial estate some 30-35m to the south of the site which is a potential source of off-site contamination.
- 9.9 As such, and in view of the contamination-sensitive proposed end residential use with gardens over the whole site, it is essential to ensure that any contamination risks (both on-site and off-site) are identified and assessed, and where necessary remediated, to render the site suitable for its intended use. Whilst it is always preferable to be fully informed of any potential contamination risks and the need (and economic viability) for any remediation works front end, this is a matter that can be controlled by way of a suitably worded five part contamination condition to identify and remove any contamination risks.

Noise:

- 9.10 The site lies some 40m to the east of an existing railway line which will be an intermittent noise source, as will noise from the more distant M11 which will provide a more pervasive contribution to the ambient noise environment. Old Mead Road itself will also be a source of transport noise, particularly when used by HGVs accessing the industrial estates to the immediate south and south-west of the site. Planning permission was granted for the development of a site to the north for up to 9 dwellings under UTT/18/3370/OP, and this included a condition requiring the submission of a scheme for noise mitigation against transport noise sources.
- 9.11 However, the application site is located further south and much closer to an existing industrial/commercial estate, with the service yard to the estate just some 30-35m from the boundary of the site. The rear aspects and gardens of the proposed dwellings will have a line of site and therefore be exposed to noise arising from activities on the industrial estate. Commercial noise is very different in nature and impact to transport noise sources, which are generally considered more steady and anonymous. Commercial noise can contain a range of elements to make it more distinguishable and intrusive, and can arise at noise sensitive times (early morning, late evenings, night-time and weekends) and the proximity to the site in question means that any noise that arises from the site could impact on future residential occupiers.
- 9.12 Whilst it is noted that there are some existing dwellings in the vicinity of the industrial estate, the application is seeking to introduce new noise sensitive receptors at this location. As such, there is both the risk of noise impacts on future occupiers, together with the risk to established and lawful businesses if complaints were to arise from these new receptors about noise from commercial operations which could result in restrictions having to be placed on the businesses under noise nuisance legislation. This would be contrary to the provisions of paragraph 182 of the revised NPPF.
- 9.13 It is for these reasons that a robust noise impact assessment needs to be undertaken of both transport and commercial noise sources as they impact on the application site prior to any permission being granted. I am therefore unable to

support the application in the absence of the required noise impact assessment and object to it as presently submitted. Should, however, you be minded to grant permission for the development as proposed, I would recommend that a noise condition is attached to any permission granted.

## **10. REPRESENTATIONS**

- 10.1 No representations received either for or against the proposal following advertising and publicity of the application and neighbour notification.

## **11. APPRAISAL**

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

- A Principle of development (NPPF, ULP Policies S7, H1, ENV10 and GEN3);
- B Whether proposed access arrangements would be acceptable (ULP Policy GEN1);
- C Whether the indicative housing layout shows that the proposed development could be satisfactorily accommodated at the site (ULP Policies GEN2 and GEN8);
- D Housing Mix (ULP Policy H10);
- E Infrastructure provision - affordable housing requirements / highway contributions (footpath link) (ULP Policies GEN6, H9 and GEN1);
- F Impact on residential amenity (ULP Policy GEN2);
- G Impact on protected/priority species (ULP Policy GEN7).
- H Contamination risk (ULP Policy ENV14).

### **A Principle of development (NPPF, ULP Policies S7, H1, ENV10, ENV14 and GEN3)**

- 11.1 The NPPF has a presumption in favour of sustainable development whereby paragraph 11 of the Framework states that LPA's should approve development proposals that accord with an up to date development plan without delay; or where there are no relevant development plan policies or the policies which are most important for determining planning applications are out of date to grant planning permission unless i ) the application policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development proposal; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework as a whole.
- 11.2 The site is within a five minute walk of Elsenham train station and is within reasonably close walking distance to village services and amenities. As with approved application UTT/18/3370/OP for the erection of 9 dwellings as referenced in the relevant planning history above, it is considered that the site can be regarded as being within a reasonably sustainable position relative to this sustainable transport mode and these local services. The social objective of the NPPF would therefore be met. The economic strand would also be met from employment arising from the development build itself and the probability of some reliance by the occupiers of the dwellings on local services and amenities, although this would not be significant in itself.
- 11.3 The site lies outside development limits and is therefore within the countryside for the purposes of definition for ULP Policy S7, which states that the countryside will be protected for its own sake and that development, including new housing, will not be permitted unless it needs to take place there or is appropriate

to a rural area. As such, the proposal is contrary Policy S7. However, this policy has been found to be partially consistent with the NPPF which takes a more positive stance towards housebuilding in the rural areas if it can be demonstrated that this would meet sustainability objectives.

- 11.4 The proposed dwellings would line the east side of Old Mead Road between a two storey dwelling to the north and two bungalows to the south and would face onto the line of the new two storey dwellings constructed on the west side of the road. A material consideration in this instance is the outline grant of permission by the Council in 2019 for the erection of 9 no. dwellings for former poultry land just to the north of the application site under ref; UTT/18/3370/OP which, if subsequently built pursuant to the grant of any reserved matters application, would also face Old Mead Road in linear fashion meaning that the proposed 6 no. dwellings proposed for the current application site would extend this line southwards towards the level crossing. The site is currently flat paddock land and does not have any high environmental value and it is considered that the development would not give rise to any significant or demonstrable environmental harm. As such, it is considered that the environmental objective of the NPPF would be met whereby paragraph 118 of the Framework states that planning policies and decisions should *“promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing...”*.
- 11.5 Concerns have been raised by the Council’s EHO over the impacts of noise and contamination for the proposed development given the closeness of the site to the London-Cambridge railway line and to a large storage and distribution depot to the south of the site. To some extent, the site has been shielded by train/track noise from the railway by the new linear residential development which has been constructed opposite the site, although clearly noise from this noise source would still be audible from the site. There would also be noise transmitted associated with the normal working operations of the storage and distribution depot.
- 11.6 Whilst emphasising these noise sources and the effects they could have on the living conditions of occupants of the proposed dwellings, the Council’s EHO has commented that a noise assessment report could be submitted at subsequent reserved matters stage for LPA approval so that appropriate noise attenuation measures could be incorporated into any final approved build scheme for the site where it is noted that the same stance was applied by officers to the 9 dwelling scheme approved under ref; UTT/18/3370/OP. No noise objections are therefore raised at this outline stage under ULP Policy ENV10 subject to the recommended noise condition being imposed.
- 11.7 The site is located within Flood Zone 1 which represents the lowest risk of flooding. As such, the site is not at risk of fluvial flooding and no objections are raised in this respect under ULP Policy GEN3.
- 11.8 Given the above planning assessment, it is considered that the principle of housing development at this undeveloped frontage site within a sustainable location close to the railway station and nearby local services through the introduction of up to six dwellings is considered acceptable against national and local plan policy.

**B Whether proposed access arrangements would be acceptable (ULP Policy GEN1)**

- 11.9 The proposed development would be served by a new vehicular access and shared service road leading from Old Mead Road, which is a class 3 local connector road between Elsenham and Henham, and where a 40mph speed limit exists along this section of road outside the site. The new access would be formed across a frontage ditch equidistant between the northern and southern flank boundaries of the site, whilst the new service road would extend in front of the new residential properties whereby this indicated new access and frontage service road arrangement would be the same access layout form as shown for approved outline application UTT/18/3370/OP for 9 dwellings to the north of the site as referenced above.
- 11.10 ECC highways have been consulted on the application and have reviewed the submitted highway impact assessment submitted with the application (Bancroft) which was revised in November 2019. They have commented that they have no objections to the proposal on highway safety grounds subject to appropriate conditions, including (1) that prior to occupation of the development that the new access at its centre line be provided with a clear to ground visibility splay and that such vehicular visibility splays be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times and (2) prior to the occupation of any of the proposed dwellings, the proposed private drive be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of carriageway and provided with an appropriate vehicular crossing of the verge.
- 11.11 The comments from Henham Parish Council and Elsenham Parish Council about the suitability of the proposed access point for the proposed development along Old Mead Road in terms of site visibility have been noted whereby it should be emphasised that the road at the southern end of the site gently rises and dips outside the indicated vehicular access location into the development site to take account of the alignment of the former railway line. However, it is considered that a highways reason for refusal or a request for the access position to be moved from its currently shown position along the road frontage to take account for this situation cannot be reasonably justified in light of the lack of a highway safety reason for refusal by ECC Highways and no objections are raised under ULP Policy GEN1.

**C Whether the indicative housing layout shows that the proposed development could be satisfactorily accommodated at the site (ULP Policies GEN2 and GEN8)**

- 11.12 The submitted housing scheme is for up to six dwellings whereby layout revisions have been made to the indicative site layout subsequent to application submission, albeit that Layout is a reserved matter. The dwellings are shown in a line with the exception of the southernmost dwelling which would be set back slightly from the others whereby all of the dwellings would face onto the frontage shared service road. The scale of the dwellings has been indicated whereby Scale falls to be considered for this outline application. The dwellings are shown in 1½ storey chalet style form of two different house types which is considered to be an appropriate scale and built form for this section of Old Mead Road where a mix of bungalows and two storey frontage dwellings make up the established pattern of housing, but with also the more imposing and harsher two storey new development now built opposite the site.
- 11.13 All of the dwellings as indicated would have private rear garden amenity spaces exceeding 100sqm in accordance with the Essex Design Guide minimum garden

standards, albeit that one of the gardens is shown slightly tight by way of comparison with the others. All of the dwellings would have the appropriate level of parking provision for 3 and 4 bed roomed dwellings either in the form of 7m x 3m single detached garages or frontage 5.5m x 2.9m hardstanding spaces to comply with Essex and Uttlesford adopted parking standards where there would be slight over parking provision for the layout as a whole which would allow for visitor parking provision. The indicative housing layout therefore shows that the proposed development could be satisfactorily accommodated at the site and no objections are raised under ULP Policies GEN2 and GEN8 in terms of scale. Landscaping is a reserved matter.

**D Housing Mix (ULP Policy H10)**

- 11.14 The indicative scheme as submitted shows two house types which would comprise 2 no. x 3 bed units and 4 no. x 4 bed units (6 no. total). This housing mix is considered acceptable for this location and no objections are raised under ULP Policy H10, although housing mix is strictly an issue for a reserved matter application.

**E Infrastructure provision - affordable housing requirements / highway contributions (footpath link) (ULP Policies GEN6, H9 and GEN1)**

*(Members deferment from 1 July 2020 meeting for further consideration of this issue).*

- 11.15 The outline application as submitted does not include provision for any affordable housing on the basis that the number of dwellings proposed is “up to 6 dwellings” and therefore falls below the 15 no. dwellings or more threshold at which point 40% affordable housing provision may be sought by the Council for housing developments via a legal obligation where this policy requirement is set out in the preamble for ULP Policy H9 of the adopted Local Plan, whilst the stated site area for the application as edged in red at 0.44 ha falls below the 0.5 ha threshold as similarly stated in the policy preamble.
- 11.16 It is the case that the red line area shown for the current application site is not physically contiguous with the red line area shown for approved application UTT/18/3370/OP for the erection of 9 dwellings whereby the two sites are physically divided by a dwelling in the middle (The Chalet) which Land Registry enquiries have confirmed is within separate ownership, having been sold by Elsenham Nurseries And Poultry Farm Limited, the applicant for both the current application and the approved application, in 2005. However, it is also the case that the blue land for Elsenham Nurseries & Poultry Farm (i.e. that land within the applicant’s ownership or control) encompasses both the current application site and the approved application site. Given this, given that the number of dwellings proposed for both sites combined would exceed 15, and given that the site area for both sites would exceed 0.5 ha, it falls to be considered whether in the circumstances the sites can be reasonably described as being a conjoined site for the purposes of requiring affordable housing and whether it can be asserted from this that the current application can be described as contrived by avoiding such a legal obligation.
- 11.17 Further to Members’ request for officers to further explore the issue of any affordable housing requirements which may fall due for the application site, the applicant in response to this request has sought its own legal opinion on this issue and an opinion was received by the Council on 4 August 2020 which officers have

read. The opinion provides an analysis making reference to the High Court case in *R on the application of Westminster City Council v Secretary of State for Transport, Local government and the Regions and Brandford Ltd (2020)* where this court decision has been relied upon for the cited case of *New Dawn Homes Ltd v Secretary of State for Communities and Local Government and Tewksbury Borough Council (2016)* and where the opinion draws a clear distinction between the facts in the New Dawn Homes Ltd. case and the current planning application at Old Mead Road, Henham.

- 11.18 It is asserted within the analysis for the received legal opinion by applying the tests within the *Westminster City Council v Secretary of State for Transport, Local Government and the Regions and Brandford Ltd* to the current application that;
- (i) The Council's ULP Policy H9 does not contain any wording to provide that separate sites which come forward can be regarded as part of an overall phased development;
  - (ii) The fact that the northern and southern sites are within the same ownership cannot as a matter of law amount in itself to a reason to amalgamate those sites;
  - (iii) The northern and southern sites form part of a larger holding that is within a single ownership, but are separated by some distance by a detached house and garden which were sold off several years ago. The northern and southern sites do not share any common boundaries.
  - (iv) The northern and southern sites will be developed separately. The northern site is currently the subject of an offer to purchase by a developer – contracts are expected to be exchanged in two months. The purchaser is already working up the reserved matters application. In contrast to the New Dawn Homes Ltd. case, the northern and southern sites will form separate building sites, each with its own access, and will be developed independently.
- 11.19 The opinion adds that the only criterion in the *Brandford* decision which would arise with the current planning application is the single ownership point, but where this is not in itself sufficient to justify combining the approved application site under ref; UTT/18/3370/OP and the current application under consideration by the Council for the purposes of the affordable housing threshold under ULP Policy H9. The opinion concludes from the analysis that *"There is therefore no proper basis on which the District Council could conclude that the development of the southern site should be required to make provision for on-site or off-site affordable housing"*.
- 11.20 Though the legal opinion obtained by the applicant is by its nature self-serving, the fact remains that each planning decision must be considered on its own merits and that the current site and that consented under UTT/18/3370/OP do not have a common boundary. Further, it is also a fact that the two sites are separated by a substantial plot of land in third party ownership, and, given that the registered title at HMLR shows the current owner of the property was registered as such in 2005, the argument that this might be a sham transaction is not even remotely tenable. Any argument that the cumulative impact of the two developments would give rise to an affordable housing requirement when the issue of vacant building credits (see post) is also taken into consideration, is doomed to fail at appeal.

11.21 Turning to the issue of vacant building credits (VBC's), the applicant has provided the Council with a breakdown comparison calculation showing the amount of floorspace which represented the old poultry buildings which stood on previously developed land on the site of approved application UTT/18/3370/OP versus the estimated combined floorspace of the dwellings shown for UTT/18/3370/OP and the current application. It should be emphasised for this calculation process that the floorspace for the proposed dwellings on both sites are shown in indicative form only given the outline nature of both applications.

11.22 In summarised form, the calculations are shown as follows:

(Difference between proposed and existing floorspace / proposed floorspace) x policy requirement)

<https://lichfields.uk/blog/2020/january/23/vacant-building-credit-in-2020/>

1486 / 3636 x 0.40 = **0.16**

0.16 X 6 (proposed units) = 96% of an affordable unit.

11.23 It will be seen from this VBC's calculation that the difference between the existing (former) poultry building floorspace and the indicative floorspace for the proposed dwellings combined equates to the requirement for 0.96, or if rounded up, 1 no. affordable housing unit for the current application site. It is considered from this exercise that the provision of a single unit of affordable housing accommodation would be both unviable for any registered social landlord and unattractive to any potential occupant, whilst also being unsuitable for the current application as a small housing development sited north of the level crossing whereby it should be noted that the 9 no. dwelling housing scheme approved under UTT/18/3370/OP does not provide for any affordable housing. This view is reinforced by the preamble to ULP Policy H9 which states that "*Appropriate sites should still be large enough to ensure a viable scheme and not lead to the provision of only 1 or 2 affordable units on a site which would lead to a fragmented approach to affordable housing in the rural areas*".

11.24 Paragraphs 54, 55 and 56 of the NPPF give advice on planning conditions and obligations whereby paragraph 56 states that planning obligations must only be sought where they meet all of the following tests;

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

A development shall also be required to meet the CIL requirements test under Regulation 122.

11.25 At their meeting on 1 July 2020, Members sought clarification from their officers for the current proposal as to whether it would be possible to require the applicant to provide a footpath link to the station from the application site as a potential s106 infrastructure contribution so as to provide better pedestrian access to and from the site to Station Road where currently there are no footpaths on either side of Old Mead Road leading northwards along the lane from the level crossing.

11.26 The Council has since received a communication from the applicant in response to Members' request which states as follows;

*“In response to the suggestion of the provision of a new public footpath from this site, presumably to the train station, we could not agree to this. The footpath would be on third party land outside of the applicant’s control. It would likely be on private land in part and would cost a significant sum. A footpath was not required for the 4 dwellings at Cott Moor, the 9 dwellings further north of this site by the same applicant, nor the 16 dwellings opposite. It would seem somewhat inconsistent to require a footpath now on this application for 6 units, which is closer to the train station than these other consents.*

*To my mind, this request would also not meet the tests set out in paragraph 56 of the NPPF, which I have replicated below (along with paras 54 & 55) as this development is not unacceptable in principle without the provision of a footpath; this is suggested by the officer’s recommendation and the previous approvals by the planning committee at Cott Moor for 4 dwellings and the 9 dwellings to the land north of this site. A requirement for a footpath would seem entirely unreasonable in the circumstances”.*

11.27 Officers have duly considered Members’ request and also the response from the applicant and consider that it would be both inappropriate and unreasonable in the circumstances to provide such a footpath link for the reasons as set out in the applicant’s response whether this provision would be desirable or not in the interests of sustainable transport and that to require one would be contrary to the advice contained within paragraph 56 of the NPPF and would also fail to meet the CIL test under Regulation 122.

11.28 In conclusion to this section, therefore, it is considered in light of the reasons set out above that it would be inappropriate under ULP Policies GEN6, H9 and GEN1 for the Council to require the applicant to provide on-site affordable housing at the application site, or in the alternative to require an off-site S106 commuted sum contribution, and that it would be both unreasonable and inappropriate for the Council to ask the applicant to provide a footpath link from the site to the train station where this would be against NPPF advice and be contrary to CIL requirements.

#### **F Impact on residential amenity (ULP Policy GEN2)**

11.29 Impact on residential amenity can only be properly considered at reserved matters stage. However, the indicated site layout and house types show that there would unlikely to be any intra-site amenity issues, whilst there would not be any overlooking/loss of privacy issues arising from adjoining residential properties into the development site due to mature hedged and vegetated flank boundaries to the site (ULP Policy GEN2).

#### **G Impact on protected species (ULP Policy GEN7)**

11.30 The site comprises undeveloped paddock land with trees and bushes along its southern boundary and has been found following a Preliminary Ecological Assessment (PEA) not to contain any habitats which are conducive to protected or priority species, whilst the assessment further states that the development would not impact on any known nearby species sites. As such, the assessment advises that no further species surveys are necessary.

11.31 The PEA report adds that there is an opportunity through the development proposal to provide a net gain for biodiversity at the site given the present low

levels of natural habitats and recommends various biodiversity measures as to how these net gains could be achieved, including the planting of a wildflower meadow to the rear of the site on land which is within the same ownership and control as the applicant whereby this proposed meadow is shown on the submitted site layout drawing. ECC Place Services have reviewed the PEA and are satisfied that there is sufficient information to enable the application to be determined and have recommended ecology conditions to reflect the recommendations made in the PEA report. No objections are raised under ULP Policy GEN7 on this basis.

## **H Contamination risk (ULP Policy ENV14)**

- 11.32 The curved southern end of the site comprises part of the former branch railway line which led off from Elsenham Station to Thaxted. Therefore, it is likely as the Council's EHO advises that the site will contain historic contamination as a result of this historic land use. The remainder of the site is set to paddock, although appears to have previously formed part of the wider former poultry farm to the north and east. The EHO has advised that any contamination which does exist at the site would need to be investigated and remediated, but that this could be achieved via the normal contamination/remediation four stage condition and no health objections are therefore raised under ULP Policy ENV14 subject to this condition being imposed.

## **12. CONCLUSION**

- 12.1 The proposal is considered acceptable in principle subject to appropriate planning conditions being imposed whereby pre-commencement conditions have been agreed with the applicant.

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

- A The principle of frontage residential development at this sustainable edge of village location within a low risk flood zone is considered acceptable. The raised issue of noise can be addressed through planning conditions.
- B The proposed access arrangements are considered acceptable.
- C The scale of the development is considered acceptable.
- D The housing mix is considered acceptable.
- E it would be inappropriate for the Council to require the applicant to provide on-site affordable housing at the application site, or in the alternative to require an off-site S106 commuted sum contribution, and that it would be both unreasonable and inappropriate for the Council to ask the applicant to provide a footpath link from the site to the train station where this would be against NPPF advice and be contrary to CIL requirements.
- F Impacts on residential amenity are likely to be negligible.
- G The development would not be harmful to protected or priority species whereby the proposal makes provision for off-site bio-diversity enhancements and net gains (wildflower meadow).

- H Historic contamination which is likely to exist on the site due to its former poultry use and existence of a former railway branch line can be appropriately remediated by conditions at reserved matters stage.

## **RECOMMENDATION – APPROVAL WITH CONDITIONS**

### **Conditions**

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

REASON: To comply with the provisions of Article 3 of the Town and Country Planning (General Development Procedure) Order 1995 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission.

REASON: To comply with the provisions of Article 3 of the Town and Country Planning (General Development Procedure) Order 1995 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.

REASON: To comply with the provisions of Article 3 of the Town and Country Planning (General Development Procedure) Order 1995 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

4. Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay as shown on DWG no. F19096/01 ("Proposed site access and horizontal visibility assessment" dated 15/08/19). 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.

REASON: To provide adequate inter-visibility between vehicles using the access and those in the existing public highway in the interest of highway safety in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005).

5. Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of carriageway and provided with an appropriate vehicular crossing of the verge.

REASON: To ensure that vehicles can enter and leave the highway in a controlled manner and to ensure that opposing vehicles can pass clear of the limits of the highway in the interests of highway safety in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005).

6. 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.

REASON: To enable vehicles using the access to stand clear of the carriageway whilst gates are being opened and closed in the interest of highway safety in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005).

7. Prior to commencement of the development, a scheme supported by a robust noise assessment shall be submitted for the protection of the dwellings from noise arising from the adjacent industrial and commercial units and road & rail transport noise sources for approval in writing by the Local Planning Authority. No dwellings shall be occupied until the scheme providing protection for those dwellings has been implemented in accordance with the approved details and has been demonstrated to achieve the required noise levels to the satisfaction of the Local Planning Authority. The approved scheme shall be retained in accordance with those details thereafter.

REASON: To provide reasonable living standards within an acoustic environment for the occupiers of the dwellings in accordance with ULP Policy ENV10 of the Uttlesford Local Plan (adopted 2005).

Pre-commencement condition justification: To ensure that the development does not prejudice the living standards and well-being of future occupants of the proposed dwellings.

8. The development hereby permitted shall not begin until a scheme to deal with contamination of land/ground gas/controlled waters has been submitted to and approved in writing by the local planning authority. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement specifically in writing:

- A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175: 2011 Investigation of Potentially Contaminated Sites – Code of Practice.
- A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report shall include a detailed quantitative human health and environmental risk assessment.
- A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
- If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the local planning authority.

- A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

REASON: To protect human health and the environment in accordance with ULP Policy ENV14 of the Uttlesford Local Plan (adopted 2005).

Pre-commencement condition justification: To ensure that the development does not prejudice the health and well-being of future occupants.

9. 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), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This includes due diligence for transitory mammals and nesting birds.

REASON: To conserve and enhance Protected and Priority species and allow the LPA to discharge its duties under the UK Habitats Regulations, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) in accordance with ULP Policy GEN7 of the Uttlesford Local Plan (adopted 2005).

10. Prior to commencement of development, a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) 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.

REASON: To enhance Protected and Priority Species/habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species) in accordance with ULP Policy GEN7 of the Uttlesford Local Plan (adopted 2005).

Pre-commencement condition justification: To ensure that biodiversity gains can be achieved for the proposed development.

11. Prior to occupation, a Landscape and Ecological Management Plan (LEMP) 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.

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

REASON: To allow the LPA to discharge its duties under the UK Habitats Regulations 2017, the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species)

12. No development or preliminary groundworks shall commence until a programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority.

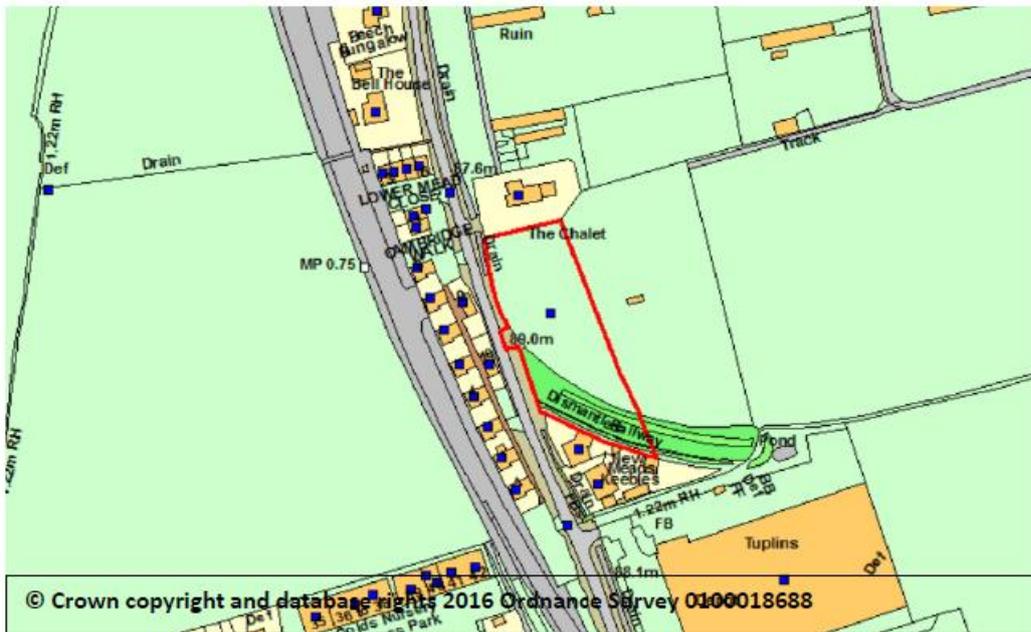
REASON: The Historic Environment Record shows that the proposed development lies within an area of known sensitive archaeological deposits. Cropmarks evidence within the proposed development indicates the potential of enclosures and a possible ring ditch to the east of the proposed (EHER 18898). Excavations to the south west of the proposed development identified Roman activity and medieval features indicative of a medieval settlement (EHER 48393). There is therefore the potential for multi-period deposits being impacted on by the proposed development (ULP Policy ENV4).

13. 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.

REASON: To ensure compliance with ULP Policy GEN2 (c) of the Uttlesford Local Plan 2005 and the Council's adopted SPD "Accessible Homes and Playspace"

14. Prior to dwelling occupation the dwellings shall be provided with electric vehicle charging points. The charging points shall be fully wired and connected, ready for first use and retained for occupant use thereafter.

REASON: To encourage/support cleaner vehicle usage in accordance with the NPPF and ULP Policies ENV13 and GEN2 of the Uttlesford Local Plan (adopted 2005).



Organisation: Uttlesford District Council

Department: Planning

Date: 16 SEPTEMBER 2020