

**UTT/21/0079/OP**

**(Report in respect of Non-Determination Appeal)**

**PROPOSAL:** Outline application with all matters reserved except access and landscaping for the erection of 9 no. detached dwellings

**LOCATION:** Land East of Bannister Green Rayne Road Felsted

**APPLICANT:** Mr P Hutley

**AGENT:** Collins and Coward

**EXPIRY DATE:** N/A

**CASE OFFICER:** Madeleine Jones

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## **EXECUTIVE SUMMARY**

**This Report is produced in light of the fact that the applicant has appealed to the Secretary of State against the Non-Determination of the Planning Application. The Report and Recommendation is to allow the Local Planning Authority to establish a position at the appeal, if the LPA were allowed to make a decision.**

## **NOTATION**

1.1 The following planning constraints apply to the application site:

- Outside Defined Settlement Limits

## **2. DESCRIPTION OF SITE**

2.1 The site lies to the west of Bannister Green, a defined settlement to the west of Felsted. The site area extends to 1.1ha. The site is currently in agricultural use

## **3. PROPOSAL**

3.1 Outline application with all matters reserved except access and landscaping for the erection of 9 no. detached dwellings

## **4. ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 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 applicants have submitted the following documents in support of the proposal:

- Planning Statement
- Ecological Appraisal
- Biodiversity Checklist

- Transport Statement
- Flood Risk Assessment
- Landscaping Proposals and Arboricultural Impact Assessment
- Landscape and Visual Appraisal

## **6. RELEVANT SITE HISTORY**

- 6.1 UTT/18/2502/OP – Outline application for 2no. dwellings Refused November 2018

## **7. POLICIES**

### **National Policies**

National Planning Policy Framework 2019 (NPPF)

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

ULP Policy S7 – The Countryside  
 ULP Policy GEN2 – Design  
 ULP Policy H9 – Affordable Housing  
 ULP Policy H10 – Housing Mix  
 ULP Policy ENV3 – Trees and Open Spaces  
 ULP Policy GEN1 – Access  
 ULP Policy GEN2 – Design  
 ULP Policy GEN3 – Flood Risk  
 ULP Policy GEN4 – Good neighbourliness  
 ULP Policy GEN7 – Natural Conservation  
 ULP Policy GEN8 – Vehicle Parking Standards

### **Felsted Neighbourhood Plan**

FEL/CW1 Landscape and Countryside Character  
 FEL/HN5: Residential Development outside Development Limits  
 FEL/CW1 Landscape and Countryside Character  
 FEL/ICH1: High Quality Design  
 FEL/ICH4: Avoiding Coalescence

### **Other Material Considerations**

The Essex Design Guide  
 SPD – Accessible Homes and Playspace  
 UDC Parking Standards (adopted February 2013)  
 Planning Policy Guidance (NPPG)  
 ECC Parking Standards – Design and Good Practice (September 2009)

## **8. PARISH COUNCIL COMMENTS**

- 8.1 The Parish Council have objected to the proposals on the following grounds:
- The application makes no reference to the Made Felsted Neighbourhood Plan.
  - The proposal is contrary to the policies of the Neighbourhood Plan The application conflicts with numerous Policies of the NPPF, the UDC Local Plan and Policies FEL/HN5 and FEL/HN7 of the recently “Made” Felsted Neighbourhood Plan (FNP). The FNP supports certain development outside

the VDL's, but only where specific criteria are met. This application does not claim to meet any of these criteria to justify such damage to the visual amenity.

- Pressure on Felsted Primary School
- The Policies within the Felsted NP support certain development but resist inappropriate development, particularly in the green open countryside spaces between the hamlets and settlements, beyond the VDL's.
- The application for 9 executive dwellings is a cynical approach to maximise profit, in being just below the threshold of 10 dwellings where the provision of affordable housing would be required.
- Inappropriate housing mix
- Development will permanently and irreversibly change the historical settlement pattern and character of this part of the Parish.
- Three appeals, APP/C1570/W/20/3252134, 3236869 AND 3235257 have been dismissed. The lack of 5/3 year housing supply does not in itself carry sufficient weight to justify approving a planning application.
- Visual amenity - The irreversible impact on the rural visual amenity by the introduction of 9 dwellings in the corner of a highly visible agricultural area at the entrance to the Hamlet would be wholly inappropriate.
- Transport statement and planning Statement are highly misleading.
- The speed limit changes to 60mph not 40 mph.
- There is no requirement to build in unsustainable locations, especially where a Made Neighbourhood Plan exists and does not support the development.
- This development is an encroachment into open countryside, outside of the VDL.
- The site was the subject of a refused application in 2018. The reasons for which are magnified for this application for 9 dwellings.
- The applicant has not demonstrated why this development needs to take place in this unsustainable location.
- The application is not in accordance with national and local planning policies, and we have demonstrated both UDC and Planning Inspectorate precedents for refusing applications of this nature despite the lack of a 5yr land supply.
- The information supplied by the applicant regarding access to facilities is misleading and fails to recognise the reality of travelling times, school locality and space availability.
- Far from providing 'a logical rounding off of Bannister Green' (Planning support ref 4.3) this development will be a dangerous precedent for allowing building outside of a VDL, in a highly visible location at the entrance to a Hamlet, in open countryside on prime agricultural land, where it is difficult to believe the development will stop at 9 if given the go ahead.

## **9. CONSULTATIONS**

### **ECC Highways**

- 9.1 The impact of the proposal is acceptable to the Highway Authority, subject to the conditions

### **Environmental Health**

- 9.2 No objections to the application subject to conditions. The development site is outside aircraft noise and other transportation noise significance contour plots. The site is also outside the Air Quality Management Zone. It is considered that the

development will not negatively impact neighbouring properties, a precautionary contaminated land condition is recommended

### **ECC Place Services Ecology**

- 9.3 No objection subject to securing biodiversity mitigation and enhancement measures

### **ECC Archaeology Place Services**

- 9.4 An Archaeological Programme of Trial Trenching followed by Open Area Excavation is recommended

## **10. REPRESENTATIONS**

- 10.1 This application has been advertised and neighbours notified. Expiry date for responses 11<sup>th</sup> February 2021. 53 representations have been received.
- 10.2 There have been an overwhelming number of objections to this application.

## **11. APPRAISAL**

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

- A Principle of development (S7, NPPF, PPG)
- B Highways safety and parking provision (GEN1, GEN8, NPPF)
- C Design, scale and impact on neighbours amenity (GEN2)
- D Biodiversity (GEN7, NPPF)
- E Land contamination (ENV14, NPPF)

### **A Principle of development (S7, NPPF, PPG)**

- 11.1 S70 (2) of the Town and Country Planning Act 1990 states that "in dealing with a planning application the local planning authority shall have regard to the provisions of the Development Plan so far as is material to the application and to any other material considerations". Refer to paras 11 and 14 and the status of the Felsted Neighbourhood Plan 2020 in light of 3.11 years HLS i.e., it has significant weight in terms of the NPPF
- 11.2 The application site is outside of the development limits and in the countryside (ULP Policy S7). Development in this location will only be permitted if the appearance of the development protects or enhances the particular character of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.
- 11.3 The site is therefore subject to the provisions of policy S7. Policy S7 is a policy of general restraint which seeks to restrict development to that which needs to take place there, or is appropriate to a rural area in order to protect the character of the countryside. This includes infilling in accordance to paragraph 6.13. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there. This policy seeks to protect the rural area from inappropriate development and permission will only be given for development which is appropriate to the rural area or needs to take place there. Permission will only be given for development which protects or enhances the character of the countryside in which it is set or there are special reasons why

the development needs to be there. The proposal relates to a form of development which is inappropriate in a rural area and which does not need to take place there. The proposal is therefore contrary to Policy S7. A review of Policy S7 for its compatibility with the National Planning Framework 2019 (NPPF) has concluded that it is partially compatible but has a more protective rather than positive approach towards development in rural areas.

- 11.4 In terms of the adopted Felsted Neighbourhood Plan 2020 (NP), the site is also outside the Development Limits. Policy HN5 of the NP resists residential development outside the village development limits other than a number of specified exceptions, which do not include market housing Paragraph 11 of the NPPF confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In this regard, the most recent housing trajectory identifies that the Council has a 3.11-year land supply
- 11.5 It is noted that paragraph 14 of the NPPF advises that in situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:
- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
  - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
  - c) the local planning authority has at least a three-year supply of deliverable housing sites; and
  - d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.

The proposal therefore has the added protection of paragraph 14 of the NPPF.

- 11.6 The proposal would extend development into the open countryside beyond clearly defined limits, diminishing the sense of place and local distinctiveness of the settlement.
- 11.7 At present Felsted Parish forms a group of hamlets which are each separated by open countryside. The parcel of land is on the edge of Bannister Green which is at present open and therefore any development here would be a harmful intrusion into the open countryside. The public right of way to the west of the site being a defensible boundary. The NPPF recognises the intrinsic character and beauty of the countryside. This proposal would have an urbanising impact on the character of the rural countryside setting. The site is inherently rural in its character and appearance and is formed of part of an arable field that is situated alongside considerable areas of neighbouring agricultural land. It reads as part of the countryside and is prominently located on the edge of Bannister Green. It is considered that the proposal would result in intensification in the built form within the immediate area that would in turn alter the character of the surrounding locality. Effect that would be out of context with the existing pattern of development and harmful to the setting and character of the countryside. There is a clear definition between the built form to the north and the open countryside to the south. The landscape performs the function of clearly defining and containing the extent of built form. The proposal would extend development into the open countryside beyond

clearly defined limits, diminishing the sense of place and local distinctiveness of the settlement.

- 11.8 The development would be seen from public rights of way. From this the development would be seen and experienced against a fundamentally rural backdrop and would appear as a prominent excursion into the open countryside.
- 11.9 The current form of development is linear along this side of the road and as such the proposal is out of character with the form of surrounding buildings
- 11.10 The proposal is contrary to ULP policy S7 and Policy HN5 of the adopted Felsted Neighbourhood Plan (made 25<sup>th</sup> February 2020)

**B Highways safety and parking provision (GEN1, GEN8, NPPF)**

- 11.11 Policy GEN1 seeks to ensure development proposals would not adversely affect the local highway network and encourage sustainable transport options.
- 11.12 The application includes the formation of a new vehicular access road. Numerous comments have been received in respect of highway safety and inaccuracies within the Transport statement in respect of speed limits. Accordingly, Essex Highway officers have been consulted. The highways authority has no objections to the proposal subject to conditions.
- 11.13 In view of the above it is considered that the proposal would comply with the aims of Policy GEN1
- 11.14 The indicated properties are all four bedroomed dwellings. The adopted Essex County Council parking standards require the provision for two parking spaces per dwelling for two- and three-bedroom dwellings and three parking spaces for three+ bedroomed properties and additional visitor parking spaces.
- 11.15 It has been demonstrated that each property would be able to meet the required parking standards. There is sufficient space for two unallocated parking spaces within the development to provide visitor parking.
- 11.16 The council has adopted an Interim Climate change Planning Policy. Interim Policy 14 requires all new homes with on plot parking should be provided with at least one installed fast charging point and at least 20% of parking spaces in new developments should be provided with installed fast charging points. All new parking spaces should be adaptable for electric vehicle fast charging (7-22kw) including through local electricity grid reinforcements, substation design and ducting. This can be achieved by condition.

**C Design and Impact on neighbours amenity (GEN2)**

- 11.17 Policy GEN2 sets out the design criteria for new development. In addition, section 12 of the NPPF sets out the national policy for achieving well-designed places and the need to achieve good design
- 11.18 Scale, layout and appearance are, however, reserved matters and therefore would be considered within a reserved matters application should this application be approved.

- 11.19 The indicative layout and scale is not considered to be in keeping with the form and character of the surroundings or appropriate in this rural location.
- 11.20 The properties can be designed so as not to have any detrimental impact on neighbours amenity.
- 11.21 The Essex Design Guide recommends that dwellings or 3 bedrooms or more should have private amenity spaces of 100sqm+.and 2-bedroom properties 50 sqm+. The indicative plan shows that sufficient adequate private amenity space to accord with the requirements of the Essex Design Guide could be provided for 9 dwellings on the site.
- 11.22 Policy H10 states that all development on sites of 0.1 hectares and above or of 3 or more dwellings will be required to include a significant proportion of market housing comprising small properties. All developments on a site of three or more homes must include an element of small two and three bed homes, which must represent a significant proportion of the total.
- 11.23 The indicative, housing mix is inappropriate and contrary to ULP policy H10 and the housing needs identified within the Felsted Neighbourhood Plan
- 11.24 The proposed development area has the potential to contain archaeological remains. It is located just outside the historic settlement of Bannister Green which contains a number of former moated sites dating to the sixteenth century (EHER 1352, 1257). The proposed development is also situated between two areas of known cropmarks; to the north these comprise linear field boundaries and to the south a curvilinear enclosure of unknown date (EHER 19791, 47693). Cartographic evidence also shows a historic pathway to the west of the proposed development on the first edition Ordnance Survey map of 1875. There is therefore the potential for medieval roadside development within the proposed development as well as for evidence of prehistoric and post-medieval occupation. As such a condition is recommended securing an Archaeological Programme of Trial Trenching followed by Open Area Excavation

**E Biodiversity (GEN7, NPPF)**

- 11.25 Policy GEN7 and paragraph 118 of the NPPF require development proposals to aim to conserve and enhance biodiversity. Appropriate mitigation measures must be implemented to secure the long-term protection of protected species.
- 11.26 An ecology survey and assessment has been submitted with the application and specialist ecological advice is that they have no objections subject to securing biodiversity mitigation and enhancement measures. A Wildlife Sensitive Lighting Strategy should be delivered for this scheme to avoid impacts to foraging and commuting bats.

The proposed reasonable biodiversity enhancements, which have been recommended to secure measurable net gains for biodiversity, as outlined under Paragraph 170d of the National Planning Policy Framework 2019 are supported. The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured. This includes installation of structurally integral bird and bat boxes on each building, further bat and bird boxes on trees, invertebrate boxes per unit, new tree and hedgerow planting throughout site, new water body installation, creation of wildflower/wild-

grass meadow within the site and the inclusion of native/wildlife friendly planting in landscape scheme.

- 11.27 The site is situated within the 22km Zone of Influence (ZOI) for the Blackwater Estuary SPA & Ramsar site. Therefore, Natural England's advice should be followed to ensure that impacts are minimised to the coastal Habitats Sites (European designated sites) from new residential development in combination with other plans and projects. It is therefore a requirement of the applicant to make a financial contribution in line with the Essex Coast RAMS, from the residential development within the ZOI specified and would need to be paid to the Council by way of a legal obligation to commit to making the contribution before development commences.
- 11.28 The proposal subject to appropriate conditions would not have any material detrimental impact in respect of protected species to warrant refusal of the proposal and accords with ULP policy GEN7

#### **F Contamination (ENV14, NPPF)**

- 11.29 Policy ENV14 states that before development, where a site is known or strongly suspected to be contaminated, a site investigation, risk assessment, proposals and timetable for remediation will be required.
- 11.30 Environmental Health officers have been consulted and they states that a precautionary contaminated land condition is recommended

## **12. CONCLUSION**

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

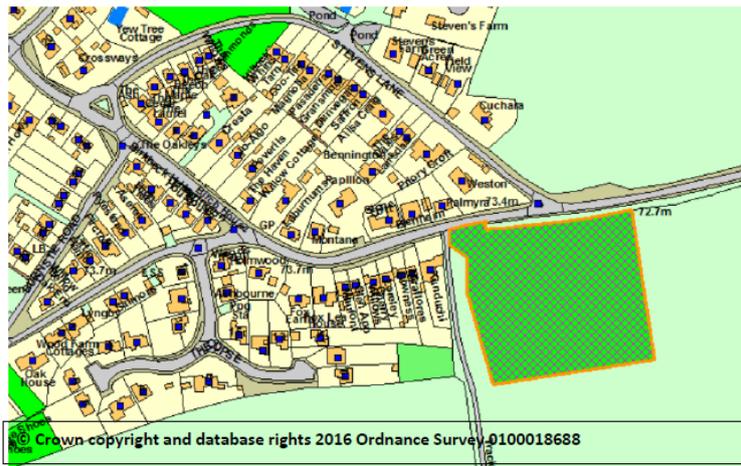
- A The proposal would have a harmful impact upon character and appearance of the surrounding area.
- B The proposal would not be compatible with the surrounding settlement.
- C The proposal will not have a detrimental impact on highway safety.
- D The proposal would protect neighbouring amenity.
- E The proposal would not materially impact upon matters of biodiversity, subject to conditions.
- F The proposal would not impact upon matters of air quality or contamination, subject to conditions

### **RECOMMENDATION – PUTATIVE REASONS FOR REFUSE**

(If the Local Planning Authority were in a position to determine the application)

1. The proposal is contrary to the adopted Uttlesford Local Plan - Policy S7 and policies FEL/CW1, FEL/ICH4, FEL/HN5 of the adopted Felsted Neighbourhood Plan 2020 and is not one of the identified allocated sites that are considered suitable for housing. The harm and policy conflict would significantly and demonstrably outweigh the proposals benefits. In light of the above, the principle of the proposed development appears to be unacceptable on grounds of sustainability and due to its unacceptable encroachment of built form within the immediate area which would thereby cause harm to the beauty and intrinsic value of the countryside

2. The development site is situated within the 22km Zone of Influence (ZOI) for the Blackwater Estuary SPA and Ramsar site. Therefore, Natural England's advice should be followed to ensure that impacts are minimised to Habitats (European) sites from new residential development. The LPA is therefore advised that a financial contribution should be sought towards visitor management measures at the Blackwater Estuary SPA and Ramsar site in line with the Essex coast RAMS per dwelling tariff, for impacts from residential development within the ZOI specified in combination with other plans and projects. No financial contribution is forthcoming, and therefore the proposals are contrary to the implementation of Policies GEN6, GEN7 and ENV7 of the adopted Uttlesford Local Plan 2005.



Organisation:	Uttlesford District Council
Department:	Planning
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