



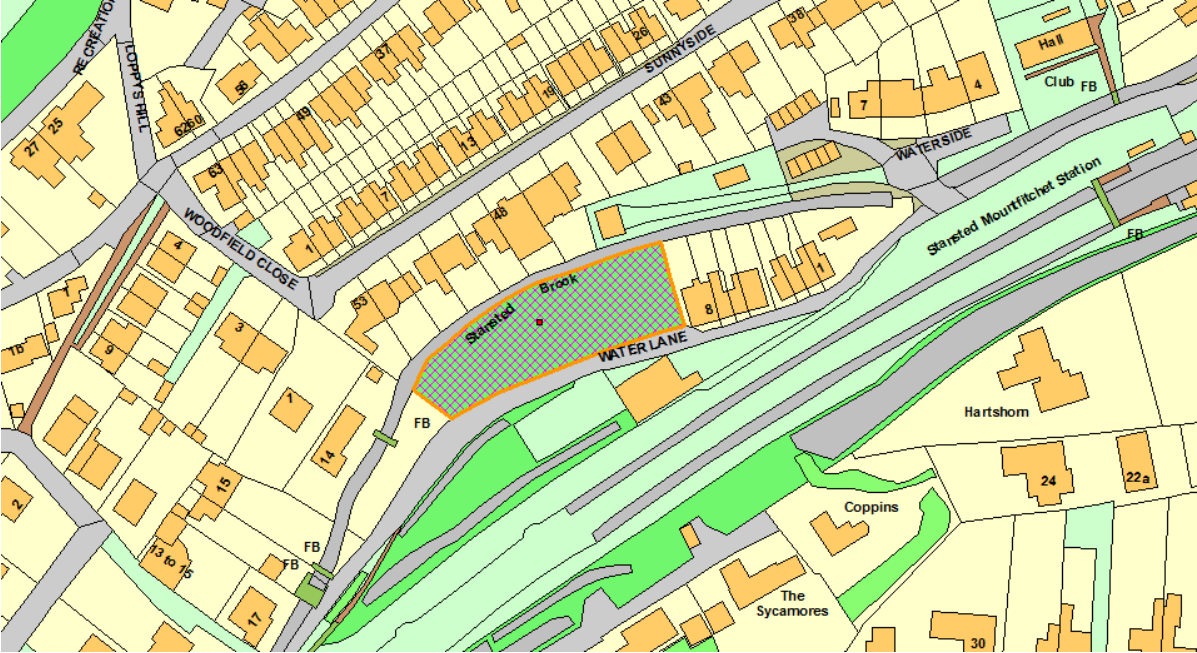
**ITEM NUMBER:** 11

**PLANNING COMMITTEE DATE:** 14 December 2022

**REFERENCE NUMBER:** UTT/22/2568/FUL

**LOCATION:** Land North Of Water Lane, Stansted

**SITE LOCATION PLAN:**



**© Crown copyright and database rights 2021 ordnance Survey 0100018688  
Organisation: Uttlesford District Council    Date: 1/11/2022**

**PROPOSAL:** Removal of conditions 5 (pre-commencement condition survey of Water Lane) and 6 (post-completion condition survey of Water Lane) attached to planning permission UTT/16/2865/OP for the erection of up to ten dwellings

**APPLICANT:** Mr David Smith

**AGENT:** Mr Neil Rouse- NJRouse Architectural Design

**EXPIRY DATE:** 15 December 2022

**EOT Expiry Date** N/A

**CASE OFFICER:** Chris Tyler

**NOTATION:** Within Development Limits

**REASON THIS APPLICATION IS ON THE AGENDA:** Removal of Condition of Major Application

---

## **1. EXECUTIVE SUMMARY**

**1.1** The application was deferred by the Planning Committee on 23 November 2022 for the application to be considered at a later date with an Officer from the Highway Authority to be in attendance.

**1.2** This is an application for the removal of conditions 5 and 6 from the planning permission under UTT/16/2865/OP. The conditions refer to the submission of 'before' and 'after' surveys, as well as repair works before the development begins and after its completion. The Officer recommends that conditions 5 and 6 are removed and the application is approved.

**1.3** Conditions 5 and 6 fail all the tests of paragraph 56 of the NPPF, including being unenforceable and unreasonable. The removal of the conditions would not make the development unacceptable, as improving highway safety and facilitating the passage of vehicles from a public highway are responsibilities that belong to the Essex County Council. The conditions attempt to create a mechanism to improve highway safety and ensure maintenance of the highway, which is the responsibility of Essex County Council. However, without there being a direct link to development that

falls beyond the scope of planning and the responsibilities of the LPA. The practical difficulty and subjectivity in attributing specific damage of the highway to the development of the 9 no. dwellings make the conditions irrelevant to this specific development, unenforceable, unprecise, and unreasonable. The wording of conditions 5 and 6 is also vague and unclear.

- 1.4 The condition of the public highway is a matter for the Essex County Council.

## 2. **RECOMMENDATION**

Approve the removal of conditions 5 and 6 subject to the re-imposition of all other conditions as set out in section 17 of this report.
---

## 3. **SITE LOCATION AND DESCRIPTION:**

- 3.1 The site lies within the centre of Stansted Mountfitchet village within close proximity to the railway station and comprises an irregular shaped parcel of enclosed land which fronts onto Water Lane towards its south-western end. The rear boundary of the site backs onto Stansted Brook. The site was formerly the location of the town's gasholder but has since over time become colonised by self-sown trees and scrub and is now overgrown. The site and the section of Water Lane in front of it slopes down from a row of attractive frontage cottages which stand onto the lane at higher ground on the site's north-eastern side, whilst the rear boundary of the site running parallel with Stansted Brook is screened by a line of mature trees.

- 3.2 Following the approval outline planning permission and reserved matters the site has been cleared, significant contamination remediation and sewage works that have taken place prior to the laying of foundations.

## 4. **PROPOSAL**

- 4.1 This proposal is submitted under Section 73 of the Town & Country Planning Act 1990 to develop land without compliance with conditions attached to the implemented planning permission UTT/16/2865/OP.

The application set out to remove conditions 5 (pre-commencement condition survey of Water Lane) and 6 (post-completion condition survey of Water Lane)

## 5. **ENVIRONMENTAL IMPACT ASSESSMENT**

- 5.1 The development does not constitute 'EIA development' for the purposes of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

**6. RELEVANT SITE HISTORY**

**6.1**

<b>Reference</b>	<b>Proposal</b>	<b>Decision</b>
UTT/16/0075/OP	Outline application, with all matters reserved except for access and scale, for the redevelopment of the former gas holder site to provide for residential development of 12 dwellings.	Refused,3/6/2016 allowed at appeal
UTT/16/2865/OP	Outline application, with all matters reserved except for access and scale, for the redevelopment of the former gas holder site to provide for up to ten dwellings.	Approved 10/02/2017
UTT/19/2388/DF O	Approval of reserved matters following outline application UTT/16/2865/OP. Details of appearance, landscaping and layout relating to the redevelopment of the former gas holder site to provide 9 no. dwellings.	Approved 19/6/2020
UTT/19/2655/DO C	Application to discharge Conditions 10 (archaeological trial trench) 11(landscape and ecological management plan) 12 (assessment) 13(remediation scheme) 14 (validation report) 16 (noise assessment) attached to UTT/16 /2865/OP.	Part Discharged 26/8/2022  19-Refused  11,12,13,14 and 16 discharged in full
UTT/21/0905/FUL	Removal of condition 9 (Accessible and adaptable dwellings) attached to planning permission UTT/16/2865/OP	Approved 4/6/2021
UTT/21/1992/DO C	Application to discharge condition 5 (condition survey)	Part Discharged  5 – Refused 10- Discharged in full
UTT/22/0948/NM A	Non material amendment to UTT/19/2388/DFO - add condition listing approved plans.	Approved 22/4/2022

UTT/22/1165/FUL	Application to vary condition 11 (approved plans) of planning application UTT/19/2388/DFO (added under UTT/22/0948/NMA).	Approved 8/8/2022
-----------------	--	-------------------

**7. PREAPPLICATION ADVICE AND/OR COMMUNITY CONSULTATION**

7.1 The LPA is unaware of any consultation exercise carried out by the applicant for this current proposal.

**8. SUMMARY OF STATUTORY CONSULTEE RESPONSES**

**8.1 Highway Authority- Objection**

8.1.1 The Highway Authority objects to the removal of conditions 5 and condition 6. Water Lane is a single-track access road of limited restrictive width, making the above requested surveys important. There is only one available route for the construction traffic which is over the bridge on Water Lane and through a narrow road not built to accommodate such construction vehicles.

Although we appreciate the applicant's proposal of use of smaller vehicles, this is not enough to alleviate our concerns and cannot guarantee no damage to the Highway.

A before and after survey will safeguard the current structure against any potential damage caused by the proposed development and will ensure that the public is not burdened with unnecessary costs caused by third party development.

**9. PARISH COUNCIL**

9.1 Objection, comments include:

1. The condition of the road and verges now, indicates that large vehicles are being used to access this site. This road is well used by pedestrians, cyclists and scooters. It is not well lit and any damage to the road causes risk of accident and/or injury to the users. The surface is now in a poor condition, and this must be made safe on completion of the development.
2. The applicant states that the surveys are unnecessary as no damage will be caused. If no damage is caused, they have no reason to request removal of the condition. A survey does not have to be expensive to undertake but is merely a photographic record of the condition on the date the pictures were taken. It appears late in the day to request permission not to undertake a pre-commencement survey given that the site is now active.

## **10. CONSULTEE RESPONSES**

### **10.1 UDC Environmental Health**

**10.1.1** No objections to the removal of the conditions.

### **10.2 Thames water**

**10.2.1** No comments

### **10.3 Lead Local Flood Authority**

**10.3.1** No comments

### **10.4 Place Services Ecology**

**10.4.1** We have reviewed the above application and believe there are no ecology comments in relation to this application in addition to our previous comments for outline application ref. UTT/16/2865/OP. Any ecology conditions of the outline application UTT/22/2568/FUL should be copied across to this new full application if consent is granted.

## **11. REPRESENTATIONS**

**11.1** A site notice was displayed on site and 116 notifications letters were sent to nearby properties. The application was also advertised in the local press.

### **11.2 Support**

**11.2.1** N/A

### **11.3 Object**

**11.3.1** 3 objections received; comments include:

- The construction of the development will not just use smaller vehicles,
- There are 4-5 skip lorries arriving each day,
- The site can be seen from neighbouring sites,
- Non complying with the conditions disregards the proper process,
- The cost of the survey will be negligible compared to the overall cost of the scheme,
- Fail to see how the condition can be removed if in breach of the condition,
- Condition 6 will determine what works are required to restore the highway,
- Residents may have to foot the bill to repair the highway,
- Residents may make a claim against the construction company,
- Survey were required at the planning stage, what's changed?
- Does not show a positive message to future developers,

- No guarantee the delivery vehicle will be small,
- Contravention of the site PPE rules

#### **11.4 Comment**

**11.4.1** All material planning matters will be considered in the following report

### **12. MATERIAL CONSIDERATIONS**

**12.1** In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, The Development Plan and all other material considerations identified in the “Considerations and Assessments” section of the report. The determination must be made in accordance with the plan unless material considerations indicate otherwise.

**12.2** Section 70(2) of the Town and Country Planning Act requires the local planning authority in dealing with a planning application, to have regard to

- (a) The provisions of the development plan, so far as material to the application,
- (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

**12.3** Section 73 of the Town and Country Planning Act 1990 enables an applicant to apply to develop land without compliance with conditions attached to an extant permission. The Local Planning Authority may amend or remove condition but may not amend any other part of the permission and therefore the original permission remains intact. Therefore, this means that a developer may elect which permission to implement

#### **12.4 The Development Plan**

**12.4.1** Essex Minerals Local Plan (adopted July 2014)  
 Essex and Southend-on-Sea Waste Local Plan (adopted July 2017)  
 Uttlesford District Local Plan (adopted 2005)  
 Felsted Neighbourhood Plan (made Feb 2020)  
 Great Dunmow Neighbourhood Plan (made December 2016)  
 Newport and Quendon and Rickling Neighbourhood Plan (made June 2021)  
 Thaxted Neighbourhood Plan (made February 2019)  
 Stebbing Neighbourhood Plan (made 19 July 2022)  
 Saffron Walden Neighbourhood Plan (made October 2022)



## **13. POLICY**

### **13.1 National Policies**

13.1.1 National Planning Policy Framework (2021)

### **13.2 Uttlesford District Plan 2005**

13.2.1 GEN1- Access Policy

### **13.3 Supplementary Planning Document or Guidance**

13.3.1 Uttlesford Local Residential Parking Standards (2013)  
Essex County Council Parking Standards (2009)  
Supplementary Planning Document- Accessible homes and play space  
homes Essex Design Guide  
Uttlesford Interim Climate Change Policy (2021)

## **14. CONSIDERATIONS AND ASSESSMENT**

14.1 The main considerations in the determination of this application relate to Highways Safety matters due to the proposed removal the condition relating to prior and post highway surveys.

### **14.2 A) Principle of removal of condition B) Highway Safety**

14.3 As this application is made under Section 73 of the Town and Country Planning Act, consideration is limited to those matters that consider the condition to be removed, which vary compared to the extant permission

### **14.4 A) Principle of development**

14.4.1 The removal of conditions 5 and 6 is acceptable for the reasons elaborated in Section B of this report.

### **14.5 B) Highway Safety**

14.5.1 The application proposes the removal of conditions 5 and 6 from UTT/16/2865/OP for 10 no. dwellings. Both conditions were recommended by the Highway Authority. This condition was not imposed by the Planning Inspector who determined the allowed application UTT/16/0075/OP. The conditions read as follows:

14.5.2 Condition 5: No development shall take place until a comprehensive condition survey of Water Lane from its junction with Station Road to the application site has been completed, details of which shall be first submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The results of such "before"

survey and any required repair work necessary to facilitate the passage of construction vehicles shall be submitted to and approved in writing by the local planning authority with any repair work being carried out prior to the construction period.

REASON: In the interests of highway safety and accessibility in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005). The use of such pre-commencement condition is required to ensure the highway serving the development is of sufficient standards to facilitate such development.

- 14.5.3** Condition 6: Following completion of the construction of the dwellings, a further comprehensive survey of Water Lane from its junction with Station Road to the application site shall be completed in accordance with the details approved in Condition 5 above. The results of the survey and any identified damage/repair work shall be submitted to and approved in writing by the Local Planning Authority. Any repair works identified in the "after" survey shall be carried out within 3 months of the completion of the construction of the dwellings to a programme to be agreed by the Local Planning Authority.

REASON: In the interests of highway safety and accessibility in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005).

- 14.5.4** The Highway Authority originally advised the conditions were required ensure any identified damage to the highway caused by the construction vehicles and required repair will be reported to the LPA and repaired within 3 months.

- 14.5.5** The applicant applied to discharge condition 5 (UTT/21/1992/DOC), however, this was refused on 7/12/2021, as Highways objected for the following reasons:

The details of the existing road survey has been assessed by the Highways Authority and it is consider applicant has failed to thoroughly consider the two highway structures between Station Road and the development site; bridge and retaining wall. These structures must be taken into consideration with appropriate assessment, as they have been identified as a potential issue and works may be necessary to facilitate the passage of construction vehicles. This is contrary appropriate highway safety and accessibility as per ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005). As such it is recommended condition 5 to be refused.

- 14.5.6** The Highway Authority was consulted for the current application and raised objections to the removal of condition 5 and 6 due to:

- a) Water Lane is a single-track access road of limited restrictive width, making the above requested surveys important. There is only one

available route for the construction traffic which is over the bridge on Water Lane and through a narrow road not built to accommodate such construction vehicles.

- b) Although we appreciate the applicant's proposal of use of smaller vehicles, this is not enough to alleviate our concerns and cannot guarantee no damage to the Highway.
- c) A before and after survey will safeguard the current structure against any potential damage caused by the proposed development and will ensure that the public is not burdened with unnecessary costs caused by third party development.

**14.5.7** The applicant advises that following consultation between the developer and Essex Highways they wish to remove conditions 5 and 6. It is planned and stated in the Construction Management Plan and Traffic Management Plan that only small vehicle will be used for all deliveries to the site and in conjunction with a holding site away from Water Lane, with an address to be provided. The smaller sized vehicles size and weight are far less than the weight limit restrictions for Water Lane its bridge/retaining wall structures, therefore negating need to provide a comprehensive before and after survey.

**14.5.8** It is well-established law that previous decisions can be material considerations because like cases should be decided in a like manner, to ensure consistency in decision-making. However, previous Secretary of State or LPA decisions do not set a precedent for the assessment of similar developments; the benefits and harm, and the levels of each, depend on the specific characteristics of a site and scheme. Therefore, the application must be considered on its own merits, however, the weight to be attributed to other planning decisions in the area depends on whether there is a material change in circumstances in comparison to the time when those decisions were made.

**14.5.9** In the following paragraphs, planning decisions from the area are discussed (see summary Table below). This analysis informs the weight to be allocated on those previous decisions. The conditions attached to those permissions are identical or very similar to the ones currently under scrutiny in this current application.

**14.5.10**

Application Number	Description	Highway Comments	Comments
UTT/22/1134/FUL	12 dwellings	Objects	Condition removed
UTT/17/0222/FUL	2 dwellings	No comments	Conditions removed
UTT/16/3663/FUL	1 dwelling	No Objections	Conditions removed
UTT/16/0782/FUL	1 dwelling	No comment. LPA should assess the conditions' acceptability in planning terms	Conditions removed
UTT/16/0786/DFO	15 dwellings	Recommended conditions 10 and 11	Conditions not imposed

**14.5.11** In regard to the most recent of those permissions (UTT/22/1134/FUL) granted on the 4/8/2022 case officer tested the conditions' compliance with paragraph 56 of the NPPF and his reasons for approving their removal are summarised below: (a) Controls outside planning legislation govern the necessary repairs, and thus not relevant to planning (test 2). (b) Impossible to quantify the impact of the development and attribute it to this specific development due to cumulative impacts from other developments on Whiteditch Lane, and thus not relevant to the development permitted (test 3) and not enforceable (test 4).

**14.5.12** Conditions 5 and 6 were removed from UTT/16/1756/FUL (2 no. dwellings – Land South of Tudhope Farm). The then case officer tested the conditions' compliance with paragraph 56 of the NPPF and his reasons for approving their removal are summarised below: (a) Controls outside planning legislation govern the necessary repairs, and thus not relevant to planning (test 2). (b) Impossible to quantify the impact of the development and attribute it to this specific development due to cumulative impacts from other developments on Whiteditch Lane, and thus not relevant to the development permitted (test 3) and not enforceable (test 4). The case officer stated it would not be appropriate to impose alternative conditions. Highways did not provide any comments for that application.

**14.5.13** Conditions 7 and 8 were removed (UTT/16/3663/FUL) on 16 Feb 2017 from UTT/16/0280/FUL (1 no. dwelling – Branksome). The reasons are summarised below: (a) Controls outside planning legislation govern the necessary repairs, and thus not relevant to planning (test 2). (b) Impossible to quantify the impact of the development and attribute it to this specific development due to cumulative impacts from other developments on Whiteditch Lane, and thus not relevant to the development permitted (test 3) and not enforceable (test 4). As previously, the case officer considered it would not be appropriate to impose alternative conditions. It should be highlighted that Highways raised no objections on this occasion, and as such, the approach on the matter from Highways has not been consistent.

**14.5.14** Conditions 5 and 6 were removed (UTT/16/0782/FUL) on 11 Jan 2017 from UTT/15/3022/FUL (1 no. dwelling – Land South of Tudhope Farm). The reasons are summarised below:

- a) It would be unreasonable to refuse the application for 1 no. dwelling if the conditions were not imposed, as this type of condition is usually imposed for large scale developments. Therefore, the condition is wider in scope than is necessary to achieve the desired objective (test 1).
- b) ECC Highways requested the conditions to control matters outside the scope of the planning permission, plus the upkeep of the byway is their responsibility, and thus not relevant to planning (test 2).
- c) The surveys are unlikely to identify only damages arising from the development permitted, as several projects are ongoing at the same time, and the conditions may require the developer to remedy an issue not created by the development (test 3).
- d) Identifying only damages from the development permitted is beyond the applicant's control, and thus the conditions are not enforceable (test 4).
- e) The end-result of the conditions is not precise (test 5).
- f) Unreasonable for the above reasons. Highways refrained from commenting and stated that "suitability and appropriateness of the suggested highway related conditions in planning terms is for the planning authority to assess".

**14.5.15** The last permission in this list of relevant decisions is a reserved matters permission (UTT/16/0786/DFO – 15 no. dwellings) in which the case officer, following the advice of ECC Highways, recommended conditions 10 and 11 for 'before' and 'after' surveys. However, when discussing the application in planning committee (14 Dec 2016), Members decided to remove those conditions from the permission.

**14.5.16** Paragraph 56 of the NPPF sets out the tests that must be complied with by all conditions:

- a) necessary;
- b) relevant to planning;
- c) relevant to the development permitted;
- d) enforceable;
- e) precise; and
- f) reasonable in all other respects.

Each condition must comply with all the tests. If a condition fails even one test, it must not be imposed.

**14.5.17** Both conditions are tested as follows:

**Necessary:**

The question is whether the development would become unacceptable in planning terms if the condition was not there.

**14.5.18** Both conditions were imposed by the LPA in the interests of highway safety to ensure the lane is capable of accommodating construction traffic and for any necessary repairs on completion of the development. However, as currently worded, conditions 5 and 6 are not necessary by themselves as their absence cannot make the development unacceptable. In planning terms because it is not necessary to know the existing condition of the byway (condition 5) or the final condition of the byway after completion of the development (condition 5), for the development to go ahead.

**14.5.19** Most importantly, conditions 5 and 6, by referring to 'any required repair work necessary to facilitate the passage of construction vehicles, they essentially place the responsibility of improving highway safety, maintaining the highway and ensuring the passage of vehicles to the developer and the LPA, whereas this task belongs to ECC Highways. Therefore, conditions 5 and 6 are not necessary as their removal cannot make the development unacceptable in planning terms.

**14.5.20** As the stated objective for conditions 5 and 6 is vaguely worded so as to 'facilitate the passage' of construction vehicles, and not, for example, 'repair work necessary to offset damages caused by the development'. Therefore, notwithstanding the condition of the road and how it would affect other users, if a construction vehicle can simply pass from Water Lane, no repair works are required for the purposes of conditions 5 and 6.

**14.5.21** Finally, the 'after' survey (condition 6) does not need to be completed due to there not being a requirement for the 'before' survey (condition 5). This vaguely worded statement does not consider the condition 5 is unnecessary to make the development acceptable and therefore should be removed.

**14.5.22 Relevant to planning:**

The question is whether the condition relates to planning objectives and it is within the scope of the permission to which it is to be attached. Matters solely governed by non-planning legislation would fail the above test.

**14.5.23** The 'before' survey (condition 5) and the 'after' survey (condition 6) are only relevant to planning in combination with their counterpart surveys and the restoration of damages because it is only then that they serve the interests of highway safety. However, as discussed in the previous paragraph, improving highway safety and the upkeep of the highway are responsibilities of ECC Highways as their link to the development in context is somewhat tenuous. In the words of the Highway Authority, s59 of the Highways Act 1980 allows the Highway Authority to recover costs for damage caused by the 'extraordinary traffic' associated with development construction traffic. Therefore, conditions 5 and 6 are somewhat tenuous in their link to the development, and as such, the conditions fail to establish their direct relevance to planning.

**14.5.24** In addition, the ‘repair work’ required by condition 6 for the passage of vehicles before commencement of the construction is also governed by other legislation (ie Highways Act – s278 and s59 and the Highway Authority has a duty to maintain under s41) and thus the failure to link the requirements of conditions 5 and to the development would fall outside the scope of planning.

**Relevant to the development permitted:**

**14.5.25** The question is whether the conditions fairly and reasonably relate to the development permitted by reason of the nature or impact of this specific development.

**14.5.26** The ‘repair work’ before construction begins (condition 5) is not relevant to the development permitted because the erection of the dwellings has nothing to do with the current condition of the highway. A condition cannot be imposed to remedy a pre-existing problem not created by the development permitted.

**14.5.27** Most importantly, the LPA cannot reasonably require from the developer repair works on the highway if the repair works cannot be specifically tied to the traffic associated only with this development. There is no effective traffic survey or monitoring that would be able to effectively apportion damages to the highway from the development of the construction of the development because other users (including existing neighbouring occupiers, visitors, delivery drivers, or possible construction vehicles for other developments in the area) would still use the lane at the same time as the construction.

**14.5.28** ECC Highways advised (October 2022) there is only one available route for the construction traffic and that the narrow road is not built to accommodate such construction traffic and therefore an objection is raised. Notwithstanding this, the afore-mentioned lack of mechanism to accurately attribute specific damages solely to this specific development due to the cumulative impacts of developments in the area and the use of the highway by other users, makes conditions 5 and 6 irrelevant to the development permitted.

**14.5.30** It is noted the while the location of the development site may not currently include any nearby construction development this may make the identification and apportionment of damage more reliable. However, this is not enough to escape ambiguity as per to what damages can be specifically attributed to the development in question.

**Enforceable**

**14.5.31** The question is whether it is practically possible for the LPA to detect non-implementation or remedy any breach of the conditions.

- 14.5.32** In the previous test, it was concluded that there is no mechanism to accurately attribute specific damages solely to the development due to the cumulative impacts of developments in the area and the use of the highway by other users. As this task is impossible, there is no policy or legal basis on which the LPA can oblige the developer to carry out repairs before starting the construction (condition 5) or after completion of the development (condition 6).
- 14.5.33** In addition, conditions 5 and 6 have not been consistently applied to all other developments in the area. The position of ECC Highways has been changed from providing no comments (UTT/16/0782/FUL) to even not objecting to the removal of the conditions (UTT/16/3663/FUL) that were originally recommended by them when consulted for UTT/16/0786/DFO (See Table in paragraph **14.1.5**).

#### **Precise**

- 14.5.34** The question is whether the condition is worded in a way that makes it clear to the applicant what must be done and when to comply with it.
- 14.5.35** Condition 5 states 'any repair work' instead of, for example, 'all repair work identified in the survey', plus it refers to 'repair work necessary to facilitate the passage' and not, for example, 'repair work necessary to offset damages caused by the development'. Condition 6 states a 'further comprehensive survey', instead of, for example, a 'further comprehensive condition survey', plus it refers to 'any identified damage/repair work' instead of being more precise in saying, for example, 'all identified damage/repair work arising from the development permitted'. It also states, 'any repair work' instead of, for example, 'all repair work identified in the survey'. Therefore, conditions 5 and 6 are not precise by reason of the wrong choice of words and their vagueness.
- 14.5.36** Again, ECC Highways (Oct 2022) state 'although the applicant proposes to use smaller delivery vehicles, this is not enough to alleviate our concerns and cannot guarantee no damage to the highway, a before and after survey will safeguard the current structures against potential damage caused by the development'. However, it is considered this is not enough to escape ambiguity as per to what damages can be specifically attributed to the development in question. The practical difficulty and subjectivity in attributing specific damages caused by the approved development, for the reasons explained above is a failure of the preciseness test.

#### **Reasonable in all other respects**

- 14.5.37** The question is whether the condition is reasonable in terms of not placing unjustifiable and disproportionate burdens on the applicant.
- 14.5.38** Notwithstanding the intention behind the use of conditions 5 and 6, it would not be justifiable or proportionate to require such repairs if they



cannot be specifically tied to the developer and the construction traffic associated only with this development for the reasons elaborated above.

**14.5.39** It is not reasonable for the LPA to require from the developer to do 'repair work' as that fails the tests set out in paragraph 56 of the NPPF and would not be reasonable in any event. More specifically, the principle of taking into account a matter which ought not to be taken into account for decision-making and improvements to highway safety that fall outside the scope of planning.

**14.5.40** It is also reasonable to ask the developer to do the 'after' survey any time after the completion of the development and at the same time require the repair works to be carried out within 3 months from completion of the development. The time restrictions conflict with each other.

## **15. ADDITIONAL DUTIES**

### **15.1 Public Sector Equalities Duties**

**15.1.1** The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers.

**15.1.2** The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**15.1.3** Due consideration has been made to The Equality Act 2010 during the assessment of the planning application, no conflicts are raised

### **15.2 Human Rights**

**15.2.1** There may be implications under Article 1 (protection of property) and Article 8 (right to respect for private and family life) of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions; however, these issues have been taken into account in the determination of this application

## **16. CONCLUSION**

**16.1** Overall, there is no material change in circumstances in comparison to those of the other applications to remove such conditions, and the previous LPA decisions must be attributed significant weight. Therefore, on this occasion, for the reasons of consistency in decision-making and after considering the application on its own merits. Taking into consideration the details in the preceding paragraphs, it is recommended that conditions 5 and 6 should be removed from UTT/16/2865/OP as they fail to meet the tests of paragraph 56 of the NPPF.

**17. Conditions**

**1** Deleted.

**2** Deleted.

**3** Deleted

**4** Prior to occupation of any dwelling, the carriageway shall be widened into the application site as shown in principle on Proposed Site Layout Drawing No.102, details of which shall be first submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority prior to commencement of development. The approved scheme shall be carried out in its entirety prior to occupation of any dwelling and shall be maintained at all times.

REASON: In the interests of highway safety and accessibility in accordance with ULP Policy GEN1 of the Uttlesford Local Plan (adopted 2005). The use of such pre-commencement condition is justified to ensure the highway requirements are in place prior to the occupation of the development.

**5** Deleted.

**6** Deleted.

**7** The development hereby permitted shall be carried out in accordance with the approved flood risk assessment 'Site Specific Flood Risk Assessment, Water Lane, Stansted Mountfitchet. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.

REASON: To prevent flooding on site and elsewhere by ensuring that compensatory storage of flood water is provided in accordance with ULP Policy GEN3 of the Uttlesford Local Plan (adopted 2005).

**8** Finished floor levels shall be set no lower than 66.68m AOD.  
REASON: To protect the development from flooding in accordance with ULP Policy GEN3 of the Uttlesford Local Plan (adopted 2005)

**9** Deleted (removed under previously approved application UTT/21/0905/FUL)

**10** The development hereby approved shall be completed in full accordance with the programme of archaeological work details submitted and approved under discharge of conditions application UTT/1992/DOC approved 7/12/2021, unless written permission is given by the planning authority.

REASON: The Essex Historic Environment Record shows that the proposed development lies on the site of a post-medieval gas works (EHER 40422). The gas works is recorded as being constructed in the middle of the 19th century with two gas cylinders being recorded on the site by the late 19th century. The site also lies to the west of the Scheduled Motte and Bailey Castle which would have had an associated settlement, probably in the area around Station Road and Water Lane. To the north of the Water Lane site animal bones of cattle have been recorded, although their date is unknown (HER 18552). In accordance with ENV4 of the of the Uttlesford Local Plan (adopted 2005).

**11** The development hereby approved shall be completed in full accordance with the landscape and ecological management plan submitted and approved under discharge of conditions application UTT/19/2655/DOC approved 26/8/2020, unless written permission is given by the planning authority.

REASON: To make appropriate provision for conserving and enhancing the natural environment within the approved development, in the interest of biodiversity and in accordance with ULP Policy GEN7.

**12** The development hereby approved shall be completed in full accordance with the contamination assessment submitted and approved under discharge of conditions application UTT/19/2655/DOC approved 26/8/2020, unless written permission is given by the planning authority.

REASON: To ensure that the approved development is not harmful to human health or other receptors in accordance with ULP Policy ENV14 of the Uttlesford Local Plan (adopted 2005).

**13** The development hereby approved shall be completed in full accordance with the remediation scheme submitted and approved under discharge of conditions application UTT/19/2655/DOC approved 26/8/2020, unless written permission is given by the planning authority.

REASON: To ensure that the approved development is not harmful to human health or other receptors in accordance with ULP Policy ENV14 of the Uttlesford Local Plan (adopted 2005).

**14** The development hereby approved shall be completed in full accordance with the contamination validation report submitted and

approved under discharge of conditions application UTT/19/2655/DOC approved 26/8/2020, unless written permission is given by the planning authority.

REASON: To ensure that the approved development is not harmful to human health or other receptors in accordance with ULP Policy ENV14 of the Uttlesford Local Plan (adopted 2005).

- 15** In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority and work halted on the part of the site affected by the unexpected contamination.

An assessment must be undertaken 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 above.

REASON: To ensure that the approved development is not harmful to human health or other receptors in accordance with ULP Policy ENV14 of the Uttlesford Local Plan (adopted 2005).

- 16** The development hereby approved shall be constructed in full accordance with the noise report submitted and approved under discharge of conditions application UTT/19/2655/DOC approved 26/8/2020, unless written permission is given by the planning authority.

REASON: To ensure that the approved development is not impacted by noise disturbance in relation to the site and nearby railway in accordance with ULP Policy ENV10 of the Uttlesford Local Plan (adopted 2005).

## Appendix 1- Highway Authority

Date: 14 October 2022 11:04:05

---

UTT/22/2568/FUL | Removal of conditions 5 (pre-commencement condition survey of Water Lane) and 6 (post-completion condition survey of Water Lane) attached to planning permission UTT/16/2865/OP for the erection of up to ten dwellings | Land North Of Water Lane Stansted Essex

Dear Chris,

The Highway Authority objects to the removal of conditions 5 (pre-commencement condition survey of Water Lane) and condition 6 (post-completion condition survey of Water Lane) attached to planning permission UTT/16/2865/OP.

Water Lane is a single track access road of limited restrictive width, making the above requested surveys important. There is only one available route for the construction traffic which is over the bridge on Water Lane and through a narrow road not built to accommodate such construction vehicles.

Although we appreciate the applicant's proposal of use of smaller vehicles, this is not enough to alleviate our concerns and cannot guarantee no damage to the Highway.

A before and after survey will safeguard the current structure against any potential damage caused by the proposed development and will ensure that the public is not burdened with unnecessary costs caused by third party development.

Kind regards

**Eirini Spyratou | Strategic Development Officer**

**Essex**  
**Highways**

**SAFER GREENER HEALTHIER**

E: [eirini.spyratou@essex.gov.uk](mailto:eirini.spyratou@essex.gov.uk)

W: [www.essex.gov.uk/highways](http://www.essex.gov.uk/highways)