

### Late List –Planning Committee 27/09/2023

This document contains late items received up to and including the end of business on the Friday before Planning Committee. The late list is circulated and placed on the website by 5.00pm on the Monday prior to Planning Committee. This is a public document and it is published with the agenda papers on the UDC website.

Item Number	Application reference number	Comment
4.	Application Designation Data	<p>Section 6 – Apr 2022 – Mar 2024. An error collating the data. It should read:                      All Major Decisions – 65                      Refusals – 20                      Appeals – 10                      Dismissed – 2                      Allowed – 1                      Pending – 7                      Result – 1.54%</p> <p>Section 8. Shown that there are 9 pending Major appeals – subsequent to this report being written UTT/22/0391/OP was dismissed. Therefore, there are only 8 pending.</p>
6	UTT/22/2278/FUL – Land to North of Cornells Lane	The full comments from ECC Highways were not appended in the committee report and are shown below:

Your Ref: UTT/22/2278/FUL  
Our Ref: 31597  
Date: 28<sup>th</sup> September 2022



CC: (by email) *DM, SMO2, Chelmsford*  
*Cllr Ray Gooding*  
*PROW, Chelmsford*

Andrew Cook  
Director for Highways  
and Transportation

To: Uttlesford District Council  
Assistant Director Planning & Building Control  
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SAFFRON WALDEN CB11 4ER

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### Recommendation

Application No. UTT/22/2278/FUL  
Applicant Mr and Mrs M. Tee  
Site Location Land to The North of Cornells Lane Widdington CB11 3SG  
Proposal Proposed erection of 4 no. detached dwellings and associated works

**From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority, subject to the following measures:**

1. Prior to occupation of the development, the access at its centre line shall be provided with visibility splays of 2.4 metres by 43 metres, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction above 600mm 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.
2. Prior to the first occupation of the development the access arrangements, vehicle parking and turning areas as shown in principle on DWG no. P5004-10.Rev. C (Title – Proposed Site Layout Plan) shall be provided. The access, parking and turning areas shall be retained in perpetuity for their intended purpose. **Reason:** To ensure that appropriate access, parking and turning is provided.
3. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary. **Reason:** To avoid displacement of loose material onto the highway in the interests of highway safety.
4. The gradient of the proposed vehicular access shall be not steeper than 4% (1 in 25) for the first 6 metres from the highway boundary and not steeper than 8% (1 in 12.5) thereafter. **Reason:** To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety to ensure accordance with safety.
5. 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.


6. The existing vehicular access (adjacent to dwelling 'The White Cottage') shall be suitably and permanently closed to vehicles incorporating the reinstatement to full height of the highway verge / footway / kerbing immediately as the proposed new access is brought into first beneficial use, with the provision of a pedestrian access into the development site provided. **Reason:** To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety.

7. The width of public footpath no. 17 (Widdington) must be retained at a minimum of 1.5 metres, and any proposed planting must be set back a minimum of 2 metres from the width of the footpath. **Reason:** To ensure the definitive line and width of the public footpath is retained, in the interest of accessibility.

**The above conditions are required to ensure that the development accords with the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 and Uttlesford Local Plan Policy GEN1.**

Informative:

- i. All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Springfield Highways Depot, Colchester Road, Chelmsford, Essex, CM2 5PU.
- ii. There shall be no discharge of surface water onto the Highway.
- iii. Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence. Therefore, the applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway.
- iv. Prior to any works taking place in public highway or areas to become public highway the developer shall enter into an appropriate legal agreement to regulate the construction of the highway works. This will include the submission of detailed engineering drawings for approval and safety audit.
- v. Any signal equipment, structures and non-standard materials proposed within the existing extent of the public highway or areas to be offered to the Highway Authority for adoption as public highway, will require a contribution (commuted sum) to cover the cost of future maintenance.
- vi. Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site. No vehicles associated with the development shall affect the ease of passage along the PROW.

		<p>vii. The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PROW is considered to be a breach of this legislation. The public's rights and ease of passage over public footpath no. 17 (Widdington) shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.</p> <p>The grant of planning permission does not automatically allow development to commence. In the event of works affecting the highway, none shall be permitted to commence until such time as they have been fully agreed with this Authority. In the interests of highway user safety this may involve the applicant requesting a temporary closure of the definitive route using powers included in the aforementioned Act. All costs associated with this shall be borne by the applicant and any damage caused to the route shall be rectified by the applicant within the timescale of the closure.</p> <p><u>Note:</u> The location of the site is such that access to key facilities, public transport, employment and leisure opportunities is limited and for the vast majority of journeys the only practical option would be the car. This should be taken into consideration by the Planning Authority when assessing the overall sustainability and acceptability of the site.</p> <p style="text-align: center;"></p> <p style="text-align: center;">pp. Director for Highways and Transportation Enquiries to Eirini Spyralou Email: <a href="mailto:eirini.spyralou@essex.gov.uk">eirini.spyralou@essex.gov.uk</a></p>
		<p>Paragraph 6.1 of the committee report: application UTT/23/1918/CLP has been refused on 22 September 2023.</p>
		<p>We have received 3 no. additional representation letters, raising similar issues to those already reported but also querying how many times a planning application has been submitted for this site.</p>
		<p>The applicant's legal representative has submitted detailed comments on the published officer report. This is reproduced in full within this addendum report. It suggests significant changes or a withdrawal be made to the officer report.</p> <p>In response officers consider it helpful to clarify information contained within the officer report.</p> <p>14.4.20 of the report identifies harms to designated heritage assets. These harms are each 'less than substantial' but are given considerable weight. These are weighed against the public benefits of the</p>

		<p>proposal which are also set out at 14.4.20. The public benefits of the scheme are not considered to outweigh the identified harms. The proposal fails the test set out in para196 of the NPPF.</p> <p>The letter received is as follows:</p>
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By email only: [dhermitage@uttlesford.gov.uk](mailto:dhermitage@uttlesford.gov.uk)

Your ref 22/2278/FUL and 22/3191/FUL  
Our ref MJH/TEE&TEE 272633.0001  
Date 20 September 2023

Dear Mr Hermitage (Ms Nwanze)

**UTT/22/2278/FUL and UTT/22/3191/FUL – Proposed 4 No detached dwellings on land north of Cornells Lane Widdington etc**  
**My clients: Dr and Mrs Tee**

I write regarding the agenda reports for the planning applications UTT/22/2278/FUL and UTT/22/3191/FUL, due to be determined at the 27 September Planning Committee.

Firstly, my clients are enormously disappointed with the recommendations given the clear support that officers gave for this application in October 2022 and indeed for a larger scheme in March 2022. The key professional advice contained within the Officer Reports bears little resemblance to that previously given to Members.

Secondly, my clients do wish to both retain a constructive working relationship with the council but also avoid further costly (and stressful) proceedings that any party may bring against Members' decision. To this end, the following comments are offered on the officer reports, which I – on behalf of my clients and their agent - suggest are addressed and are incorporated in a replacement full new report (or otherwise an addendum report).

#### Report on UTT/22/22678/FUL

1. At Para 1.2, the OR does not pick out the salient points of the JR. This is vital to Members' consideration.
2. At Para 1.2 the OR does not explain that the Planning Committee resolution was following officer recommendation for approval. It is important to set out why officers recommended approval (ie

Partners: Mark Cornell, Jason Brady, Rebecca Mason, Steven Hopkins, Carol Toulson, Samuel Bowden, Philip Davies (non lawyer), Rodley Livingstone, Michael Hamman, Beth Greg, Rachel Shaw, Lawrence Pearce  
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		<p>changes to scheme, access fallback, tilted balance) and why they are no longer doing so. This will assist members in understanding issues of consistency (or otherwise). Indeed, case law on consistency confirms that if a decision-maker is to depart from a previous decision then they are to explain their (rational/lawful) reasons for doing so.</p> <ol style="list-style-type: none"> <li>3. At para 1.3, the Officer Report (OR) does not explain the reasons why the appeal for UTT/21/2137/FUL was withdrawn. One of the two reasons was because the LPA served a Provisional TPO after the appeal hearing. This concerns all trees at the site frontage along Cornells Lane and had the effect of colouring the permitted development access 'fallback'. The OR should explain that TPO was requested by a resident who is a councillor for Widdington Parish Council (WPC), WPC itself and two UDC Members, one of whom is on Planning Committee, with a third UDC member (also on Planning Committee) being involved in correspondence on this matter. It should be noted that that the TPO was served against the recommendation of the council's landscape officer, who was asked by a Senior Member to reconsider his professional advice. The second reason the appeal was withdrawn was because the High Court had (after the appeal hearing) granted leave to appeal to Widdington Parish Council (WPC) which affected the weight of the planning permission which was relied upon during the hearing. The appellants asked the inspector to await the outcome of WPC's application to High Court for a Judicial Review (JR) but they were not agreeable to do so. Such delay would have also allowed time to my clients to address the Provisional TPO. More recently it can be explained that the LPA, I understand, took the conscious decision to let the Provisional TPO lapse (after the 6 month period). It is clear that there were actions involving politicians to affect planning matters at this site and that affected my clients decision to withdraw the planning appeal. This information, including the vows of secrecy between instigators/officers whilst my clients were not approached for comment, is available from FOI information. It is all highly unusual and undermines the development control system.</li> <li>4. At Para 1.3, the OR does not explain that the decision made by Planning Committee on UTT/21/2137/FUL was contrary to the recommendation for approval by officers; including the key reasons why they recommended approval. At this stage there was no Certificate of Lawfulness for a Means of Access. Officers adopted the tilted balance which they are no longer doing. Again there is an issue of consistency and an absence of explanation why previous decisions are now being departed from.</li> <li>5. At Para 1.5 the OR is misleading. It indicates that 3 reasons for refusal should be demonstrated as being satisfactorily addressed. This takes no account of the potential for the LPA to positively consider the application, on either the flat or tilted balance, where only one or two of the three reasons have been addressed, or some or all partially. This is particularly so where the Tilted Balance applies, which allows for a degree of harm in its assessment. Again Members must be correctly advised of this test and that it is open to them to employ the Tilted Balance as the Planning Committee had done on this and the previous application before.</li> <li>6. At Para 1.6, it should be explicitly advised that the Certificate of Lawfulness and the access fallback <u>also</u> provides a response to the previous refusal.</li> <li>7. At Para 1.9, it should be made clear that Policy ENV9 is of reduced weight according to Inspectors and inconsistent with the NPPF. The OR should clarify how to apply such reduced weight.</li> <li>8. At Para 1.12, it is not clear under what policy provisions this assessment is being made. The assessment appears to factor in both designated and non-designated heritage assets against public benefits. This is an incorrect test under NPPF provisions. The OR conflates different policy assessments. This is a fundamental flaw.</li> </ol>
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9. At Para 1.13 the OR refers to the 'location factors of the site' not having materially changed. It is not clear how site location factors can alter and this point needs to be clarified to Members as to its meaning.
10. At Para 3.1 the Report is incorrect. The public footpath to the east does not lie to the eastern boundary. The site is separated by a narrow strip of land before the footpath which is demarcated by a 1.8m fence, which prevents public views towards the site at this point. The OR refers to *the site* offering views in to the village. There are no views available to *the public* from *within* the site (where owned by the applicants) as it is entirely private. In fact, it is a benefit that such views will be created for all users by the proposals. Furthermore the views towards the built up part of the village from this currently private land are limited/restricted but are all towards housing lying along Cornells Lane, High Street and (where land rises again) at Hamel Way, reinforcing the appropriateness in location terms for this housing scheme.
11. At Para 3.2 the OR is highly misleading. It states "the majority" of the Site 'abuts' the Widdington Conservation Area (WCA). Members should be properly appraised of the position, especially in the light of the JR where WPC claimed (unsuccessfully) that the location of the WCA had not been properly identified. The OR effectively infers that the proposed development is in close proximity (ie abutting) the WCA. This is inaccurate. I suggest that actual distances from the proposed dwellings to the WCA are cited in the OR and annotated on presentation plans to Planning Committee. Similar observations apply to listed buildings, also noting any intervening planting, so the Planning Committee can properly understand their relationships in spatial terms to the built development (which will assist an understanding of potential heritage impacts).
12. At Para 4.1 the report should clarify that the proposed footpath will re-use the existing track to the south-west. The track access would be closed to vehicles, representing a 'benefit' to highway safety, given the current access specifications/alignment. The footpath proposed would then run along the southern part of the site to link - beyond the site (but in ownership of the applicants) - to the public footpath further east. The footpath proposed is not to be a 'public' footway but permissive.
13. At Para 4.3, a more balanced report would set out the range of changes made in this scheme.
14. At Para 4.4, the details of the proposal are woefully lacking. In particular, there is no reference (even briefly) to the arguments in support of the case or even any reference to the various consultant statements/reports produced. This would be helpful to adding an understanding that the application is comprehensively made and professionally informed.
15. At Para 6.1 the table is misleading because it suggests that *the site* has been subject of schemes for 15 and 20 dwellings, which it only formed part of - i.e. the land that is the subject of this application is much lesser than that for the 15 and 20 unit schemes.
16. At Para 7.1 it wrongly states no pre-application advice has been sought. There is no reference to the pre-application advice received from UDC which was paid for, where officers indicated there would be scope for development for a 4 unit scheme. It is that advice which led to applications being made and it is completely remiss to omit this important part of the history. Indeed without some encouragement by the council arising from the advice given, applications might not have followed. I will note here that the Applicants and their agents have at all time sought to work with the Council to avoid errors being made
17. At Para 8.1.1, the Highway Authority response is not provided at Appendix 1. The OR does not clarify that ECC Highways did not object previously.



		<p>18. At Para 9.1, WPC refer to an 'estate road'. The scheme is a 'private drive'. The OR should clarify the type of arrangement accordingly.</p> <p>19. At Para 10.2 the OR should set out the previous conflicting comments made by the Landscape Officer which are a matter of public record for this/previous application. His latest assessment of harm to the lane has changed without reasoning to do so and as such the advice is inconsistent, indeed confusing. It is remiss of the OR not to fully provide Members with the two sets of conflicting comments so they can take a view on this matter, particularly where there has been no change in circumstances. In addition there are numerous other concerns with this consultation response set out at 10.2.1 -10.2.10 which have not been fully addressed. Please refer to Mr Loon's email (12/9/23) which comments on the Landscape Officer's latest response, following which I invite you to update members accordingly.</p> <p>20. At Para 10.3 (Paras 10.3.1 – 10.3.10) the Heritage consultee makes various comments. Again his previous comments (4/10/22) on this application were different and so Members should also be appraised of these. A particular concern is the change in comment regarding compliance with NPPF Para 206. There is no reason given for the change, indeed no assessment at all. Please see Mr Loon's email (13/9/23) and bring these concerns to the attention of Planning Committee. It is important that they are aware of the yo-yoing opinions of this consultee, where there has been no change in circumstances.</p> <p>21. At Para 10.4, the full text of Place Services Ecology is not given. Importantly they confirm "support" for reasonable biodiversity enhancements (ie not just mitigation). There is also no reference in the OR to the ecology updated information submitted.</p> <p>22. At Paras 14.3.1/14.3.2, the OR does not advise members regarding the reduced weight of Policy S7 and its incompatibility with the NPPF. This is a key omission given the recommendation for refusal cites policy S7.</p> <p>22. At Para 14.3.3 the OR states a Presumption in Favour of Development but elsewhere conflicts with this assessment. The OR is highly confusing as to the policy tests.</p> <p>23. At Para 14.3.5/14.3.6, the OR does not comment on the local bus ie 32 buses a day, twice hourly (N/S), 6 days a week. Also that from Newport, Audley End and Bishops Stortford stations which it connects to, the linking train serves nearby Stansted Airport, one of the largest employers in Essex. It should also be noted that the service is secure, following a recent consultation by Essex CC which recommends 'no change'.</p> <p>24. At Para 14.3.7, the OR skips across the recent appeal which was withdrawn. It fails to mention that UDC did not defend this appeal. Whilst this may have been due to the grant of permission in October 2022, it is clear that the LPA has publicly agreed various matters/policies when signing the Statement of Common Ground Dec 2022. This should be advised to Planning Committee as it sets out the Council's hitherto most public assessment. The various relevant elements in that document must be reported so that your authority is clear on what position it has already taken, when deciding if to 'change its mind'. The Committee should also be advised of the consequences of making inconsistent decisions. I refer you to Mr Loon's email (06/09/23) and invite you to act accordingly.</p> <p>25. Also at Para 14.3.7, the OR does not factor in the reduced weight of Policy S7 in to the assessment, nor advise members how to do this.</p>
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25. At Para 14.4.1, the OR identifies the site as "at an elevated ground level compared to much of the village". This is misleading. The site gradually rises eastwards. Also the context is not described in that housing to the south (eg Weft House/Cornells Lane) lies at a similar level, that housing to the north eg Church Lane/Church View lies at an elevated level, as does housing at Hamel Way. This is how the village has evolved over time and this material context is important to an informed Member assessment.

26. Regarding character, appearance and heritage at Para 14.4.2 onwards the OR makes a different assessments to the OR in October 2022 or has errors of fact and incomplete analysis.

- At that time the OR recognised the inspector's concerns about the 20 unit scheme i.e. not linear, estate development, their scale. The application positively responded to those and the OR recognised the same especially that the scheme was compatible with 20th Century, piecemeal, evolved linear approach of development along Cornells Lane. Differing assessments are now made, stating non compliance with the High Street (ie not Cornells Lane) linear form which is now said to weigh against the scheme.
- The OR incorrectly states this would be the only housing on the north side of Cornells Lane, despite White Cottage and Corner Cottage fronting that lane. This is an error of fact and misleading.
- Existing/proposed landscaping was noted as mitigation previously but now the OR says it doesn't 'sufficiently mitigate'
- The OR refers to views from the Conservation Area in to the site. These are extremely limited and currently include views of ugly electrical apparatus proposed for removal
- The OT states the development would impact the setting and appearance of the Conservation Area but does not quantify this impacts of how harmful it would be (and how). The OR does not advise of the LPA's latest SOCG position as presented to PINS (Dec 2022) which agreed a very low level of LTSH to the WCA. Also, there is no assessment of design of development 'within' the WCA (under Policy ENV1) which forms a negligible part of the site. The only proposals 'within' the WCA is to improve its appearance. The OR is silent on this yet concludes the development should be refused based on Policy ENV1. The remit of ENV1 must be set out to Members fully (ie it does not apply to the vast majority of the site).
- There is no clear assessment against NPPF Para 206.
- The OR states that there will be harm to the setting of listed buildings, again not stating exactly how this harm is derived in the case of each building and at what level. This is particularly concerning given the outcome of the JR and the Judge's criticisms of the council's analysis. Again the LPA's latest position in the SOCG (Dec 2022) agreed no harm to any listed buildings for the similar scheme.
- The landscape officer's inconsistent comments regarding harm to the protected lane and not given. This is unfair and incomplete
- There is no reference to the applicant's expert Heritage Statement (or the various other heritage information submitted) to give a balanced view on heritage,

27. At 14.4.13, the OR gives 'negligible' weight to the Access Fallback. This contrasts with the 'Significant Weight' of the fallback which Mr Brown advised to the Committee in October 2022 but the Courts criticised officers for not providing advice as to how that conclusion was reached. At Para 50 the Judgment states *Mr Brown did not make it clear that the LDC was linked to the use of the Site for the purpose of a market. Consequently, members were not encouraged to grapple with the issue concerning how likely the market was to occur. This was a key controversial issue given SWTC's position and the representations made by WPC as to the viability of an elaborate access to support a smaller charity market (given the evidence of the cost of putting in the access was in the region of £50,000 - £100,000).* I now look - in the light of the Judgement - how the OR assesses the fallback. Para 14.4.13

states “based on third party evidence and a general assessment of the likelihood of a permitted event(s) to be held on the site which would prompt such an access to be constructed under the provisions of the GPDO, officers consider it is not a likely prospect. Accordingly, officers give negligible weight to the fallback”. The LPA makes the same mistake again as at October 2022. The OR does not provide Members with any detail (as the Judgment states) on “how to grapple” with fallback issues. There is no assessment of the information that the applicants have submitted and why it is claimed the fallback exists and is of significant weight and how it addresses ‘third party evidence’ which the OR refers to (but does not flesh out). The information regarding the officer’s ‘general assessment’ is completely silent, so nobody has an idea (including Members, objectors, applicants) how the conclusions are reached. Quite clearly the OR does not give the information that Members will need to assess the matter. On what is quite clearly an important issue to this case, particularly in light of the JR decision, this omission must be comprehensively rectified.

28. I will add here that the fallbacks are more than just the “Market CLOPUD” – there is the pending Certificate of Lawfulness application (23/1918/CLP) but also a general fallback arising under the Permitted Development regime. In short, Members will need to be appraised of the decision in 23/1918/CLP but also that the GPDO provides other possible fallbacks – being relevant to the “possibility” of a fallback arising (especially in circumstances where the Applicants have applied for 2x Certificates and have openly stated their clear intention to provide a PD access).
29. There is an internal contradiction in the fallback advice regardless. The OR acknowledges that it has some (‘negligible’) weight but then states this gives rise to ‘no change’ in the circumstances regarding the proposal. These conflicting matters must be remedied to properly advise Members.
30. At Para 14.4.13, the Protected Lane assessment in the OR is defective. It is a NDHA and therefore the advice of the heritage adviser is required, to be balanced against the applicant’s heritage consultant. Instead the OR refers to the (self-conflicting) opinion of the Landscape Officer (not a heritage professional). It also omits to mention the assessment in the previous OR and SOCG. All heritage and planning professionals attribute low level harm to the Protected Lane. The Report does not make this clear. Nor does it make plain that the level of less than substantial harm (‘LTSH’) to the lane was not advised by the heritage consultee as a ‘low’ level of LTSH in UTT/22/2137/FUL and, as such, the advice to UDC from its statutory consultee has changed. Again, this is material to the decision-making process – being informative to the Council’s earlier decision to grant permission in UTT/22/2278/FUL.
31. At Para 14.4.18, the OR does not refer to the level of LTSH (ie whether negligible, very low, low, moderate, high, very high) and so Members will not understand the overall level of LTSH when making the assessment under NPPF Para 202.
32. At Para 14.4.20, there are erroneous assessments. As just one example, the LPA should consider that Martin’s Farm is not visible from the site (a review of the applicant’s expert Heritage Statement may assist, as will the SOCG).
33. At Para 14.4.21, this is termed the ‘balancing exercise’. It is clear from Paras 14.4.9. and 14.4.20 that the NPPF 202 test is to be undertaken and a comparison is made of heritage issues and public benefits (regardless of the adequacy of those details). However, at 14.4.21 the Balancing Exercise seems to focus solely on heritage and not the wider planning balance (whether based on the flat or tilted balance). This section of the OR needs to make clear what it is assessing. This is because the effect of the OR’s conclusion is to argue there is a ‘clear reason’ for disengaging the tilted balance and then recommending refusal on (very unconvincing) heritage grounds. Even this had any justification, the OR must then properly set out the full planning balance, including all material considerations, which it fails to do.

34. At Para 14.4.21 the OR pays no attention to the most recent housing supply position (March 2023, superseding the LPA's position) where successfully challenged at appeal (and not contested by the LPA). There is no reference to the extent of housing deficit established by that appeal decision ie c 700 dwellings, nor reference to the time which the council has been without 5YHLS. The Courts have determined these are material considerations yet there is no assessment of this in relation to quantifying the weight of housing benefit. Indeed, the previous OR for UTT/22/2278/FUL (Oct 2022) advised members that "As the Council is currently unable to demonstrate a 5 YHLS, increased weight should be given to housing delivery..". There is no similar assessment by the LPA now. Rather, at Para 14.4.21, the OR refers to 'limited' weight of housing benefit. Furthermore, it is not clear where this phrase sits in relation to a comparison against the weight of 'low level' LTSH. All the public benefits, not just housing, must be aggregated together so that members can consider what the 'cumulative' weight of these public benefits actually is. The OR is unclear on this but regardless makes the giant leap that public benefits do not outweigh LTSH harm. This defect must be remedied.
35. At Para 14.4.21 the OR refers to a loss of appreciation of the conservation area from the part of the site that is to be developed. Most of the site is not in the WCA and the OR does not state how such loss of appreciation would (or can) occur. This and other comments are new and different to the previous OR assessment.
36. At Para 14.4.21, again the OR fails to refer to the LPA's most recent assessment and conflicts with its most recent public position advised to PINS i.e. there is "no harm" to listed buildings; and "very low harm" to the setting of the WCA (UDC, Dec 2022). There is no justification for taking a different view from these assessments in the absence of changed circumstances. The JR decision advised of errors in (some of) the LPA's heritage assessments. The OR should only concern those which were wrong and address them. The council's official heritage assessment post JR must be fully reported to Members so they can understand the council's potentially conflicted position (and risks associated).
37. At Para 14.4.22, the OR also introduces a new materially misleading test when referring to heritage 'public benefit'. This is not the NPPF 202 test, which only deals with the 'significance' of the designated heritage asset (this being weighed against public benefits). The report is misleading.
38. At Para 14.4.24/14.4.25 – based on the above the OR assessment is flawed.
39. At Para 14.6.1 the OR notes the existing access serves an electricity sub-station. However, there are no such rights.
40. At Para 14.11.3 the OR makes an abrupt conclusion which is erroneous and conflicts with other officer assessments regarding heritage and the tilted balance. The LPA must clearly understand that it refused UTT/21/2137/FUL on the Tilted Balance. The OR ignores this important point. There are no reasons to go against that assessment. Indeed, the LPA's more recent (and accurate) heritage assessments in the SOCG Dec 2022 are helpful to informing the NPPF Para 11(d)(i) assessment but are clearly ignored.
41. In light of all the above, there are serious issues with/within the OR.

Report on UTT/22/3191/FUL

- Corresponding comments also apply to this OR. That OR/paragraph numbering is largely the same except for the Executive Summary at Paras 1.1 to 1.17, which is commented on below

- Please cross refer my comments on the OR paragraphs below with those I make above for the OR for UTT/22/2278/FUL (corresponding paragraph numbers given in brackets below)
- At Para 1.5 re the JR (see Para 1.2)
- At Para 1.6 - re appeal withdrawal (see Para 1.3)
- At Para 1.8 – overcoming reasons (see para 1.5)
- At Para 1.9 – response to RFR (see Para 1.6)
- At Para 1.12 re ENV9 (see Para 1.9)
- At Para 1.15 re policy tests (see Para 1.12)
- At Para 1.16 re location factors (see Para 1.13)

Conclusion

I trust you will review these comments and act accordingly. Namely, as with the previous Officer Report there are issues that have not been addressed and, on behalf of my clients, they do not wish to see further challenges to the Committee decision – I venture that in the circumstances the Council likewise wishes to avoid further proceedings relating to the above applications. You may note the High Court’s view upon the previous Officer Report set out in paras 25 and 39-41 of the Judgment which I copy below:

“25. On 19 October 2022, the IPs’ planning consultant (Mr Loon) emailed the planning officer (Mr Tyler). That email suggested corrections which could be reported to members by a revised report or addendum. It also raised *“two important matters central to the reasonable/robust decision making in this matter and at the Committee next week”*. These are relevant to grounds 1 and 2 below. Mr Loon’s email was a call for action by UDC. He envisaged that UDC would supplement the OR to address what he regarded as important gaps in the analysis.”.


“39. Mr Loon’s email dated 19 October 2022 (on behalf of the IPs) spotted these limitations in the treatment of the fall-back in the OR. The fall-back analysis was one of the *“important matters central to ensuring reasonable/robust decision making”* which he identified needed to be addressed further. He noted that the OR did not:-

- Explain what weight should be ascribed to the fall-back;
- Explain how that weight is to be “derived/evidenced”; or
- Undertake any comparative analysis of impacts.

40. As above, Mr Loon’s email did not facilitate the preparation of an addendum report. Rather the late list simply set out the email as a late representation.

41. In my view members were not given a legally adequate direction in written form on how to approach the contentious issue of the fall-back. That position was essentially accepted by Ms Strachan and Dr Williams subject only to the argument faintly advanced that the publication of the late list plugged the gap. I reject that suggestion because (a) the late list was not presented as advice from officers and (b) Mr Loon’s point was (correctly) to say that further analysis was needed. Merely reproducing his request for that analysis cannot be said in itself to plug the gap in analysis (given the range of competing contentions made in the representations as to how the issues he identified should be approached in the factual circumstances of this case).”

In the circumstances please can you respond as soon as possible confirming what you/the Council will do – i.e. withdraw the flawed report and replace with a new one, or provide an addendum - before 5pm Friday 22 September 2023 please.

		<p>I venture that to withdraw and produce a new report will be "cleaner"/less confusing to Members and the Public at large.</p> <p>Either way, I await your response and fully reserve my clients' rights in respect of both applications pending your response (or failure to respond) <u>by 5pm this Friday</u>.</p> <p>Yours sincerely</p>  <p><b>MIKE J HARMAN</b> For and on behalf of Holmes &amp; Hills LLP</p> <p>Enc(s)</p> <p>CC – Ms F Nwanze (email only) - <a href="mailto:fnwanze@uttlesford.gov.uk">fnwanze@uttlesford.gov.uk</a></p>
		Paragraph 4.1 of committee report: Footpath to the south-west of the site will be closed to vehicles.
7	UTT/22/3191/FUL	The full comments from ECC Highways were not appended in the committee report and are shown below:

Your Ref: UTT/22/3191/FUL  
Our Ref: 31597  
Date: 15<sup>th</sup> February 2023



CC: (by email) *DM, SMO2, Chelmsford*  
*Cllr Ray Gooding*

Paul Crick  
Director for Highways  
and Transportation

To: Uttlesford District Council  
Assistant Director Planning & Building Control  
Council Offices  
London Road  
SAFFRON WALDEN CB11 4ER

County Hall  
Chelmsford  
Essex CM1 1QH

### Recommendation

Application No. UTT/22/3191/FUL  
Applicant Mr and Mrs M. Tee  
Site Location Land to The North of Cornells Lane Widdington CB11 3SG  
Proposal Proposed erection of 4 no. detached dwellings and associated works

**From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority, subject to the following measures:**

1. Prior to occupation of the development, the access at its centre line shall be provided with visibility splays of 2.4 metres by 43 metres, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction above 600mm 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.
2. Prior to the first occupation of the development the access arrangements, vehicle parking and turning areas as shown in principle on DWG no. P5004-10.Rev. D (Title – Proposed Site Layout Plan) shall be provided. The access, parking and turning areas shall be retained in perpetuity for their intended purpose. **Reason:** To ensure that appropriate access, parking and turning is provided.
3. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary. **Reason:** To avoid displacement of loose material onto the highway in the interests of highway safety.
4. The gradient of the proposed vehicular access shall be not steeper than 4% (1 in 25) for the first 6 metres from the highway boundary and not steeper than 8% (1 in 12.5) thereafter. **Reason:** To ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety to ensure accordance with safety.
5. 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.

6. The existing vehicular access (adjacent to dwelling 'The White Cottage') shall be suitably and permanently closed to vehicles incorporating the reinstatement to full height of the highway verge / footway / kerbing immediately as the proposed new access is brought into first beneficial use, with the provision of a pedestrian access into the development site provided. **Reason:** To ensure the removal of and to preclude the creation of unnecessary points of traffic conflict in the highway in the interests of highway safety.
7. The width of public footpath no. 17 (Widdington) must be retained at a minimum of 1.5 metres, and any proposed planting must be set back a minimum of 2 metres from the width of the footpath. **Reason:** To ensure the definitive line and width of the public footpath is retained, in the interest of accessibility.

**The above conditions are required to ensure that the development accords with the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011 and Uttlesford Local Plan Policy GEN1.**

Informative:

- i. All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works. The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to Essex Highways, Springfield Highways Depot, Colchester Road, Chelmsford, Essex, CM2 5PU.
- ii. There shall be no discharge of surface water onto the Highway.
- iii. Under Section 148 of the Highways Act 1980 it is an offence to deposit mud, detritus etc. on the highway. In addition, under Section 161 any person, depositing anything on a highway which results in a user of the highway being injured or endangered is guilty of an offence. Therefore, the applicant must ensure that no mud or detritus is taken onto the highway, such measures include provision of wheel cleaning facilities and sweeping/cleaning of the highway.
- iv. Prior to any works taking place in public highway or areas to become public highway the developer shall enter into an appropriate legal agreement to regulate the construction of the highway works. This will include the submission of detailed engineering drawings for approval and safety audit.
- v. Any signal equipment, structures and non-standard materials proposed within the existing extent of the public highway or areas to be offered to the Highway Authority for adoption as public highway, will require a contribution (commuted sum) to cover the cost of future maintenance.
- vi. Steps should be taken to ensure that the Developer provides sufficient turning and off-loading facilities for delivery and site worker vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site. No vehicles associated with the development shall affect the ease of passage along the PROW.



		Paragraph 6.1 of the committee report: application UTT/23/1918/CLP has been refused on 22 September 2023.
		The applicant's legal representative has submitted detailed comments on the published officer report. This is reproduced in full within this addendum report. It suggests significant changes or a withdrawal be made to the officer report. The letter received is included above under UTT/22/2278/FUL.
		Paragraph 4.1 of committee report: Footpath to the south-west of the site will be closed to vehicles.

Note – The purpose of this list is to draw Members attention to any late changes to the officer report or late letters/comments/representations. Representations are not reproduced in full they are summarized

Late items from **STATUTORY CONSULTEES** are reproduced in full.