

LPA's APPEAL STATEMENT OF CASE

**LAND SOUTH OF (EAST OF GRIFFIN PLACE),
RADWINTER ROAD, SEWARDS END, GREAT
DUNMOW, SAFFRON WALDEN, ESSEX,
CB10 2NP**

**PUBLIC INQUIRY SCHEDULED FOR
6 SEPTEMBER 2022**

**OUTLINE APPLICATION FOR THE ERECTION OF UP TO 233 RESIDENTIAL
DWELLINGS INCLUDING AFFORDABLE HOUSING, WITH PUBLIC OPEN SPACE,
LANDSCAPING, SUSTAINABLE DRAINAGE SYSTEM (sUDs) AND ASSOCIATED
WORKS, WITH VEHICULAR ACCESS POINT FROM RADWINTER ROAD. ALL
MATTERS RESERVED EXCEPT FOR MEANS OF ACCESS (UTT/21/2509/OP)**

**SUBMITTED ON BEHALF OF UTTLESFORD DISTRICT COUNCIL BY TIM DAWES
MRTPI (PLANNING DIRECTOR FOR PLANIT CONSULTING)**

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1. Introduction

- 1.1 This statement is provided on behalf of Uttlesford District Council ('the Council') following their Planning Committee resolution (at the Thursday 17 March 2022 meeting which was a continuation of 16 March 2022 main meeting) and the Council's consequent decision to refuse planning permission for an outline application for the erection of up to 233 dwellings residential dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDS) and associated works, with vehicular access point from Radwinter Road, with all matters reserved except for means of access at Land South Of (East Of Griffin Place) Radwinter Road, Swards End, Essex. (planning application reference UTT/21/2509/OP).
- 1.2 It is anticipated that a full list of submitted documents will be contained in an agreed Statement of Common Ground.
- 1.3 The application was subject to extensive consultations which raised a number of concerns, including multiple highway related matters; insufficient ecological information and the need for contributions to mitigate the impact of development by way of a section 106 legal agreement.
- 1.4 This Statement of Case has been prepared on behalf of the Council by Mr Tim Dawes, MRTPI (Planning Director, Planit Consulting), appointed by the Council to represent it on this appeal. Mr Dawes will also give Town and Country Planning evidence at the Public Inquiry. It is anticipated that evidence will also be provided by Essex County Council ("ECC"), at least from its Highway Department (as Highway Authority in respect of Highways matters).

2 Site location and description and designations

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- 2.1 The application site comprises a rectangular piece of farmland measuring 18.3ha to the east of Saffron Walden.
- 2.2 The lawful use of the site is agricultural and the site is currently in arable agricultural use.
- 2.3 A track is located to the north and runs from east to west. A drainage ditch runs parallel to the track.
- 2.4 The site slopes from the south-east to the north, directly adjacent to a residential development approved under UTT/13/3467/OP & UTT/16/1856/DFO, which is being implemented by Linden Homes.
- 2.5 The development plan designates the site as:
 - Outside of the development limits in the countryside; and
 - Within a minerals safeguarding area

3 Relevant Planning History

- 3.1 Northern field within the site was subject to a planning application in 1958 under reference SWB/0046/58 for the use of the land for housing, which was refused.
- 3.2 UTT/21/1138/SO - request for an EIA Scoping Opinion under Regulation 15 of the EIA Regulations 2017 for residential development of up to 240 dwellings, new access and associated landscaping and infrastructure was submitted by Rosconn Strategic Land.

3.3 Of note are these sites, the subject of planning permission for residential-led development, which lie adjacent to or close to the site:

- Land south of Radwinter Road, permissions UTT/13/3467/OP & UTT/16/1856/DFO on application by Linden Ltd, which is now being implemented and which site is to the east of the Appeal Site (“the Linden Homes Site”)
- Land north Of Shire Hill Farm, Middle Site/Dianthus UTT/17/2832/OP, which sits immediately south of the Linden Homes Site, and east of the Appeal Site, describing a dogleg to the south, and in respect of which Redrow Homes Ltd have submitted application UTT/21/3565/DFO for approval of reserved matters (“the Redrow Homes Site”).
- Land east of Thaxted Road, permission UTT/18/0824/OP & UTT/19/2355/DFO (the latter approved following appeal by Bellway Homes(Essex), ref APP/C1570/W/20/3252121, decision 15 December 2020 which site is to the south of the southern limb of the Redrow Homes Site (“the Bellway Homes Site”)

3.4 Attention is drawn to application UTT/21/3565/DFO, currently being determined, potentially being referred to June Committee.

4 Development plan and other related documents

4.1 The statutory development plan for the purposes of the overarching test for this appeal set by s.70 of Town and Country Planning Act 1990 and s.38(6) of the Planning and Compulsory Purchase Act 2004 comprises (so far as relevant):

- The Uttlesford Local Plan 2005 (saved policies); and
- Essex Minerals Local Plan (July 2014)

- 4.2 The Uttlesford Local Plan²⁵ (LP) was adopted in January 2005. Many of its policies were saved in December 2007. The countryside is defined by policy S7 as all those parts beyond the Green Belt which are not within the settlement boundary. It expects the countryside to be protected for its own sake only allowing development which needs to take place there or is appropriate to a rural area.
- 4.3 The Essex Minerals Local Plan (July 2014) also forms part of the development plan. Policy S8 (Safeguarding mineral resources and mineral reserves) is relevant.
- 4.4 The Development Plan documents therefore relevant to this appeal comprise the Uttlesford Local Plan and the Adopted Policies map.
- 4.5 The Council considers the following list of Uttlesford Local Plan policies relevant to the determination of the appeal.

Uttlesford Local Plan 2005 (ULP)

Policy S7 – The Countryside
Policy H1 – Housing Development
Policy H9 – Affordable Housing
Policy H10 – Housing Mix
Policy GEN1 – Access
Policy GEN2 – Design
Policy GEN3 – Flood Protection
Policy GEN4 – Good neighbourliness
Policy GEN5 – Light Pollution
Policy GEN7 – Natural Conservation
Policy GEN8 – Vehicle Parking Standards
Policy ENV2- Development affecting Listed Buildings
Policy ENV3-Open Spaces and Trees

Policy ENV4 Ancient Monuments and Sites of Archaeological Importance
Policy ENV5 – Protection of Agricultural Land Policy ENV14 – Contaminated Land
Policy ENV15 – Renewable Energy

- 4.6 It is considered that the following policy is the only one of relevance to the appeal within the Essex Minerals Local Plan.

Essex Minerals Local Plan (July 2014)

Policy S8 Safeguarding mineral resources and mineral reserves

- 4.7 The current position of the Saffron Walden Neighbourhood Plan should also be noted.
- 4.8 The modifications to the Neighbourhood Plan recommended by the Examiner are currently being made to the Plan prior to issuing a Decision Statement to proceed to a Referendum. Taking into consideration the final comments made by the Examiner and that the Neighbourhood Plan has further advanced in the process of being ‘made’, the Council conclude that limited to moderate weight should be given to the Saffron Walden Neighbourhood Plan.
- 4.9 As to other material considerations outside the statutory development plan, for the purposes of the overarching statutory test, the Council identifies the following:
- The NPPF (2021)
 - National Planning Policy Guidance; and also
 - the following supplementary planning documents and guidance

- Essex County Council Development Management Policies Supplementary Planning Guidance (February 2011)
- SPD Accessible Homes and Playspace (November 2005)
- Energy Efficiency and Renewable Energy October 2007
- Uttlesford Interim Climate Change Planning Policy
- Essex Design Guide
- ECC Parking Standards
- UDC Parking Standards

Update on timing of new local plan

4.10 Uttlesford submitted its Regulation 19 Plan (eLP) to the Secretary of State for independent examination in January 2019. However, the Examining Inspectors concluded following the Stage One Examination that the Plan was not sound and the Council withdrew the Local Plan in March 2020, with a view to preparing a new Local Plan.

4.11 Following the withdrawal of that Plan, the Council published its Local Plan Development Scheme 2020 (LPDS) in October 2020 and outlined the timetable for the preparation of the new Local Plan (CD6.5). It has completed an extended consultation of the Issues and Options which ran from 11 November 2020 until April 2021, and the current timetable is as follows: -

- 12 and 18 May 2022 Local Plan Leadership group to consider policy chapters and strategy chapters
- 12 May 2022 – All member briefing to consider the draft local plan
- 7 June 2022 – recommend the Regulation 18 Local Plan for consultation
- 15 June – approve the draft local plan for consultation
- Consultation on regulation 18 local plan to be subject to approval by Full Council

4.12 The aim currently is to have the new local plan in place by summer of 2024.

5 Reasons for refusal

5.1 The application (ref UTT/21/2509/OP) was considered and was resolved to be refused planning permission at the Thursday 17 March Planning Committee which was a continuation of the 16 March 2022 (item number PC 13) (hence the delegated officer report attached to the Appellants' Statement of Case, which was to give effect to the Committee's decision and is not the officer report prepared for the Committee meeting – a much more substantial document).

5.2 The decision was issued on 18 March 2022 for the following five refusal reasons:

1. The submitted application has not demonstrated that pedestrian and cycle movement with neighbouring areas have been given priority.
 - a. There is no permeability from the site to allow easy access to the adjacent development and facilities for pedestrians and cyclists.
 - b. The quality of the key routes for pedestrians and cyclists has not been assessed and limited improvement is proposed for mitigation.

The proposal is therefore contrary to the Highway Authority's Development Management Policies DM1, DM9, DM11, DM15 adopted as County Council Supplementary Guidance in February 2011, and the Policy GEN 1 of the Uttlesford District Council Local Plan and the NPPF.

2. It cannot be determined from the submitted application that the residual, cumulative impact is on the road network is acceptable as it has not sufficiently been demonstrated that the Page 3 of 6 mitigation proposed in the application will be deliverable or effective for the following reasons:

a. It is not clear that the deliverability of the schemes has been considered adequately.

b. Church Street High Street

i). The deliverability of this scheme has not been adequately demonstrated it will be difficult to add control to due to the narrow footways and carriageway. Position of the equipment and maintenance bay, the presence of street furniture and cellars have not been taken into account.

ii). Any signal placed in this location would have to be linked to the existing signals on the high street, which may require refurbishment of the whole system.

iii). Although not a highway matter it is not clear that the impact on the historic buildings has been taken into account which stop the delivery of the scheme.

c. Sustainable Transport

i. There is not sufficient information in the submitted application to demonstrate that effective mitigation to promote sustainable transport and help limit the impact of the development on the town highway network which has been demonstrated to be over capacity number at a number of junctions impacted by traffic from this development.

The proposal is therefore contrary to the Highway Authority's Development Management Policies DM1, DM9, DM11, DM15 adopted as County Council Supplementary Guidance in February 2011, and the Policy GEN 1 of the Uttlesford District Council Local Plan and the NPPF 2021.

3. The applicant has provided insufficient ecological information on European Protected Species (bats). The proposal is therefore considered contrary to the implementation of Policies GEN7 and ENV7 of the adopted Uttlesford Local Plan 2005 and the relevant passages contained within Section 15 of the National Planning Policy Framework 2021.
4. The proposed development would fail to provide and facilitate active travel measures and would therefore have a negative impact on the climate, the environment, and the local and national emissions goals. Therefore, the proposed development would be contrary to Policy GEN2, Uttlesford Interim Climate Change Policy and the NPPF 2021.
5. The proposed development fails to deliver appropriate infrastructure to mitigate any impacts and support the delivery of the proposed development including affordable housing provision, contributions to education and contributions to libraries. The proposal is therefore considered contrary to the implementation of Policies GEN6 - Infrastructure Provision to Support Development, and Policy H9 - Affordable Housing, of the Adopted Uttlesford Local Plan 2005, and the National Planning Policy Framework 2021

5.2 It should be noted that as regards reason for refusal 4 the reference to policy GEN2 is in reference to the Uttlesford Local Plan 2005 and reason for refusal 4 identifies with that as well as the interim climate change policy and the NPPF 2021.

5.3 As explained further below, reason for refusal 3 is now no longer sustained in light of updated advice from Essex County Council ecology (25 May 2022) and can be withdrawn subject to securing appropriate conditions/s.106 planning obligations.

6 The Councils case including response to Appellants Statement of Case

6.1 The Council contends that the proposed development is contrary to Development Plan policies and will give rise to significant adverse impacts as explained below. It is considered that these harms significantly and demonstrably outweigh the acknowledged benefits which amount to material considerations in its favour. The conflict with Development Plan policy is not countermanded by material considerations outside the Development Plan, including the NPPF 2021. The Council's case is that the application of the overarching statutory test set by s.70(2) of the TCPA 1990 and s.38(6) of the PCPA 2004 must result in the dismissal of this appeal.

6.2 The Council accepts that in terms of the NPPF 2021 it is currently unable to demonstrate a five-year supply of deliverable housing land and that there is a significant shortfall in the provision of both market and affordable housing in the district. The Council accepts that, given it cannot demonstrate a five-year housing land supply ("5YHLS") then for the purposes of the NPPF 2021, the "tilted balance" at para.11(d) of the NPPF 2021 is engaged, but in this case does not favour a grant of permission by reason of para.11(d)(ii).

6.3 For the purposes of para.11(d) of the NPPF 2021 the Council considers that the most important policies of the Local Plan for determining this appeal are Uttlesford Local Plan (ULP) Policies S7, H1, H9, H10, GEN1, GEN2, GEN3, GEN4, GEN5, GEN6, GEN8, ENV2, ENV3, ENV4, ENV5 and ENV15 and policy S8 of the ECC Minerals Plan. The Council accepts that its lack of a 5YHLS means that some of these policies are to be treated as being out of date for the purposes of the NPPF 2021, but maintains that these policies remain broadly consistent with the NPPF and should therefore be given due weight at this appeal in accordance with Paragraph 219. The Appellants do not contend these are out of date for any reason other than lack of 5 year housing supply (see 2.3 of the appellants statement of case). In particular, it is considered that the sustainable transport/highway network policies and climate change/environmental policies that underpin the reasons for refusal are consistent with the NPPF and should not be de-weighted by reason of lack of 5YHLS. Further it is worth pointing out that Uttlesford scored well in the 2021 Housing Delivery Test (HDT), with a score of 129%. The latest figures published by UDC show that in the next period this fell to 99%. The figure for this year is not yet known.

Highways and transport related matters

- 6.4 Evidence for highways and transport related matters will be provided by Katherine Wilkinson the Strategic Development Engineer for Essex Highways. The officer's evidence will address reasons for refusal 1, 2 and partially no.4.
- 6.5 Although many aspects of the application is in outline form only, access is not in outline and is to be fully detailed, as it is not a reserved matter. The TCP Development Management Procedure England Order 2015 makes it clear that access includes not only access to and from the site at its boundary but also within the site.

Reason 1

- 6.6 Evidence will be provided to show that the scheme as submitted does not demonstrate or provide priority for pedestrians and cycle movement in relation to the neighbouring development areas and there is insufficient evidence to show that suitable links with existing or committed development will be delivered. Further the quality and key routes for pedestrians and cyclists has not been fully assessed and there is only limited improvement shown as mitigation. The proposal is simply to route pedestrians and cyclists on Radwinter Road.
- 6.7 The Appellants' Statement of Case claims that the decision in respect of highways was reached without regard to all the up to date documents, in particular the January 2022 Cotswold Transport Planning Technical Note: Outstanding Highways Matters. This is not the case. The writer of this SOC has contacted the relevant witness and it has been confirmed at the point of writing the Highway Authority's final word on the application, the letter of 15 March 2022 (the 2021 date is a typo) recommending refusal, the additional information had been fully considered. This was in addition to two notes dated December 2021 (one titled *Response to Highways Comment*, the other *Transport Assessment Updates*) and also a meeting was held on 16 December 2021 between the transport consultants and the Highway Authority, as well as the access plan Drawing No.SK01 Rev D. to which the Appellants' Statement of Case also referred. The information provided by the Appellants' transport consultants following the Highway Authority's earlier letter recommending refusal of 24 November 2021 addressed a number of issues, but there remained outstanding concerns. This can be readily seen by comparison of the two Highway Authority letters.

- 6.8 It is evident that the Highway Authority moved from its original stance and objection. For example, this is clear in respect of the vehicular access, with the objection being removed following sight of the vehicular access drawing. It is further evident that of the junctions originally causing concern as regards mitigation, having taken into consideration the additional information, the Highway Authority's concerns were allayed regarding some junctions, but not Church Street High St – hence it is in the reason for refusal.
- 6.9 It is clear that the December additional information and January note was taken into account in the 15 March consultation response (still recommending refusal) but was not specifically referred to in the reasons for refusal and probably should have been. The Highways officer responsible has confirmed this to be the case.
- 6.10 The proposals are contrary to the development plan and to other material considerations.
- 6.11 Policy GEN1 of the Uttlesford Local Plan 2005 is referred to and has 5 criterion attached; which include capacity, road safety, meeting need and also promoting alternative means of transport.
- 6.12 The Development Management policies for Essex County Council (adopted in 2011) are also relevant and cited in the reasons for refusal. The relevant policies are DM1, DM9, DM11 and DM15. These refer to general policies, accessibility and transport sustainability, public rights of way and congestion.
- 6.13 Paragraph 112 (a) of the NPPF states developments should “give priority first to pedestrian and cycle movements, both within the scheme and within neighbouring areas; and second – so far as possible – to facilitate access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use. It will be shown that this scheme fails to do this.

- 6.14 The scheme fails these requirements of the development plan and local guidance as well as the NPPF as explained in the reason for refusal.
- 6.15 It should be noted by the Inspector that these issues and concerns were fully explained and raised with the appellants (then the applicants) at pre-submission stage. The appellants were encouraged to enter into a Planning Performance Agreement (PPA), to allow a series of meetings with Statutory Consultees to fully address these issues up front, prior to any formal planning submission. The applicant was made aware of Highway Authority concerns in pre-app meetings and a written consultation response dated 10 February 2021. In summary the Highway Authority advised *“In isolation this development will impact on the highway network with little opportunity for mitigation. There are capacity issues with the town centre and without a significant strategic intervention it is difficult to see how these will not be exacerbated by a development in this location.”*
- 6.16 It will be shown in evidence that the permeability of the site for active travel is of significant concern as there are limited opportunities for cyclists and no direct pedestrian or cycle routes to the adjacent developments and onwards.
- 6.17 It will be shown that given what is proposed (routing pedestrians and cyclists on Radwinter Road) movement to and from the site will be primarily by car as there will be limited choice for residents to use sustainable transport and this will impact on the Radwinter Road and the Radwinter Road/Thaxted Road junction where the existing AQMA is located as this site appears to be an unintegrated ‘Island’. It is not connected to the adjacent sites whereby there are further open spaces, proposed Primary School site, a bus route which is proposed through the adjacent sites plus to get to facilities by way of shops, gyms, civic amenity site, restaurant/cafes, leisure centre facilities. These matters will be developed further in evidence.

- 6.18 The then-applicants made it clear during application stage that the feasibility of providing a direct pedestrian / cycle link to the adjacent Linden Homes Site was being investigated but was not deemed feasible. Late in the application process a letter was submitted to the Local Planning Authority from Iceni on behalf of the landowners of Land East of Shire Hill Farm and South of Radwinter Road on the 10 March 2022. This concerned future links to the site; however it was not considered sufficient to overcome the objection, and is not sufficient.
- 6.19 As is apparent from the Iceni letter, and as will be discussed in more detail in evidence, this correspondence was as much as anything concerned with promoting/highlighting/securing the development of land held by their clients and there is nothing in the letter that secures the necessary links. There is nothing in the letter that provides an un-caveated stance; there is no certainty or assurances that the link through the Linden Homes Site is secured. The best it offers is some form of quid pro quo arrangement.
- 6.20 The Highways Authority objected on the grounds that the scheme has not demonstrated that pedestrian and cycle movement with neighbouring areas have been given priority: there would be no permeability from the site to allow easy access to the adjacent development and facilities for pedestrians and cyclists; and the quality of the key routes for pedestrians and cyclists has not been fully or properly assessed and there is very limited improvement proposed for mitigation. These give rise to clear conflict with the development plan and also other material considerations, including local policy and the NPPF, and significantly and demonstrably outweigh the proposals' benefits.

Reason 2

- 6.21 Policy GEN1 of the Uttlesford Local Plan 2005 is again referred to and, as noted above, has 5 criterion attached; which include capacity, road safety, meeting need and also promoting alternative means of transport. Policy GEN1 seeks to ensure that development is only permitted if the access is appropriate, traffic generation does not have a detrimental impact on the surrounding road network, it is designed to meet the needs of people with disabilities and it encourages sustainable modes of transport.
- 6.22 The Essex County Council Development Management Policies (adopted in 2011) are again also relevant and cited in the reasons for refusal. The relevant policies are DM1, DM9, DM11 and DM15. These refer to general policies, accessibility and transport sustainability, public rights of way and congestion.
- 6.23 Paragraph 111 of the NPPF 2021 makes it clear that “ development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”
- 6.24 In accordance with paragraph 110 of the NPPF when assessing specific applications for development it should be ensured that: “a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; (c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code 46 ; and (d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree”

6.25 The scheme is reliant on a number of junction improvements to avoid severe residual impact on the road network. The Highways Authority considered that the application did not demonstrate that the mitigation proposed above will be deliverable or effective, and therefore objected for three specific reasons (within the reason for refusal) which will be considered further in evidence. These were:-

- Deliverability of the schemes
- Church St, High Street – specific issues with control, due to narrow footways and carriageways and the position of equipment and street furniture that has not been factored in. This will be explored more closely in evidence.
- Sustainable transport – Evidence will show that a number of nearby junctions are already at ‘over-capacity’ and will be adversely impacted by this development. Further, the application does not do enough to promote sustainable transport and limit impact on the existing highway network.

6.26 In respect of these three highway reasons for refusal, the proposal is considered contrary to Highway Authority's Development Management Policies DM1, DM9, DM15 adopted as County Council Supplementary Guidance in February 2011, and the Policy GEN 1 of the Uttlesford District Council Local Plan and the relevant policies contained in the NPPF 2021.

6.27 Overall the impact on the local highway network caused by this proposal is not acceptable in terms of capacity, accessibility or mitigation.

6.28 Evidence will show that the overall scheme does not best promote sustainable transport to such an extent to actively and visibly limit the impact of the development on the town highway network.

- 6.29 The problems identified by this reason for refusal give rise to clear conflict with the development plan and also other material considerations, including local policy and the NPPF, and significantly and demonstrably outweigh the proposals' benefits.
- 6.30 As regards NPPF para.111, contrary to the Appellants' Statement of Case, the Council contends that as a matter of principle the clash with NPPF para.111 does not arise only in circumstances where the Local Planning Authority/Highway Authority can positively prove severe residual impact on the highway network, but also where, as here, the applicant ought to have, but has not, provided sufficient evidence that such will not occur.
- 6.31 The Appellants state in their Statement of Case that they will be tabling large scale amendments to the refused drawings to overcome the concerns. Clearly at this stage the Council does not know the full extent or content of these possible amendments and reserves the right to comment on them. The Inspector will need to judge whether to accept them or decide they would need to be the subject to a new submission. The Council will also need to determine how they should be addressed. As the *Holborn Studios* case has made clear (revisiting and adjusting the *Wheatcroft* test), the interests of third parties must also be considered.

Reason 3

Impact on Ecology

- 6.32 The County Council's 'Place Services' (ecology) were consulted on the initial application and issued a holding objection on the application on 2 March 2022 stating '*holding objection due to insufficient ecological information on European Protected Species (bats)*'

- 6.33 The consultee was not satisfied that there was sufficient ecological information available for determination of the application with regards to bats, a European Protected Species. Earlier concerns regarding other European Protected Species (including Hazel Dormouse) and Priority species (farmland birds) and Priority habitats (hedgerow) had been addressed sufficiently that they could be dealt with by conditions/s.106 planning obligation
- 6.34 Since the letter of 2 March 2022, a letter has been received dated 25 May 2022, providing revised comments on the application. The letter advises there are now no objections subject to securing biodiversity mitigation and enhancement measures by conditions and possibly by s.106 planning obligation.
- 6.35 The consultee further advises, *“we are now satisfied that there is sufficient ecological information available for determination of this application. This provides certainty for the LPA of the likely impacts on designated sites, protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.”*
- 6.36 The senior ecologist has explained in the letter that 5 planning conditions are required (or to be secured by s.106 planning obligation if relevant land is not in the Appellants’ control) and these are:
- Action required in accordance with ecological appraisal recommendations.
 - Concurrent with reserved matters prior to commencement – farmland bird mitigation strategy.
 - Concurrent with reserved matters prior to any works above slab level: biodiversity enhancement strategy.
 - Concurrent with reserved matters prior to occupation; landscape and ecological management plan.

- Concurrent with reserved matters prior to occupation; wildlife sensitive lighting design scheme.

6.37 The full text of the suggested conditions is in the letter of 25 March 2022.

6.38 Therefore the Council confirms that this reason for refusal is no longer pursued, as it can now be dealt with by condition (or s.106 planning obligation if the relevant land is not in the Appellants' control), and that subject to the imposition of these 5 planning conditions/securing anything that cannot be secured by condition by s.106 planning obligation, the Council **withdraws** this reason for refusal.

Reason 4

6.39 Reason for refusal 4 concerns the impact on efforts to promote active travel and to tackle climate change, improve the local environment and meet emissions targets, due to the lack of sustainable transport options. This is not specifically a highway reason for refusal although there is clear synergy with reasons for refusal 1 and 2(c). Evidence will be given in support.

6.40 The development plan policy context for this reason for refusal is based on policy GEN2 of the Uttlesford Local Plan and the Interim Climate Change Policy which was put in place to bridge the gap between the 2005 local plan and the new local plan in light of concerns surrounding climate change. The NPPF is also relevant, including the "environmental objective" as a whole. In chapter 14 of the NPPF it devotes itself to meeting the challenges of climate change. In the 2021 iteration there is clear move towards supporting appropriate measures to safeguard the resilience of communities and infrastructure to climate change impacts. Similarly chapter 15, environment, is on point, notably para.174(e) and para.186 regarding air quality limits.

6.41 The reason for refusal is clear that the development does not actively seek to meet emission targets and to actively improve the local environment.

6.42 The climate change aspect is addressed in the Uttlesford Interim climate change policy which in interim policy 1 says:-

- Developers should 'locate the development where the associated climate change impacts and carbon emissions, including those derived from transport associated with the intended use of the development can be minimised, and ii) promoting development which minimises carbon emissions and greenhouse gas emissions and maximises the use of renewable or low carbon energy generation.'

6.43 Interim policies 13 and 14 seek to encourage the reliance on the car. Specifically they say

- Developers should demonstrate how their proposals would promote travel by sustainable transport modes in a manner and to a degree proportionate to the significance of the development proposed, particularly active travel modes (walking and cycling). Interim Policy
- Taking into account current national policy, new development should comply with the additional electric vehicle parking and charging standards below:
 - all new parking spaces should be adaptable for electric vehicle fast charging (7- 22 kW), including through local electricity grid reinforcements, substation design and ducting;
 - all new homes with on-plot parking should be provided with at least one installed charging point; and
 - at least 20% of parking spaces in new developments should be provided with installed fast charging points, increasing in accordance with the Road to Zero Strategy (see main policy text)

6.44 In paragraph 3.18 the Interim climate change policy says:-

“New development should deliver high standards of sustainable design, which by definition will minimise adverse impacts on the environment, including air quality. Paragraph 181 of the NPPF makes it clear that planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs.

Interim Policy 5: Developers should demonstrate how their proposals would not lead to any material decrease in air quality or to significant adverse effects on the environment or amenity and, where relevant, how they would comply with the Saffron Walden Air Quality Action Plan to minimise effects on local air quality and reduce CO² emissions.”

6.45 This document will be drawn upon further in evidence.

6.46 Strong concerns were raised by the Essex County Council Climate change Project Officer (see email 23 February 2022) that because of its location and routing of pedestrians and cyclists onto Radwinter Road, the development would be largely or even completely car based and therefore have a negative impact on the climate and the environment and national emissions targets (the problems associated with NO_x and particulates are now very well established).

6.47 Ten minimum measures were put forward to mitigate the harm. The email of 22 February 2022 is referred to for the full list, but the Inspector is invited to note the list includes pedestrian/cycle linkage with the Linden Homes Site. It was felt that these improvements would come in parallel with wider improvements for cyclists in the town.

6.48 The issues identified by this reason for refusal give rise to clear conflict with the development plan and also other material considerations, including local policy and the NPPF, and significantly and demonstrably outweigh the proposals' benefits.

Reason 5

Provision of Affordable Housing and Infrastructure to Support the Development

- 6.49 The appeal proposal generates a need for the provision of affordable housing in accordance with Policy H9 of the Local Plan. It is considered also that the development would also need to bring forward sustainable travel and transport planning measures to mitigate its impacts. Furthermore, the residential development of this site would increase the pressure on local infrastructure including education and healthcare.
- 6.50 The appellants have been provided with heads of terms to move a draft section 106 legal agreement on. These draft heads of term include the following: -
- Provision of 40% affordable housing
 - Financial contribution for health contributions
 - Financial contribution for long-term on-going maintenance of public open space (including LAP and LEAP)
 - Open spaces LEAPs and LAPs to be offered to the Saffron Walden Town Council and should they declare they are not willing to take on the long terms maintenance then they should go to a Man Co
 - Biodiversity (net gain)
 - Payment of education financial contributions
 - Library contribution
 - Custom built dwellings 5%
 - Financial contributions for various highway related matters identified in the consultation response from ECC Highways; multiple matters identified but maybe only a few to attract inclusion in section 106 legal agreement with the rest being secured via a 278 agreement (some works may need to be carried out by appellants)

- Pedestrians and cyclists paths with adjacent development to the west (ideally looking for a link road to connect with the adjacent link road which is going to connect the west 3 development sites between Radwinter Road to Thaxted Rd)
- Sustainable Transport contribution - to fund improvements to enhance bus services
- Residential Travel Plan & monitoring fee
- Provision of SANG
- Undertake Council's reasonable Legal fees
- Reasonable monitoring costs

6.51 To date these are not agreed; with some concerns being raised by the appellant.

6.52 It is anticipated that a S106 legal agreement could be produced which may address these concerns. However, if an acceptable S106 cannot be provided, the Council will argue that the development is unacceptable in terms of its impact in respect of the lack of provision for affordable housing, community facilities, sustainable transport, education provision, as well as the healthcare provision and how they would be further exacerbated by the proposed development, together with the harmful effect of further unmitigated pressure.

7 Planning balance and conclusions

7.1 The Council will set out what it considers are the benefits of the proposal and will carry out a planning balance. It accepts that the provision of market housing and affordable housing (if secured under a section 106 legal agreement) are considerable benefits and should each be given substantial weight in the determination of this appeal, particularly given the shortage of both market and affordable housing in the district at present, as well as the state of the 5 year housing land supply and lack of an up to date new local plan.

- 7.2 If secured under a section 106 legal agreement the development will also provide community facilities, green infrastructure with associated landscaping, SUDs, open space, and public realm. It is also recognised that the site provides the opportunity for seeking a net gain in biodiversity.
- 7.3 The Council considers that these benefits (should they be secured under a section 106 legal agreement) should be afforded weight but notes that these elements are primarily needed to meet the needs of the future residents of the development and to mitigate the impacts of the development.
- 7.4 The Council also notes that the appeal scheme's current approach to facilitating/securing the relief road that the Highway Authority hopes to achieve for Saffron Walden means this cannot be considered a benefit of the appeal scheme, given the location proposed, for the reasons explained to the Appellants (then applicants) at the transport/highways meeting in December 2021.
- 7.5 The evidence will show that the Appellants have not adequately addressed multiple issues surrounding highway/transport matters and that overall the scheme does not adequately promote sustainable transport and limit the impact of the development.
- 7.6 The development site due its location and lack of connection and permeability back to the town would be very car dependant. Without mitigation there would be clear and evident negative impact on climate, the environment and the local and national emission goals.

- 7.7 In addition although not sufficient to justify refusal in their own right the other disbenefits of the proposals must not be forgotten when striking the planning balance. These include loss of agricultural land (which includes best and most versatile land) and that the site is safeguarded for minerals (hence the County Council Minerals has raised an issue in that regard – see its letter dated 19 January 2022)
- 7.8 There is no agreed section 106 in place. There are some measures that remain in dispute.
- 7.9 The Council contends that the application of the overarching statutory test points clearly to dismissal of this appeal. This is so even if one were to look only at the appeal through the lens of the NPPF (which would be incorrect, as the statutory test affords primacy to the development plan, and it is contended the development plan policies carry weight despite engagement of the NPPF “tilted balance”). But even looking only through the lens of the NPPF, the Council contends that the adverse impacts of granting such a development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole and planning permission should not be granted.

8 Conditions

- 8.1 A list of planning conditions will be put forward as part of the statement of common ground with the appellant to assist the Inspector in the event of the appeal being allowed. These will be subject to round table discussion at the Public Inquiry. These will need to include the 5 planning conditions put forward for mitigation in respect of ecology.

9 List of documents that may be referred to

- NPPF 21
- Uttlesford Local Plan 2005
- Draft Saffron Walden Neighbourhood Plan
- Essex Minerals Local Plan (July 2014)
- Supplementary Planning Documents
- Officer report for application UTT/21/2509/OP
- Minutes from Planning Committee meeting
- Consultation responses from the public planning file
- Appeal decision Bellway Homes (Essex) ref. APP/C1570/W/20/3252121