

Town and Country Planning Act 1990 (“the TCPA 1990”)

Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)

Before Inspector Mrs C Masters, MA (Hons), Chartered Fellow RTPI

In the matter of an inquiry into an appeal pursuant to s.78 of the TCPA 1990

by

Rosconn Strategic Land

and **T E Baker** and **S R Hall** (executors of Mr E C Baker and Mrs J Baker)

against the refusal by

Uttlesford District Council

of an application for planning permission for:

Outline planning 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.

at

Land south of Radwinter Road (East of Griffin Place), Saffron Walden

Inspectorate ref: APP/C1570/W/22/3296426

LPA ref: UTT/21/2509/OP

LPA OPENING STATEMENT

*Common abbreviations: Appellants = Rosconn Strategic Land & T E Baker and S R Hall (executors of Mr E C Baker & Mrs J Baker); LPA = Local Planning Authority; Council/LPA = Uttlesford District Council; HA = Highway Authority; ECC = Essex County Council, the HA; Proposals = the proposals the subject of the appeal, including as amended; Appeal Site = the land south of Radwinter Road, east of Giffin Place, Saffron Walden, the subject of the Appeal; SoC = Statement of Case (so, AppSoC, LPASoC); SoCG = Statement(s) of Common Ground (i.e. Planning SoCG, Supplementary Transport SoCG); NPPF = National Planning Policy Framework; CD = core document (CD numbers are in **[bold]**).*

Appearances for LPA: James Burton (counsel, of 39 Essex Chambers), instructed by the solicitor to the Council, who will call Mr Tim Dawes, BA (Hons), Member RTPI, in relation to general planning matters.

Introduction

1. This is the written opening statement on behalf of Uttlesford District Council, the local planning authority (“the Council”).

2. As the Inspector and the Main Parties are aware (and as members of the public should be aware, but the Council is conscious may not be), matters have moved on considerably since the Council determined to refuse planning permission.
3. With the exception of an ecology reason that was withdrawn at the outset of the appeal process based on updated ecology advice (Reason for Refusal 3), the Council's refusal of permission was based on highways/transport objections (Reasons for Refusal 1, 2 and 4), as to which the Council, quite properly, not only had regard to, but relied on, the advice and position of the statutory consultee, the highway authority ("the HA"), Essex County Council ("ECC").
4. There was also a reason concerning the absence of anything securing the appropriate mitigation (Reason for Refusal 5).
5. In the normal way, Reason for Refusal 5 would be met by a suitable planning obligation pursuant to s.106 of the TCPA 1990 (and, in due course, appropriate agreement pursuant to s.278 of the Highways Act 1980 etc).
6. It was the "highways/transport" Reasons for Refusal 1, 2 and 4 that stood substantively between the Council and the Appellants at Statement of Case ("SoC") stage (see LPASoC). For those, the Council had continued to rely upon the advice and position of the statutory consultee: ECC as HA.

The present position as to highways/transport and the Reasons for Refusal overall

7. In relation to the highways/transport Reasons for Refusal, as the Inspector would expect the Appellants and ECC have continued to work to narrow issues, to the extent the Appellants have now produced a mitigation package that is satisfactory to the Highways Authority. This is as explained in some detail in the latest Statement of Common Ground ("SoCG") concerning transport matters between the HA and the Appellants, dated July 2022 ("the Supplementary Transport SoCG") [CD/B40], and also by the Proof of Evidence of the Council's planning witness, Mr Tim Dawes.
8. There are various elements to the highways/transport mitigation package, which measures are listed in the table at Section 5 of the Supplementary Transport SoCG. The measures include (but are not limited to): the provision of physical cycle/pedestrian infrastructure on the Appeal Site towards its south-west corner and a commitment to seek to secure a cycle/pedestrian link through some 3m of third party land to the (Redrow Homes) housing development site that lies beyond it to the west (so allowing access to a town centre cycle/pedestrian route away from Radwinter Road); physical improvements to Radwinter Road, including physical improvements to the footway and to the Tesco pedestrian crossing point at its access junction and also new bus stops; various physical improvements to other junctions, including to the Church Street/High Street junction the subject of Reason for Refusal 2(b), to mitigate against traffic congestion; a bus service contribution and a contribution to a future town-wide car club.
9. The Council relies on ECC's advice in this regard, and as regards highways/transport matters the Council adopts ECC's position as its position.
10. There is no dispute between the ECC and the Appellants, and by extension between the Council and the Appellants, that by reason of the highways/transport measures set out at Section 5 of the Supplementary Transport SoCG, the Proposals will have no adverse impact on both the immediate public highway and wider public highway network and that by those matters the Proposals would satisfactorily provide sustainable transport

measures appropriate to the location of the Appeal Site. By these measures, then, the Proposals would comply with the development plan (in particular Policy GEN 1 of the Uttlesford District Local Plan), the NPPF and relevant guidance (including relevant ECC Highway Development Management Policies). See paras.5.2-5.5 of the Supplementary Transport SoCG (and see also e.g., the Executive Summary of the Sustainability Report prepared for the Appellants by Turley [CD/D20]).

11. Hence the Council, like the Highways Authority, is now satisfied regarding highways/transport matters, subject to suitable planning conditions and a suitable s.106 planning obligation securing the necessary agreed highways/transport mitigation (along with the other items required), and in the circumstances the Council has withdrawn Reasons for Refusal 1, 2 and 4 (having already withdrawn Reason for Refusal 3), subject to suitable conditions and a suitable s.106 planning obligation.
12. The withdrawal, subject to suitable conditions/s.106, is as explained by the Council's Director of Planning, Mr Dean Hermitage, in his letter to the Inspectorate of 25 July 2022 [CD/B46], and in more detail by Mr Dawes in his Proof of Evidence.
13. As Mr Dawes explains, the Council is also very conscious that it cannot demonstrate a five year housing land supply for the purposes of the National Planning Policy Framework ("the NPPF") and gives this matter, and the market and affordable housing the Proposals would provide, substantial weight.
14. As per Mr Dawes' Proof of Evidence, the above means the Council's position is now that, subject to suitable conditions and a s.106, the planning balance lies in favour of a grant of permission.
15. The Council notes that the Appellants have consulted on amendments to the Proposals involved in the up to date highways/transport mitigation package, and the Council sees no reason those amendments to the Proposals should not be accepted by the Inspector, including having regard to the tests as explained in case law (*Holborn Studios*)¹.

Conditions and section 106

16. As regards the s.106 planning obligation deed, a draft agreement is very well advanced. Necessarily, this covers a great deal more than merely highways/transport matters. The other obligations, which obligations securing affordable housing and such as education, health and library contributions) are important, just as are those that concern highways/transport.
17. For the avoidance of doubt, there is also no dispute between the Appellants and the Council that the items it is agreed should be secured by conditions and s.106 planning obligations meet the relevant statutory and policy tests, save for one item which merits comment: ECC's requirement of safeguarded land for a future relief road. The Council understands ECC consider this necessary, and that the Appellants agree. The Council has no particular position on this point, which it is agreed provides planning benefits in any event.
18. The Inspector should please note, however, clause 4.1 of the current draft s.106, which requires, in relation to the obligations given by the Owners to the Council and to ECC set out in Schedules 3 and 4 to the draft s.106, that those:

¹ *R (Holborn Studios) v Hackney LBC & anr* [2017] EWHC 2823 (Admin), *per* John Howell QC, sitting as a Deputy High Court Judge, see in particular paras.66-71.

‘...shall only apply and shall be enforceable by UDC or ECC in such circumstances that the appointed Inspector or the Secretary of State states clearly in the decision letter granting the Permission that such obligations are necessary and meets the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010’

19. Therefore, if the Inspector is minded to grant permission, and agrees that the obligations meet the statutory tests set out in Regulation 122 of the CIL Regulations (which tests include necessity), that must be clearly stated for the obligations to have effect (though note the distinct position regarding the safeguarded land for the relief road).
20. Whilst the Council is aware that there had been a handful of matters of drafting outstanding between the Appellants and ECC within the Schedule 4 that deals with the Owners’ obligations with ECC, the Council understands that these either have been, or have almost been, resolved.
21. In any event, the Council does not anticipate anything other than production for the Inspector of a s.106 document that is agreed between it and the Appellants in the course of the Inquiry.
22. The same is true as regards suggested conditions to a planning permission, should the Inspector decide to allow the appeal. There is an agreed draft list between the Council and the Appellants (on which the Rule 6 Party has also commented).

Council’s role at this Inquiry

23. In the particular circumstances, the Council’s role during this Inquiry is much more limited than would normally be the case.
24. The Council will, of course and in the usual way, seek to assist the Inspector in whatever way possible with the issues before her.
25. However, the Council will not take up Inquiry time on issues that are not in dispute between it and the Appellants, and insofar as the Council has any questions for the Appellants’ witnesses anticipates they would be brief indeed.
26. Equally, the Council is conscious that the Rule 6 Party, being the Town and Parish Councils acting together, remains at odds with the Appellants over not only the issues of substance covered by the Reasons for Refusal, but also other issues. However, due to the way matters have evolved as explained above, the matters in dispute between the Appellants and the Rule 6 Party are not matters for the Council to weigh in on and, for the avoidance of doubt, the Council would not propose to cross-examine the Rule 6 Party’s witnesses on those matters.
27. The Council will be calling its planning witness, Mr Dawes (who will appear remotely, by video link). Mr Dawes will explain the Council’s position in a little more detail, which it is hoped will assist the inquiry, including the public. By reference to the Inquiry timetable, it is hoped that will be at a point in which the final pieces of the drafting jigsaw as regards the s.106 planning obligation and conditions have been resolved. But if they have not, Mr Dawes can deal with anything that requires consideration either in formal oral evidence-in-chief, or at the conditions/obligations roundtable, as appropriate.

28. As regards other matters potentially relevant to Inquiry time, the Council is unaware of any application for costs (at least, any application affecting it, and again see Mr Hermitage's letter in that regard).
29. A final word for members of the public.
30. As explained above, the issues that drove the Council's refusal of planning permission have fallen away, subject only to finalisation of the legal document, the s.106 planning obligation, that will secure the agreed mitigation package and to appropriate planning conditions. The public must bear in mind that if they have issues with the Proposals, they must not rely upon the Council to take those points on their behalf.
31. Members of the public should have access to the appeal documents, including SoCGs and Proofs of Evidence and Core Documents generated during the Appeal, via the Council's website. That contains a link to the Core Documents which the Appellants' planning agents have helpfully maintained and are maintaining on their website.

JAMES BURTON

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6 September 2022