

## **CD6.23**

### **Appeal Decision – Elsenham**

**Preface:**

This appeal decision is important because it deals with an allowed appeal where securing of a condition to deliver M4(2) and M4(3) properties was acceptable, which is relevant to the consideration of the appeal scheme.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



## Appeal Decision

Hearing Held on 6 August 2020

Site visit made on 18 July 2020

**by D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

**Decision date: 4 September 2020**

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**Appeal Ref: APP/C1570/W/19/3242550**

**Land south of Rush Lane, Elsenham CM22 6TF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Rosconn Strategic Land Limited, Nigel John Burfield Holmes, Rosemary Holmes, Mark Burfield Holmes, Robert Murton Holmes, Sasha Renwick Holmes and Tanya Renwick Cran (the Appellants) against the decision of Uttlesford District Council.
  - The application Ref UTT/19/0437/OP, dated 18 January 2019, was refused by notice dated 14 November 2019.
  - The development proposed is an outline application for the erection of up to 40 dwellings with all matters reserved except for access.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 40 dwellings with all matters reserved except for access at land south of Rush Lane, Elsenham CM22 6TF in accordance with the terms of the application, Ref UTT/19/0437/OP, dated 18 January 2019, subject to the conditions set out in the schedule to this decision.

### Procedural Matters

2. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by an proposed Masterplan, a Landscape and Visual Assessment and a raft of supporting technical documentation in relation to highways, ecology, noise, air quality and surface water drainage. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation.
3. With the agreement of both parties, the description of development was amended during the application process from 44 dwellings to 40. I have therefore taken the description provided on the Appeal Form rather than the version provided on the Application Form.
4. There is no dispute between the parties that the Council cannot demonstrate a five-year housing land supply (5YHLS). In such situations paragraphs 11 and 73 of the "*National Planning Policy Framework*" (the Framework) state that those policies which are most important for determining the application are to be considered out-of-date. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh

the benefits, when assessed against the policies in the Framework taken as a whole. I have approached my decision on that basis.

5. The Council withdrew the emerging Uttlesford Local Plan (eLP) on the 30 April 2020, it therefore carries no weight my determination of the appeal. Both main parties agree that the evidence base, in particular the 2016 "*Uttlesford Countryside Protection Zone Study*", (the LUC study) which formed part of the evidence base for the eLP, is a material consideration in this appeal.

### **Main Issue**

6. This is the effect of the development on the character and appearance of the countryside.

#### *The appeal site*

7. The appeal site is a plot of pastureland located on the southern edge of Elsenham some 2.25 hectares in size. The field is subdivided into two paddocks by a post and rail fence and is visually contained behind hedgerows interspersed with a number of mature trees. Save for a small field shelter located near the access point in the south west corner, there are no large permanent structures or buildings on the site.
8. The site is bounded to the north by Rush Lane, a residential cul-de-sac and to the north-west by a Public Footpath (PROW28). The former contains a mix of terraced and semi-detached properties that front towards the appeal site. Public Footpath (PROW29) bisects the southern section of the site from the south west corner to the south east corner connecting Rush lane (via PROW 13-29) and Robin Hood Road.
9. Robin Hood Road is located to the east of the appeal site which again is a residential cul-de-sac that terminates at the level crossing. The road is narrow and there are no pedestrian footways. The houses on the eastern side of Robin Hood Road face towards the appeal site. The majority of the southern site boundary is flanked by the West Anglian Mainline Railway. To the south-west of the site is a large detached residence known as Mill House.
10. The site lies just outside the settlement boundary for Elsenham. A parade of local shops lies along the high street to the north of the site. The primary school and the village surgery lie a little further afield. The nearest bus stop is located approximately 800m north of the site on Stansted Road.
11. There are a number of other new developments in the immediate area. To the north-west is a development under construction of 165 houses to the south of Stansted Road. On the southern side of the railway line is a development of five houses at the old Sawmill, Fuller's End. To the east is the Hall Road site which has the benefit of an as yet unimplemented planning permission for 130 dwellings.

#### *Background and policy context*

12. The appeal site is located outside the settlement boundary and within the Countryside Protection Zone (CPZ) around Stanstead Airport. It is therefore in the countryside for planning purposes. Within such areas, Policy S7 of the LP states that planning permission will only be granted for development that "*needs to be there or is appropriate to a rural area*". It goes on: "*Development*

*will only be permitted if it protects or enhances the particular character of the part of the countryside within which it is set, or there are special reasons why the development in the form proposed needs to be there."*

13. Policy S8 takes a similarly restrictive approach towards development in the CPZ. Only development that is required to be there, or is appropriate to a rural area, will be permitted. Development will not be permitted if a) new buildings or uses would promote coalescence between the airport and existing development in the surrounding countryside, or b) it would adversely affect the open characteristics of the zone.
14. The Development Plan for the District comprises the "*Uttlesford Local Plan*" 2005 (the LP). This was adopted seven years before the original Framework at a time when there was no requirement to boost significantly the supply of housing, no requirement to identify an Objectively Assessed Need and no presumption in favour of sustainable development. The LP only covered the period to 2011 and consequently expired nearly ten years ago. As the Appellants point out, the LP has now been out of date for longer than it was in date.
15. As is made clear at the beginning of Section 6 of the LP, one of its key components was to deliver the housing requirements which were based upon those in the "*Essex and Southend-on-Sea Structure Plan to 2011*" and the "*Regional Spatial Strategy for the South East of England*". The LP housing requirements were derived from household projections which are now about three decades out of date. The policies in the LP, including settlement boundaries, allocations, were formulated and predicated upon the constrained supply set out in the Structure Plan. From the evidence I heard, it seems that most, if not all, the allocations in the LP have long since been built out.
16. Based on the foregoing, there can be little doubt that the LP is now painfully out of date in terms of its purpose, its strategy, its content and its housing delivery policies. It does not meet the requirement for the Council to have an up-to-date plan and it is clearly not a strong foundation upon which to refuse planning permission.
17. The appeal site was allocated for housing in the eLP (Policy ELS1) with the Council finding "*Elsenham is a key village with a range of services and facilities. Development of the site is considered suitable because it would contribute to a sustainable pattern of development*". The eLP was withdrawn in response to the Examining Inspectors' letter dated 10 January 2020. In that letter "*significant concerns*" were raised in relation to the soundness of the plan. In particular, the Inspectors were not satisfied that the proposed Garden Communities had been adequately justified and reliance on them would likely result in a worsening affordability problem in the District. The Inspectors were also critical of the strategy to deliver sufficient housing over the short and medium term and recommended that the Council would need to allocate more small and medium sites to bolster its 5YHLS. As previously mentioned, the appeal site was one of those medium sized sites that was to be allocated for housing in the eLP.
18. Although the Framework stresses the desirability of local planning authorities having up to date development plans, paragraph 213 states that policies should not be considered out of date simply because they were adopted prior to the publication of the Framework. It is therefore incumbent on me to apply

paragraph 213 which states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan to those in the Framework, the greater the weight that may be given.

19. The first point to make in assessing what weight should be given to Policy S7 is that in seeking to protect all countryside, the policy patently goes some way beyond the advice in paragraph 170(b) of the Framework, which, inter alia, seeks recognition of the intrinsic character and beauty of the countryside. Other than '*valued landscapes*' the Framework does not seek to protect the countryside outside defined settlements. Instead it advocates a more cost/benefit approach where the merits of the proposal are weighed in the balance. The balancing of harm against benefit is a defining characteristic of the Framework's overall approach embodied in the presumption in favour of sustainable development. This more positive approach was acknowledged in the Council's 2012 Compatibility Assessment which found S7 to be partially consistent with the Framework. In light of the above, where Policy S7 is used to restrict housing, it cannot be seen to be consistent with the language of the Framework.
20. The Framework does not contain specific policies relating to CPZs. However, many of the points made above are relevant to Policy S8. Whilst the overall landscape aims of the policy could be seen as being partially consistent with advice in paragraph 170(b), the policy is couched in the same protectionist language as Policy S7 which is at odds with the more positive approach adopted in the Framework.
21. From the evidence before me, most notably the Council's Committee Reports pertaining to the appeal scheme and land west of Hall Road<sup>1</sup>, it is evident that the Council has, in some cases, adopted the positive approach advocated by the Framework rather than the strict application of Policies S7 and S8. As numerous large developments have been consented or built within the CPZ in recent years, it is also the case that existing settlement and CPZ boundaries bear little resemblance to the situation on the ground. This is particularly apparent in Elsenham.
22. At the Hearing, the Council accepted that its housing land supply situation would be significantly worse if the Council had applied Policies S7 and S8 in the same manner as it has done in this case. In other words, applying the restraints of Policies S7 and S8 will continue to compromise the Council's ability to meet its future housing requirements. Overall, these matters lead me to conclude that settlement/CPZ boundaries in Uttlesford are not inviolable.
23. There is little before me to explain why the Council's approach to Policies S7 and S8 in this case is so contrasted with other schemes in and around Elsenham. I appreciate that some of those sites were approved because they were allocations in the previous 2014 emerging Local Plan. However, that is little different to the situation here. At the time the Council made its decision, the site was an allocation in the eLP. I do not find the Council's explanation that the application may have been refused due to concerns about the fragility of the eLP to be particularly persuasive.

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<sup>1</sup> LPA Ref: UTT/19/0462/FUL

24. Irrespective of how the Council arrived at its decision, its witness accepted that development of greenfield sites in the Countryside and CPZ will be necessary if the Council are to meet its housing targets over the next few years before a new local plan can be prepared and adopted. Whilst I appreciate the Council has met its housing targets in each of the last 3 years, there is little before me to demonstrate whether this represents a fundamental shift or an ephemeral eddy of appeal-based delivery. Given that the Council's witness accepted it does not have a credible short or medium-term strategy for addressing its 5YHLS deficit, I suspect the latter.
25. I have carefully considered the appeal decisions brought to my attention by the main parties. These confirm that between 2015 and 2019 Inspectors have come to differing views on the issue of consistency and the subsequent weight to be applied to Policy S7. Most of those decisions preferred by the Council<sup>2</sup>, including the Secretary of State's decision<sup>3</sup>, were made in the context of the Council being able to demonstrate a 5YHLS, albeit marginally. There also appears to me to be a general pattern of less weight being ascribed to Policy S7 as the Council's 5YHLS has deteriorated<sup>4</sup>. Notwithstanding the above, there was no suggestion at the Hearing that the facts of any one of the previous cases were so aligned with the facts here that the previous decision indicated that this appeal should be either allowed or dismissed. I have therefore had regard to the various decisions insofar as they are relevant to my consideration of this appeal.

#### *Character and appearance*

26. The appeal site was independently assessed as part of the LUC study in 2016. The overall aim of which was to assess the extent to which land within the CPZ is meeting its purposes as set out in Policy S8 which would enable the Council to make informed decisions about its continuing validity through the eLP.
27. The study found that development of the appeal site for housing would result in a moderate level of harm due to its low rating against purpose 4 (restricting coalescence). This was partly because of the dispersed nature of the nearest settlement and the site's relative distance from the airport. The study concluded that the CPZ/settlement boundary should be moved to the railway line which itself could prevent coalescence between the airport and Elsenham. The appeal site was subsequently recommended for removal from the countryside and CPZ in the eLP. In my view the LUC study is a significant material consideration in favour of the appeal scheme.
28. From my own observations I saw that the appeal site contributes to a pleasant, open, albeit visually contained, rural setting to the south-west of Elsenham. The site however has few redeeming features and is not designated or part of a 'valued landscape' in the terms set out in the Framework. As I saw on my site visit, the site has a number of urbanising influences such as the railway line with overhead cables, new development at the former sawmill, new development to the north-west, and the constant hum of traffic from the M11. On that basis I would be hard pushed to describe the site as some have as 'open countryside'.

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<sup>2</sup> APP/C1570/A/14/2222958, APP/C1570/W/16/3156864 and APP/C1570/W/18/3209655

<sup>3</sup> APP/C1570/A/14/2219018

<sup>4</sup> APP/C1570/W/19/3226302

29. Those opposing the development did so primarily on the basis that the open nature of the site contributes positively to the local area and particularly for users of the footpath. The extent to which the proposed dwellings would be visible beyond the site and the public footpath would depend on details which have been reserved for future determination. Nonetheless, I accept that whatever its final form the development would result in an irreversible loss of openness and would have a significant visual effect from within the site boundaries. However, as that would be the case with any greenfield site, it is not a reason to dismiss the scheme out of hand.
30. The site is currently enclosed behind mature landscaping on its boundaries. Except for the removal needed to create the site access, the hedges and trees would be retained and supplemented with new planting. Significantly, the Council accept that the development would not be readily visible over the wider area. Where the dwellings might be visible, they are likely to be seen against the general townscape of Elsenham and would not be unduly intrusive in the wider landscape.
31. There would of course be a more pronounced visual effect from those properties on Rush Lane located opposite the site access. Whilst I have some sympathy with those residents who might experience a change to their outlook, there is no right to a view. Given the likely distance between the houses on Rush Lane and those proposed, I do not consider the resulting outlook for these residents would be unacceptable in normal planning terms. In any event, the scale and layout of the houses are issues which the Council would have control over at the reserved matters stage.
32. Bearing in mind the likely layout with houses set back from the south site boundary as well as the alignment of the railway and existing development along Robin Hood Road, I do not consider that the development would result in a significant degree of coalescence between Elsenham and Fuller's End. The houses would also relate well to the existing built form and bearing in mind those consented developments in the immediate area, would read as a logical extension to the village.
33. I accept that the houses would be visible from PROW29. However, the Masterplan shows how it might be possible to develop the site and to divert the footpath through areas of open space rather than along estate roads. Whilst it would inevitably be a different experience, this has to be offset against the benefits arising from new public access to areas of open space around the footpath. These maintained areas would provide a pleasant stopping point where users could sit and enjoy the view over to Fuller's End, have a picnic or simply watch the trains go by. Whilst I understand that some would prefer to retain the footpath's open aspect, it has to be recognised that some, particularly the less mobile and perhaps those with pushchairs and young children, would benefit significantly from the proposed footpath and connectivity improvements.
34. Overall, there would be some localised visual effects arising from the loss of the appeal site's open and undeveloped character. There would also be some erosion of the amenity value derived from views across the appeal site from the public footpath. However, in my view the overall level of harm would be limited. Nonetheless there would still be conflict with Policies S7 and S8 and this weighs against the development in the overall planning balance.

## **Other Matters**

35. Local residents have expressed a wide range of concerns including but not limited to the following: loss of wildlife habitats, drainage, air quality, the effect on highway safety, congestion and local infrastructure. However, it is evident from the Committee Report that these matters were carefully considered by the Council at the application stage. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.

## **Conclusion and Planning Balance**

36. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore the development plan.
37. I have found that the development would result in limited harm to the open characteristics of the CPZ and countryside. There would be no significant coalescence either between Elsenham and the airport or surrounding settlements. Overall, there would be limited conflict with the countryside protection aims of LP Policies S7 and S8.
38. As to whether material considerations indicate that the permission should be allowed, the Framework is one such consideration. In light of the Council's 5YHLS position, those policies that are most important for determining the application are to be considered out-of-date. Along with my findings in relation to consistency, this strictly limits the weight I attach to the conflict with LP Policies S7 and S8. It also engages the default position identified in paragraph 11(d) of the Framework.
39. The effect of this is that the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused. The key issue is therefore whether the development would satisfy the other relevant requirements of the Framework and thus benefit from the presumption in favour of sustainable development.
40. The provision of up to 40 dwellings comprising of market and affordable housing carries substantial weight in a district with an acknowledged acute shortage of market and affordable housing. This is the weightiest factor in the overall balance. Beyond the public footpath, there is currently no public access to the appeal site and therefore the opportunity for the local community to use the areas of open space created by the development, is also a benefit, albeit one that is primarily intended to address the needs of the occupants of the appeal scheme itself. Collectively, the social benefits attract substantial weight.
41. The purchase of materials and services in connection with the construction of the dwellings, employment during the construction period, an increase in local household expenditure are economic benefits that weigh in favour of the scheme.
42. In environmental terms, there would inevitably be some dis-benefits. In the sense that the development of open countryside is such a disbenefit, this cannot carry significant weight because of the Council's 5YHLS position which can only realistically be remedied by the release of greenfield sites in the



countryside and/or the CPZ. There would inevitably be landscape harm arising from a loss of openness across the appeal site. However, given the site's high level of visual containment and close relationship to the existing built form of Elsenham, these are not factors that weigh heavily against the scheme.

43. The environmental benefits include small biodiversity gains. The appeal site is also located in an accessible and sustainable location on the edge of Elsenham, a town with a reasonable range of shops and services. The public transport contribution which aims to increase the frequency of bus services through the village has the potential to benefit the local community. Taking these benefits into account, I find the development would result in minor environmental harm.
44. Based on the foregoing, it is clear that the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from this development. I am thus satisfied that the appeal scheme would constitute sustainable development. This is a significant material consideration sufficient to outweigh the limited development plan conflict.
45. Accordingly, I conclude that the proposal should be allowed, subject to the imposition of a number of conditions, as discussed at the Hearing and set out in the schedule below.

### **Planning Obligations**

46. The Framework sets out policy tests for planning obligations; obligations must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in regulation 122 of the CIL regulations.
47. The education contribution comprises an Early Years and Childcare contribution of £17,422.00, a local primary school contribution of £15,281.00 and a local secondary school education contribution of £23,214.00. These contributions are supported by a response from the Education Authority which identifies a potential future deficit at local education providers which would serve the development. I consider the education obligation, which is calculated via a standard formula, would be fairly and reasonably related to the development proposed and it would as a result meet the statutory tests.
48. The clauses under Schedule 2/Part 1 reflect these requirements of LP Policy H9 contains to provide 40% affordable housing. I have received further information from the Council regarding the bus service contribution of £118,000. Schedule 2/Parts 4 and 5 contain drainage and open space obligations. In all cases I am satisfied that the obligations meet the statutory tests.

### **Conditions**

49. The parties have suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (PPG). In some instances I have amended the conditions in the interests of brevity or to ensure compliance with the PPG.
50. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. To ensure a suitable and safe access, I have imposed a condition relating to the

highway works<sup>[4]</sup>. However, I have simplified the condition given that the relevant details are already shown on the approved plan. To ensure a satisfactory level of permeability I have imposed a condition regarding a pedestrian link to PROW28<sup>[5]</sup>. Conditions regarding the provision of a satisfactory drainage system are necessary to ensure drainage of the site in the interests of flood prevention<sup>[6&7]</sup>. In the interests of local ecology and to ensure a net-gain for biodiversity, I have attached various ecology conditions<sup>[8-10]</sup>. In some cases, I have simplified the conditions suggested by the Council as some of the detailed requirements were patently excessive for a development of this size. Given that the Council would retain overall control for the approval of these schemes, I am satisfied they would not be prejudiced by these changes.

51. To protect the living conditions of local residents, I have imposed conditions relating to noise mitigation and restrictions upon construction hours<sup>[11&12]</sup>. A land contamination condition is necessary to ensure the land is suitable for its intended use<sup>[13]</sup>. Beyond the provision of electric charging points to each dwelling, the Council was unable to explain what other measures might be required under the suggested air quality scheme. I have therefore imposed a more specific condition relating to electric charging points to mitigate the impact on air quality<sup>[14]</sup>. To ensure compliance with the Council's SPD<sup>5</sup>, I have imposed a condition relating to accessible homes<sup>[15]</sup>. Finally, to protect any archaeological assets that may be present I have imposed an archaeology condition<sup>[16]</sup>.
52. The suggested condition regarding the diversion of Footpath 29 is unnecessary as footpath diversions are covered by other legislation namely s257 of the Town and Country Planning Act. I have amended the requirements of the suggested drainage condition so as to include details of maintenance and management arrangements. A separate condition covering these matters is therefore unnecessary. I am not persuaded that a condition requiring the applicant to keep a maintenance log work is relevant to planning, necessary or enforceable, I have omitted it accordingly.
53. The ecological information submitted with the application does not support the presence of bats. That conclusion has not been challenged by cogent evidence. Accordingly, I am not persuaded that the suggested lighting condition is necessary. Finally, I am satisfied that the requirements of the two birdstrike avoidance conditions, are capable of being dealt with as part of 'landscaping' at the reserved stage and/or through the drainage scheme (condition 6). I have omitted the suggested conditions accordingly as they are unnecessary.
54. Conditions 6, 7, 9, 10 and 16 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.

*D. M. Young*

Inspector

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<sup>5</sup> Full title: Supplementary Planning Document - Accessible Homes and Playspace 2005

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access works shown on drawing number DWG-04 Rev B shall be provided prior to first occupation of any dwelling.
- 5) Prior to first occupation of any dwelling, a pedestrian connection between the development and Public Footpath 28 (Elsenham), details of which shall first have been submitted to and agreed in writing with the local planning authority, shall be provided and retained thereafter.
- 6) No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
  - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753;
  - Limiting discharge rates to 6.5 l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
  - Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
  - Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event;
  - Final modelling and calculations for all areas of the drainage system;
  - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753;
  - Detailed engineering drawings of each component of the drainage scheme;
  - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
  - A written report summarising the final strategy and highlighting any minor changes to the approved strategy, and

- Details of maintenance and management arrangements

The development shall be carried out in complete accordance with the approved details.

- 7) No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
- 8) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (Cotswold Wildlife Surveys, September 2019) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.
- 9) No development shall take place until a Reptile Mitigation Strategy has been submitted to and approved in writing by the local planning authority. The Reptile Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.
- 10) No development shall take place until a Biodiversity Enhancement Strategy has been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.
- 11) Prior to first occupation of the development a scheme for protecting the proposed dwellings from rail noise shall be submitted in writing to the local planning authority for approval. The scheme shall follow the recommendations identified in the Resound Acoustics Noise & Vibration Assessment report (Ref: RA00562-Rep 1) dated January 2019. None of the dwellings shall be occupied until such a scheme has been implemented in accordance with the approved measures which shall be retained thereafter.
- 12) Construction work shall only be carried out on site between 8:00am and 6:00pm Monday to Friday, 9:00am to 5:00pm on a Saturday and no work on a Sunday or Public Holiday. The term "work" will also apply to the operation of plant, machinery and equipment.
- 13) The dwellings hereby permitted shall not begin until a scheme to deal with contamination of land/ground gas/controlled waters has been submitted to and approved in writing by the local planning authority. The scheme shall include all of the following measures, unless the local planning authority dispenses with any such requirement in writing:
  - A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175: 2011 Investigation of Potentially Contaminated Sites – Code of Practice.
  - A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report shall

include a detailed quantitative human health and environmental risk assessment.

- A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
  - If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the local planning authority.
  - A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.
- 14) Prior to first occupation, each dwelling hereby approved shall be provided with an electric vehicle charging point. Once provided the charging points shall be retained thereafter.
- 15) 5% of the dwellings approved by this permission shall be built to Category 3 (wheelchair user) housing M4 (3)(2)(a) wheelchair adaptable. The remaining dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4 (2) of the Building Regulations 2010 Approved Document M, Volume 2015 edition.
- 16) No development or preliminary groundworks can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority prior to reserved matters applications being submitted.
- A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following the completion of this work.
  - No development or preliminary groundworks can commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been signed off by the local planning authority through its historic environment advisors.
  - The applicant will submit to the local planning authority a post-excavation assessment (to be submitted within three months of the completion of fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

**APPEARANCES**

FOR THE APPELLANTS

Thea Osmund-Smith LLB

Frazer Hickling BA (Hons) DipUD MRTPI

Gary Holliday CMLI BA(Hons) M.Phi

Appellants' Barrister

Appellants' Planning Consultant

Appellants' Landscape Witness

FOR THE LOCAL PLANNING AUTHORITY

Alison Hutchinson MRTPI

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INTERESTED PERSONS

Dr A Mott

Elsenham Parish Council