

## TOWN AND COUNTRY PLANNING ACT 1990

### SECTION 78 APPEAL

<b>SITE</b>	Land To The North Of Cornells Lane, Widdington, Essex CB11 3SG
<b>APPLICATION DESCRIPTION</b>	Proposed erection of 4 no. detached dwellings and associated works
<b>LPA</b>	Uttlesford District Council
<b>LPA REF</b>	UTT/21/2137/FUL
<b>APPELLANT</b>	Mr and Mrs M. Tee



## APPELLANT'S STATEMENT OF CASE

APRIL 2022

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## 1.0 INTRODUCTION

- 1.1 This appeal is made by Springfields Planning and Development on behalf of the appellants, Mr and Mrs M. Tee.
- 1.2 The appeal concerns a refusal of full planning permission by the Local Planning Authority (LPA) Uttlesford District Council. This statement assesses the council's reasons for refusal and advocates a case for the appeal to be allowed.
- 1.3 Throughout this Statement, various appendices are referred to, which are submitted as separate individual documents. A full list of appendices is set out in the contents page of this Statement.

### The Planning Application

- 1.4 The planning application seeks approval of the "Proposed erection of 4 no. detached dwellings and associated works" on Land north of Cornells Lane, Widdington, Essex. The scheme is a detailed (ie 'full') application, meaning it is ready to be delivered (subject to discharge of any planning conditions) to help the local housing crisis, in the event the appeal is allowed.
- 1.5 The subject planning application (LPA reference: UTT/21/2137/FUL) followed on from positive pre-application advice which confirmed officer opinion that there was *scope for development* at the site. The application was submitted on 29<sup>th</sup> June 2021 and was validated by the LPA on 1<sup>st</sup> July 2021.
- 1.6 The LPA made a decision on the application around eight and a half months later, via the Planning Committee, which rejected the **recommendation of planning officers to approve** (see below).
- 1.7 The planning application was submitted with a significant level of information (listed at Appeal Questionnaire Response 5b) including numerous plans, professional reports and other supporting documents. This level of information should give confidence that the appeal proposal is properly and robustly informed.
- 1.8 The proposed scheme is substantially explained and justified in the Planning, Design and Access Statement, June 2021 (NB herein referred to as the '**PDAS**'). That document draws together the relevant planning issues that need to be considered in determining the appeal. To avoid undue repetition, **the inspector is asked to fully review the PDAS** in conjunction with the other documents which accompanied the planning application, as well as the additional comments and justification set out in this Statement of Case. Note that the PDAS was issued just before the updated NPPF of July 2021 and as such some of the cited NPPF paragraph numbers may have changed.
- 1.9 Further details of the appeal scheme and its justification will be set out in this Statement of Case. However, particular **key issues** to bring to the inspector's attention are as follows:
  - The council continues to be unable to demonstrate a 5 Year Housing Land Supply, such that the **NPPF's 'Presumption in Favour of Sustainable Development' is engaged**
  - **Heritage officers have indicated that only a low level of harm applies**
  - There are **no objections from the Highway Authority** regarding the access proposal

- **Other statutory consultees raise no objections**
- **Planning Officers of the LPA fully supported the planning application** subject of this appeal. They recommended approval of the proposal but the council's Planning Committee decided to refuse the application contrary to the professional advice received from its own officers.

### The Decision

- 1.10 The Planning Application was reported to the Uttlesford Planning Committee on 17<sup>th</sup> March 2022. **The professional planning officers of the council recommended approval of the planning application, subject to planning conditions. The inspector is asked to give weight to the professional opinion of the council's planning officers** who had fully considered the scheme against policy and material considerations.
- 1.11 The planning officers' *Report to Planning Committee* is found at Appendix 1 and *an Addendum to Planning Committee Report* at Appendix 2. Weight can be attached to the council's own professional advice which supported the application and took in to account the council's Development Plan policy and material considerations including Government Policy as set out in the National Planning Policy Framework (NPPF).

### Planning Officer's Summary Assessment

- 1.12 The summary conclusions from the council's planning officers, which underpinned their recommendation to approve the application, are set out at paragraphs 11.1 to 11.9 in the Report to Planning Committee (Appendix 1) as follows:
- **11.1 The location of the current proposed development of 4 dwellings is largely seen to accord with the NPPF on sustainable development, and with Policies S7 and GEN1 of the Uttlesford Local Plan 2005.**
  - **11.2 The proposed layout, scale and appearance of the development is acceptable in the context of the character and appearance of the site and surrounding area.**
  - **11.3 The level of harm to the designated and non-designated heritage assets is considered low level. The benefits have been weighed against this.**
  - **11.4 The landscaping details are considered appropriate however more detailed plans will be required and secured by condition. Therefore the proposal accords with ULP Policies S7, GEN2, and ENV3.**
  - **11.5 The submitted layout plan shows that impacts on residential amenity are not likely to be significant and therefore accords with ULP Policies GEN2 and GEN4.**
  - **11.6 The proposal would not be harmful to protected/priority species (ULP Policy GEN7).**
  - **11.7 The proposed highway access is not considered to have any harmful impact to highway safety and in accordance with ULP Policy GEN1.**

- 11.8 The *harm caused by the proposed development is not considered to significantly and demonstrably outweigh the benefits*, when assessed against the policies in this Framework taken as a whole NPPF Paragraph 11d (i).
- 11.9 **RECOMMENDATION- APPROVE SUBJECT TO CONDITIONS**

Source - Report to Uttlesford DC Planning Committee 17th March 2022

- 1.13 Notwithstanding the positive officer recommendation to approve, members of the Planning Committee voted to refuse the application. A motion by one member to defer the application was not supported.
- 1.14 There are three reasons for refusal cited in the Decision Notice. These reasons can be *generally* summarised under the following impact issues:
- i) character and appearance of the Protected Lane;
  - ii) character and appearance of the Conservation Area and setting of listed buildings;
  - iii) context, setting and character of the rural location/Countryside
- 1.15 This appeal addresses the reasons for refusal and will demonstrate why the appeal should be allowed, taking account of Development Plan policy and material considerations.

#### Planning Committee Deliberations

- 1.16 The Uttlesford DC Planning Committee meeting of 17<sup>th</sup> March 2022 is available on the council's website and YouTube. The appellants have prepared a written transcript of the committee's deliberations of the planning application subject of this appeal. The *Transcript of Planning Committee* is found at Appendix 3. The LPA is invited to confirm this is accurate.
- 1.17 The committee transcript demonstrates that, in disagreeing with recommendations from their own professional officers, councillors of the Planning Committee did not have a 'balanced debate' to make a decision as required under the Planning Acts (ie an assessment of Development Plan and material considerations) and did not properly consider, discuss or weigh up scheme benefits against alleged impacts when considering the tilted balance under the NPPF's Presumption in Favour of Sustainable Development.
- 1.18 There were various members of the public who spoke for or against the application, one of these including a co-owner of the village pub. The Deputy Leader of Uttlesford Council (who is not a voting member) addressed the Planning Committee to speak against the application. Only 6 out of 10 members attended the committee including 4 members of the same (ruling) political party as the Deputy Leader, who had made comments against the application.
- 1.19 The inspector will see from the Committee Transcript that the Member debate was very one sided. The Planning Committee paid no or very little attention to benefits and other positive attributes of the application, including how much weight should be attributed to those issues, which (amongst others) include:

- housing need and the significant **housing land supply shortages**
- the council's **unduly restrictive countryside policy**
- the provision of **energy efficient and sustainably constructed housing** over above and above policy and Building regulation requirements, **saving circa 5 tonnes of carbon dioxide** emissions to the atmosphere – each year
- potential for **significant biodiversity net gain**, an off site ecology area measuring nearly one third of an acre
- substantial new vegetation including around **50 newly planted trees**, nearly **half a kilometre of new hedgerow**
- the provision of a **new footpath** through the site for public safety, amenity and enhanced appreciation of the Conservation Area
- how the scheme had **addressed a previous appeal decision** (which concerned a significantly different scheme for 20 dwellings on a much larger area than now being considered at this appeal)
- the importance of **reduced scale (ie numbers of housing) when making a comparison against the appeal scheme** which was a much larger site area and a “major “housing scheme
- **low or no impact upon designated heritage assets** (from 4 dwellings) and how this compared to impacts concerning the (20 unit/larger site) appeal scheme
- **potential to construct an access under permitted development** in exactly the same way as proposed, as a ‘material consideration’

1.20 Further comment on these matters is made later in this Statement.

1.21 It will be noted that **Uttlesford DC's planning service was placed in “Special Measures” on 8 February 2022** by Government (Christopher Pincher MP Minister of State for Housing Department for Levelling Up, Housing and Communities) due to **poor performance in defending appeal decisions**, including those planning applications recommended for approval by planning officers but refused by planning committee.

1.22 The Special Measures ‘Designation’ (Appendix 4) was made under section 62A of the Town and Country Planning Act and states it is made in relation to the LPA's **“quality of making decisions on applications for planning permission for major development”**. Until further notice applicants for major schemes can bypass the LPA and apply direct to the Planning Inspectorate. The appellants have concerns about the quality of the Planning Committee's decision making in this case, as evidenced in this Statement.

1.23 The ‘Designation’ also follows on from the *“Uttlesford District Council Local Planning Authority Peer Review”* by the East of England Local Government (EELGA) August 2021 which prepared a report entitled *“Fit for Purpose Local Planning Authority and Development Management Improvement Plan”*.

1.24 This report investigated the council's planning service and its performance including the Planning Committee and made various recommendations eg training for Planning Committee Members. Amongst other matters the EELGA Peer Review noted planning applications (like the 'minor' appeal application scheme) are being called to Planning Committee, then being overturned by members. Paragraph 6.12 states:

*"6.12 - It is apparent Members are working on the back end of the Development Management pathway, and not properly enabled to be at the front end. This tends to result in call-ins, requiring applications to be considered at Committee that would be more appropriately dealt with under the delegation scheme and **overturning applications recommended for approval**. These individual and collective actions reflect a lack of trust between members and officers and are failures of process. They appear to be made without regard to the impacts on the quality [of] decision making, performance of the LPA, costs pressures they add to an already overloaded and failing system. Above all they reflect a lack of understanding of where in the planning process better place making and development outcomes can be secured."*

1.25 These observations are clearly evident in the case of the appeal application, where the officer's recommendation has been overturned for a scheme that would deliver high quality building and place making. Members, it would seem, appear not to trust their professional officers.

1.26 Paragraph 6.5 of the EELGA Peer Review further highlights this problem. Members can lack trust in their own professional planners, criticise officers and ignore technical evidence:

*"6.5 During the review, some Members referred to positive working relationships with officers but other Members expressed a lack of trust in the officers. The Planning Committee appears to be an arena for confrontation, officers criticised, and external professional technical evidence dismissed."*

1.27 It is evident from the Committee Transcript that the Planning Committee was close to disregarding technical advice of external consultees or was selective in how the consultee comments were used or interpreted. The committee tried to go against the advice of the Highways Authority (who did not object on highway safety grounds) but were eventually dissuaded by planning officers to do so.

1.28 Furthermore, the **Planning Committee decided to refuse the application on heritage grounds despite the council's heritage advisers indicating there is a low level of harm to the Conservation Area**, as set out in the email consultation response from the Built Heritage Officer dated 21 February 2022, also reported at paragraph 6.11 of the *Addendum to Planning Committee Report* at Appendix 2.

1.29 The Planning Committee's failure to (a) acknowledge the LPA's own consultee advice that there was only a **low level of such heritage harm** and (b) **apply this low level of harm** in considering the planning balance, was a critical oversight by the committee and in the appellant's opinion was unreasonable.

1.30 It was also noted that one member, when referring to the term professional advisers, then quoted, "*I don't know if he [last speaker] wants to say professional advisors anymore..*". This may potentially indicate member mistrust of professional advisers or a misunderstanding of why comments were made (requiring training to address).



1.31 Tellingly, “Recommendation 1” of the EELGA Peer Review proposes that,

*“Before sitting on the Planning Committee, Members need to undertake mandatory training on planning matters and attend annual refresher courses. Members need to be encouraged to read the National Planning Policy Framework and observe a nationally recognised best practice LPA Planning Committee at work.”*

1.32 Had such training already have been undertaken, one would have reasonably expected that (at least) a more balanced debate was undertaken by the Planning Committee in relation to the appeal application, such that the reason for the officer recommendation was fully understood, including the importance of professional terms used eg “low level” of harm upon the Conservation Area (a designated heritage asset) in weighing up the tilted balance in relation to NPPF Paragraph 11.

1.33 Such improved understanding by the committee (as may be facilitated in the future by the training recommended by EELGA) may have influenced the quality of the member debate and potentially led to a different outcome of the application (in turn avoiding this appeal).

## 2.0 THE SITE LOCATION & ITS SUSTAINABILITY

2.1 Chapter 3 of the “PDAS” sets out a *significant* amount of information concerning the appeal site’s location and its sustainability. To avoid repetition, the Inspector is asked to refer to that information in conjunction with the information set out below.

2.2 Key points to note are:

- The available facilities in Widdington, such as a Public House, Village Hall, Church, Equipped Play Area, Allotments, Post Office (mobile), various visiting food caterers and bus stops for the 6 days/week bus service (see below). **The numerous village facilities are within short and easy walking distance** of the appeal site. The inspector is referred to the originally submitted ‘**Facilities Map**’. Further information on local facilities is shown on the submitted **Photographs of Site and Context** (June 2021).
- Widdington’s **proximity to the road network and to other nearby larger settlements** (eg towns of Saffron Walden and Bishop’s Stortford) where a larger range of facilities and services are provided
- **Widdington has close proximity to other villages**. These have various facilities of their own but jointly with other villages help form part of the overall service provision in the local rural communities, which those living at the appeal site could take advantage of. This is particularly relevant in national policy terms because **small housing growth in Widdington will also help support services in the cluster of other villages around** (eg Newport, Debden, etc), noting NPPF paragraph 79 which states:

*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, **development in one village may support services in a village nearby.** (NPPF Para 79)*

- **Widdington benefits from a good hourly bus service** which operates 6 days/week (Mon-Sat) and has up to 12 services per day. It runs between the towns of Saffron Walden and Bishop’s Stortford and **serves three mainline railway stations** on its route (Newport, Audley End and Bishop’s Stortford) giving access to London, Harlow and Cambridge. The inspector is directed to the bus and railway timetables submitted with the original application documents. **It is possible from the appeal site to reach towns, mainline railway stations and London via public transport without using the car.**
- Furthermore, Essex County Council recently sought comments on the “Uttlesford Bus Consultation Feb 2022”. This concerns improvements to various bus routes in the District, including the 301 service which comes through Widdington. **The 301 bus service is already a good service but is proposed for significant improvements**, with up to 18 (from 12) services per day. It would also include earlier departure times (from 0657hrs) and later arrival times (2157hrs) which will further improve the ability to commute by public transport to towns and railway stations for onward travel (eg Cambridge/London). The proposed 301 Bus Timetable is found at Appendix 5. Essex CC are currently out to tender as the current contract is due to expire at the end of July

2022. Following reviews of bids, a new contract will commence at the beginning of August 2022. Updates may be reported to the Inspector to provide further evidence of the sustainability credentials of the village.

- 2.3 The LPA does not allege in its decision notice that the appeal site is located within an unsustainable location, isolated, remote from local services or not served by public transport. The site is clearly located within the fabric of the village where social and economic objectives of the NPPF can be realised.
- 2.4 It should therefore be deemed as lying within a reasonably sustainable village location related to the *limited scale* of housing proposed. Indeed, paragraphs 3.22 to 3.27 of the PDAS evidence a “cluster” of 7 new dwellings (net gain of 5 dwellings on adjacent sites) further from the centre of the village, outside the village envelope. Accordingly, the 4 dwellings proposed at the appeal site could not be deemed unacceptable in respect to access to services and facilities, when the LPA has granted a greater number of dwellings at other clustered sites elsewhere in the village.
- 2.5 In summary, given all of the above there should be no doubt that **Widdington, wherein the appeal site lies, is a sustainable location suited to the proposed *minor scale* of housing development.**

### 3.0 THE APPEAL SITE & CONTEXT

3.1 Chapter 2 of the PDAS *comprehensively* sets out details of the Appeal Site, including:

- Site Context and Character
- Site Description
- Site Constraints (noting various professional reports and surveys)
- Planning History (especially noting pre-application advice; & major housing appeal scheme)

3.2 To avoid undue repetition, the inspector is accordingly directed to Chapter 2 the PDAS to understand the site and its context and the submitted **Photographs of Site and Context** (June 2021). Some key and additional comments are made below.

3.3 The appeal site measures 0.48ha and lies in a **central village position** off Cornells Lane, just east of the village High Street, where the proposed housing would have an appropriate spatial relationship in these terms. The appeal site part includes, or otherwise lies immediately adjacent to, the public highway, which is marked in yellow on the plan provided by Essex CC (Appendix 8).

3.4 Whilst undeveloped, **the site can be seen in context with other buildings comprising the built up fabric of the village**. From within the body of the appeal site, other village housing is visible to the west (eg back of High Street), Cornells Lane, south (eg Weft House, Cornells Lane filtered view) and north (filtered view). From outside the site eg along Cornells Lane and around the High Street junction, housing is also visible. Accordingly, well designed and appropriate scaled **residential development would not be out of character with what lies around**.

3.5 **The internal part of the site is significantly shielded from public viewpoints**, including: mature vegetation to Cornells Lane to the south; and a mixture of close board fencing and mature vegetation to the east. Subject to appropriate siting and scale (as proposed), the development at the appeal site should not be harmful to current viewpoints enjoyed, noting along that Cornells Lane lies lower than the ground level of the body of the site and as such views of it are already restricted.

3.6 It is vitally important for the inspector to appreciate that **the appeal site only relates to a smaller part of an overall paddock**. The bulk of it will be retained undeveloped.

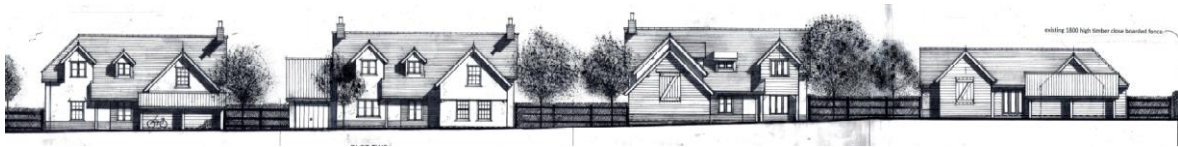
3.7 This is crucial to understand because of the material site history. The 'whole' paddock (not the smaller part subject of this current appeal) was subject of a major planning application (UTT/18/0885/FUL) for a major housing scheme and was dismissed on appeal on 30 January 2020 (see below). An extract of the layout plan of that scheme is provided at Appendix 6 from which it will be seen that the whole paddock was proposed for development of 20 dwellings and also included a 'major' road adopted access arrangement with 2m footways each side of the new road. It will also be seen that apart from being wider the access was proposed further east along Cornells Lane.

3.8 The Appeal Decision (PINS Ref: 3226765) regarding the 20 unit scheme under application UTT/18/0885/FUL is provided at Appendix 7. **The reasons for dismissing that appeal have been addressed in the application proposals subject of this current appeal**.

3.9 **The current scheme site area of 0.48ha (for a minor scheme of 4 dwellings) is markedly different to the area of paddock that was involved in the appeal scheme, which was 1.35ha (for a large scale scheme of 20 dwellings).**

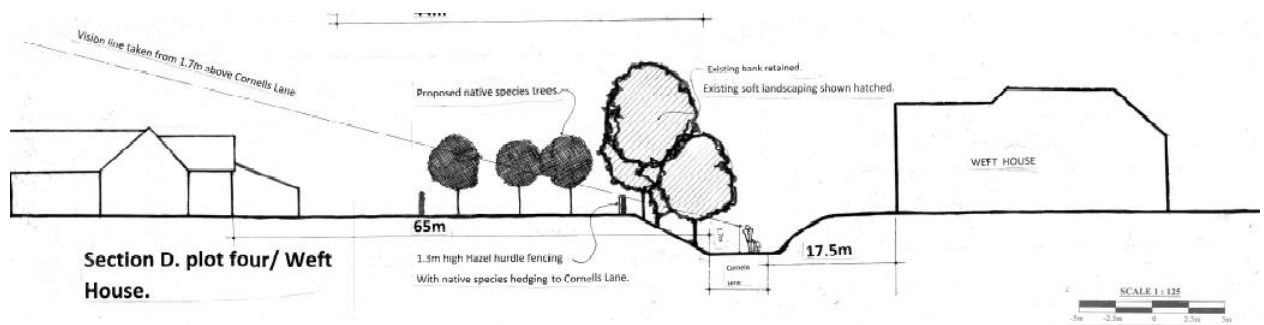
## 4.0 APPEAL PROPOSALS

- 4.1 The appeal concerns a full planning application regarding the “Proposed erection of 4 no. detached dwellings and associated works”.
- 4.2 The appeal application included a *comprehensive* package of professional reports/surveys, architect drawings and other supporting documentation, including the following:
- Planning Application Form
  - Photographs of Site and Context
  - Facilities Map
  - Access Assessment
  - Preliminary Ecological Appraisal
  - Minor Development Biodiversity Checklist
  - Arboricultural Impact Assessment
  - Heritage statement
  - Energy statement
  - Sustainability Statement
  - Flood Map for Planning
  - Bus Timetable – 301 Service
  - Train Timetable – Cambridge to London Liverpool Street
  - Drawing No: P 5004-03 Rev A – Location Plan
  - Drawing No: P 5004-10 Rev B – Proposed Site Layout Plan
  - Drawing No: P 5004-11 Rev A – Proposed Floor Plans
  - Drawing No: P 5004-12 Rev A – Proposed Elevations (Side Elevations – Plots 1 & 4)
  - Drawing No: P 5004-13 Rev A – Proposed Elevations (Side Elevations – Plots 2 & 3)
  - Drawing No: P 5004-14 Rev A – Proposed Elevations (Front & Rear Elevations, Plots 1, 2, 3 & 4)
  - Drawing No: P 5004-15 Rev A – Proposed Sections
  - Drawing No: P 5004-16 – Infrastructure Layout
  - Drawing No: P 5004-17 Rev A – Soft and Hard Landscaping Details
- 4.3 The inspector is asked to refer to Chapter 4 of the PDAS which provides a full and detailed explanation of the scheme and its evolution, in order to avoid undue repetition in this Statement of Case.
- 4.4 The scheme is evidenced as being **carefully designed**, taking account of constraints and opportunities, SHMA **housing needs**, consultant reports (in relation to access, trees, heritage, energy and sustainability), Uttlesford DC’s Climate and Ecological Emergency, Uttlesford DC’s Interim Climate Change Policy and relevant planning history.
- 4.5 The appeal scheme proposes a **high quality, traditionally designed and ‘beautiful’ development** of three chalet dwellings and a bungalow.
- 4.6 Examples of **superb quality traditional materials include natural slate and hand made clay tiles**. The development is of limited scale, height and density (*circa 12 dph*). It will achieve an attractive arrangement of dwellings as shown below.



Attractive arrangement of village scale homes

4.7 It will benefit from existing boundary landscaping cover both along Cornells Lane and to the east. There would be limited visual impacts of the dwellings due to set back from the site frontage, lower levels of the lane (than the site) and existing roadside vegetation. Cross section drawings show the potential for further invisibility from perpendicular lane views with additional landscaping measures (attractive hazel hurdle fence and hedgerow). All cross sections (Drawing P5004-15-RevA) should be referred to but one plot example is shown below, which shows Plot 4 and also its (lower and more set back) relationship to an existing dwelling, Weft House, on the opposite side of Cornells Lane. Weft House is set back 17.5m from the road. Plot 4 is shown set back 65 m from the road which will diminish any visual prominence from the lane.



4.8 Furthermore, **extensive areas of new landscaping** are proposed including:

- **Circa 50 new trees**
- **Around 500m ('half a kilometre') of new hedgerows**
- **A new ecology area to the rear of the private gardens (around a third of an acre)**

4.9 The scheme will therefore be set within an enclave of existing and (as it matures) new vegetation to provide a very attractive small scale enclave, which will provide, in the appellant's view, a 'beautiful' place, as required by the NPPF.

4.10 CGI Images have been prepared as supporting information which are intended to give a flavour of the proposals, including high quality design and good levels of amenity and landscaping. They aim to demonstrate compliance with para 126 of the NPPF: *"The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve"*.

4.11 The CGI's are provided at Appendix 9 (Rear view across paddock) and Appendix 10 (View from above Cornells Lane). For a quick reference, thumbnail images are also provided below. These show the potential for the completed development to assimilate in the landscape, including existing tree cover and proposed landscape once matured.



CGI images of the proposed development, showing high quality buildings and place making

- 4.12 Furthermore, the dwellings have been designed (see submitted expert Energy Statement) to achieve energy savings of around **61% above building regulations**, equating to **5.1 tonnes of carbon dioxide emission savings** to the atmosphere – *each year*. This is achieved through a variety of measures including:
- increased fabric thickness to walls
  - Air Source Heat Pumps and
  - Solar Panels.
- 4.13 There will also be numerous other sustainability measures such as:
- Electric Vehicle Charging Points
  - Water Efficiency
  - Home Working facilities
- 4.14 All of these measures are offered to be secured via a planning condition linked to the Sustainability Statement (as informed by the Energy Statement), in the event the inspector allows this appeal.
- 4.15 **A new permissive footpath for connectivity, convenience and safety will be provided for public use** through the southern part of the site, linking High Street (west) to PROW's (east). This will be available to the new occupiers and public alike and can be secured via condition in the event the appeal is allowed. It will be noted that Cornells Lane has no footway *along the site frontage* so members of the public currently have to walk in the road if accessing/exiting the PROW to the east of the site via the Cornells Lane steps. The new footpath link gives a safer "option". Again it can be secured by condition.
- 4.16 **The new footpath will open up (currently unavailable) views of the Conservation Area** where towards the back of the High Street, to allow the public to experience these views. For example, when walking on the new internal footpath where in front of plot 1, views will be available to the north-west for the public to enjoy.
- 4.17 **The application scheme did not attract recommendations to refuse planning permission from any technical consultee.** See paras 6.11-6.18 of the Report to Planning Committee (Appendix 1). However, several comments were made, or conditions recommended. These consultees included:

Consultee	Comments Made
Ecological Consultee (Essex CC, Place Services)	<b>No objections</b> , subject to conditions. Ecology enhancements supported
Specialist Archaeological Advice (Essex CC, Place Services)	<b>No objections</b> , subject to conditions
Historic Buildings and Conservation Advice (Essex CC, Place Services)	<b>Advised Low Level of Harm</b> to Conservation Area, following initial observations effects upon heritage assets
Highways Authority (Essex CC)	<b>No objections</b> , subject to conditions
Environmental Health Officer (Uttlesford DC)	<b>No objections</b>
Anglian Water	<b>No objections</b>
National Air Traffic Safeguarding	<b>No objections</b>
BAA Aerodrome Safeguarding	<b>No objections</b>

- 4.18 The observations made by the Assistant (ie junior) Built Heritage Officer in his initial consultation response were considered by planning officers, who advised verbally **that the consultee comments “lacked substance”**. Planning officers subsequently sought confirmation from the consultee as to their opinion of the level of harm upon heritage assets. It was confirmed on 21 February 2022 (see Appendix 11) in an email to the planning officer from the Assistant Built Heritage Officer that the level of harm to the Conservation Area is “low”, but this was following a *senior* heritage colleague’s review. **This cited low level of low contrasts quite significantly with and in effect contradicts the junior officer’s original commentary**, which cited (unsubstantiated) ‘urbanisation’ effects plus (generally vague and unqualified comments) about impacts upon heritage assets. The appellants are not aware that the junior heritage officer had visited the *body* of the appeal site (which is private and locked) to make the initial assessment. The appellants agree with planning officers that those original comments from the junior heritage consultee *lack substance*.
- 4.19 In respect of Essex CC Highway comments, there is no objection on highway safety grounds subject to various conditions. One of these conditions concerns a requirement to achieve a certain gradients. Such gradient can be achieved, as per the Highway Consultant’s confirmation hereby submitted at in the form of a Technical Note at Appendix 12.

#### [Community Consultation](#)

- 4.20 The appellants drew encouragement for making the application due to the contents of the Widdington Design Statement dated 2009 (Appendix 13). This document was prepared by the



community and is noted in the Report to Planning Committee (Appendix 1) as Supplementary Planning Guidance. As such it is a material planning consideration.

- 4.21 Page 18 notes that one of the few opportunities for development is by extending the village in the east 'along Cornells Lane'.
- 4.22 Page 20 confirms future development outside village envelope should include 'village extension rather than creating separate estate development'. It will be noted that the 20 unit housing estate scheme (plan at Appendix 6) was dismissed via Appeal Decision PINS Ref: 3226765 (Appendix 7) although that related to the whole paddock, not this much smaller part subject of the current appeal, which proposes a small village 'extension', in linear form without depth. Other guidance at Page 20 is to ensure compatible building materials and colours; also to maintain low density character. The appeal scheme fully complies with this *local design guidance*.
- 4.23 Accordingly, the appellants attended the Widdington Parish Council meeting which met to discuss its consultation response to the application. The appellants spoke about the benefits of the application but were verbally advised by the Parish Council that the application scheme was contrary to their 'Planning Application Decision Tree' (Appendix 14). This document pre-determines the Parish Council's response (ie objection) to the LPA, dependent on the nature of the application. Its list sets out the wide range of circumstances which will attract an objection. It confirms, for example, that applications for houses outside the village envelope (no. 4 on the list), applications for an executive homes (no. 5) or even - somewhat worryingly - applications for 'social housing' (no. 6) will be objected to. The document is considered to be the antithesis of the NPPF which seeks to significantly boost housing supply and meets various housing needs.
- 4.24 The Parish Council did not therefore consider any of the benefits of the application, even housing provision. The objection letter made on their behalf pays little or no attention to these benefits. The appellants placed informative notices (Appendix 15) around the appeal site to advise their community of the application scheme's benefits but within 24 hours these were torn down.
- 4.25 The inspector will appreciate that there are only a small handful of residents who live immediately around the site and could be said to be 'directly' affected in any way by the development. Letters of objections included include some people writing in multiple times, several members of the same household, residents from other ends of the village and even a letter from Cambridge, many miles away.
- 4.26 It is also clear that many of the objection letters were based on a template which was posted on social media. A support letter from a local resident confirms this, although that letter was then requested to be removed from the Uttlesford DC website shortly thereafter. The appellants saved a copy of that letter (Appendix 16) from the LPA website but have removed the supporter's name to protect their identity. Numbers of objection letters should have no bearing on the outcome of this appeal although Uttlesford District Council's Deputy Leader in his objection letter has highlighted the number of objections. Any legitimate planning issues which representations letters raise are material and these have been properly addressed in this appeal.

## 5.0 DEVELOPMENT PLAN POLICY

- 5.1 The appeal falls to be determined subject to the provisions of Section 38(6) of the Planning & Compulsory Purchase Act 2004. This requires that the determination of an application for planning permission must be made in accordance with the development plan unless 'material considerations' indicate otherwise. This approach is reiterated at Paragraph 47 of the National Planning Policy Framework (NPPF/The Framework).
- 5.2 This Chapter therefore considers the adopted Local Plan. It also comments briefly on SPDs/SPGs, the emerging Local Plan and emerging Neighbourhood Plan.

### Uttlesford Local Plan ('the Local Plan') adopted 2005

- 5.3 The Local Plan is the relevant Development Plan in this appeal.
- 5.4 It was adopted by Uttlesford District Council on 20<sup>th</sup> January 2005 and only covers the period to 2011. The Council made an application in July 2007 to 'save' the policies in the Uttlesford District Local Plan. The Secretary of State's direction in respect of this request was received in December 2007. All the policies except two, which relate to completed development sites in Takeley, have been saved.

### Local Plan Housing Policy

- 5.5 The Local Plan was predicated on the basis of the housing requirements contained in the Essex and Southend on Sea Replacement Structure Plan 2001. The Structure Plan was extant at the time of adoption of the Local Plan but has ceased to be part of the Development Plan. It was largely replaced by The East of England Plan 2008 (Regional Spatial Strategy 14) with more up to date housing requirements (backdated to 2001). However, the East of England Plan was itself revoked in January 2013. The Local Plan - including its housing strategy - is therefore founded upon strategic planning policy documents which no longer exist and were formulated prior to The Framework (2012), as now amended in 2021.
- 5.6 There is no 'up to date' housing requirement in the adopted Local Plan, simply because its housing requirements are based upon the long since revoked Structure Plan. The Local Plan at Policy H1 (see Appendix 17), which concerns Housing Development, confirms that,

*"the Local Plan proposes 5052 dwellings for the period 2000 to 2011..".*

- 5.7 **The adopted Local Plan therefore only has a time horizon for providing housing until 2011.**

- 5.8 In a recent planning appeal (see PDAS paragraphs 6.9 & 6.10; and this Statement, Chapter 9 and Appendix 31), an inspector stated,

*'there can be little doubt that **the LP [Local Plan] 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**'.*

- 5.9 **The LPA is unable to demonstrate a 5 year housing land supply.** Housing supply issues are examined later in this appeal Statement as they provide support for the appeal proposals. Given the circumstances of the Local Plan and lack of housing land supply, a legitimate opportunity arises in this appeal application to help address the council’s housing need.
- 5.10 Policy H1 is a Housing Supply policy and thus is a ‘most important’ policy (in terms of NPPF Paragraph 11) concerning this appeal given that the proposal concerns new housing. However, the policy should be treated as ‘out of date’ or ‘**not up to date**’, due to the time horizon of the Local Plan housing allocations and the inadequate housing land supply situation in Uttlesford.
- 5.11 The LPA itself recognises within its *Local Plan NPPF Compatibility Assessment July 2012* (Appendix 18) that Policy H1 (Appendix 17) is “*not consistent*” with the NPPF (2012 version, now 2021).

#### **Site Designations and Related Policies**

- 5.12 The following Local Plan site designations and policies are relevant to this appeal, given the contents of the Decision Notice. The inspector is asked to Appendix 19 (Local Plan Inset Map – Widdington) and Appendix 17 (Local Plan Policies) which provide details of these, as extracted from the Uttlesford Local Plan 2005.

#### Policy S7 (Countryside)

- 5.13 The site (apart from the south-westerly nib of land at the start of the existing access) lies outside of the Development Limits of Widdington and is thus defined as Countryside within the Local Plan 2005 Proposals Map to which Policy S7 (Countryside) of the Local Plan applies. The Development Limits are demarcated by the black line on the Widdington Inset Map (Appendix 19), as taken from the adopted Local Plan.
- 5.14 Policy S7 is a ‘most important policy’ (NPPF, Paragraph 11) in determining the appeal application. For reasons set out below and elsewhere in this Statement, the policy is deemed out of date and of limited weight.
- 5.15 The appeal site is evidenced in the policy small text as being located within a ‘Rural *Restraint Area*’ as described at para 2.2.8 of the Local Plan (see Appendix 17), to which Policy S7 applies.
- 5.16 Policy S7 is aimed at preventing most forms of new development from occurring in ‘Countryside’ location, because of its strict ‘protectionist’ approach. **The policy is unduly restrictive and does not reflect Government Policy regarding sustainable growth and boosting housing supply.**
- 5.17 Also, the supporting paragraph at 2.2.8 explains that any development beyond development limits must be consistent with national policy. National Planning Policy has markedly changed since March 2012 following the inception of the National Planning Policy Framework (NPPF).
- 5.18 For the above reasons Policy S7 is **not up to date**, when compared with national planning policy. The acknowledged lack of compliance with national policy objectives and (limited) weight to be afforded to it is addressed in more detail later in this Statement.

5.19 The importance to this appeal of the Development Plan policies which are ‘not up to date’ is also examined later in this Statement.

#### [Policy ENV9 \(Historic Landscapes\)](#)

5.20 Another ‘most important policy’ (NPPF, Paragraph 11) in determining the appeal application is Policy ENV9 which concerns a range of ‘Historic Landscapes’, in this case including the ‘Protected Lane’ which runs the whole (circa 2km) length of Cornells Lane and therefore includes the southern highway frontage of the appeal site. A small part of the Protected Lane designation is shown in yellow on the Widdington Inset Map (Appendix 19), as taken from the adopted Local Plan.

5.21 For reasons set out later in this statement, Policy ENV9 is also an *out of date* policy and therefore of *restricted weight* in determining this appeal.

#### [Policy ENV1 \(Design of Development within Conservation Areas\)](#)

5.22 Only the site’s south-westerly nib of land, at the start of the existing access, lies within the Widdington Conservation Area. This part of land also lies within the Development Limits of the village. The Conservation Area boundary is demarcated by a red line with red triangles on the Widdington Inset Map (Appendix 19), as taken from the adopted Local Plan.

5.23 Therefore **the majority of the appeal site does not lie ‘within’ the Conservation Area**. It is clear from the ‘title’ of the policy however that it relates to development ‘within’ Conservation Areas. Therefore, this Development Plan policy, overall, has little relevance to the appeal as no buildings are proposed within the Conservation Area. Notwithstanding, development outside but affecting the Conservation Area is a consideration under legislation and national policy as examined later in this Statement.

#### [Policy ENV2 \(Policy ENV2 - Development affecting Listed Buildings\)](#)

5.24 There are no listed buildings upon the appeal site, although some are within the ‘vicinity’ at various/significant distances away from proposed key built development. An assessment against this policy, related legislation and national policy is examined later in this Statement.

#### [Other Policies listed in the Report to Planning Committee](#)

5.25 The Report to Planning Committee (Appendix 1) lists at paragraph 8.4 various other policies that were used as part of the planning officer’s deliberations in recommending the grant of planning permission.

5.26 Apart from those policies cited in the decision notice (ie S7, ENV1, ENV2, ENV9) ***the LPA did not refuse the application against these other policies and therefore the development should be deemed compliant (ie not in conflict) with them. The policies concerned are:***

- Policy GEN1 - Access
- Policy GEN2 – Design
- Policy GEN3 -Flood Protection
- Policy GEN4 - Good Neighbourliness
- Policy GEN5 - Light Pollution

- Policy GEN6 - Infrastructure Provision to Support Development
- Policy GEN7 - Nature Conservation
- Policy GEN8 - Vehicle Parking Standards
- Policy ENV3 - Open Space and Trees,
- Policy ENV8 - Other Landscape Elements of Importance for Nature Conservation
- Policy ENV13 - Exposure to Poor Air Quality

5.27 The Report to Planning Committee (Appendix 1) similarly lists a range of non-statutory policies eg Supplementary Planning Documents (SPD's) and Guidance which were considered by the council's planning officers in recommending approval of the application, again which the LPA has raised no objections against or cited in its Decision Notice. These documents are set out below and it should therefore be deemed that the application is compliant with them in the absence of any conflict cited in the Decision Notice:

- Uttlesford Strategic Flood Risk Assessment (SFRA) (2016)
- Widdington Conservation Area Appraisal and Management Proposals (2013)
- Widdington Village Design Statement (2009)
- Uttlesford Protected Lanes Assessment (2012)
- Uttlesford Local Residential Parking Standards (2013)
- Essex County Council Parking Standards (2009)
- Supplementary Planning Document- Accessible homes and play space homes
- Essex Design Guide
- Uttlesford Interim Climate Change Policy (2021)

5.28 **Of particular note is the Uttlesford Interim Climate Change Policy (2021)** (Appendix 20) which encourages applicants to deliver development which addresses climate change through a range of initiatives. These include, for example, **aiming to deliver energy efficient housing which exceeds Building Regulations by 19%. It also seeks ecological provision.** As will be clear from the appeal documents, the scheme includes an Energy Statement and Sustainability Statement which at some expense addressed the aims of the Interim Climate Change Policy but which no regard was given by the Planning Committee members as evidenced in their discussion (See Transcript of Planning Committee – Appendix 3).

5.29 The Widdington Village Design Statement (2009) also acknowledges the potential for development to the east of the village along Cornells Lane, as reported at Chapter 4 of this statement. Again the Planning Committee paid no regard to this.

### Uttlesford Draft Local Plan

5.30 Given the out of date nature of the Local Plan, Uttlesford District Council is embarking on the process of formulating a new Local Plan. There have been *two* previous attempts at preparing a new Local Plan and each has been withdrawn, meaning the council is significantly delayed in having any up to date planning strategy – including housing delivery – to meet District needs.

5.31 A replacement Local Plan was first withdrawn in January 2015 following a critical report by the Examination Planning Inspector.

5.32 Following this, another replacement Local Plan was subject of an examination in July 2019. The Inspector raised significant issues of soundness.

5.33 The Council had previously attempted to address the inspectors' concerns via submission of additional evidence and suggested main modifications. However, in January 2020, the appointed Inspectors determined that withdrawal of the Plan from examination was likely to be the most appropriate option.

5.34 The Inspectors concluded that fundamental aspects of the Plan were not sound with their primary concerns relating to the deliverability and sustainability of the three proposed Garden Communities. The Inspectors' Report issued in the form of a letter dated 10 January 2020 considered, inter alia, that the strategy would leave other sites in the district undeveloped, which would be likely to *'adversely affect the vitality and viability of services in existing towns and villages and result in a lack of housing choice in the market'* (Paragraph 31). This would result in a *'worsening affordability problem'* and significantly delay the provision of housing (Paragraph 34). The Inspectors considered that, in order to arrive at a sound strategy,

*'as a primary consideration, **the Council would need to allocate more small and medium sized sites that could deliver homes in the short to medium term and help to bolster the 5 year HLS'*** (Paragraph 114).

5.35 Note that the appeal proposals will deliver such small scale of quickly deliverable development.

5.36 The Council agreed to withdraw the Plan at its EGM meeting on 30 April 2020, following a report from officers. The report also set out at paragraph 19 (concerning Housing Supply) the implications of having no new Local Plan or 5 year housing land supply, stating that,

*'the Council currently does not have a five year housing land supply (5YHLS) and it is unlikely to have a 5YHLS until the adoption of a new Local Plan. Housing development will still happen and the district could be vulnerable to the approval of unplanned, ad-hoc development, which may not deliver the benefits achievable through planned growth in accordance with an up-to-date plan'.*

5.37 As a result, the Draft Local Plan was withdrawn with effect from 30 April 2020.

5.38 A first draft Local Plan is expected to be consulted upon in Summer 2022. If a draft Local Plan (or related/material iterations and information) has been published before this appeal is determined, the appellants reserve the right to comment accordingly, although any weight to draft Local Plan at such an early stage will likely be limited. NPPF gives advice at paragraphs 48-50. In particular, Paragraph 48 advises regarding the weight to be applied to emerging Development Plans as follows:

*Local planning authorities may give weight to relevant policies in emerging plans according to:*  
*a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*  
*b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

*c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)*

5.39 It is noted that the council's original timetable had targeted adoption of a new Local Plan by 2024. However, this is contrary to Government Policy issued in the form of a Written Ministerial Statement made on 19 January 2021 by Christopher Pincher, Minister of State for Housing, which states,

*'It is critical that work should continue to advance Local Plans through to adoption by the end of 2023 to help ensure that the economy can rebound strongly from the COVID-19 pandemic. Completing Local Plans will help to ensure that we can build back better and continue to deliver the homes that are needed across England.'*

5.40 More recently, the LPA website advises that, 'A programme of works and timetable outlining the steps to deliver a new Local Plan by December 2023 is being developed'. This appears an extremely challenging timetable.

## 6.0 GOVERNMENT PLANNING POLICY

### The National Planning Policy Framework (NPPF)

6.1 The NPPF sets out Government planning policy. Some of the pertinent policies are set out below.

6.2 Paragraph 2 confirms that the NPPF ‘must be taken into account in preparing the development plan, and is a material consideration in planning decisions’.

6.3 At Chapter 2 of the NPPF (Achieving Sustainable Development), Paragraph 7 states ‘the purpose of the planning system is to contribute to the achievement of sustainable development’.

6.4 Paragraph 8 advises that:

*Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

*a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and*

*c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy*

6.5 Paragraph 10 advises that, ‘so that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11)’.

6.6 Critical to this appeal, the Paragraph 11 confirms that, ‘**decisions should apply a presumption in favour of sustainable development**’ and goes on to state that ‘for decision taking **this means:**

*‘c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or **the policies which are most important for determining the application are out-of-date (8), granting permission unless:***



i). the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (7); or

ii). **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.** ‘

6.7 This appeal will show that the Presumption in Favour of Sustainable Development is not disengaged by the caveats listed section 11 d) i) and its footnote (7). Footnote (8) is pertinent to this appeal as it concerns housing supply issues. It comments on the policies which are most important for determining the application are out-of-date and states: ***‘This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites ...’***

6.8 As will be evidenced in this appeal Statement, the “most important Development Plan policies” in regard to this appeal are out of date:

- In respect of Policy S7 (Countryside), this policy is out of date for several reasons but in particular due to the fact that the LPA cannot demonstrate a five year supply of housing land.
- Policy H1 (Housing) is out of date given that it only made housing allocations until 2011
- Policy ENV9 (Historic Landscape) is also an out of date policy, being out of kilter with the NPPF.

6.9 Paragraph 38 states *‘Local planning authorities should approach decisions on proposed development in a positive and creative way....Decision-makers at every level should seek to approve applications for sustainable development where possible’*. This patently did not occur by the LPA in determining this application. **The Planning Committee went against the recommendations of its professional planning officers** (which indicated the scheme was a sustainable development) and took little to no account of the benefits that would be derived. Sustainable Development should be approved ‘where possible’ but the LPA rejected such possibility.

6.10 Another key part of the NPPF relevant to this appeal (which puts forward a housing scheme) is Government policy at Chapter 5 for ‘Delivering a sufficient supply of homes’. Paragraph 59 advises of the Government’s objective of **significantly boosting the supply of homes** and the need to avoid unnecessary delay. This appeal scheme assists the stated objective.

6.11 Paragraphs 68 to 73 concern ‘Identifying land for homes’. Paragraph 68 requires planning policies to identify a sufficient supply of sites. This should include a specific, deliverable sites for years one to five year plan period, as well as sites or broad locations for growth in years 6-10 and where possible 11-15 of the plan. The council’s adopted Local Plan (2005) only has a time horizon for delivery of housing until 2011, so fails miserably in this respect.

6.12 Paragraph 69 notes that: ***‘Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should: c) support the development of windfall sites through their policies and decisions..’*** In this case, the site is small scale and is a windfall site so is compliant with NPPF paragraph 69. As will be seen from the 5-Year Land Supply Statement and Housing Trajectory Status as at April 2021 (Appendix 21) Uttlesford DC is particularly reliant on windfall developments in the coming years.

- 6.13 Paragraphs 74-77 concern 'Maintaining supply and delivery' of housing. Paragraph 74 states that, '*Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to **provide a minimum of five years' worth of housing...***'. The LPA is unable to demonstrate a deliverable 5 year housing land supply (currently 3.52 years). The housing supply position is discussed in detail later in this appeal statement.
- 6.14 Paragraphs 78-80 concern 'Rural Housing'. Paragraph 78 advises that: '*planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs.*' Paragraph 79 states that, '*To promote sustainable development in rural areas, **housing should be located where it will enhance or maintain the vitality of rural communities.** Planning policies should identify opportunities for villages to grow and thrive, **especially where this will support local services.***' The appeal location is compliant in this respect. Paragraph 80 states that planning decision should avoid the development of 'isolated homes in the countryside' The LPA has not alleged that the appeal site is 'isolated'.
- 6.15 Chapter 6 of the NPPF concerns 'Building a strong, competitive economy'. Paragraph 81 states that, '*significant weight should be placed on the need to support economic growth and productivity*'. There will be economic benefits arising from the construction and subsequent occupation of the appeal site, as set out later in this statement.
- 6.16 Chapter 8 of the NPPF (Promoting health and safe communities) sets out at paragraph 92 that planning decisions '*should aim to achieve healthy, inclusive and safe places..*', which the appeal scheme proposes.
- 6.17 Chapter 9 of the NPPF concerns 'Promoting Sustainable Transport', including public transport. Paragraph 105 notes that, '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making*'. Paragraph 110 requires (inter alia) seeks to ensure that '*a) appropriate opportunities to promote sustainable transport modes can be – or have been - taken up, given the type of development and its location*'; and that '*b) safe and suitable access to the site can be achieved for all users*'. Paragraph 111 advises that '*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*'. The appeal site is in proximity to regular public transport and the scheme was not refused on highway safety grounds by the LPA.
- 6.18 Chapter 11 of the NPPF is entitled 'Making effective use of land'. Paragraph 119 states that, '*Planning policies and **decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions***'. Paragraphs 124-125 concern 'Achieving Appropriate Densities'. Paragraph 124 states that planning decisions should 'support development that makes efficient use of land, taking into account (inter alia) of *a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it; and e) the importance of securing well-designed, attractive and healthy places.* The amount and low density of development is cognisant of this policy, noting the need for different types of housing and the importance of attractive places.
- 6.19 Chapter 12 provides policy concerning 'Achieving well-designed places' and the appellant's scheme pays significant regard to the Government policy objectives regarding design. Paragraph 126 states that, '*The creation of high quality, beautiful and sustainable buildings and places is fundamental to*

what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Such well designed and beautiful buildings and a place will be delivered in this appeal scheme. Paragraph 130 requires decisions to ensure developments to meet various design criteria eg: will add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character, establish or maintain a strong sense of place, optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. The appeal proposals meet these criteria.

6.20 Paragraph 134 states that, *'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to: a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents.'* In this case the development is well designed, reflecting NPPF policy, Local Plan design policies and those in the Widdington Design Statement.

6.21 Chapter 14 of the NPPF (Meeting the challenge of climate change, flooding and coastal change) provides inter alia policies on flood risk. Paragraph 159 advises that, *'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk'*. The site however is in a low risk flood zone (Zone 1) with low probability of flooding.

6.22 Chapter 15 (Conserving and Enhancing the Natural Environment) concerns matters such as flood risk, climate change, landscape impact, agricultural land, contamination, biodiversity and geology. In this case, of particular note is the proposal to deliver:

- climate change friendly development with substantial carbon dioxide savings as a result of energy efficiency measures;
- significant new vegetation allied to retained planting and sensitive design to address landscape issues and;
- scope for significant biodiversity net gain.

6.23 **The appeal proposals include significant measures for addressing climate change through sustainable design, energy efficient housing and notable ecological enhancements.**

6.24 Paragraph 174 states that: *'Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; d) minimising impacts on and providing net gains for biodiversity.'*

6.25 The site does not comprise a 'valued landscape'. It contains some vegetation at boundaries which will be retained (bar access incursion) along with retention of adjacent paddock land, to help recognise

the intrinsic character and beauty of the countryside. Impacts on biodiversity are limited and there will be net gains for biodiversity.

6.26 Chapter 16 (Conserving and enhancing the historic environment) contains various policies in relation to how development should take account of designated and non-designated heritage assets. A detailed commentary on this matter is set out later in this Statement. It considers the appeal scheme against its potential impacts upon the local Protected Lane (a non-designated heritage asset) and listed buildings and the Conservation Area (designated heritage assets), taking account of NPPF policy, Local Plan policy and legislation.

6.27 The above NPPF policies have been factored in to the proposals and their justification.

## 7.0 REBUTTAL OF REASON FOR REFUSAL 1 (RfR1) – PROTECTED LANE

7.1 The decision notice sets out the council’s reasons for objecting to the development due to impact upon the Protected Lane. RfR1 states:

*The proposed development will result in a significant harmful impact to the character and appearance of the Protected Lane (non designated heritage asset). The need of the development does not outweigh the harm to the historic significance of the site and the protected lane. As such the development is not in accordance with ULP Policy ENV9 and paragraph 203 of the NPPF that considers the balanced judgement required to the scale of any harm or loss of the significance of the heritage asset.*

7.2 The appellants assert that this reason for refusal is of insufficient weight to override the need for and benefits of the development for the following reasons:

- Policy ENV9 is out of date. It is not fully in compliance with the NPPF
- In consideration of Policy ENV9, the ‘historic significance’ of the lane is limited
- In consideration of Policy ENV9 and NPPF Paragraph 203, the scale of any harm to, and impact upon, this non-designated heritage asset is not ‘significant’
- The level of visual harm is not significant to the character and appearance of the lane
- Planning officers do not object to the proposals in respect of the impacts on the Protected Lane
- The work required to form the access in the protected lane could be carried out without planning permission in relation to other permitted development and represents a “fallback” as a material planning consideration, which the LPA did not properly take in to account.

7.3 Further details of the above arguments are now presented. In conjunction with these arguments (and to avoid repetition), the inspector’s attention is drawn to the Heritage Statement (RPS, May 2021). The Heritage Statement sets out an assessment of the ‘Significance of the Lane’ and makes an assessment of impact upon Cornells Lane (as a ‘non designated’ heritage asset) at paragraphs 4.24 to 4.28.

### [Policy ENV9 \(Historic Landscapes\)](#)

7.4 Uttlesford Local Plan Policy ENV9 relates to a wide range of historic landscapes. The relevant and sole element applicable to this appeal concerns the ‘Protected Lane’, which runs along the whole length of Cornells Lane (circa 2km) and therefore runs along the southern frontage of the appeal site as shown on the Widdington Inset Map (proposals map for the adopted Local Plan).

7.5 Policy ENV9 states:

*Development proposals likely to harm significant local historic landscapes, historic parks and gardens and protected lanes as defined on the proposals map will not be permitted unless the need for the development outweighs the historic significance of the site.*

7.6 The ‘Protected Lane’ is not a statutory designation. The NPPF would therefore deem this as a ‘non designated’ heritage asset and thus it is of lesser heritage weight than say a listed building or

conservation area, which have a statutory status and which the NPPF indicates comprise ‘designated’ heritage assets.

- 7.7 The lesser weight applying to the non-statutory status is important to understand in the ‘tilted balance’. This is particularly the case as Policy ENV9 introduces a ‘mini test’ which requires the ‘need for the development’ to outweigh the historic significance of the site. Such mini test does not appear in the NPPF (2021) in respect of non-designated heritage assets and as such the policy is not compliant with The Framework.
- 7.8 A similar view was taken in an appeal, PINS ref 3271310 (extract at Appendix 22) concerning a scheme of 168 dwellings on Land west of Pennington Lane, Stansted Mountfitchet, Essex, which was determined following a public inquiry. The inspector, Jonathan Price BA (Hons) DMS DipTP MRTPI, reviewed the compliance of Policy ENV9 when considering the impact upon Pennington Lane, which is a narrow Protected Lane bordering open countryside. He first noted (at paragraph 42) the impacts of the appeal development. The scheme included removal of lane vegetation to accommodate a major highways access of 6.75m plus 2m footways each side to serve housing which would have been sited behind nearly the whole site frontage (600m) comprising the Protected Lane. In the appeal decision at paragraph 59, the inspector assessed any harm from the development against Policy ENV9 as follows:
- Policy ENV9 requires the need for the development to be balanced against the historic significance of Pennington Lane. It does not use the term non-designated heritage asset and differs with how the Framework now deals with these. In paragraph 203, the Framework requires the proposal’s effect on the significance of a non-designated heritage asset to be taken into account. In weighing the proposal’s direct and indirect effects, the Framework seeks a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset. As a non-designated heritage asset, Pennington Lane would be at the lowest tier of importance as such, whereby its significance would weigh lightly against the need for the proposed housing. On the basis of this, and the reduced weight given to it through a lack of consistency with the more recent Framework, I find limited harm from the conflict with LP Policy ENV9.*
- 7.9 The appellant’s case echoes the conclusions of this inspector regarding the weight of Policy ENV9.
- 7.10 Furthermore, starting point of Policy ENV9 is that development ‘will not be permitted’. This is an unduly restrictive policy and implicitly starts from the basis that there is a presumption *against* sustainable development. In this appeal, and in accordance with the NPPF, there is a Presumption ‘in favour’ (not against) sustainable development, which Policy ENV9 clearly conflicts with. This is not surprising, given that the policy relates to the Local Plan which was adopted in 2005, prior to the first version of the NPPF in 2012, which has since had several updates (to 2021).
- 7.11 Accordingly, the weight of this Development Plan policy should be reduced and any harm which may conflict with the policy should be afforded only ‘limited’ weight, as per similar conclusions reached in the Pennington Lane appeal decision. Impacts upon the Protected Lane should be considered as part of an overall balanced assessment.
- 7.12 Curiously, the appeal decision cites that the development does not comply with both Policy ENV9 and NPPF Paragraph 203, although these two policies conflict for reasons indicated.

### [Historic Significance of the Lane](#)

- 7.13 Notwithstanding the criticisms of Policy ENV9 and the reduced weight to be applied to the policy, it is material to consider what the policy refers to as the ‘historic significance’ of the Protected Lane. Note that the RfR also refers to the historic significance of ‘the site’, but in the context of Policy ENV9, this will only relate to that part of the appeal site which is affected by the Protected Lane designation.
- 7.14 Note that the ‘historic significance’ which ENV9 refers to is just *one part* of the rationale for declaring Cornells Lane as a Protected Lane.
- 7.15 The inspector is directed to the submitted [Heritage Statement](#) (RPS, May 2021), which at [paragraphs 3.48 to 3.56](#) reviews the Uttlesford Protected Lanes Assessment (Essex CC, 2012) and its assessment of Cornells Lane. The full text should be read to avoid undue repetition here. However, key points of note are that:
- Protected Lanes are selected not only for their *historic interest*, but also for their biodiversity, group value and aesthetic value
  - **Cornells Lane scores only 2 out of 6 for Historic integrity.** It has experienced ‘*moderate improvements or loss to historic fabric of the lane...*’
  - The lane’s integrity has clearly been significantly undermined by later alterations and interventions, noted to include the loss of verges, [the construction of new accesses](#) and the addition of housing nearby
  - The provision of development alongside a Protected Lane is not considered to be unacceptable or inherently harmful. One of the reasons for Cornells Lane scoring well on Aesthetics is the ‘nice views of houses’ from the Lane
  - The ‘significance’ of the Lane as a non-designated heritage asset is particularly drawn from its connection with other historic and landscape features and, *to a lesser extent*, its own intrinsic heritage interest
  - **The overall contribution of the Site to the significance of the Lane as a non-designated heritage asset is limited.** This is primarily due to the length and size of this Lane together with its closer connection with other historic and landmark features.
- 7.16 Therefore, the Heritage Statement clearly advises that the ‘significance’ of Cornells Lane as a non-designated heritage asset is limited.

### [Impact Upon the Significance of the Lane](#)

- 7.17 Paragraph 203 of the NPPF requires that, “*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”

7.18 The inspector is directed to the submitted Heritage Statement (RPS, May 2021), which at paragraphs 4.24 to 4.28 assesses the Impact of the Appeal Proposals upon the Significance of Cornells Lane as a non-designated heritage asset. Again, the full text should be read but key points to note are as follows:

- the additional intervention into Cornells Lane is proximate to existing accesses to Weft House and the existing access into the Site
- the access may have some impact on the 'integrity' of Cornells Lane but this is already poor and is evidenced as not being a key reason for its identification as a Protected Lane. A further slight change to this is not therefore considered to affect the lane's 'significance'
- the proposed development has been designed to minimise any potential impact on views from the Lane eg housing set well back plus additional planting to strengthen the existing boundary planting along the lane
- new additional planting, set-back of the dwellings and design of the new development retain much of the character of Cornells Lane and the rural approach into the conservation area
- the relationship between the Lane and the local heritage assets (eg listed buildings), which is an important element of its 'significance', will not be changed while any impact to the archaeological potential of the Lane has been considered acceptable by the Council
- it will still be possible to understand the Lane's function and historic character, as a lane that linked Widdington with the surrounding development to the east
- **any impact to the significance of Cornells Lane as a non-designated heritage asset is minor in magnitude. In accordance with the NPPF this harm should be weighed, in a balanced judgement, against the significance of the Lane.**
- **the Lane is considered to be of limited significance**, with much of its historic integrity having been lost and much of its significance derived instead from its relationship with other historic features

7.19 Therefore, in considering compliance with Paragraph 203 of the NPPF, the appellant's assert that:

- i) the significance of the lane as a non-designated heritage asset is already 'limited';
- ii) the development will have a 'minor impact in magnitude' upon the significance of the Protected Lane.

#### [Protected Lane impacts in the Planning Balance](#)

7.20 This Statement later provides a justification for the appeal proposals, balancing material considerations against Development Plan policy. In particular it also assesses the application under the NPPF's tilted balance.

7.21 Local Plan Policy ENV9 has been evidenced as being out of date and of reduced weight.



- 7.22 The physical impact of the proposal directly upon the Protected Lane essentially relates to the construction of a 'private drive' this being a minor shared surface access of 5.5m in width. It is acknowledged that this will remove a small section of bank, across the site's southern frontage with the lane. This frontage is approximately 160m long, so it will be appreciated that the access takes up only around 3% to 4% of it. Furthermore, in the context of the total length of Cornells Lane, which is circa 2km long, the overall impact on the significance of the lane is minimal.
- 7.23 Visual effects of the proposed access will only be fully appreciated where in close proximity to the access. The impacts would therefore be 'localised'. This is because one is not able to 'see through' the bank where the private drive would be located. Currently, looking west along Cornells Lane (just beyond the site's south-east corner near the 'steps' to the PROW), it is difficult to make out the entry of the vehicular access to the Weft House, where opposite the appeal site's proposed access. By the same token, the visual impact of the proposed private drive, would be similarly limited when viewed from this approach. When viewed from the High Street junction, the proposed access is closer at this approach but again will have limited visual impact and can be reasonably compared to the current impacts from the westerly access to the Weft House. This is evidenced on the photographs with annotated views provided at Appendix 23.
- 7.24 The access works in this appeal scheme would not have the effects on the Protected Lane which the 20 unit appeal scheme had. In the appeal decision (Appendix 7) for 20 dwellings, the inspector (at paragraph 30) noted there would be a, "*significant increase in traffic using the lane. There would also be significant engineering works to the banks, including re-grading, widening for passing places and removal of some trees. Combined with a notable increase in traffic, the tranquillity, character and appearance would be adversely affected. **Such effects would be somewhat localised.***". The inspector considered these matters only weighed moderately (ie not overriding) against that appeal scheme.
- 7.25 In this appeal and by way of comparison to the 20 unit appeal scheme:
- There would be no '*significant increase traffic*'
  - Given the low level of the land where the access is proposed and the fact the access is a 'private drive' at 5.5m, not a major road access at 9.5m (as proposed in the appeal scheme) then there will not be '*significant engineering works*' to the same extent
  - There is no '*widening for passing places*' proposed
  - The vegetation to be removed for the access includes some "patchy" hedgerow where the species are of "low quality" (i.e. unclassified tree status) such as elm, blackthorn and elder as stated in the tree report. Around 50 new trees plus new hedgerows across the overall site will act both as compensation and enhancement for the small amount of poor quality vegetation lost
  - The proposed 'minor' access is now seen in context with one located diagonally opposite
- 7.26 The inspector (at paragraph 30) also indicated the effects on the protected lane were '*somewhat localised*', where this concerned a much wider/major access proposal on an arguably more sensitive part of the lane because the bank at that point is higher where those access works would have occurred.
- 7.27 In the current appeal scheme, the effects on the lane will be very localised (not really noticeable looking down the lane from a distance) but also seen *in context* with the accesses and other development such as houses, garages, parked cars, fences, dog bins, telegraph poles, etc, which affect the user experience of the lane at this point. Reference should be paid to the application submitted

document entitled, *Photographs of Site and Context* (June 2021) and Appendix 23, as well the photographs below, which gives examples of accesses along the Protected Lane (constructed through its bank) which are part of the lane's overall character and provide precedents against which to consider the appeal scheme access proposals.



Character and Precedent - Weft House access, lying diagonally opposite site, which cuts through the bank in Protected Lane

- 7.28 The inspector noted character and appearance of the lane would be affected by the 20 unit scheme. However, there are material differences with the appeal scheme for 4 dwellings.
- 7.29 The banks of the protected lane become steeper heading east along the site frontage because the site's land level becomes higher relative to the road level. Because the proposed private drive access would be to the west end of the frontage, not the east end, then the steeper banked section is not affected as it would have been in the 20 unit appeal scheme, although there will still be some banking works.
- 7.30 There is no work proposed to form a passing bay in the site frontage. This was a highway authority requirement in the 20 unit scheme, given the circumstances where the new access was to be sited much further along the narrow section of lane and was to serve many properties. The access arrangements in the current appeal negate the need for any passing bay such that this element of impact on the Protected Lane is entirely eliminated.
- 7.31 The inspector referred to the tranquil character of the non-designated heritage asset. With only 4 dwellings, as opposed to 20, less traffic movements and reduced works (eg access and passing bay), the impacts on tranquillity will be significantly reduced. The activity will clearly be of a suitable 'village scale'.
- 7.32 At the point of the proposed access, the site is essentially within a village context (notwithstanding Policy S7) where there are buildings and features as described. There is some reasonable level of 'village life' activity evident, with local residents and motorised traffic (eg cars, farm and delivery traffic) using the lane near/next to the site.
- 7.33 The lane serves a few dozen properties, businesses and farmland. It also used to serve Mole Hall Wildlife Park which attracted visiting cars and school coaches until its closure. The local buses use the junction of Cornells Lane/High Street as turning point. The buses reverse in to Cornells Lane and such hourly activity is also visible from this point (see photographs below) and further influences the character and tranquillity of the lane. There is a clear awareness that one is "in the village" at this

point. Therefore, it is inaccurate to state that the lane is perfectly tranquil given this various village activity.



The hourly bus reverses from High Street in to Cornells Lane. The lane serves dozens of properties, affecting tranquillity

- 7.34 The inspector at paragraph 29 of the appeal decision (Appendix 7) cited an alleged ‘green tunnel’ effect along the lane, noting, *“the prevailing perception is of a steep banked lane with overhanging, coppiced mature trees on its northern side creating a green tunnel effect”*. However the alleged ‘green tunnel’ is not a feature noted for Cornells Lane in Essex CC’s Uttlesford Protected Lanes Assessment. Instead it has been gradually created by overhanging limbs of roadside trees which are of low individual quality, overcrowded, with unbalanced crowns and where the longevity of the trees is in doubt.
- 7.35 The submitted AIA (tree report/survey) notes some safety concerns with these roadside boundary trees, stating at paragraph 7.2 that,
- “The roadside bank contains an unmanaged group of tall, slender sycamores, groups of elm (in varying stages of Dutch Elm Disease) and occasional ash and field maple. The trees have collective landscape value, but many are individually of low quality due to over-crowding which has led to the trees being tall, slender and with unbalanced crowns weighted over the road. Tree removals are recommended on this boundary only for safety reasons”*.
- 7.36 Consideration of the tree removals would be a matter for the highway authority where the lane’s trees are on highway land. Given the AIA comments, the so called green tunnel effect (NB - which can only be ‘seasonal’ and doesn’t exist when trees are not in leaf) may deteriorate, change or even disappear altogether over time. However, the inspector will note that various new tree planting is proposed by the appellants (within the site) close to the southern boundary, for longer term landscape amenity benefit.
- 7.37 As stated earlier, there will be limited impacts on the approach to the site (and access) and no impacts on the green tunnel effect (see Appendix 23).
- 7.38 The application’s cross section drawings demonstrate limited/no visibility of the proposed dwellings but any glimpses of the dwellings would accord with the Essex CC’s **Uttlesford Protected Lanes Assessment, which noted ‘nice views of houses’ along the lane.**

7.39 Planning Officers did not object to the access works or to views of proposed houses from the lane. They assessed the impacts on the Protected Lane, taking account of Policy ENV9 and NPPF Paragraph 203. The planning officer's assessment is found at paragraphs 9.24 to 9.34 in the Report to Planning Committee (Appendix 1). Some of the key conclusions of planning officers are as follows:

*The proposed access to the site will require the incursion within Cornell Lane, which is a protected lane, in comparison to the refused schemes the location of the access uses a low part of the bank to Cornells Lane, also where the vegetation at this point is of lower quality. The previous schemes included a significantly larger access and was sited further east along Cornells Lane where it is deeply incised. The required visibility splays for the development will not require the removal of further bank Cornells Lane...*

*The Protected Lane is considered a non-designated heritage asset, the Council's Heritage Officer has assessed the development overall considers the harm caused to be at the lower end [of the] scale....*

*It is noted adjacent the proposed highway access there is an existing wide access serving William the Conqueror and Weft House and as such there are number of points along the Protected Lane that have already included the loss of verge and the addition of housing. This single smaller **access point is not considered unacceptable [or] inherently harmful.** It is also noted the Uttlesford Protected Lanes Assessment confirm that one of the reasons for Cornells Lane scoring 2 on Aesthetics is the 'nice views of houses' from the Lane and as such **the view of appropriate sited and design dwellings being seen from the Lane cannot be deemed as a harmful.***

*Paragraph 203 of the NPPF applies and as such a balanced judgement will be required, taking into consideration the above assessment it is considered introduction of the access point and built form of the dwellings will result in a low level of harm to Cornells Lane*

Source: Report to Planning Committee 17<sup>th</sup> March 2022

7.40 The professional planning officers, having also considered the heritage consultee's comments, state that the harm upon the lane is at the lower end of the scale. The appellant's expert heritage consultant opines in the Heritage Statement that the harm to the protected lane is at a low level and minor in magnitude. This really begs the question why the council's Planning Committee decided to refuse the application given such low level of harm as agreed by these professionals. The inspector is asked to review the evidence and form a balanced conclusion on levels of harm and how this is then factored in to the tilted balance assessment.

#### [Access as Permitted Development](#)

7.41 The appellants have taken legal advice which indicates that an access to the appeal site could be formed under permitted development rights pursuant to the General Permitted Development Order (GPDO) Schedule 2, Part 2, Class B. This could be formed in connection with the holding of a market (ie car boot sales) for which permitted development rights also exist under the GPDO under Schedule 2, Part 4, Class B (a) and which would provide the appellants with an alternative use of the land, allowing an income to be derived.

7.42 Details concerning the GPDO permitted development access and boot sale operation are set out in a letter from reputed planning lawyers Holmes and Hills dated 12 April 2022 to Uttlesford District Council, which is found at Appendix 24.

7.43 Such permitted development access could be formed 'exactly' as per the access proposed in this appeal. The legal ability to do so is a material consideration as a fallback.

7.44 The Transcript of Planning Committee (Appendix 3) evidences that Planning Officers verbally advised the Planning Committee that,

*there is permitted development rights to secure a new access, on an unclassified lane, an unclassified highway of which this is, but which is a material consideration, you know, but, that would have to be demonstrated that there is, it can be lawfully done. You know, at this point, we, we haven't got anything in place that says that it can be lawfully done for a certificate of lawfulness application or something like that, but possibly it could be built. **And that is a material consideration.***

7.45 Accordingly, the appellants propose to submit a Certificate of Lawfulness application to prove that such access would be lawful. It is likely that a decision on such application has been made before this appeal is determined, so the appellants therefore reserve the right to update the Inspector on this matter, given that such permitted development rights as may be further confirmed via a Certificate of Lawfulness act and as a material planning consideration. Indeed, before the appeal decision is made it may be the case that works to form the access have been started or even completed.

7.46 The ability to construct an identical access is a 'fallback' position which Court Judgements indicate is material planning consideration. A recent Judgement *R (on the application of Spedding) v Wiltshire Council* (see Paragraphs 39-43 in the extract at Appendix 25) is informative as it also details precedents arising from other Judgements regarding 'fallback'. The Judgement cross refers to the Judgement in *Gambone v Secretary of State for Communities and Local Government* [2014] EWHC 952 (Admin) where Ian Dove QC ruled that,

*The fallback argument is in truth no more or less than an approach to material considerations in circumstances where there are, or may be, the opportunity to use land in a particular way, the effects of which will need to be taken into account by the decision-maker.*

*That involves a two-stage approach. The first stage of that approach is to decide whether or not the way in which the land may be developed is a matter which amounts to a material consideration. It will amount to a material consideration on the authorities, in my view, where there is a greater than theoretical possibility that that development might take place..*

*It could be development for which there is already planning permission, or it could be development that is already in situ. It can also be development which by virtue of the operation of legal entitlements, such as the General Permitted Development Order, could take place..*

*Once the question of whether or not it is material to the decision has been concluded, applying that threshold of theoretical possibility, the question which then arises for the decision-maker is as to what weight should be attached to it. The weight which might be attached to it will vary materially from case to case and will be particularly fact sensitive..*

7.47 There is also a cross reference to the Judgement in *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452, where Lindblom LJ summarised three principles regarding fallback development including (inter alia) that,

*The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in the Samuel Smith Old Brewery...;and the judgment of Supperstone J in Kverndal v Hounslow London Borough Council [2016] PTSR 330,...As Sullivan LJ said in the Samuel Smith Old Brewery case [2009] JPL 1326, in this context a “real” prospect is the antithesis of one that is “merely theoretical”: para 20. The basic principle is that “for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice”: para 21.*

7.48 In this appeal case, the fallback position to construct an access is derived from GPDO Permitted Development rights. It is more than theoretical and is “a possibility”. As such it meets the basic principle as a fallback in line with legal precedents. Weight must be applied to this.

7.49 Rights inferred by the GPDO allow the construction of an access similar or identical or even larger than the one applied for in this appeal. The LPA (as ‘decision maker’) did not assess the fallback position by comparing what could be done with what was proposed in the appeal scheme.

7.50 The Transcript of Planning Committee (Appendix 3) shows that planning officers inadvertently stated, in relation to a permitted development access, that “you can't just do the access”. Whilst this statement is correct in relation to the access under consideration at the appeal, it is not correct in relation to a permitted development access, which might may of an identical nature to the access in the appeal scheme. The Planning Committee did not therefore give appropriate weight to the potential fallback position and this was a failing of the LPA’s decision.

7.51 The inspector as decision maker is requested to take in to account the pertaining permitted development rights for constructing an access and apply appropriate weight as a fallback position in determining this appeal.

## 8.0 REBUTTAL OF REASON FOR REFUSAL 2 (RfR2)– LISTED BUILDINGS & CONSERVATION AREA

8.1 The decision notice sets out the council’s reasons for objecting to the development essentially due to impacts upon (a) the settings of listed buildings and (b) the character and appearance of the conservation area. These comprise ‘Designated Heritage Assets’ under the NPPF. RfR 2 states:

*The proposed development will not preserve or enhance the character and appearance of the Conservation Area and will result in harmful impact to the setting of the nearby listed buildings, not in accordance with ULP Policies ENV1, ENV2 and paragraph 199 of the NPPF. The public benefits of the development do not provide sufficient opportunities to enhance their significance or overall outweigh the harm of the proposal, therefore also in conflict with paragraphs 202 and 206 of the NPPF.*

8.2 The appellants assert that this reason for refusal is unwarranted and of insufficient weight to override the need for and benefits of the development for the following reasons:

- There is limited impact on the significance and setting of the Conservation Area
- The development will provide an opportunity to better reveal the significance of heritage assets in accordance with paragraph 206 of the NPPF
- All professionals, including planning officers and the built heritage consultee, agree that impacts upon the Conservation Area are at the low or very low end of the scale
- The significance of listed buildings is unaffected. This opinion is further informed by comparison assessments and comments made by the inspector regarding the previous 20 unit appeal scheme
- In weighing any harm against the public benefits under paragraph 202 of the NPPF, a balanced view does not support refusal, as set out in the RfR, nor as part of the NPPF’s ‘tilted balance’.

8.3 Further details of the above arguments are now presented.

### Conservation Area – Impact on significance and setting

8.4 The appellant’s submitted Heritage Statement (RPS, May 2021) (which should be referred to in full) assesses the impacts of the proposed development upon the Conservation Area. It identifies that the site is located adjacent the village core, to the east side of Widdington. The appeal site is located almost exclusively outside of the Widdington Conservation Area, except for the southwest extreme of the site, which includes a nib of highway land forming part of the existing maintenance access to the site from Cornells Lane. The element of this existing access up to the access gates, is located within the Conservation Area. The remainder of the appeal site forms part of the setting of the Conservation Area, together with various identified listed buildings within the Widdington Conservation Area (see below).

8.5 The council has refused the development against Local Plan Policy ENV1. The ‘title’ of the policy is headed as ‘*Design of Development ‘within’ Conservation Areas*’. As the majority of the appeal site does not lie ‘within’ the Conservation Area, this Development Plan policy, overall, has little relevance to the appeal.

8.6 Policy ENV1 states,

Policy ENV1 - Design of Development **within** Conservation Areas'

*Development will be permitted where it preserves or enhances the character and appearance of the essential features of a Conservation Area, including plan form, relationship between buildings, the arrangement of open areas and their enclosure, grain or significant natural or heritage features. Outline applications will not be considered. Development involving the demolition of a structure which positively contributes to the character and appearance of the area will not be permitted.*

- 8.7 The appeal scheme - where 'within' the Conservation Area - does not affect any of its 'essential features'. The application is full, not outline. Also there are no new buildings or demolition proposed therein. Consideration under Policy ENV1, is therefore limited to any surfacing arrangement of the nib of highway land. This is currently part of a generally unmade track (part overgrown and of untidy appearance) serving the paddock which the landscape drawings for the appeal scheme plans indicate will be finished with a hardened surface. The final details of surfacing materials and finishes can be agreed via condition to the LPA's satisfaction to ensure they are sympathetic and result in an improvement to its current appearance. As there is full control over this matter, the refusal against Policy ENV1 is unwarranted.
- 8.8 Notwithstanding the above, development outside but affecting the Conservation Area is a consideration under legislation, especially s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ie to pay '*special attention...to the desirability of preserving or enhancing the character or appearance of that area*' and national planning policy, all of which the Heritage Statement has taken in to account in its assessment (NB – NPPF Paragraph numbers have since altered following the update in July 2021). NPPF Paragraph 199 indicates that, 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation'. The appellants have recognised this in their assessment.
- 8.9 The Heritage Statement assesses impacts of the proposed development on the character and appearance of the Conservation Area and should be referred to. In short, **it is the appellant's considered view, based on expert Heritage advice, that the Conservation Area's character and appearance will be preserved and thus accords with planning law and policy.**
- 8.10 The site forms part of the setting of the Widdington Conservation Area and currently provides a 'degree' of rural context. From within the main 'body' of the site, which is private land (ie excluding fringe highway land) some views are available into the conservation area. As such it makes a limited contribution to the historic interest of the conservation area and, to a lesser extent, its architectural interest.
- 8.11 The proposed development would alter the rural setting of the conservation area by introducing residential built form, however this would not be appreciable from within the vast majority of the conservation area, including in views from the High Street. There will be a small alteration to the conservation area, through the re-surfacing of part of the access road which will be carried out in a sympathetic manner.
- 8.12 The proposed development would cause some alteration to the historic linear plan form of Widdington, particularly evident along the High Street, which contributes to the historic interest of the conservation area. However, in developing only along the southern boundary of the Site, this alteration is minimal and **follows the pattern of twentieth century, piecemeal development within**



**Widdington** and within land immediately surrounding the Widdington Conservation Area. It will also follow a historic route, **providing linear development along Cornells Lane**. The development would also not be perceived from within the conservation area or from those areas of its setting where the historic plan form is recognisable.

8.13 The location and alignment of the development will follow Cornells Lane, reflecting the evolution of Widdington, with dwellings constructed over time, generally in a linear manner, to overlook and follow the established historic routes through the settlement. The location and linear form of the development would also retain the majority of the conservation area's undeveloped, rural setting to the east of High Street, maintaining the "transition" between the settlement and the wider rural surroundings which the Inspector in the 20 unit appeal decision (Appendix 7) identified at paragraph 8 (albeit he recognised this was subjective) as an important feature. He stated, "*There is some subjectivity in such assessments and my own observations were that the appeal site is an intrinsic part of the rural setting of the village, providing a transition from the rear gardens and amenity land adjacent to the western boundary and the agricultural fields and open countryside to the east*". There is no doubt that such transition is substantially *unaffected* in the current appeal and therefore addresses a key criticism of the inspector.

8.14 In that appeal decision (Appendix 7), which of course concerned a major scheme of 20 dwellings on the whole paddock, the inspector further considered the impacts on the Widdington Conservation Area (WCA) and noted at Paragraph 28 that:

*The proposal, in particular the siting of plots 13 to 20, combined with the scale and overall coverage of built form would visually compete with the village scape of properties in the WCA. Appearing as an almost continuous frontage with limited space in between, it would appreciably erode the sense of openness and harmfully diminish views of a significant part of the WCA from its rural surroundings. It would harmfully detract from the ability to appreciate the WCA and would cause some less than substantial harm to its significance.*

8.15 Whilst the degree of less than substantial harm was not stated by the inspector, the numbers of dwellings (ie 20 units), their siting and overall coverage were clearly of concern. **By contrast, it is clear that in this current appeal for 4 dwellings, there is a significant reduction in a) scale and b) overall coverage of built form, especially where plots 13-20 were sited previously. Around 2 acres of the previous appeal site is no longer proposed for built development and will be kept open as paddock/ecology areas, as the 'transition' for the benefit of the rural setting. These revised arrangements significantly address the inspector's previous criticism regarding impact upon rural area which forms 'part' of the Conservation Area's setting.** He stated, in respect of the 'whole' paddock at paragraph 26 of the appeal decision (Appendix 7) that "*The appeal site allows for a clear appreciation of the historic form and appearance of the WCA in its rural setting*".

8.16 Therefore, the essential setting of the Conservation Area will now be preserved in this minor housing scheme, particularly given the vast majority of the paddock land lying to the east of the conservation area is no longer proposed for (or part of) any development in this appeal.

8.17 The 'transition' area will retain those private views from within the wider paddock and any public views that are permitted from the wider public footpath network to the north and east of the Site. Reference should be paid to the Heritage Commentary Map (Appendix 26) which shows the Transition

Area. This can be compared to the layout of the 20 unit appeal scheme (see Appendix 6) which had no such transition area, as the 'whole' of the paddock was covered in built form.

- 8.18 Another explanatory plan entitled 'Views of Conservation Area' (Appendix 27) indicates where (currently) available views from the footpath to the eastern edge of the paddock can be taken. It demonstrates that an open view is available across the wider paddock land (which will not be developed) to the back of properties in the High Street, marking the edge of the Conservation Area. The proposed development of 4 dwellings will not materially impact on such viewpoint, as evidenced and as can be ascertained at a site visit.
- 8.19 Note however that since the previous appeal, views from the eastern edge of the paddock have been in part but significantly restricted by the necessary erection of a close board boundary fence (c 2m high) to the east side of the paddock, again as evidenced on the plan, 'Views of Conservation Area' (Appendix 27). This was erected to maintain the appellant's privacy following consultee comments from the PROW officer (on the 20 unit planning application) that the definitive footpath line lay within the paddock ie not the other side of the paddock's eastern boundary hedge, which has always been walked. The discovery led to persons vandalising and hacking through the appellant's mature hedge to the south-east corner of the paddock, allowing unrestricted entry for mass numbers of public, dog walkers, trespassers, etc, across the appellant's private paddock land. The appellants private garden area at Meadow Cottage (backing on to the whole paddock) and bathroom windows became totally exposed to intrusion and this is why it was essential to erect a close board fence to prevent such intrusion occurring. Accordingly, fencing works occurred to preserve amenity and privacy, which were hitherto that point enjoyed by the appellants who are well in their third decade of living at Meadow Cottage.
- 8.20 As such, the public receptors which the inspector identified to the east of the paddock and allowed views towards (but at some distance) of the Conservation Area have been, in part, removed. A c 2.0m high close boarded fence runs parallel and close to the current appeal site's eastern boundary, such that 'direct' views of the appeal site from that part of the footpath are unavailable. Any remaining available views from the (newly walked) footpath to the east side of the paddock could further continue to be restricted where the close board fencing has no yet been applied to the existing fence frame, which has yet to be completed.
- 8.21 This fence was not in situ at the time of the 20 unit appeal scheme but the inspector acknowledged verbally at the hearing that the ability to erect such fence under GPDO Permitted Development rights was a material consideration (although this is not referred to in the decision notice). Indeed, the fallback position for the completion of the fence under permitted development rights must be taken into account, in the same way as the permitted development rights for a site access (see earlier in this statement for legal judgements re 'fallback').
- 8.22 There is only a limited impact on the setting and significance of the Conservation Area, with the built form not experienced from within the Conservation Area. Buildings would be significantly set back from Cornells Lane behind existing planting (both existing planting and planting proposed as part of the scheme). A verdant approach towards the Conservation Area would therefore be maintained by this planting, together with the location and scale of the buildings.
- 8.23 With regard to any alleged agrarian setting, it will be noted that the appeal site and also the retained paddock land are not in any active arable use and are not under cultivation. Although the site forms

part of the immediate, undeveloped surroundings it is not in active use and is simply an element of undeveloped land adjacent to the settlement for which a viable use should be found.

- 8.24 The buildings would also be constructed in a simple, vernacular style diminishing in height from west to east. This will minimise their visual impact and respond to a characteristic of the conservation area identified in a previous consultation response by heritage officers who noted “*detached buildings set within spacious plots*”.
- 8.25 The proposals would therefore slightly alter the development form of Widdington and alter a small element of the rural setting of the Widdington Conservation Area. This would result in a limited impact to the “significance” of the conservation area, a designated heritage asset, equating to a **very low level** of less than substantial harm. This limited, less than substantial harm should be weighed against the public benefits of the proposals in accordance with paragraph 202 of the NPPF (see below).
- 8.26 The junior heritage consultee (Assistant Built Heritage Consultant, Essex CC Place Services) did *not* recommend refusal of the appeal application but raised some initial comments in their first consultation response (6 August 2021) concerning impacts upon the Conservation Area. The consultee stated that the existing site positively contributes to the agrarian setting and rural character of the settlement of Widdington and designated heritage assets, including the Conservation Area. In response, this appeal Statement has shown how the setting of the rural area and the Conservation Area will be preserved.
- 8.27 They then went on to say that surrounding ‘*landscape, views, tranquillity, land use and other environmental factors such as noise, light pollution and general disturbance should be taken into account*’ - but these were vague unsubstantiated statements which did not quantify exactly in what way there would be harm arising to the Conservation Area (which the proposed dwellings lie outside of). In response, the inspector is asked to note that:
- (a) the site lies in a village environment where there will already be some impacts from noise (eg traffic using Cornells Lane), light pollution from buildings and ‘general disturbance’. The proposals in this appeal will not markedly change what is experienced in this village locality;
- (b) in the *Report to Planning Committee* (Appendix 1) planning officers did not object to any of the issues raised by the consultee. The report (at paragraph 9.65) also confirms that Policy ENV5 (Light Pollution) was considered but the LPA did not refuse the application against this policy. Indeed, any external lighting details can be agreed but it should be noted that no “streetlights” are required for the proposed private drive;
- (c) the inspector in the previous appeal for 20 dwellings (Appendix 7) did not raise objections to the impacts on the nearby Conservation Area as a result of *noise, light pollution and general disturbance*. Whilst he noted some effects from traffic this was due to the amount of traffic related to 20 dwellings and is clearly different from the impacts from traffic in this 4 unit scheme
- 8.28 The Planning Committee did not identify ‘specific’ impacts upon the Conservation Area and appeared to have no regard to the professional assessment of their own planning officer regarding **the low level of impact** of the proposed development upon the Conservation Area, as mainly set out at paragraphs 9.35 to 9.43 of the Report to Planning Committee (Appendix 1).

- 8.29 The Transcript of Planning Committee (Appendix 3) shows that the committee relied on the consultee's initial comments (6 August 2021) regarding impacts on the Conservation Area, which they said amounted to harmful 'urbanisation'. The appellants strongly refute this claim and consider such opinion is without foundation or evidence. Further information on the appellant's response to this particular matter is found in the rebuttal to RfR3 concerning countryside impacts.
- 8.30 Crucially, the Planning Committee failed to acknowledge the consultee's subsequent advice and opinion of 21 February 2022 (Appendix 11), also reported in the Addendum to Planning Committee Report (Appendix 2) that **the level of harm to the Conservation Area was low** (further details are set out later). The Planning Committee erred by not applying due weight of such 'low harm' to the assessments made by the consultee. It appears the **Planning Committee assessed harm levels to be overriding, which is without any foundation and is contrary to all professional advice.**

#### Consideration Under NPPF Paragraph 206

- 8.31 The LPA refused the development on the basis of a conflict with Paragraph 206 of the NPPF which states,

*Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.*

- 8.32 RfR2 states (inter alia) that:

*The proposed development will not preserve or enhance the character and appearance of the Conservation Area and will result in harmful impact to the setting of the nearby listed buildings....The public benefits of the development do not provide sufficient opportunities to enhance their significance....therefore also in conflict with paragraphs....206 of the NPPF.*

- 8.33 It will therefore be seen that the LPA has sought to justify refusal against NPPF Paragraph 206 on the basis that the significance of the Conservation Area (and listed buildings) will not be enhanced. Indeed, this follows the opinion if the Assistant Built Heritage Consultant who had, somewhat strangely, opined that the proposals were inconsistent with Paragraph 206, when in fact the opposite is true.
- 8.34 A careful inspection of the wording of NPPF Paragraph 206 indicates that the policy does not "require" development to 'enhance' the setting of a heritage asset, merely that LPA should "look for" opportunities.
- 8.35 Furthermore, where such opportunities are sought in the settings of heritage assets, these should *either 'enhance' or 'better reveal their significance'*.
- 8.36 In this case, the appeal proposals will *better reveal the significance* of the Widdington Conservation Area by the introduction of a new footpath through the site (available to occupiers and public alike via permissive rights) which will open up views towards the back of High Street where the Conservation Area lies.

- 8.37 For example, the new footpath where located south of Plot 1 (see photograph, below, of approximate location) would allow a view of Conservation Area including White/Corner Cottage (listed), Roseley Barn (curtilage listed to Martin’s Farm) and other buildings further north including along High Street.



View (currently unavailable to public) from proposed permissive footpath, looking north-west towards properties in the Conservation Area. This viewpoint would better reveal the significance of the Conservation Area (and buildings), only becoming available as a result of the scheme

- 8.38 Such currently ‘internal’ views are not available from within the appeal site where the land is entirely private. Note that views across the site to the Conservation Area are prevented from the c2.0m high close board fence running parallel to the public footpath *to the east of the paddock* along the full depth of the appeal site. Also, views across the appeal site from Cornells Lane are restricted by roadside vegetation and raised land, noting the lower level of Cornells Lane along most of the site frontage.
- 8.39 The proposal therefore fully accord with NPPF Paragraph 206 by providing an opportunity to better reveal the significance of the Conservation Area and listed buildings within it. The relevant part of RfR2 is not justified. Indeed, in their Report to Planning Committee (Appendix 1), **professional planning officers agreed that the proposals were in accordance with NPPF Paragraph 206** (see paragraph 9.54). There is no evidence to take a contrary view to the professional opinions of the planning officer.

#### **Level of Harm to Conservation Area**

- 8.40 **There is unanimous agreement from professionals that the level of harm to the Conservation Area is of a low or very low level.**

8.41 Such professionals include planning officers, the council’s heritage consultee and the appellant’s heritage consultant.

8.42 The appellant’s heritage expert in the submitted Heritage Statement (RPS, May 2021) at paragraph 4.16 concludes that the proposals would result in,

*a limited impact to the significance of the conservation area, a designated heritage asset, equating to a **very low level of less than substantial harm.***

8.43 The LPA’s heritage consultee, whilst raising some concerns in their initial response (dated 6 August 2021) had not provided *any* indication of the *level* of harm to the Conservation Area’s setting or its significance. The LPA had sought to obtain this but it was not until 21 February 2022 (some 6 months later) that this opinion was provided. The junior officer (Assistant Built Heritage Consultant) had to review the scheme and seek advice from a senior officer. He commented,

*I have reviewed the scheme again and sought another opinion with a member of our Senior Team. The scheme would in principle result in **low level of harm to the Conservation Area, through development in its setting.***

8.44 The planning officer, in the Report to Planning Committee (Appendix 1), also states at Paragraph 9.54 that,

*the proposed development will subsequently result in a **very low level of less than substantial harm to the significance of the Widdington Conservation Area***

8.45 These professional comments are summarised below and in the ‘Heritage Gauge’ (Appendix 28):

Professional Assessor	Advised <b>Level of Harm</b> to Significance of Conservation Area	Evidence
Appellant’s Heritage Consultant	<b>Very Low</b>	Heritage Statement May 2021
Heritage Consultee	<b>Low</b>	Consultation Reply 21.02.22
LPA – Planning Officers	<b>Very Low</b>	Report to Planning Committee

8.46 Despite such clear advice from professionals, the LPA has refused the application on the basis of harm to the Conservation Area’s significance, which is clearly at the low or very low end of the scale. The appellants therefore reserve the right to comment on any statement that the LPA may make regarding this matter, should it decide to defend this reason for refusal.

#### Listed Buildings – Impacts on Significance and Settings

8.47 The appellant’s submitted Heritage Statement (RPS, May 2021) (which should be referred to in full) assesses the impacts of the proposed development upon listed buildings.

8.48 RfR2 states (in part) that,

*The proposed development...will result in harmful impact to the setting of the nearby listed buildings, not in accordance with ULP Policies....ENV2 and paragraph 199 of the NPPF.*

8.49 Local Plan policy ENV2 states,

*Policy ENV2- Development affecting Listed Buildings*

*Development affecting a listed building should be in keeping with its scale, character and surroundings. Demolition of a listed building, or development proposals that adversely affect the setting, and alterations that impair the special characteristics of a listed building will not be permitted. In cases where planning permission might not normally be granted for the conversion of listed buildings to alternative uses, favourable consideration may be accorded to schemes which incorporate works that represent the most practical way of preserving the building and its architectural and historic characteristics and its setting*

8.50 The relevant part of the policy in this appeal is in regard to development which affects the surroundings or setting of a listed building. **The appellants contend that there would be minimal harm to settings and surroundings of local listed buildings.**

8.51 NPPF Paragraph 199 states, 'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'.

8.52 The expert Heritage Statement (RPS, May 2021) has considered the proposals against Local Plan and NPPF policies, as well as legal requirements including Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that special regard must be given by the decision maker, in the exercise of planning functions, to the desirability of preserving or enhancing listed buildings and their setting.

8.53 The Heritage Statement (RPS, May 2021) has assessed listed buildings impacts under law, Development Plan and the NPPF policy (NB – NPPF paragraph numbers have changed following update in July 2021).

8.54 The inspector is asked to refer to previous planning history, which in respect of identifying affected listed buildings is set out at paragraphs 3.9 to 3.15 of the Heritage Statement. Note in particular that during the determination of the Appeal for 20 unit scheme (Appendix 7) - *a much larger scheme and site area* - the Inspector identified the following listed buildings as being affected, which were also *agreed* by the LPA at the related informal hearing:

- Church of St Mary the Virgin (Grade II\* listed building; NHLE 1238372)
- Fleur de Lys Inn (Grade II listed building; NHLE 1274198)
- William the Conqueror (Grade II listed building; NHLE 1238376)
- Corner Cottage and the White Cottage (Grade II listed building; NHLE 1238374)

- 8.55 Given that the appeal site is now significantly smaller in area than before and the proposal includes only 4 (not 20) dwellings, with a smaller, less impactful access, there should be no more listed buildings affected than the inspector had identified (and were agreed with the LPA).
- 8.56 The Inspector did not identify any impacts to the Grade II listed Martins Farmhouse, or its associated curtilage listed Roseley Barn (which now forms a separate and extended residential unit).
- 8.57 The council's consultee (Place Services, Assistant Built Heritage Consultant) states in the initial consultation response dated 6 August 2021 that the following listed buildings are in close proximity to the appeal site:
- William The Conqueror, Grade II listed (list entry number: 1238376);
  - Corner Cottage/White Cottage, Grade II listed (list entry number: 1238374) and
  - Martins Farmhouse, Grade II listed (list entry number: 1238383).
- 8.58 The consultee then states that, 'The proposals would result in the harmful urbanisation of the site, inevitably resulting in several impacts to the setting of William The Conqueror, Corner Cottage/The White Cottage...noting this harm would be less than substantial...'
- 8.59 It would appear therefore that there are only two listed buildings which the consultee believed would be affected, namely William The Conqueror and Corner Cottage/White Cottage, both grade II listed.
- 8.60 However, it is unclear from the consultee's initial response what the alleged 'several impacts' would actually be on the settings of these buildings.
- 8.61 The decision notice at RfR2 is similarly unhelpful and unclear in this matter, as it merely refers to an alleged 'harmful impact to the setting of the nearby listed buildings' but does not specify why or how this impact would occur. Neither does it specify *which* listed building settings would be harmed.
- 8.62 The Transcript of Planning Committee shows that there was no in depth discussion on this matter, although reference was made to the previous appeal decision (which is material and analysed below) and one member curiously referred to 5 listed buildings (not the 2 buildings which its consultee had identified) as being affected.
- 8.63 Furthermore, apart from the alleged harm being cited as 'less than substantial' by the consultee, it is not clear what the level of harm to the setting of the listed buildings would be eg high/medium/low, negligible. Again, the decision notice at RfR2 does not clarify.
- 8.64 To understand any potential harm to significance of the three listed buildings referred to by the consultee as being in *close proximity*, the appellant's Heritage Statement (RPS, May 2021) has firstly assessed what contribution the appeal site makes to their significance. A quick summary is set out below but the full report in the Heritage Statement should be referred to.



Listed Building	Contribution of Site to Building's Significance	Heritage Statement Paragraph Nos.
Martins Farmhouse	Site makes a <b>limited</b> contribution to the significance of Martins Farmhouse, including curtilage listed Roseley Barn	3.35 to 3.40
Corner Cottage/ White Cottage	Contribution of the Site to significance of Corner Cottage/White Cottage is <b>limited</b> and restricted to partial views available of them together with some rural context	3.41 to 3.44
William The Conqueror	Extremely <b>limited</b> nature of views do not allow for appreciation of special architectural interest of the listed building, so do not contribute to its significance. Existing Site access is in close proximity and visible, not contributing to significance of the listed building	3.45 to 3.47

8.65 As will be understood, **the appeal site currently makes little contribution to the significance of these listed buildings** and as such development upon the appeal site has less propensity to make differing judgements.

8.66 Note that the Assistant Built Heritage Officer in his consultation responses did not evidence any analysis regarding what contribution the appeal site makes to the significance of listed buildings.

8.67 The Heritage Statement then analyses potential impacts upon the significance of those listed buildings and have taken account of comments made in the 20 unit appeal decision (Appendix 7). A summary impact is set out in the table below but the full analysis of the Heritage Statement should be read to understand how these conclusions were reached.

Listed Building	Assessment of Impact upon Building's Significance	Heritage Statement Paragraph Nos.
Martins Farmhouse	proposed development would have <b>no impact</b> on the significance of Martins Farmhouse; relationship between the Barn and Farmhouse unaffected; legibility of its historic use unchanged. The special architectural and historic interest would be preserved, as appeal Inspector's findings for the 20 unit scheme	4.17 to 4.18
Corner Cottage/ White Cottage	Area's role within the setting of the listed building will be unchanged; proposed development will have <b>no impact</b> on the significance of the listed building. Its special architectural and historic interest will be preserved,	4.19 to 21
William The Conqueror	slight changes within the setting of the listed building will have <b>no impact</b> on its significance or the ability to appreciate and experience its significance; special architectural and historic interest of the listed building will be preserved	4.21 to 4.24

8.68 As will be understood, **the significance and settings of the listed buildings will be preserved.**

- 8.69 The assessments made by the inspector for the previous appeal regarding impacts upon listed buildings provide a useful reference point. That scheme (see plan at Appendix 6) was in relation to the ‘whole’ paddock and concerned dwellings with related works (including a passing bay opposite William the Conqueror). In the appeal decision (Appendix 7) the inspector noted the following:
- White & Corner Cottages – Para 25: *“there would be some less than substantial harm by virtue of development within their setting, albeit to the lower end of any scale.”*
  - William The Conqueror – Para 22: *“there would be some harm to the setting by virtue of such development and activity associated with it, within its setting”*. Scale of harm was not stated. However, much of the cited “some” harm was due to the passing bay/vibrations (see para 21) which is not required as part of the current appeal proposals.
  - Church of St Mary The Virgin – Para 24: *“there would be some less than substantial harm but it would be at the lower end of the scale.”* However, this is not a building which the council’s consultee deemed to be in close proximity regarding the current appeal scheme.
  - The Fleur-De-Lys Public House – Para 20: *“It would distract from the ability to appreciate the listed building from the High Street and the appeal site, causing some less than substantial harm to its significance.”* Again, this is not a building which the council’s consultee deemed to be in close proximity regarding the current appeal scheme.
- 8.70 As stated, the impact upon Martin’s Farmhouse was not considered by the inspector, as the LPA agreed at the appeal hearing that it was not necessary to do so.
- 8.71 Note that the Assistant Built Heritage Officer in his consultation responses did not evidence any ‘specific’ harm on the proposals subject of this appeal upon the significance of listed buildings.
- 8.72 The Report to Planning Committee (Appendix 1) does make a full assessment of impacts on listed buildings, as set out at paragraphs 9.45 to 9.53 & 9.55, which the inspector should refer to.
- 8.73 Note there was an error in the Report to Committee (Appendix 1) at paragraph 9.51 regarding level of harm upon William The Conqueror, which was inadvertently stated as ‘high’. The planning officers subsequently issued a correction in their Addendum to Planning Committee (Appendix 2) that this should have read as ‘low’ level of harm.
- 8.74 The appellants have produced a summary ‘Heritage Gauge’ document (Appendix 28) which in simple table form sets out comments from the previous inspector regarding the 20 unit scheme. It also cites, in relation to the current appeal, summary levels of impact on listed buildings as assessed by the appellant (see Heritage Statement), the council’s consultee (Consultation Responses of 06.08.21 & 21.02.22) and the LPA’s planning officers (Report to Planning Committee and Addendum).
- 8.75 It will be seen that that is substantial agreement on (low or no) levels of harm to listed buildings between the appellants and the council’s professional planning officers.
- 8.76 Reference should also be paid to the assessments in the Heritage Commentary Map (Appendix 26) which will further assist the inspector’s assessment regarding impacts in listed buildings, including a comparison against observations from the previous inspector regarding the 20 units scheme.

8.77 Regarding NPPF Paragraph 206 as cited in RfR2, comments have been made earlier in this Chapter against this element of national policy and that there will be opportunities from the proposed (permissive) footpath that will run through the site. This will allow all users including the public to appreciate buildings within the Conservation Area, which will include views of White Cottage and the curtilage listed Roseley Barn (in curtilage of Martin's Farmhouse). These viewpoints are not currently available to the public. By making them available it will *better reveal the significance of these heritage assets* and so "***should be treated favourably***" (NPPF Paragraph 206). The LPA has failed to do so.

### Consideration Under NPPF Paragraph 202

8.78 The LPA alleges conflict with NPPF Paragraph 202. RfR2 states (in part),

*The public benefits of the development do not...overall outweigh the harm of the proposal, therefore also in conflict with paragraphs 202....of the NPPF.*

8.79 NPPF Paragraph 202 states,

*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

8.80 There is unanimous agreement following assessments by the appellants, the council's heritage consultee and the professional planning officers that the appeal proposals would *lead to less than substantial harm to the significance of a designated heritage asset*.

8.81 Accordingly, NPPF Paragraph 202 requires that 'the less than substantial harm' should *be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*.

8.82 In respect of the Conservation Area impacts, all professionals agree that the level of harm from the proposals upon the significance of the Conservation Area would be either low or very low.

8.83 In respect of the Listed Building impacts, the appellants and council planning officers agree that the level of harm from the proposals upon the significance of listed buildings is either not applicable or low. The council's heritage consultee has not made a specific impact assessment regarding level of harm.

8.84 There would be several and meaningful 'public benefits' from the development, as stated elsewhere in this appeal Statement. Given that impacts upon the identified designated heritage assets are evidenced as being either not applicable or at the low end of the 'less than substantial harm' scale, the appellants are of the view that there is no justification for refusing the application under NPPF Paragraph 202. Indeed, in their Report to Planning Committee (Appendix 1), **professional planning officers agreed that the proposals were in accordance with NPPF Paragraph 202** (see below).

### Conclusions regarding Impacts on Designated Heritage Assets

8.85 Based on the above assessment, the appellants are of the view that the impact upon the significance and setting of Designated Heritage Assets (Widdington Conservation and assessed listed buildings)

does not justify a reason for refusal under relevant law or policy. There is no conflict with Local Plan policies ENV1 or ENV2, or paragraphs 199, 202 and 206 of the NPPF.

- 8.86 The proposed development will result in a very low level of less than substantial harm to the significance of the Widdington Conservation Area, due to the alteration of a small part of its rural setting and the slight change to the morphology of Widdington.
- 8.87 The significance of all listed buildings potentially affected by the proposed development will be preserved, in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act, 1990.
- 8.88 In their Report to Planning Committee (Appendix 1), planning officers weighed up all information in their assessment and also made positive conclusions regarding impacts on Designated Heritage Assets. In respect of the Conservation Area, planning officers concluded as follows at paragraph 9.54

*Taking into consideration the consultation responses from the Council's Heritage Consultant, the details of the previous planning appeal and submitted Heritage Statement it is considered the proposed development will subsequently result in a **very low level of less than substantial harm to the significance of the Widdington Conservation Area and is in accordance with ULP Policy ENV1 paragraphs 202 and 206 of the NPPF and S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.***

- 8.89 In respect of the Listed Building impacts, planning officers concluded at paragraph 9.55 as follows,

*As assessed above **the significance of all listed buildings potentially affected by the proposed development will be preserved, in accordance with ULP Policy ENV2 section 202 of the NPPF and section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.***

- 8.90 Accordingly, the appellants subscribe that RfR2 is not justified.

## 9.0 REBUTTAL OF REASON FOR REFUSAL 3 (RfR3) – COUNTRYSIDE

The decision notice sets out the council's reasons for objecting to the development on countryside grounds. RfR3 states:

*The proposal would represent an inappropriate form of development within the countryside, having an urbanising effect that would be out of context with the existing pattern of development and harmful to the setting and character of the rural location. The proposal is not in accordance with ULP Policy S7 and paragraph 174 (b) of the NPPF in terms of recognising the intrinsic character and beauty of the countryside.*

9.1 RfR3 is analysed below against the following headings:

- Character Impacts
- The Relevance and 'Weight' of Local Plan Policy S7 and Development Limits
- Housing Supply and Impact on Policy S7
- Weight given to Policy S7 by Planning Inspectors
- The Need to Develop Housing in the 'Countryside'

### Character Impacts

9.2 To avoid repetition, the inspector is firstly directed to the PDAS at Chapter 4 and Chapter 6 (paragraphs 6.73 to 6.86) which explain, in some detail, the proposals and how these have successfully addressed character issues, including the comments from the appeal inspector concerning previous development on the 'whole' paddock. Further comments are now offered.

9.3 The LPA assert that the development comprises an 'inappropriate form of development'. For reasons set out in this Statement, it must be recognised that housing has to occur outside development limits due to housing land supply shortfalls. Where such development occurs, it is important that it delivers high quality development and aspires to meet the aspirations of delivering beautiful buildings and places, as set out in the NPPF.

9.4 In this case, the appellant's assert that the quality of the buildings and the place it will deliver is evidenced as high quality and beautiful. The inspector is asked to review the drawings. The proposed traditional build form of the dwellings is appropriate to the village setting and not at odds (or 'inappropriate') with the prevailing context. The dwelling scales are kept small i.e chalets or bungalows. The features of the dwellings provide architectural interest. High quality materials are proposed eg natural slate and hand made clay tiles, as opposed to cheaper concrete tiles. The LPA has overlooked the quality of the scheme in its decision making.

9.5 The decision notice alleges an 'urbanising' effect. This allegation is wildly exaggerated. The scheme is a minor housing scheme of a suitable village scale. The scheme will not overwhelm the village or impose a character which is different or alien to what is generally experienced in the locality, noting the site is close to the village core and its many buildings, including dwellings.

9.6 The term 'urbanising' derives from the adjective 'urban', which the Concise Oxford English Dictionary defines as "of, living in, or situated in a town or city". 'Urbanize' is defined as "1. make Urban. 2 destroy the rural quality (of a district)."

- 9.7 It cannot be said that the additional of three chalet dwellings and a bungalow will have the effect of making this settlement 'urban' ie turning the village in to town. Furthermore, whilst there will inevitably be some minor adverse impacts - as is the case of building on any greenfield land - the scheme is minor in nature and could not reasonably be said to 'destroy' the rural quality of the district. Such an emotive term would not be warranted.
- 9.8 Elements which make a settlement 'urban' include not just the *scale* of housing but also other features such as roads with footways and streetlights, where a more low key informal village feel starts to become more structured. In this case, it is important to draw comparisons with the appeal scheme for 20 dwellings and related appeal decision (See Appendices 5 and 6).
- 9.9 It will be seen that that appeal scheme used the whole of the paddock for a major housing development. Housing was spread across the whole paddock measuring 1.35ha. The 'scale' of housing development was significant. The inspector opined at paragraph 10 of the appeal decision that,
- The proposal would be a comparatively large estate of 2 storey housing and although there is some screening, from the east such development would be starkly visible and of an overall scale and disposition that would harmfully encroach above and across the skyline. It would not be discreet as the LVA suggests and would jar with their lower, more modest scale and the linear character and pattern of the village.*
- 9.10 In the current scheme of 4 homes, it will be appreciated that the issues of *scale* which the inspector had identified have been significantly overcome. This includes not just the spread and numbers of dwellings, but also the reduction in heights from before, as evidenced in the PDAS. The scheme is of a 'lower', more 'modest' scale and has a 'linear character' running parallel to the road (and not housing in depth) such that the key issues which the inspector identified have been addressed.
- 9.11 The decision notice claims that the development would be 'out of context with the existing pattern of development', yet the inspector in the 20 unit appeal has acknowledged that a 'linear character' exists in the village. The LPA's allegation is that the *pattern of development* in the village is not being respected. Indeed, planning officers recognise in the *Report to Planning Committee* (Appendix 1) at paragraphs 9.37 to 9.38 that,
- The siting of the dwelling[s] would be compatible with the more twentieth century, piecemeal development within Widdington and also the more linear approach of development along Cornells Lane that has evolved over time.....The location of the proposed development follows the evolution of Cornells Lane which includes a number of dwellings built over time and mainly in a linear layout that are compatible with the historic routes through the village.***
- 9.12 Furthermore, the 20 unit appeal scheme also involved a 'major' road access which required 2m footways running alongside the new carriageway to meet with the requirement of the Essex Design Guide. As an 'adoptable' estate road, the Highway Authority would also have expected street lights to be incorporated. These footways and streetlights, which could be termed 'urban' features are not proposed or required in the current appeal scheme. There is no urbanising effect as alleged.
- 9.13 The previous appeal decision for 20 dwellings is a material consideration. The inspector did not say that no part of the overall paddock could ever be developed. Rather, his concern in rural location terms was due to the scale of development and number of residents. At paragraph 37 he stated,

*the key consideration is the effects from the scale and numbers of future residents and there are materially different site specific and bespoke considerations in each appeal. Each case must be determined on its own merits*

9.14 Clearly, as the scale of development and resulted numbers of new residents is reduced, being related to only 4 dwellings, not 20, it is clear that the **inspector's previous concerns have now been substantially addressed in respect of the suitability of the site's 'countryside' location**. This is evidenced by the following:

a) **the site area has significantly reduced from 1.35ha to 0.48ha;**

b) **the number of dwellings has been reduced from 20 dwellings to 4 dwellings** (a village scale minor housing scheme); this will result in (using a reasonable average of 2.3 residents per dwelling) only 9 new village residents as opposed to 46 and will not overburden this village location;

c) the application site only includes 'linear' development on the southern part of the overall paddock, **with over 2 acres left undeveloped**; there is no 'in depth' housing development or resultant "suburbanisation";

d) **a substantial paddock area between the appeal site and the northern paddock boundary will be maintained as grassland and a newly proposed open ecology area**. The overall (south to north) gap is typically of around 80 metres in depth, across the whole (west to east) extent of the paddock;

e) **the west to east 'transition' will therefore be largely kept**, open and green, either as paddock or new ecological area. The low density residential development will not impact significantly on this transition, noting that that large rear gardens are also proposed backing on to the retained/undeveloped paddock land. This transition, will respect the rural character by remaining undeveloped;

f) **whereas there were 8 dwellings (plots 13-20) proposed in the appeal scheme shown located close to the eastern boundary of the whole paddock, this is no longer the case**. Only one dwelling is close to the eastern paddock boundary, to the south-east side. Careful attention has been given to ensure this property is low in scale (proposed as a bungalow with hipped roof to the east side). It also benefits from good existing screening along the paddock boundary, heavily restricting views from the east (and south). There should be **no wider landscape** impacts (see Images 50 and 51 at *Photographs of Site and Context, June 2021*) especially due to the screening to the east of the paddock and limited amount of proposed building at the eastern part of the site. Furthermore, **all dwellings are proposed as low in scale** and appropriate to a village, as chalets or bungalows;

g) **there are no other urbanising effects** such as a major road junction with separate footways or adoptable roads with streetlights.

9.15 The decision notice also objects under paragraph 174 (b) of the NPPF, which is part of a multi-faceted policy at paragraph 174, sub-sections (a)-(f). It states planning decisions should contribute to and enhance the natural and local environment by: *(b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland*;

- 9.16 The development recognises the character and beauty of the countryside by delivering high quality and beautiful *rural style* homes which will successfully add to the local rural character in this part of the village. The *homes and gardens will back on to the retained paddock, in a similar way to the homes which exist to the west*. Whilst the development will not be highly visible in the public domain due to siting, set back from the road, softening from mature existing and other new landscaping (see cross section drawing), it would be the case that the homes will appear suitably rural in scale, nature, appearance and materials when glimpsed from outside the site.
- 9.17 Wider public views of the appeal site in other areas of the village are largely restricted by landscaping (eg Cornells Lane and eastern side of paddock) and intervening buildings or fences. **The much reduced scale of this minor housing scheme in comparison to the appeal scheme of 20 dwellings substantially addresses the inspector’s previous concerns regarding impacts on the landscape.**
- 9.18 The scheme recognises the trees at the fringes of the site and will retain these, apart from removal of a small section of *poor quality* hedgerow including bramble, etc, (as evidenced in the supporting tree survey). This is the only loss of vegetation and is insignificant. By contrast, **approximately 50 new trees and nearly half a kilometre of new hedgerows are proposed to be planted**, not just for mitigation but also for enhancement of the countryside. The new housing development will make this enhancement possible. In the event that the appeal is allowed, tree and hedgerow species details can be agreed with the LPA by condition (to ensure native varieties) in recognition of the reflecting the prevailing rural character.
- 9.19 Similarly, whilst there are no ecology objections from the LPA or its consultee, the countryside will benefit from the **significant ecological enhancements** for biodiversity net gain that will be delivered and secured via conditions, including amongst other initiatives a *new ecological area of 0.28 acres*.
- 9.20 The LPA has not alleged the loss of agricultural land, which is part of the overall paddock lying fully in the appellant’s control. One of the appellants is an NHS doctor (ie not a farmer) and has never farmed the land in 26 years of ownership. Indeed the size of paddock is overall likely too small for a viable commercial farming enterprise. The inspector previously addressed this matter in the 20 unit appeal scheme when he stated that, *“I am satisfied that....there would be no loss of productive agricultural land so that it should be regarded as being in conflict with the LP [Local Plan]”*.
- 9.21 Thus, there is no great prejudice to paragraph 174 (b) of the NPPF especially when this sub-paragraph is considered ‘in the round’ as part of the tilted balance. It is also important to consider the overall aspects and relevance of Policy S7, where this is a policy which seeks to restrict development. The analysis below should be read in conjunction with comments in the PDAS.

#### **The Relevance and ‘Weight’ of Local Plan Policy S7 and Development Limits**

- 9.22 For the purposes of the Uttlesford Local Plan, adopted 2005, the site lies in an area outside of any ‘Development Limits’ and is therefore treated as ‘Countryside’ under Policy S7. Given the NPPF’s focus on growth, significantly boosting housing supply and the presumption *in favour* of sustainable development, the location of the site in the countryside per se should not lead to an automatic refusal of planning permission.
- 9.23 The LPA has placed undue reliance on the policies of the outdated Local Plan, when weighed against more up to date national planning policy and various material planning considerations. Policy S7 of



the Local Plan and strict adherence to 'Development Limits' is not consistent with Government's 'presumption in favour of sustainable development'. Policy S7 provides no 'explicit' flexibility to recognise that, where a development is 'sustainable', for example in environmental, social and economic terms, it will be viewed positively. An up to date Local Plan would include policies which reflect the 'presumption in favour of sustainable development'. The Uttlesford Local Plan which is 17 (seventeen) years old, does not.

- 9.24 The LPA has long understood the inconsistency of Policy S7 with the NPPF. In the *Uttlesford Local Plan 2005 - National Planning Policy Framework Compatibility Assessment* by Ann Skippers dated July 2012 (Appendix 18), the report indicates the lack of compatibility of Policy S7 with the NPPF, as follows:

*'The protection and enhancement of natural environment is an important part of the environmental dimension of sustainable development, but the NPPF takes a **positive approach, rather than a protective one**, to appropriate development in rural areas. **The policy strictly controls new building whereas the NPPF supports well designed new buildings to support sustainable growth and expansion of all types of business and enterprise in rural areas**'.*

(NB – appellant's emphasis added).

- 9.25 The appellants agree with this view that Policy S7 is not consistent with the NPPF. Policy S7 (Countryside) is recreated below. Particular elements of this policy are highlighted to show their emphasis on protection and restraint, as follows:

*The countryside to which this policy applies is defined as all those parts of the Plan area beyond the Green Belt that are **not within the settlement** or other site boundaries. In the countryside, which **will be protected for its own sake**, planning permission will only be given for development that **needs to take place there**, or is appropriate to a rural area. This will include infilling in accordance with paragraph 6.13 of the Housing Chapter of the Plan. There will be **strict control on new building**. Development will **only be permitted** if its appearance 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.*

(NB - emphasis added by appellant to show non-compliance with NPPF).

- 9.26 From both the appellant's analysis and the council's own Compatibility Assessment (Appendix 18), there is an inconsistency with the NPPF. The phrase 'protecting the countryside for its own sake' no longer appears in national policy. Such rigid protection and restriction of 'countryside' as set out in Policy S7 is no longer compliant with national policy in this respect. Government emphasis is upon allowing sustainable developments to happen. **Sustainable development can occur within countryside areas and indeed the LPA has approved small housing schemes elsewhere in the village**, as evidenced at paragraphs 3.22 to 3.26 of the PDAS. The inspector will be able to view these schemes which lie along or behind Springhill, this being the main road to the north side of the village, leading in to High Street.

- 9.27 Policy S7 places "strict control" on development outside of settlement boundaries. The Local Plan (2005) designates the Development Limits of settlements and applies inflexible housing policies which do not recognise the NPPF's focus on sustainable development and are therefore inconsistent with the NPPF. The Local Plan remains out of kilter with up to date national planning policy and its focus on

sustainable growth. Development Limits can only be appropriate as part of a plan-led system if the document they are part of is up to date, allocates sufficient housing and embraces Government policy that places an emphasis on sustainable development ie the NPPF. The 2005 Local Plan's slavish adherence to Development Limits is outdated.

9.28 The application of a Development Limits approach with Policy S7 means that development in the countryside cannot 'normally' occur under the council's planning policies, **irrespective of whether the proposed development is sustainable taking account of economic, environmental and economic aspects**. This approach is not in the spirit of or compliant with Government Policy with its emphasis on sustainable development.

9.29 This is particularly the case when it comes to meeting the challenge of sustainable housing provision in rural areas. The Government's PPG states with regard to Rural Housing, that,

*'People living in rural areas can face particular challenges in terms of housing supply and affordability, while the location of new housing can also be important for the broader sustainability of rural communities.....A wide range of settlements can play a role in delivering sustainable development in rural areas, so blanket policies restricting housing development in some types of settlement will need to be supported by robust evidence of their appropriateness..'*

Paragraph: 009 Reference ID: 67-009-20190722; Revision date: 22 07 2019

9.30 Given the above, Policy S7 is an **out of date** policy because parts of it - including the 'blanket' restrictions on growth outside settlement boundaries - are not consistent with the NPPF. The 'weight' to be given to Policy S7 should therefore be reduced significantly given its overly restrictive approach, contrary to NPPF policy and the PPG.

9.31 Notwithstanding this, the Inspector can consider that the appeal scheme could in one interpretation be considered in line with that part of Policy S7 which states: "...*planning permission will only be given for development that needs to take place there*..". This is because the development comprises a land use which is evidenced as "needed (ie housing) and has to be allowed in the rural area because of the shortage of housing land supply and lack of available allocations in the Development Plan. The section below entitled 'Housing Supply and Impact on Policy S7' provides further information concerning the council's ongoing housing shortages and how this in turn severely weakens the weight of Policy S7 in this appeal.

9.32 Despite the countryside location, **planning officers acknowledge that the location of the development is sustainable and will accord with the social dimension of Policy S7**. In the *Report to Planning Committee* (Appendix 1), planning officers state,

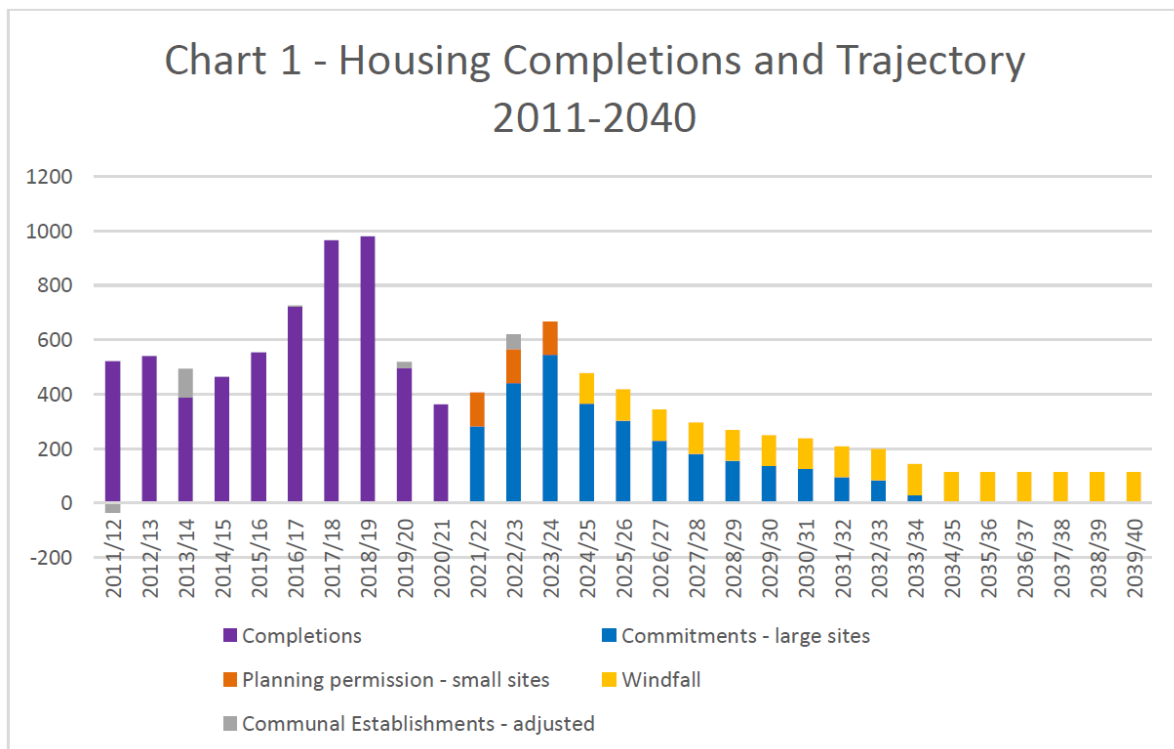
*In conclusion, the proposal in the form proposed would not be in conflict paragraph 8(b) of the NPPF regarding the fact that is in a sustainable location and will contribute to the social role of sustainable development, this would also be a consistent approach as per the approval of the above smaller housing developments within Widdington. Therefore the proposed location of the current proposed development of 4 dwellings is largely seen to accord with the social dimension of the NPPF on sustainable development, and with policies S7 and GEN1 of the Uttlesford Local Plan 2005.*

Source: Uttlesford DC - Report to Planning Committee 17 August 2022

9.33 **The opinions of professional planning officers should be taken in to account by the inspector.**

**Housing Supply and Impact on Policy S7**

- 9.34 Under the NPPF, the LPA is required to demonstrate a 5 Year Housing Land supply. **If the LPA cannot demonstrate a 5 year housing land supply, this will render Policy S7 as an ‘out of date’ policy under the NPPF’s Presumption in Favour of Sustainable Development (Paragraph 11 and Footnote 8) and therefore reduces the weight which can be applied to it.** The current effect of Policy S7 is to restrict housing from occurring when there isn’t enough housing supply. The housing supply position is now briefly assessed, using the LPA’s own data.
- 9.35 The *Report to Planning Committee* (Appendix 1) acknowledges at paragraph 9.82 that the council was unable to demonstrate a 5 year housing land supply, with **only 3.52 years housing land supply** available. This figure is taken from the council’s *5-Year Land Supply Statement and Housing Trajectory Status as at April 2021* (Appendix 21).
- 9.36 The council uses an annual housing supply target of 701 dwellings. When applying the ‘minimal’ (5%) buffer as allowed under the NPPF methodology, the 5 year housing land requirement equates to 3680. The council’s housing land supply over the applicable 5 year period is only 2592 dwellings, leaving **a significant housing shortfall of 1088 dwellings (ie 3.52 years).**
- 9.37 This should be regarded as a **significant shortfall in the number of deliverable housing units.** Given the amount of the shortfall, this adds great weight to the planning argument in support of this appeal. That is to say, it is not just that Uttlesford cannot demonstrate sufficient housing land supply, but it is also the scale of shortfall which brings further imperative to approve sustainable housing sites. This matter has to be considered as part of the ‘planning balance’ which is discussed later.
- 9.38 The appellants also wish to point out that Uttlesford District Council has historically had difficulties in meeting its housing targets and is forecasting this to continue for years ahead. Chart 1 of the *5-Year Land Supply Statement and Housing Trajectory Status as at April 2021* (Appendix 21) is recreated below, which sets out the parlous state of housing land supply.



Source: Uttlesford DC - *5-Year Land Supply Statement and Housing Trajectory Status as at April 2021*

9.39 The council is working to an average annual housing need of 701 dwellings, commencing from 2011/12. From this it will be seen that the LPA has only exceeded this annual housing target three times in the last ten years ie in the period 2011/12 to 2020/21. From 2021/22 onwards, the LPA effectively needs to play ‘catch up’ to meet housing requirements. Unless and until the LPA has a housing strategy in a new Local Plan which makes housing allocations upon deliverable sites, the council is likely to face ongoing housing land supply deficiencies.

9.40 It is noted that the housing trajectory for the three year period 2021/22 to 2023/24 **places significant reliance on small housing sites and windfall sites**, which the appeal scheme comprises.

9.41 The courts have held that the extent of a housing supply shortfall and how long it is likely to endure, the steps the council are taking and the contribution of new housing developments can determine how much weight is given to the benefit of increasing housing supply.

9.42 In the Judgement of *Phides Estates (Overseas) Limited v SSCLG, Shepway District Council, and David Plumstead [2015] EWHC 827 (Admin)*, the Courts held that:

*Paragraph 14 of the NPPF prescribes an approach to decision-making when relevant policies, including "[relevant] policies for the supply of housing", are "out-of-date". It does not, however, prescribe the weight to be given to the ability of a particular proposal to reduce a shortfall in housing land supply as a benefit to be put in the balance against "any adverse effects". This is a matter for the decision-maker to judge, and the court will not interfere with that judgment except on Wednesbury grounds. Naturally, the weight given to a proposal's benefit in increasing the supply of housing will vary from case to case. It will depend, for example, on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. **So the decision-maker must establish not only whether there is a shortfall but also how big it is, and how significant.** This will not be possible unless the relevant policies are correctly understood. In this case they were."*

(NB - NPPF Paragraph 14 is now found at Paragraph 11 of the 2021 version of the NPPF)

9.43 In *Hallam Land v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808*, the Court of Appeal indicated that planning inspectors and the Secretary of State when determining planning appeals for housing development are obliged to calculate the extent of the shortfall in an LPA's 5 year housing land supply (5YHLS). Main points arising from this Judgement are that:

- where no 5YHLS exists, the weight given to out of date Development Plan policies is a matter for the decision maker's judgement but, logically, the this should be less if the housing is large and more if it is small
- Whilst a planning inspector or the Secretary of State is not always required to quantify the precise extent of the shortfall, the 'balancing exercise' normally means the question for decision-makers is not just about whether a 5YHLS exists but also (broadly, at least) how large any shortfall is
- Therefore in planning appeals concerning housing, the decision-maker will normally have to identify at least the broad magnitude of any shortfall in housing land supply.

9.44 In light of these Judgements, the inspector should give increased weight to the benefit of housing at the appeal site, having identified that the scale of housing shortfall is significant and likely to persist

for some time. Correspondingly, **the weight of the restriction imposed by Policy S7 to developing in the countryside should be limited** (see below).

9.45 The above factors help to advance the arguments for delivery of housing at the appeal site, which lies in an area to which countryside policy applies.

#### Weight given to Policy S7 by Planning Inspectors

9.46 Planning Inspectors and the Secretary of State have considered the ‘weight’ to be applied to Local Plan Policy S7 when determining appeals in Uttlesford for housing development in the countryside ie, outside of development boundaries. Examples of recent cases and conclusions are set out below:

PINS Appeal Ref	Date of Appeal Decision	Appeal Site	Weight afforded to (or conflict with) Policy S7	Example Inspector Comments (see Appendix for full commentary)
3270615	19.01.22	Land to the west of Buttleys Lane, Great Dunmow	<b>Very Limited</b> Weight (*)	(*)S7 not consistent with the Framework except for element regarding appearance of development to protect or enhance the particular character of the part of the countryside within which it is set
3272403	30.11.21	Mill Road, Henham	<b>Limited</b> weight (*)	(*) except where consistent with NPPF objectives in relation to recognising the intrinsic character and beauty of the countryside – moderate weight to this element
3274573	25.10.21	Land north of Bedwell Road, Elsenham	<b>Limited</b> weight (*)	(*) except the part concerned with protecting or enhancing the character of the countryside – moderate weight to this element
3242550	04.09.20	Land south of Rush Lane, Elsenham	Strictly <b>Limited</b>	LP is <b>painfully out of date</b> ; LP Settlement boundaries are not inviolable
3243727	04.09.20	Land south of The Street, Takeley	<b>Limited</b> weight overall	S7 not consistent with language of the Framework
321003	20.06.19	Clifford Smith Drive, Watch House Green, Felsted	<b>Limited</b> weight	3-year supply of housing land. This represents a significant shortfall
3168869	21.08.17	Land off Little Walden Road, Saffron Walden	<b>Limited</b> weight overall	policy cannot be considered to be up-to-date
3166101	21.08.17	Land West of London Road, Newport	<b>Limited</b> weight overall	Policy S7 not consistent with the Framework

9.47 The general thrust of the appeal decisions is that **limited weight is afforded to any conflict with Policy S7** as a result of housing development being proposed outside village envelopes ie in the countryside.

9.48 A more detailed analysis (including extracts of appeal decisions) is provided at Appendix 31, which the inspector is asked to have due regard to.

9.49 These appeal decisions are material considerations. The comments of the inspectors back up the appellant's views regarding the limited weight to be attributed to any conflict against Policy S7, even more so when there is a (significant) housing shortfall.

9.50 **Given the evidence above, the LPA's justification for its refusal, on the grounds of the development being contrary to Policy S7, is significantly weakened.**

#### The Need to Develop Housing in the 'Countryside'

9.51 Pertinent issues to this appeal which help justify housing development in the countryside are :

- The council cannot demonstrate a 5 Year Housing Land Supply
- **There is a significant shortfall of houses – over 1000 dwellings** according to the LPA itself
- The Local Plan's relevant policies affecting housing delivery are out of date/non-compliant
- The Local Plan does not make provision for housing beyond 2011; a replacement Local Plan is required to make new housing allocations
- The Uttlesford area has other areas where higher countryside restrictions apply, including Green Belt, which are generally 'off limits'
- New Local Plan will not be in place until at least 2024
- Policy S7 restricts new residential development. The policy is of limited weight – according to appeal inspectors
- The council relies on windfall sites in its housing trajectory (the appeal is a windfall site)

9.52 Taking all of the above into account, it is clear that new **unplanned housing development currently needs to take place in the countryside** to address inappropriate, restrictive policies, at a time of 'significant' housing shortfalls.

9.53 Because of a lack of allocated housing land for the period beyond 2011 (no provision has been made) then development **has to** occur outside of settlement boundaries in the Countryside, and this 'may' be contrary to Policy S7. Quite simply, new housing development will have to go *somewhere* in the countryside, in the absence of an up to date Local Plan providing sufficient housing land and having up to date policies reflecting The Framework.

9.54 The adopted Local Plan does not afford the land at the appeal site, nor indeed any of the land around the site, any special or higher status in the Countryside.

9.55 The appellants have assessed the *relative* merit and value of the appeal site as 'countryside'.

9.56 It is not a 'valued' landscape in NPPF terms (for example an Area of Outstanding Natural Beauty) and so there is no conflict with NPPF paragraph 174 (a).

- 9.57 In respect of the adopted Uttlesford Local Plan 2005, the appeal site does not form part of Uttlesford's Metropolitan Green Belt or its 'Countryside Protection Zone' located around Stansted Airport. The Uttlesford District has numerous other designations and restrictions in the rural area, as set out in its adopted Local Plan. These include Sites of Special Scientific Interest, National Nature Reserves, County Wildlife Sites, Ancient Woodlands, Important Woodlands, Special Verges, Ancient Monuments, Historic Landscapes, Historic Parks and Gardens and Landscaped Areas. None of these designations apply to the appeal site but do apply to other Rural Areas in Uttlesford. However, Cornells Lane is locally designated as a 'Protected Lane' to which Policy ENV9 applies (see commentary elsewhere in this Statement).
- 9.58 It will be noted that Policy S7 restricts development in the Countryside unless there are '*special reasons why the development in the form proposed needs to be there*'. The arguments set out above provide such reasons to justify the principle of housing in the countryside, and also at the appeal site as it is not affected by numerous designations.

### Summary

- 9.59 In summary, Policy S7 is of restricted and limited weight because it does not fully conform to the NPPF and is an out of date policy. It places restrictions upon housing development in the countryside outside development boundaries, which is also a particular problem during times of acknowledged and continuing housing shortages. It is clear that planning inspectors at appeal (including decisions taken following examination of evidence at PLI's and hearings) afford only **limited weight to conflicts with Local Plan Policy S7**, given the scale of current and ongoing housing shortfalls and due to incompatibility with the NPPF.
- 9.60 Accordingly, in determining this appeal, such similar **limited weighting to Policy S7 should be applied and conversely a higher degree of weighting should be afforded the supply of housing brought by the appeal which the policy seeks to restrict.**

## 10.0 JUSTIFICATION FOR THE APPEAL PROPOSALS

10.1 The appellants now put forward their substantive case in favour of this appeal, under the headings below. The inspector is requested to read this in conjunction with the justification put forward at Chapter 6 of the PDAS and the opinions of professional planning officers who recommended approval of planning permission in their Report to Planning Committee (Appendix 1) based on their analysis at paragraphs 9.1 to 9.88 and 11.1 to 11.9.

### Applying the Presumption in Favour of Sustainable Development

10.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise. One of the most powerful material considerations is the National Planning Policy Framework (NPPF), in particular, its *Presumption in Favour of Sustainable Development* and the requirement to meet housing needs.

10.3 Paragraph 11 of the NPPF confirms that, ‘**decisions should apply a presumption in favour of sustainable development**’. It states at (d) that ‘for decision taking **this means**:

*‘approving development proposals that accord with an up-to-date development plan without delay;  
or*

***where there are no relevant development plan policies, or the **policies which are most important for determining the application are out-of-date, granting permission unless:*****

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.***

10.4 The NPPF clarifies in the footnote to Paragraph 11 (concerning policies which are out-of-date) that ‘*this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites*’.

10.5 As evidenced, the LPA is currently unable to demonstrate a 5 year housing land supply. In this respect alone the Presumption in Favour of Sustainable Development is engaged viz-a-viz ‘*the policies which are most important for determining the application are out-of-date*’. This means that one of the most important policies for determining this appeal - Local Plan Policy S7 (Countryside) - which is cited as a reason for refusal is out of date. Also, as explained earlier in this Statement, Policy H1 (Housing) is out of date given that it only made housing allocations until 2011 and Policy ENV9 (Historic Landscape) is out of date, being out of kilter with the NPPF.

10.6 This statement of case has set out why Policy S7 is not fully compliant with the NPPF (regardless of the housing supply situation) being overly restrictive. It takes a protectionist rather than supporting sustainable development in the rural areas. Policy S7 has also been considered by planning inspectors, including at recent Public Local Inquiries. The appeal decisions (as evidenced) confirm that Inspectors have applied Policy S7 limited weight. The policy is part of an Local Plan adopted in 2005 which an appeal inspector recently opined is now **painfully out of date** in terms of its purpose, its strategy, its content and its housing delivery policies.



- 10.7 Accordingly, given that the *most important policies for determining the application are out-of-date*, the *Presumption in Favour of Sustainable Development* (Para 11, NPPF) (the ‘tilted balance’) is engaged.
- 10.8 The first part of the tilted balance at NPPF Paragraph 11(d) (i) requires consideration of whether the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. In this case the relevant assets are ‘designated heritage assets’. Accordingly, an unweighted and separate balancing exercise concerning these is firstly required in accordance with paragraph 202 of the Framework, which states, ‘Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.’
- 10.9 The submitted Heritage Statement indicates that the proposed development will subsequently result in a ‘*very low level of less than substantial harm to the significance of the Widdington Conservation Area*’ and that ‘the significance of all listed buildings potentially affected by the proposed development will be preserved’. Given this professional assessment, it is contended that the amount of public benefits of the development mean there is no clear reason for refusing the application against Paragraphs 11d (i) or 202 of the NPPF. Public benefits may include anything that delivers economic, social or environmental objectives. These benefits are set out later below and it is consideration of these, balanced against the (limited) impacts upon heritage assets, that has led to the stated conclusion above.
- 10.10 The second part of the tilted balance at NPPF Paragraph 11(d)(ii) states that permission ‘should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF’s policies as a whole’.
- 10.11 The ‘test’ effectively places an onus upon the LPA to show that any adverse impacts (if they do exist) both *significantly and demonstrably* outweigh the benefits to such an extent that the development should not be allowed to proceed. The consequence of applying the *Presumption in Favour of Sustainable Development* is that the planning balance shifts in favour of allowing the appeal *unless* there is significant and evidenced overriding harm in comparison to the benefits.
- 10.12 Therefore, **under the test at NPPF Paragraph 11(d)(ii), where a decision maker takes the view that the benefits and adverse impacts are ‘in equilibrium’, or even if the adverse impacts marginally (but do not ‘significantly’) outweigh the benefits, then planning permission should be granted.**
- 10.13 The appellants contend, in weighing up the tilted balance, that any adverse impacts are limited, such that they do not ‘significantly’ and ‘demonstrably’ outweigh the benefits of the development and as such that this appeal should be allowed.
- 10.14 The benefits of the development address the economic, social and environmental objectives of sustainable development as set out at Paragraph 8 of the NPPF, as now set, following which the remainder of this Chapter assesses certain other elements of the proposed development. This will help determine whether there are any adverse impacts that would significantly and demonstrably outweigh the scheme’s benefits of allowing this sustainable small scale rural housing development.

## Benefits of the Development

10.15 The scheme has carefully considered how it can reasonably maximise benefits of the development. These must be taken in to account as part of a balanced assessment. It is apparent from the Transcript of Planning Committee (Appendix 3) that there was no Member discussion of the range of benefits, with only slight references made to proposed housing. There was no discussion of the benefits of ecological enhancements, energy efficiency savings, sustainable design, climate change initiatives which go over and above policy requirements and so are not just 'mitigation' but also classed as benefits, in addition to housing and related other benefits. The inspector is asked to give these benefits due weight.

### (a) Economic Benefits

10.16 The construction of four dwellings will bring short term economic benefits. Employment during the construction phase, along with the purchase of related goods/services, will benefit local companies eg contractors, sub-contractors, trades and suppliers.

10.17 The occupiers of the houses would contribute to the local economy in the long term, such that there would be some positive economic benefit for those offering services in the local area. Whilst for example, the Fleur de Lys pub may be benefit from extra custom, the economic benefits should not be looked at on a Widdington-centric basis, but more widely so that other locations benefit, for example the shops, pubs or restaurants in other rural areas and villages around such as Debden or Newport.

10.18 The increased pool of potential customers for the local bus service could bring improved viability. This is a service which the Parish Council supports and wants to do everything possible to maintain it. Additional customers on the route, generated via new housing, will meet such desire and also falls in line with NPPF policy which supports local services. Reference should be made to PPG Advice (*'Rural Housing - How can planning policies support sustainable rural communities?'*) which states that a wide range of settlements can play a role in delivering sustainable development in rural areas.

10.19 The dwellings are designed with home offices to encourage working from home (a growing trend, especially since the Covid19 Pandemic), enabling the prospects of an economically active additional population in the village and reducing out commuting.

10.20 Approval of the scheme will also generate funding for the District and Parish via the New Homes Bonus, as well as increased Council Tax receipts. These could be used to good effect locally, such as improvements to the local bench and seating area in High Street which requires refurbishment.

### (b) Social Benefits

10.21 The application proposes the construction of four dwellings. The provision of housing is a social benefit addressing the social objective of sustainable development, as stated at the NPPF. This is especially so at the current time given the lack of a 5 Year Housing Land Supply and the NPPF's requirements to significantly boost housing supply. **This small scheme can deliver quickly and this factor lends additional support at a time of housing shortages.**

10.22 Particular paragraphs of the NPPF which lend support to the housing proposal include:

- Paragraph 60 (significantly boosting the supply of homes)
- Paragraph 62 (Planning Policy to reflect different housing needs)
- Paragraph 69 (Contribution of small housing sites)
- Paragraph 79 (housing should be located where it will enhance or maintain the vitality of rural communities to promote sustainable development in rural areas)

- 10.23 The highest housing need in Uttlesford is for 3 bedroom properties, according to the council’s own SHMA assessment. Three of the proposed dwellings meet these highest needs. Furthermore, the aging demography of Uttlesford’s residents demands that properties suited to the older generation are delivered. In this case, a 2 bedroom bungalow is also proposed. This is particularly significant in Widdington given the lack of new build bungalows in the village. This will potentially allow for downsizing and freeing up another local property for a family.
- 10.24 The proposed development will provide a *high quality built environment, accessible to local services*, including those which can be reached via the regular bus service to other nearby settlements which offer facilities for health, education, leisure and retail facilities, thus assisting social objectives.
- 10.25 The site is located in a small settlement and benefits will accrue from additional localised surveillance brought by additional residents. The development will also be safe and secure being located off a private drive but also proposing a new permissive footpath route (increasing surveillance) which the applicants anticipate will be beneficial to local people and reasonably well used, given the absence of a footway along Cornells Lane by the site frontage.
- 10.26 Additional residents will add to the social vitality of the village, for example providing extra patronage of clubs and societies, etc.
- 10.27 The proposals comply with the social objective of the NPPF in the above respects but most notably via the provision of dwellings of targeted type and bedroom size to help address the council’s significant housing needs and land supply shortfalls.

[\(c\) Environmental Benefits](#)

- 10.28 The development addresses objectives of the NPPF and Uttlesford DC’s declared Climate and Ecological “Emergency” 2019 (and subsequent Interim Policy) in beneficial ways. Particular minimum requirements of UDC’s interim policy are proposed to be significantly exceeded.
- 10.29 The LPA’s Interim Climate Change Policy (February 2021) seeks a 19% increase in Energy Efficiency over and above Building Regulations. The appeal scheme will provide **61% energy efficient savings**, this being secured via conditions.
- 10.30 The development will address Climate Change objectives in particular through the energy efficient design measures. These include improved fabric and the provision of air source heat pumps and photo voltaic panels.
- 10.31 **The development is designed to save over 5 tonnes of carbon dioxide emissions** to the atmosphere compared to a scheme which meets Building Regulations. This is a tangible benefit, especially for such a small scheme. Each dwelling would also be provided with an **electric vehicle charging point**.

- 10.32 The scheme includes significant new tree planting of **around 50 new trees** which will bring ecological and environmental benefits. New hedgerow is shown around the plots and the site footpath and driveway. There would be close to **500m (“half a kilometre”) of new hedgerows provided.**
- 10.33 Opportunities to make improvements to certain vegetation along Cornells Lane could be pursued in accordance with recommendations of the AIA, which the appellants would be willing to undertake subject to agreement from the highway authority.
- 10.34 The applicants also propose to deliver **tangible biodiversity net gain** in the form of the proposed off site **new ecological area measuring 0.29 acres.**
- 10.35 A **pleasant landscaped footpath corridor** for use by the public via permissive rights will be delivered, creating a safe walking environment with new views. It gives an option to walking in the lane at this point. Note that **the internal footpath will connect the High Street footway and PROW networks.**
- 10.36 The scheme proposes to **remove overhead power line and apparatus by grounding cables**, for visual benefit.
- 10.37 The development will deliver **high quality design** with appropriate scale, form, density, architecture and superb materials, adding to the overall quality of housing in the village.
- 10.38 The NPPF at Paragraph 120(d) encourages the re-use of under utilised land, especially if this would help to meet identified needs for housing. The site is part of a paddock which is ‘under utilised land’ currently as horses are not kept it by the appellants and the land has not been farmed for many years (nor has any prospects of this). However, the proposals would allow a sizeable part of the paddock to remain, which may potentially appeal to one of the new occupiers should they be interested in keeping horses thereon, in turn making a *beneficial use* of the land.

### Housing Need

- 10.39 The key driver for promoting this development because the LPA cannot demonstrate a 5 Year Housing Land Supply. At around 3.5 years housing land supply it is more than 1000 homes short of target. There is no up to date Local Plan which would otherwise have plan-led housing allocations. Previous Local Plan inspectors recognise the need to allocate small housing sites. The situation is chronic and will take time to resolve. This will not mean that all speculative applications for housing will succeed but those which are highly credible, in sustainable locations relative to the scale of housing proposed and without significant, overriding harm should be supported. One such scheme is this appeal scheme.
- 10.40 The Transcript of the Planning Committee (Appendix 3) reveals Member discussion that housing was the ‘only’ real benefit; also that four new dwellings isn’t going to make or save the district and so was judged not to carry much weight at all, in terms of benefit. Two points arise: (1) Housing is not the ‘only’ real benefit; (2) *Increased weight* should be given to the housing benefit relative to the shortfall. This has been clarified in the Judgement of *Phides Estates (Overseas) Limited v SSCLG, Shepway District Council, and David Plumstead [2015] EWHC 827 (Admin)* as reported earlier in this Statement.

10.41 The council has taken negative approaches to granting housing schemes and has not attached sufficient weight to the importance of providing housing during this time of shortfall. The comments of the inspector in an appeal at north of Stewarts Way, The Street, Manuden (PINS ref: 3242024) are useful. An extract of this appeal decision is found at Appendix 29. Paragraph 49 states,

*'The addition of up to 22 houses proposed by the development would make a contribution towards addressing this shortfall on a site that is available in the short term. Whilst the contribution would be modest in the context of the overall shortfall, the Council's argument that it would not therefore be meaningful is not a credible position to take. It also fails to acknowledge the important contribution that small and medium sized sites can make to meeting the housing requirements of an area'*

10.42 Accordingly, the inspector is asked to give *due weight* to the benefit of housing in the light of: (a) significant, ongoing shortfalls; (b) NPPF policy to significantly boost housing supply and meet housing needs; and (c) relevant legal Precedents and appeal decisions.

10.43 The scheme can be built out relatively quickly to meet NPPF paragraph 68. Widdington is a desirable location with hourly bus access to mainline railway stations serving London and Cambridge, plus close to towns and Stansted Airport, so it is anticipated that there would be strong demand for new properties in this high value area, particularly given shortage of housing supply. The potential speed of build out and *delivery* of this medium scale site is therefore a material consideration under the NPPF.

10.44 Paragraph 69 also states that *'to promote the development of a good mix of sites local planning authorities should...c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes'*. The development is a windfall site and will add to the mix of homes, including family housing and a bungalow.

10.45 Given the benefits arising from the scheme, the large housing shortfalls, out of date policies (S7 and H1) and overall compliance with NPPF policy, the appellants are of the view that the LPA should have granted planning permission. The council did not (as required by the NPPF, paragraph 38) pursue sustainable development in a 'positive way' when considering this scheme.

### Locational Sustainability

10.46 Chapter 2 of this appeal Statement ('The Site Location & Its Sustainability') provides information and evidence which demonstrates that the appeal site lies in a reasonably sustainable village location, which is suited to the proposed *minor scale* of housing development.

10.47 Additional information regarding the site's sustainable location is provided in the PDAS at [Chapter 3](#). A detailed justification for the proposed development of housing at the site location is set out at Paragraph 6.44 to 6.72 of the PDAS, which the inspector is asked to refer to.

10.48 The LPA has not specifically raised objections on grounds of the site's location, access to services or (for this small scale scheme) the potential amount of private car usage. The reasons for refusal on such grounds, in relation to previous appeal scheme for 20 dwellings upon the overall paddock area, could not reasonably apply to this smaller site and minor (4 dwellings) development scheme.

Accordingly, the previous inspector's concerns in these respects as stated in the appeal (which concerned a 'major development') are addressed.

10.49 **Housing in this sustainable rural village location finds support from the NPPF**, including the following policies:

- Paragraph 8 (b) (social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being);
- Paragraph 79 (housing should be located where it will enhance or maintain the vitality of rural communities to promote sustainable development in rural areas);
- Paragraph 105 (opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in decision-making)

10.50 Notwithstanding the restrictions upon development set out in Local Plan Policy S7 (Countryside), this policy is out of kilter with the NPPF. Given the housing shortfalls, this also gives added weight to the appellant's case which promotes village scale housing at this location.

10.51 Furthermore, the council's professional planning officers, in their Report to Planning Committee (Appendix 1), at paragraphs 9.2 to 9.14 assess the Location of the Site. They consider Local Plan Policies S7 and GEN1 (regarding access), as well as the NPPF. At paragraph 9.14 they conclude that,

*the proposal in the form proposed would not be in conflict paragraph 8(b) of the NPPF regarding the fact that is **in a sustainable location and will contribute to the social role of sustainable development**, this would also be a consistent approach as per the approval of the above smaller housing developments within Widdington. Therefore the proposed location of the current proposed development of 4 dwellings is largely seen to accord with the social dimension of the NPPF on sustainable development, and with policies S7 and GEN1 of the Uttlesford Local Plan 2005*

10.52 Accordingly, the site location is entirely suitable for this *small scale* rural housing scheme.

### **Impact Upon Countryside**

10.53 A comprehensive analysis of the council's policy reason for RfR3, Policy S7 (Countryside) has been set out earlier in this statement.

10.54 Policy S7, which seeks to restrict housing development in the countryside has been evidenced to be of limited weight. This significantly weakens the LPA's development plan policy basis for refusing the application and such reduced weight must be applied in determining this appeal. As an appeal inspector recently cited (see Appeal Decision Pins Ref: 3242550 at Appendix 31) the Local Plan is 'painfully out of date' and '**is clearly not a strong foundation upon which to refuse planning permission**'.

10.55 This statement has demonstrated that the inspector's previous concerns (especially regarding scale and numbers of new residents) have now been substantially addressed in respect of whether this was suitable site in the countryside. The scale of the appeal development would not cause the impacts that arose in respect of a much larger housing scheme of 20 dwellings and on a much larger site area than now proposed.

10.56 In short, the appellants assert that:

- the scale of development and resultant numbers of new residents would not overwhelm the village or cause undue impacts to the countryside
- the quality of the buildings (including architecture and materials) and the place it will deliver will be of high quality and beautiful appearance, to the benefit of the location, which is in a village environment, albeit within a countryside policy designation
- the proposal is a minor housing scheme of a suitable village scale which will not cause 'urbanisation' as claimed by the LPA at RfR3
- the scheme would be in keeping with the character of housing in this location, albeit located in the countryside. There is overriding harm; it will be of low density and well landscaped
- the linear development would not be *out of context with the existing pattern of development* (RfR3), also as agreed by the professional planning officers of the council. It is not backland development. It follows more piecemeal linear development as has evolved in the village
- character is respected by dwellings backing on to or overlooking a paddock, as others dwellings do currently
- there will be significant new landscaping and an ecology area for the benefit of the countryside
- the site is already well screened and development will not be prominent or have high visibility. Wider landscape effects would not occur.
- there is no loss of agricultural land. An effective use of unused land will be made
- overall, the development will be a modest but *high quality* and positive addition to the village.

10.57 This statement has also shown that development must take place in the countryside, given the out of date Local Plan (housing sites allocated only to 2011) and significant housing land supply shortages, which can only be addressed by allowing housing outside of Development Limits in the countryside. This approach will inevitably have some impacts upon greenfield countryside locations and as such a degree of harm must be accepted if housing needs are to be met at the current time.

10.58 The Widdington Design Statement 2009 (Appendix 13) indicates that land to the east, in Cornells Lane, is one of the few areas where housing development could take place. This the appeal proposal's compliance with the comments of this local document should attract some weight particularly at a time of Uttlesford District's housing land shortages, which Widdington is not immune from.

- 10.59 Planning officers were supportive of the development in Character and Appearance terms, as evidenced in the Report to Planning Committee (Appendix 1).
- 10.60 It is notable that the LPA has not objected to the development on the grounds of Policy GEN2 (b) regarding landscaping matters. One criterion for development is that 'It safeguards important environmental features in its setting, enabling their retention and helping to reduce the visual impact of new buildings or structures where appropriate'. The LPA implicitly accepts the existing landscape features will help reduce the impact of the built forms, which will therefore assist the integration of the new dwellings upon this village site, which is technically 'countryside' (mostly) at this point.
- 10.61 The appellants therefore do not accept the LPA's allegation at RfR3 that the development would be *harmful to the setting and character of the rural location*, such that refusal under Policy S7 and NPPF Paragraph 174(b) is not justified.

### Design and Layout

- 10.62 In addition to this appeal statement, the PDAS (see paragraphs 6.87-6.99) fully explains the design and layout of the development has been carefully considered taking account of constraints, opportunities, technical issues, policy requirements and requisite standards.
- 10.63 The scheme is a sensitive, high quality development, appropriate to the edge of village location. Scales and heights of dwellings are low. Dwelling designs are bespoke designed by local architects, rural in nature and traditional in form, with interesting features and articulation. Excellent materials are proposed including natural slate and hand made clay tiles (materials can be secured via conditions). Density is low (circa 12 dph) with good space around the buildings and ample amenity/garden areas and parking areas, including rural style cart lodges.
- 10.64 A linear arrangement of dwellings is acknowledged as appropriate by planning officers and the link to the village and PROW footpaths ensures excellent connectivity. The proposed landscaping (trees and hedgerows to gardens), private drive and permissive footpath, in addition to retained vegetation, further add to the overall quality. The development will be safe and welcoming.
- 10.65 The proposed creation of beautiful buildings and place meets design aspirations of the NPPF at Chapter 12 (especially paragraphs 126, 130 & 134) as well as local design policy set out in Local Plan Policy GEN2, the Essex Design Guide and the Widdington Design Statement 2009 (Appendix 13). The council's planning officers at section 9(B) in the Report to Planning Committee (Appendix 1) are supportive of the design and character of the proposed development. The inspector is asked to give weight to the high quality of the scheme, recognising that design plays an important part in the assessment of impacts of the development upon the character of the 'countryside', which in the appellants view would be positively addressed.

### Highways, Access and Transport

- 10.66 The proposals for the vehicular access have been prepared by professional highway consultants (SLR) and are explained in their Statement entitled Access Assessment (June 2021). Further justification is set out in the PDAS (Paragraphs 6.125 - 6.132) and below.



- 10.67 The access proposal was reviewed by the Highways Authority, Essex CC, who had no objections on highway safety grounds. In their consultation response of 27 October 2021 they confirmed that *‘from a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority’*, subject to various measures (ie conditions) listed, which the appellants can comply with.
- 10.68 Given the comments from the consultee and the small amount of traffic arising on a slow moving road, the access proposal therefore complies with NPPF Paragraph 111. There is no harm to highway safety, nor resultant cumulative ‘severe’ impacts on the highway network.
- 10.69 Whilst the LPA has not refused the application on highway grounds, objectors have queried compliance of the access proposal with highway standards. However, the scheme has taken account of the Essex Design Guide and its associated Highways Technical Manual. It is important to note that these documents are ‘guidance’ documents and not “set in stone”, such that reasonable variations can be deemed acceptable by the Highways Authority at their discretion and still be deemed ‘safe’ in highway terms.
- 10.70 The Essex Design Guide’s Highways Technical Manual (see extract at Appendix 30) states that, *‘It should be read in conjunction with the other sections of this guide – in particular Streets and Roads and Parking – to provide a full understanding of the relevant design principles for new residential developments. The overarching aim is to ensure that in new residential and mixed-use environments, the circulation and movement of people is pleasant, convenient, safe, responds to local context and combines with good place-making. Motorised vehicle movement must efficiently service development without predominating, while walking, cycling and the use of public transport must be facilitated and encouraged, taking precedence over private modes of motorised transport.’*
- 10.71 It further explains that *‘When proposing a residential layout, developers should attend to all relevant and current documents and guidelines, including but not limited to...’* and goes on to list a large range of documents, including the National Policy and Guidance, the NPPF, Local Policy and Guidance, etc.
- 10.72 It will be appreciated that the proposals for the access have taken account of other policy documents, to limit an unnecessarily over-engineered solution to deliver a development which is *‘pleasant, convenient, safe, responds to local context and combines with good place-making’*.
- 10.73 The Highways Authority require a slightly altered gradient arrangement than was intended. The appellant’s highway consultants have produced a Technical Note (Appendix 12) which explains the gradients are achievable within the site and also provides an additional commentary in response to some points raised by third party objectors to further assist an understanding of the access design.
- 10.74 It will also be noted that the site lies within easy and very short walking distance proximity to village facilities (which will be connected by the new footpath) including the 301 bus service. The appellants agree the imposition of a condition for a Travel Pack. These packs (which are prepared by Essex CC) give information on sustainable travel and include bus vouchers to encourage use of public transport. The appellants would purchase these packs and distribute them to the new occupiers. The development therefore encourages sustainable transport as far as it is able in this village location, complying with paragraphs 103 and 105 of the NPPF.
- 10.75 The development will also be provided with requisite parking provision.

- 10.76 In paragraphs 9.58 to 9.64 of their *Report to Planning Committee* (Appendix 1) planning officers agree that the development is satisfactory in respect of Access, Parking and Transport, meeting Local Plan policies GEN1 and GEN8 and various SPD's.
- 10.77 Given the above the scheme positively addresses policies of the NPPF and Local Plan in terms of achieving safe access and promoting sustainable transport.

### Heritage Issues

- 10.78 This Statement has fully examined the council's reasons for refusal regarding heritage assets and does not find there are significant and demonstrable adverse impacts which would outweigh benefits.
- 10.79 In respect of RfR1, it has been established that whilst there will be a degree of impact upon the Protected Lane primarily as a result of the new access proposal, the works would be limited and localised, would be seen in context with other access incursions serving residential properties and would not undermine the overall historical significance of the lane as a non-designated heritage asset. Finer details of the access proposals can be agreed via conditions to ensure the final appearance and related landscaping details are agreed by the LPA. Furthermore, there is a fallback position (material consideration) due to the availability of permitted development rights to create an access, which has been acknowledged by planning officers. This matter may be further evidenced by a Certificate of Lawfulness and actual construction, prior to the determination of this appeal. There is no significant harm (ie low level and minor in magnitude) arising under Policy ENV9 or NPPF paragraph 203.
- 10.80 In respect of RfR2, the appellants have carried out a comprehensive assessment regarding potential impacts upon the Widdington Conservation and assessed listed buildings. Based on this assessment, the appellants are of the view that the impact upon the significance and setting of these Designated Heritage Assets is limited does not justify a reason for refusal under relevant law or policy. There is no conflict with Local Plan policies ENV1 or ENV2, or paragraphs 199, 202 and 206 of the NPPF.
- 10.81 The appeal scheme brings the prospect of securing an archaeological dig, via conditions recommended by the archaeological consultee, which may help reveal further information on the historic evolution of the village.
- 10.82 The Report to Planning Committee (Appendix 1) demonstrate that planning officers had assessed impacts on heritage and non-designated heritage assets and were satisfied that the proposals were acceptable in these respects.

### Climate Change and Energy Efficiency

- 10.83 As evidenced in the PDAS, Energy Statement, Sustainability Statement and this appeal statement, the appeal proposals pay particular attention to sustainable design and energy efficiency, to address Climate Change, NPPF policies and the LPA's Interim Climate Change Policy (Appendix 20). Significant measures to reduce carbon emissions (61% energy efficiency/ 5 tonnes of carbon dioxide savings per annum over Building Regulations) provide one example of the sustainable design proposals. Others include ecological enhancements (see below) and significant amounts of new landscaping, etc.
- 10.84 Paragraphs 9.72-9.81 The Report to Planning Committee (Appendix 1) shows the planning officers support for these provisions. The council expects developers to have regard to the Interim Climate

Change Policy but it is evident from the Transcript of Planning Committee (Appendix 3) that – despite commissioning expert consultants and reports to address the interim policy – the Planning Committee did not discuss the proposed climate change mitigation and adaptation provisions, when making their decision. The inspector is asked to have significant regard in the tilted balance to the sustainable design and energy efficiency measures, which the appellants are content to be secured via conditions eg as were recommended by planning officers. These measures address the NPPF policy provisions, especially Chapters 14 and 15 plus the council’s Interim Climate Change Policy SPD.

### Biodiversity and Natural Environment

- 10.85 Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by (inter alia) minimising impacts on and providing biodiversity net gain. The appeal proposal positively addresses this policy. A preliminary ecological assessment (PEA) has been carried out. All significant impacts on biodiversity, including potential adverse impacts upon specific protected species, habitats and designated sites can likely be wholly mitigated, based on the detailed findings of the PEA. The Council’s ecological consultee raises no objections, subject to conditions.
- 10.86 Of particular note is the proposed off site ecological area (0.28 acres) which can be delivered and managed via planning conditions. This is noted as being *supported* by the council’s ecological consultee. It is a significant benefit, going over and above standard mitigation or enhancement measures and due weight should be applied to this.
- 10.87 The Report to Planning Committee (Appendix 1) at paragraphs 9.66-9.70 indicates the planning officers were satisfied that the ecological proposals were satisfactory in terms of Local Plan Policies GEN7 (Nature Conservation), ENV8 (Other Landscape Elements of Importance for Nature Conservation) and the NPPF eg Paragraph 174.

### Flood Risk and Drainage

- 10.88 Chapter 14 of the NPPF (Meeting the challenge of climate change, flooding and coastal change) provides inter alia policies on flood risk. Paragraph 159 advises that, ‘inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk’. The site however is in a low risk flood zone (Zone 1) with low probability of flooding.
- 10.89 The LPA does not object on flood risk grounds. The Report to Planning Committee (Appendix 1) concluded that,

*Policy GEN3 contains the Local Plan policy for flooding, although this has effectively been superseded by the more detailed and up-to-date flood risk policies in the NPPF and the accompanying PPG. The SFRA confirms that the site is not in an area at risk of flooding and, as the development is for less than 10 dwellings, national policy does not require the use of a sustainable drainage system. The application site is in flood zone 1 and therefore it is concluded that the proposal would not give rise to any significant adverse effects with respect to flood risk, such that it accords with ULP Policy GEN3, and the NPPF.*

- 10.90 There are no objections to foul drainage from the statutory consultee, Anglian Water.

- 10.91 Conditions can be imposed to agree details of the surface water and foul drainage arrangements.
- 10.92 Accordingly the appeal scheme is acceptable in terms of relevant NPPF and Development Plan policies regarding flood risk and drainage.

### Neighbouring Amenity

- 10.93 The appellant's assessment in the PDAS indicates that there should not be any significant impacts upon residential amenity by way of overlooking, overshadowing, overdominance or noise, especially given distances involved. Planning officers do not raise any issues in this respect as per their assessment at Paragraphs 9.56-9.57 of the Report to Planning Committee (Appendix 1). In the absence of any material concern regarding neighbouring amenity impacts, the development will therefore comply with Policies GEN 2 (Design) and GEN 4 (Good Neighbourliness) of the Local Plan and relevant design and amenity policies of the NPPF.

## Summary – The Tilted Balance

10.94 Based upon all the submitted application and appeal documentation, the appellants therefore conclude that **the appeal proposal has been properly demonstrated to be a *sustainable development***. The development meets economic, social and environmental objectives of the NPPF and also brings numerous benefits in the following way:

<p><b>Economic:</b></p>	<ul style="list-style-type: none"> <li>➤ short term benefits during the construction phase, with benefit to local companies eg contractors, sub-contractors, trades and suppliers.</li> <li>➤ occupiers of the houses would contribute to the local economy in the long term, in Widdington and surrounding areas</li> <li>➤ increased pool of potential customers for the local bus service could bring improved viability</li> <li>➤ dwellings are designed with home office to encourage working from home, enabling the prospects of an economically active additional population</li> <li>➤ funding for the District and Parish via the New Homes Bonus, as well as increased Council Tax receipts</li> </ul>
<p><b>Social:</b></p>	<ul style="list-style-type: none"> <li>➤ the construction of four dwellings to address 5 Year Housing land supply deficiencies (1000 plus homes short)</li> <li>➤ 3 x 3 bed dwellings meeting highest housing size need as indicated in Uttlesford's SHMA</li> <li>➤ 1 x 2 bed bungalow to meet housing needs of an aging demographic</li> <li>➤ additional localised surveillance brought by additional residents and use of new footpath through site</li> <li>➤ additional residents will add to the social vitality of the village, for example providing extra patronage of clubs and societies</li> <li>➤ high quality built environment, accessible to local services, including those which can be reached via the regular bus service to other nearby settlements</li> </ul>
<p><b>Environmental:</b></p>	<ul style="list-style-type: none"> <li>➤ improved fabric to dwellings and the provision of air source heat pumps and photo voltaic panels. The development will save over 5 tonnes of carbon dioxide emissions to the atmosphere compared to a scheme which meets Building Regulations (61% more energy efficient)</li> <li>➤ each dwelling would also be provided with an electric vehicle charging point and Travel Pack with bus vouchers, to encourage sustainable transport take up</li> <li>➤ significant new tree planting which will bring ecological and environmental benefits</li> <li>➤ opportunities to facilitate/encourage improvements to certain vegetation along Cornells Lane eg where dying/dangerous</li> <li>➤ tangible biodiversity net gain in the form of the proposed off site ecological area measuring 0.29 acres</li> <li>➤ provision of pleasant landscaped footpath corridor for use by the public via permissive rights</li> <li>➤ removal of overhead power line and apparatus by grounding cables, for visual benefit</li> <li>➤ delivery of high quality design with appropriate scale, form, density, architecture and materials, adding to the overall quality of housing in the village</li> <li>➤ re-use of under utilised paddock land for beneficial use</li> </ul>

10.95 The LPA has not objected to the development on the following grounds:

- Ecological Impacts
- Highway Safety
- Drainage and Flooding
- Neighbouring Amenity
- Design and Layout
- Noise
- Lighting
- Climate Change Mitigation/Adaptation
- Airport Safeguarding

10.96 The LPA has objected on three grounds relating to impacts on the Protected Lane (RfR1), Conservation Area and Listed Buildings (RfR2) and Countryside (RfR3). However, for reasons fully set out in this Appeal Statement and at Chapter 6 of the PDAS, the alleged harm would not ‘significantly and demonstrably’ outweigh the numerous benefits of the development. As such, in considering the titled balance, the NPPF’s Presumption in Favour of Sustainable Development would indicate that this appeal should be allowed. The council’s Planning Officers also concluded in a similar way, as set out at paragraphs 9.82-9.88 of the Report to Planning Committee (Appendix 1) and the inspector is asked to give weight to the assessments of the LPA’s professional officers.

### Conditions

10.97 The conditions recommended by Planning Officers in the Report to Planning Committee (Appendix 1) are generally acceptable to the appellants in the event of the appeal being allowed. Key condition categories of conditions for the inspectors consideration include the following:

Condition Category	Planning Rationale
Highways And Access	To meet the Highway Authority’s recommended requirements
Ecology, incl. new ecology area	To ensure ecological mitigation & enhancements are delivered & managed
Archaeology	To ensure an archaeological dig and recording takes place
External Materials	To ensure high quality appearance
Hard & Soft Landscaping	To ensure high quality appearance and good amenity levels
Access detailing	To ensure high quality appearance
Sustainable Design	To ensure energy efficient and sustainably designed housing
Sustainable Transport	To encourage use of sustainable public transport via Travel Pack
Drainage	To ensure suitable surface water and foul water drainage provision
Contamination	To report contamination, if found

10.98 Agreement of any “pre-commencement” conditions recommended by the inspector may be required to meet usual protocols, in the event the appeal is to be allowed.

## 11.0 SUMMARY AND CONCLUSIONS

- 11.1 The appeal proposals seek approval of the development of part of an under utilised paddock for the erection of four dwellings and associated works, in the settlement of Widdington. This statement has demonstrated why the proposal is acceptable, having regard to Development Plan policy and other material considerations, including the National Planning Policy Framework (NPPF).
- 11.2 The appeal has to be determined in accordance with Section 38(6) of The Planning and Compulsory Purchase Act. A decision should be made in accordance with the Local Plan unless material considerations indicate otherwise. The appeal is heavily supported by policies of the National Planning Policy Framework (NPPF) which are key material considerations to the determination of this appeal. The NPPF has a ***Presumption in Favour of Sustainable Development***.
- 11.3 The council's 'most important' adopted Local Plan policies in determining this appeal are 'out of date', particularly because the LPA is not able to demonstrate a 5 year supply of housing land to meet its housing needs. The "painfully out of date" Local Plan only envisaged housing delivery up until 2011.
- 11.4 In such circumstances, a 'balancing exercise' must be carried out in applying the NPPF's Presumption in Favour of Sustainable Development. Essentially, this test is whether any adverse impacts (if they do exist) would be so strong such that they 'significantly' and 'demonstrably' outweigh the benefits of the development. Appeals nationally indicate that such adverse impacts are set at a reasonably high bar, given their necessity to clearly outweigh any benefits if an appeal is not to be allowed. This bar has not been met by the LPA's decision.
- 11.5 The LPA (via its Planning Committee) refused the application contrary to the recommendation of its professional planning officers. ***Weight should be given to the professional advice provided by planning officers who recommended approval of the planning application.***
- 11.6 The evidenced debate by the Planning Committee reveals that a lack of discussion of the scheme benefits and overall compliance with NPPF and Development Plan policy. Instead there was a focus on alleged harm. The council's reasons for refusal relate to impacts upon non-designated heritage assets (RfR1), designated heritage assets (RfR2) and countryside (RfR3). This appeal statement has considered in depth each of the council's reasons for refusal and does not consider that significant adverse effects would arise.
- 11.7 All heritage professionals agree that harm to the Conservation Area is either very low/low. The significance of heritage assets also including listed buildings and a Protected Lane would not be compromised. Planning officers agree. RfR1 and RfR2 do not provide strong reasons for refusal.
- 11.8 Similarly, alleged harm to the countryside would be limited for reasons set out. There will inevitably be a degree of harm of building on a greenfield site but the edge of village location is appropriate for the village scale housing scheme, which will be of high quality appearance and well landscaped. RfR3 must also be balanced against the council's significant housing shortages.
- 11.9 The development will bring benefits, most importantly the delivery of 4 homes making a moderate contribution to the significant housing shortfall. Whilst a minor development, the NPPF recognises

the importance of such schemes, plus it addresses the ‘scale’ problems of a previous appeal for 20 dwellings. The inspector’s comments have been fully addressed on this smaller site area.

- 11.10 The provision of biodiversity enhancements (including a large ecological area), energy efficient/ sustainably designed housing and a new footpath for safety are notable benefits, in addition to the overall economic, social and environmental benefits which will ensue.
- 11.11 There are no objections from the LPA or any consultee on technical details, including matters such as access, ecology and flood risk.
- 11.12 Planning conditions can be imposed to ensure delivery of various elements of the proposals, including energy efficient and sustainably designed homes, ecological enhancements (including an off site ecology area) and Travel Packs to encourage use of the regular local bus service. Conditions can also ensure other details of the development are controlled such as materials, hard/soft landscaping (including around the proposed access), drainage and archaeological digs.
- 11.13 In consideration of the ‘tilted balance’ pursuant to Paragraph 11 of the NPPF, this appeal been demonstrated that there will be no adverse impacts which would *‘significantly and demonstrably’* outweigh the numerous *benefits* of the development, in particular the delivery of market housing which is urgently needed to address the considerable and ongoing shortages of housing in the Uttlesford District, as well as sustainably designed development to help meet the climate and ecological emergency which the council has declared.
- 11.14 **In applying the NPPF’s Presumption in Favour of Sustainable Development, it is therefore respectfully requested that this appeal should be allowed.**