

Town and Country Planning Act 1990

Appeal by Fairfield Elsenham (Ltd)

Site at Land North East Of Elsenham, Elsenham, CM22 6AA

Appeal ref APP/C1570/A/14/2213025

CLOSING SUBMISSIONS

On behalf of the Joint Parish Councils (Appeal B)

1. Appeal B should be dismissed. There is no pressing need for additional housing in the District. The Council is clearly able to demonstrate a supply of deliverable housing land which comfortably exceeds 5 years. The proposed development will cause planning harm in a number of respects, not least in respect of lack of sustainability and severe impact on the highways network and highway safety. In the circumstances of this case, the proposal should be dismissed due to the clear conflict with the adopted development plan. Even if it were determined that the higher paragraph 14 NPPF test were to apply, which we say is not engaged, it has been clearly demonstrated that the harm significantly and demonstrably outweighs the benefits.
2. These closing submissions are organised into three distinct main sections; the statutory duty and the planning balance; five year housing land supply and transport and highways.

The Statutory Duty and the Planning Balance

3. The starting point in the determination of the appeal must be the statutory duty to determine the appeal in accordance with the development plan unless material considerations indicate otherwise (s.38(6) Planning and Compulsory Purchase Act 2004 and s.70 Town and Country Planning Act 1990). The NPPF does not and could not depart from this.

4. For the purposes of this appeal, the statutory development plan comprises the saved policies of the UDC Local Plan 2005. There is no dispute (Mr Copsey, PC xx) that the appeal proposal is in clear conflict with saved policies S3 and S7 of the Plan. The effect of those policies is that the development would be outside the settlement boundary of Elsenham and within the countryside, where policy S7 says that only development that needs to be in the countryside and is appropriate to a rural area should be permitted. This large urban development is clearly not development that needs a countryside location, is inappropriate to a rural area and so is contrary to policies S3 and S7.
5. As set out below, it is also clearly contrary to policy GEN1 due to its inadequate road access and impact on the highway network. Further, it would be contrary to policy ENV5 (and para 112 of the NPPF) due to its take of some of the best and most versatile agricultural land “BMV” (33 – 43 ha). Whilst it is true that much of the District is made up of grades 2 and 3 agricultural land, there is no evidence of how much of the latter is BMV within the definition in Annex 2 of the NPPF. This is because there is no evidence of how much is grade 3a (which is within the definition) and grade 3b (which is not). There is also no assessment of the appeal site in this respect. Therefore, as accepted by PC, it simply cannot be said that the site is constituted of poorer quality agricultural land than other sites in the District. The loss of BMV is a clear disadvantage of the proposal.
6. It is evident from all these conflicts that if the appeal were determined in accordance with the adopted development plan, as is required by statute, there could be no real doubting that it would be dismissed and refused permission. It is only if there were material considerations clearly indicating otherwise that a grant of permission could be justified.
7. There are no material considerations indicating a different outcome. Whilst the emerging Local Plan shows the appeal site as part of a proposed allocation, this cannot be accorded any significant weight. Neither the allocation, nor the soundness of the whole strategy of the Plan have yet been independently examined and there are of course very significant unresolved objections to the Elsenham allocation. In such circumstances, paragraph 216 of the NPPF is clear: little or no weight is to be given to policies which have very significant unresolved objections. Even PC accepts that only “limited weight” can be accorded to the emerging plan.
8. Another material consideration that could potentially detract from the development plan outcome is government policy as a whole, found in the NPPF. However, the circumstances of this case are such that the NPPF does not pull in a different direction from the development plan. The NPPF acknowledges that it does not and cannot change the statutory priority that is given to the development plan (NPPF para 12). It is also clear that due weight should be given

to relevant policies in existing plans according to their degree of consistency with the framework (NPPF para 215). There is no material inconsistency between the applicable development plan policies and the framework. Policy S7 seeks to protect the countryside from unnecessary development. PC accepted that this is consistent with the NPPF's acknowledgement of the intrinsic character and beauty of the countryside (para 17 5th bullet). He also accepted that the fact that S7 includes different wording does not make it inconsistent and he accepted that policy S7 includes similar flexibility to that included in the NPPF.

9. Further, the NPPF recognises the importance of a plan-led system that provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency (NPPF para 17 1st bullet). That system is only to be disturbed in specific circumstances, such as where a local planning authority cannot demonstrate a five year supply of housing land (NPPF para 49 and para 14). Those circumstances do not arise here.
10. Whilst the Appellant (and specifically, PC) assert that the weighted balance in paragraph 14 is triggered and applies even in the presence of a five year housing land supply, that argument cannot reasonably be sustained. PC accepted that the development plan is not absent or silent, and relies only on an assertion that it is "out of date". However, he accepted that it cannot be considered out of date simply because it is time expired (in the sense of the plan period having ended). If it could be considered out of date for that reason alone, the effect of paragraph 14 would be to override the statutory status of all time expired plans, something which could not be intended and which would not be lawful.
11. PC sought to rely on an argument that the adopted plan's development needs were settled a number of years ago. However, that cannot be an adequate reason for rejecting the development plan as "out of date" in circumstances where it is determined that objectively assessed, up to date development needs are being met. Such a determination would naturally follow from a conclusion that there is a five year housing land supply. This can also be implied from the fact that, conversely, where there is not a five year housing land supply, paragraph 49 specifically deems policies for the supply of housing as "out of date", thus expressly dealing with PC's development needs point.
12. Further, where there is a 5 year housing land supply, there is no "need" to breach the settlement boundaries of the adopted local plan and there is no need to disturb the "predictability and efficiency" of the plan led system. Accordingly, as in the recent Summer Street appeal decision dated 15 September 2014 (at paras 30 – 31) (attached to Ms Hutchinson's, AH's rebuttal proof), policy S7 should be accorded weight, the appeal should be determined in accordance with it and the weighted balance in paragraph 14 should not apply.

13. So, in fact, the NPPF does not contain any indication that the proposal should be determined otherwise than in accordance with the adopted statutory development plan. Further it is clear that the NPPF has a strong emphasis on sustainable development, which is described as a “golden thread” running through it. Conversely, where development is unsustainable, as it will be shown to be here, permission should be refused. For such a large development, the lack of higher order facilities, such as secondary schooling or significant retail or employment, will mean that the proposal will effectively have the unsustainable role of a commuter housing estate attached to a village in the countryside.
14. Whilst reliance is placed on the fact that land for local shops and a primary school is being provided, these are only two examples of “key facilities” mentioned in paragraph 38 of the NPPF. Also, the retail provision will only be made on a commercial basis, meaning that there will not be any if it does not turn out to be viable. The preliminary enquiries and limited indication of interest (ID50) cannot sensibly be said to demonstrate viability. Further, the words “such as” in paragraph 38 indicate that they do not represent the only necessary “key facilities” and it is clearly the case that, for example secondary schooling is a facility for a “day to day activity” that will not be available within walking or cycling distance of the site, nor is the site located in a settlement where journey lengths to, for example, bulk food shopping are minimised. The obvious limitations to locating such a large development on the edge of a village rather than a larger settlement cannot be ignored.
15. In addition to the NPPF (paras 30, 34) indicating that development should be located where it can promote sustainable transport, it indicates that development should be refused where the cumulative impacts of a development on the transport network will be severe. As is set out below, this can be demonstrated in this case.
16. Even if (which is not accepted) it were considered necessary to carry out the planning balance under paragraph 14, the unsustainable location and severe impact on the transport network must be added to the other disadvantages of the development on the “harm” side of the equation. These include not only the loss of countryside, loss of BMV (both accepted as disadvantages of the proposal by PC), but also all the residual adverse impacts identified by GG (proof 7.2 to 7.9, ES Part 3 para 16.3, Table 16.1) (and accepted as relevant by PC). Taken together, it is submitted that the harm demonstrably and significantly outweighs the benefits of the proposal.
17. That balance is even further set against allowing the appeal if it is accepted that there is a five year housing land supply because, in such circumstances, the weight to be attached to the

benefit of additional housing is reduced (PC xx). In any case, the commencement conditions argued for by the Appellants (requiring reserved matters within 5 years and commencement up to a further 2 years thereafter) offer no confidence that the proposal would deliver any contribution to housing supply within 5 years. Also, it should be noted that there has been no viability assessment of the offered affordable housing (along with the other s.106 contributions offered). Paragraph 173 of the NPPF clearly requires careful attention to viability and costs in decision-taking. PC accepted that if it turned out that the affordable housing was not viable, it would be possible to seek to renegotiate the s.106 agreement on this basis. It is submitted that, in the absence of a demonstration of viability at this stage, the weight to be accorded to the benefit of affordable housing provision should be reduced to account for this risk of undeliverability.

Five year housing land supply

18. The Council can comfortably demonstrate a housing land supply of 6.2 years (ID6) and this is in circumstances where it has been more prudent than it needs to be: It has applied the 5% buffer not only to the target but also to the shortfall. This is not the practice recommended in the Secretary of State decision in Thundersley, Essex (see GG para 5.22) and is also not the practice adopted by Land Securities (“LS”) or the Joint Parish Councils (ID6). This has had the effect of artificially inflating the target and underestimating the supply.
19. The Council uses an annual requirement figure of 523, which sits very close to the average (529) of the 2011 based and 2008 based SNPP2012 in the September 2014 Edge Analytics Phase 6 Report (p.69 CD C17). GG considers this to be a slight overestimate as, in his view, the more up to date 2011 based figure should be used (508). However, other than on these two points, the Joint Parish Councils fully support and rely on the Council’s case on 5 year housing land supply.
20. Much of the parties’ proofs of evidence have now been superseded and the updated summary of the parties positions (ID6) reveals that the main differences between the Council’s case and the cases of the two appellants relate to annual target, shortfall and selection of buffer, issues dealt with below. Other more minor differences can be dealt with quickly.
21. First, LS includes an addition of 335/352 (10%) for “lapse rate”. However, Mr Meakins could not justify this by reference to any policy guidance or any evidence of past lapses of this order. Sensibly the Fairfield Partnership (“TFP”) do not argue for a lapse rate adjustment (ID6).
22. LS differ again from all other parties (including the other appellant, TFP) in refusing to include C2 housing in supply. This approach is contrary to the PPG (which clearly states that local

planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement) (PPG, ID3-037-20140306).

23. As to windfall allowance, this was clearly justified by the Council at the Inquiry (the allowance does not include double counting or garden land) and all parties now agree that an allowance can be made and that 50 dwellings a year can be applied (ID 6), with only TFP opting for a slightly lower figure of 40 dpa.
24. The target figure of 523 was clearly justified as prudent by the Council, who regards it as fully supported by the most up to date, objective assessment by independent consultants (C17 September 2014). That assessment is based on the most up to date 2012 based sub-national projections (published in May 2014, para 2.14, C17) and includes consideration of inward/outward migration and jobs growth. It is different from previous phases of the Edge Analytics work because it includes the most to date projections and also because it uses the POPGROUP version 4 technology, “a 2014 upgrade to the forecasting software which incorporates important methodological changes, specifically to align more closely with ONS methods” (C17, p.6).
25. Mr Meakins only basis for preferring the Phase 5 work over Phase 6 (C17) was that he claimed not to understand the consultants’ updated methodology, but this can be no basis for undermining the most up to date assessment. The authors of the Phase 6 report explain very clearly the updated methodology at paragraphs 1.12 to 1.15 of the report (C17, p.7). This demonstrates improved practice as to the approach to in-migration. Since in-migration concerns movement from the rest of the UK to Uttlesford, it is mainly influenced by changes in that UK population rather than by changes in the Uttlesford population itself. Sensibly, the methodology has been corrected and updated to reflect this as explained at C17, p.7. As a result, the Phase 6 report is not only more up to date but is more robust and reliable than the previous phases of the Edge Analytics work. The fact that the Council’s annual target figure (523) is considered to be supported by this latest work conclusively demonstrates the reliability of the target figure in representing objectively assessed needs.
26. Mr Meakins’ criticism of the jobs projections in C17 was based on little more than the fact that other jobs projections are available, but not that they are necessarily any more reliable. Mr Copsy’s reliance on growth at Stansted airport can be accorded little weight, given that there is no evidence that there will be any significant jobs growth in the 5 year period.
27. As to shortfall, both Appellants seek to add in “shortfalls” from the ten year period prior to the start of the emerging plan period (2000/01 – 2010/11). It is submitted that this is an arbitrary

time period to select and it could not be explained why that period is selected rather than, say, thirty years. The three years of the emerging plan period is the most appropriate period for calculating any shortfall.

28. The historic ten year period has also been calculated on the wrong basis. The most up to date assessment of housing need for that historic period is the RSS figures (and the recent case law suggesting that those figures should not be used for future need, does not apply to the logic of using those figures for assessing historic shortfalls). When those RSS figures are used, there is no shortfall over that ten year period (see table attached to AH rebuttal para 2.32). Further, it is also clearly apparent from that table that there has been no “persistent under delivery” such that a 20% rather than 5% buffer should be applied.
29. As to the shortfall over the last three years, the same table shows (when compared with ID6) that again the Council has erred on the side of caution and has not netted off the under delivery against over delivery. The Council has included a shortfall of 133 when the correct figure on its annual target should be 118, leading to the conclusion that the Council has tended to underestimate its housing land supply.
30. For all of the above reasons, the Council’s case on five year housing land supply is robust and should be accepted.

Transport and Highway matters

31. The proposal will overwhelm the village of Elsenham and largely extend into the parish of Henham, taking up a swathe of countryside whilst introducing large amounts of traffic onto unsuitable roads in a rural area and posing a threat to road safety. This is a clear case where the impacts on the local highway network will be severe.
32. The transport element of the development proposal is critically dependent on the success of a transport strategy which seeks to ensure that almost all the traffic from the development going south and west uses routes (Route 3 – ACEFG on ID35 @ 8.5 miles and Route 4 – ACFG on ID35 @ 9.6 miles) that are significantly longer, in terms of distance, than the most direct route (Route 2 – ABKHG on ID35 @ 5.2 miles).
33. That this is so is plain from correspondence dating back from 2009. In an email dated 17 December 2009 from the highways authority, the “key issue” was identified as “being whether traffic will route along Hall Road (Routes 3 and 4) or via Stansted Mountfitchet (Route 2) (Transport Assessment (“TA”), Appx A – email from Matthew Bradley to Nigel Downes, para 3).

34. This is followed up in 2012 with an email exchange between the Appellant and the highways authority specifically relating to this application and whether or not that transport strategy will work (TA, Appx A – emails between Matthew Bradley and Nigel Downes dated 7 February 2012).

35. It is also clear from the TA itself (dated March 2013) which recognises the centrality of the strategy to the application. At page 9 of the TA (para 1.4.1, second bullet), it is recognised that “*the key component*” of the agreed highway strategy “*would involve re-directing traffic along an improved Hall Road by introducing traffic management measures through Elsenham and along Stansted Road towards Stansted Mountfitchet.*” Further, at para 10.1.2 of the TA (p.50), it is stated:

“The overarching objective of the Highways Strategy is to encourage both development and background traffic to use Hall Road rather than Stansted Road to access the south and further destinations to the west. The strategy has already been discussed and agreed in principle with ECC.”

36. Additionally, correspondence from the highways authority in April 2013 makes this clear:

“The distribution of traffic is vital to the success of the transport element of this application and we have concerns about the split of trips shown on table 12.3 and the percentage of traffic that has been assigned to Hall Road.” (Transport Assessment Addendum (“TA Addendum”, Appendix A, email from Katherine Wilkinson to Karen Denmark dated 25 April 2013).

37. The consultation response letter from the highways authority dated 19 September 2013 (ID??) explains why the highways authority does not raise objection to the application. It refers to two main parts of the agreed transport strategy. The first relates to sustainable transport modes (to which I return below); the second relates to the traffic distribution element of the strategy. In relation to the latter, the letter makes clear that conditions and monitoring are necessary to ensure that traffic is discouraged from using the High Street and Stansted Road. It states that “*the assessment of the evidence put forward in the Transport Assessment concludes that there is capacity in the Highway network to accommodate the development if these conditions are met*”.

38. From all this it is clear that, in the view of the highways authority at least, the acceptability of the development in highway terms depends on the success of the traffic re-assignment strategy and on the reliability of the evidence in the TA in this respect. The necessary corollary of this is that if the strategy is doomed to failure (as will be demonstrated), the application becomes

unacceptable in highway terms due to the severity of the impacts of the development on the highway network.

39. The need for the success of the strategy concerns not just congestion and driver delay (which is important in itself) but the impacts of significant additional traffic on the constrained nature and environmental sensitivity of vulnerable existing routes, not just through Stansted Mountfitchet but also through Tye Green and Ugley Green (which both have tight bends and are very narrow in places). There is also the acute concern of local people that traffic will choose to go north to the alternative service centre of Saffron Walden through an equally unsuitable route via Old Mead Road and the “Toot toot bridge”.
40. Essex Highways Impact Assessment of the Draft Local Plan to 2031 (dated March 2014 – CD E15 at pages 19 - 21) sets out the limitations of Elsenham in terms of the lack of sustainable transport modes and lack of suitable access to the highway network. The Appellant’s transport witness himself (“MH”) recognises the “sensitive locations” and the need to “protect vulnerable locations from undesirable traffic growth” (MH proof, 1.1.8). He also states that the strategy has been formulated “bearing in mind the sensitivity of the existing road layout in Stansted Mountfitchet” (MH proof 1.1.9). In developing the transport strategy with the highways authority, the need to avoid loading significant extra traffic onto these constrained and unsuitable routes was clearly accepted.
41. In order to examine the strategy assumptions and its prospects of success, it has been necessary to go into some detail. The main assessment of traffic impacts of the development in the TA assumes a high degree of success of this transport strategy. The extent of the assumed success of the re-assignment can be seen by considering table 12.4 (TA Addendum, p. 35) which is described at 12.3.4 (p.34) as an assignment which “more reflects the existing patterns”; and then comparing it with table 5-1 of the TA Addendum (and table 12.3 of the TA, p.73). For example, the re-assignment assumes that only 10% of the traffic travelling from the site to Bishops Stortford will use the Stansted Road route, whereas the assignment “more reflective of existing patterns” shows that 100% of traffic to Bishops Stortford currently uses that route. An even more optimistic assumed shift can be seen in terms of the route to London (100% to 0%) and similar assumed shifts can be seen in terms of many other destinations.
42. Further, the numbers of vehicles to which these percentages relate (and that would use the sensitive routes, were the strategy not to work) are by no means trivial and are significantly greater than those shown in Appendix BRB2 (as those numbers are based on the TA rather than TA Addendum distribution of trips, and so include a very high level of internalisation of trips, which was considered unrealistic by the highways authority). For example, the correct figures

(derived from Appx R of the TA Addendum) for the vehicles from the development that would use Stansted Road in the a.m peak hour, were the strategy to fail, should be 337 rather than the 262 stated in BRB2; and in the p.m peak hour should be 296 rather than the 192 stated in BRB2.

43. Whilst there was some limited “sensitivity testing” undertaken in the TA Addendum, it is plain that there remains clear reliance on the strategy working, both on the part of the Appellant and the highways authority. For example, the highways authority have required a number of onerous conditions and interventions seeking to ensure that success. Additionally, they have required a “Local Roads Mitigation Bond” in the s.106 agreement (p.13, current draft) to provide for further measures to be undertaken in future, although there is in reality very limited scope for later mitigation, should the strategy turn out not to work.
44. The results of the “sensitivity testing” show that a number of problems will result in terms of breach of junction capacity and congestion (TA Addendum, section 34, p.102) but, relying on the deterrent effect of that congestion, the Appellant considers that the impacts would be “largely manageable” (TA Addendum, para 34.1.5, p.102). As MH accepted, this was not the view of the highways authority. It also ignores the environmental impacts and the acknowledged vulnerability of the sensitive locations, including Stansted Mountfitchet. It ignores the additional inconvenience that will be caused to those who have no option but to use the sensitive routes (such as those whose destination is Stansted Mountfitchet itself).
45. In any case the “sensitivity testing” is entirely inadequate as it only considers junction capacity and driver delay. There is no sensitivity testing of the environmental impacts in the Environmental Statement, identified as including severance, pedestrian amenity and delay, cyclist amenity and delay, fear and intimidation, accidents and safety. MH confirmed that all the assessments in the environmental statement are based on the assumed assignments, namely they are based on the traffic that would be generated if the strategy works to the high degree assumed (see above). There is therefore no evidence as to what the environmental impacts would be on the acknowledged unsuitable routes, should the strategy fail, as it is doomed to do.
46. I say that it is doomed to fail because it is reliant on making Routes 3 and 4 more attractive than Route 2 by a comparison of journey times. As is shown, the existing direct, short and quick nature of route 2 and the availability of other, relatively attractive, but unsuitable, rat-runs means that this will not, and cannot, be achieved. The TA states that the strategy has been developed on the basis that drivers will make a route choice based upon an overall “generalised cost” (TA 10.5.1 p.61) and it states that the two primary components of this are the “value of time and reliability”.

47. First, as accepted by MH (xx), there has been no assessment of the reliability of journey times as there has not been the significant number of recorded journey time surveys that would be needed to assess reliability and consistency.
48. Second, (also as accepted – MH xx) the TA ignores the other important component of “generalised cost” in the route choice decision making. Namely, the TA omits to refer to vehicle operating costs, which includes fuel costs and vehicle wear and tear and depreciation. Such costs are obviously primarily driven by mileage/journey distances and it is clear that some drivers will make their choice of route based on this factor. For regular commuting journeys for example, this could be very significant given the fact that route 2 is the shortest route of the three by far.
49. Third, and crucially, the comparisons of journey times set out in the TA and the TA Addendum are wrong and fundamentally misleading. This should be fatal to the success of the appeal, particularly given the “vital” importance of the success of the assignment strategy to the highways authority and given the express reliance by the highways authority on the evidence in the TA in their conclusion that the development traffic could be satisfactorily accommodated and in their decision not to object to the application (see letter dated 19 September 2013, ID??).
50. The existing surveyed journey times for the peak hour (am – 0800 – 0900; pm 1700 – 1800) for routes 2, 3 and 4 are claimed to be set out in tables 10.5 and 10.6 of the TA (p.54, TA) and table 20-1 of the TA Addendum (p.53, TA Addendum). Both the TA (March 2013) and the TA Addendum (July 2013) were produced after all the route time surveys, which were, we are told, undertaken in October 2012 and January 2013. At paragraph 10.2.10 of the TA (p.52), it is stated that the full journey time surveys are contained in Appendix K. However, Appendix K only includes the journey time surveys undertaken in October 2012 (pages 1 – 9 of ID37). Further, whilst Appendix K of the TA Addendum (pages 10, 10A of ID37) purports to include link times from the January 2013 journey time survey, it does not include the raw data. MH accepted that this was an “oversight” and further accepted that he had not seen the raw data for the January 2013 survey and so could not verify the reported times from that survey.
51. Table 5 of the Agreed Statement on Highway Matters (ID 33) sets out the agreed summary of the recorded journey times surveyed. It is apparent from a comparison of this with the tables relied on in the TA and TA Addendum (p.54 TA, p.53 TA Addendum) that there are significant and material errors in the both these documents. First, as MH accepted in xx, the figure of 13:45 for the route 2 pm peak is in error and should be the average of 13:45 and 11:57 (12.51) as both these times were recorded for the pm peak hour for that route. Second, the only time in

the TA and TA Addendum tables that represents an accurate recorded time for the route concerned is the time of 16:22 for the route 2 in the am peak hour.

52. It is clear that none of the other reported journey times in the TA/TA Addendum (p.54 and 53 respectively) are recorded survey journey times. When this was put to MH, he sought to explain by suggesting that the recorded time for the route 4 in the a.m peak (of 24:45) was an “outlier” and disregarded (notwithstanding that this is included in the agreed recorded times in Table 5 of the Agreed Statement). He then said that the recorded times were supplemented by “average link times” from the January 2013 survey (for which there is no raw data available). Since hearing MH’s evidence, BB has sought to draw out and agree all the relevant link/section times and averages in a user friendly format so that they can be adequately examined by the Inspector and Secretary of State. However, if this user friendly information cannot be provided, the Inspector will be invited to examine the individual link/section times in Appendix K of the TA and TA Addendum and average them in order to ascertain whether in fact MH’s times (in ID42A and in the tables of the TA (p.54) and TA Addendum (p.53)) can arithmetically be derived from the section link times. BB does not accept that they can be.
53. There is certainly no explanation or calculations in the evidence before the inquiry to demonstrate that MH’s times (or those reported in the main body of the TA/TA Addendum) have any reliability whatsoever. None of the manipulation of the link/section figures is reported, explained or justified in either the TA or the TA Addendum. There is no evidence to show that the link times Appendix K of the TA/TA Addendum (p. 1 – 10A of ID37) do in fact average to the times relied on by MH and this is not accepted. Further, nowhere has it been reported that a recorded route time was disregarded as an “outlier”. Even now, no explanation is given for why that time was considered an “outlier”. MH could only rely on the reference in the survey to there being traffic queues reported during that surveyed time, something which one would expect anyway at the peak time. There was no extraordinary event or circumstance identified and he had not investigated this with the survey contractor.
54. It is, in any case, apparent from all the other recorded link times for that route that the time of 24:45 is not an outlier but is representative. This is also confirmed by Mr Bamber’s experience of the route – he measured his journey along that route during the peak a.m hour and recorded a time of 25 minutes. It is also corroborated by Councillor Dean who recorded a time of 22 minutes for that journey and that was during an off peak period (ID40). By contrast, the link times supposedly recorded during the January 2013 survey (but for which we have no verification or raw data to examine) appear to be inexplicably short and out of line with almost all the other recorded times for the relevant links, even those outside the peak hours. For example (on a straight forward but tortuous examination of the relevant links in Appendix K of

the TA and TA Addendum) the January 2013 time for the a.m peak link time for FG (J8 to Bishop's Stortford) of 3:36 appears to be the shortest of over 30 recorded times for that link, even though most of those are off peak.

55. What has become abundantly clear is that the route times set out in the TA (tables 10.5 and 10.6) and the TA Addendum (table 20-1), and on which the highways authority relied, are woefully inaccurate and misleading and cannot be derived from underlying base data. They are based on inconsistent methodology in that the times for some routes are based on the recorded time for the whole route (eg 16:22 for route 2 – where averaging all the recorded links would produce a shorter time for that route – 15:20) whereas the times for other routes, we are told, are based on average link times for which there is only partial base data available and with some base data times disregarded when the data has, in MH's words, been "cleaned up" and no explanation in the TA. Also, as already mentioned, there is a clear and admitted inaccuracy in at least one of the stated journey times in the TA/ TA Addendum, namely the time for the pm peak for route 2 (reported as 13:45, now admitted to be 12:51).
56. BB set out a comparison of the recorded times (from Appx K TA and table 5 of the Agreed Statement ID33) for the three route times for the a.m and p.m peak hours in ID34 (now Table A of ID34A). This shows that the travel time for route 2 is significantly quicker than both routes 3 and 4 in both the am and pm peak hours. This is so, even though for route 3, the nearest hour to the peak (which one would expect to be quicker than during the peak hour) has had to be used given the lack of data for that route. It also shows a sharp contrast between the recorded times for route 4 in the pm peak (22:15 and 22:57) and the figure relied on by MH (ID43A) and reported in the tables of the main body of the TA and TA Addendum for this hour and route (17:52), revealing that there appears to be some inexplicable error in the latter that cannot be explained by the "average link times" explanation, particularly given that, save for a single 8 second queue, there is not even any claim or report of any queuing or "extraordinary event" by the survey contractors for those p.m peak hour journey records (see boxes 11 and 12 of p.3 of ID37).
57. In ID34, BB also sets out the effect of the intervention measures on the recorded times. The positions as to BB and MH on the effect of these measures are set out in the Agreed Statement at tables 6, 7 and 8. MH agreed in xx that the figures for route 2 in table 20-5 of the TA Addendum are wrong and should be 2:52 and 4:05 rather than 3:12 and 4:25. Further, whilst he originally relied on the effects as reported in the TA Addendum at tables 20-2, 20-3 and 20-4 (p.55 – 57), he agreed in xx that there is a clear error in the time addition for the effect of the Link Road. This has been reduced in MH's document 42A and ID33. Table 20-2 of the TA Addendum should similarly be corrected from 01.29 to 01.02/01.03 (58 seconds plus "4 or 5

seconds” for the junction delay – see p.11 of ID 37 which shows the miscalculation). The knock on effect of this in table 20-5 would be to further reduce the figures for route 2 to 2:26 and 3:39.

58. In addition, BB considers that the effect of the measures to the Link Road is still exaggerated by MH due to the assumed speed reduction; the effect of the speed reduction on the High St is overestimated due to the low existing speeds caused by parked cars; the assumed speed reduction for the Crown Estate measures has also been overestimated due to the lack of any proposed substantial measures and the effect of the Hall Road widening has been significantly overestimated. By reference to BB’s calculation based on road design guidelines, even if the entire length of the road could be widened the assumed speed increase could not be achieved and, additionally there is uncertainty as to what widening is physically possible or feasible and safety concerns (referred to below). Nevertheless, ID34 includes both MH and BB’s positions for the effects of the measures. It can be seen from ID34 that even assuming MH’s optimistic view of the effect of the intervention measures, route 2 is still significantly quicker than route 4 in both the am and pm peak hours. This is disastrous for the predicted effect of the transport strategy.
59. Whilst route 3 is shown as very slightly quicker (but not on BB’s estimation of the effect of the measures for the am peak hour), this can be of no real comfort to the Appellants. This is because the route 3 recorded times are not for the peak hour itself, there being no available recorded time for that route. Also and most importantly, the continued availability of route 3 cannot be assumed as it relies on the use of a private road owned by Stansted Airport operators. The airport is able to close that private road to non-airport traffic at any time if, for example, significant increased use of it impedes the effective operation of the airport or impacts unduly on airport passenger traffic. Whilst it is claimed that such a closure would require planning permission and a stopping up order (TA 5.2.18, p.24), there is no evidence for this and MH could not explain the basis of any such requirement. In any case, there is no suggestion or indication that any such requirements would be able to prevent such a closure.
60. The clear effect of all this is that the “vital” element of the transport strategy will clearly fail. The reported evidence in the tables in the TA and TA Addendum is inaccurate and misleading. The development traffic will not be effectively encouraged or re-directed to use Hall Road rather than the Stansted Mountfitchet route. The latter (route 2) is significantly shorter in terms of distance, will be significantly quicker (even with the proposed intervention measures) and there is no evidence to demonstrate that it would be any less reliable.

61. Even if the strategy were to work, the environmental assessment of its impacts is flawed in a number of respects. The transport chapter in the environmental statement fails to follow good practice. Only peak hour impacts are assessed, whereas the IEMA Guidelines do not restrict assessment to peak hour (ES, Chapter 11, March 2013, para 11.2.14). Second, and very importantly, there is no proper assessment or survey of sensitive receptors on the considered routes. This has led to sensitive receptors being ignored. For example (see e.g table 11.14, p.34), Old Mead Road is labelled as “low sensitivity” when it is a road with no footpaths and pedestrian access to the Golds Enterprise Zone and residential properties, something that should plainly be considered as “high sensitivity” according to table 11.3 (p.7 ES, Chapter 11). Similarly, Stansted Road is wrongly described as “low” sensitivity when it includes Grove Hill which has narrow footways and should be considered “medium” sensitivity according to table 11.3. Also, Lower Street is described as “low” when it should be described as “medium sensitivity” due to it being an already congested junction and a shopping area with roadside frontage (see table 11.3). Importantly, Hall Road is also described as “low” sensitivity when it should be assigned to the “high” sensitivity category due to its accident cluster (see table 11.3 of Ch 11 of the EIA and also see fig 3.5 of the original TA showing the accident cluster – see also below on this).
62. This latter issue is a very important point. A key plank of the transport strategy is to seek to encourage not only more traffic to use Hall Road, but, significantly, also to seek to make the use of Hall Road more attractive by reducing journey times by increasing traffic speeds along that route. As explained by Mr Bird, such a strategy is seriously flawed and of significant concern in terms of road safety. Whilst improvements to Hall Rd are proposed, these are only works to widen the road and only “where feasible and necessary” (see definition of “Hall Road Improvements” in s.106 Agreement at 1.45).
63. There has been no assessment of the physical extent to which it is possible to improve the width or geometry of Hall Road. It is narrow in places, and as already mentioned, includes the location of an accident cluster at the bend south of the Tye Green Road. This is shown at figure 5.3 of the TA and amounts to four accidents at that specific location in a five year period. Two were categorised as “slight” and two as “serious”. Three of these were attributed to drivers “failing to negotiate the bend” and one was as a result of a driver losing control while moving over to let a vehicle pass on the opposite carriageway (TA, para 5.6.3, p.29). It is acknowledged that the geometry of the bend is likely to be a significant factor in these accidents (ES March 2013, 11.4.41, last sentence). Vehicle speed is also likely to have been a factor. Against this, there are no specific or assessed proposals to alter the geometry of the bend at this location (accepted by MH in xx) (indeed the narrow available highway verge width at this point makes

any significant improvement within highway land impossible) and it is proposed generally to increase speeds along the road! This can only have the potential to be seriously detrimental to road safety.

64. As to the sustainability of the site location and the potential for modal shift, the Appellants rely on a Travel Plan to discourage reliance on the private car and increase modal shift. However, the success and availability of effective measures under a Travel Plan are necessarily hampered by the inherent limitations arising from the site location. If the measures under the Travel Plan are ineffective to achieve its objectives, there is little that can be done. This is partly why paragraph 34 of the NPPF seeks to ensure that large developments such as this are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However, inexplicably MH failed to consider or refer to this clearly relevant policy in his proof.
65. As set out in the Highways Impact Assessment (March 2014 – CD E15), Uttlesford residents are more likely to own cars and to use them to travel to work, which is likely to be a higher than national average distance away. Travel to work by train forms a very small percentage of Uttlesford residents’ journeys to work. Car ownership in Elsenham is even higher than at District level and “without adequate measures to encourage the use of non-car modes, or the provision of adequate facilities to reduce the need to travel, the site allocations in the village would be likely to lead to a significant increase in the level of traffic on the local road network” (CD E15, p.19). This, coupled with the very limited local facilities in Elsenham, indicates that the site is not in an inherently sustainable location. As such, the success of Travel Plan measures will also be limited by the constraints of the location. Further, it is to be noted that the Travel Plan will be primarily a residential travel plan. Accordingly the studies relied on by MH to demonstrate travel plan successes (proof paras 3.6.6 and 3.6.7) are not relevant as they concern work place travel plans which are more effective due to employer control.
66. A proposed additional facility relied on by the Appellants to increase sustainability is an increased bus service to Bishops Stortford. However, the long journey times (at around 43 minutes and significantly longer during the am peak due to a 20 minute wait at Stansted Airport) shown on the indicative proposed timetable (ID43) demonstrate (as accepted by MH - xx) that the service is very unlikely to be a realistic choice for anyone travelling from the site to Bishops Stortford. Accordingly, the only real potential value of the bus route is for travelling to and from Stansted Airport. However, in reality, this is of almost no value at all because the bus service will cease to run as soon as the developer subsidy runs out (or, if earlier, within five years) (see definition of “Local Bus Service Scheme” at 1.64 of the draft s.106 agreement).

67. The proposed bus service simply will not be viable. BB has demonstrated this by his calculations at Appx BRB7 and even these are based on underestimate of operating cost – MH confirmed in xx that the annual operating cost is now estimated to be £296,418 (and from a further document, is indicated to be as much as £333,000 p/a) rather than £282,000. On that (now inaccurate) lower estimated annual cost, MH is only able to demonstrate viability if he uses his own particular method for the annual number of trips and if he assumes a 5% bus mode share. BB has used a reasonable and transparent method (which was not challenged in xx) of estimating the annual number of trips per dwelling using the national travel survey number of person trips per annum multiplied by average house occupancy. This is criticised by MH on the basis that it uses national average information but MH accepted that his calculation also uses a factor (8.8) derived from national average data. On the basis of BB's estimation of total number of trips, the bus service will not be viable even if a 5% modal share is assumed.
68. However, the 5% modal share is considered by BB and Mr Bird to be completely unrealistic. Even BB's assumed 2.7% modal share is vastly optimistic, it being the bus modal share in Bishop's Stortford where, as MH accepted, there is a much broader range of bus services and destinations. Assuming that modal share, the bus service will never break even and so will never become viable whether one uses BB's or MH's calculation for estimation of total annual trips. The position would be even worse if the corrected increased estimate for annual operating costs were used.
69. It follows that the proposed increased bus service cannot be relied upon to reduce use of the private car. Whilst the rail service is a benefit, its limited destinations and frequency reduce its prospects for any significant modal shift. Even the Appellant only assumes a train mode share for all trip purposes of between 5% and 6% (para 2.4.10 of MH Rebuttal Proof of Evidence).
70. Similarly, the prospects of significantly increasing walking and cycling over the use of the private car are extremely limited. This is because of the very limited availability of local services within realistic walking distance and the inherent unsuitability of the local road network for safe cycling. The facilities within Elsenham are limited to a primary school, GP, pub, post office and local shop, meaning that residents have to travel further afield to reach such services as a secondary school, further and higher education, hospitals and clinics, bulk food shopping, comparison shopping, most personal business destinations and most leisure facilities. Whilst there are some on site facilities proposed, such as additional local shopping, these will not make up for the deficiencies identified and, in any case, there is no evidence that such facilities will be viable.

71. All in all, the development of 800 dwellings is proposed in an inherently unsustainable location, on the edge of a village with few facilities and with little prospect of any meaningful or realistic improvement in the situation. The local road network around the site is vulnerable, sensitive and inherently unsuitable, so much so that onerous measures are being required to seek to divert traffic along supposedly more suitable, but less direct and longer, routes. The success of this latter strategy is key to the success of the appeal (and was a precondition for the support of the highways authority) and yet it has been conclusively demonstrated that, not only is it doomed to fail, but the information relied on by the highways authority as to its prospects of success was inaccurate and misleading. The result will be large amounts of traffic being released on to unsuitable roads (such as to Stansted Mountfitchet and other ‘rat runs’) with severe potential environmental effects that have not been assessed. Even if success of the strategy could be assured, there has been no proper assessment of environmental impacts of that and the strategy seeks to add more and faster traffic at the site of an existing accident cluster with no prospect of effective mitigation.
72. It follows that the proposal is in conflict with the NPPF and there is also a clear conflict with adopted development plan Policy GEN1, which requires amongst other things: that the main road network must be capable of carrying the traffic generated by the development safely; that the traffic generated must be capable of being accommodated on the surrounding transport network and that the development should encourage movement by means other than driving a car.
73. In conclusion there are clear breaches of the development plan that should lead to a dismissal of the appeal. Even if paragraph 14 of the NPPF were to be found to be triggered, for the reasons given it is clearly demonstrated that the harm significantly and demonstrably outweighs the benefits.
74. For all these reasons, it is respectfully submitted by the Joint Parish Councils that the Elsenham appeal, Appeal B, should be recommended for dismissal.

22 October 2014

JENNY WIGLEY

No 5 Chambers