

Appellant's Statement of Case  
LRW Ref 20190423.10.38

Local Planning Authority:	Babergh & Mid Suffolk
LPA Application Ref:	1648/17
Appellant:	Mr P. Davidson
Agent:	Mr Fergus Bootman
Site Address:	Land at Post Mill Lane, Fressingfield
Description of Development:	Outline planning application for new residential development and associated new roads, infrastructure and open space.
Date of Validation:	26/04/2017
Date of Decision:	22/11/2018

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## 1.0 Introduction:

- 1.1 This appeal statement is made on behalf of Mr P. Davidson and seeks approval for the grant of outline planning consent for new residential development and associated new roads, infrastructure and open space on land at Post Mill Lane, Fressingfield.
- 1.2 The appeal proposal seeks to confirm the principle of residential development and secure details of access to the site; all other matters (i.e. those relating to appearance, landscaping, layout and scale) are reserved.
- 1.3 Application reference 1648/17 – the refusal of which is subject of this appeal - was accompanied by the following supporting documents. These are also submitted in support of this appeal, and are included as appendices to this statement:
- Appendix 1: Planning Statement incorporating Design & Access Statement and Heritage Statement
  - Appendix 2: Site Location Plan - 3325-TD-LW-XX-DRG-AR-1003
  - Appendix 3: Indicative Site Plan - 3325-TD-LW-XX-DRG-AR-1004
  - Appendix 4: Flood Risk Assessment incorporating Foul and Surface Water Drainage proposals prepared by Plandescil Consulting Engineers
  - Appendix 5: Phase 1 Contamination Report prepared by Plandescil Ltd, Consulting Engineers
  - Appendix 6: Arboricultural Impact Assessment prepared by AT Coombes Ltd
  - Appendix 7: Phase 1 Ecology Report prepared by Eco-Check
  - Appendix 8: Transport Note prepared by La Ronde Wright Ltd
- 1.3 In addition to this previously submitted information, this appeal is supported by two further documents concerning highways impacts. A summary of this report and a justification for their submission in support of this appeal is included at section 9.3 of this statement. These documents are:
- Appendix 9: Written Representation Supporting Statement: Transport, prepared by Royal Has Koning DHV
  - Appendix 10: Pedestrian Route Assessment, prepared by Royal Haskoning DHV and accompanying 'Proposed Walking Improvements Concept Plan'
- 1.4 On 21/11/2018 Mid Suffolk District Council's 'Development Control Committee A' resolved to refuse application reference 1648/17. This resolution was in line with the officer's recommendation, and the reasons for refusal were set out in the decision notice issued 22/11/2018.
- 1.5 This Statement of Case has been prepared with reference to the Planning Inspectorate's Procedural Guidance (published March 2019) and, in accordance with that guidance, sets out the case in favour of the proposal and addresses specifically the four reasons for refusal cited on the decision notice.

## 2.0 The Appeal Site

- 2.1 The site comprises two rectangular fields joined to form a single parcel of land.
- 2.2 The site is located close to the eastern edge of Fressingfield village and accessed via Post Mill Lane, a cul-de-sac which leads off New Street and currently provides access to 21 dwellings.
- 2.3 The appeal site is bounded to the north and east by agricultural land. Situated to the south and west of the western field are the two small residential developments which constitute the existing residential development on Post Mill Lane. Outline planning consent for these developments was granted in 2005 (0512/05), with reserved matters applications approved in 2007 (0586/07) and 2008 (3216/08). It is understood that all houses were completed by 2011. At present, Post Mill Lane (adopted public highway) runs to the front of these developments and terminates at the boundary of the application site.
- 2.4 The southern boundary of the eastern field borders residential gardens. These gardens are associated with properties fronting onto New Street and are generally older houses forming part of the historic settlement pattern of the village.
- 2.5 The northern and eastern boundaries of the site are demarcated by mature hedgerow planting.
- 2.6 The appeal site is set around an existing Anglian Water pumping station and electricity sub-station.
- 2.7 The site is currently vacant and appears to have been last used for agriculture. Neither the western nor eastern field has been in active agricultural use for some time and both have reverted to a scrubby grassland environment.
- 2.8 In terms of the wider area, Fressingfield is designated as a 'Primary Village' in the Mid Suffolk Core Strategy development plan document and, in keeping with this designation, accommodates a medical centre, a village shop, sports and social club, playing fields and village pubs. The site is in a sustainable location, positioned within easy walking distance of all these facilities.
- 2.5 The site lies adjacent to but outside the settlement boundary as designated by the Mid Suffolk Local Plan (adopted 1998, plan period 1998 – 2006) and is in the area designated as 'countryside' for the purposes of Mid Suffolk's Local Plan.
- 2.6 The site lies outside the Fressingfield Conservation Area, with the closest boundary of the Conservation Area situated approximately 120m from the eastern boundary of the site.

## 3.0 Areas of Agreement

3.1 Mindful of the four reasons for refusal as stated on Decision Notice, responses from consultees during the planning application process and the content of the Planning Officer's report to Planning Committee, it is considered that the following issues are not matters of dispute in this appeal:

3.2 Out of date Policies - In the officers' report to Planning Committee pertaining to the appeal site, MSDC identify the following Local Plan policies as being out of date (see page 251 of Appendix 12 for extract from MSDC Committee Report confirming this position). MSDC's own summary of why the policy is considered out of date is included in italics:

MSDC Core Strategy Document (2008)

- CS1 – Settlement Hierarchy *[due to it conflicting with paragraph 77 and 78 of the NPPF [2018]]*
- CS2 – Development in Countryside and Countryside Villages *[due to it obviating planning balance and being contrary to paragraphs 77 & 78 of the NPPF [2018]]*
- CS5 – Environment *[due to it exceeding what is required at para 192 NPPF]*

MSDC – Core Strategy Focussed Review (2012)

- FC2 – Provision and Distribution of Housing *[conflict with para 17 NPPF 2018]*

3.4 Following determination of the application subject of this appeal, MSDC have further identified policies FC1 (Presumption in Favour of Sustainable Development) and FC1.1 (Mid Suffolk Approach to delivering Sustainable Development) as being out of date (see para 3.10 of report extract, included at Appendix 13), due to a perceived conflict with the NPPF.

3.5 Landscape Impacts – MSDC accept the appeal proposal would not result in any unacceptable landscape impacts (see para 4.15.3 of MSDC Committee Report, included here at Appendix 12).

3.6 Ecology Impacts - MSDC accept the appeal proposal would not result in any unacceptable impacts on protected species or their habitat (see para 4.15.4 of MSDC Committee Report, included here at Appendix 12).

3.7 Amenity Impacts – MSDC accept that the proposal could – given appropriate consideration at reserved matters stage - be accommodated within this site without unacceptable impacts on existing residential amenity.

3.8 Under-delivery of housing – The Housing Delivery Test: 2018 Measurement identifies MSDC as delivering only 81% of the new homes required in the period 2015 – 2018.

## 4.0 Reasons for Refusal

- 4.1 The four reasons for refusal are set out in the decision notice, a copy of which is included at Appendix 14.
- 4.2 The reasons for refusal are lengthy, and a detailed response to each of the four matters is set out in section 8 of this Statement. Several of the 4 reasons cited for refusal contain more than one substantive point, and each reason comprises several paragraphs. Consequently, by way of summary and for the sake of clarity, a consolidated review of what is understood by the Appellant to be the reasons for refusal, is set out below:
- 1a) (Principle of development) The scale of housing development proposed is significant and considered unacceptable and inappropriate for the Primary Village of Fressingfield: the benefits posed would not significantly and demonstrably outweigh the identified harm identified.
  - 1b) (Principle of development) The site lies outside the identified development boundary and, as such, is contrary to policy CS2: the benefits posed would not significant and demonstrably outweigh the identified harm this conflict with the development plan.
  - 2) (Highways) Increased traffic passing along New Street and/or Jubilee Corner will result in an unacceptable impact on highway safety, particularly for pedestrians. This risk is unacceptable, contrary to Local Plan Policy T10 and para 109 NPPF and would significantly and demonstrably outweigh any benefits arising from the proposed development.
  - 3a) (Foul water) The proposed development is unlikely to be adequately serviced and would overburden existing infrastructure.
  - 3b) (Flood risk) The proposed development is contrary to para 163 NPPF as it would increase flood risk elsewhere (namely the Low Road area).
  - 3c) (Foul Water) The proposed development is contrary to para 180 NPPF as it will not ensure the new development is appropriate for its location as it does not take into account the likely effects, including cumulative effects, of pollution upon health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
  - 3d) (Foul water & flood risk) The risks identified at 3b and 3c significantly and demonstrably outweigh the benefits which might arise from the proposed development.
  - 4a) (Heritage: Impact on Listed Building) The application proposes the development of up to 5 new dwellings on open land to the immediate rear of a Grade II Listed Building. This would result in less than substantial harm to the setting of the Listed Building and it is not considered that the development would deliver any public benefits which that would outweigh this identified harm, nor is any such harm necessary in supporting

such benefits. As such the development is contrary to policies HB1 and HB8 of the Local Plan, and 196 NPPF

- 4(b) (Heritage: Impact on Heritage Assets) The development is contrary to para 192(a) as fails to take account of the desirability of sustaining and enhancing the significance of heritage assets
- 4(c) (Heritage: Impact on Heritage Assets) The development is contrary to para 192(c) NPPF, as it fails to take account of the desirability of new development making a positive contribution to local character and distinctiveness
- 4(d) (Heritage: Impact on Conservation Area) The development is contrary to para 194 NPPF and HB8 as the proposal would result in harm to the setting of the Fressingfield Conservation Area and there is no clear and convincing justification – including public benefit – for this harm.



## 5.0 Planning History & Other Applications

### 5.0 Appeal Site History

- 5.0.1 In 2002 the appeal site formed part of a wider site on which consent was sought for new housing. The outline application was withdrawn (0128/02)
- 5.0.2 A number of historic and very recent planning applications are relevant to understanding the planning context of this site generally and this appeal specifically.
- 5.0.3 A summary of these applications is set out below:

### 5.1 Historic Consents

- 5.1.1 24/02/2005 – Ref. 0512/05 – Outline consent granted for redevelopment of part brownfield site for 11 affordable dwellings (to be delivered on land identified as ‘Zone A’) and 10 market dwellings (‘Zone B’). This consent established the principle of creating the residential development now known as Post Mill Lane and concerned land immediately adjacent to the appeal site.
- 5.1.2 29/07/2009 – Ref. 0586/07 – Reserved matters granted for 11 affordable dwellings on land identified as Zone A in outline consent ref 0512/05.
- 5.1.3 24/12/2008 – Ref. 3216/08 – Reserved matters granted for 10 market dwellings on land identified as Zone B in outline consent ref 0512/05. Approved plan CL01-P5 (Site Layout Plan) identifies the appeal site as ‘Potential Future Development’ (see Appendix 15).

### 5.2 Recent Consents

- 5.2.1 15/08/2017 – Ref. 4410/16 – Hybrid planning consent was granted in the village of Fressingfield for: i) full planning consent for erection of new Scout Hut with associate facilities and access road; and ii) outline consent with all matters reserved for up to 28 dwellings.
- 5.2.2 04/07/2018 – Ref. 3872/16 – Hybrid planning consent was granted in the village of Fressingfield for: i) full planning consent for new Baptist Chapel, car park and access; and ii) outline consent for up to 18 dwellings.
- 5.2.3 In addition to the two applications above (both approved), it is the case that the application subject of this appeal was submitted within three weeks of two further, unconnected applications seeking consent for residential development elsewhere in the village of Fressingfield.
- 5.2.4 These applications at John Shepherd Road (ref. 1432/17) and Stradbroke Road (ref. 1449/17) sought planning consent for a total of 184 new dwellings across two sites.

- 5.2.5 Applications 0586/07 and 1449/17 were considered on the same Planning Committee meeting as the appeal site, and decisions on these applications immediately preceded the decision on the appeal site. All three applications were refused.
- 5.2.6 At time of writing, no appeal had been lodged against refusal of either of these applications.
- 5.2.7 Figure 1, below, shows the location of these two developments in relation to the appeal site, and the position of all sites in relation to the services and amenities offered by the village.



Figure 1: Appeal site and location of applications 4410/16 & 3872/16 (both approved) and 0586/07 & 1449/17 (both refused)

## 6.0 Policy Context

6.0.1 The following Development Plan policies are considered to be relevant and, notwithstanding their age, to have a degree of consistency with the NPPF. Policies which are accepted by MSDC to be out of date (following the Woolpit decision and subsequent MSDC reports to Planning Committee) are omitted from this list.

6.0.2 Applying the test at para 213 NPPF, due weight should be afforded to the following policies according to their degree of consistency with the Framework: the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. Consideration of weight to be afforded to each policy is set out in the assessment section, below.

### 6.1 [Adopted Core Strategy: Saved Policies \(2008\)](#)

6.1.1 CS6 – Services and Infrastructure - New development will be expected to provide or support the delivery of appropriate and accessible infrastructure to meet the justifiable needs of new development

### 6.2 [Mid Suffolk Local Plan: Saved Policies \(1998\)](#)

6.2.1 HB1 – Protection of Historic Buildings

6.2.2 HB8 – Safeguarding the Character of Conservation Areas - Priority will be given to protecting the character and appearance of Conservation Areas... Similar care will be taken when considering proposed development on land which lies adjacent to a Conservation Area.

6.2.3 HB14 – Ensuring Archaeological Remains are not destroyed

6.2.4 H13 – Design and Layout of Housing Development – New housing should be of a scale and density appropriate to the site and its surroundings

6.2.5 T10 – Highways Considerations in Development - When considering planning applications for development, the district planning authority will have regard to the following highway matters: -

- the provision of safe access to and egress from the site
- the suitability of existing roads giving access to the development, in terms of the safe and free flow of traffic and pedestrian safety;
- whether the amount and type of traffic generated by the proposal will be acceptable in relation to the capacity of the road network in the locality of the site;
- the provision of adequate space for the parking and turning of cars and service vehicles within the curtilage of the site;
- whether the needs of pedestrians and cyclists have been met, particularly in the design and layout of new housing and industrial areas. cycle routes and cycle priority measures will be encouraged in new development.

6.2.6 RT4 – Amenity, Open Space and Play Areas in Residential Development - residential developments of 10 or more dwellings should provide open space in the form of play

areas, formal recreation areas or amenity areas, unless MSDC consider there are adequate existing facilities nearby

6.3 [Mid Suffolk Local Plan: Altered Policies \(2006\)](#)

- 6.3.1 Altered Policy H4 – Affordable Housing - Outside the designated Market Towns of Needham Market and Stowmarket, sites of 5 dwellings or more should provide an element of affordable housing up to 35% of the total proposed provision.

## 7.0 Statement of Case

- 7.1 The application subject of this appeal proposes a development of up to 24 new homes on a site immediately adjacent to the adopted development boundary in the village of Fressingfield. The site is currently unused and available for development. The proposal seeks outline consent, with all matters bar access reserved.
- 7.2 A detailed assessment of the planning merits of this proposal, including consideration of relevant planning policy and guidance, is included within the Planning Statement submitted with the original application (see Appendix 1). That assessment was written on the basis that MSDC had no five-year HLS. The position surrounding MSDC's HLS is now less clear (see section 8, below) however, even if it is accepted that a five-year supply can now be demonstrated (this is not clear and, consequently, the position regarding HLS is not a central argument in this appeal), it remains the case that the appropriate test for determination of this appeal is still that at paragraph 11 NPPF.
- 7.3 The NPPF is clear that, where policies most important for determining the application are out of date, the appropriate test for planning decisions is that at para 11. In this instance, MSDC accept that the Core Strategy policies most important for determining this application (namely CS1 - Settlement Hierarchy; CS2 – Development in Countryside and Countryside Villages; FC1 - Presumption in Favour of Sustainable Development; FC1 – Sustainable Development; F1.1 - MSDC's approach to delivering sustainable development; FC2 – Provision and Distribution of Housing) are out of date.
- 7.4 This leaves saved Local Plan policies as being the only potentially relevant development plan policies. The Local Plan was adopted in 1998 and, whilst policies cannot be regarded as out of date based on age alone, weight should be given to them according to their degree of consistency with the NPPF (paragraph 213).
- 7.5 In this instance, saved policy H7 seeks to protect the character and appearance of the countryside by stating '*outside settlement boundaries there will be strict control over proposals for new housing. The provision of new housing will normally form part of existing settlements*'. This restrictive approach fails to respond to the persistent under-deliver of new homes in the district over recent years (see para, 3.8, above, concerning MSDC delivery rates) and, consequently, fails to respond to local circumstances (paragraph) 77 NPP. Furthermore, the policy does not recognise the requirement to promote sustainable development in rural areas, and fails to consider the importance of policies enabling local villages to grow and thrive – especially where this will support local services (paragraph 78), such as Fressingfield's shop, school, medical centre, churches etc.
- 7.6 Consequently, it is considered that saved policy H7 is out of date and should be afforded no weight when determining this application. This is a position apparently acknowledged by MSDC, who do not reference the policy in their (very lengthy) decision notice.
- 7.7 Mindful of the above, the case in favour of this appeal proposal is as follows:

- The policies which are most important for determining the application are accepted by MSDC as being out-of-date.
- Accordingly, the appropriate test in determining the principle of the development is that at para 11 NPPF, and this is true irrespective of the HLS position (which is unclear)
- With reference to this test, the benefits of the proposal are considered to be as follows:
  - An increase in the provision of housing numbers at a time where there is, at best, a marginal HLS
  - Approval of a highly deliverable site (being largely free from constraints, readily accessible, and being located immediately adjacent to a recently completed housing development, the infrastructure for which was designed to accommodate the future growth proposed in this application) in an area of demonstrated persistent under-delivery of new homes
  - Delivery of homes in a sustainable location, immediately adjacent to the health centre and with safe walking routes possible to local school and services
  - An increase in choice and type of homes in the village
  - 35% affordable housing provision (policy compliant)
  - Employment opportunities during the construction phase
  - New residents would be likely to use the local shop and services within Fressingfield, making a positive contribution to the village's vitality and viability
  - Provision of a modest area of community open space (or contribution in lieu of delivery on site)
  - Footpath improvements to improve safety of walking routes to key services in the village for existing and proposed residents
  - Promotion of highway works in the village centre could deliver benefits to existing and proposed residents
  - Contribution of CIL payments
- Set against these benefits, the adverse impacts are considered to be:
  - The potential for less than substantial harm to the setting of the Grade II Listed Ladymeade cottages, depending on the specific scheme which is brought forward at reserved matters stage.
- With reference to the test at paragraph 11, this potential for less than substantial harm is not considered to significantly and demonstrably outweigh the identified benefits of the scheme
- With reference to the test at paragraph 196 NPPF, the potential for less than substantial harm to the setting of a Grade II Listed building does not outweigh the public benefits of the proposal, being those identified above.

7.4 The specific issues of principle of the development, highways impacts, infrastructure and flood risk impacts and heritage impacts are considered in the response to MSDC's reason for refusal, set out below.



## 8 Position Regarding Housing Land Supply

- 8.1 The Planning Statement which supported the original application was written at a time when MSDC accepted they could not demonstrate a deliverable HLS.
- 8.2 This position has changed several times over the course of the application and subsequent preparation of this appeal; these changes are summarised below:
- **April 2017 -** Application submitted - MSDC could not demonstrate a deliverable five-year supply of housing
  - **July 2018 -** The 2017-18 Annual Monitoring Report (AMR) concluded a 6.5-year supply, assessed against Core Strategy requirements
  - **September 2018 -** The Woolpit decision (APP/W3520/W/18/3194926) concluded MSDC could demonstrate at best a 3.4-year supply, and the Inspector noted that *'it is highly likely that the Councils HLS is less than 3.4 years'* (28/09/18).
  - **March 2019 –** MSDC publish the Housing Land Supply Position Statement 2018/19 – MSDC claim a 5.06-year supply
- 8.3 The current position then is that MSDC claim an HLS, but this claim is made in an 'informal planning document' (MSDC description): the document is not part of the development plan nor has it been tested at appeal.
- 8.4 It is not necessary in this instance to test rigour or otherwise of the assessment within this informal document, as it is acknowledged by MSDC that the relevant policies are out of date and, accordingly, that the appropriate test for determination is that at paragraph 11: the absence of a HLS is not necessary to set these policies aside or diminish the weight which can be afforded to them.
- 8.5 If an HLS is accepted, then it is well established that a five-year supply does not represent the maximum supply of homes a council can have, and the delivery of 24 homes in a sustainable location would both accord with the NPPF's objective to significantly boost the supply of homes and contribute to the reinforcing MSDC's stated position regarding HLS.
- 8.6 If an HLS is not accepted – and it is clear from consultation responses to the Position Statement Document that doubts remain (amongst other matters) as to whether or not the sites identified by MSDC are truly likely to come forward in the necessary timeframes and, either way, the claimed supply of 5.06 years leave little room for any error in the evidence base – then the correct test remains that at paragraph 11, however even greater weight can be afforded to housing delivery when undertaking the 'tilted balance'; exercise at paragraph 11.

- 8.7 Given the modest nature of this scheme and having regard to the policy context as detailed above, this appeal does not seek to challenge the assertion in the informal document, however, given the very recent change in position and the impact it has on the lines of reasoning developed in the original Planning Statement, it was considered necessary to clarify the position in relation to the correct test to apply when considering this appeal proposal.



## 9 Response to MSDC's Reasons for Refusal

9.1 Reason 1a) (Principle of development) *The scale of housing development proposed is significant and this level of growth is considered unacceptable and inappropriate for the Primary Village of Fressingfield: the benefits posed would not significantly and demonstrably outweigh the identified harm.*

- 9.1.1 This appeal proposes a development of up to 24 new homes, 8 of which would be affordable (complying with MSDC Altered Local Plan Policy H4).
- 9.1.2 Fressingfield is a popular village which provides a range of services and amenities including two public houses, a village shop, a primary school, a health centre, village hall, three churches (Baptist, Methodist, Church of England), a nursery and a sports and social club with associated playing fields.
- 9.1.3 As envisioned by the adopted Core Strategy (which designates Fressingfield as a Primary Village) the village is growing – with recent consents granted for up to 46 new homes over two sites (consents ref. 4410/16 and 3872/16). Facilities are responding to this growth, with these consents also delivering a new Scout Hut and a sizeable new Baptist Church/Community space (providing 1,132 sq. m of floor space over two stories, and incorporating a coffee shop, multi-use main hall and several smaller office and common rooms).
- 9.1.4 In short, Fressingfield is a successful rural village with a very good range of facilities and, this being the case, is exactly the kind of location for modestly-scaled market and affordable housing such as that proposed in this application.
- 9.1.5 In the officer report to committee, MSDC appear to recognise this, stating (at para 4.6.2) *'If the site were within the settlement boundary a 2.2% increase in total housing stock in the village may not be considered that significant and may constitute small scale development [or at least smallish]'*.
- 9.1.6 MSDC have calculated this figure using house numbers from an unspecified source dated from 2017. This source identifies the total number of properties in the village as 1,080. MSDC identify that the proposed addition of 24 homes would represent a 2.2% increase to this figure.
- 9.1.7 This figure is incorrect; the 2015 census shows a total of 444 occupied households, and it is not the case that the village has more than doubled in size since 2015 (housing growth has, in fact, been relatively limited, see Section 5, above, for a summary of recent residential consents in the village).
- 9.1.8 Working from the correct figure of 444 households, the 24 new dwellings proposed in this appeal would result in a 5.4% increase in the number of households in the village. This is larger than the figure identified by MSDC, however it cannot be concluded that this modest growth represents a significant increase in the scale of the village, nor can this level of growth be considered unacceptable and inappropriate for a designated Primary Village. The council's assertion that a 2.2% increase represents a significant and unacceptable increase is simply without merit, and the same is true of the proposed actual 5.4% increase.

- 9.1.9 When making a determination of whether the proposal represents a 'significant' and 'unacceptable' level of growth, a robust calculation should also acknowledge the 46 homes which have recently been consented (ref 4410/16 and 3872/16 ). If these homes are viewed as part of the village which the appeal proposal would expand, then the percentage increase resulting from the appeal proposal falls to 4.9%. Conversely, if these new consents are considered as new development which, together with the appeal proposal, must be borne by the 'existing' village, then the increase in housing numbers recently experienced by Fressingfield rises to 15.8%.
- 9.1.10 Whichever way these numbers are divided up – and even if the figures exclude a small number of windfall sites achieved by infill etc within the settlement boundary (figures not known) – there is, as recognised by MSDC, no manner in which a proposal for 24 new homes can be considered a 'significant' increase in the context of the village.
- 9.1.7 Mindful of the above, the justification for the assertions in Reason 1 of the decision notice that the appeal proposal would result in a '*significant ...unacceptable and inappropriate*' scale of development is entirely unclear. Rather than a quantitative assessment of the scale of the development, reason 1 appears to follow the qualitative assessment set out at para 4.6.3 of the officer report to committee, wherein the officer concludes that development which would be considered small-scale (or 'smallish') within the settlement boundary, becomes significant in scale when positioned outside (but adjacent to) the settlement boundary.
- 9.1.8 The logic behind this reasoning is unclear. The reasoning becomes entirely flawed (if it is not already considered so) when it is recognised that no weight should be afforded to the development boundaries established within the Development Plan, given the plans' significant policy conflict with the NPPF in this regard (see section 7, above).
- 8.1.9 The second element of reason 1a states that the '*benefits posed would not significantly and demonstrably outweigh the harm and conflict (with adopted policies) identified*'.
- 9.1.10 Again, the reasoning behind this is unclear. The reason for refusal does not identify the 'harm' it refers to, but it is presumed to amount to the fact that MSDC are of the opinion that a development of 24 dwellings is simply too great an increase in housing stock to be considered appropriate in the village (notwithstanding the fact that they – incorrectly - calculate the increase as amounting to 2.2%, and no objections were received from the local school, medical centre or other provider of services and facilities, to suggest the proposed modest increase in population resulting from 24 new homes would be unacceptable).
- 9.1.11 Even if it is accepted that an increase in households by 24 represents harm (and this is not accepted), the reason for refusal then appears to misapply the test at para 11 NPPF.
- 9.1.12 The reason for refusal requires that the benefits associated with the proposal (which are not identified, but in the committee report are cited by MSDC as delivery of market and affordable housing in an area of identified undersupply, and short-term economic benefits associated with the build process) to '*significantly and demonstrably outweigh the harm*' (unidentified, other than conflict with policies of the Local Plan which the council accept are out-of-date).
- 9.1.13 This is incorrect: the test at para 11 NPPF creates a presumption in favour of sustainable development and states that, where development plan policies most important for the determination of the application are out of date (as is the case in this

instance), planning consent should be granted unless *'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.*

- 9.1.14 So, reason 1 errs by effectively inverting the test of sustainable development and applying a standard which requires the benefits to significantly and demonstrably outweigh identified harms.
- 9.1.15 The correct application of the test at paragraph 11 requires the decision maker to approve the application unless the harms (which, though not accepted by the appellant for reasons set out above, for the purposes of reason 1 MSDC consider to amount to a simple, unsupported, statement that the development is too large for the village of Fressingfield to accommodate) significantly and demonstrably outweigh the benefits (market and affordable housing delivery in an area of identified need and undersupply, short-term economic benefits through build process and payment of CIL).
- 9.1.16 Applying this test, it is the Appellant's case that reason 1 fails to identify any real harm and, even if the simple statement that the scale of development proposed is *'significant and inappropriate'* is accepted as a harm (which it is not), this does not significantly and demonstrably outweigh the identified benefits.
- 9.2 Reason 1b (Principle of development) *The site lies outside the identified development boundary and, as such, is contrary to policy CS2: the benefits posed would not significant and demonstrably outweigh the identified harm this conflict with the development plan.*
- 9.2.1 At page 251 of the officer report to Committee (Appendix 12), MSDC acknowledge that the Inspector in the Woolpit decision identified policy CS2 as being out of date. The council identify the policy as conflicting with paras 77 and 78 of the NPPF and, notwithstanding this conflict, if it is the case that there is no HLS (which is unclear) as a policy concerned with the supply of housing (and thus a policy most relevant in determination of this appeal proposal for housing), in the absence of a deliverable five-year supply of housing, it cannot be considered up-to-date.
- 9.2.2 Similarly, saved Local Plan Policy H7 (which restricts new development in the designated countryside to within identified settlement boundaries, with a few specified exceptions), must also be considered out-of-date due to a lack of consistency with the NPPF (see para 7.5, above).
- 9.2.3 Given this acknowledged position, it is surprising to see reference to both the settlement boundary, the settlement hierarchy and policy CS2 in the first reason for refusal, and more surprising still that the reason identifies conflict with out-of-date policy CS2 as 'harm', to be weighed against the benefits of the proposal. The reason ascribes *'considerable weight'* to the conflict with an out-of-date policy.
- 9.2.4 It is the appellant's case that there can be no intrinsic harm arising from conflict with an out-of-date policy. In the event relevant policies are out of date the appropriate test is (as has been established, and as is accepted by MSDC) that at para 11. Applying this test, it is clear there are no conflicts in respect of the principle of residential development at this sustainably located site situated in an area of identified housing

need and where it is accepted there is an undersupply of new homes (in respect of the housing delivery test).

- 9.2.5 The first reason for refusal appears to then repeat the mis-interpretation of the test at para 11 NPPF, and again requires that the benefits significantly and demonstrably outweigh the perceived harm arising from conflict with an out-of-date development plan policy. As discussed above at paras 9.1.12 - 9.1.15, this is an incorrect interpretation and effectively inverts the test: it is clear that in order to refuse the application a decision maker must be satisfied that the harms significantly and demonstrably outweigh the benefits. As with reason for refusal 1a, this is not the case in respect of reason 1b.

**9.3 Reason 2 (Highways) Increased traffic passing along New Street and/or Jubilee Corner will result in an unacceptable impact on highway safety, particularly for pedestrians. This risk is unacceptable, contrary to Local Plan Policy T10 and para 109 NPPF and would significantly and demonstrably outweigh any benefits arising from the proposed development.**

- 9.3.1 This appeal is accompanied by two new pieces of supporting information, which have been prepared to address the second reason for refusal. These are the document titled Transport Report and the Pedestrian Route Assessment, both prepared by Royal Haskoning DHV.
- 9.3.2 This new information is presented in response to the objection received from Suffolk County Council Highways (SCC) which, in turn, informed the second reason for refusal.
- 9.3.3 The position of SCC in respect of this development proposal changed a number of times during the course of the pre-application discussions and subsequent (22 month) determination period.
- 9.3.4 A detailed log of correspondence relating to highways is included at Appendix A to the Transport Report (itself included as Appendix 9 to this Statement of Case) however, in summary, the response from SCC Highways has varied as follows:

Date	Application Stage	SCC Position
10/01/17	Pre-application enquiry to SCC	Response indicates no objection to principle, subject to technical matters being addressed
26/04/17	Application validated	MSDC formally consult SCC
01/06/17	Consultation period	SCC state no objection, subject to conditions
10/08/17	MSDC determination period	SCC lodge 'holding objection' based on cumulative impact on the highway network (of this and applications 1432/17 and 1449/17)
14/05/18	MSDC determination period	SCC withdraw holding objection – no objection subject to conditions as development would have no severe impact on highways safety and, as such, not conflict with para 32 NPPF 2012

02/11/18	MSDC determination period	SCC lodge objection – proposed development would have an unacceptable impact on Highways safety and so conflict with para 109 NPPF 2018
13/11/18	MSDC recommendation for refusal to committee	Report to Planning Committee recommending refusal is published by MSDC. No communication from either MSDC or SCC to applicant despite attempts to call and email case officer.

9.3.5 Over the course of this 22-month process efforts were made by the appellant to maintain a dialogue with both MSDC and SCC (see, for example, correspondence log at Appendix A of the supporting statement: transport). It was therefore disappointing to realise (without having been informed by SCC or MSDC) that the consultation response had changed to one of objection and, less than two weeks later, be presented with a committee report with a recommendation for refusal (again, with no communication from MSDC advising the application was included on the committee agenda).

9.3.6 The extent to which these events demonstrate MSDC's compliance with article 35(2) of the Development Management Procedure Order (2015) (which requires local planning authorities to explain how they have worked with the applicant in a positive and proactive manner), the requirement to approach planning decisions in a positive, proactive and creative way (para 38 NPPF), or the reasonableness or otherwise of the conduct, is considered in the application for costs which accompanies this appeal. The purpose of including this timeline here is to demonstrate this additional information simply presents a response to the changed position from SCC, an opportunity the appellant was not afforded by MSDC.

9.3.7 Considering the content of the supporting statement, it directly addresses the second reason for refusal. The reason for refusal applies the logic that:

- a) the existing highways layouts at New Street and Jubilee Corner are unsafe for pedestrians
- b) the proposed new development would increase pedestrian and vehicular traffic movement along these routes
- c) This further traffic along an unsafe route would result in an '*unacceptable impact on highways safety*'.
- d) This impact is an identified harm which outweigh the benefits of housing delivery (with reference to the test at para 11 NPPF) and is also contrary to policy T10 of the Local Plan and para 109 NPPF.

9.3.8 The Transport Report considers these issues in detail, and uses data from traffic counts and speed surveys taken along New Street together with Crashmap data (which holds records of all reported Personal Injury Collisions (PIC) on the highway) to make an informed assessment of the existing risk to road users in Fressingfield and what impact the addition of 24 new homes would have on this situation.

9.3.9 In summary, the Report identifies:

- Traffic flows during peak hours were 'low' (typically one vehicle per minute in either direction)
- Compliance with the existing 30 mph speed limit along New Street was 'very high', with less than 15% of all vehicles exceeding the limit over the entire seven-day survey period
- Only one PIC has been recorded in the village in last five years. This occurred at Jubilee Corner and the 'very likely' causal factors are noted in the accident data as being '*loss of control*' and '*illness or disability, mental or physical*' (i.e. not associated with highways causal factors).

9.3.10 Having regards to the above, the Report concludes that '*there is no evidence to support the contention that there are substantive casual factors in the village relating to highways, and that there is an evidence-based case that New Street presents an intrinsically safe highways environment*' (para 4.2.2).

9.3.11 The Report further notes (at para 4.2.4) that, whilst there is an established link between reduction in speed through villages and a reduction in accident rate, evidence does not support the contention in the second reason for refusal that increased traffic flow will result in an increased accident rate.

9.3.12 The final contentions in reason number two state that the appeal proposal is contrary to Policy T10 of the adopted Local Plan and para 109 NPPF.

9.3.13 In response, considering first Local Plan policy T10 and working through the various criteria of that policy: it is the case that the site can be safely accessed; evidence does not support the contention that the highway is unsafe or that the very limited increased movements associated with the appeal proposal would render it unsafe; the road network surrounding the site has sufficient capacity to accommodate this limited increase; and the proposal provides sufficient space for parking and turning within the development (see Section 4.4 of the Transport Report for a detailed assessment against Policy T10).

9.3.14 With regards to the identified conflict with para 109 NPPF (which states *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*), there is no evidence to support the view that the development will increase risk to pedestrian safety (para 4.4.17 Transport Report).

9.3.15 The second additional report accompanying this appeal is a Pedestrian Route Assessment. This Assessment provides an independent audit of the existing safety of the pedestrian routes between the application sites and key local amenities, using a methodology prepared by the Royal Society for the Prevention of Accidents.

9.3.16 The Assessment considers walking routes from the site to five key amenities in the village, and splits three of these five routes into 'to' and 'from' routes (where walking to

the amenity would necessitate using a different side of the road than walking ‘from’ the amenity).

9.3.17 Of these eight routes, four are identified as being ‘unsafe’ as pedestrian walking routes. Given the limited increase in both vehicle, cycle and pedestrian traffic which would be generated by this development (36 two-way person vehicle trips, 3 pedestrian trips and 2 cycle trips across AM and PM peak hours – see Table 3.2 Transport Note), it is not considered that the appeal proposal would result in an unacceptable impact on highways safety (discussed above).

9.3.18 Notwithstanding this fact, it is recognised that the existing highways situation in respect of pedestrian safety is one which can be improved. The alterations which are required to move all the routes classified as ‘unsafe’ to ‘safe’ are relatively modest and comprise:

1. Adjustment of the junction radius and associated footway widening at the junction of New Street and Priory Road.
2. Relocation of the dropped kerb pedestrian crossing on B1116.
3. Promotion of a Traffic Regulation Order (TRO) relating to 20mph speed limit on New Street (on up to two occasions) and on that TRO being sealed, the provision of all *signing and lining associated with implementation of that speed limit*.

(See Table 5.1 of the Assessment and accompanying plan titled ‘Proposed Walking Improvements Concept Plan’ for detail).

9.3.19 In light of the findings of the Assessment, the Appellant proposes delivery of these identified improvements as part of the development. A suitable condition to secure these improvements is suggested in section 10 of this Statement (condition 12).

9.4 Reason 3a) (Foul water) *The proposed development is unlikely to be adequately serviced and would overburden existing infrastructure.*

9.4.1 At point of submission in 2017, the application subject of this appeal was accompanied by a pre-application development enquiry to Anglian Water, the relevant technical consultee in respect of potable and foul water. The enquiry identified the development as being up to 31 homes, to be delivered in a single phase.

9.4.2 Anglian Water’s response to this pre-application enquiry was in the form of a Pre-Planning Assessment Report (see Appendix C to the Flood Risk Assessment, Surface Water & Foul Water Drainage Strategy, which is included as Appendix 4 to this Statement).

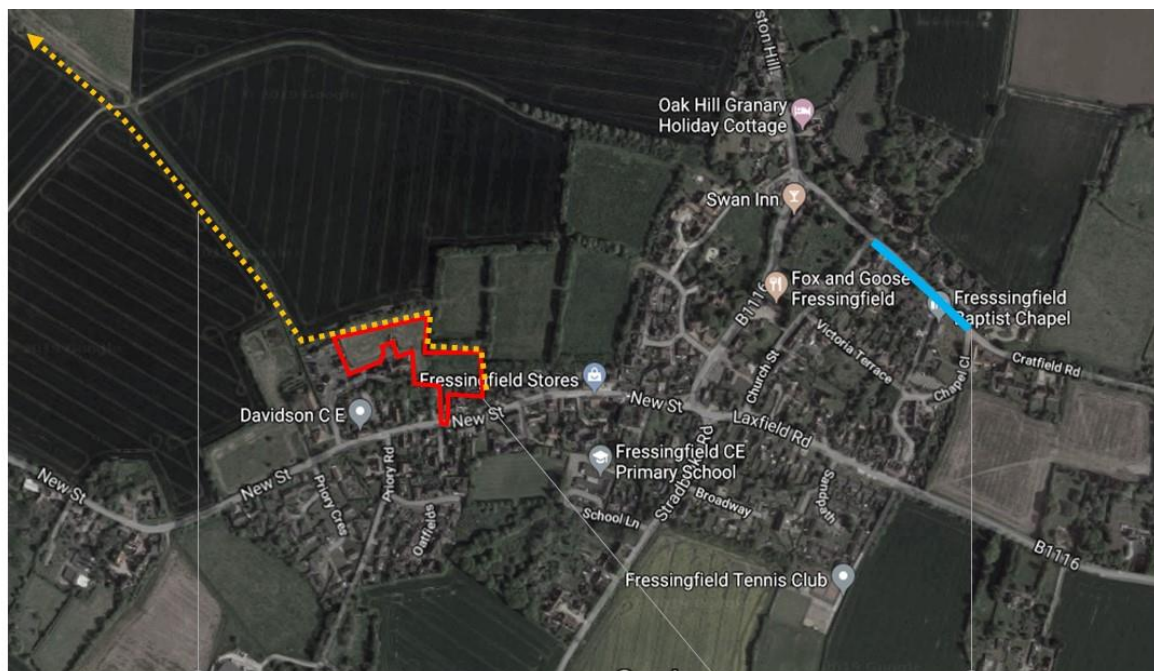
9.4.3 The Pre-Planning Assessment Report confirmed the relevant water recycling centre has sufficient capacity to accommodate flows from the site, but stated further hydraulic modelling was required to clarify whether or not the network has capacity to accommodate the additional flows resulting from the proposed development (indicated, at that pre-app stage as being up to 31 homes).



- 9.4.4 This resulted in Anglian Water producing a Drainage Impact Assessment (DIA) (also included in Appendix C to Appendix 4 of this Statement). The DIA identified that, based upon the development splitting foul water flows between two manholes, *'the development will not cause detriment to the capacity of the sewer system'* (Page 2 – Summary – DIA).
- 9.4.5 Accordingly, the indicative foul drainage scheme which accompanies this proposal for outline planning consent has been designed to reflect this requirement.
- 9.4.6 Anglian Water reiterated this position in response to formal consultation by MSDC, where it was confirmed that *'a Development Impact Assessment has been prepared in consultation with Anglian Water to determine a feasible mitigation solution. We will request a condition requiring compliance with the agreed drainage strategy'* (see page 33 of Appendix 12, MSDC Report to Planning Committee).
- 9.4.7 It is recognised that Pre-Planning Assessment Reports issued by Anglian Water represent the position at a particular point and, as such, are considered to be valid for a period of 12 months. Mindful of this, and the very significant delays in determining the application, this appeal is accompanied by a more recent Pre-Planning Assessment Report (dated 28/12/2018 and attached at Appendix 16(i)). This report confirms Anglian Water's position remains unchanged and, subject to appropriate system design, the development will not cause detriment to the capacity of the sewer system. A further, follow-up enquiry to Anglian Water confirms that, even if some form of mitigation were to be proposed by the appellant (though it must be noted that the appellant does not accepted that any such measure is needed), Anglian Water would not support any such measure, presumably as they do not wish to be in position where they are forced to adopt what they consider to be unnecessary infrastructure (Appendix 16(ii), email correspondence with Anglian Water).
- 9.4.8 Under the terms of the Water Industry Act 1991 Anglian Water have a duty to satisfy the water services infrastructure of new development. Where new development will exceed capacity at a water recycling centre, or where the existing infrastructure can demonstrably not cope with proposed new connection, development can be delayed (and consent refused) to allow infrastructure to 'catch up' with demand. However, where the relevant technical consultee raises no objection and explicitly confirms the existing network has sufficient capacity, refusal to consent new development on the basis that the proposal would *'overburden existing infrastructure'* (as stated in reason 3 of the refusal) cannot be justified.
- 9.5 **Reason 3b) (Flood risk)** *The proposed development is contrary to para 163 NPPF as it would increase flood risk elsewhere (namely the Low Road area).*
- 9.5.1 Paragraph 163 states: *When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.*



- 9.5.2 As a major planning application, the appeal proposal is accompanied by a detailed Flood Risk Assessment (FRA) and Surface and Foul Water Strategy (Appendix 4).
- 9.5.3 As a technical document, MSDC look to comments from Suffolk County Council in their role as Lead Local Flood Authority (LLFA). In response to this application the LLFA confirmed they have no objection to the proposal, subject to imposition of certain conditions.
- 9.5.4 Given the conclusions of the submitted FRA (namely that the site is in a location which is at low risk of surface and fluvial flooding, and the development can be designed in such a way so as to maintain greenfield surface water runoff rates) and the response from the LLFA, it is unclear what justification MSDC have for concluding that the development would increase flood risk elsewhere and, therefore, why the council consider the proposal conflicts with para 163 NPPF.
- 9.5.5 When considering the potential for surface flows from the appeal site to impact on the Low Road area it is relevant to note that the indicative surface water management plan identifies attenuated surface water flows from the site being discharged into the existing ditch network and, ultimately, into a small stream which flows north-east, away from the village (see drawing 21647 in Appendix A of Appendix 4 to this report, and Figure 2, below) .



Proposed route attenuated surface water flows from site would take via existing ditch network. Ditch network discharges to small stream which flows north-east away from village

● Appeal site

'Low Road' Area & Beck

*Figure 2: Sketch showing proposed route of surface water from appeal site, in relation to area of identified flooding at the Beck and Low Road area.*

- 9.5.6 Consequently, reason 3b is considered to be unsupported by the evidence and is not appropriate reason for refusal of this development proposal.

9.6 Reason 3c) (Foul Water) *The proposed development is contrary to para 180 NPPF as it will not ensure the new development is appropriate for its location as it does not take into account the likely effects, including cumulative effects, of pollution upon health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.*

9.6.1 Paragraph 180 states '*Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development*'.

9.6.2 In citing para 180 as a reason for refusal MSDC appear to be suggesting that the village of Fressingfield – designated in their adopted Core Strategy as a Primary Village and identified as a location where small-scale housing growth will be considered appropriate – is not, in fact, an appropriate location for new housing.

9.6.3 The logic of this approach is unclear and, further, this conclusion is at odds with the requirement at para 78 for planning policies to '*identify opportunities for villages to grow and thrive, especially where this will support local services*' (such as Fressingfield's school, shop and health centre).

9.6.4 It is also unclear why this site, within the village and immediately adjacent to the development boundary is considered an inappropriate location for housing development, when two other, similar-sized sites both located in the village and adjacent to the settlement boundary were only recently considered appropriate locations for new residential development (see consent 4410/16, 28 new homes and scout hut, approved in 2017, and consent 3872/16, 18 new homes and new chapel, approved in 2018).

9.6.5 Finally, the assertion that the appeal proposal represents development inappropriate for its location is at odds with the conclusions of the MSDC Strategic Housing and Economic Availability Assessment (SHEELA) (August 2017). This assessment – which includes a high-level assessment of utilities capacities – concluded that the site is '*potentially deemed suitable for residential development*' (see Appendix 21 for SHEELA report on site).

9.7 Reason 3d) (Foul water & flood risk) *The risks identified at 3b and 3c significantly and demonstrably outweigh the benefits which might arise from the proposed development.*

9.7.1 Objectors to the development proposal submitted evidence of recent instances of surface water overtopping manhole covers in the sewer which runs beneath at Low Road/Cratfield Road. This evidence illustrates an existing situation which is occurring irrespective of the new development in this appeal.

- 9.7.2 The third reason for refusal of the application considers – notwithstanding the comments from the relevant technical consultee - that the cause of this overtopping is an issue of capacity within the sewer network, and concludes that *‘the proposed development will exacerbate the known flooding and pollution problem... as a result of the fact that the foul system will contain more foul water from the significant new development’*. Reason 3 then goes on to conclude that this identified harm attributed to the development proposal *‘significantly and demonstrably outweigh the benefits that might arise from the proposed development’*.
- 9.7.3 Where the policies most important for determining the application are out of date, the test at paragraph 11 NPPF requires development proposals to be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposal.
- 9.7.4 Consequently, in order to properly apply this test, the nature and extent of adverse impacts must be understood and weighed against the benefits. Reason 3 makes no attempt to quantify the harm it identifies: it simply states that (notwithstanding the comments of Anglian Water) the proposal would make an existing bad situation worse and is therefore unacceptable.
- 9.7.5 Considering the situation in Fressingfield, it is understood that the public sewer network serves at least 401 properties in the village (this being the number of properties Anglian Water billed for sewerage in 2017 – source; *An Investigation as to whether the current Sewerage System has Sufficient Capacity to Accommodate the proposed Housing developments in Fressingfield*, prepared by Supporters Against Fressingfield Expansion, Appendix 17). The appeal proposal would result in not more than 24 new homes being connected to this sewerage network, representing a 6% increase in the number of homes connected to the network.
- 9.7.8 Furthermore, in attempting to assess the nature and scale of the existing problem, and the extent to which the proposed development would impact on this situation, it is instructive to consider responses to other development proposals in the village in the recent past.
- 9.7.9 In 2017 MSDC approved an application for up to 28 new homes and a new scout hut at a site approximately 200m away from the appeal site (and served by the same sewerage network). The application received 12 objections, which raised concerns regarding highways impacts, amenity impacts, ecology and the capacity of health centre and schools to accommodate the proposed new residents. Only one of these 12 objections raised the issue of flooding or foul water, where the objector stated, *‘I am also concerned the proposal would have an adverse effect on the drainage and water supply in the village’* (See Appendix 19 - Letter received by MSDC in respect of application ref 4410/16).
- 9.7.10 In 2018 MSDC approved an application for up to 18 new homes and a new chapel at a site less than 200m away from the appeal site (and, again, one served by the same sewerage network). Across 35 representations of objection and a petition signed by

25 residents, objectors to the proposal identified 23 different grounds of objection against the application ranging from highways to concerns regarding anti-social behaviour. None of the representations identified the issue of flood risk or sewerage capacity as an issue. (see Appendix 18 for extract from Report to Committee, detailing issues raised by objectors).

9.7.11 It is important to note that the appellant agrees that overtopping of the sewer network is – whatever the cause – unacceptable. However, preventing new development is not going to solve this existing problem, and the fact that this issue was not raised on other, similar applications in the village which were approved in the 22 month period during which the appeal application was being determined, raises questions as to why it is such a significant issue in this application, but was not considered a problem for these other developments.

9.7.12 The test at para 11 NPPF requires adverse impacts to significantly and demonstrably outweigh the benefits of the proposal in order to justify refusal. Given the modest increase in flows generated from the proposed development (which would represent a 6% increase in number of properties served), it is not considered that adverse impacts arising from this development in respect of foul water and surface flood water – if there are any at all – outweigh the benefits associated with the proposal.

9.8 *Reason 4a (Heritage: Impact on Listed Building) The application proposes the development of up to 5 new dwellings on open land to the immediate rear of a Grade II Listed Building. This would result in less than substantial harm to the setting of the Listed Building and it is not considered that the development would deliver any public benefits which that would outweigh this identified harm, nor is any such harm necessary in supporting such benefits. As such the development is contrary to policies HB1 and HB8 of the Local Plan, and 196 NPPF*

9.8.1 The test at para 11 NPPF is two-limbed, and the first limb states that where the most important policies are out of date, permission should be granted *‘unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed’*

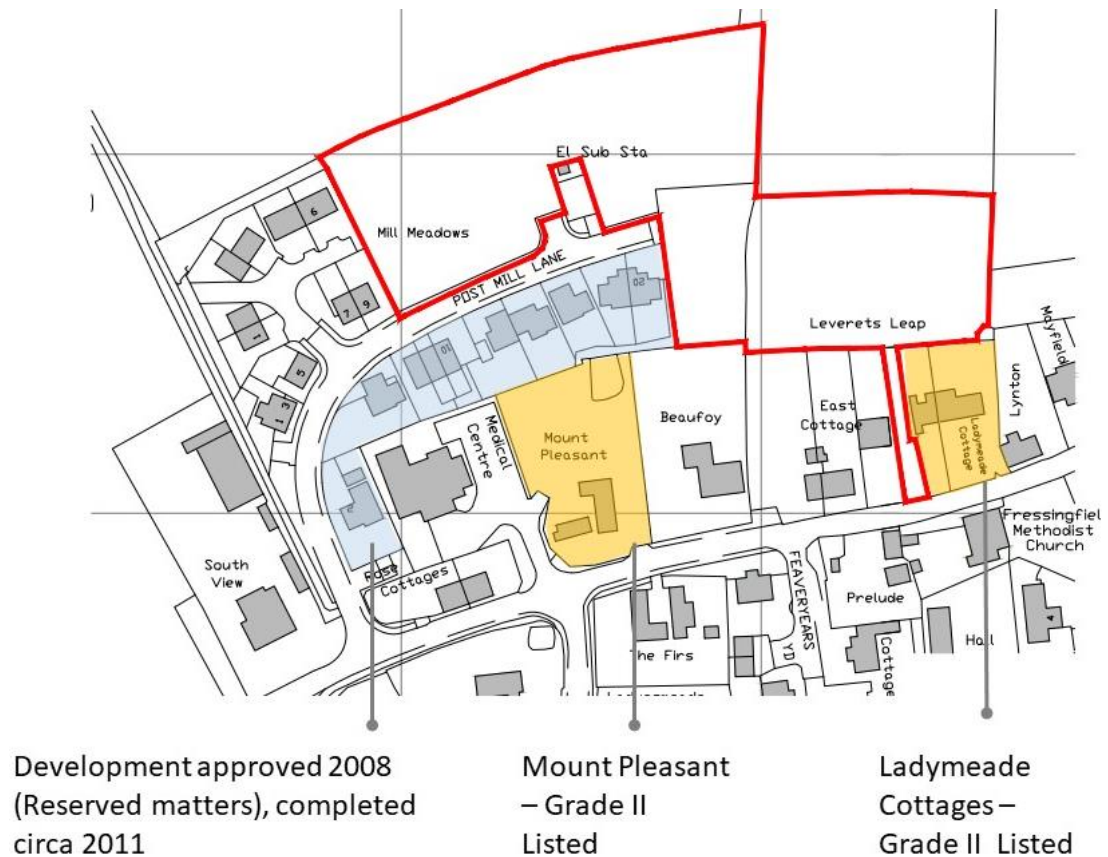
9.8.2 At footnote 6, the NPPF defines what should be considered ‘assets of particular importance’ and it includes Listed Buildings. Consequently, when considering development which would impact on a Listed Building, the appropriate test does not require any harm to that heritage asset to significantly and demonstrably outweigh the benefits of the scheme (i.e. the test set out in the second limb of para 11, and which is relevant to all the preceding matters considered in this Statement).

9.8.3 Instead, when considering impacts on designated heritage assets, the appropriate test is that at paras 195 and 196 NPPF. Para 195 is concerned with development proposals which would result in substantial harm to a designated heritage asset. This test is not relevant to this appeal as MSDC identify the perceived harm associated with the development as ‘less than substantial’. Para 196 states that, *‘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’.*

- 9.8.4 Accordingly, to properly apply this test a decision maker must first consider the level of harm to the designated heritage asset which would occur as a result of the proposed development, then balance this against the benefits delivered.
- 9.8.5 In this instance, the site is located to the immediate north of Ladymeade, a Grade II Listed house, now divided into two cottages. Ladymeade sits close to the centre of a plot which extends from New Street north, to the southern boundary of the application site. In addition, the proposed pedestrian link running between the site and New Street abuts the western boundary of Ladymeade’s plot. The site is also within 50m of a second Grade II Listed Building, Mount Pleasant.
- 9.8.5 In terms of impacts on these designated heritage assets, residential development such as that proposed will inevitably have some impact on the setting of the Listed buildings, particularly the Grade II Listed Ladymeade. However, this impact can be limited by respecting the existing boundary of the Ladymeade plot, retention of exiting boundary planting (a mixture of mature hedge and trees) and careful design and siting of new dwellings along the southern boundary of the eastern field (to be considered at reserved matters stage) so as to respect the setting of both Ladymeade and Mount Pleasant: these are all matters which can be properly controlled through the reserved matters process.
- 9.8.6 When considering the potential for development at the appeal site to adversely impact the setting of the Grade II Listed Ladymeade cottages, it should also be noted that the submitted layout is indicative only and was designed (at the suggestion of MSDC as part of the pre-application process) to accommodate a potential future road link to the neighbouring application site (1432/17, land at John Shepherd Avenue, application refused). Not having to accommodate this potential future link would create more space within the site and allow a greater number of potential site layouts to be tested by any future developer.
- 9.8.6 Furthermore, when considering the impact on these properties, it is also relevant to note that these houses sit close to the centre of a rural village and, as such, are in a location where changes to the immediate village and landscape – i.e. changes to their setting - are inevitable; these are not isolated properties in an isolated rural location.
- 9.8.7 In this context, the purpose of the Listing is to protect the character of the building and its setting, not to frustrate any development on neighbouring land. Appropriately located, scaled and detailed development will alter, but not adversely impact, the setting of these village-centre Listed Buildings. This appears to have been the approach adopted when considering consent for new residential development to the immediate rear of Mount Pleasant (0512/05): a pattern of development very similar to that which could arise as a result of development at the appeal site (see Figure 3, below).





*Figure 3: Showing the relationship of: i) previous but recent new development in relation to Grade II Listed Mount Pleasant and ii) the appeal site to Grade II Listed Ladymeade Cottages*

- 9.8.8 This is situation which is repeated across East Anglia (and beyond), and one only need to look at the development patterns in villages close to the application site to see that, as these rural villages expand and grow, the immediate setting of the historic core (which typically includes a number of Listed Buildings) is altered: this does not necessarily mean 'harm' to the heritage asset, and is an essential part of these villages remaining vital and living settlements, rather than museum pieces to be preserved in aspic.
- 9.8.9 This pattern is well illustrated in the nearby villages of Laxfield (approximately 5 miles south-east of the appeal site) – see Figure 4 – and Stradbroke (approximately 4 miles south) – see Figure 5.

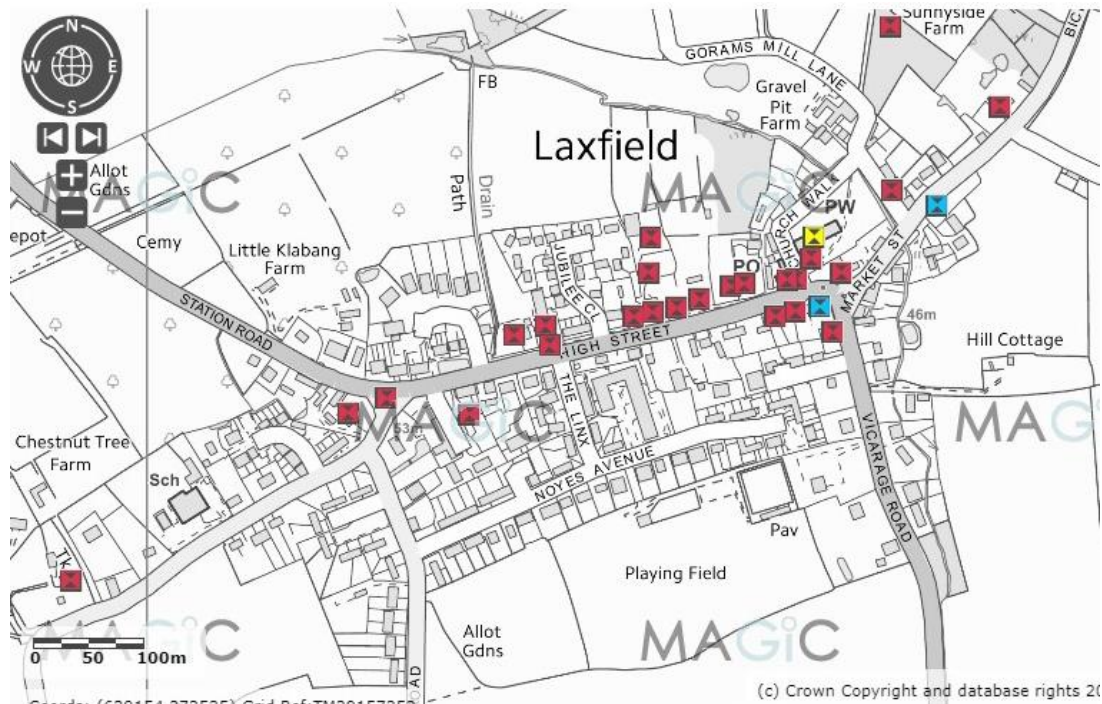


Figure 4: Extract from Magic Map.gov.uk showing location of Listed Buildings (Grade I – Yellow, Grade II\* – Blue, Grade II Red) within the village of Laxfield and the relationship to newer residential development.

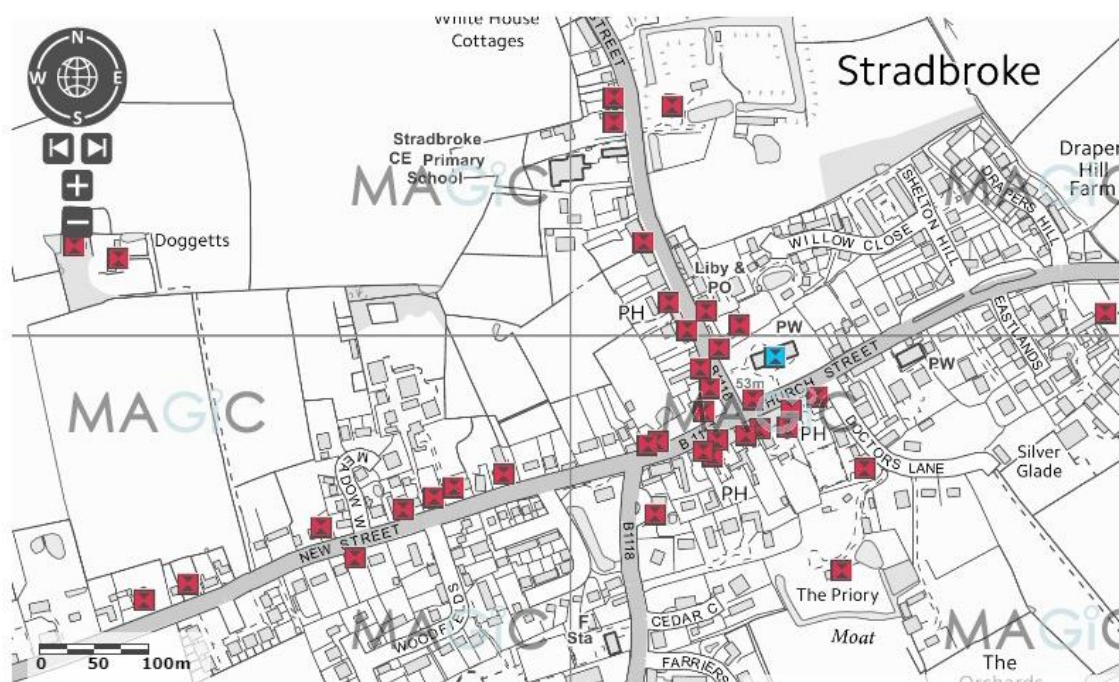


Figure 5: Extract from Magic Map.gov.uk showing location of Listed Buildings (Grade I – Yellow, Grade II\* – Blue, Grade II Red) within Stradbroke and the relationship to newer residential development.

9.8.10 Returning to the test at paragraph 196, and mindful that this is an outline planning application, it is accepted that the development could lead to less than substantial harm

– though, with appropriate design and mitigation this could be as low impact as causing no harm – to the setting of Ladymeade Cottages.

- 9.8.11 When considering the public benefits to weigh against this (potential) less than significant harm, MSDC simply state that the proposal would not deliver ‘*any public benefits, individually or collectively, that would outweigh the harm*’. Neither the five paragraphs of Reason 5 nor the officer’s report to committee identify what – if any – public benefits they consider the development can deliver with reference to paragraph 196. In this instance, in a planning context of persistent under-delivery of housing when assessed against need, marginal (and perhaps questionable) HLS position and recognising the undersupply of new affordable housing in rural Suffolk, the delivery of 24 new homes (including 8 affordable homes) is a public benefit which should be afforded significant weight in the decision. Smaller public benefits ranging from the economic benefits associated with the build process, CIL contributions and the boost to village vitality and support for local services which arise from a mixed housing development (in terms of size and tenure) are also important benefit arising from the appeal proposal.
- 9.8.12 Having regard to the above, and the specific guidance at paragraph 196 and the NPPF, it is considered the public benefits of the scheme significantly outweigh any modest adverse impacts there could be to the setting of the Grade II cottages, and there is no clear reason for refusing the development proposed on the grounds of heritage impacts.
- 9.9 Reason 4(b) (Heritage: Impact on Heritage Assets) *The development is contrary to para 192(a) as fails to take account of the desirability of sustaining and enhancing the significance of heritage assets*
- 9.9.1 Paragraph 192 states ‘*In determining applications, local planning authorities should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation*’.
- 9.9.2 The justification for this being part of the reason for refusal is unclear and, in respect of impact on heritage assets, it is considered that the appropriate test is that set out at para 196, discussed in detail above.
- 9.9.3 In applying the test at paragraph 196 the decision maker is taking account of the desirability of sustaining and enhancing the significance of heritage assets. Looking beyond the potential for impacts specific to the setting of the Grade II Ladymeade Cottage, an intrinsic part of the character of the village of Fressingfield (at the Core of which is the Conservation Area – a designated heritage asset) is the fact that it is a living working, village. Carefully sited, scaled and designed new developments, such as that which would come forward at the appeal site, help to ensure the vitality of the village and maintain it as a community and a vital place, rather than simply a static monument to a historic rural village.



9.10 Reason 4(c) (Heritage: Impact on Heritage Assets) *The development is contrary to para 192(c) NPPF, as it fails to take account of the desirability of new development making a positive contribution to local character and distinctiveness*

9.10.1 As an outline application it is unclear how this application can demonstrate the desirability of making a positive contribution to local character and distinctiveness, other than to reiterate the points above regarding carefully considered development on appropriate sites (such as the appeal site) contributing the vitality and sustainability of the village.

9.10.2 Even if it could be adequately demonstrated that the application fails to take account of this issue (and it is the conclusion of this Statement that this cannot be demonstrated), with reference to the test at paragraph 11, this would neither provide a clear reason for refusing the development, nor would the failure to take account of this 'desirability' amount to an adverse impact which significantly and demonstrably outweigh the benefits of the proposal (as detailed above).

9.11 Reason 4(d) (Heritage: Impact on Conservation Area) *The development is contrary to para 194 NPPF and policy HB8 as the proposal would result in harm to the setting of the Fressingfield Conservation Area and there is no clear and convincing justification – including public benefit – for this harm.*

9.11.1 Policy HB8 of the saved Local Plan is concerned with safeguarding the character of Conservation Areas and states: *Priority will be given to protecting the character and appearance of Conservation Areas... Similar care will be taken when considering proposed development on land which lies adjacent to a Conservation Area.*

9.11.2 The appeal site is neither within nor adjacent to a Conservation Area and, as such, the provisions of policy HB8 – to the extent that the saved policy accords with the NPPF – are not applicable to this appeal.

9.11.3 Paragraph 194 requires that *'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or harm from development within its setting) should require clear and convincing justification.*

9.11.4 In respect of the Grade II Listed cottages, the impact on the setting is considered in detail above, through application of the test at paragraph 196 NPPF. Reason 4 appears to state that, irrespective of the impact on the Listed Building, the adverse impact on the setting of Fressingfield Conservation Area would significantly and demonstrably outweigh the benefits of the proposal. This is not the case.

9.11.5 Given the detailed pre-application engagement with MSDC, the findings of the SHEELA regarding this site and the dialogue which (from the appellant's side, at least) was maintained throughout the 22 month determination process, it is surprising that the issue concerning impact on the character of the Conservation Area was not raised at any point prior to publication of the report to committee.

- 9.11.6 Mindful that, at its nearest point the Conservation Area is approximately 120m from the appeal site and that, at that point, is separated from the site by at least a road and one plot depth, it does not appear a convincing reason for refusal.
- 9.11.7 Given the distance, the presence of buildings between the edge of the Conservation Area and the appeal site, and the resulting limited intervisibility between the two, it is not considered that the proposal would have any adverse impact on the setting of the Fressingfield Conservation Area and, mindful of the test at paragraph 11, even if once could identify an adverse impact, it is not considered that this significantly and demonstrably outweigh the benefits associated with the scheme.

## 10 Conclusion

- 10.1 This appeal seeks consent for a development of 24 new homes, including 8 affordable homes. The site is highly deliverable, sustainably located and would demonstrably add to the economy and vitality of the village of Fressingfield.
- 10.2 In terms of the appropriate manner in which to assess the application, it is accepted by MSDC that policies most relevant to the proposal (when considering principle of the development) are out of date and, accordingly, the appropriate test is that at paragraph 11 NPPF.
- 10.3 It has been demonstrated above that the benefits of this proposal – including delivering of housing in an area where delivery has persistently fallen short of identified need – are substantial and that there are no adverse impacts which significantly and demonstrably outweigh these benefits.
- 10.4 The council's reasons for refusal have been rationalised and systematically worked through. As detailed in this assessment, they are not considered to have merit in planning terms and with specific reference to saved local plan policies (where these accord with the NPPF) and the NPPF itself, do not warrant refusal of this application.
- 10.5 For these reasons, the Inspector is respectfully invited to allow this appeal and enable this site to be brought forward as soon as possible, bringing to an end a very lengthy decision process.

## 11 Conditions

### Conditions Schedule

1. Details of the appearance, landscaping, layout, and scale, (the Reserved Matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the Reserved Matters to be approved.

### *Affordable Housing*

4. The development shall not begin until a scheme for the provision of affordable housing has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include (i) the numbers, type, tenure and location of the affordable housing, (ii) the timing of the construction of the affordable housing, (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing, (iv) the arrangements to ensure that such provision comprises affordable housing for first and subsequent occupiers, and (v) the occupancy criteria. The affordable housing shall then be provided and maintained in accordance with the approved scheme.

### *Drainage: Surface Water*

5. Concurrent with the first reserved matters application(s) a surface water drainage scheme shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be in accordance with the approved FRA and include:
  - a) Dimensioned plans and drawings of the surface water drainage scheme;
  - b) If the use of infiltration is not possible then modelling shall be submitted to demonstrate that the surface water runoff will be restricted to  $Q_{bar}$  or 2l/s/ha for all events up to the critical 1 in 100 year rainfall events including climate change as specified in the FRA;
  - c) Modelling of the surface water drainage scheme to show that the attenuation/infiltration features will contain the 1 in 100 year rainfall event including climate change;
  - d) Modelling of the surface water conveyance network in the 1 in 30 year rainfall event to show no above ground flooding, and modelling of the volumes of any above ground flooding from the pipe network in a 1 in 100 year climate change rainfall event, along with topographic plans showing where the water will flow and be stored to ensure no flooding of buildings or offsite flows;
  - e) Topographical plans depicting all exceedance flowpaths and demonstration that the flows would not flood buildings or flow offsite, and if they are to be directed to the surface water drainage system then the potential additional rates and volumes of surface water must be included within the modelling of the surface water system;

6. The scheme approved surface water drainage scheme (required by condition 5) shall be fully implemented as approved.
7. Concurrent with the first reserved matters application details of the implementation, maintenance and management of the surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
8. The development hereby permitted shall not be occupied until details of all Sustainable Urban Drainage System components and piped networks have been submitted, in an approved form, to and approved in writing by the Local Planning Authority for inclusion on the Lead Local Flood Authority's Flood Risk Asset Register.
9. No development shall commence until details of a construction surface water management plan detailing how surface water and storm water will be managed on the site during construction is submitted to and agreed in writing by the local planning authority. The construction surface water management plan shall be implemented and thereafter managed and maintained in accordance with the approved plan.

*Drainage: Foul Water*

10. No development shall commence until a foul water strategy has been submitted to an approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

*Amenity*

11. Construction work shall not take place outside the following hours: -  
 07:30 – 1800 Monday – Friday  
 08:30 - 13:30 Saturday  
 And no work on Sundays or Bank Holidays  
 (These hours shall only apply to work generating noise that is audible at the boundary of the nearest noise-sensitive property).

*Highways*

12. Unless otherwise agreed in writing, no dwelling on the development hereby approved shall be occupied until the following works have been completed in full accordance with a scheme that has been first approved by the Highway Authority to comprise:
  - A. Adjustment of the junction radius and associated footway widening at the junction of New Street and Priory Road.
  - B. Relocation of the dropped kerb pedestrian crossing on B1116.
  - C. Promotion of a Traffic Regulation Order (TRO) relating to 20mph speed limit on New Street (on up to two occasions) and on that TRO being sealed, the provision of all signing and lining associated with implementation of that speed limit.

13. Before the development is commenced, details of the estate roads and footpaths, (including layout, levels, gradients, surfacing and means of surface water drainage), shall be submitted to and approved in writing by the Local Planning Authority.
14. No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least Binder course level or better in accordance with the approved details except with the written agreement of the Local Planning Authority.
15. Before the development is commenced details of the areas to be provided for storage of Refuse/Recycling bins shall be submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.
16. Before the development is commenced details of the areas to be provided for the manoeuvring and parking of vehicles including secure cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.
17. Before development commences visibility splays at the junction of Post Mill Lane with New Street shall be provided as shown on Drawing Number 21647/002/B as submitted and shall thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over zero metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

#### *Archaeology*

18. No development shall take place within the area indicated [the whole site] until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
- b. The programme for post investigation assessment
- c. Provision to be made for analysis of the site investigation and recording
- d. Provision to be made for publication and dissemination of the analysis and records of the The Archaeological Service Resource Management Bury Resource Centre Hollow Road Bury St Edmunds Suffolk IP32 7AY site investigation
- e. Provision to be made for archive deposition of the analysis and records of the site investigation
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

- g. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.
19. No building shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation approved under part 1 and the provision made for analysis, publication and dissemination of results and archive deposition.

### *Ecology*

20. Concurrent with the first reserved matters application details (including programme of delivery, location and specifications, including specification of hedgehog-friendly fencing throughout the scheme) of all ecological mitigation and enhancement measures contained within the Preliminary Ecological Assessment report (Eco-Check Consultancy, April 2017), Reptile Survey (Eco-Check Consultancy, May 2017) and Great Crested Newt Method Statement (Eco-Check Consultancy, November 2017) shall be submitted to and approved in writing by the local planning authority. Thereafter, this approved scheme must be implemented to the agreed timescales and specification, unless otherwise agreed in awaiting by the Local Planning Authority.

## Appendices

Appendix	Title	Grouped As
Appendix 1	Planning Statement & Application Form	Original Application
Appendix 2	Site Location Plan	Original Application
Appendix 3	Indicative Site Plan	Original Application
Appendix 4	Flood Risk Assessment and Surface & Foul Water Proposals	Original Application
Appendix 5	Contamination Report	Original Application
Appendix 6	Arboricultural Assessment	Original Application
Appendix 7	Ecology Assessment	Original Application
Appendix 8	Transport Note prepared by La Ronde Wright	Original Application
Appendix 9	Supporting Statement: Transport	Evidence to support Appeal
Appendix 10	Pedestrian Route Assessment & proposed highways measures	Evidence to support Appeal
Appendix 11	Inspector's Decision Letter Woolpit	Miscellaneous supporting information
Appendix 12	Committee Report for app 1648/17 (appeal app) – extract demonstrates MSDC agree policies are out of date	Miscellaneous supporting information
Appendix 13	Extract from MSDC Committee Report – extract demonstrate that MSDC are now determining applications on the basis that Policy FC1 and FC1.1 are out of date (relevant part highlighted in pink text)	Miscellaneous supporting information
Appendix 14	Decision Notice	Miscellaneous supporting information
Appendix 15	Site layout plan CL01 approved under RM application 3216/08 (showing appeal site as area of 'potential future development')	Miscellaneous supporting information
Appendix 16(i) & (ii)	i) Updated Pre-Planning Assessment Report from Anglian Water; ii) Response from AW to mitigation enquiry	Miscellaneous supporting information
Appendix 17	An Investigation as to whether the current Sewerage System has Sufficient Capacity to Accommodate the proposed Housing developments in Fressingfield	Miscellaneous supporting information
Appendix 18	Extract from Mid Suffolk District Council Development Control Committee Report Agenda Item 9a, application ref 3872/16,	Miscellaneous supporting information

	illustrating points raised in objection to the proposed development of chapel and 18 new homes.	
Appendix 19	Letter received objecting to new Scout hut and houses (4410/16)	Miscellaneous supporting information
Appendix 20	Site assessment from MSDC SHEELA (2017)	Miscellaneous supporting information