

Mid Suffolk District Council's Rebuttal to the Appellant's Claim for Costs

Appeal reference: APP/W3520/W/19/3227159

Mid Suffolk District Council reference: 1648/17

Appeal under Section 78 of the Town and Country Planning Act 1990 in respect of:

‘Outline planning permission with all matters reserved for up to
24 dwellings and associated roads, infrastructure and open space’

Site address: Land at Post Mill Lane, Fressingfield, IP21 5BL

Appeal by: Fergus Bootman of La Ronde Wright Ltd.

on behalf of: Peter Davidson [C.E.D. Farms Ltd.]

June 2019

TOWN and COUNTRY PLANNING ACT 1990

THE TOWN AND COUNTRY PLANNING (APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE)
(ENGLAND) REGULATIONS 2009

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NPPG

Rebuttal to Appellant's Claim for Costs

Mid Suffolk District Council

1.0 Introduction

- 1.1 This Rebuttal Statement in respect of the Appellant's Claim for Costs has been prepared by Vincent Pearce, BA[Hons] MRTPI, Principal Planning Officer for Mid Suffolk District Council.
- 1.2 It relates to the Appellant's Claim for Costs reference ***LRW Ref 20190710.2*** dated 9 July 2019.

2.0 The Council's Position

- 2.1 The Council will demonstrate within this Rebuttal that the Appellant's Claim for Costs is not substantiated and that the Council acted reasonably throughout.
- 2.2 It is in fact a speculative claim that the Council respectfully asks the Inspector to dismiss.

3.0 The Rebuttal

- 3.1 This Statement will deal with each of the Appellant's claims in turn:

3.2 Failure to work with the applicant in a positive and proactive manner [1]

3.3 Changing case officers

- 3.4 The Council fully accepts that the case officer dealing with this application changed over the life of this application.
- 3.5 Case officer A [the original officer] who was a senior planning officer left the authority for a post in another planning authority at the start of 2018. The Council no longer has email and telephone logs relating to officer A but as an experienced officer the Council would have expected constructive dialogue to

have been maintained and has no reason to suppose that dialogue was not ongoing.

- 3.6 At that stage the application was not in a position to enable determination.
- 3.7 Officer B, a principal planning officer, then took on the application from officer A to maintain business continuity.
- 3.8 It is perfectly reasonable for any local planning authority to manage its capacity to ensure that in the event of an impact by circumstances beyond its control it can continue to maintain its level of service to customers. In this case it meant another case officer being allocated application ref: 1648/17.
- 3.9 The Council cannot reasonably legislate for such circumstances but it can and did respond flexibly and with agility to ensure that there was no breakdown in service.
- 3.10 In this particular case the Council ensured that there was no gap between officer A departing and officer B assuming responsibility for handling the planning application now the subject of appeal.
- 3.11 The Council considers this represents best practice and demonstrates its commitment to excellent customer service and a positive approach to working with applicants.
- 3.12 In Spring 2018 the impending maternity leave of case officer B was the trigger for the case to be taken on by case officer C [the case officer who produced the Committee report and has handled the appeal] as issues with the application had not been fully resolved.
- 3.13 Indeed, the Council ensured that the officer C who took over from officer B was also a Principal Planning Officer [in this case with 40 years planning experience].

- 3.14 Clearly having three officers working on the application over the period of its lifetime is not ideal. The Council recognises this, but it was not a case of the Council arbitrarily chopping and changing officers around as implied by the appellant to frustrate them.
- 3.15 The Council is therefore surprised that the appellant is claiming that the change in case officers was unreasonable. On the contrary the Council believes its foresight ensured seamless delivery of service in the face of these challenges. This was and is an entirely reasonable response by the Council to changing circumstances beyond its control.
- 3.16 The Inspector will have noted from the material submitted by the Council with its Statement of Case just how controversial this application was and remains. The Council actively sought to ensure that the experience of officers dealing with the application was commensurate with the complexity of the issues raised and the intense local interest/objection.
- 3.17 This is most definitely an example of the Council's commitment to a constructive and positive approach. It also ensured the applicant could be confident that the change in officer would not prejudice their position in terms of the experience and competence of the case officer.
- 3.18 Vincent Pearce [case officer C] joined the Council on 14 May 2018.
- 3.19 On 16 May he emailed Fergus Bootman to introduce himself as the case officer taking on application reference 1648/17 from officer A.

***"From:* Vincent Pearce <Vincent.Pearce@baberghmidsuffolk.gov.uk>**

***Date:* Wednesday, 16 May 2018 at 15:50**

***To:* Fergus Bootman <Fergus.Bootman@larondewright.co.uk>**

***Subject:* contact Vincent Pearce Babergh Mid Suffolk**

Hello Fergus

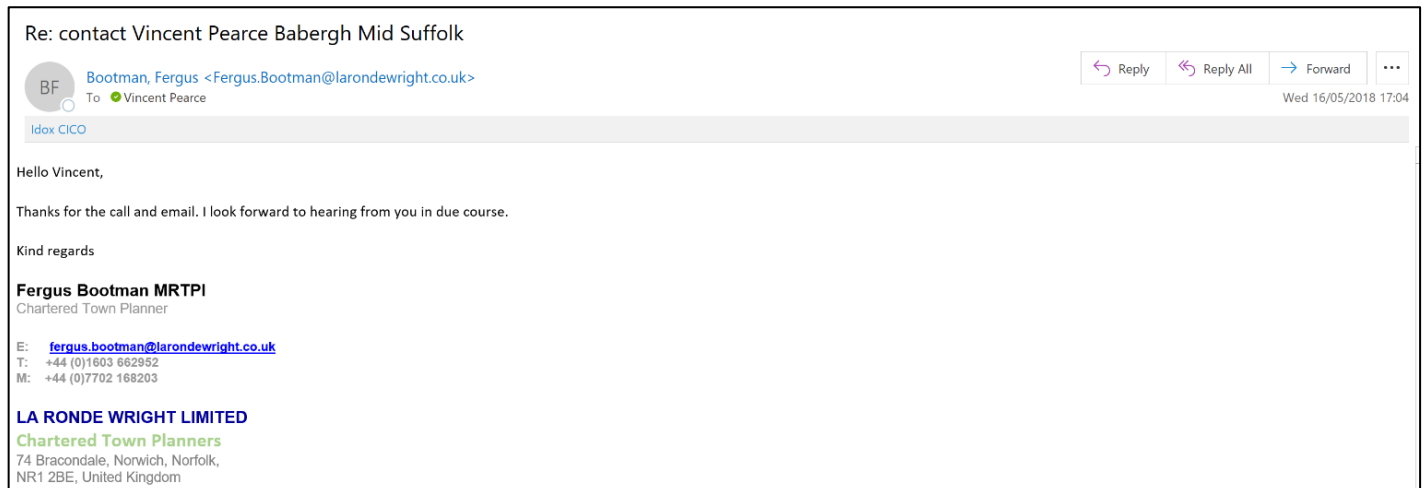
This is my email address (your Fressingfield application 1648/17)

Speak to you soon following my site visit tomorrow and after I have chased Sam Harvey SCC Highways

Kind regards

Vincent"

3.20 Fergus Bootman was pleased with this contact.



3.21 On 23 May 2018 following his site visit Vincent Pearce emailed Fergus Bootman with his comments. A sketch was also attached to illustrate some of the constructive and positive suggestions being made to enhance the prospects of the proposal.

3.22 In an email dated 23 May 2018 from Fergus Bootman to Vincent Pearce Mr Bootman recorded:

“...Again, I do appreciate your thoughts on this and your proactive approach.....”

3.23 This proactive, problem-solving approach is exactly what the Government advocates when urging local planning authorities to be constructive and positive.

3.24 This is the pattern followed by the case officer. The Council suggests that Mr Bootman’s frustration now expressed in his Claim for Costs was not a product of lack of collaboration with the case officer but a symptom of the officer not being able to properly report the application to Committee because of the changes to the NPPF [in 2018], ongoing objection with detailed and thoroughly

researched technical statements being submitted from local people and a changing 5YHLS landscape [of which more later].

3.25 **Heritage Issues**

3.25 The Council does not accept Mr Bootman's claim that he was unaware of the Council's concerns in respect of what it saw [sees] as harm to adjacent heritage asset: Ladymeade Cottage [Grade II listed building] until some 13 months into the life of the application.

3.26 On 30 May 2017 Paul Harrison [Heritage and Design Officer BMSDC] provided formal heritage advice as an internal consultee within which included:

Although the contribution of the farmland to the setting of the listed building is modest, and the importance of setting to the building's overall heritage significance is also modest, the impact of substituting modern suburban housing for undeveloped farmland is considerable, particularly as it would sever the building's last physical connection with the rural surroundings, and the harm should be rated between low and medium.

3.27 This advice was shared and remains publicly available on the Council's web page.

3.28 It is this advice that shaped reaction to the overall proposal in terms of harm contrary to paragraph 196 that could not be outweighed by the public benefits arising from the development.

3.29 At no time was the applicant willing to reduce the overall number of proposed units from 24 on the basis that that would affect the land/build deal then agreed.

3.30 Had the applicant demonstrated a without prejudice willingness to consider the implications of a reduction in units the issue in respect of heritage harm may have been satisfactorily resolved. He didn't and it wasn't.

3.31 Collaborative working requires all parties involved to be constructive and positive.

3.32 In its Statement of Case the Council has highlighted how the proximity of proposed dwellings to the rear of Ladymeade Cottage results in "less than substantial harm" to that asset. By refusing to entertain a reduction in unit numbers the applicant had effectively closed that debate and limited the scope for constructive and positive engagement. Hence the limited scope of layout

amendment changes subsequently shared by the Council and the fact that a reduction in unit numbers to the rear of Ladymeade Cottage was not pursued.

3.33 The Council's Statement of Case dedicates sixteen detailed paragraphs to justifying its refusal of the application now at appeal. The Council argues that this is a robust defence that fully sets out the Council's case. The appellant is at liberty to produce such rebuttal arguments as he deems necessary. Claiming that the Council has not made a case is clearly not the case.

3.34 On this evidence the Council would expect this element of the appellants claim to fail.

3.35 Alleged shifting advice: Highways

3.36 The appellant suggests that the case officer gave shifting advice as to the position of local highway authority in respect of the proposal, its impact and the need for highway works and this impacted possible Committee dates.

3.37 The Council accepts that the advice of Suffolk County Council as statutory consultee [the local highway authority] did change and this did have an impact on how the merits of the proposal could be reported. This therefore did result in some uncertainty around when the application would be reported to Committee.

3.38 What the appellant fails to mention is the fact the during the lifetime of this application the NPPF was subject to significant amendment from the version that was in force when the application was first submitted [NPPF 2012] to the one that applied [NPPF 2018] when Suffolk County Council as local highway authority amended its formal advice to one of objection with recommended reasons for refusal.

3.39 The review by SCC Highways of the application was prompted by appeal decisions that followed the publication of NPPF [2018] and these took time to be reported. This time had accrued as a result of the local highway authority attempting to agree a package of highway works that might ameliorate traffic problems at Jubilee Corner. It was and is perfectly legitimate for the local highway authority to seek to answer all the highway safety issues raised by local residents in the highly detailed documents submitted by them. The agent's frustration that questions being raised by local people resulted in delays whilst the local planning and highway authorities researched and responded to these does not make the action of either Council unconstructive or negative. Indeed,

the Council argues the contrary is true. Both were attempting to whittle down any areas of dispute between all the parties.

- 3.40 This omission can only be deliberate to artificially paint a false picture of unreasonable behaviour where one did not exist. In its amended comments SCC[H] made it absolutely clear that the change in NPPF and particularly paragraph 109 had required the application to be reassessed in the light of the amended advice.

“Following the July 2018 revisions to the National Planning Policy Framework Suffolk County Council has reviewed its position regarding planning application 1648/17....” Taken from the Introduction of SCC[H] formal consultation response dated November 2018. [SCC[H] having re-examined local conditions in Fressingfield in a series of visits]

- 3.41 This is perfectly reasonable. Indeed had SCC[H] not assessed the merits of the proposals in the light of the latest NPPF and after having regard to local submissions it could have opened a decision based on the initial advice to legal challenge. In other words by not considering a reassessed and reviewed highway advice from the LHA the Council [MSDC] may have been held to have acted unreasonably.
- 3.42 It is also the case that the nature of the proposed highway works to Jubilee Corner were under review by the LHA on the basis of determining their likely effectiveness in mitigating the harm to pedestrian safety identified by the LHA as arising from this and other applications in Fressingfield.
- 3.43 The applicant’s agent considered that his client should not be required to make any contribution towards the cost of those works on the basis that his clients scheme was significantly smaller than that other two housing proposals.

- 3.44 At the same time as these debates were ongoing the Council also needed to demonstrate that it was listening to strong concerns being expressed by local people.
- 3.45 This meant the case officer attending a public meeting in a packed community centre in Fressingfield and him organising at separate site meetings with representatives from SAFE [Supporters Against Fressingfield Expansion], the LHA and a further round table meeting with Anglian Water representatives, SAFE representatives and the local councillor. Each of these produced their own issues and matters arising that required careful analysis. This was and is a legitimate part of the democratic planning process and cannot be labelled as unreasonable behaviour simply because it meant the application could not be reported to Committee because material planning considerations were still actively being explored long into the life of the application.
- 3.46 The issues underpinning the acknowledged localised flooding problems in Fressingfield were complicated and the cause little understood until forensic discussion with the AW had teased out the likely root cause. It was at this point that the real impact of new development on the flooding problem in Fressingfield became clear. Had the Council not have pursued the issue as thoroughly as it did with the support of local people the Committee may never have had all the relevant facts before it. That would have been unreasonable and would have exposed the Council to criticism for not adequately considering the drainage implications of the proposal when considering its merits. Particularly if planning permission had been granted only to find out later that the problem of raw sewage spewing out into Low Road had been exacerbated by additional development.

3.47 Alleged shifting advice: Drainage

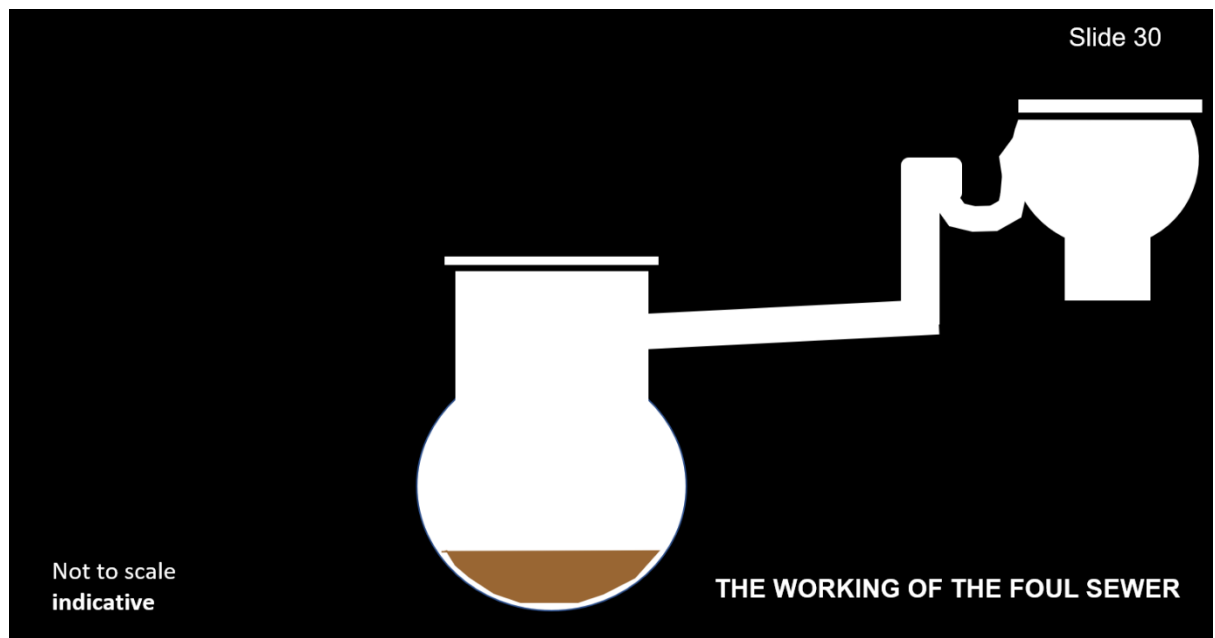
- 3.48 The reference to the note of meeting with Anglian Water is in the Council's Statement of Case in order to provide evidence that the meeting in question occurred. The report to Committee clearly and comprehensively reported the nature of the problem with Fressingfield's foul water drainage system – as established at that meeting.
- 3.49 The appellant has benefitted from access to the Committee Agenda from before 21 November 2018 and in particular the reference below:

4.13.1 Foul Water

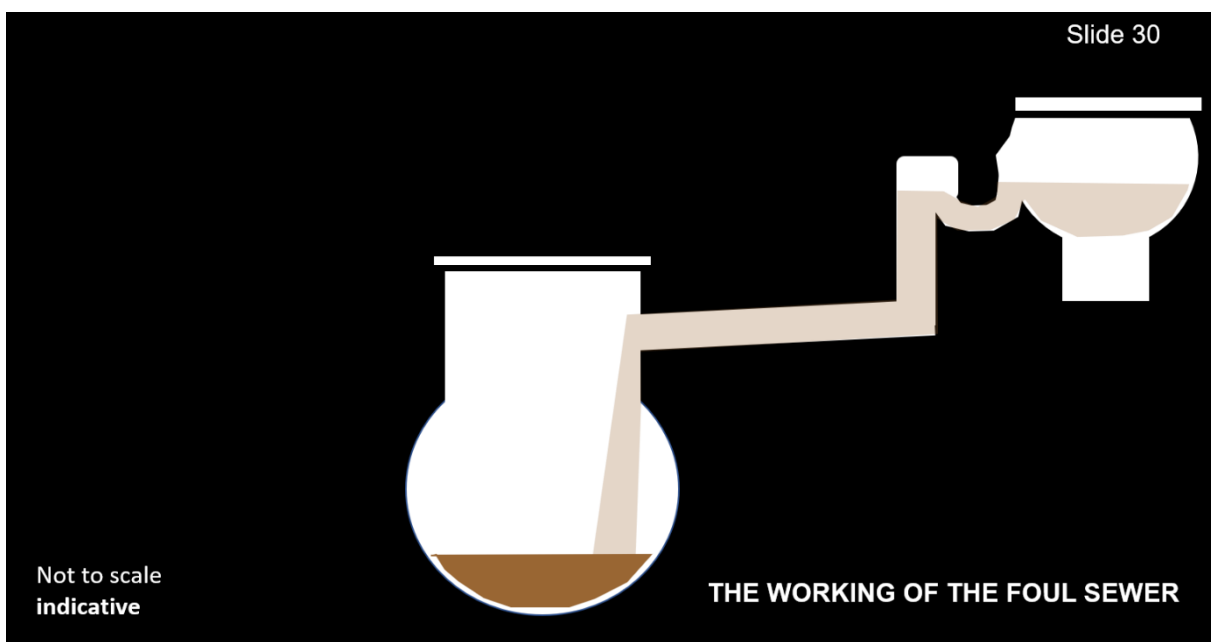
- 4.13.2 The foul water system serving the majority of Fressingfield is described by Anglian Water [AW] as a 'closed' system. That is to say that it was not originally designed to accommodate surface water in a combined pipe and was historically not constructed for such dual functionality. Its function is to transport foul water only. It was constructed with no surface water connections. Therefore when modelling foul flows arising from new development Anglian Water's models only factor in foul water flows and the impact on capacity because it is 'designed' as a closed foul water system.
- 4.13.3 Anglian Water has investigated the possible causes of acknowledged localised flooding where raw sewage comes up out of the sewer when the manholes are 'popped' open by the excess pressure in the system during storms. They have ruled out ingress of surface water into the foul water system as a result of broken pipes. The only plausible cause therefore can only be surface water connections.
- 4.13.4 Since the systems construction in the early nineteenth century an unknown number of domestic surface water connections have been connected to the foul water system as was the custom without the knowledge of the foul drainage authority. This is not peculiar to Fressingfield but occurred all over the country.
- 4.13.5 In raising no objection to additional development in Fressingfield Anglian Water does so because the Fressingfield 'closed' foul drainage system theoretically has sufficient capacity to accommodate the foul flows from the three proposed developments.
- 4.13.6 The fact that surface water connections have been made and therefore increase the amount of water in the pipes is not a material consideration for AW because those connections should not be there. That said their hands are tied because they do not have the legal powers or budget to have such historic connections removed.
- 4.13.7 They will only take action when the pressure in the system during storms is such that raw sewage backs up and forces its way out of domestic lavatory bowls into peoples houses.
- 4.13.8 For Fressingfield this means that when large quantities of rain fall in a short time the spare capacity in the foul water pipes is rapidly occupied by surface water and the build-up of pressure and content causes the manhole covers to pop and diluted raw sewage to spill into the road and the Beck.
- 4.13.9 The additional development currently being proposed in Fressingfield [including the application site under consideration here] is not likely to significantly impact the capacity in the foul surface system in its own right in normal conditions. However, it is reasonable to assume that in periods of high rainfall in a short period of time it will take less surface water to fill the capacity of the foul water system [because it now contains more foul sewage] and that as a result an equivalent amount of rainfall post development completion will increase the risk and quantity of flooding. This flooding is also likely to contained increased levels of foul sewage content.
- 4.13.10 Whilst this is not it would appear be an issue that can be resolved by AW as the budgets do not exist and it is not a problem of AW's making it is reasonable for the planning authority to conclude that the impacts described above can be expected even where no additional surface water is entering the foul water system from the new developments.
- 4.13.11 This cannot be considered environmentally sustainable. The pollution of parts of the village and the Beck, however occasional, with raw sewage, sanitary products and toilet paper is unacceptable pollution that will only worsen with significant levels of new development connecting to the Fressingfield foul water system. As it becomes increasingly common to experience extreme weather conditions in the UK it seems ridiculous and completely unacceptable to expect local people to endure what at times looks and smells like a medieval living environment.
- 4.13.12 Residents within the village who do enjoy the benefit of surface water 'connections' to the foul water system could make things easier for those fellow residents who experience the flooding by installing water butts to reduce the pressure on the foul water system - That is to say storage in butts will mean the foul system will not be expected to accept so much abnormal flow during high rainfall. It seems unlikely however that residents of properties with historic surface water connections to the foul system will opt to pay for the installation of a separate surface water drain even if it could be established by investigation [dyes] that they did have such a connection.

3.50 Furthermore the presentation to Committee that was attended by Fergus Bootman included an animated diagrammatic representation of the foul drainage system in Fressingfield based on the description of the issue provided by Anglian Water. The note of the meeting accidentally missing from Council's bundle of appendix documents adds nothing new to the Council's Case and the associated Committee report and was to be included merely to evidence the meeting occurred. The appellant's case has not been prejudiced by the fact that the note of meeting appears not to have been sent with the Council's Statement of Case and appendices.

1



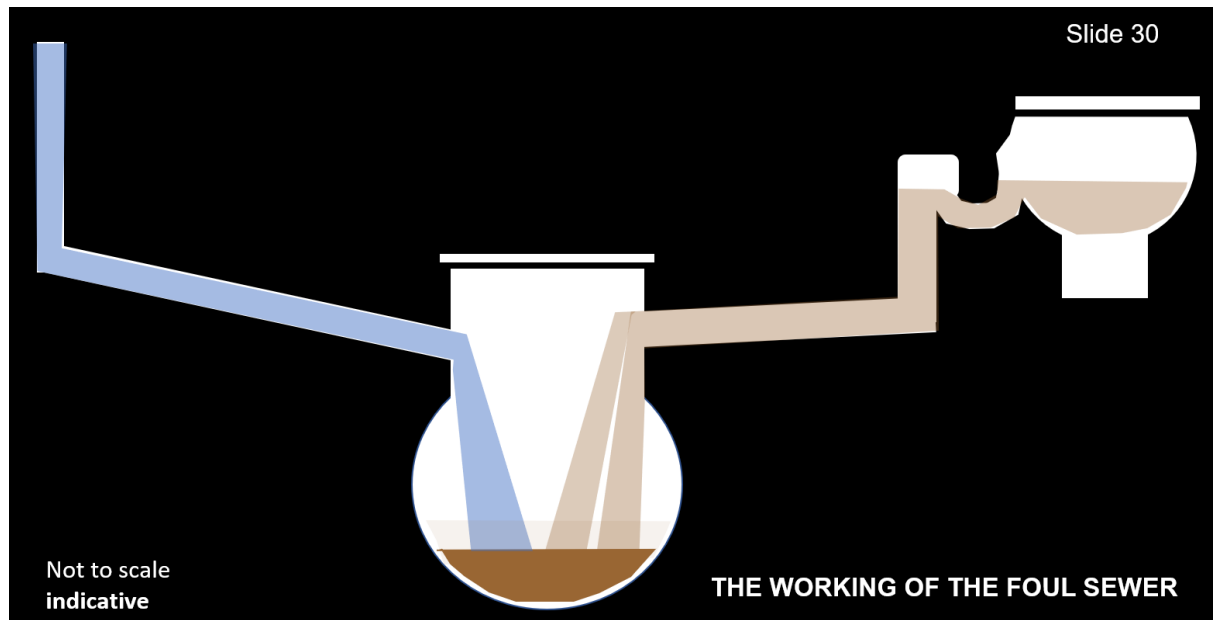
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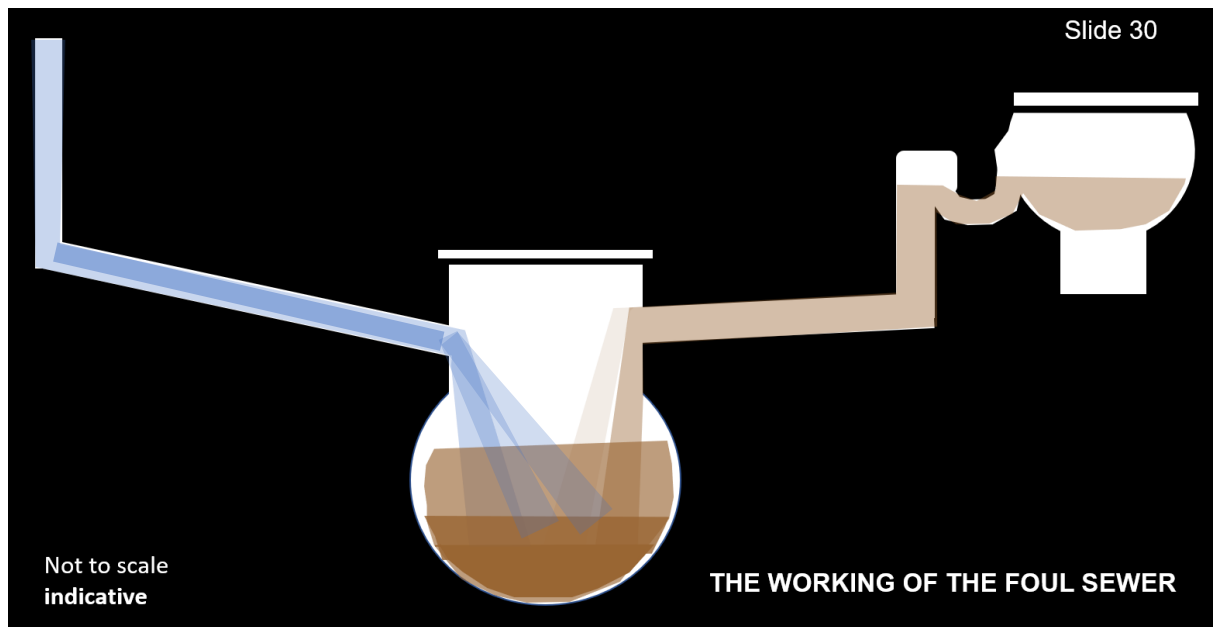
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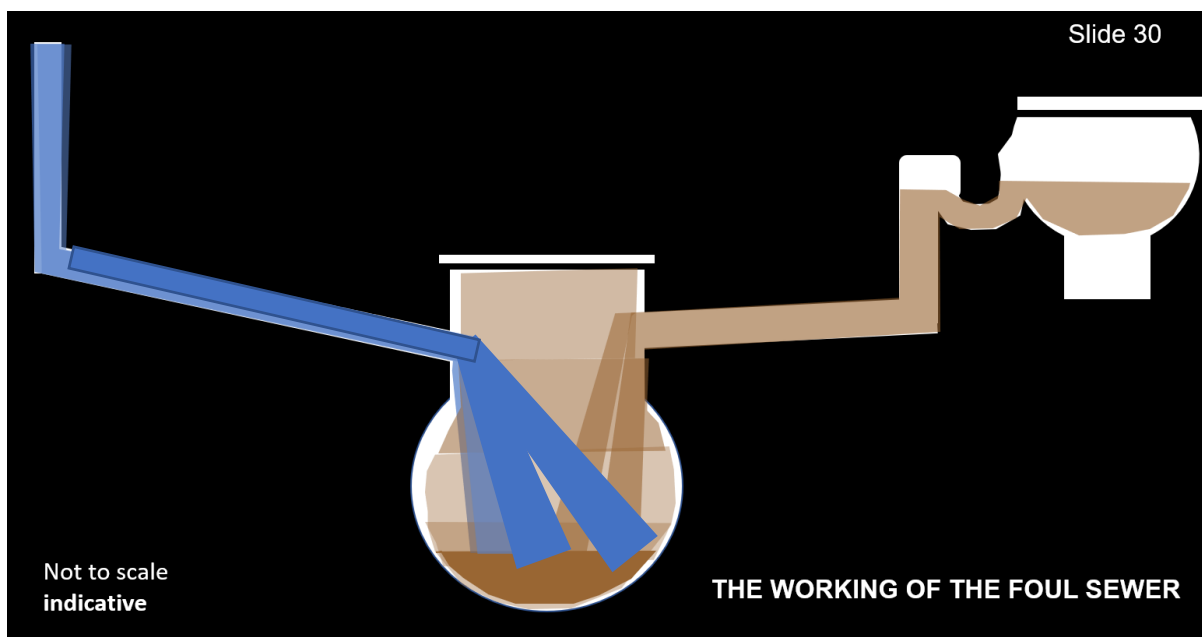
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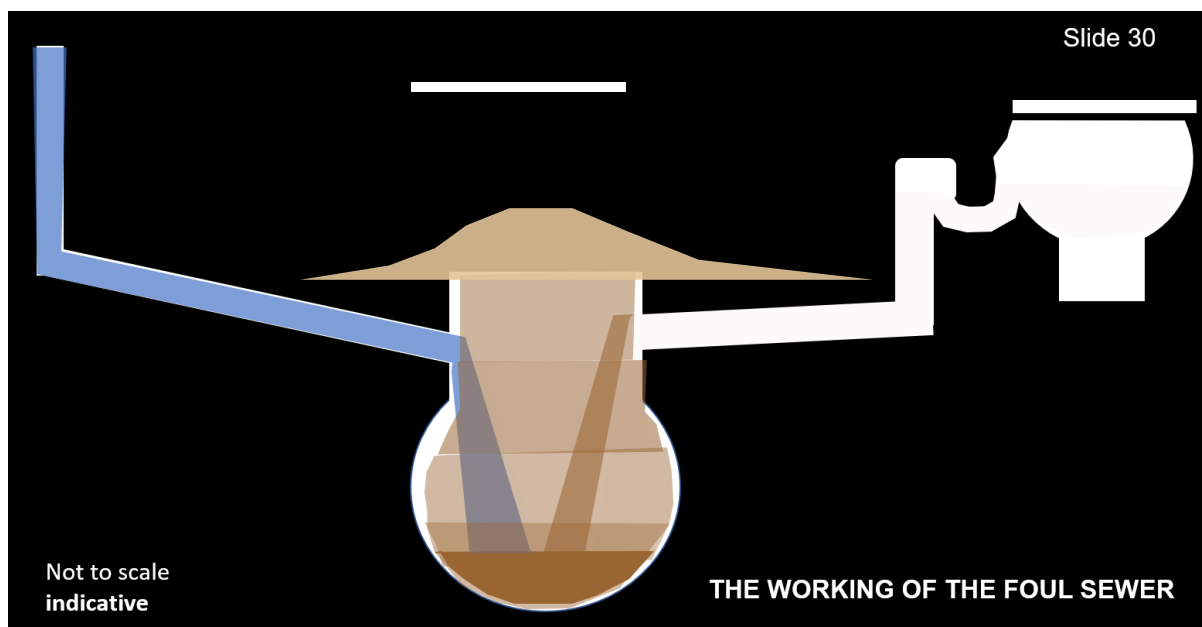
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Animated PowerPoint extract from Committee presentation to demonstrate what happens to Fressingfield's foul sewage system during heavy rain.

- 1&2 If system genuinely 'closed' it has capacity
- 3 new foul input
- 4 However, system is in reality 'combined' with surface water connections
- 5 Additional sewage in system [from new development] ordinarily not a problem even with surface water infiltration
- 6 However, heavy rainfall takes up capacity and pressurises the foul system
- 7 Manholes pop and diluted raw sewage pours into streets, the beck and gardens. Added sewage in the system from new development means more concentrated effluent outfall

3.51 In order to illustrate the lengths to which the Council went to find a consensus and the factors that meant it was not reasonably possible to report the application to Committee before it was the following brief action chronology is provided:

- case officer Vincent Pearce joins BMSDC

14 May 2018

- Formal hand-over of application to Vincent Pearce and briefing by case officer B

16 May 2018

- Vincent Pearce contacts agent Fergus Bootman to introduce himself as new case officer

16 May 2018

- Vincent Pearce visits Fressingfield and discusses application with Parish Clerk and engages in a 2 hour walk about looking at issues arising from application. **This was relevant to the consideration of 1648/17 because it was part of ongoing public consultation**

17 May 2018

- Email from Vincent Pearce to Fergus Bootman with sketch attachment

23 May 2019.

- Email **23 May** 2018 from Fergus Bootman to Vincent Pearce

“...Again, I do appreciate your thoughts on this and your proactive approach.....”

- Vincent Pearce attends site meeting in Fressingfield with SAFE [Supporters Against Fressingfield Expansion] representatives and carried out 3 hour walk about to look at areas of concern. **This was relevant to the consideration of 1648/17 because it was part of ongoing public consultation**

29 May 2018

- Email from Vincent Pearce to Fergus Bootman with sketch attachment

31 May 2019.

- Vincent Pearce attends 2 hour public meeting [19.30hrs] in Fressingfield to discuss village objections with residents in packed village hall. **This was relevant to the consideration of 1648/17 because it was part of ongoing public consultation**

4 June 2018

- MSDC PLANNING 'A' COMMITTEE **6 June** 2018: Not able to present to this committee as matters outstanding
- Email from Vincent Pearce to Fergus Bootman with sketch attachment **12 June** 2019.
- MSDC PLANNING 'A' COMMITTEE **4 July** 2018: Not able to present to this committee as matters outstanding
- Publication of Babergh Mid Suffolk AMR 2017-2018. **This was central to consideration of 1648/17 because it indicated that BMSDC was able to demonstrate that there was a 5YHLS in Mid Suffolk. [relevant to the consideration of 1648/17]. This was a material consideration that did not lend support to 1648/17 and it was agreed with Mr Bootman that no decision would be taken pending the outcome of the Woolpit Appeal [where the 5YHLS was to be challenged]**

July 2018

- **Woolpit Inquiry held on 31 July, 1, 30 and 31 August 2018 Site visit made on 2 August 2018.**
- MSDC PLANNING 'A' COMMITTEE **1 August** 2018: Not able to present to this committee as **matters outstanding and Woolpit decision awaited**
- MSDC PLANNING 'A' COMMITTEE **29 August** 2018: Not able to present to this committee as **matters outstanding and Woolpit decision awaited**
- MSDC PLANNING 'A' COMMITTEE **26 September** 2018: Not able to present to this committee as **matters outstanding and Woolpit decision awaited**

- Woolpit Decision issued **28 September 2018**. This was relevant to the consideration of 1648/17 because the Inspector in this case determined that on the evidence provided MSDC was not able to demonstrate that it had a 5YHLS. This was relevant to 1648/17 as it now lent greater support to the proposal under paragraph 11 of the NPPF
- BMSDC begins review of its 5YHLS using latest methodology prescribed by NPPF as it disputes Woolpit Inspectors conclusion in respect of 5YHLS position in Mid Suffolk. This was relevant to 1648/17 as members on the Planning Committee wanted to be presented with an accurate 5YHLS position statement for all residential applications in the light of the dispute in respect of Woolpit. **It is right that the Committee had the most accurate information before it because the triggering [or not] of paragraph 11 and being able to demonstrate a 5YHLS is so fundamental to any lpa's consideration of the merits of major residential applications. The Council required its position to be robust in the face of threatened JR from a number of sources.**
- Meeting with SCC Highways to discuss application. **Relevant because of the review of their initial comments being carried out by SCC Highways**

9 October 2019

- Site meeting in Fressingfield with SAFE representatives, AW representatives, local councillor. **This was relevant because it was the first time the relevant drainage authority had engaged in direct discussion in respect of the drainage issues in Fressingfield. It was this meeting that established that Fressingfield's foul drainage system was in fact for all practical purposes 'combined' and not 'closed'**

12 October 2018

- MSDC PLANNING 'A' COMMITTEE **24 October 2018**: Not able to present to this committee as **matters outstanding**
- Amended SCC Highway authority consultation response: 2 November 2018 **Recommend REFUSAL on highway safety grounds having reviewed earlier recommendation and considered paragraph 109 in the light of appeal decisions that clarified interpretation.**

“Recent appeal decisions have clarified the Planning Inspectorates views on road safety and we have considered these in our response. In summary the Planning Inspectors have viewed each site as unique and that the absence of a history of crashes should be balanced against road safety issues when deciding if there is an unacceptable impact on highway safety grounds”

As SCC [H] had long concerns over pedestrian safety caused by the lack of footways in New Street a further 24 units disgorging pedestrians into New Street was considered an unacceptable hazard now capable of resisting under paragraph 109. The case law had taken a little while to evolve following publication of the NPPF [2018]”

- MSDC PLANNING ‘A’ COMMITTEE 21 November 2018: **Committee refuses application**

3.52 The Inspector’s attention is drawn to the fact that throughout this period the Appellant was at liberty to submit an appeal for non-determination if there was a concern about timings? That they chose not to do so underlines the fact that they were engaged in supporting - even if only tacitly - the LPA and LHA in exploring all of the most important issues.

4.0 Failure to respond to – or recognise – the changing situation with regards to cumulative impacts [2]

4.1 The appellant’s agent also fails to recognise or mention that in July 2018 the Council produced its AMR which demonstrated the Council did have a 5YHLS. This meant that consideration of the application now at appeal would need to be set in this context rather than one in which the applicant was proposing 24 units during a period where a 5YHLS did not exist. The implications for the application and the fact that the tilted balance would not need to be applied on the basis of no 5YHLS were explained to the agent.

4.2 In the spirit of full constructive and positive working the Council explained to the agent that although circumstances were now less favourable towards his client’s proposal an appeal had been lodged in Woolpit which would involve an up to date analysis of the Council’s 5YHLS. This may be relevant to the Fressingfield case.

4.3 The agent was at this point willing to wait for the outcome of the Woolpit Appeal in the hope that it provided greater clarity around the question “Can the Council demonstrate that it has a 5YHLS” – for the obvious reason that this might ultimately help his client.

- 4.4 The appeal decision of September 2018 in respect of the Woolpit case resulted in the Inspector in that case concluding that the Council had not demonstrated it had a 5YHLS at the Inquiry.
- 4.5 The figures considered at the Woolpit appeal had been produced before the Governments change in methodology for calculating 5YHLS and therefore the Council immediately announced that it would produce an interim Statement in respect of its 5YHLS based on the newly described methodology as it had not been given a chance to re-work its data for the Inquiry. This would again provide useful clarity in respect of the NPPF context within which the application would be assessed and therefore was reasonable
- 4.6 The Council therefore argues that the applicant/appellants agent was supportive of these delays in as much as they may have resulted in advantage to his client's case when it was presented to Committee. It is somewhat surprising therefore to find that the agent is now stating the delay for these actions to be completed was unreasonable ...but only when the advantage he had hoped to gain failed to materialise.
- 4.7 The agent at paragraph 3.4 of his Claim for Costs states:
- “When determining this application at Planning Committee the Council had already refused the two much larger planning applications (0586/17 and 1449/17). Arguably, at this point the issue of cumulative impacts should have fallen away and not impacted on the appeal proposal for 24 new homes. However, the Council's decision was based the potential for cumulative impacts - particularly with regards to highways, where Suffolk County Council's (SCC) position of objection was explicitly based on cumulative impacts.”
- 4.8 This completely fails to recognise that the report presented to Committee in respect of 1648/17 makes it clear that the proposal when judged on its individual merits is unacceptable. The agent appears to have conflated the three reports and a reference to cumulative impacts to mean that the Council did not assess 1648/17 on its individual merits once the other two applications had been refused. That is demonstrably not the case as the extracts below clearly show:

Following the July 2018 revisions to the National Planning Policy Framework (NPPF) Suffolk County Council has reviewed its position regarding planning applications 1648/17, 1449/17 and 1432/17. The significant change in the NPPF is para 109 that states that development should only be prevented or refused on highway grounds if there would be an *unacceptable impact on highway safety*, or the residual cumulative impacts on the road network would be severe. This revises the previous guidance that stated that development should only be refused where the residual cumulative impacts are severe.

In our previous response we stated that the impact of the proposed development was at the high level of significance in terms of road safety, but that no single road safety issue was considered severe as no significant numbers of crashes had been recorded in the area and hence we could not recommend refusal of these applications based on the 2012 version of the NPPF.

Recent planning appeal decisions¹ have clarified the Planning Inspectorates views on road safety and we have considered these in our response. In summary the Planning Inspectors have viewed each site as unique and that the absence of a history of crashes should be balanced against observed road safety issues when deciding if there is an unacceptable impact on highway safety.

Extract from SCC[H] formal consultation response 2 November 2018

4.21 Cumulative Impacts

4.21.1 The application must principally be judged on its individual planning merits but the NPPF [2018] does make it clear that cumulative impacts may also be a material consideration in particular instances.

Extract from Committee Report - Part 3, Section 4: Assessment of the Merits of the Proposal

Irrespective of the housing land supply position the proposal will have, if approved:

- an unacceptable and **substantially adverse** highways impact and conflicts with NPPF [2018] paragraph 109 and T10.; and,
- an unacceptable and **substantially adverse** impact on the foul water system in the village and is likely to exacerbate existing well catalogued pollution problems associated with the overflow of raw sewage into the street at Low Road during periods of heavy rainfall.; and,
- an unacceptable and **moderately less than substantial** impact on the setting of an adjacent heritage asset, namely Ladymeade – a Grade II listed building; and,
- an unacceptable **significantly adverse impact** on the Council's wider District Wide Settlement Hierarchy and Housing Distribution Strategy in that it will result in a significant level of new residential development being located in a village where only smallscale sustainable development is encouraged due to the poor accessibility , relative isolation and low economic, environmental and social sustainability of the location; and,

The adverse impacts of granting permission will significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal does not amount to sustainable development and, therefore, does not score positively against other material considerations including the tilted balance triggered by the coming into play of paragraph 11 (d) of the NPPF [2018]

Extract from Committee Report - Part 4, Section 5: Planning Balance and Conclusion

4.9 The Inspector will note that within the reasons for refusal there is no reference to cumulative impact of this proposal with any other in Fressingfield. This demonstrates that in the final judgement the Council did consider the merits of the proposal in their own right and not as suggested by the appellants agent with reference to cumulative impacts of proposals in Fressingfield that had been refused by the Committee earlier on the agenda.

4.10 Clearly having refused the other applications the Committee the applicants in those cases were at liberty to appeal those decisions and then potentially cumulative impact may have become an issue at that stage. As they were not appealed that debate is now academic. What is clear is that the Council believed that the Post Mill Lane development now before the Inspector was unacceptable in its own right for the reasons set out in the reasons for refusal. The claim being made by the agent here is in reality a red herring.

5.0 Failure to provide clear and precise reasons for refusal [3]

5.1 It appears to the Council that the agent at paragraph 4.1 of his Claim for Costs has misunderstood the role played by an Adopted Development Plan as the starting point for any decision taker.

“ Paragraph 2:

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise...

Paragraph 12. **The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.....”**

5.2 Whilst the Council openly cites some relevant policies as being out-of-date [recognising the fact that the NPPF may take precedence] they remain Adopted Development Plan policies. As set out in the Council's Statement of Case it is perfectly reasonable and appropriate for the Council to refer to such policies. The question thereafter is one of judgement and the weight that can then be properly afforded to those policies. This is an established principle and it is surprising the agent has sought to bring such an obviously incorrect interpretation into this arena and into his claim. The Council has acted entirely reasonably.

6.0 Failure to Provide Full Documentation [4]

- 6.1 Whilst the Council as Local Planning Authority was expecting the Heritage Team to make a representation to the Inspector it transpired that no such representation was necessary as the Council's Statement of Case fully addressed the heritage reasons for refusal. Therefore, this does not impact the Council's case or prejudice the appellants position because the Council's Planning Statement of Case fully deals with the heritage issues and heritage reasons for refusal arising from the proposed development.
- 6.2 The document referred to notes of meeting with Anglian Water was expected to have been attached to the statement of case along with other relevant material referred to. It is attached hereto as proof that the meeting occurred and that the 'combined' nature of the system became clear at that meeting despite the system being described by AW in its consultation as 'closed'
- 6.3 Paragraphs 3.47 - 3.51 also provide background to the drainage issue and clearly demonstrate that the appellant had all the necessary information necessary to understand the drainage issue that in the Council's opinion warranted refusal on drainage grounds. The note of meeting merely provides evidence that the case officer met Anglian Water.

7.0 Failure to properly consider, understand and apply the relevant test in recent case law which the Council then sought to rely on in refuting the appeal [5]

- 7.1 The principle at the heart of the case quoted by the Council is a simple one to grasp and is as described in the Council's Statement of Case. It provides new clarity around the fact that for paragraph 11 of the NPPF [2019] to apply where some policies within the Adopted Development Plan may be held to be 'out-of-date' one must first consider all relevant policies within the Adopted Development Plan and then weight their significant to the issues at hand. If after doing that analysis the policies that are not 'out of date' are of greater relevance and carry greater weight than those that aren't then the local planning authority is not required to apply the tilted balance. Therefore it is not sufficient for the appellant's agent to claim that the Adopted Development Plan is 'out of date' and therefore has little or no weight because many of the relevant policies are complaint with the NPPF [2019] and remain valid [not 'out of date']. The significance of this very recent case is explored in the Council's Statement of Case and it is not reasonable for the appellants agent to dismiss the Council's inclusion of it simply because it does not suit his client's case.
- 7.2 In the Statement of Case the Council has described the relevance of the case to the appeal at hand and asked the Inspector to consider its relevance. The Council's Statement of Case sets out its case for a scenario where the Inspector is persuaded of its relevance and a scenario where the Inspector is not persuaded. This is reasonable. Again, this will be a matter of judgement.
- 7.3 Whilst the case referred to was not available at the time the Committee considered the merits of the planning application 1648/17 it is now a relevant consideration for the matter at appeal.
- 7.4 The Council, does not wish to repeat its Statement of Case here as that would be inappropriate.

8.0 Proposing conditions which include a number which are, variously, unnecessary, imprecise and unenforceable, and the purpose of which appears to be a further attempt to frustrate delivery of new homes at the site, in the event the appeal is granted. [6]

- 8.1 The appellant themselves provided a list of draft conditions. It is for the Inspector to adjudge what conditions are required based on his/her judgement. This is not a case where one party's evidence must be favoured over and above another.
- 8.2 This element of the agent's claim is perverse and the agent knows that. The Council is asked to provide suggested conditions on a 'without prejudice' basis in the event that the Inspector is minded to uphold the appeal and grant planning permission. The Council expects that the Inspector will consider these and reach his or her own conclusions as to their relevance and the appropriateness of the suggested wording. The Inspector will only attach conditions as he or she sees are appropriate and he or she will choose the final wording.
- 8.3 The fact that the agent realises this is a spurious component in the overall claim is demonstrated by the fact that he does not identify the suggested conditions that are in his opinion "variously, unnecessary, imprecise and unenforceable, and the purpose of which appears to be a further attempt to frustrate delivery of new homes at the site" nor does he provide amended text.
- 8.4 If the Inspector upholds the appeal and grants planning permission with appropriate conditions presumably the appellant would not suggest the Inspector is attempting to frustrate delivery of new homes. Nor is the Council.
- 8.5 The Council is however seeking to ensure that such development as shall be permitted is sustainable [economic, social and environmental] and does not result in harm that is not outweighed by public benefit. That is precisely the purpose of the planning system.

9.0 Conclusion

- 9.1 On the basis of all the above the Inspector is respectfully asked to dismiss the Claim for Costs.**

Appendices follow:

From: Vincent Pearce <Vincent.Pearce@baberghmidsuffolk.gov.uk>

Date: Wednesday, 16 May 2018 at 15:50

To: Fergus Bootman <Fergus.Bootman@larondewright.co.uk>

Subject: contact Vincent Pearce Babergh Mid Suffolk

Hello Fergus

This is my email address (your Fressingfield application 1648/17)

Speak to you soon following my site visit tomorrow and after I have chased Sam Harvey SCC Highways

Kind regards

Vincent

Re: contact Vincent Pearce Babergh Mid Suffolk



Bootman, Fergus <Fergus.Bootman@larondewright.co.uk>
To: Vincent Pearce

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Wed 16/05/2018 17:04

Idox CICO

Hello Vincent,

Thanks for the call and email. I look forward to hearing from you in due course.

Kind regards

Fergus Bootman MRTPI
Chartered Town Planner

E: fergus.bootman@larondewright.co.uk
T: +44 (0)1603 662952
M: +44 (0)7702 168203

LA RONDE WRIGHT LIMITED
Chartered Town Planners
74 Bracondale, Norwich, Norfolk,
NR1 2BE, United Kingdom

Re: sketch for post mill lane 18 00706.pdf



Bootman, Fergus <Fergus.Bootman@larondewright.co.uk>
To: Vincent Pearce

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Wed 23/05/2018 16:53

20170307 - Version 5.pdf
2 MB

Idox CICO

Action Items

Hello Vincent

Thanks for the sketch and discussion. I will discuss with Peter and revert. In advance of these discussions, and without prejudice, I do have some comments on your proposal which I would welcome your thoughts on prior to discussing with Peter:

- 1) The existing submitted layout does make provision for connection through to the land to the north – the submitted plan does not make this explicit however it is annotated on the attached sketch (provided confidentially: please do not upload to public access). On the assumption (TBC) that Peter has no wish to ransom, am I correct in understanding this gives you what you need in providing a layout which can connect through to the site to the north. Both applications are outline so layout is only indicative: ours simply demonstrates that the number of units proposed is achievable and, in doing so, the scheme is both policy compliant and makes provision for connections through to the neighbouring site, should they be required.
- 2) If the plan were amended as per your sketch would there not be a concern that the proposal for this site would become entirely contingent on the site to north obtaining consent? With no room for a turning head at the eastern end, the layout does not work without access through Mr Brown's land. Whilst the number of plots has increased by one, my view at present is that there is considerable benefit to us in having a scheme which can be delivered independent of the neighbouring land, but which can also accommodate a highways-compliant connection through if this is desired, rather than one which relies on the neighbouring site also obtaining a consent.
- 3) Your sketch reorients plot 8: would you not have a concern re amenity on the occupants of Ladymeade (Listed Cottage semi detached cottages to south of site, and adjacent to footway to New St)? The reorientation puts the principle elevation facing south, overlooking the gardens. I appreciate that plot 6 is similarly oriented, but the existing dwelling to the south is set much further back.

Again, I do appreciate your thoughts on this and your proactive approach. I await your further thoughts and will discuss with Peter asap following your reply.

Thanks and kind regards

Fergus Bootman MRTPI
Chartered Town Planner

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M: +44 (0)7702 168203

RE: post mill lane FRESSINGFIELD



Bootman, Fergus <Fergus.Bootman@larondewright.co.uk>
To: Vincent Pearce

[Reply](#) [Reply All](#) [Forward](#) [...](#)

Tue 12/06/2018 15:06

Idox CICO

Hello again Vincent

I have spoken with Peter and he is happy to agree to a pedestrian link through the eastern boundary as per your sketch. Given that the application is outline – with layout to be agreed – and there is a clear way to achieve the route within the submitted indicative site plan, can we proceed on the basis that the requirement to deliver a pedestrian link (minimum 1.2m wide, surface treatment etc to be resolved at reserved matters stage) will be secured by condition attached to the outline consent (all being well)? Given the modest nature of the change and the fact that the development is particularly dense, I would hope that you would feel confident to stand before members and say that you are satisfied that a scheme of 24 houses including a pedestrian link can be delivered within the site.

Please let me know if this is acceptable, or if you require any further additional information in this regard.

Thanks and kind regards

Fergus Bootman MRTPI
Chartered Town Planner
01603 662952

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Vincent Pearce

From: Vincent Pearce
Sent: 14 October 2018 16:33
To: hwilson4@anglianwater.co.uk
Subject: Fressingfield planning applications - meeting follow-up

Hello Hannah

Thank you to you and your colleagues, Luke, Nigel & Grant for meeting me , Councillor Lavinia Hadingham and local residents John, Pam, Elizabeth and John on Friday in Fressingfield.

The discussion of local drainage issues in the context of the three planning applications for residential development that have yet to be determined by the Council was very illuminating. As the case officer dealing with the three proposals [Post Mill Lane; Stradboke Road & John Shepherd Road] I found it very helpful.

I am not a drainage expert and your collective descriptions and explanations of how the Fressingfield foul water system works have helped me better understand what drainage implications may arise from significant additional development in the village. Thank you for the clarity you gave.

Anglian Water is aware of localised flooding issues in Fressingfield and does acknowledge that after particularly heavy rainfall the foul water system does overflow and deposits foul water into the road beside the Beck. Its escape being possible as a result of 'popped' manhole covers.

I now understand, and please correct me if I am wrong, that the foul water system serving the majority of Fressingfield is a 'closed' system. That is to say that it was not designed to accommodate surface water in a combined pipe and was not constructed for such dual functionality. It's function is to transport foul water only. It was constructed with no surface water connections. Therefore when modelling foul flows arising from new development your models only factor in foul water flows and the impact on capacity because it is designed as a closed foul water system.

Anglian Water has investigated the possible causes of this flooding and has ruled out 'ingress' of surface water into the foul water system as a result of broken pipes as a contributory factor as the integrity of the system is sound. The only plausible cause can therefore only be unrecorded surface water 'connections'.

Since the systems construction in the early nineteenth century an unknown number of domestic surface water connections have been connected to the foul water system as was the custom without the knowledge of the foul drainage authority. This is not peculiar to Fressingfield but occurred all over the country.

In raising no objection to additional development in Fressingfield you do so because the Fressingfield 'closed' foul drainage system theoretically has sufficient capacity to accommodate the foul flows from the three proposed developments.

The fact that unrecorded surface water 'connections' have been made and therefore increase the amount of water in the pipes is not a material consideration for AW because those connections should not be there. That said your hands are tied because you do not have the legal powers to have such historic connections removed.

I would however appreciate your thoughts in respect of the accuracy of my description of the operation of that system and conclusions below in respect of the likely impact of additional development in so far as your professional knowledge of the drainage systems in Fressingfield.

"The foul water system in Fressingfield is a closed system in that was not designed or constructed to accept surface water flows. Over the years an unknown number of unrecorded surface water connections have been made throughout the village. This now means that when large quantities of rain falls in a short time the spare capacity in the foul water pipes is rapidly occupied by surface water and the consequent build-up of pressure causes the manhole covers to 'pop' and diluted foul water to spill into the road and Beck.

The additional development currently being proposed in Fressingfield and the sewage it will generate is not likely to significantly impact the capacity in the foul surface system in its own right. However it is reasonable to assume that in periods of high rainfall in a short period of time it will take less surface water to fill the capacity of the foul water system [because it now contains more foul sewage] and that as a result an equivalent amount of rainfall post-development as pre-development will increase the risk and quantity of flooding. This flooding is also likely to contain increased levels of foul sewage content because there will be more in the system due to the increase in population.

Whilst this is not, it would appear, to be an issue that can be resolved by AW as the budgets do not exist and it is not a problem of AW's making it is reasonable for the planning authority to conclude that the impacts described above can be expected even where no additional surface water is entering the foul water system from the new developments.

I would welcome your thoughts on whether it is technically correct that I can reasonably make the assumptions and conclusions above.

My only objective is to understand the cause and effect of flooding incidents in Fressingfield in order that I might properly advice the Council's planning committee of the planning implications that arise from new development and in order that I might make as assessment as to the sustainability of the various proposals from an environmental perspective [as well as social and economic].

I realise your response is likely to be without prejudice to your position as the foul drainage authority.

I did note from our discussions that residents within the village who do enjoy the benefit of unrecorded surface water 'connections' to the foul water system could make things easier for those fellow residents who experience the flooding by installing water butts to reduce the pressure on the foul water system - That is to say storage in butts will mean the foul system will not be expected to accept so much abnormal flow during high rainfall. It seems unlikely to me however, that residents of properties with historic surface water connections to the foul system will opt to pay for the installation of a separate surface water drain even if it could be established by investigation [dyes] that they did have such a connection. Furthermore if such a surface water drain was merely going to add water to the Beck then in high rainfall the Beck itself is likely to over-top more frequently.

I look forward to receiving your comments.

Kind regards

Vincent

Vincent Pearce

Principal Planning Officer
Development Management

Babergh & Mid-Suffolk - Working Together

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