

Committee Report

Item 7A

Reference: DC/19/05956

Report Author: Steven Stroud

Ward: Fressingfield.

Ward Member/s: Cllr Lavinia Hadingham.

RECOMMENDATION – REFUSE PLANNING PERMISSION/AGREE PUTATIVE REASON(S) IN RESPONSE TO APPEAL REF APP/W3520/W/21/3266951

Description of Development

Outline planning application (all matters reserved) - Erection of up to 18 no. dwellings and associated new roads, infrastructure and open space.

Location

Land off, Post Mill Lane, Fressingfield

Application Type: OUT - Outline Planning Application

Development Type: Major Small Scale - Dwellings

Applicant: C.E. Davidson Ltd

Agent: La Ronde Wright

Parish: Fressingfield

Site Area: 0.56ha

Gross Density of Development (dpha): 32

INTRODUCTION

This Officer Report follows the Development Control Committee B meeting of 25th November 2020 where Members resolved to defer the determination of the application.

A full copy of the draft Minute of that decision is appended (Appendix A) but the reasons for deferral were given as follows:

‘To seek legal advice on the weight of a made Neighbourhood Plan and if the tilted balance that engages the Local Plan affects the Neighbourhood Plan the same way, despite its full weight. Particular review of Para 12 of the NPPF is sought in this instance as well as paragraph 11.d)ii NPPF.’

Principally such matters, where relating to matters of judgement, are the preserve of the decision taker. Nevertheless to aid Members in navigating the broader decision-taking context, advice from Counsel has been obtained and is appended to this report (Appendix B).

On reflection of the legal advice obtained, and having further regard to the various representations received following the publication of the last officer report, officers consider it prudent that Members now revisit the application afresh and with the benefit of a revised officer report which has been informed by the advice of Counsel. The planning process is an iterative one and the evolution of your officers advice reflects the legal advice now to hand. It will be noted that officers now recommend that planning permission be refused but only in respect of one key issue.

Following the Development Control Committee B meeting of 25th November 2020 the Council has received notification of an appeal lodged by the Applicant (now Appellant) on grounds of non-determination. That appeal has not yet, at the time of drafting this report, received a start date from the Planning Inspectorate (“PINS”) but there is no reason to consider that the appeal will not be found to be valid. Being the case, there remains an application to determine but with an understanding that there is a likelihood the appeal will start before a decision can be taken.

On that basis, a recommendation is set out that will either: [a] authorise officers to refuse the application for the reason(s) set out; or, [b] resolve putative reasons for refusal upon which to defend the appeal i.e. resolve to agree those reason(s) on the basis that the Council would have refused planning permission had the appeal not been registered. As the registration of that appeal is outside the hands of the local planning authority and the resolution of Committee does not constitute the issue of the decision notice, it is procedurally appropriate to ensure that both [a] and [b] are instructed lest the appeal be registered after committee has heard the application but before the decision notice has been issued.

In light of the impending appeal and having regard to the public interest in this matter, Members are also asked to endorse officers’ recommendation to write to the PINS requesting that the appeal be dealt with by way of the public inquiry procedure, as opposed to the written representations procedure as currently requested by the Appellant. Such a request is considered appropriate having regard to Annexe K of the *Procedural Guide Planning Appeals – England* (Nov 2020), on account of substantial local interest.

Where relevant and in light of time constraint, sections of the previous report to Committee will be reproduced (e.g. ‘Part Two – Application Details’) but refreshed where necessary. Members are reminded, however, to consider the application afresh and in light of this new

report, especially ‘Part One – Policy Context’ which sets out the decision taking context in detail.

PART ONE – POLICY CONTEXT

Legal Duties

- 1.1 Section 70(2) of the *Town and Country Planning Act 1990* requires, in dealing with an application for planning permission, a local planning authority to have regard to the provisions of the development plan, so far as is material to the application, and to any other material considerations.
- 1.2 Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that applications for planning permission under the planning Acts be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 1.3 Section 66(1) of the listed buildings Act states that in ‘*considering whether to grant planning permission for development which affects a listed building or its setting, the [decision taker] shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses.*’ Section 72(1) of the same Act applies to conservation areas and effectively replicates the s66 duty, stating that for decision-taking: ‘*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*’ Officers are satisfied that no harm is posed by the development to the significance of any designated heritage assets such that the s66 and s72 duties are not actively engaged¹. Officers are also satisfied that the development would pose no harm to any non-designated asset.

Neighbourhood Plan Status

- 1.4 The application site is within a Neighbourhood Plan area. The Fressingfield Neighbourhood Development Plan (“FNDP”) was “made” in March 2020 and is adopted as part of the development plan i.e. in accordance with the s38(6) duty, relevant decisions are to be made in accordance with it, unless material considerations indicate otherwise.

Most Important Policies

- 1.5 It is trite planning that a given application will engage a broad number of policies across various development plan documents; some are directly engaged, others are of a more tangential relevance. Decisions are taken by considering the development plan as a whole, but in light of the key issues that are brought about by this particular application² the most important policies for its determination are considered to be the following:
 - FRES 1 – Housing Provision
 - FRES11 – Localised Flooding and Pollution

¹ Notwithstanding that the site falls outside of the designated Fressingfield Conservation Area in any event.

² Matters of: principle/spatial strategy; highway safety and network capacity; and, flood risk and drainage.

- FRES15 – Transport and Highway Safety
- FC1.1 – Mid Suffolk approach to delivering Sustainable Development
- CS1 – Settlement Hierarchy
- CS2 – Development in the Countryside and Countryside Villages
- CS4 – Adapting to Climate Change
- H7 – Restricting Housing Development unrelated to the needs of the Countryside
- T10 – Highway Considerations in Development

1.6 Compliance with some of the policies listed above does not automatically mean that the development accords with the plan as a whole; and in a similar vein, conflict with a small number of those policies might still equate to a non-compliance with the plan as a whole, bearing in mind the relative importance of the policies that are infringed and the extent of any conflicts identified.

1.7 As will be explained below, the above policies are, when viewed in the round, up to date for the purposes of determining this particular application and they remain the starting point in any decision.

The National Planning Policy Framework

1.8 The *National Planning Policy Framework* (“NPPF”), last updated in June 2019, sets out the Government’s planning policies for England and how they should be applied. It is a material consideration for decision-taking purposes and can affect the weight attached to policies of the development plan. It cannot, however, alter whether there is a conflict with the development plan nor undermine the statutory primacy that a development plan holds.

1.9 The following paragraphs are of particular and direct relevance to this application:

- Paragraphs 11, 12 (the presumption in favour of sustainable development);
- Paragraph 213 (annex 1: implementation);
- Paragraphs 77, 78 (rural housing);
- Paragraphs 108, 109 (promoting sustainable transport);
- Paragraphs 163, and 165 (planning and flood risk); and
- Paragraph 180 (ground conditions and pollution).

1.10 The NPPF is supported and complemented by the national *Planning Practice Guidance* (“PPG”). The guidance provided by the PPG is advice on procedure and elaboration of NPPF policies rather than explicit additional policy and is an online reference as a living document. It is a material consideration alongside the NPPF.

1.11 Paragraph 11 of the NPPF directs that planning decisions should apply a ‘*presumption in favour of sustainable development*’. In respect of the operation of paragraph 11 for decision-taking purposes, where planning proposals accord with an up-to-date development plan, they should be granted planning permission without delay. The corollary, naturally, is that where a proposed development does not accord with an up-to-date development plan there should be an expectation that planning permission will be refused unless there are prevailing material considerations to the contrary, as per NPPF paragraph 12.

- 1.12 Paragraph 11.d)ii. is widely known as the “tilted balance”. This is because there would be, if engaged, a presumptive tilt in favour of a grant of permission unless there were demonstrably significant adverse impacts present (which might include conflict with the development plan³) sufficient to outweigh that presumption.
- 1.13 The “tilted balance” cannot apply to this case for the following three reasons: firstly, there are development plan policies relevant to the determination of the application and those most important for its determination are set out above. Secondly, the Council benefits from a housing land supply of 7.67 years and has passed the latest Housing Delivery Test (“HDT”). Thirdly, as advised above and as will be explained below, when taken in the round the most important policies for determining the application are up to date. For these reasons the “tilted balance” is not in your officers opinion engaged in relation to this application and its circumstances.
- 1.14 Because the “tilted balance” under NPPF 11.d)ii. is not engaged, it is not necessary to consider NPPF paragraph 14; suffice to say that, if it *were* engaged, then the conditions a) – d) under that policy would be met.

Assessment of Development Plan Policies – inc. NPPF Paragraph 213

- 1.15 It is now important to consider all of the most important development plan policies engaged by the application proposal and identify the weight that officers recommend be afforded to them in reaching a decision, having regard to paragraph 213 of the NPPF among other factors. Noting NPPF paragraph 11.d) it will then be explained why the most important policies for the determination of this application are up to date.

FRES 1

- 1.16 Policy FRES1 embodies the spatial strategy for the Fressingfield neighbourhood plan area. It permits new development within the defined settlement boundary and accounts for housing policies and allocations sufficient to meet its identified requirement of ‘*around 60 dwellings*’; it also remains consistent with the emerging local plan⁴ in that regard. Since the base date of April 2018, four further dwellings have been permitted beyond that which had already been accounted for in the FNDP. This means that in total 55 new homes have been permitted within the plan period so far; 15 years remain to run.
- 1.17 The FNDP notes in express terms that its purpose is to support and manage growth, not prevent it, and the supporting text to FRES1 recognises that the identified requirement is a target and not a ceiling. Thus, the strategy within the plan does not preclude further growth, but this is subject to development being in accordance with the conditions set by FRES1.

³ *Gladman Developments Ltd v SSHCLG* [2021] EWCA Civ 104.

⁴ The emerging local plan sets a requirement of 56 dwellings for the Fressingfield neighbourhood plan area over the next plan period (2018 – 2037). The FNDP contains policies and allocations sites to meet a need of approximately 60 dwellings over a similar period.

- 1.18 It is important to recognise that the Inspector found, subject to recommendations (which were enacted) that the FNDP met the “basic conditions”. This means that, among other things, the NDP *‘contributes to the achievement of sustainable development’*⁵.
- 1.19 This policy, and indeed the spatial strategy that it represents, is considered to be up to date. It is comprehensive and is recently made. It responds to local circumstances and takes a positive approach to shaping new growth consistent with the NPPF. It is afforded full weight.

FRES11

- 1.20 FRES11 is drafted relevant to the particular issues faced locally. This is relevant in light of the significant number of representations submitted in respect of localised flooding and sewage issues faced within the village. The policy is drafted on terms entirely consistent with the relevant policies of the NPPF.
- 1.21 It is up to date and is afforded full weight.

FRES15

- 1.22 FRES15 is entirely consistent with chapter 9 of the NPPF. It is up to date and is afforded full weight.

FC1.1

- 1.23 FC1.1 is a post-NPPF policy previously found to be sound. It is a broad policy that sets out how the Council will seek to implement sustainable development. It states that all new development within the district will be required to demonstrate the principles of sustainable development and will be assessed against the presumption in favour of sustainable development through a local context. Such an approach is consistent with the NPPF as a whole, recognising the importance of achieving sustainable development – which may take many forms – and also the need to have regard to local circumstances which is important bearing in mind the discussion of policies CS1, CS2, and H7 below.
- 1.24 It is up to date and is afforded full weight.

CS1, CS2, and H7

- 1.25 Policy CS1 sets out the spatial strategy for the district in directing how and where new development should be distributed. Policies CS2 and H7 are subsequently engaged where development is proposed within the countryside; policy CS2 looks more broadly at all forms of development and policy H7 looks specifically at housing. Policy CS2 sets out countryside compatible development, which includes include housing unrelated to the needs of the countryside. H7 echoes the sentiment of CS2, steering housing towards existing settlements.
- 1.26 Taken together, those three policies are not expressly prohibitive of new development in the countryside and allow for new development that is in accordance with them. They provide a strategy for the distribution of development that is appropriate in recognising local circumstances and their overall strategy remains

⁵ Schedule 4B, paragraph 8(2) of the *Town and Country Planning Act 1990*.

sound. This is because they take a responsible approach to spatial distribution, requiring the scale and location of new development to take into account local circumstances and infrastructure capacity. Those elements are considered to be consistent with the NPPF.

- 1.27 In the circumstances of this application Fressingfield is a “Primary Village”, which is on the 3rd tier of the Council’s spatial strategy i.e. it is sequentially less preferable than the Towns and Key Service Centres of the district, which remain the main focus for new development within the district. It is explained at §2.30/.31 of the Core Strategy that Primary Villages are capable of limited growth in accordance with local need. It is explained that: *‘development will be limited to sites within settlement boundaries or, by allocation in the Site Specific Allocation document, to sites adjacent to settlement boundaries.’*
- 1.28 In general terms there has been no district-wide settlement boundary review, nor has there been (with the exception of the *Stowmarket Area Action Plan*, that is itself more than 8 years’ old) any district allocations document providing for plan-led growth in accordance with the Council’s spatial strategy.
- 1.29 It has been repeatedly recognised through appeal decisions⁶ and decisions of this Council that for many applications dealing with the provision of new housing in the countryside, these three policies are out of date, for varying reasons, dependent upon issue. Generally this is because such policies, if applied with full force, would be too restrictive of new housing proposals in the countryside. This is on account of the fact that it could be said that such policies are no longer responsive to local circumstances and needs, contrary to the NPPF i.e. while the underlying strategy of those policies might be sound, their stringent application would otherwise frustrate new development from being secured, bearing in mind the increasing needs of the district. For most major housing applications this has been acknowledged where dealing with new housing for Key Service Centres such as Thurston and Woolpit, which should be a focus for new growth.
- 1.30 However, the prevailing circumstances under the currency of this application are distinguishable and require careful attention. Quite apart from the recognition that as a Primary Village only limited growth would be appropriate, the spatial strategy for Fressingfield has been reviewed and brought up to date with the making of the FNDP: the settlement boundary of the village has been reviewed in that plan making process, and new allocations made alongside policies sufficient to meet the latest identified requirement for new housing (a requirement that remains consistent even with the emerging JLP). Policies CS1, CS2, and H7 are compatible with the FNDP, and in particular FRES1. If there were tension between them then by law it is the policy of the FNDP that would be followed in any event⁷.
- 1.31 Therefore, irrespective of whether elements of policies CS1, CS2, and H7 are out of date within the circumstances of other applications for housing in other places, their strategy remains sound when considered in the current context and their approach to dealing with housing in the countryside in the parish of Fressingfield now needs to be read alongside the making of the FNDP i.e. if they had been overtaken by events “on the ground”, they have now caught up within this localised context. The policies are consistent with the need to enhance and maintain villages and rural communities, and avoid new isolated homes, as set out within paragraphs 77, 78, and 79 of the NPPF. Through the making of the FNDP they are responsive to local circumstances. Further, CS1, CS2 and H7 also reflect NPPF paragraph 103 which

⁶ See, for example: 3194926 (Woolpit); 3214324 (Stowmarket); 3215534 (Eye).

⁷ As per s38(5) of the *Planning and Compulsory Purchase Act 2004*.

provides that the planning system should actively manage patterns of growth and focus significant development on locations which are or can be made sustainable. It bears repeating that the application remains a major proposal for a settlement that is not expected to be a focus for new growth.

- 1.32 Having regard to this application and the present circumstances, these policies are considered to be up to date.

CS4

- 1.33 Policy CS4 is consistent with chapter 14 of the NPPF. It is up to date and afforded full weight.

T10

- 1.34 Policy T10 is similar to FRES15 and is consistent with the NPPF. It is up to date and afforded full weight.

Whether the most important policies are up to date

- 1.35 The case of *Wavendon*⁸, which has since been approved by the Court of Appeal⁹, has made clear that the exercise of determining whether the most important policies are out of date involves assessing each policy and then reaching an overall judgement about whether the set of policies relevant in a particular case is up to date or not. This requires a holistic view about what the most important policies for determining the application are, before then forming a view about whether, collectively, they are out of date.
- 1.36 For the reasons set out above, taken in the round it is clear that the most important policies for the determination of this application are up to date. The “tilted balance” cannot therefore engage as a material consideration in this decision.

The Joint Local Plan

- 1.37 The emerging Joint Local Plan is currently at Regulation 19 pre-submission stage and has not yet been submitted for examination; thus, the plan currently has only limited weight in the decision-taking process. It is not considered to play a determinative role in this application.

Previous Appeal Decision (ref: APP/W3520/W/19/3227159)

- 1.38 The application now before Members follows a previous application for a larger development that was refused planning permission and dismissed on appeal. Planning appeal decisions can be important material considerations. However, local planning authorities are not bound to follow them though of course they should be taken into account where relevant.
- 1.39 It is important to recognise that the Inspector in that case based his decision on the prevailing planning policy context of the time. By way of chronology it should be noted that the decision was issued on 25th September 2019. This was before both the making of the FNDP (March 2020) and the outcome of its

⁸ *Wavendon Properties Limited v SSCLG and Milton Keynes Council* [2019] EWHC 1524 (Admin).

⁹ *Paul Newman Homes Limited v SSHCLG* [2021] EWCA Civ 15.

examination (28th October 2019); it is further noted that the Inspector gave no weight to the FNDP in reaching his decision. The reason that these points are important to recognise is that one of the “Main Issues” before the Inspector was drafted as follows:

‘whether the site would be an appropriate location for residential development having regard to the development plan and national planning policies and the character and appearance of the area’
[officer *emphasis*]

1.40 In respect of the emphasised, first part of that Main Issue, it clearly cannot be the case that any findings on that point should be of any particular weighting now that the FNDP has been made; there has been a significant material change in planning policy since the date of that decision, albeit the Inspector still found against the development on account of conflict with the development plan. On this matter officers afford very limited weight to the appeal decision.

1.41 The other three Issues under the appeal were set out as follows:

- *‘the effect of the proposed development on the setting of the Grade II listed Ladymeade.*
- *the effect of the proposed development on highway and pedestrian safety in the vicinity of the site; and*
- *whether the proposed development would exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall.’*

1.42 As acknowledged earlier in this report, the matter of likely impact and consequent effect upon the significance of designated heritage assets has been addressed through the re-scaling of the development and keeping the land to the rear of Ladymeade free from development. This is considered sufficient to ensure that the significance of that asset is preserved. No other asset would be harmed by the development.

1.43 The second and third Main Issues are dealt with under the second and third Key Issues set out within this report under ‘Part Four’. In respect of these matters the appeal decision is considered to be more relevant but for sake of prudence Members are nevertheless asked to consider matters having regard to all of the evidence put to them.

PART TWO – APPLICATION DETAILS

Site and Surroundings

2.1 The site comprises a 0.56ha L-shaped parcel of land formed by a large rectangular plot on the north side of Post Mill Lane and a smaller rectangle on the south side. On the inside elbow is an existing pumping station and enclosure. The site is, generally speaking, enclosed such that landscape and local character impacts are likely to be limited.

2.2 The site is located on the western edge of Fressingfield and is accessed via Post Mill Lane, a *cul-de-sac* which leads off New Street and currently provides access to 21 dwellings which are situated to the immediate west and south of the application site.

- 2.3 The application site is bounded to the north by agricultural land. Situated to the south and west of the western part of the field are the two small residential developments which constitute the existing residential development on Post Mill Lane. Immediately to the east is an enclosed field which has been left to regenerate naturally. It is outside of the application site.
- 2.4 At present, Post Mill Lane (adopted public highway) runs to the front of these developments and terminates at the boundary of the application site.
- 2.5 The southern boundary of the eastern part of the 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.
- 2.6 The northern and eastern boundaries of the site are demarcated by mature hedgerow planting.



Proposal

- 2.7 Planning permission is sought in outline (with all matters reserved) for up to 18 dwellings including a policy-compliant provision of up to 6 no. affordable units (35%).

- 2.8 Illustrative material has been provided showing how development could be assimilated within the site and might be brought forward should planning permission be granted. If the maximum number of 18 units were to be delivered then realistically the development is likely to be configured on generally the same terms as indicated. While the presence of the existing pumping station – outside of the red-lined area – is a relatively unattractive feature that would sit as the centrepiece to the development (and is shown to be adjacent to the open space) officers do not consider that this of itself would present an objectionable situation on its own terms.
- 2.9 It is understood from the application material that a “wildlife area” is proposed to be secured on land outside of but adjacent to the site, within the field parcel that formed part of the previous application. The weightiness of such a benefit is considered later in this report.

PART THREE – CONSULTATION SUMMARY

Consultations and Representations

- 3.1 All of those most recent or relevant responses received prior to the completion of this report are summarised or directly quoted below, which includes public representations and consultation responses. Nevertheless, all responses received are available to view on the Council’s website and historically were capable of inspection at its offices as detailed above. Given the lengthy/technical nature of some of the responses received, it is advised that Members are directed to consider all documents in full.

Summary of Consultations

Fressingfield Parish Council (Appendix C)

Object, chiefly for three reasons:

- i. Conflict with the Fressingfield NDP.
- ii. Highway safety impacts (and concern regarding LHA change of view).
- iii. Flooding/foul network capacity.

National Consultee (Appendix D)

Natural England

‘...has no comments to make on this application’.

Anglian Water

Does not object:

- There is capacity within the foul network to accommodate the development.
- No dwellings should be sited within 15m of the pumping station.
- Surface water should be disposed of via SuDS; discharge to watercourse would be acceptable.

County Council Responses (Appendix E)

Development Contributions

- A s106 contribution for secondary school transport is required (£1,205 per dwelling).
- Other infrastructural asks met through the CIL.

Lead Local Flood Authority

- Holding objection because drainage strategy requires explicit reference to the local Drinking Water Safeguard Zone.

Officer comment: the LLFA has subsequently advised that no objection is raised.

Local Highway Authority

Does not object:

- The development would not be contrary to NPPF para. 109.

Fire and Rescue

Does not object:

- Fire hydrants are required.

Archaeology

Does not object but the site lies within an area of interest:

- Investigative/recording condition(s) are required.

Internal Consultee Responses (Appendix F)

Heritage

Do not object:

- The development would not harm the significance of Ladymeade.

Officer comment: Further consideration has been given to the potential for impact upon other assets in the vicinity including the Conservation Area. The development is not considered to pose any harm to the significance of any heritage assets.

Environmental Health (Land Contamination)

Do not object; standard informative regarding developer responsibilities.

Ecological Consultant (Place Services)

Does not object:

- Sufficient information is available to determine the application.

- Conditions are required to conserve and enhance.

Strategic Housing

- 35% affordable housing is required, scale/mix/tenure to be agreed.
- Open market mix to be agreed.

Communities and Public Realm

Do not object:

- Subject to securing adequate open space at reserved matters.

B: Representations (inc. SAFE and Suffolk Preservation Society, see Appendix G)

Supporters Against Fressingfield Expansion ("SAFE")

Objects, chiefly for three reasons:

- Conflict with the Fressingfield NDP.
 - Highway safety impacts (and concern regarding LHA change of view).
 - Flooding/foul network capacity.
- The Council has a 5-year housing land supply
 - The application is contrary to the emerging JLP
 - Cumulative impacts should be considered
 - Highway and flooding data is out of date
 - Heritage impacts remain a concern
 - Further affordable housing is not needed/surplus to anticipated supply
 - Harmful to protected vistas
 - Appeal decision for the previous refusal cannot be relied upon

Suffolk Preservation Society

Objects:

- Contrary to a made NDP.

Other representations received – of which there has been a considerable volume – are summarised below, in no particular order (and all comments are available for inspection on the planning file):-

- Conflict with district planning policies
- Conflict with the Fressingfield NDP
- Contrary to the NPPF
- The site is not allocated for development and has no local support
- Poor design
- Drainage/sewage concerns
- Highway safety concerns
- Traffic impact concerns
- Inadequate infrastructure (lack of school places, doctor capacity etc.)
- Harm to heritage
- Lack of public transport

- Unsustainable location
- Pollution concerns
- Lack of employment opportunities
- Inadequate local highway network
- Lack of parking detail
- Harm to landscape
- Inadequate open space
- Too high density/over development of site.

All consultee responses and representations received have been read, duly considered, and taken into account when preparing this report for Members.

PART FOUR – ASSESSMENT OF KEY ISSUES

- 4.1 As set out at the start of this report, having regard to the particulars of the application, the planning policy context, and the nature of comments received from consultees and interested parties, there are three Key Issues relevant to the determination of the application and that are within the ambit of the “most important” policies set out under Part One of this report.
- 4.2 Those Key Issues are as follows, and will be dealt with in turn under subsequent headings. For simplicity they follow the Main Issues articulated in the previous appeal.
- i. Whether the proposal is in an appropriate location having regard to the development plan and national policies [“Principle/Spatial Strategy”];
 - ii. The effect of the proposed development on highway and pedestrian safety in the vicinity of the site [“Highway Safety and Network Capacity”]
 - iii. Whether the proposed development would exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall [“Flood Risk and Drainage”]

Key Issue i. – Principle/Spatial Strategy

- 4.3 The most important development plan policies relating to this issue are FRES1, FC1.1, CS1, CS2, and H7. NPPF paragraphs 77 and 78 are also of relevance.

The Development Plan

- 4.4 The FNDP (and in particular Policy FRES1) provides for a comprehensive spatial strategy and is recently made. The FNDP sets out where new sustainable housing development should go, and should not go. Policy FRES1 is broken into two parts: the first, explains how the identified requirement of around 60 dwellings is to be met over the plan period; the second, deals with other development proposed outside of the settlement boundary. It is noteworthy that development outside of that boundary is not expressly precluded.
- 4.5 For the avoidance of doubt the FRES1 policy is copied below.

FRES 1 Housing Provision

The Neighbourhood Plan area will accommodate development commensurate with Fressingfield's classification within the settlement hierarchy.

This Plan provides for around 60 dwellings to be developed in the Neighbourhood Plan area between April 2018 and March 2036. This growth will be met through:

- i) The allocation of the following sites for development:
 - a) Land at Red House Farm – approximately 28 dwellings
 - b) Land West of School Lane – approximately 18 dwellings
- ii) small 'windfall' sites and infill plots within the Settlement Boundary that come forward during the Plan period and are not specifically identified in the Plan;
- iii. conversions and new development opportunities outside the Settlement Boundary in accordance with paragraph 79 of the NPPF 2019

The focus of new development will be within the Settlement Boundary as defined on MAP 5.1.

Proposals for new residential development outside of the Settlement Boundary, other than development in accordance with paragraph 79 of the NPPF 2019 or residential extensions, will only be permitted where it can satisfactorily be demonstrated that there is an identified local need for the proposal supported by a housing needs assessment and that it cannot be satisfactorily located within the Settlement Boundary.

Allocated sites and the Settlement Boundary are shown on Map 5.1

- 4.6 The application development is now assessed against those parts.
- 4.7 Firstly, the application site is not allocated for development.
- 4.8 Secondly, the application site is not within the settlement boundary.
- 4.9 Thirdly, the application does not propose the conversion of any existing building and is not in an isolated location where the application of NPPF paragraph 79 would be relevant.
- 4.10 Fourthly, there has been no satisfactory demonstration that there is an identified local need for the development. The application is not supported by a housing needs assessment and there is no evidence to suggest that housing needs cannot presently be met and/or satisfactorily located within the new settlement boundary.
- 4.11 Straightforwardly, therefore, the application is in conflict with FRES1. The conflict with FRES 1 indicates at a fundamental level that the proposal does not accord with the policy, aims and objectives of the FNDP viewed as a whole.

- 4.12 In turn, the application is not in accordance with policy CS1. Within the terms of that policy Fressingfield is a Primary Village only expected to accommodate limited growth, subject to need. Such growth is dealt with in accordance with FRES1 and the comprehensive strategy provided within the FNDP.
- 4.13 Further, the development does not meet any of the exceptions listed in policy CS2. While there is no particular objection in character or appearance terms, the proposed development would also be in conflict with policy H7 because it would not form part of an existing settlement, a settlement that has only very recently reviewed and expanded its settlement boundary to accommodate new growth.

The NPPF and PPG

- 4.14 Having regard to paragraphs 77 and 78 of the NPPF, and the local circumstances set out above, it cannot be the case that the application development respects local needs or is responsive to those circumstances. The policies of the development plan have identified opportunities for the village to grow and thrive; the application proposal is at odds with that strategy.
- 4.15 The importance of the plan-led system, and in particular neighbourhood planning, is a key plank of Government policy and there is no indication that the FNDP is not meeting its required needs going forward; whether judged now on account of the current strategic policies of the development plan, or those emerging under the JLP.
- 4.16 The importance of neighbourhood planning is explained within the PPG where it is stated that:

*'Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. They are able to choose where they want new homes, shops and offices to be built, have their say on what those new buildings should look like and what infrastructure should be provided, and grant planning permission for the new buildings they want to see go ahead. Neighbourhood planning provides a powerful set of tools for local people to plan for the types of development to meet their community's needs and where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.'*¹⁰

...

*Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop over the next 10, 15, 20 years in ways that meet identified local need and make sense for local people. They can put in place planning policies that will help deliver that vision or grant planning permission for the development they want to see.'*¹¹

Conclusion

- 4.17 In respect of Key Issue i. the proposed development would not be in an appropriate location having regard to the development plan and national policies. It would be contrary to policies FRES1, FC1.1, CS1, CS2,

¹⁰ Neighbourhood Planning, Paragraph 001 Reference ID: 41-001-20190509.

¹¹ Neighbourhood Planning, Paragraph 003 Reference ID: 41-003-20190509.

and H7. Furthermore the appeal scheme is contrary to NPPF paragraphs 77, 78 and would be contrary to the importance placed upon the plan-led system.

- 4.18 For these reasons alone, the application is contrary to key elements of the development plan and so falls to be considered as a matter of judgement contrary to the development plan as a whole. It would be contrary to the NPPF when taken as a whole, too.

Key Issue ii. – Highway Safety and Network Capacity

- 4.19 Matters relating to highway safety formed part of the Council's case when refusing planning permission on the previous scheme and the subsequent appeal was defended on such basis. The development plan policies relevant to this issue are FRES15, FC1.1, and T10. Paragraphs 108 and 109 of the NPPF are especially applicable having regard to national planning policy.
- 4.20 This Key Issue, alongside Key Issue iii. below, relates to a matter of great concern locally and significant objections have been raised by interested parties in that respect. All representations have been considered carefully.
- 4.21 The findings of the previous appeal Inspector in relation to this issue are considered to remain appurtenant to the determination of this present application. In that regard it was found:

'Both main parties have submitted their views on the effects of the proposal on Highway and pedestrian safety within the village. This includes a Transport Report and the Pedestrian Route Assessment, in support of the appeal. From my examination of the detailed material submitted, I agree with the appellant that the proposal would not have a harmful effect on highway and pedestrian safety within the village.'

Whilst I acknowledge concerns from the Council and local residents on this matter, the Council accepts that there is a low incidence of reported accidents in this area. Furthermore, there is little substantive evidence before me to demonstrate that the proposal would result in pedestrian and highway safety concerns.

As such I find no conflict against Saved Policy T10 of the LP and the Framework which together requires consideration of, amongst other things, safe access to and egress from a site, the suitability of existing roads giving access to the development, including the safe and free flow of traffic and pedestrian safety, and whether the needs of pedestrians and cyclists have been met. Whilst the LP is of some age, this policy is generally consistent with the Framework policies on promoting sustainable transport, and therefore I give it considerable weight in my decision.'

- 4.22 It is not considered that the planning context has changed such that these considerations can be set aside. Nor is it considered that there has been any substantive change in local circumstances that would lessen the relevance of the Inspector's opinion on this matter. It is important, therefore, that such remarks also be carefully considered in reaching a decision on this application.
- 4.23 For sake of prudence, officers have nevertheless considered this issue again in light of the new application notwithstanding that it is for a lesser quantum of development.

- 4.24 Occupiers of the new development, if walking to the services and facilities within the centre of the village, would most likely adopt a route that would take them along New Street. Ostensibly, other routes are available (e.g. via field access) but these are considered to be less desirable (especially at night or in inclement weather), and are less direct. However, the route to the primary school is considered to be safer where access via Priory Road is available.
- 4.25 Beyond the Priory Road junction much of the local footway network is below acceptable width standards (and in some places is non-existent), resulting in pedestrians needing to walk in the road to pass obstructions and opposing pedestrians. Certain junctions, such as Jubilee Corner, have restricted visibility. The concerns raised by the Parish Council, SAFE, and other interested parties, are therefore understandable. However, the submitted *Pedestrian Route Assessment*, which was accepted by the Inspector, highlights that both traffic flows and speeds are generally low, with visibility along New Street sufficient to enable highway users to avoid conflicts. It is notable that the allocated sites within the FNDP, particularly Land at Red House Farm, would suffer from the same localised issues. Local accident data relevant to the site, and the routes from it to local facilities, indicates that incidents are rare.
- 4.26 The Suffolk County Council as the Local Highway Authority do not object to the proposed development. Various improvements are also proposed by the Applicant to further minimise risk. Such measures include:
- Adjustment of the junction radius and associated footway widening at the junction of New Street and Priory Road.
 - Relocation of the dropped kerb pedestrian crossing on B1116/Laxfield Road (at Jubilee Corner).
 - Promotion of a Traffic Regulation Order ("TRO") relating to a new 20mph speed limit on New Street.
- 4.27 Having regard to the above, the effect of the proposed development on highway and pedestrian safety in the vicinity of the site is considered to be acceptable. There is no indication that impacts upon the highway network would be severe. The application is considered acceptable having regard to this issue and when considered against local and national planning policy.

Key Issue iii. – Flood Risk and Drainage

- 4.28 The third Key Issue also relates to a matter that the Council had pursued in respect of the previous refusal and appeal. The most important policies having regard to this issue are FRES11, FC1.1, and CS4. Paragraphs 163, 165, and 180 of the NPPF also apply.
- 4.29 When considering the previous development for 24 no. units (as opposed to 18 no. in this case), the Inspector reached the following conclusion in respect of flood risk and drainage:

'The Council and residents have raised objections to the proposal stating that the proposed development would exacerbate the existing flooding and pollution problem in the village as a result of adding further foul water to the existing system which already floods during periods of heavy rainfall. However, Anglian Water, raises no objections to the proposal subject to a condition requiring compliance with the agreed drainage strategy. This response from the relevant drainage authority confirms that the development would not cause harm to the capacity of the sewer system, and I have no reason to take a different view from their professional advice.'

As such, I find that the proposed development would not exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall. In this respect, the proposal would not conflict with paragraphs 163 and 180 of the Framework which amongst other things, seeks to ensure that flood risk is not increased elsewhere and 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.'

- 4.30 It is appreciated that this position remains disputed by the Parish Council, SAFE, and local residents. Officers do not dispute that there is clearly an issue in the village that remains to be solved: in periods of heavy rainfall areas of the village are liable to flooding and this includes flooding through the “popping” of manhole covers in the street; thus a pollution, as well as more general flooding, risk. This is a significant existing problem but one which has not so far precluded further development from being permitted or allocated.
- 4.31 A difficult decision needs to be taken. The Council has to weigh into account a previous appeal decision that is considered to remain relevant, and there is no objection from any technical consultee. This includes Anglian Water who are ultimately the body responsible for the foul network. On the other hand, there remains the repeated anecdotal (and factually correct) evidence of an existing flooding issue. The key question is whether it has been established that the proposed development would exacerbate that problem.
- 4.32 In general surface water terms, the proposed development is not within proximity to known areas of localised flooding¹² and will not increase risk of flooding elsewhere. There is no objection from the Lead Local Flood Authority. Surface water runoff from the site will be attenuated within pervious paving and a piped network within the development, before progressing through an attenuation pond and a flow control prior to discharge to a ditch. The surface water from the site will not be directed to the foul network.
- 4.33 Having regard to the foul network, it is proposed that all foul water be sent to the pumping station immediately adjacent to the site. Anglian Water remain of the view that there is capacity in the network to deal with the flows associated with the proposed development. It is implied in the representations from SAFE that the long-standing problem of sewage flooding is as a result of surface water entering the foul network at times of heavy rainfall. Officers infer that as a consequence, capacity within the foul network is taken up by that surface water; hence, a build-up of pressure in the network resulting in the “popping” of manholes. The development would not add to that problem because it will be diverting surface water elsewhere.
- 4.34 Paragraph 183 of the NPPF states that:

'The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.'

- 4.35 Having regard to that policy position it is considered unreasonable to object to the proposed development where the body responsible for foul water states that there is capacity to accommodate the proposed

¹² Maps 6.4 a) and b) of the FNDP.

development. The root of the problem appears to rest with an issue that is outside of the Applicant's control and which would not, strictly speaking, be exacerbated by their proposed development.

- 4.36 On the evidence available at this time, it is not considered that there is a clear link between the proposed development and an increased risk of flooding. It is not considered that the proposed development would exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall. On that basis officers do not consider that this could reasonably form a reason for withholding planning permission.

Scheme Benefits

- 4.37 It has already been set out that by law Members must have regard to material planning considerations and that this application should be determined in accordance with the development plan unless material considerations indicate otherwise. The benefits of the development, as material considerations, must therefore be taken into account.
- 4.38 Such benefits in this case principally relate to the provision of new housing. While new housing, and new affordable housing, are of themselves important benefits they are nevertheless of limited quantum in this development. Likewise the economic benefits to flow from the development would be limited. The highway improvements proposed would have some wider utility but are nevertheless proposed in order to improve highway safety credentials. The proposed wildlife area does present net gain to biodiversity but is not of itself necessary to make the development acceptable, and it is not apparent that the positive value of the existing land would be diminished if the development were not pursued.
- 4.39 Overall, the scheme benefits are afforded a limited weight.

PART FIVE – CONCLUSION

Planning Balance and Conclusion

- 5.1 Decision taking begins with the development plan and it is of vital importance that planning decisions are plan-led. The NPPF, an important material consideration, reiterates this fundamental point.
- 5.2 Straightforwardly, the proposed development conflicts with the housing policies within the development plan, including those of a recently made NDP. Whilst some elements of the proposal comply with relevant parts of the development plan and national policy as discussed above, the application proposal fails to comply with the development plan as a whole. The harm posed is substantial.
- 5.3 The Council can demonstrate that it has a five-year housing land supply, it has passed the HDT, and taken in the round the most important policies for the determination of this application are up to date. The application cannot benefit from the "tilted balance" of NPPF paragraph 11.d)ii.
- 5.4 The policies infringed by the proposed development are up to date when considered against the policies of the NPPF. The conflict with the Plan is therefore a matter of great significance. Assessed against the

policies of the NPPF taken as a whole, the application performs no better where it is contrary to a recently made NDP.

- 5.5 The proposed development would be contrary to the development plan and national planning policy and there are no material considerations that justify a departure from those policies; the harm that has been identified significantly and demonstrably outweighs the limited benefits.
- 5.6 There are no other considerations that would indicate a planning balance being struck any other way than to refuse planning permission.

...

RECOMMENDATION

- 1) That Members resolve to: refuse planning permission, or in the event that the appeal has begun agree putative reasons for refusal, for the following reasons:

- i. The Fressingfield Neighbourhood Development Plan ("FNDP") provides a comprehensive strategy for growth which positively plans for development to meet its identified needs. The FNDP is recently made and in relation to new housing identifies where sustainable housing development should, and should not, go.

The proposed development of up to 18 no. dwellings, outside of the settlement boundary in the countryside and without a justifiable need, fails to accord with policy FRES1 of the FNDP. It fails to accord with policies CS1, CS2, and H7, and in turn policy FC1.1.

Straightforwardly, the proposed development is inimical to the spatial strategy of an up to date development plan. It conflicts with the development plan as a whole, for this reason alone. It does not represent sustainable development and is contrary to the NPPF.

The development conflicts with the development plan when taken as a whole and there are no material considerations which indicate that a decision should be taken other than in accordance with the development plan.

- 2) That Members delegate authority to the Chief Planning Officer to defend the appeal for the reasons set out under 1) above, being amended and/or varied as may be required.
- 3) That Members endorse the recommendation that officers write to the PINS requesting that the appeal be dealt with by way of the public inquiry procedure on account of substantial local interest and the need for planning policy evidence to be tested through formal questioning by an advocate.