

## Babergh District Council

Planning Application B/16/00777, Land south of Bull Lane, Long Melford

### Notes on Officer's Report on behalf of Long Melford Parish Council

3rd July 2017

**The Parish Council (LMPC) is aware of a number of defects (including misinterpretation of the law and the NPPF) in the officer's report which indicate that the recommendation for approval cannot be justified. They are set out in brief in the following Notes. If members decide to approve the application on the basis of the report as it stands their decision would be open to legal challenge,**

#### The Basis on which the Application is to be Determined

The starting point is the law relating to the determination of planning applications and the role of the development plan.

Law

##### *1990 Act section 70(2)*

"In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations."

##### *2004 Act section 38(6)*

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The plan rules, unless material considerations indicate otherwise.

#### Government Policy and the Supreme Court Judgment

Government policy is set down in NPPF, the key elements of which, as interpreted by the Supreme Court in the recent Suffolk Coastal etc case, are:

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking....."

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

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

– specific policies in this Framework indicate development should be restricted."(NPPF para 14)

The provision for "where a development plan is absent....." is triggered by para 49, which relates to the lack of a five-year supply of land for housing:

"Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. (NPPF para 49)

This provision is again prefaced by a reminder of the central place of sustainable development:

“Housing applications should be considered in the context of the presumption in favour of sustainable development.” (NPPF para 49)

And para 49 needs to be seen in the context of para 47, which sets an objective “To boost significantly the supply of housing.....”

The Supreme Court judged that a narrow view of the words “policies for the supply of housing” was correct.

“It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so affect their operation. But that does not make them policies for the supply of housing in the ordinary sense of that expression.”(Supreme Court para 57)

“In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.”(Supreme Court para 58)

However the Supreme Court is clear that, once the trigger bringing para 14 into operation has occurred, the decision-maker’s focus shifts to the tilted balance set out in NPPF para 14 (quoted above):

“The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed.” (Supreme Court para 59)

The golden thread of a presumption in favour of sustainable development is elaborated in para 6 of NPPF:

“The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.”

### Recapitulation

Government advice does not supplant or alter law, so applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

NPPF is a material consideration.

In the event of a deficient five-year housing land supply the key process for the decision-maker, faced with an application, is set out in para 14 of NPPF, involving the weighing, in a tilted balance, of the adverse impacts and benefits of the proposed development.

The concept of sustainable development brings in most of the policies of NPPF and therefore most of the corresponding policies of the development plan.

### The Development Plan

The development plan for Babergh is the Babergh Local Plan, Core Strategy and Policies, 2011-2031, adopted in February 2014. The plan was prepared in the context of NPPF, which is confirmed in para 1.7 of the plan and in 41 other references to NPPF. The plan will therefore have been examined for consistency with national policy, meaning that the plan will enable the delivery of sustainable development in accordance with the policies in the NPPF.

The Core Strategy is described, on the cover, as Part 1 of the New Babergh Plan. The Executive Summary explains how issues not covered in Part 1 will be addressed:

“other subsequent Development Plan Documents (DPDs), that is Development Management and Site Allocations, will provide much more detailed policies covering detailed or specific requirements to cover many elements of development proposals and the site-specific details where new, smaller sites are to be allocated for development (or for other purposes).”

The current (2016-17) Annual Monitoring Report shows no sign of Part 2, Development Management and Allocations, being produced; the focus has shifted to a new joint plan for Babergh and Mid-Suffolk. This has caused a very large increase in reliance on windfalls for housing development, as no allocations have been made apart from five strategic allocations related to the main towns.

## The Officer’s Report

### Policies for the Supply of Housing

At para 27 officers provide their own interpretation of the Supreme Court ruling:

“ruling that a “narrow” interpretation of this expression is correct; i.e. it means policies identifying the numbers and location of housing.”

**Nowhere in the judgment is there any mention of “location”. The court specifically rejected the notion of interpreting policies for the supply of housing as including policies affecting the supply of housing.**

### An Appropriate Understanding of Sustainable Development

At para 33 officers set out how the application will be considered, including assessment against the three dimensions of sustainable development listed in NPPF para 7. **This is not an adequate basis of assessment as the three dimensions are set out for a different purpose**, namely “These dimensions give rise to the need for the planning system to perform a number of roles:” The advice is addressed to the planning system as a whole i.e. including plan-making. **The appropriate definition of sustainable development is set out in the preceding paragraph 6, quoted above and brings in paras 18-219 of NPPF. Paragraph 7 is clearly inappropriate for the assessment of individual planning applications.**

At para 35 the report states that “policies CS2, CS3, CS11 and CS15 provide a framework to consider the sustainability of this site, having regards to the three strands of sustainable development in the NPPF.”

This again makes the mistake of relying on NPPF para 7, not the policies of NPPF as a whole (paras 18-219). This mistake seems to lead to a similarly restricted view of sustainable development policies in the Core Strategy. Two serious omissions which we address below are Policies CS17 and saved CN08. The effect of law, NPPF and the clarification by the Supreme Court is that the absence of a five-year land supply for housing triggers the operation of NPPF para 14 which in turn requires the decision-maker to weigh all the relevant policies of the development plan in the tilted balance that is set out. The law remains that planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise. The net effect is that any change in the weight attached to development plan policies needs to be justified in order to be a material consideration. Other than saying that LPA’s should “grant(ing) permission unless: – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole” the NPPF leaves the weighting of development plan to the LPA; NPPF does not of itself automatically reduce or increase the weight to be attached to any particular class of development plan policy.

### Policy CS2

At para 115 and elsewhere the report concludes that CS2 should be afforded limited weight:

“However, in the absence of a five-year supply and with significant weight afforded to the provision of housing as to address the housing shortfall, Officers are of the view that this policy should be afforded limited weight.”

Affording limited weight to this policy entitled “CS2 Settlement Pattern Policy” has not been justified and cannot be justified:

- we have shown that policies for the supply of housing do not include the location of housing; this policy is about the development strategy for all types of development across the District.
- There is no justification for affording limited weight to the policy, for example showing that it had significantly restricted the supply of housing; there is no evidence that it had such an effect.
- The report in the same paragraph makes the point that this policy is central to the achievement of sustainable development in Babergh:

“Policy CS2 forms part of a suite of policies to control the distribution of new housing, and can be afforded weight, since it contributes to ensuring that development is sustainably located and unsustainable locations are avoided. This planning objective remains important and is consistent with the NPPF presumption in favour of sustainable development.....”

The presumption in favour of sustainable development established in NPPF (para 14), which should be seen as a golden thread in both plan-making and decision-taking, means that a policy central to the achievement of sustainable development in Babergh cannot be given limited weight on a whim, without evidence to justify it.

**This policy, CS2, should be accorded full weight unless the Council can provide good grounds for it to be considered otherwise. Policy CS2 views this site as countryside where particular requirements have to be met: “ In the countryside, outside the towns / urban areas, Core and Hinterland Villages defined above, development will only be permitted in exceptional circumstances subject to a proven justifiable need.” This case has not been made in relation to the current proposal.**

#### Policy CS11

At paras 162 and 163 the report concludes that CS11 should also be considered of limited weight:

162. “Paragraph 47 of the NPPF requires LPAs to identify a 5 year supply of specific deliverable housing sites. NPPF Paragraph 49 states that ‘relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites’.

163. Babergh District Council does not have this housing land supply at this time and as such the relevant policies set out above for the supply of housing are not considered to be up to date. Whilst it is identified that there is not compliance with these policies, it is considered that policies CS2 and CS11 are relevant policies for the supply of housing and therefore limited weight should be attached to these policies.”

Affording limited weight to this policy entitled “CS11: Strategy for Development for Core and Hinterland Villages” has not been justified and cannot be justified:

- According to the Core Strategy para 2.8.5.1 this policy has been designed to create flexibility in facilitating development:

“It is intended to provide greater flexibility within rural communities, allowing growth and service / infrastructure improvements, to develop in line with the day to day practice of people living in those communities.”

And the paragraphs following this one quoted expand on the benefits that will be generated in terms of facilitating growth and development. No evidence is provided that this policy has been a significant factor in limiting housing development. It would seem to be a policy to which full weight should be accorded as it is designed to support growth.

- There can be no doubt that this policy contributes to sustainable development, particularly it expressly brings into play, for developments covered by CS11, Policy CS15: Implementing Sustainable Developments in Babergh. It cannot be that Babergh DC would wish to be seen to be downplaying the importance of sustainable development.
- The presumption in favour of sustainable development established in NPPF (para 14), which should be seen as a golden thread running through both plan-making and decision-taking, means that a policy central to the achievement of sustainable development in Babergh cannot be given limited weight on a whim, without evidence to justify it.

**This policy, CS11 and CS15 with it, should be accorded full weight unless the Council can provide good grounds for it to be considered otherwise.**

#### Policy CS15

Para 35 lists CS15 as one of four CS policies “appropriate to consider the sustainability of this site.” The report does not alter the weight attached to this important policy. The report concludes at para 156: “In this regard, the proposal can only be treated as being partly in compliance with policy CS15,” this after giving the proposal the most cursory assessment against the 19 criteria in CS15. **Our view, previously submitted to the Council, is that the proposal fails to “score positively” (the requirement of CS11) on 18 of the 19 criteria. The report scores the proposal much higher, but our check of the Council’s scoring indicates that in 11 out of 18 cases the Council has not asked the full question. And the Council has failed to address one issue, which, significantly, is number ii: “make a positive contribution to the local character, shape and scale of the area.”**

When the report makes the overall “tilted balance” of assessment of the proposals at para 180, it suggests that limited weight should be attached to policies CS2 and CS11, but does not consider at all the non-compliance of the proposals with CS15. Yet this policy, “Implementing Sustainable Development in Babergh” is central to the issue of sustainability. Whilst it is set up as one of four relevant policies it is not even considered when the report reaches its recommendation that the Council approve the application.

**The advice to members in the report is misleading in that the assessment of the proposals against CS15, which is central to the achievement of sustainable development in the District, has been inadequately carried out and overlooked in arriving at the recommendation. If correctly treated, CS15 would have led to a very different tilted balance assessment.**

#### Policy CS17

The Council has neglected to consider Policy CS17, which relates to the historic value of settlements and their contribution to the rural economy and which names Long Melford along with only one other settlement. The policy states that “appropriate new development that supports this role will be encouraged.” The Council has not assessed the appropriateness of the proposals in the context of the historic character of Long Melford and its contribution to tourism and the rural economy. More importantly in the context of the weight attached to CS15, the policy expressly and particularly brings CS15 into play: “All proposals for development should comply with other policies in the Core Strategies and Policies document, particularly Policy CS15.....” CS15 does not need to be introduced by another policy; it stands alone and applies to all new development in the District.

**Our view, spelt out clearly in earlier submissions but ignored in the report, is that the proposal would be harmful to the historic character of Long Melford and therefore damaging to the rural economy, in conflict with CS17.**

#### 24 Bull Lane

The Council concludes at para 65: “this proposal would cause harm to the significance of 24 Bull Lane as a designated heritage asset, the level of harm is assessed as less than substantial, but close to that level and certainly greater than a slight or moderate level of harm.” These are weasel words which conceal the truth that the harm would be significant, words which are completely at odds with the preceding text and words which are designed to reduce the barriers to the approval of the development. We have reproduced the whole of paras 63 and 64 (with our emphasis) as they are so shockingly inconsistent with the conclusion in para 65:

63. “The **greatest impact of the development** is likely to be on the setting of 24 Bull Lane. At present, this has a **completely rural setting**, one that belies its true location relatively close to Long Melford. Its roadside position is an important feature of its setting, but of similar importance is the **isolated location of this house** and its immediate (unlisted) neighbour: they form a **distinctive group**, in well-defined individual plots, but with a **strong physical and visual relationship to the open countryside around them**. The open land to the east of 24 Bull Lane, and particularly that behind it and its neighbour, provides a **tranquil rural backdrop** to the asset, which **greatly enhances the appreciation and understanding of its significance as an isolated rural dwelling**.

64. The proposed development seeks to **embed this isolated group of buildings in a new suburban extension to Long Melford**, and this **disrupts the existing tranquil, open and rural setting** of the asset. Of **particular concern** is the plan to develop immediately behind 24 Bull Lane, including the construction of a new access road running behind the existing plots and a number of new, two-storey dwellings. The **visual intrusiveness and disruptive effect of this will be exacerbated by the slight rise in the existing ground level from north to south** and the end result is likely to **completely sever 24 Bull Lane from its existing rural context**. In addition, development along the roadside to the east of 24 Bull Lane will **further erode the open, rural character of the setting**, leaving the listed building appearing as one amongst many roadside buildings, **now completely absorbed into the built-up area** of Long Melford.”

It would be hard to describe a more devastating effect if No.24 were to be bombed! It is absurd to then describe the effect as less than substantial or less than significant.

**The Council should re-visit this assessment and come to an honest conclusion. Our view is that the effect will be substantial and significant. The weighing exercise stipulated in NPPF para 134 and carried out in para 177 of the report should be re-run on the basis of a significant harmful effect on No 24. The outcome, given the limited benefits of the proposal, should be that the application be refused (as was recommended in the officer’s report prepared for the meeting planned for 14 Dec 2016).**

#### Transport Assessment and Highways Safety, CS 15, xviii and xix

The report states at para 133 that the proposals comply with the above policies and with TP15. However this conclusion depends on a number of findings that the proposals are less than satisfactory:

- The letter from the applicant’s highway consultants dated 26<sup>th</sup> August is an attempt to make up for the failure in the application to address traffic conditions at the two junctions at either end of Bull Lane. The core message of this letter is that the Bull Lane/Hall Street junction is unsatisfactory but that there are many unsatisfactory junctions in the County, so it is OK. The letter also presents a number of misleading facts:

- It presents the measured widths of Bull Lane and shows how different combinations of vehicles can pass. However the measurements used include the marked footway adjacent to the Bull Hotel. Yet on page 1 of the letter the consultants refer to the marked footway and conclude that this provides ready access for pedestrians to pass from east to west and vice versa. They have double-counted the space.
- On pages 2 and 3 the consultants compare the junction at Hall Street with Home Zones, a type of traffic-calming measure. They imply that the junction performs adequately in this way. But once again they are relying on the full width including the footway as being available for vehicles, so the dimensions fall way short. Secondly they say that Home Zones serve 200-300 dwellings, whereas our own count shows that this junction serves some 700 dwellings.
- The consultants are clearly saying that a significant volume of the pedestrian flows from the development will use the junction, which they have to share with cars, vans and trucks.
- The report acknowledges in several places that the transport provisions are inadequate:
  - “In terms of Bull Lane/Hall Street there is no scope for further improvements due to existing buildings.” This is saying clearly that improvements are needed but they cannot be provided. This is no basis for concluding that the transport proposals comply with development plan policies.
  - “Opportunities for pedestrian connections are limited and the proposals have provided a connection into the existing pavement on Bull Lane.” Again the message is clearly that the site is not well located for pedestrian access.
  - “The pedestrian route to the village centre will have enhanced signing to encourage use of the Woollards Gardens route.” It is well known that people will tend to follow the most direct route when walking – the route along the side of the Bull Hotel will be the direct route for people coming from the proposed development. In particular people heading for the northern part of Hall Street, say north of the butcher’s, will not want to extend their journey by going via Woollard’s Gardens.
- Para 125 of the report refers to “a range of off-site highway improvements including bus stop improvements to encourage public transport.” These “improvements” included long visibility splays, road widening in Bull Lane, traffic calming, a wide entrance into the site and new bus stops, all of which will add to the damaging suburbanisation of this important entry to the village.

**The above all amounts to a site that is poorly located for safe vehicle and pedestrian movement, which in turn requires inadequate measures that will be intrusive and of limited effect. The application fails to comply with CS15, xviii and xix.**

### Sequential Testing

The applicant and the Council have adopted a flawed approach to sequential testing. The Bull Lane site has been compared in loose terms to two sites in Long Melford: Orchard Brook and land north Roper’s Lane. Both are in the hands of developers and have planning permission: they could not possibly be considered alternatives to the Bull Lane site.

The point of sequential testing is to assess whether, given in this case that the site is outside the BUAB, there are other sites which, in terms of sustainable development and the relevant policies of the development plan, would be preferable to the Bull Lane site.

The site, according to the report, is not within 400m (5 mins walk) of village facilities (in fact, it is over 1km from some key village facilities); it is quite likely that there will be sequentially preferable sites. LMPC has commenced preparation of a Neighbourhood Plan and it is likely that it will include allocations of land for housing. An initial list of sites has been prepared, nearly all within the village BUAB.

At para 76 the report concludes that there are no sequentially preferable allocated sites in Long Melford. That is a wrong comparison: there is no requirement to consider only allocated sites particularly where reliance on windfall sites is so high.

The key point is that the applicant and the Council have failed to prepare a valid sequential test, contrary to the requirements of Policy CS11 .

### Housing Need

Housing need is the key component of the benefits being counted by the Council. In para 82 the report defines housing need: “ ‘locally identified need’ within policy CS11 as meaning the needs of the Core Village, its functional cluster and possibly the area immediately adjoining it but no wider.” The only source of evidence of local need is the applicant’s Housing Needs Study (HNS), which, the Council accepts (para 100), is not to be relied on. The evidence of the need and the benefit is missing.

Housing need is a key component of the benefits of the proposals in two respects:

- The benefit that has to be weighed against the, in our view (see above), significant harm being done to the heritage asset, 24 Bull Lane. **The balance found in the report should now be reversed: permission for the scheme should be refused.**
- In the overall tilted balance assessment the benefit must be discounted on account of the failure to demonstrate locally identified need.

### Ensuring Adequate Infrastructure Capacity

The Council is still relying on the applicant’s CIL contribution for the provision of the additional infrastructure capacity and therefore the satisfaction CS15, paras iv and v. However, as we have made clear in earlier submissions, there can be no certainty that the contribution or any other moneys will be applied to the infrastructure needs identified as a result of the proposal. There will be a bidding process, as set out in para 157 of the report:

“The application is liable to CIL and therefore Suffolk County Council have outlined the monies that they would be making a bid for to mitigate the impact of the development on education and libraries.”

Implicit in any bidding process is that any bidder may be successful or unsuccessful; the timing, and even the fact, of funds becoming available for the expansion of facilities in Long Melford is completely uncertain. The fact that this is a product of the CIL framework, somebody else’s fault, is irrelevant. What matters is that this contribution cannot be counted as mitigation. **The proposal is contrary to the development plan with respect to both CS11 v) and CS15 iv) and should be refused.**