

# Committee Report

**Committee Date:** 2 August 2017

**Item No:** 2

**Reference:** B/15/01678/FUL  
**Case Officer:** Gemma Pannell

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**Description of Development:** Erection of 10 single-storey dwellings for the over 55s, along with refuse, bicycle/gardeners store buildings and associated landscaping works.

**Location:** Land South of Gatton House, Hadleigh Road

**Parish:** East Bergholt

**Ward:** Dodnash

**Ward Member/s:** Cllr John Hinton and Cllr Stephen Williams

**Site Area:** 0.87ha

**Conservation Area:** Not in Conservation Area

**Listed Building:** The adjacent property, Gatton House, is Grade II listed.

**Received:** 08/12/2015

**Expiry Date:** 31/03/2016

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**Application Type:** Full Planning Permission

**Development Type:** Smallscale Major Residential Dwellings

**Environmental Impact Assessment:** EIA not required

**Applicant:** Mr and Mrs Aggett

**Agent:** Roger Balmer Design

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## **SUMMARY**

The proposal has been assessed with regard to section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan policies, the National Planning Policy Framework and all other material considerations have therefore been fully considered.

Officers recommend approval of this application. As explained in this report, the proposed development is considered not to be in accordance with development plan policies CS2, CS11 and CS15, and less than significant harm would arise to the adjacent heritage asset from the proposal. However, the harm to the heritage asset has been weighed against the public benefits brought about by the proposal, and it is considered that those benefits outweigh the harm.

Furthermore, the Council does not now have a five year housing land supply and the adverse impacts of the development, including areas of non-conformity with the development plan policies referred to, are not considered to significantly and demonstrably outweigh the benefits of the development.

The proposed development is considered to be sustainable development within all three identified strands (economic, environmental and social) of the NPPF and there is a presumption in favour of this proposal in accordance with the NPPF.

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## **PART ONE – REASON FOR REFERENCE TO COMMITTEE**

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The application is referred to committee for the following reason/s:

- **This application is referred to Planning Committee at the request of Councillor Williams.**

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## **PART TWO – APPLICATION BACKGROUND**

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1. This section details history, policies, advice provided, other legalisation and events that form the background in terms of both material considerations and procedural background.

### **History**

2. The planning history relevant to the application site is listed below. A detailed assessment of the planning history including any material Planning Appeals will be carried out as needed in Part Three:

B/89/00914/OUT - Outline – erection of a detached dwelling and garage.  
Refused.

### **Details of Previous Committee / Resolutions**

3. This application was previously reported to Planning Committee in March 2016.
4. Whilst the Planning Committee resolved to grant planning permission, and permission was subsequently issued on 29<sup>th</sup> March 2016, the decision was the subject of Judicial Review. The decision on the Judicial Review was issued on 9<sup>th</sup> December 2016 and the decision quashed the planning permission.
5. The application is, therefore, returned to the Planning Committee for redetermination.

### **Details of Member site visit**

6. Members undertook a visit of the site on 20<sup>th</sup> March 2016.

## Details of any Pre Application Advice

7. Pre-application advice was given on the merits of the scheme having regard to policy CS11.

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## **PART THREE – ASSESSMENT OF APPLICATION**

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### Consultations

8. *An initial consultation was carried out 16 December 2015 and the following responses were received:*

**East Bergholt Parish Council:** Recommend refusal on the significant harm to the AONB plus area is identified as valued green space for protection in emerging neighbourhood plan (submitted to Babergh for section 16 consultation).

**LHA** – No objection subject to conditions.

**County Archaeologist** – The proposed development is in an area of archaeological potential recorded on the County Historic Environment Record. The proposed development is located just outside of the historic settlement core (EBG044) and to the south east of a Roman cremation cemetery (EBG009). As a result, there is high potential for encountering early occupation deposits at this location. Therefore, standard archaeology conditions are recommended to enable recording and understanding of the significance of any heritage asset before it is damaged or destroyed.

**Historic England** – *(Full comments used within assessment below)*  
Recommendation: We have concerns that the proposed development would cause less than substantial harm in terms of paragraph 134 of the NPPF to the significance of the conservation area by inappropriately positioned development in its setting, altering a key access route into the historic core. The setting of the grade II\* listed building would be similarly affected, although we would not consider it amounts to more than a degree of harm. We suggest that the council weighs the public benefit that could be delivered by the scheme against this harm in accordance with paragraph 134 of the NPPF. If the council does find clear and convincing justification for the proposals, we would not wish to comment on the design of the scheme which has merit in its own right.

**Natural England** – The proposal will not affect any statutorily protected sites.

**Suffolk Wildlife Trust** – We have read the ecological survey reports (Richard Kilshaw Ecological Services, Nov 2015 and Essex Mammal Surveys, Nov 2015) and we note the conclusions of the consultants. We request that the recommendations made within the reports are implemented in full.

The reptile survey identified as required should be undertaken prior to the determination of this application in order to ensure that the decision is made based on all relevant material considerations, in accordance with the requirements of ODPM Circular 06/2005. However, based on the level of risk it would appear that the mitigation they have described would be appropriate if reptiles were found on site.

The requirements for survey and implementation of the necessary mitigation measures (ahead of any works, including clearance, on site) can be secured by a pre-commencement condition. In addition to the reptile survey, the other recommendations made within the survey reports should be implemented in full, via a condition of planning consent, should permission be granted.

**Suffolk Fire and Rescue Service:** The Fire Authority request that adequate provision is made for fire hydrants via the imposition of a condition.

**Suffolk County Council – Landscape:** (*Detailed comments are incorporated into assessment below*). The proposal is acceptable in landscape terms subject to conditions.

**SCC Infrastructure:** In view of the dwellings being for occupation for people over the age of 55 there will be no requirement for education contributions.

**Corporate Manager – Community Planning, Heritage & Design:** Concerns about the density of development and the impact of the wide access point and views into and out of the conservation area. The gap provided by the site is significant in terms of establishing the rural character and setting of the two listed buildings that it separates. Less than substantial harm would result to the setting of both. The visual separation provided by the conifer belt between the site and The Gabel will not last so the visual impact of the development on this will be greater than it would be if this was retained. The tranquillity of the cemetery and views across the open area would be impacted by the development. If balancing harm against public benefit, then need to be sure that the development was desirable in terms of providing housing for the over 55s and achieved that aim. There appears to be a compromise on provision of ancillary outbuildings and garden space in order to achieve both the numbers of units and to achieve design aesthetic. The use of the inward looking courtyard for parking does seem rather a wasted opportunity and will compromise the setting of the development.

**Arboricultural Officer** - No objection subject to development being undertaken in accordance with the principles outlined in the accompanied arboricultural report, an appropriate condition should be used for this purpose. Although a number of trees are proposed for removal these are either of limited amenity value and/or poor conditions and all important (category A) trees are scheduled for retention. A detailed tree protection and arboricultural method statement, will be required.

**Corporate Manager - Development (Housing and Regeneration) – No objection:**

The proposed development proposes 'Almshouse' type single storey units for the over 55's. Taking into account the planning circumstances this appears to be an appropriate use of the site and will meet the needs of older people wishing to down size from larger family housing to smaller more manageable accommodation, within the open market sector.

The most recent information from the Council's Housing Register shows 23 applicants registered for housing stating a local connection with East Bergholt of 6 of these are 55 years and over.

The provision of three units for affordable housing on site would help meet the need for affordable housing within East Bergholt for older people and will meet current affordable housing planning policy requirements.

**Corporate Manager – Sustainable Environment (Land Contamination):**

The Phase 1 desk study by MM-EC Geoenvironmental in support of the application adequately demonstrates that the likely risk from contamination to end users of the development is likely to be low and as such I have no in principle objections to the development.

**Corporate Manager – Sustainable Environment:** If the Council wishes to grant planning permission prior to the approval of the overall energy/sustainability statement, then this can be dealt with by condition to ensure that the required standards/accreditations are secured at the post-construction stage.

**Suffolk County Council Flood & Water Team (inc. Drainage) –** No comments to make.

**Dedham Vale Society:** Objection in Principle – substantial development within the Dedham Vale AONB which we would argue is contrary to paras 115 & 116 of the NPPF where it is stated that such application should be refused except in exceptional circumstances and where it can be demonstrated they are in the public interest. To allow such a development in these circumstances would set a most unfortunate precedent for future attempts to intrude on the landscape of the AONB. We also note that the area in question does not feature as a potential site for development in the emerging Neighbourhood Plan and believe that great weight should be attached to this document, prepared by the local community who are best suited to know what is best for East Bergholt.

We object to the design of the development in relation to its treatment of the vehicle traffic it would create which we consider the applicant has completely misjudged. We do not consider that sufficient notice has been taken of the additional traffic that would use the already busy Hadleigh Road, encumbered with the Primary School almost opposite. Furthermore, the layout of the development providing a car park in the middle courtyard, seems peculiarly insensitive giving all ten properties an unappealing view from their front doors.

*Following the receipt of amended plans, an additional consultation was carried out on 5<sup>th</sup> February 2016 and the following responses have been received:*

**Corporate Manager – Community Planning & Heritage:** The Heritage Team considers that the proposal would cause less than substantial harm to the setting of Gatton House, The Gables and that of the conservation area. The dense courtyard development would result in loss of openness of the site and sense of countryside filtering in through the village. The wide access point would affect the closed views along the west side of Hadleigh Road between Gaston Street and Gatton House. The Heritage Team recommends that this harm is weighed against the public benefits of the proposals as required by paragraph 134 of the National Planning Policy Framework

**Dedham Vale and Stour Valley Project:** The site is within the nationally designated Area of Outstanding Natural Beauty and as such, the proposal should seek to protect and enhance the landscape and special qualities of the area.

The suitability or otherwise of the site for development will be determined by the relevant national and local planning policy, and therefore we offer the following comments in relation to the potential landscape impact only.

Given the location of the site in the context of the village of East Bergholt, it is important that the scheme takes into account its setting within a nationally protected landscape and in particular, the conservation of the character of this historic village setting.

The site is currently screened from the road by an over-mature coniferous hedge. This in itself is a dominant feature in the street scene and is not part of the local landscape character. Removal of the hedge along the road frontage and the boundary with The Gables would inevitably open up the views of the site and therefore make the development more visible, however, it is considered that this is best addressed with a detailed scheme of replacement planting. The replacement planting should seek to enhance the street scene and boundary treatment of the site with the introduction of locally appropriate planting which respects the local landscape character and effectively screens the development.

Longer range views from further afield within the AONB are not considered to be available and therefore the proposed landscape mitigation needs to address the immediate visual impact, such as from the road frontage and the cemetery at the rear. If the local planning authority approve the application, we would recommend a condition to ensure that a detailed scheme of planting and maintenance (at least 10 years), is submitted and approved prior to commencement of any work. The maintenance plan also needs to address how the areas of planting outside of the individual domestic gardens will be maintained in the long term as, for the mitigation to be effective, the success of the planting is crucial.

The areas of planting between the cemetery and the development should seek to provide a gentle transition of planting rather than an abrupt solid boundary for example.

In addition to a suitably detailed and appropriate landscape scheme and maintenance proposal, we would recommend that a condition is required to ensure that external lighting is minimised to that which is required for safety. Any lighting, signage etc. along the access road etc. will need careful consideration and conditioning.

**Historic England:** The proposed amendments have reduced the visual prominence of the proposed buildings, but for reasons set out in our advice of 6<sup>th</sup> January 2016, we consider the development could still result in harm to the significance of East Bergholt Conservation Area and the Grade II\* listed The Gables. The Council should therefore weight the public benefit that could be delivered by the scheme against this harm in accordance with paragraph 134 of the NPPF.

**Natural England:** The advice provided in our previous response applies equally to this amendment. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

**Dedham Vale Society:** The Society has now studied the plans and is pleased to note the revised approach to the car parking provision. This is an improvement but has only been achieved at the expense of a larger use of green belt land within the Dedham Vale AONB. The Society therefore maintains its objection in principle to this intrusion into the AONB. We consider granting permission for this proposed development as setting a dangerous precedent for further attempts to nibble away at the AONB on site adjacent to other villages in the Vale.

**East Bergholt Parish Council:** Recommend refusal on the significant harm to the AONB plus area is identified as valued green space for protection in emerging neighbourhood plan.

## Representations

9. 37 representation(s) objecting to the original application have been received and the comments are summarised as follows:-

- Speculative application – to gain profit from the land sale;
- No clear delivery plan or named or committed developer;
- Ridge heights are typical of a two storey development – potential for rooms in the roof;
- Significant built footprint;
- Potentially development will accommodate 26 people;
- Car park for 22 cars and 55m access road is punched into the AONB;
- Additional traffic generation;
- Access Road resembles an airport runway;
- Landscaping will take many years to mature;
- Destruction of frontage to Hadleigh Road;
- Visually intrusive;
- Destroy amenity and rural character of the village;
- Loss of one of the few remaining open meadows located within this part of the historic village;
- The timescale and level of impact is not acceptable;
- Conflict with the Neighbourhood Plan (disregard for the Landscape Partnership's Study);
- Need to minimise impact from lighting;
- Previous selective enforcement activity in recent years – will conditions be enforced;
- No practical means of ensuring housing is restricted to over 55 years;
- Loss of site to development will outweigh limited economic and housing benefits that can be expected to arise through the development;
- Outside of the BUAB;
- Within the Dedham Vale AONB;
- Defined as an important open space which should be protected from development (as per the Neighbourhood Plan);
- Neighbourhood Plan should be given weight in planning decisions and therefore is a material consideration;
- Identified in the SHLAA as site not appropriate for development;
- Identified in an independent landscape study to support the neighbourhood plan as one of the few sites in the Parish whose landscape has the lowest capacity for development;
- Need to conserve and enhance the historic environment;
- Development is at odds with national government policy;
- Alternative sites are available;
- Initial support from the LPA is premature and potentially prejudicial to a fair and considered period of consultation;
- Conflict with the EBE NP; significant weight of argument and policy context against the granting of planning permission;
- Refuse this application;
- Increased traffic;
- Excessive parking provision;
- Substantial new settlement;
- Age limit should be higher;
- Appearance of the development is dense and urban;
- Decorative chimneys – intrusive in terms of visual impact;

- Mature specimens should be planted;
- Development in the AONB shouldn't be allowed;
- Cumulative impact would be destructive of the tranquillity of the AONB;
- No evidence that this is in the public interest;
- Detrimental impact on the landscape and the wildlife;
- NP recommends 86 new homes up to 2030, this implies less than 6 per annum. Therefore larger developments should only have to be permitted in exceptional circumstances;
- Adverse impact on the landscape, character and tranquillity of the village;
- Site is contiguous with the open fields belonging to the cemetery;
- Out of character with the relatively small number of existing single houses in open gardens on that side of the road;
- NP designates this as an important open space;
- Short and long term injury to many aspects of the character and amenity value of this historic part of the village through disproportional scale and development density;
- Should be defined as 65yrs+;
- Over development;
- Valuable and unique asset within the AONB;
- NP must feature strongly in the considerations of this application;
- Provision for visitor parking;
- Development is not wheelchair accessible;
- Negligible storage space, no utility rooms are proposed;
- Site was historically used for grazing, which is in keeping with a country village;
- Development is too dense;
- Rooflines are too steep and ridge lines too high;
- Clock lantern is inappropriate;
- Lack of garages;
- Should be a 21<sup>st</sup> Century development;
- Phoney representation of alms houses;
- Erosion of the AONB would not benefit the village or visitors from further afield who contribute to the tourist industry that the area attracts;
- Road and pedestrian safety;
- Should be for 8 retirement 2 bedrooomed bungalows;
- No thought for the requirements of the elderly;
- How will the site be managed for the elderly;
- EB is already a large village with multiple applications for further development. Not enough infrastructure to cope with any more. Road access onto the A12 is dreadful;
- Doctors surgery is already full, as is the school;
- Meadow is crucial to maintaining the rural nature of this historic village;
- Do not want to become a town;
- Already a parking problem;
- Increasing population density on this site will change the character of the village;
- Destruction of the historic core;
- The site is likely to be included within the Conservation Area in the future;
- Statistics taken from the neighbourhood plan show development here is unacceptable;
- Wall should be constructed along the boundary of Gatton House;
- Disturbance of the peace and tranquillity of the cemetery for those visiting loved ones;



- Smaller scale development should be considered;
  - Contractors vehicles will need to park on the site;
  - Object to any further infill development.
10. Five representation(s) objecting to the amended application have been received and the comments are summarised as follows:-
- Proposal results in greater impact to The Gables (Grade II\*) as a result of the removal of the conifer trees along the boundary;
  - Amended ridge heights are still greater than many bungalows in East Bergholt;
  - Buildings will protrude some 3.36m above the boundary wall height;
  - Insufficient space to plan adequately sized and tall hedging or evergreen trees;
  - Adequate screening should be implemented prior to the commencement of development and maintained for the life of the development;
  - PD Rights should be removed for alterations to the roof – to prevent loft spaces being used for accommodation;
  - 10 dwellings is too dense. Inadequate space for proper screening and little space between the proposed buildings and boundaries with The Gables and Gatton House;
  - Reduction in numbers of dwellings would result in less traffic;
  - Lighting should be controlled by condition;
  - Unjustified development in an AONB;
  - No identified need for the development;
  - No affordable housing is provided on site;
  - Open market dwellings will be out of reach for local people due to the high quality build;
  - Discrimination against people under 55;
  - Will not free up dwellings in the village as may be purchased by those outside the area;
  - No guarantee that the AH contribution will be spent in East Bergholt;
  - All public comments should be available to view online;
  - Inappropriate nature of single bulky building;
  - Garaging is needed – especially for over 55s;
  - Viability and profitability should not be a planning consideration;
  - Access arrangements are harmful to the street scene as a result of wide visibility splays;
  - Enforcement of over 55's restriction;
  - A 10 year timescale for the landscaping condition highlights the scale of expected detrimental impact of this scheme on the character and amenity of the local area.
11. One representation(s) supporting the amended application has been received and the comments are summarised as follows:-
- The applicant has responded positively to many initial comments made;
  - The amended plan represents high quality development. Much needed in East Bergholt;
  - The proposed scheme is not considered detrimental to the street scene or AONB;
  - This development is in stark contrast to B/15/00673.
12. The following organisations and public representatives have made representations on the application and their comments are summarised as follows:-

**The East Bergholt Society:** Refuse – because of the location in the AONB. We applied the tests for development in the AONB as set out in the National Trust “AONBs and Development”:-

- The development does not conserve or enhance the AONB;
- The central car parking would dominate the view from the street with no possibility of screening by planting;
- Haven't taken into account the fundamental principle of conservation and enhancement;
- Not in compliance with NPPF para 115;
- Consider that this is “major” development which is a significant number in a sensitive area in a village setting;
- Permission should be refused unless there are exceptional circumstances to justify permission and that the development is in the public interest. We cannot support that there are neither exceptional circumstances nor public interest;
- If it were genuine sheltered accommodation, guaranteed to be occupied by those older people identified as having a need locally, a case could be made;
- The LPAs development plan is up to date and was strengthened by the Inspector with regard to its heritage landscape;
- Lack of consideration for development in the AONB.

*The following representations have been received following the consultation period during March 2017:*

**East Bergholt Parish Council** - No further comments received

**East Bergholt Society** – Fundamental objections remain unaltered but in addition dispute the calculations for the 5 yr housing land supply and the impact of this on the Neighbourhood Plan. All three applications being considered in East Bergholt fail to comply with the NPPF as per the Society's original objection

**Dedham Vale Society** -The society continues to object to this application.

Seven further letters have been received raising the following objections:

- Harm to existing and future users of Hadleigh Road
- Increasing fast and dangerous traffic passing and using two nursery schools
- Parking of cars along Hadleigh Road has hampered use of driveways
- Existing problems will be exacerbated during construction and occupation of any extra building in Hadleigh Road
- Harm to natural habitat of this sensitive and vulnerable site
- Great need for protection and management of natural environment for the well being of future generations
- Building in the countryside will not enhance the Stour Valley and its AONB.
- Objections raised through the judicial review have not been addressed
- Further legal action will result if council pretends housing assessment need and the 5 year plan are not valid
- If the Council has been negligent in its production of its plan – consideration will be given to the liability of individual Councillors
- The plan should be rejected because of its adverse impact on the village in a sensitive location.
- Ludicrous retro design and overdevelopment are further reasons for refusal

- Development remains the same and therefore I continue to objection
- Councillors are obliged to listen to the voice of the people they represent and to manage the budget of those that pay their local taxes
- The only people that will benefit from this scheme would be those located outside of Babergh (i.e. the applicant and potential residents) at the cost of people living in the village.
- 99% of the people of East Bergholt don't want to develop in the AONB and yet the local council approved such a concept.
- Disrespect and lack of understanding of village planning has cost us all and councillors are not elected to waste funds.
- If permission is granted for this development a number of conditions should be imposed, that all occupiers must be over 55; properties should not be allowed to extend, including TV/satellite aerials and restrictions on construction noise and traffic pollution during the build.
- The Addendum statement and new site/block plan fails to make any substantive points that give weight to the case for this development which remains contrary to policy and the wishes of East Bergholt and detrimental to amenity, conservation, heritage and landscape characteristics of the site and its surroundings.
- A decision here is premature to the updated neighbourhood plan and the objective audit of the 5 yr housing land supply. Any decision would be open to question.
- BDSC Planning Committee is the decision maker having responsibility for implementing the NPPF to achieve sustainable development.
- The context of the site and the recently made EBNP and East Bergholt Development Partnership (Community Land Trust) which is planning its own development for the benefit of the community should be taken in to account.
- The decision should be transparent and be based on actual benefit that relates to the application.
- The buildings will be permanent and the loss of a lovely meadow protected by the AONB will be permanent to the detriment of the setting of the village and the loss of enjoyment of the green wedge off Hadleigh Road.
- Further investigations should be undertaken with regard to the 5YHLS, otherwise an incorrect weight might be given to relevant policies.
- Consideration of the application should be deferred until matters of housing land supply, heritage evaluation and any possible revision of the EBNP.
- The introduction of a supposed community benefit by allocating an area of the site to become a so called tranquil area for reflection and contemplation for those visiting the cemetery is not welcomed – this could become an area for noisy unsocial behaviour ranging from general nuisance to criminal activity.
- The elderly retired require safety and security. Potential residents will need to weigh the risks of disturbance, vandalism, theft and damage to property, their person and their vehicles before deciding to buy.

### **The Site and Surroundings**

13. The application site comprises 0.87ha of land located outside of, but immediately adjacent to, the built up area boundary of East Bergholt, which is identified as a core village in policy CS2 of the Core Strategy. The application site is also within the Dedham Vale Area of Outstanding Natural Beauty (AONB) and abuts the Conservation Area boundary. The neighbouring properties are listed buildings (Gatton House and The Gables).
14. The application site comprises meadow land that previously formed part of Gatton House and has now been severed from Gatton House, having been sold as a separate entity.

15. The application site fronts onto Hadleigh Road and comprises a five bar gate and a row of mature conifer trees, which also extend beyond the application site along the boundary with Gatton House. The application site contains a number of semi mature trees, some of which are to be retained as part of the development. The side boundary of the site alongside Gatton House, runs beside the tennis court and swimming pool, and the other side adjacent to The Gables, is adjacent to their tennis court. The rear boundary abuts the parish cemetery.

### **The Proposal**

Please note details of the proposed development including plans and application documents can be found online.

16. Planning permission is sought for the erection of 10 single storey linked dwellings with a central courtyard. The dwellings are proposed to be limited to occupation by persons over 55 and have been designed as small properties, which may give the opportunity to downsize.
17. The application has been amended since original submission, as a result of ongoing discussions and as a result of concerns raised by both statutory consultees and interested parties.
18. The amendments that have been undertaken are as follows:-
  - Removal of conifers trees along the SE boundary – due to their limited lifespan;
  - Reduction in width of access road from 5.5m to 4.25m;
  - Removal of footpath on the NW side of the access. This helps to lessen the overall visual impact of the access and a footpath on the east side remains;
  - Car parking has been relocated from the central courtyard to areas on each side of the site. This minimises views of parked cars from the access to the site and improves the outlook for the proposed dwellings;
  - Redesign of bin store and cycle storage;
  - Reduction in roof pitch and ridge heights and lowering of chimneys;
  - Removal of crow stepped parapet gables;
  - Simplification of central clock tower;
  - Central courtyard now landscaped feature to provide garden area whilst allowing access and turning for larger delivery vehicles and emergency vehicles;
  - A 2.1m high soft red brick wall along part of the boundary with Gatton House.
19. Members are advised that these alterations were made prior to the matter being reported to Planning Committee in March 2016. However, the applicant's agent submitted a further supporting statement in March 2017 (following the judicial review) which has been subject of further consultation.

This includes an updated masterplan with an area of publicly accessible land to the rear of the site.

### **NATIONAL PLANNING POLICY FRAMEWORK**

20. The National Planning Policy Framework (NPPF) contains the Government's planning policies for England and sets out how these are expected to be applied. Planning law continues to require that applications for planning permission are determined in accordance with the Development Plan unless material considerations indicate otherwise. The policies contained within the NPPF are a material consideration and should be taken into account for decision-making purposes.
21. The NPPF is supported by the Planning Practice Guidance (PPG), which assists applicants and decision makers to interpret the NPPF. Both the NPPF and PPG are referred to within this report where relevant to the assessment.

### **PLANNING POLICIES**

22. The Development Plan, so far as relevant to this application, comprises the Babergh Core Strategy 2014, saved policies in the Babergh Local Plan (Alteration No.2) adopted 2006 and the policies set out in the East Bergholt Neighbourhood Plan. The following policies are applicable to the proposal:

### **BABERGH CORE STRATEGY 2014**

- **CS1** - Applying the Presumption in Favour of Sustainable Development in Babergh
- **CS2** - Settlement Pattern Policy
- **CS3** - Strategy for Growth and Development
- **CS11** - Strategy for Development for Core or Hinterland Villages
- **CS15** - Implementing Sustainable Development in Babergh
- **CS18** - Mix and Types of Dwellings
- **CS19** - Affordable Homes

### **SAVED POLICIES IN THE LOCAL PLAN**

- **HS32** - Public Open Space (New Dwellings and Sites up to 1.5ha)
- **CR02** - AONB Landscape
- **CR07** - Landscaping Schemes
- **CN01** - Design Standards
- **CN06** - Listed Buildings
- **CN08** - Development In or Near Conservation Areas
- **TP15** - Parking Standards – New Development

### **THE EAST BERGHOLT NEIGHBOURHOOD PLAN**

- **EB1** - Housing Numbers
- **EB2** - Development Size and Location
- **EB3** – Village Heart
- **EB4** – Housing Type, Tenure and Sizes
- **EB5** – Increasing the Choice of Housing Options for Older People
- **EB6** – Landscape and Views
- **EB7** – Local Green Space
- **EB8** - Biodiversity

- **EB9** – Housing and Non-Residential Design
- **EB10** – Preservation of Non-Designated Heritage Assets
- **EB12** – New Developments, Parking
- **EB13** – New Developments, Walking and Cycling
- **EB14** – New Developments, Footpaths, Cycleways and Bridleways
- **EB18** – New Development and Farm Vehicles Access
- **EB22** – Electric Cars
- **EB23** – Sustainable Drainage Systems

### **SUPPLEMENTARY PLANNING DOCUMENTS**

23. The following documents are also considered as material for the purposes of determining planning applications and are applicable to this proposal:-
- Rural Development and Core Strategy Policy CS11 SPD
  - Babergh District Council - Affordable Housing, Supplementary Planning Document (2014).
  - Cabe at Design Council - Building for Life 12 (3rd Edition, 2015).
  - Department for Transport - Manual for Streets (2014).
  - Suffolk County Council - Suffolk Guidance for Parking (2014), adopted 2015.
24. On the 6 March 2014, a number of Ministerial planning circulars were cancelled by central Government and were replaced by the Government's online Planning Practice Guidance (PPG). The guidance provided is advice the interpretation and application of national planning policy and has been taken into account in reaching the recommendation made on this application.
25. The PPG is an online reference and is available via the following link: [www.planningguidance.planningportal.gov.uk](http://www.planningguidance.planningportal.gov.uk).
26. The relevant policies that have been referenced can be viewed online. Please see the notes attached to the schedule.

### **Main Considerations**

27. From an assessment of relevant planning policy and guidance, representations received, the planning designations and other material issues the main planning considerations considered relevant to this case are set out including the reason/s for the decision, any alternative options considered and rejected.

### **The Principle of Development**

28. The National Planning Policy Framework (NPPF) requires Councils to identify and update on an annual basis a supply of specific deliverable sites sufficient to provide for five years worth of housing provision against identified requirements (paragraph 47). For sites to be considered deliverable they have to be available, suitable, achievable and viable.

29. 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 (as stated in paragraph 49 of the NPPF). Where policies cannot be considered up-to-date, the NPPF (paragraph 14) cites the presumption in favour of sustainable development and states that planning permission should be granted unless i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or ii) specific policies in the NPPF indicate development should be restricted. The presumption in paragraph 14 also applies where a proposal is in accordance with the development plan, where it should be granted permission without delay (unless material considerations indicate otherwise).
30. The precise meaning of 'relevant policies for the supply of housing' has been the subject of much case law, with inconsistent results. However, in May 2017 the Supreme Court gave judgment in a case involving Suffolk Coastal District Council which has clarified the position. The Supreme Court overruled earlier decisions of the High Court and the Court of appeal in this and other cases, ruling that a "narrow" interpretation of this expression is correct; i.e. it means policies identifying the numbers and location of housing, rather than the "wider" definition which adds policies which have the indirect effect of inhibiting the supply of housing, for example, countryside protection policies. However, the Supreme Court made it clear that the argument over the meaning of this expression is not the real issue. The absence of a five year housing land supply triggers the application of paragraph 14 of the NPPF. In applying the 'tilted balance' required by this paragraph, the Council must decide what weight to attach to all of the relevant development plan policies, whether they are policies for the supply of housing or restrictive 'counterpart' policies such as countryside protection policies.
31. In accordance with National Planning Policy Guidance paragraph 030 (Reference ID: 3-030-20140306) the starting point for calculating the 5 year land supply should be the housing requirement figures in up-to-date adopted Local Plans. It goes on to state that '...considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light...Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints...'
32. The Council adopted its Core Strategy in Feb 2014 having been tested and examined as a post-NPPF development plan. The Council published the Ipswich and Waveney Housing Market Areas Strategic Housing Market Assessment (SHMA) in May 2017 which is important new evidence for the emerging Babergh and Mid Suffolk Joint Local Plan. Therefore, the 5 year land supply has been calculated for both the adopted Core Strategy based figures and the new SHMA based figures. For determining relevant planning applications, it will be for the decision taker to consider appropriate weight to be given to these assessments and the relevant policies of the development plan.
33. A summary of the Babergh 5 year land supply position is:
- Core Strategy based supply for 2017 to 2022 = 4.1 years
  - SHMA based supply for 2017 to 2022 = 3.1 years

34. Policy CS1 is the local reflection of the presumption in favour of sustainable development and is embedded within the development plan. It includes the position that where relevant policies are out-of-date at the time of the decision, the Council will grant planning permission (unless material considerations indicate otherwise), taking into account whether any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF overall, or specific policies in the NPPF indicate that development should be restricted. Since there is not, on any measure, a 5 year land supply, paragraph 49 of the NPPF deems the relevant housing policies of the Core Strategy to be out-of-date, so triggering both the 'tilted balance' in paragraph 14 of the NPPF, and the operation of Policy CS1.
35. The NPPF requires that development should be sustainable, and paragraph 6 of the NPPF sets out guidance on what this means in practice by drawing attention to all of the policies from paragraph 18 to 219 of the NPPF. In some circumstances there is also a presumption in favour of sustainable development which is to be applied as set out in paragraph 14 of the NPPF. This has been discussed above. Paragraph 7 of the NPPF sets out three dimensions for sustainable development, economic, social and environmental:
- "an economic role - contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure:*
- a social role - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and*
- an environmental role - contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."*
36. In the light of all of the above, this report will consider the proposal against the policies of the development plan, including the East Bergholt Neighbourhood Plan, to determine whether the proposal is in accordance with the development plan as a whole. If it is not, and there are policy conflicts, they will need to be weighed against other material considerations to see whether a decision which does not accord with the development plan is warranted, in the light of the presumption in favour of sustainable development, and in the context of the authority not being able to demonstrate a 5 year land supply.

### **Sustainability of the Proposal (including assessment against the development plan and the NPPF)**

37. As detailed at paragraph 22 above, in applying the 'tilted balance' required by paragraph 14 of the NPPF, the Council must decide what weight to attach to all the relevant development plan policies, whether they are policies for the supply of housing or restrictive 'counterpart' policies such as countryside protection policies.



38. In that regard, whilst it is for the decision maker to determine the weight that is to be given to these policies, it is your officer's opinion that policies CS2, CS3, CS11 and CS15 provide a framework to consider the sustainability of this site, having regard to the three strands of sustainable development set out in the NPPF. As such, these policies and their requirements are assessed further here.
39. Policy CS2 (Settlement Pattern Policy) identifies East Bergholt as a Core Village, which will act as a focus for development within its functional cluster. Sites outside of a Core Village (or other defined settlement) form part of the countryside and Policy CS2 limits development in the countryside so that it will only be permitted in exceptional circumstances subject to a proven justifiable need. The application site is outside of the defined Core Village and so needs to satisfy these tests to comply with Policy CS2. Policy CS2 identifies the 10 larger rural villages, which form the centre or core of a 'functional cluster' of smaller settlements (see Core Strategy, paragraph 2.1.1.5).
40. Policy CS3 sets out the Council's Strategy for Growth and Development. It states that  
*"Babergh District Council will make provision for 5,975 new dwellings between 2011 and 2031 in the District. These dwellings are planned as follows: 1,100 between 2011 - 2016; and 4,875 between 2017-2031. The housing target will be achieved by:*
- i) Existing commitments as identified in the trajectory;*
  - ii) Allowing for a windfall figure of 1,640 dwellings;*
  - iii) Making provision for 2,500 new dwellings to be built in the following locations:*
- .....*  
*Core & Hinterland Villages 1,050*  
*.....*
- The Council will introduce management actions to address housing delivery should there be a 20% deviation in housing delivery as opposed to targets for 2011-2016; and 2017 – 2021; and a 10% deviation for 2022-2026. These management actions could include constructively and proactively working with developers to bring forward committed or allocated sites; reviewing phasing of allocated sites; reviewing housing targets and associated policies; and allocating additional sites to meet targets if required".*
41. Policy CS11 sets out the Local Plan 'Strategy for Development in Core and Hinterland Villages' and (so far as relevant) states that:
- "Proposals for development for Core Villages will be approved where proposals score positively when assessed against Policy CS15 and the following matters are addressed to the satisfaction of the local planning authority ... where relevant and appropriate to the scale and location of the proposal:*
- 1. the landscape, environmental and heritage characteristics of the village;*
  - 2. the locational context of the village and the proposed development (particularly the AONBs, Conservation Areas, and heritage assets);*
  - 3. site location and sequential approach to site selection;*
  - 4. locally identified need - housing and employment, and specific local needs such as affordable housing;*
  - 5. locally identified community needs; and*
  - 6. cumulative impact of development in the area in respect of social, physical and environmental Impacts.*

42. The general purpose of Policy CS11 is to provide greater flexibility in the location of new housing development in the Core and Hinterland Villages. Considered together, Policy CS2 (Settlement Pattern Policy) and Policy CS3 (Strategy for Development and Growth) and Policy CS11 provide for a **minimum** of 1,050 dwellings to be delivered in Core and Hinterland Villages for the period between 2011 and 2031. Subject to specified criteria, Policy CS11 intentionally provides greater flexibility for appropriate development beyond the existing Built Up Area Boundaries (BUAB) for each Core Village, as identified in the 2006 Local Plan Saved Policies. However, as the High Court has clarified in the Judicial Review discussed below, this flexibility has to operate within the limits of Policy CS2 so that sites outside of the BUAB need to satisfy the tests in Policy CS2 as well as the criteria in Policy CS11.
43. The accompanying 'Rural Development & Core Strategy Policy CS11 Supplementary Planning Document ("the SPD") was adopted by the Council on 8 August 2014. The Council produced the SPD to provide guidance on the interpretation and application of Policy CS11, acknowledging that the Site Allocations Document foreshadowed in Policy CS11 may not be prepared for some time. Although the SPD is not part of the statutory development plan, its preparation included a process of community consultation before it was adopted by the Council, and means that it is a material consideration when planning applications are determined.
44. The proper interpretation of development plan policy is a matter of law and, in principle, policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context; however, statements of policy should not be construed as if they were statutory or contractual provisions (see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13).
45. The matters listed in Policy CS11, which proposals for development for Core Villages must address, are now considered in turn.

#### The landscape, environmental and heritage characteristics of the village

##### *Impact on Landscape*

46. Policy EB6 of the EBNP states that;
 

*“Development proposals shall demonstrate that they:*

  - 1. Comply with the policies and guidance relating to the Dedham Vale AONB and its setting;*
  - 2. Where appropriate, satisfy the development tests set out in paragraph 116 of the National Planning Policy Framework;*
  - 3. Respond positively to the special qualities and scenic beauty of the Dedham Vale AONB and its setting;*
  - 4. Have taken full account of the capacity assessment set out in the Landscape Sensitivity and Capacity Assessment (Map 11) ; and*
  - 5. Would not have an unacceptable adverse impact on the landscape setting of the village demonstrated through a Landscape and Visual Impact Assessment”.*
47. In respect of criteria 1-3 of policy EB6, the impact on the AONB is considered in the following sub-section of this report.

48. Map 11 within the EBNP sets out the Landscape Sensitivity and Capacity Assessment. It identifies this area has having Low Landscape Capacity, where the overall findings of the assessment were “...*the countryside within and surrounding the main built-up area of the village comprises rural, intact, high quality landscapes. The majority of the identified parcels of land in the countryside surrounding East Bergholt were found to have only a Low to Medium capacity to accommodate development, based on the assumptions set out in the report. Five parcels were found to have a Medium capacity to accommodate development on that basis and none were found to have a Medium to High or High capacity*”.
49. Policy EB6 requires that developments take full account of the Landscape Sensitivity and Capacity Assessment (criterion 4) and that an LVIA should demonstrate that there would not be an unacceptable adverse impact on the landscape setting of the village (criterion 5). Whilst these are separate issues, the fundamental matters at hand are the impacts of development on the landscape, the sensitivity of the landscape to such impacts and the overarching impacts on the AONB. These are therefore considered below. However, it should be noted that the Examiner did not accept that this site should be classified as Local Green Space, and removed this proposed designation from the site in the Examination of the Neighbourhood Plan. As such, policy EB7 is not applicable to this scheme.
50. The site is in a parcel of land adjacent to Gatton House and bounded by the cemetery to the west, the neighbouring property known as *The Gables* to the south. The site consists of grassland with scattered trees and is bounded on two sides (eastern and southern) by mature and very tall leylandii conifers. The boundary with the cemetery consists of semi-mature scattered trees and clear views into the site from the cemetery are available. Therefore, these views and the proposal site contribute to the setting and character of the cemetery. Opposite the site on the eastern side of Hadleigh Road is a mix of relatively new and late 20th century development creating a street scene that appears to retain some of the earlier boundary hedging and trees which pre-date this development. The leylandii hedge on the western side of the road has ceased to be robustly managed at some point after 2009, and now creates something of an oppressive outlook for some of the properties at the front of Hop Meadow.
51. The site itself does not appear to be significantly visible in the wider landscape and is difficult to locate from the highest point on Dead Lane, which is about 650m to the west of the site. The wider countryside to the west of the site consists of a wooded undulating grassland and arable landscape in which the only significant detractor the character and condition of the AONB is the rumble of traffic on the A12.
52. A proposed landscaping scheme has been submitted. This identifies the road frontage conifers for removal as well as those along the boundary wall of *The Gables*. The applicant has identified that the trees along the boundary with *The Gables* will need to be removed in the next 10 years.
53. The trees along the boundary with *The Gables* have no long term future and will be difficult to extract following construction of the site. Therefore, since the application was originally submitted it has been decided that these trees should be removed and replaced as part of this proposed development. This will create the opportunity to provide an effective landscaping treatment in the long term, included as part of the development and therefore controlled by the LPA. These changes will also remove planting which detracts from both the character and condition of the site, and its surroundings including the Conservation Area.

54. Given the sensitive nature of the site and importance that good landscaping will play in its acceptability it is suggested that the period for the landscaping condition should be at least 10 years.
55. Given the need however to ensure effective control of mitigation in this sensitive location, it may be appropriate for the LPA to control planting and aftercare for a longer period. This is to be achieved by incorporating landscaping and maintenance into a s106 agreement.
56. The most significant landscape impact of the proposal will be the change in land cover on the site from grassland and scattered trees to a built development. It does not appear that any other locally characteristic landscape features will be lost. The expected changes to the Hadleigh Road frontage appear to be broadly consistent with the developing streetscape.
57. There will be significant changes to the street frontage and views of the site from Hadleigh Road as well as to views from the cemetery. The proposed development is also likely to change the outlook for the cemetery and it is important the agreed landscape scheme is appropriate to the particular sensitivities of this area. The submitted landscape proposal, whilst not providing species details, is considered to deal with this matter satisfactorily.
58. A Landscape and Visual Impact Assessment (LVIA) has been submitted with the application. The LVIA concludes that;
  - the proposed development site has limited/localised capacity for some small scale development consisting of 10 dwellings. Development could be accommodated here without significant adverse effect. The effects of this proposed development are localised and slight adverse in magnitude in year one become slight beneficial in the longer term. This is because the proposed development is small in scale and relates well to adjacent character and development and does not alter the character and special qualities of the AONB. Nor does it have an adverse effect on the character and appearance of the conservation area and would in time make a positive contribution to the approach to the village and gateway into the conservation area.
  - The site is not noted as a visually important gap in the street scene in relation to Policy CN03.
  - The site is not visible from public rights of way within the wider AONB to the west and northwest.
  - The proposed scheme is in accordance with the management priorities identified in the 'Managing a Masterpiece' assessment for the AONB.
  - The site's location means it has a close connection to the existing settlement edge and could be considered to form a natural extension of the village's development.
  - The site has an existing strong vegetative framework, comprising hedges, blocks of woodland and scrub and public views are limited to those along Hadleigh Road and from the Cemetery.
  - The strong vegetation framework along with proposed landscaping would enable the new development to be integrated into the landscape with limited adverse effects on surrounding receptors.
  - The small scale of the site and proposed planting would be in keeping with the immediate context of the site.
  - The cultural associations so valued as part of the natural beauty of the AONB would be unharmed.

59. In this regard, it is considered that the proposed development has fully assessed the capacity of the landscape to accommodate the development. Furthermore, whilst the proposal would give rise to some impacts on the landscape, it is considered that it has been demonstrated that the proposal would not cause an unacceptable adverse impact on the landscape setting of the village. The proposal is therefore considered to accord with criterion 4 and 5 of policy EB6. The assessment will, therefore, turn to the impact on the AONB.

*Impact on the Area of Outstanding Natural Beauty*

60. Section 11A(2) of the National Parks and Access to the Countryside Act 1949 and Section 85 of the Countryside and Rights of Way Act 2000 requires that *'in exercising or performing any functions in relation to, or so as to affect, land in ... Areas of Outstanding Natural Beauty, relevant authorities 'shall have regard' to their purposes'*. The statutory purpose of an AONB designation is to conserve and enhance the natural beauty of the area.
61. Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Furthermore paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in areas of outstanding natural beauty, which have the highest status of protection in relation to landscape and scenic beauty. In *Bayliss v SSCLG* [2014] 1 P & CR 22, the Court of Appeal addressed the significance of the words *"great weight"* in paragraph 115. Recognising that the actual impact of a particular proposal on an AONB may vary from trivial or substantial to major, the Court of Appeal stated (at paragraph 18) that:-
- a. *"...The decision maker is entitled to attach different weights to this factor depending on the degree of harmful impact anticipated. Indeed, in my view, it could be irrational to do otherwise. The adjective 'great' in the term 'great weight', therefore, does not take one very far. Here the inspector found that the impact on the adjacent parts, and I stress the fact that this was the adjacent part, of the AONB would be limited."*
62. Paragraph 116 of the NPPF and the PPG states that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration must include an assessment of the need for the development, the cost of and scope for development elsewhere outside the designated area and any detrimental effect on the environment and landscape and the extent to which it can be moderated.
63. Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the NPPF applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. The NPPF is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable.
64. As set out above, policy EB6 of the EBNP requires that;

*"Development proposals shall demonstrate that they:*

1. *Comply with the policies and guidance relating to the Dedham Vale AONB and its setting;*
2. *Where appropriate, satisfy the development tests set out in paragraph 116 of the National Planning Policy Framework;*
3. *Respond positively to the special qualities and scenic beauty of the Dedham Vale AONB and its setting”.*

65. Saved policy CR02 of the Babergh Local Plan brings about similar requirements, and states;

*“The landscape of the Dedham Vale and the Suffolk Coast and Heaths Areas of Outstanding Natural Beauty will be safeguarded through the strict control of development. Unless there is an overriding national need for development having a significant impact in the particular location and no alternative site is available, such developments will not be allowed. Due regard will be given to the provisions contained within the Dedham Vale and Stour Valley, and the Suffolk Coast and Heaths Management Strategies”.*

66. Officers have considered the size and scale of the development proposed and do not consider that the development should be treated as major development, to which the policy in paragraph 116 of the NPPF would apply, even though it is so categorised for the purposes of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). In *Aston v SSCLG* [2013] EWHC 1936 (Admin) the High Court rejected an argument to the effect that 'major development' should be given the same meaning wherever it appeared in regulations or planning policy documents, and, specifically rejected the contention that it should be interpreted in accordance with the definition of *“major development”* set out in Article 2 of DMPO.

67. On this basis paragraph 116 is not engaged in this application circumstance. As such, consideration turns to the provisions of paragraph 115 and the development plan policies CR02 and EB6, as follows.

68. Paragraph 115, Policy CR02 and Policy EB6 bring about different tests in respect of the consideration of development in the AONB. Paragraph 115 provides that great weight should be given to *“conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty”* whilst policy CR02 requires that *“there is an overriding national need for developments that have a significant impact in the particular location and that there are no alternative sites available”*. Policy EB6 sets out three separate criteria, the first of which seeks compliance with the policies and guidance relating to the Dedham Vale AONB, and the third of which seeks that development proposals *“Respond positively to the special qualities and scenic beauty of the Dedham Vale AONB and its setting”*. The second criteria in policy EB6 requires satisfaction of the tests in paragraph 116 of the NPPF, wherever appropriate. For reasons already set out, paragraph 116 is not engaged in this instance.

69. Whilst the requirements set out within the policies are different, it is apparent that the aims of these policies are to conserve the landscape and scenic beauty of the AONB (paragraph 115), ensure that in instances where there is a significant impact that there is a demonstrable national need and that no alternative sites are available (CR02) and that developments respond positively to the special qualities and scenic beauty of the AONB (EB6). As such, the developments impact on the AONB will now be considered against these provisions.

70. Given the location of the site in the context of the village of East Bergholt, it is important that the scheme takes into account its setting within a nationally protected landscape and in particular, the conservation of the character of this historic village setting.
71. The site is currently screened from the road by an over-mature coniferous hedge. This in itself is a dominant feature in the street scene and is not part of the local landscape character. Removal of the hedge along the road frontage and the boundary with The Gables would inevitably open up views of the site and, therefore, make the development more visible. However, it is considered that this is best addressed with a detailed scheme of appropriate replacement planting. The replacement planting should seek to enhance the street scene and boundary treatment of the site with the introduction of locally appropriate planting which respects the local landscape character and effectively screens the development. Subject to this planting being secured, the proposal is not considered to give rise to significant impacts (and thereby in the terms of policy CR02 it is not necessary to consider whether there is a national need or alternative sites available).
72. Longer range views from further afield within the AONB are not considered to be available and, therefore, the proposed landscape mitigation needs to address the immediate visual impact, such as from the road frontage and the cemetery at the rear. It is considered that this can be achieved through a condition of any permission granted and, therefore, the landscape and scenic beauty of the site would be conserved in the terms required by paragraph 115 of the NPPF.
73. Furthermore, it is considered that the public benefits accruing from the proposal comprise significant landscape enhancement through the loss of the non-native conifers which are mature and have a limited life remaining. The replacement of these trees with well-considered landscaping positively contributes to the street scene setting and the wider AONB, in accordance with the requirements of policy EB6.
74. Whilst the proposal is within the AONB boundary it is considered that having reviewed the findings of the submitted LVIA in this regard, the proposal does not, because of the location and the limited scale of the development, have a significant adverse impact, (in either landscape or visual terms), and would result in some enhancement to this nationally designated landscape. As such, for the reasons already set out, the proposal complies with paragraph 109 and 115 of the NPPF, and with development plan policies CR02 (Babergh Local Plan) and EB6 (EBNP).

#### *Impact on Heritage Assets*

75. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that *'in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'*.
76. Recent case law on the application of that statutory duty acknowledges that the consideration of the impact of a proposed development on the significance of a designated heritage asset is a matter for its own planning judgement, but that the local planning authority is required to accord any identified harm to the significance of a designated heritage asset considerable importance and weight. This also applies to the duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act (see below).

77. The NPPF sets out the Government's national planning policy for the conservation of the historic environment and builds upon the 1990 Act referred to above. It also identifies protection and enhancement and establishes a presumption in favour of sustainable development in the planning system (paragraphs 6, 7 and 14). Good design is a key part of sustainable development, and the Government attaches great importance in it (paragraph 56). The NPPF also states that the significance of listed buildings and conservation areas can be harmed or lost by alteration to them or development in their setting (paragraph 132) and that the conservation of heritage assets is a core principle of the planning system (paragraph 17). Paragraphs 132-134 state inter alia that when considering the impact of works on the significance of a designated heritage asset, great weight should be given to the asset's conservation; any harm requires clear and convincing justification. Where works will lead to harm to significance, Local Planning Authorities should refuse consent unless it can be demonstrated that the harm is necessary to achieve public benefits that outweigh that harm and that proposals which make a positive contribution to the asset should be treated favourably (paragraph 137). In making this assessment the decision maker should not apply the 'tilted balance' of paragraph 14 of the NPPF (even if it is otherwise applicable) but should place the priority on conserving the heritage asset free from harm, by refusing harmful proposals, unless there is sufficient public benefit to outweigh that harm.
78. Saved policy CN06 of Babergh Local Plan Alteration No. 2 (2006) requires inter alia that alterations to any part of a listed building are: justified in terms of preserving the special character of the building; would make use of appropriate materials; and would cause the minimum possible impact to the heritage asset. Policy EB9 of the EBNP is also relevant, requiring that;
- “Developments in the Conservation Area (Map 18) should preserve or enhance the character and appearance of the Conservation Area (Map 18), whilst developments within the setting of a listed building should not result in harm to that building’s significance”.*
79. In accordance with the NPPF, due weight must be given to the policies contained within the development plan according to their degree of consistency with the NPPF. Policy CN06 of the Local Plan is considered to be consistent with the NPPF and so should be accorded full weight in the determination of the application.
80. The application site is a parcel of land abutting the East Bergholt Conservation Area and built up area of the village. It is located between two listed buildings: Gatton House (grade II); and The Gables (grade II\*). Although there is evidence that the land may have been planted as gardens to Gatton house in the early 20th Century, it is now less well planted and essentially remains a meadow area between the two buildings. The site is within the Area of Outstanding Natural Beauty.
81. The site in isolation makes no particular contribution to the setting of either listed building, however, it is an example of the breaking through of the green fingers of the countryside, filtering into the built up area of the village. As such it is important to the setting of both the listed buildings and the Conservation Area. The well-planted boundary (albeit non-native conifers) with Hadleigh Road reinforces the closed views established by the hard edge of the red brick boundary wall to Gables and continued by the planted boundary of Gatton House.



82. The introduction of a dense courtyard of housing in to this area will have an impact on the openness of the setting and change the character of this location at the edge of the village, by filling the gap between the two listed buildings. The splayed access point would affect the closed nature of the roadside boundary and will have an impact on views into and out of the conservation area.
83. Revised plans have been submitted addressing comments on the design and layout of the proposed scheme. However, the principle and design concept remains essentially the same as that originally submitted. This is an attractive scheme with a design aesthetic that draws heavily on the nineteenth century “estate” development of villages within the local area. The relocation of the parking and narrowing of the access road are an improvement and views of the scheme from its access road would be more successful than with the previous proposal, without the clutter of cars within the courtyard.
84. The impact of the development on the setting of the Gables would be greater as a result of the removal of the conifer belt to the south boundary. However, this tree belt could be removed at any time as is not within the Conservation Area. The Gables currently sits within a well enclosed and private site. On the removal of the substantial trees there would be a more direct visual association between this and the development, which would harm the setting of the grade II\* listed building. This could be mitigated by re-establishing enclosure in the form of mature trees. It is considered that greater harm would result if the trees were left along the boundary and the development proceeded as the trees are likely to be removed following construction as there is likely to be post development resentment leading to pressure to remove the trees which would be situated close to rear boundaries. The trees also have limited life span and their removal would be difficult once development had occurred and there would be no opportunity to require any replacement planting post development. Furthermore, in the event that permission was not forthcoming, these trees would remain in need of maintenance and ultimately are likely to be removed, due to their deteriorating condition, with no/little potential to secure any replanting in this locality.
85. Therefore, the amendment to the proposal removing the tree belt along the boundary is considered to enable a longer term protection for the setting of the The Gables, should this development be approved.
86. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that “... *In the exercise, with respect to any buildings or other land in a conservation area ... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*’. Saved policy CN08 reflects this provision, requiring that;

*“Proposals for the alteration, extension or change of use of an existing building, or for the erection of new buildings in a conservation area or which have an impact on views into or out of a conservation area should:*

- preserve or enhance the character of the conservation area or its setting;*
- retain all elements and components, including spaces, which contribute to the special character of the area;*
- be of an appropriate scale, form, and detailed design to harmonise with its setting;*
- include fenestration which respects its setting;*
- use materials and components that complement or harmonise with the character and appearance of the area; and*
- ensure that natural features such as trees and hedges are retained and integrated into any development proposals.”*

87. The boundary of this part of the East Bergholt Conservation Area follows the road and is characterized by single depth development along the road edge, often set in substantial grounds. Modern development has been positioned to the north and east. The development grain of the historic core of the village retains its open pattern and the definition between it and newer developments is clear. The application documents provide a thorough investigation into the qualities of the conservation area and the application site. This pays particular attention to the contribution of the Hadleigh Road approach into the conservation area.
88. The site is a separate parcel of land north of The Gables, grade II\* listed. A boundary wall along the roadside significantly contributes to the heritage assets which provides the most visual link between the two sites. This site was previously included in plans to expand the boundary of the Conservation Area. Whilst it was not included, the submitted documents correctly state that it is a positive contribution to the setting of the conservation area and has a green edge which marks the boundary between the settlement and countryside. Glimpses through the green edge of the site exist, which reinforce its open nature.
89. Modern development lies to the north-east of Hadleigh Road, and whilst this has eroded the quality of the space, its effect does not override it. The area south-west of Hadleigh Road has resisted modern expansion, whereas the north and east of the village has not. Therefore, Historic England are of the view that it would be more appropriate to develop other sides of the conservation area, rather than this location, as it retains qualities that contribute to the setting of the heritage assets (Conservation Area and The Gables).
90. The loss of the open space and its replacement with a scheme of this scale would result in less than substantial harm to the setting of the listed building and that of the conservation area. The design could be seen to reinforce local distinctiveness, and proposed planting introduce some enclosure to the road frontage, but it is not considered that this counters any harm resulting from the loss of openness of the site.
91. The Supporting Statement concludes that there is harm to the heritage asset, but notes that it is low and the public benefits would outweigh the harm when assessed using the considerations of paragraph 134 of the NPPF. Historic England disagree with the amount of harm identified, and consider the impact would be more harmful than that described, albeit that they do not allege that proposal would result in anything other than less than substantial harm (see below). Paragraph 132 of the NPPF requires that 'any' harm requires clear and convincing justification.
92. Having considered the current proposals in light of government policy and relevant Historic England guidance, Historic England have suggested that development in other locations would be more appropriate. These proposals would alter the development grain of the settlement in this location, affect the glimpsed views through the site of open space and erode the boundary between countryside and settlement.
93. This impact would amount to less than substantial harm in terms of paragraph 134 of the NPPF and Historic England consider the public benefits provided by the proposal might be better provided elsewhere in the village or area. However, they leave it to the Local Planning Authority to weigh the public benefits for this scheme against the less than substantial harm in accordance with paragraph 134 of the NPPF.

### *Conclusion (Impact on Heritage)*

94. The NPPF, at paragraph 134, says that, where proposals lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Decision-takers should now make this balancing assessment of harm against public benefits. Unless the public benefits of the scheme are considered to be substantial, they will not outweigh the harm to heritage interests. Decision-takers should also be mindful of the specific legal duties with regard to the settings of listed buildings set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Therefore, taking all of these factors into account, it is necessary to consider the specific benefits of this proposal against the harm to heritage assets that has been identified. The balancing assessment is carried out in the 'Planning Balance' section of this report.

### The locational context of the village and the proposed development

95. This matter requires an assessment of the context in which the application site is located by reference to the village, its facilities and applicable planning designations.
96. Paragraph 10 of the SPD states that: *"To be considered under CS11 proposals must be in or adjacent to a Core Village or a Hinterland Village. Proposals should be well related to the existing settlement. It is suggested that the starting point for assessing this is whether or not the site adjoins the Built Up Area Boundary (BUAB) of the village. Some sites, even though they adjoin a BUAB may not be well related to the village and a judgement will need to be made taking in account issues such as:*
- *Whether the proposal would constitute ribbon development on the edge of the village*
  - *How the site is connected to the exiting settlement, jobs, facilities and services including location of site access and availability of sustainable transport links*
  - *The scale, character and density of the proposal in relation to the existing adjoining development*
  - *Whether the proposal constituted a logical extension of the built up area of the village*
  - *Whether the proposal is self-contained and has logical natural boundaries".*
97. Furthermore, policy EB2 of the EBNP relates specifically to the size and location of development. This policy provides that;
- "Housing development will be supported within or immediately adjacent to the village Built Up Area Boundaries provided that the development:*
1. *Would not have an unacceptable adverse impact on the Dedham Vale Area of Outstanding Natural Beauty (Map 9), Local Green Spaces or sites of biodiversity and geodiversity importance;*
  2. *Conserves, enhances and respects the Conservation Area (Map 18), heritage assets and built character of the local area, respecting the density, rhythm, pattern, proportions and height of existing development in the street scene;*
  3. *Would not have an unacceptable adverse impact on the local highway network;*
  4. *Would be of an acceptable size and scale that contributes to the character of the village and the "Sense of Place"; and*
  5. *Is within 800 metres of the Village Heart or Focal Points (Map 4).*

*Housing development on sites not adjacent to the Built Up Boundaries or outside the 800 metres zones will be supported where they satisfy the special circumstances set out in paragraph 55 of the National Planning Policy Framework.*

*Rural Exceptions Affordable Housing will be encouraged on sites adjacent to or well related to the Built Up Area Boundaries (Maps 5 & 6) in accordance with Local Plan Policy CS20.*

*Housing development of up to 15 homes that is well designed and integrated into the village will be preferred. Developments of 15 or more dwellings will be supported where they deliver exceptional benefits to meet the housing needs of the community including affordable and low cost market housing suitable for newly forming households, young families and homes for older people”.*

98. Some of the aspects of policy EB2 relate to individual matters that fall within separate sections of this report, such as the impacts on the AONB, impacts on heritage assets and biodiversity. However, the site and development are considered to comply with a number of the principle elements of EB2, including;
- The site lies immediately adjacent to the BUAB of East Bergholt.
  - The site lies within the Village Heart, as set out in Map 4 of the EBNP.
  - The site lies within a Focal Point, as set out in Map 4 of the EBNP.
  - The development provides for a scheme of 10 dwellings for older people.
99. In respect of the criteria within paragraph 10 of the SPD, as detailed at paragraph 95 above, it is considered that the proposed development meets these criteria as the site is adjacent to the settlement boundary and is within 400m of the core village. The site lies within the village heart and focal point area and there cannot, therefore, be any question that the site is sustainably located relative to the facilities in the village heart.
100. Furthermore, the scale, character and density of the proposal is acceptable having regard to the nature of development in East Bergholt and the proposal constitutes a logical extension of the built up area of the village. Therefore, the proposal also complies with this part of policy CS11.

#### Site location and sequential approach to site selection

101. The acceptability of the principle of development does not turn on whether or not the site is within the BUAB. In this case the site is outside but adjacent to the BUAB. However it adjoins the boundary and is considered to be reasonably well related and accessible by walking to the services and facilities of East Bergholt.
102. Within the addendum that the applicant has provided to their original Planning Statement, an assessment of alternative sites in the village has been provided. This identifies that;
- In considering the sequential approach the Judge was satisfied that as long as sites within the Built Up Area Boundary (BUAB) had been addressed there was no need to sequentially test sites outside the BUAB. (Transcript of Judgment para 31(2)). He stated ...”They dealt briefly but accurately and sufficiently with sequential assessment, on the correct assumption that what was required to be assessed were sites within East Bergholt. There were none within the built-up area of the village, the only relevant category for suitability which was required to be considered before a site adjoining the built-up area.”

- In terms of alternative sites within the settlement boundary it is considered that there are no sites available within the built up area boundary available to meet the needs of the proposed demographic. The proposed site is within 400 metres walk to the hub/core of existing facilities within the Village being; the local convenience shop, post office, bakery, tea rooms, estate agent, pub, pharmacy and village notice board.
- The Doctor's surgery is located away from the hub facilities, on the edge of the village. A site located closer to the Doctor's surgery would then be remote from the hub of existing village facilities. The hub facilities are likely to be in far more regular (arguably daily) use than the Doctor's surgery.
- There is no other shop in East Bergholt outside the hub of existing facilities. There is a kiosk in the garage, selling sweets, soft drinks and ice creams catering for the schoolchildren entering and exiting the nearby High School. The Kiosk does not sell convenience goods, and is only open during standard business hours, closing at lunchtime on Saturday and closed all day on Sundays and Bank Holidays. It cannot be reasonably said to provide convenience shopping provisions, by contrast with the Co-op in the hub is a fully stocked convenience store, open 7 days a week with extended opening hours and on bank holidays.
- For completeness consideration is given to other possible sites. The existing garage in the village, is closer to the doctor's surgery, but is remote from all other hub facilities. The garage site is 1.7 km distant from the main facilities hub/village core. The application relevance B/16/01092 land east of the Constable Country Medical Practice is also located some 1.7km from the main facilities hub/village core. Additionally, it is currently an employment site so its use for residential development may well be considered to be contrary to Local Plan and NP policies. In addition, a public footpath runs along the site boundary adding a further constraint to any development.
- In terms of the area around the main village hub or core where the shops are located there are no other sites that are known to be suitable and or available.
- Realistically there are no other sites with access to services within the built up area boundary, other than perhaps an odd single infill development within the built up area boundary.
- The application site is very close to main facilities, with easy access to bus services that provide a circular route around the village passing the doctor's surgery, with footpath connections from the site to the facilities. The application site achieves this whilst providing a small number of dwellings meeting the policies contained within the NP and local plan policies.
- Whilst it is accepted that the site is within the AONB, as the LVIA has identified, the proposal overall does not result in any more than limited harm and there are positive gains.
- The recent Housing White Paper continues to afford protection to the green belt, but does not specifically refer to other landscape designations. Whilst the AONB designation is fully respected, as previously stated, the NPPF does not preclude development within the AONB.
- This needs to be weighed against the positive contribution and benefit the site can make in delivering 10 homes for the over 55s in a highly sustainable location. There cannot be a more suitable site to accommodate this identified local housing need within the main village centre.

103. This assessment is considered to provide a reasoned assessment of alternative sites in the village and, for these reasons, it is considered that there are no sequentially preferable sites available. There are no sequentially preferable allocated sites within East Bergholt and the Neighbourhood Plan does not contain any site allocations.

104. The outcome of R (on the application of East Bergholt PC) v Babergh District Council CO/2375/2016 before Mr Justice Mitting has clarified that, in relation to sequential assessment, there is no requirement to look at alternative sites adjoining the built up area boundary, as sequentially they are within the same tier. As such, in the absence of sites within the BUAB and no requirement to consider other sites outside the BUAB, the proposal is considered to be acceptable in terms of this element of policy CS11.

Locally identified need - housing and employment, and specific local needs such as affordable housing

105. The outcome of R (on the application of East Bergholt PC) v Babergh District Council CO/2375/2016 before Mr Justice Mitting has clarified "Locally Identified Need" within policy CS11 means the needs of the Core Village, its functional cluster<sup>1</sup> and perhaps in areas immediately adjoining it (paragraph 23). It does **not** mean the needs of the wider rural parts of the district, it being agreed by all the parties that it would not in any event apply to urban areas such as Ipswich fringe.
106. The approach to the distribution of new dwellings within Policy CS3 is to be driven by the function of the villages, their role in the community, and the capacity for a particular level of growth which will be guided by many factors and which will result in a different level of development being identified as "*appropriate*" in different settlements, even those within the same category. The approach will also provide for a degree of in-built flexibility within the catchment area.
107. The Core Villages are very varied and their needs and factors which influence what is an "*appropriate level of development*" will vary from village to village, especially where villages are situated within environmentally and visually sensitive landscapes, particularly the AONBs, and/or where villages include conservation areas and heritage assets. These landscapes and heritage assets will be key considerations when considering planning applications.
108. Accordingly, "*locally identified need*" or "*local need*" should be construed as the development to meet the needs of the Core Village identified in the application, namely East Bergholt and the functional cluster of smaller rural settlements which it serves.
109. It is important to note that this interpretation of Policy CS11 should not be misconstrued as a justification to restrict proposals for new development in and around Core Villages to meet the needs of that Core Village alone. The Core Strategy expressly contemplates that Core Villages will accommodate the majority of new housing development to meet the needs described in Policy CS3 as "*rural growth*", including the development needs of the "*functional cluster*" served by that Core Village. Where appropriate, the development needs of a wider catchment area may also be relevant, subject to the particular needs of local rural communities and significant constraints on development in nearby Core and Hinterland Villages (see Core Strategy, paragraph 2.8.5.4).
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110. Policy CS11 allows flexibility for developments of appropriate scale and form to come forward for Core Villages. The Growth and Development Strategy therefore allows for some rural growth, which has been identified locally as important to sustain the existing rural settlement pattern and existing rural communities in the catchment area. The sequential approach of the Strategy for Growth and Development requires new development for "*rural growth*", first, to be directed to Core Villages, which are expected to accommodate new development in locations beyond existing BUAB, where appropriate.
111. In respect of affordable housing need, paragraph 2.8.5 of the Core Strategy advises that Policy CS11 will lead to greater flexibility in the provision of affordable housing, related to need which has to be considered more widely than just within the context of individual settlement but also the other villages within that cluster and in some cases adjoining clusters. This is consistent with the requirements of the NPPF that aim to ensure that the local plan meets the needs for affordable housing in the housing market area.
112. The SPD identifies that proposals should be accompanied by a statement that analyses the local housing needs of the Village and how they have been taken into account in the proposal. For the reasons explained, the local housing needs of the village must be construed as the needs of the village itself and the needs of the function cluster of smaller rural settlements it serves. In this case the Applicant has submitted a housing needs assessment.
113. The applicant's addendum to the planning statement, submitted in March 2017, has set out the evidence for housing need as follows:
114. Further research in to the Evidence Base forming part of the Neighbourhood Plan (NP) has taken place. Information contained within the appendices D1 to D7 of the NP are figures derived from the 2011 Census that illustrate that East Bergholt has a higher population of people over 65 than Suffolk or England.
115. The figures show population of people over 65 as:
- East Bergholt = 24.8%,
  - Suffolk = 19.9%
  - England = 16.3%.
116. The figures demonstrate that 62.9% of East Bergholt's housing stock comprises detached properties, compared with 34.8% in Suffolk and 22.3% in England. Broadly, in 2011, 24.8%, nearly a quarter of East Bergholt's population, was aged over 65. In the same year, 62.9%, that is nearly two thirds of the housing stock in East Bergholt was made up of detached properties. It is suggested that since 2011 the number of over 65 year olds in East Bergholt will have almost certainly increased, as has the number of detached houses.
117. The NP recognised the need to build mixed housing inter alia for older people, including providing housing for older people for downsizing and housing
- "...that provides a mix of new housing that satisfies residents demand for a "start to finish" life in the Village".
118. Chapter 3 of the NP makes numerous references to the need in East Bergholt for retirement homes, including:

- p 30, para 77, 'Feedback from the questionnaire showed ...a future and growing requirement for 1-2 bedroom and retirement homes.'
- p 31, para 79, 'The evidence shows there is a growing need for smaller 2 and 3 bedroom houses and retirement homes to meet the needs of the younger and ageing population.'
- p 31, The Housing mix requirements bar chart appears to indicate as regards retirement homes, a need for an increase of almost 10% to 10% by 2020 and to 20% by 2030.
- p 42, para 117, 'Over 600 people who responded to the questionnaire (Appendix C.7) have lived in the Parish for more than 15 years and wish to remain in the village for the foreseeable future. This will increase the number of older people.'
- p 43, para 122 '...it is assessed that 35-40 smaller homes (covering both market and affordable homes) will be required to be built in East Bergholt. As a result of the current imbalance in housing types in the village and the large unmet demand for smaller houses, it is intended that 40% of all houses built should comprise smaller homes.'
- p 44, para 125, 'This plan seeks to meet the needs of an ageing population (Appendix D.3) who stated they wish to stay in the village (Appendix C.7)...The Questionnaire identified the need for 30 people requiring retirement homes by 2020 and 42 people by 2030'

119. The NP also recognises the need for housing for older people near the heart of the village;

"... Village project – a Land Trust – to allow for a proportion of housing need for older people to be built so that they are ...close to the heart of the Village".

"Responses from local estate agents, informing the NP, included reference to a shortage in the Village of smaller homes for "downsizers".

120. In addition, responses in the parish questionnaire, as the evidence base to the NP, as summarised. In answer to the free flow question on housing provision at least 18 different comments make direct reference to the need for provision for older people, downsizing and bungalows in East Bergholt.

121. In addition to the 18 specific comments concerning housing for older people in East Bergholt, many comments were also made about the need for a scheme like Dove Close at Capel St Mary. (Those units are available to purchase and there is a significant waiting list to secure a unit. Whilst the occupation of these is offered on a different, shared facilities, basis, it does illustrate a need for accommodation for older people and the shortage of such accommodation.)

122. For completeness The Housing Needs Survey 2015 identified a need for 3 bungalows. For clarity, it is suggested that this 2015 Survey is indicative of need/demand for lower cost /affordable housing.

123. In assessing need, in addition to addressing the need in East Bergholt, one must also have regard to the needs of the villages within the functional cluster, where it is evident that further additional need exists.



124. It is clear that the evidence cited is supportive of a local East Bergholt need for bungalows for older people at the quantum proposed (10), and the provision is supported by the national planning policy position. The White Paper and the NPPF are evidence of the Government's drive to achieve a greater number of homes for older people to meet the evidenced ageing population.
125. The Government recognises the need to accommodate additional homes, including making provision for older people. The recent housing White Paper further supports this provision where para 1.16 states "We propose to strengthen national policy so that local planning authorities are expected to have clear policies for addressing the housing requirements of groups with particular needs, such as older and disabled people". Para 1.12 in the final sentence again stresses "... *the importance of taking account of the needs of different groups, for example older people*".
126. During the proceedings in the High Court the Judge acknowledged that the proposed units were not low cost homes, but homes for people who may be downsizing whilst staying in the Village. The Judge further commented that it appeared that there was a need for this housing type locally, but this was described as a District wide need in the Officers Report. The Judge also commented that the over 55 age for older people homes was the age recognised by the government for such schemes. The Judge acknowledged that the site was close to the main village with easy access to facilities.
127. It is considered that there is some evidence of a need within East Bergholt, that this need can be met by the proposed units and that the proposal accordingly meets some of the requirements of planning policies CS2 and CS11 and policies contained within the NP.
128. The development proposed will enable the provision of specific age related development which will go some way to meeting the local need and contribute towards housing land supply consistent with the objectives of paragraphs 47 and 49 of the NPPF. However, the scheme cannot, for the reasons set out above, be considered to be fully compliant with the development plan in this regard as the exceptional circumstances test in policy CS2 has not been demonstrated to have been met, and it has also not been demonstrated that there is a locally identified need for this development in the terms required by this limb of policy CS11.

#### Locally Identified Community Needs

129. Policy CS11 requires a similar approach to the determination of proposals for development to meet locally identified community needs, recognising the role of Core Villages and the "*functional clusters*" they serve. Paragraph 2.8.5.2 of the Core Strategy notes that the "*approach advocated for the management of growth in Core Villages and their hinterlands, has many benefits for the communities*". The benefits that the application of Policy CS11 and other relevant policies should secure include "*Flexibility in the provision of and location of facilities*" ... "*to reflect a catchment area pattern which relates to the day to day practice of the people living in the villages*" (see item iii) in paragraph 2.8.5.2).
130. The SPD identifies that proposals should be accompanied by a statement that analyses the community needs of the Village and how they have been taken into account in the proposal. In this case the applicant has not submitted a community needs assessment. The proposed development will generate contributions towards community infrastructure, to be spent on local services and infrastructure, therefore supporting rural communities, local services and facilities.

131. In the absence of such a statement, the application submission has not adequately demonstrated how the proposal would meet this element of policy CS11. However, Officers would advise that the proposed development will generate contributions towards community infrastructure, to be spent on local services and infrastructure, therefore supporting rural communities, local services and facilities. In this regard, despite the absence of the needs assessment, the proposal delivers benefits through CIL that are considered to satisfy this element of policy CS11.

#### Cumulative impact of development in the area in respect of social, physical and environmental impacts

132. The SPD identifies, at paragraph 13, that *"cumulative impact should include existing commitments and other proposals in the same village and existing commitments and other proposals in the cluster where they are likely to have a wider impact for example in terms of traffic generation, capacity of schools and health services. The impact on other neighbouring villages and neighbouring local authority areas should also be taken into account"*.
133. The technical advice received from highways and the lead flood officer demonstrate that the development can be accommodated within the village and that the services, facilities and infrastructure have the capacity to accommodate the level of development proposed.
134. It is therefore considered that given the responses from statutory consultees and the scale of development proposed, the cumulative impact of the development will be easily accommodated within the existing infrastructure of the village and will not lead to a detrimental impact on the social, physical and environmental wellbeing of the village nor the wider cluster. The proposal therefore complies with this element of CS11.

#### **Summary of Assessment Against Policy CS11**

135. The individual elements of CS11, in relation to Core Villages, have been assessed above. Notwithstanding the balancing exercise required in respect of heritage assets and public benefits, which will be carried out later in this report, the proposal cannot be said to fully comply with policy CS11. The proposal does not demonstrate that the development meets local needs, both in terms of housing and community facilities.

#### Consideration Against Other Development Plan Policies.

136. As noted, there is no 5 year land supply, and as a result the policies for the supply of housing in the Core Strategy are, in line with paragraph 49 of the NPPF, deemed to be out-of-date for as long as this remains the case. This brings into play Policy CS1 (as well as paragraph 14 of the NPPF). The presumption in favour of sustainable development applies, unless it is excluded by either the consequence of applying the 'tilted balance' or the operation of restrictive policies in the NPPF. The 'tilted balance' is capable of affecting the weight to be given to other Core Strategy policies, although the weight they should be given remains a matter for planning judgment.

137. Development in core villages will be approved where the criteria related to core villages in CS11 are addressed to the satisfaction of the local planning authority and where proposals score positively when assessed against policy CS15. The above appraisal provides, therefore, only part of the consideration of the sustainability of the site and only part of the consideration of the development plan as a whole. As such, this report will now consider the provisions of the EBNP and other relevant development plan policies, and also consider, in light of the entirety of this assessment, the three strands of sustainable development set out in the NPPF.
138. Policy CS2 requires that sites outside of a Core Village (or other defined settlement) form part of the countryside and Policy CS2 limits development in the countryside so that it will only be permitted in exceptional circumstances subject to a proven justifiable need. The application site is outside of the defined Core Village and so needs to satisfy these tests to comply with Policy CS2.
139. Policy CS2 forms part of a suite of policies within the Core Strategy. As set out at paragraph 22 of this report, the Core Strategy was adopted post-NPPF and, therefore, was examined and tested against the provisions of the NPPF. It can be seen that the aims of the Core Strategy, coupled with the development of a site allocations document referenced within it, would deliver the housing needs of the district through a planned approach to the delivery of housing. The approach set out within policy CS2 was, therefore, deliberately restrictive of development in the countryside, aiming to direct development sequentially to the towns/urban areas, and to the Core Villages and Hinterland Villages.
140. However, the Council cannot now demonstrate a supply of specific deliverable sites sufficient to provide five years worth of housing against the housing requirements, as required by paragraph 47 of the NPPF. In the light of this, the weight that should be given to policy CS2 needs to be considered in the context of paragraph 14 of the NPPF. This is because at least some of the policies in the Core Strategy are relevant policies for the supply of housing (such as policy CS3 which includes the number and distribution of new homes). Those policies are currently out-of-date, whilst the shortfall endures, and so Policy CS1 and paragraph 14 of the NPPF are engaged.
141. 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's objective of promoting sustainable development, by limiting development in less sustainable locations with a limited range of services to meet the needs of new residents in a sustainable manner. However, in the absence of a five-year supply and with a substantial shortfall of almost a year (at best) or almost 2 years (at worst) indicating that it is appropriate to give significant weight to the provision of housing as to address the housing shortfall, Officers are of the view that this policy should be afforded limited weight.
142. Policy CS15 is a long, wide-ranging, criteria based policy, setting out how the Council will seek to implement sustainable development. It contains a total of 19 criteria, covering matters such as landscape impact, job creation, minimising energy and waste and promoting healthy living and accessibility. Many of the criterion within policy CS15 are covered within the individual sections of this report including, for example, landscape impacts, sustainable drainage, biodiversity and minimising car use and it is not, therefore, necessary to run through each and every one of those criteria in this section of the report. What follows is, therefore, an overarching summary of the key points. Where those issues relate directly to development plan policies, including those in the EBNP, they will be referenced directly also.

143. As a Core Village, East Bergholt is recognised as providing service and facilities for its own residents and for those that live in small villages and rural settlements in the surrounding hinterland. These facilities include a primary school, a secondary school, playing fields and a sports centre, four community buildings including a village hall, a filling station, a GP practice, a sports centre, churches, public houses, a pharmacy, a village shop, a post office, a butchers and a bakery and a tea room.
144. It is acknowledged that there will be a high proportion of car travel from East Bergholt, as people travel out of the village to work, however it is also important to take into consideration both the provision of and accessibility of public transport in East Bergholt, which provides a credible alternative mode of transport for a variety of activities including employment, retail and leisure and recreation (criterion xviii of CS15). Policies EB13 and EB14 are particularly relevant to this consideration requiring (respectively) that *“New developments should provide an adequate and safe footpath layout within the development and good pedestrian links to pedestrian routes to the village and nearby countryside. Schemes should demonstrate cycle friendly road layout and safe connections to the highway”* and that *“Where possible, new development should take advantage of any opportunity to enhance and protect existing footpath, cycleway and bridleway networks, create new networks and improve connections between existing and proposed networks. They should also aim to reduce recreational pressure on Stour & Orwell Special Protection Areas”*.
145. In consideration of NP policies EB13 and EB14 the application is proposed for the over 55s where the use of cycles may be lower than for normal housing requirements, but where mobility scooters, may instead of or as well as, be in use. However, notwithstanding this, the proposal provides an access width of 4.25 metres which provides adequate width for cars, cycles and mobility scooters to pass with ease.
146. The access road links up with the existing road network detailing a layout that is cycle friendly, whilst providing links to the existing highway layout. The proposed footpath to the south side of the access road provides connection from the proposed dwellings to the existing footpath on Hadleigh Road thereby providing excellent links to the village and the countryside beyond. In addition this footpath links in with the proposed open space so that walkers can access the public open space.
147. Each one of the dwellings has a garden store, where bikes and or mobility scooters could be stored. The garden stores link directly with the proposed bound pathway allowing access with ease onwards to the public highway network and including the wider cycle network.
148. Furthermore, the proposed provision of public open space at the head of the development, with footpath links from Hadleigh Road creates a new footpath network with the ability to enjoy the countryside and the AONB. There is also an opportunity for the parish council, should they wish to, to establish a link through to the main village. The road width has been reduced to ensure that the proposed connection to the public highway is of an appropriate scale for the location.
149. The socio-economic profile of East Bergholt highlights the village’s important role as an economic asset for the Babergh District. It is an attractive place to a variety of people. However, there is a need to balance housing stock and growth in the future to ensure that new housing development adds variety and choice to the local housing market and address a wide range of housing needs.

150. It is considered that the development proposed would enhance the vitality of the community and new housing development would deliver a range of benefits including attracting new residents to enhance the economic contribution of East Bergholt, underpinning social capacity, providing affordable housing and widening the housing mix overall. The specialised nature of the proposed housing, being for over 55s, would accord with the requirements of policy EB5 of the EBNP, which states;

*“Up to one third of new housing developed in the plan area should be designed to meet the needs of older people. The development of homes suitable for older people, including affordable and market housing, of types and sizes that meet local housing need will be supported on sites that satisfy the requirements of Policy EB2. Small scale infill development of older people’s housing within 400 metres of St Mary’s Church (Map 8) will be supported where they provide homes with easy access to the facilities in the Village Heart (Map 7), subject to conforming to other policies of the development plan.*

*Subject to the need and viability being demonstrated, the development of a care home in the village will be supported”.*

151. Whilst the development sits slightly outside the 400m from the church threshold within policy EB5 (approximately 550m), this is not considered to be an unreasonable distance to travel and the proposal sits within the designated village heart, thereby further supporting its sustainability relative to facilities and services in the village. The proposal is, therefore, considered to accord with criterion iv of policy CS15, through ensuring an appropriate level of services, facilities and infrastructure are available or provided to serve the proposed development.
152. This report has already considered the landscape setting of the site and surroundings and heritage assets (criterion i of CS15), and the manner in which the proposal provides for the aging population (criterion vi of CS15). Environmental aspects related to sustainable drainage (criteria x and xii of CS15), the associated highway issues (criterion xix of CS15) and biodiversity aspects (criterion vii of CS15) will also be considered. The design and layout of the scheme, and its impacts on the local area, are also to be considered (criterion ii of CS15). These assessments need to be made in order to fully assess the sustainability of the proposal as a whole, along with the following matters;
- The proposal would provide work for local contractors during the construction period, thereby providing economic gain through local spend within the community. (criterion iii of CS15).
  - The proposed ‘almshouse style’ dwellings would provide much needed smaller homes for the elderly population, being specifically for the over 55s and where the application site is situated within a sustainable location, near to the existing facilities and services provided in East Bergholt. Footpath links already exist from the application site to the village shops and other local facilities of East Bergholt, which will provide ease of access to these services, without the need to rely on the use of the private car. The proposal will enable the potential for elderly residents to downsize, but to remain within the community (criterion v of CS15)
  - The application proposes to use grey water recycling and the properties will be developed with a high standard of energy efficient measures, with a SUDs mean of drainage (criterion viii of CS15)

- The proposal creates a private landscaped area to the site frontage with the rear landscaped area providing community benefits, in its landscaped form, for the occupiers of the site and for the wider community, including when viewing the site from the public realm cemetery (criterion viii of CS15).
- The application proposal creates the opportunity for green spaces and habitat connectivity by way of the significant additional landscaping and habitat creation. Additional measures such as bat boxes, barn owl boxes and hedgehog shelters can be incorporated into the scheme (criterion x of CS15).
- The application site is situated within Flood Zone 1, where a residential use is appropriate due to the extremely low risk of flooding. It is therefore considered that the application site is sequentially appropriate for this development (criterion xi of CS15).
- Grey water recycling and rain water harvesting (with header tanks in the roof space of the units) are proposed, thereby reducing the demand for potable water (criterion xiii of CS15).
- During construction, all methods will be employed to minimise waste. (criterion xiv of CS15).
- The proposed dwellings will be constructed as a minimum to meet the requirements of Part L of the Building Regulations, which requires a high level of energy efficiency (criterion xv of CS15)
- The proposal is for the over 55s, where accessibility has been considered, including flush thresholds to enable access for those with mobility impairments (criterion xvi of CS15).

### Design and Layout

153. Delivering quality urban design is a core aim of the NPPF which states, in paragraph 56, that good design is a key aspect of sustainable development and indivisible from good planning. At paragraph 64 it states that permission should be refused for poor design that fails to take opportunities to improve the character and quality of an area and the way it functions. The NPPF also encourages the use of Local Design Review.
154. Saved policy CN01 of the Babergh Local Plan requires that *“All new development proposals will be required to be of appropriate scale, form, detailed design and construction materials for the location”* and sets out criteria as to how this should be achieved. Policy EB9 of the EBNP provides that *“Proposals must plan positively for the achievement of high quality and inclusive design reinforcing the locally distinctive and aesthetic qualities of the buildings and landscape in the Parish as described in the Character Assessment and follow the Local Design Guidance”*.
155. An initial scheme, submitted at pre-application stage, was considered by the Suffolk Design Review Panel and this comprised a mix of dwelling types and sizes where the layout comprised a cul-de-sac arrangement utilising a greater site area and was for 15 dwellings. The Review Panel considered that this was not an appropriate approach for the site and the current scheme was devised following this feedback to address the comments made during the pre-app process.
156. Considerable thought has gone into the overall design of the scheme and the dwellings proposed are designed as alms houses, with low eaves, chimneys, and tile banding to provide a visually interesting roof form.

157. The dwellings proposed comprise 4 no. 2 bed and 6 no. 3 bed, each with their own private amenity space comprising lawn and stone terrace. The dwellings will be constructed from a traditional range of materials, comprising handmade red bricks, clay peg roof tiles, clay finial ridge tiles with clay coping, timber painted windows, doors and decorative finishes (bargeboards etc.) and cast aluminium heritage rainwater goods.
158. The rear boundaries are to be woven willow fencing with solid oak gates. A communal area is provided to the rear of the site, which is to be left undisturbed with some wild flower planting proposed. This will enable greater control of the boundaries of the site, especially to the rear which borders onto the cemetery and therefore is greater sensitivity in terms of landscape impact.
159. The front part of the site is to be landscaped, following removal of the conifer trees and the entrance road then forms a straight line towards the courtyard area and the houses grouped around this. The applicant's intention is that the dwellings will then provide a focal point when viewed from the entrance to the site.
160. Landscaping has been detailed at this stage to demonstrate how the site will work within the landscape and provide enhancements to overall landscape setting.
161. Historic England have commented on the design element and felt that *"the almshouse style layout, low density, good use of detailing and proportions are to be commended. If not for the principle concern, the design would be considered a sensitive approach which would have some benefits to the setting of the conservation area"*. It is therefore considered that the design and the layout of the scheme are acceptable and in accordance with both local and national planning policy.
162. In terms of the East Bergholt character assessment the application is set well back from the carriageway and provides for a dense landscaped frontage, including shrubs, hedges and trees. This landscaped ethos continues around the site periphery with planting. Trees are retained and supplemented within the area proposed for public open space, although this will not generally be perceptible from Hadleigh Road. The dense landscaped frontage contributes to the spacious quality of the development. The design detailing and materials represent a high quality palette of materials evident within the site context. The proposal is of an appropriate scale to its location.

#### Highway Safety

163. The proposed development will be served by a single vehicular access which has been reduced in width from 5.5m to 4.25m with appropriate visibility splays. This will lead into two parking courts set immediately in front of the courtyard and buildings on each side of the site. These parking areas will be contained within soft red brick walling and 3 additional spaces have been provided above and beyond the minimum statutory requirements. It is considered that this will lessen the risk of vehicles parking along the access road or within Hadleigh Road.
164. Sufficient parking is provided on site in accordance with the Parking Standards. The proposal therefore accords with the provisions of policy EB12 of the EBNP and saved policy TP15.
165. The Local Highway Authority are satisfied that the development is acceptable and will not lead to an adverse impact on highway safety. As such, and in light of the connectivity aspects also having been found to have been acceptable, the proposal accords with criteria xviii and xix of policy CS15.

## Drainage

166. Policy CS15 requires development to minimise the exposure of people and property to all sources of flooding and to minimise surface water run-off and incorporate sustainable drainage systems (SUDS), where appropriate.
167. Policy EB23 of the EBNP requires that new residential development of ten or more units or on development sites of 0.5 or more of a hectare (where it is not known whether the number of residential units will be ten or more) will be expected to provide sustainable drainage systems for the management of run-off.
168. The proposal sets out an intention to use grey water recycling and the properties will be developed with a high standard of energy efficient measures, with a sustainable drainage system (SUDs) being employed. There have been no objections raised by the Local Flood Authority. As such, the proposal accords with policy EB23 and with criterion (x), (xi), (xii) and (xiv) of policy CS15 where they are relevant to these issues.

## Biodiversity and Protected Species

169. In assessing this application due regard has been given to the provisions of the Natural Environment and Rural Communities Act, 2006, in so far as it is applicable to the proposal and the provisions of Conservation of Habitats and Species Regulations, 2010 in relation to protected species.
  170. Policy EB8 of the EBNP requires that developments should protect and enhance biodiversity and geodiversity to reflect the requirements of paragraphs 109, 117 and 118 of the National Planning Policy Framework. It sets out particular criteria that should be complied with, including protecting and enhancing internationally, nationally and locally designated sites, protected species and ancient or species-rich hedgerows, grasslands and woodlands, preserving ecological networks, and the migration or transit of flora and fauna; and promoting the preservation, restoration and re-creation of wildlife priority habitats and the protection and recovery of priority species.
  171. The application is supported by an Ecological Appraisal and Bat Survey. The Ecological Appraisal identifies that the landscaping scheme accompanying the proposal retains open grassland areas and many of the existing mature trees, while enhancing wildlife value by extensive planting of native trees and shrubs, in groups or dense mixed-species blocks, and a new hedgerow to the rear site boundary. The selected species and structural composition of the scheme provides good foraging, nesting and refuge opportunities for birds, small mammals and invertebrates, in addition to providing good habitat connectivity around the site, and links to the wider environment.
  172. In this regard, the proposal is considered to have fully considered and mitigated any effects to biodiversity resulting from the scheme, and also provides enhancements through appropriate landscaping and planting that will encourage a variety of wildlife and habitat on the site. In this regard, the proposal is considered to accord with the provisions of policy EB8, criterion vii of policy CS15 and paragraphs 109, 117 and 118 of the NPPF.
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### Environmental Issues (Land Contamination)

173. A phase 1 investigation report has been submitted with the application and the Senior Environmental Management Officer has raised no objection to the proposed development. A note will be imposed on any permission to advise the developer the Local Authority should be informed if any inspected ground conditions are encountered during construction.
174. As such, the proposal is considered to comply with criterion vii of policy CS15 insofar as it relates to land contamination.

### Renewable Energy

175. The key policies are policies are CN01, CN04 and CS13. It is considered that the proposals are acceptable in design terms and maximise renewable energy and low carbon technologies where possible through the buildings regulation regime and otherwise.
176. For these reasons, it is also considered that limbs (viii) and (xv) of policy CS15 are complied with where relevant. It is also not considered that the residential nature of the development would lead to any issues in terms of air quality subject to suitable conditions including a construction and environmental management plan. Therefore limb (xvii) of policy CS15 is complied with.

### **Summary of Assessment Against Policy CS15**

177. Policy CS15 is a detailed policy setting 19 individual criteria as to how sustainable development will be implemented in Babergh. The proposal has been assessed against these criteria and, whilst a number of the criteria are met, it is not possible to conclude that the development accords with policy CS15 as there are a number of criteria within policy CS15 that the proposal is either silent on or which the development does not comply with. In this regard, the proposal can only be treated as being partly in compliance with policy CS15.

### **Planning Obligations and CIL**

178. In respect of CIL, the PPG advises that an approved charging schedule must be published by the charging authority. The date the charging schedule comes into effect is chosen by the charging authority and is specified within the charging schedule, but this must be at least one day after the date of publication. The charging schedule remains in effect until the charging authority either brings into effect a revised version or decides to stop charging the levy. On 20 January 2016, the Council resolved to that its CIL Charging Schedule would come into effect on 11 April 2016 (Paper R85).
179. Planning permissions which first permit development on a day when the charging schedule is in effect will be liable for the Levy. Regulation 8 defines the time at which a planning permission is treated as first permitting development. In most cases it will be the day that planning permission is granted.
180. On this basis a section 106 obligation will be required to secure the following:-
- Secure the maintenance and retention of landscaping for a period of 10 years;
  - Restriction on occupation of dwellings to over 55s.

181. The remainder of the matters will fall to be considered under the CIL Charging Schedule.

### **Details Of Financial Benefits / Implications (S155 Housing and Planning Act 2016)**

182. Granting this development will result in the following financial benefits:
- New Homes Bonus
  - Council Tax
  - CIL

These are not material to the planning decision

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## **PART FOUR – CONCLUSION**

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### **Planning Balance**

183. This application brings about a number of issues which require careful attention in reaching a decision upon this proposal. What follows, therefore, is a balancing of those issues in light of the assessment carried out within the preceding paragraphs of this report.
184. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The consideration is, therefore, whether the development accords with the development plan and, if not, whether there are material considerations that would indicate a decision should be taken contrary to the development plan.
185. The development plan includes the Babergh Core Strategy (2014), saved policies in the Babergh Local Plan (2006) and East Bergholt has recently completed a Neighbourhood Plan (made on 20<sup>th</sup> September 2016) which also forms part of the development plan. As such, the policies contained within the Neighbourhood Plan must be given due weight in making a decision on this application. It is, therefore, one of the main considerations in determining any planning applications submitted in East Bergholt, unless material considerations indicate otherwise.
186. In light of this application relating to a proposal for new housing, a further important consideration in determining this application is that Babergh does not currently have a five-year supply of deliverable housing sites. Paragraph 47 of the NPPF requires LPAs to identify a 5 year supply of specific deliverable housing sites. Paragraph 49 of the NPPF 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*'.
187. Paragraph 14 of the NPPF states;
- “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”.*

188. As such, the effect of paragraphs 47, 49 and 14 are that;

- the local authority should be able to identify a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements;
- that where such a supply cannot be demonstrated, policies for the supply of housing should not be considered up-to-date, and;
- where policies are not up-to-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole or where specific policies in this Framework indicate development should be restricted. Policy CS1 sets out a similar approach where relevant Core Strategy policies are out-of-date.

189. As set out at paragraph 30 above, the Supreme Court in May 2017 has clarified the position with regards to ‘policies for the supply of housing’ and how that is to be considered. Officers note that the judgement makes it clear that the meaning of that expression is not the real issue, and that the absence of a five year housing land supply triggers the application of paragraph 14 of the NPPF, and that in applying the ‘tilted balance’ required by this paragraph, it is necessary to consider the weight to attach to all of the relevant development plan policies.

190. Officers acknowledge that applying the requirements of paragraphs 14 and 49 of the NPPF is likely to cause tension with regards to the recently made Neighbourhood Plan. In this respect, the Planning Practice Guidance, which provides up-to-date direction on the proper interpretation and application of national planning policy, provides clarification around this point. In relation to the weighting to be applied to policies within a neighbourhood plan relevant to the supply of housing where a Council cannot demonstrate that it has a 5-year land supply, para. 83 states the following:

*“In such instances paragraph 49 of the Framework is clear that “relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites.” Paragraph 49 applies to policies in the statutory development plan documents which have been adopted or approved in relation to a local planning authority area. It also applies to policies in made neighbourhood plans.*

*.....*

*In this situation, when assessing the adverse impacts of the proposal against the policies in the Framework as a whole, decision makers should include within their assessment those policies in the Framework that deal with neighbourhood planning.*

*This includes paragraphs 183–185 of the Framework; and paragraph 198 which states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted”.*

191. It is considered that policy CS3, along with policies EB1 and EB2 of the EBNP, are policies for the supply of housing. It is, therefore, considered that paragraph 14 of the NPPF is engaged with regards to this proposal. So, too, is policy CS1.
192. However, prior to considering the presumption in favour of sustainable development identified by paragraph 14, it is necessary to consider whether there are specific policies in the Framework that indicate development should be restricted. The footnote to this part of the NPPF identifies, amongst other things, policies relating to land designated as an Area of Outstanding Natural Beauty and designated heritage assets, as being those which may indicate development should be refused.
193. In consideration of the AONB, the assessment carried out is that the proposal does not conflict with the NPPF or with other specific policies in the development plan. However, in consequence of the Council’s heritage assessment, the NPPF (para 14, footnote 9 and paragraph 134) and the statutory duty imposed by section 66(1) of the Listed Buildings Act are to be taken into account in the consideration of the policy context.
194. As set out in the judgement on *Forest of Dean Council & the Secretary of State for Local Government v Gladman Developments Limited* (2016) EWHC 421 (Admin) and at the Court of Appeal in its decision on *Barnwell Manor Wind Energy Ltd v East Northants DC* [2014] EWCA Civ. 137 when an authority finds that a proposed development would harm the setting of a listed building or the character and appearance of a conservation area, it must give that harm considerable importance and that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted.
195. The NPPF (para. 134) states that *‘where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal including securing optimal viable use’.*
196. In this instance, the public benefits of the proposal can be summarised as including the following:-
  - Delivery of 10 dwellings of an appropriate housing mix, the proposal would have inherent social and economic benefits and would meet housing needs and delivery of growth;
  - Removal of inappropriate non-native trees within the AONB and enhanced landscaping with native species;
  - Provision of publicly accessible land to the rear of the site.
197. Considered in isolation, it is unlikely that these public benefits would be sufficient to outweigh the harm that has been identified. However, in combination these public benefits are sufficient to outweigh the less than substantial harm to the setting of the listed building identified, even when considerable importance and weight is given to the desirability of preserving the setting of that building.

198. Officers have therefore applied the balance required by paragraph 134 of the NPPF, having special regard to the desirability of preserving the setting of the listed building as required by section 66 of the Listed Buildings Act, and given the harm considerable importance and weight. The outcome of this balancing exercise is that those public benefits identified outweigh the less than substantial harm, even when that harm is given considerable importance and weight.
199. In this respect, where paragraph 14 of the NPPF provides a presumption in favour of sustainable development, it is necessary to consider whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted. The public benefits of the scheme have been weighed against the harm to heritage assets and have been found to outweigh that harm, thereby satisfying the test in paragraph 134.
200. As such, it can be concluded that there are not specific policies in the Framework that indicate that development should be restricted and, therefore, paragraph 14 can be engaged. It should be noted that the outcome of R (on the application of East Bergholt PC) v Babergh District Council CO/2375/2016 before Mr Justice Mitting in respect of how the Council balanced the issues of the impact on the AONB and the impacts on heritage assets was that the claims made against the manner in which the Council had balanced these issues failed. This is a matter of planning judgement.
201. Further, and in any event, the Council does not have a five year housing land supply and considers therefore that limited weight should be attached to policies CS2, CS11, CS15, EB1 and EB2. Whilst it is considered that the proposal does not strictly comply with these policies, any conflicts with these policies (whether in relation to proving “exceptional circumstances” or compliance with the limbs of policy CS11 including (locally identifiable need) should be afforded limited weight.
202. Therefore, whilst the proposal is not in accordance with the development plan as a whole, it is considered that the adverse impacts from the proposed development (including the identified harm to heritage assets or otherwise) do not significantly and demonstrably outweigh the benefits of the development explained in this report, even where policies in the Neighbourhood Plan are given greater weight due to their recent examination and development by the community. Furthermore, whilst the restrictions in footnote 9 of the NPPF include impacts on heritage assets, for the reasons explained above none of these policies indicate that development should be restricted.
203. As such, the proposal is considered to be sustainable development, in accordance with the three dimensions of sustainable development set out in the NPPF, and a recommendation of approval is therefore made. Whilst such a decision would not be in accordance with the development plan, viewed as a whole, it is an outcome that is envisaged by policy CS1 where the ‘tilted balance’ and the presumption in favour of sustainable development are engaged.
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**Statement Required by Article 35 Of The Town and Country Planning (Development Management Procedure) Order 2015.**

204. When determining planning applications, the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires Local Planning Authorities to explain how in dealing with the application they have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application. In this case the Local Planning Authority worked with the agent/applicant to address issues and following minor amendments/amplifications, additional information received and subsequent re-consultation, the Local Planning Authority was able to reach a decision having had regard for all material planning considerations.

**Identification of any Legal Implications of the decision**

205. The application has been considered in respect of the current development plan policies and relevant planning legislation. Other legislation including the following have been considered in respect of the proposed development.

- Human Rights Act 1998
- The Equalities Act 2010
- Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
- Natural Environment and Rural Communities (NERC) Act 2006 (any rural site)
- The Conservation of Habitats and Species Regulations 2010
- Localism Act
- Consideration has been given to the provisions of Section 17 of the Crime and Disorder Act, 1998, in the assessment of this application but the proposal does not raise any significant issues.

**RECOMMENDATION**

That the Corporate Manager - Growth and Sustainable Planning be authorised to grant planning permission subject to the prior completion of a Section 106 or Undertaking on terms to his satisfaction to secure the following heads of terms:

- Secure the maintenance and retention of landscaping for a period of 10 years;
- Restriction on occupation of dwellings to over 55s.

and that such permission be subject to the conditions as set out below:

- 1) Standard Time Limit Condition.
- 2) Approved Plans
- 3) Archaeological work and monitoring
- 4) Details of fire hydrants to be submitted
- 5) As recommend by Highways
- 6) The recommendations of the ecological report to be adhered to
- 7) Detailed hard/soft landscaping
- 8) External lighting details
- 9) Tree Protection/Arb Method Statement
- 10) Energy Statement – post construction