

Objection to application for Land at Moores Lane, East Bergholt.

On behalf of East Bergholt Parish Council

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LPA Reference: B/15/00673

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Introduction

Planning Direct have been appointed as advisers to East Bergholt Parish Council and produce this objection on behalf of the Parish Council, for consideration by Babergh District Council in relation to B/15/00673, an application for 144 homes and 360sqm of single storey courtyard development to contain 4 B1 (business) units, public open space, associated landscaping and infrastructure.

Executive Summary

A neighbouring authority, Suffolk Coastal, recently won significant parts of their case at the Supreme Court, *Suffolk Coastal v Hopkins Homes*¹.

That case, combined with the High Court decision in *East Bergholt v Babergh District Council*², mean that this application should be refused as non-compliant with Babergh Core Strategy CS2, CS11 and CS15, East Bergholt Neighbourhood Plan, and the National Planning Policy Framework.

The starting point for all planning decisions is the local development plan; this has been underlined in countless court cases, including *Suffolk Coastal v Hopkins Homes*, and in *East Bergholt v Babergh*.

A fuller explanation of the *Suffolk Coastal* case follows, but essentially the Supreme Court confirmed the need to apply the ‘narrow view’ of policies for the supply of housing. Within the judgment, policies for the protection of the countryside, the assessment of housing in the countryside and settlement policy were found not to be policies for the supply of housing, and therefore it was open to the decision taker to give them full weight.

¹ *Suffolk Coastal District Council v Hopkins Homes & anor* [2017] UKSC 37

² *East Bergholt Parish Council v Babergh District Council and Others* [2016] EWHC 3400 (Admin)

Babergh officers have conceded that the proposal is contrary to CS2, CS11 and CS15 within the Council's development plan. Where your officers have erred is in their response to Supreme Court decision; significant weight can be afforded to these policies, and should be by you as decision takers.

Further, it is clearly the intent of Government, as expressed in a Written Ministerial Statement³, that Neighbourhood Plans should be given full weight, even where a Local Planning Authority cannot demonstrate a five-year supply. Therefore, even if the District Council's Core Strategy is given less weight, the Neighbourhood Plan should be given full weight.

It is therefore up to the Committee to determine what weight development plan policies should be afforded. However, regardless of whether the Committee decides to give full weight or minimal weight to development plan policies, the Committee must apply those policies fully and without exception.

The Officer report makes clear that the application does not accord with Core Strategy CS2, CS11 and CS15. It is open to this committee to give full weight to those policies, should they decide to, as you did in Capel St Mary recently.

The application is also contrary to East Bergholt Neighbourhood Plan, which was adopted following a referendum. The EBNP should be granted full weight by the Committee, per the Written Ministerial Statement.

A fuller explanation of how the proposal is contrary to the EBNP follows in subsequent sections, but it is contrary to policy EB1, EB2, EB4, EB5, EB6, EB7, EB8, EB9, EB10, EB14, EB15, EB17, and EB22. Given full weight should be given to these policies under the WMS, each of these is a ground for refusal.

The proposal is also contrary to the National Planning Policy Framework, which is a material consideration. Even if the Committee accepts the officer view that the tipped balance within NPPF Paragraph 14 is engaged, Paragraph 14 specifically states that proposals which are contrary to the Framework should be refused.

The Officer report also makes clear that the application is deficient in other ways.

The application does not meet with the requirements of the Corporate Manager for Strategic Housing. The Council requested a specific housing mix, which is not met. Instead a different mix is proposed, without justification.

The application raises the risk of increased pressure for recreation on the AONB and the nearby Stour and Orwell estuary. The Dedham Vale AONB and Stour Valley Project raises significant concerns relating to the proposals impact through traffic, increased pressure for

³ Written Ministerial Statement on Neighbourhood Planning – HCWS346

recreation, and highlights the potential for a cumulative impact, when set against other developments proposed within this cluster, including in the nearby village of Brantham.

There are a number of other issues contained within the consultation responses and in the inadequate consideration of these concerns by the officers contributes to the flawed suggestion that the application must be recommended for approval.

This report therefore recommends to the Council's Planning Committee that it rejects the planning application.

Legal Considerations

Councillors will naturally be concerned to make sure that their decision is legally watertight, following previous decisions of this committee which were later overturned by the courts.

The starting point for the consideration of any planning application is Section 38(6) Planning and Compulsory Purchase Act 2004, which states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. This requirement is confirmed at various points in the NPPF, including paragraphs 11, 150, and 196. The NPPF is confirmed as a material consideration both in plan making and decision taking.

The Development Plan for East Bergholt includes the Babergh Core Strategy, Saved Policies from the Babergh Local Plan: Alteration No. 2 (2006), and the adopted East Bergholt Neighbourhood Plan.

Material considerations that are relevant to the application include, but are not limited to, the National Planning Policy Framework (2012), National Planning Practice Guidance (2014), the Rural Development and Core Strategy CS11 SPD, Babergh District Council – Affordable Housing SPD (2015), Suffolk Guidance for Parking (2014), Manual for Streets, CABI Building for Life 12.

Councillors will also be aware of two court cases that have a direct impact on the decision before them, namely the Supreme Court decision in *Suffolk Coastal v Hopkins Homes* and the High Court decision in *East Bergholt PC v Babergh DC*, both referred to above.

Suffolk Coastal v Hopkins Homes

The decision of the Supreme Court in this case is of the highest importance to Local Planning Authorities faced with the circumstance of a failure by them to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing ("the 5-year housing supply").

The Supreme Court determined that only policies for the supply of housing – number of houses required, and where they can be built – should be considered out-of-date for the operation of Paragraph 49. This is known as the 'narrow application', as is set out below.

In that scenario, a local planning authority must adopt the approach set out at paragraph 49 of the NPPF, which has the effect of bringing into play the “tilted balance” required of a decision maker under paragraph 14 NPPF (and importantly footnote 9 thereof).

The following passages from the speech of Lord Carnwath are relevant to the interpretation of the “tilted balance” obligation:

“54... since the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14, it is important to understand how that is intended to work in practice... the balance is tilted in favour of the grant of permission, except where the benefits are ‘significantly and demonstrably’ outweighed by the adverse effects, or where ‘specific policies’ indicate otherwise”

“56... Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds...”

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

“58... other categories of policies, for example those for employment land, or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose”.

However

“60... On that reading, non-housing policy which may objectively be entirely up-to-date, in the sense of being recently adopted and in itself consistent with the Framework, may have to be treated as notionally ‘out-of-date’ solely for the purpose of the operation of paragraph 14 [NPPF]

“61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as ‘out-of-date’, merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not ‘out of date’, but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles”.

Additionally, the Parish Council draws to the committee's attention the following extract from the speech of Lord Gill:

"85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply...The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependant on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will 'significantly and demonstrably' outweigh the benefits of the proposal...The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to 'specific policies in the Framework' cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers."

East Bergholt PC v Babergh DC

This case considered the application of specific elements of the Babergh Core Strategy, which it was determined the Council had misapplied. The outcome of the case provides the proper legal interpretation of the Core Strategy policies which the committee must apply.

*Tesco Stores v Dundee City Council*⁴ states that 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 the proper context. Statements of policy should not be construed as if they were statutory or contractual provisions, however,

East Bergholt PC v Babergh DC considered the application of policies CS2 and CS11 in the Babergh Core Strategy, as they were applied by the Council in a planning application in East Bergholt, B/15/01678/FUL Land South of Gatton House.

The Council's local plan core strategy Policy CS2 says that:

Core Villages will act as a focus for development within their functional cluster and, where appropriate, site allocations to meet housing and employment needs will be made in the Site Allocations document.

Significantly, CS2 says that

"in all cases the scale and location of development will depend upon the local housing need... and the views of local communities as expressed in parish... neighbourhood plans."

CS2 goes on to add that

⁴ *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13

“In the countryside, outside the town/urban areas, Core and Hinterland Villages defined above, development will only be permitted in exceptional circumstances subject to a proven justifiable need.”

Meanwhile, Policy CS11 says 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 (or other decision-maker) where relevant and appropriate to the scale and location of the proposal.

The additional matters referred to are: the landscape, environmental and heritage characteristics of the village; the locational context of the village and proposed development; the site location and sequential approach to site selection; locally identifiable housing need – housing and employment and specific local needs such as affordable housing; locally identifiable community needs; and the cumulative impact of development in the area in respect of social, physical and environmental impacts.

As Mr Justice Mitting said, in the East Bergholt case:

“18... only if satisfied that both requirements [Policies CS2 and CS11] are met should planning permission be granted for a development outside the built-up area boundary of a Core Village.”

In his judgment, Mr Justice Mitting found:

“23... I am satisfied that for the reasons explained, local housing need in Policy CS11 means housing need in the village and its cluster, and perhaps in areas immediately adjoining it.”

Policy Issues

Core Strategy

The proposals fail to accord with a number of planning policies in relation to the Development Plan. It is for the Committee to determine how much weight should be given to the policies in the Development Plan, but the Written Ministerial Statement, a material consideration in planning terms, indicates that Neighbourhood Plans should be given full weight where a Council can demonstrate more than 3-years housing land supply. Babergh are capable of demonstrating 3.1 years on the SHMA figures, and 4.1 years on the housing requirement in the Core Strategy.

It is clear that the *East Bergholt v Babergh* case direct applies to this application. The Council must satisfy itself that building outside the built-up area boundary is necessary in exceptional circumstances, and that it meets a justifiable local need.

The applicants have not demonstrated exceptional circumstances subject to a proven justifiable need to comply with CS2. Specifically, the applicants have not demonstrated local housing need for this development, as required by the policy as a matter of law.

The applicants have further failed to demonstrate that they have given thought to the cumulative impact of development in the area in respect of social, physical and environmental impacts.

The application scores poorly against the criteria in Policy CS15, and therefore it is contrary to CS11.

Unless the committee is sure that the applicants have demonstrated that they have satisfied both CS2 and CS11, then as the Supreme Court decision makes clear, the decision maker must take the failure of the proposed development to meet a local housing need into account. The committee should give proper weight to these policies in the planning balance, as it informs to what extent the relevant locality (for housing supply purposes) will benefit from the development and therefore whether the benefits significantly and demonstrably outweigh the clear adverse impacts of granting permission for East Bergholt village and its immediate environs, or for the wider community in Babergh.

The Officer report makes clear that the Council is clear that the application is contrary to CS2, CS11 and CS15. As the Supreme Court decision makes clear, it is entirely proper for the committee, taking into account the facts of the case and aware of the policy conflict, to refuse to grant planning permission.

East Bergholt Neighbourhood Plan

The proposals are additionally contrary to the East Bergholt Neighbourhood Plan, in that they are contrary to policy EB1, EB2, EB4, EB5, EB6, EB7, EB8, EB9, EB10, EB14, EB15, EB17, and EB22.

Policy EB1 provides that “A minimum of 86 new homes shall be developed in East Bergholt during the plan period 2015 to 2030.”

It is clear from the supporting text that the figure of 86 stems from a range of possible growth perspectives, and is a figure supported by the community as the best response to development. The upper end of that range, 108 homes, stems from continuity with past house building numbers in East Bergholt and Hinterland Villages 2001 to 2014. The proposals before the committee are for 144 dwellings, which is substantially higher than the highest end of the range acceptable to the community. The proposals are therefore contrary to EB1.

Policy EB2 provides a set of criteria against which housing development proposals in East Bergholt can be assessed. Specifically, it states that a development must:

“not have an unacceptable adverse impact on the Dedham Vale AONB, Local Green Spaces, or sites of biodiversity and geodiversity importance.”

“conserve, enhance and respect the Conservation Area, heritage assets and built character of the local area, respecting the density, rhythm, pattern, proportions and height of existing development in the street scene.”

“not have an unacceptable adverse impact on the local highway network.”

“be of an acceptable size and scale that contributes to the character of the village and the ‘Sense of Place’.”

There are other restrictions but these are the most relevant. In addition, the policy states that “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.”

The Officer’s report assesses that the proposal will not have an unacceptable adverse impact on the Dedham Vale AONB, or on Local Green Spaces, or on sites of biodiversity and geodiversity importance.

The Parish Council would ask the committee to determine whether the cumulative nature of the proposals and other approved applications is likely to lead to an increase in pressure on the AONB, the Ramsar sites, and the nearby sites of special scientific interest for leisure use, and whether such pressure could lead to damage. The Parish Council considers that this is an unacceptable adverse impact which has not been properly considered by the Council’s officers.

The officers accept in their report that harm is caused to heritage assets. While this is identified as at the low end of the spectrum, there is clearly harm caused to the setting of the nearby listed buildings, including at least two Grade II listed buildings and one Grade II* listed building, which have views leading to the development site.

The Parish Council contend that the proposal does harm to the setting of listed buildings and is therefore contrary to EB2.2. Further that the proposal fails to respect the density, rhythm, pattern, proportions and height of existing developments within the street scene.

While Highways England abdicate any responsibility for one of the most dangerous junctions onto the A12, the committee will be well aware of the dangers of adding extra traffic to a junction which could not be built today as it would not meet modern design minimums.

The Parish Council are of the opinion that the committee should consider their own knowledge of the area, when assessing whether or not the application will have an unacceptable adverse impact on the local highway network.

The policy requirement that the development would be of an acceptable size and scale that contributes to the character of the village and the “Sense of Place” is clearly not designed to

allow an application that would materially change the size of the village by 20% in one go. This is an unacceptably large application that would be devastating to the character of the village and would change East Bergholt irretrievably.

The application proposal is for 144 homes, so it is clearly not compliant with a preference of up to 15 homes. The test is therefore whether or not it delivers exceptional benefits to meet the housing needs of the community.

The Parish Council is not of the opinion that the proposals deliver the housing needs of the community. Other policies within the Neighbourhood Plan (EB4) provide that 40% of the development should be properties suitable for newly formed households, especially one and two bedroom properties. The applicant has failed to properly identify a local housing need sufficient to justify the development.

Policy EB4 provides that residential development should provide a mix of house types, tenures and sizes to support identified housing needs of the Parish and its Hinterland villages. It also provides that Affordable Housing shall be provided in accordance with Babergh Core Strategy and the Babergh Affordable Housing SPG. Finally, it provides that 40% of new dwellings should be one and two bedroom homes.

This application clearly fails on all three counts. The proposal does not support identified housing needs of the Parish and Hinterland villages within the functional cluster. The affordable housing proposed does not meet the mix requested by the Corporate Director for Strategic Housing. And the proposal provides just 28% of new dwellings at one or two bedrooms.

Policy EB5 aspires to increase the housing choices for older people by encouraging up to one third of new development to meet the needs of older people. Development of housing that meets the needs of older people will be supported on sites that meet the criteria for EB2, which this proposal does not.

Nor does this proposal meet the needs of housing for older people. There is no commitment that the proposed housing will be built for flexible conversion, meeting the requirements of Building Regulations M4(2) Accessible and Adaptable Dwellings, which are optional but should be a requirement on a substantial proportion of this development.

The developer has made much of the fact that some of the proposed dwellings will be suitable for older people. While the EBNP requires this to be up to one third of all dwellings, the developer has included just five market bungalows, and two affordable bungalows. While not all older people will necessarily want to live in a bungalow, the Parish Council does not consider that this is a realistic attempt to meet the policy or provide for older people.

Policy EB6 requires that the proposals should protect the sensitive landscape and views around East Bergholt. The specifics of the requirement are detailed at Paragraph 53 of the Officer's report before the committee.

At Paragraph 54 the officer claims that the Dedham Vale AONB has concluded that the development would not impact significantly on the purposes of the designation of the Dedham Vale and Suffolk Coasts and Heaths AONB. However, if the committee recalls the consultation response from the Dedham Vale AONB this is not the conclusion of the consultation. The Dedham Vale AONB and Stour Valley Project consultation response states that:

“To safeguard the landscape of the AONB, as stated in Babergh Saved Policy CR02, any development adjacent to the AONB should be sympathetic to the purposes of the AONB, i.e. should contribute to conserve and enhance natural beauty. High quality design and layout should be incorporated into the development.

“The potential for increased traffic **through the AONB** and facilities for walking and cycling particularly along the B1070 for access to the A12. There is potential for **negative impacts** on tranquillity, **reduced road safety** for vulnerable road users and impact on local communities.” (Our emphasis).

The consultation response further states that:

“With increased population, pressures for recreation within the AONB and nearby Stour and Orwell estuary are likely to be increased. It should be noted that the Stour and Orwell estuary is designated for its national and European importance for birds and habitats through the SSSI, SPA and Ramsar designations. A development of this scale within reasonable distance of the protected site could result in residual impacts, such as recreational disturbance which can have a negative impact on the purposes of designation, i.e. birds and protected habitat interest such as inadvertent disturbance.”

It is the Parish Council’s view that the AONB management team are clearly concerned about the impact on the AONB, the SSSI, the SPA and the Ramsar sites. They consider that the Council should assess the impact, while the Council assumes that they have assessed the impact. While Natural England are quoted by the Council, they too ask the Council to assess the impact.

Elsewhere in the country, Natural England have assessed that for development within 6km of a European site, and large sites (such as this proposal) beyond 6km, it will not be possible to demonstrate no adverse effect on the integrity of European sites and mitigation measures will need to be considered.

It is clear that this site is within 6km of the AONB, the SSSI, the SPA and the Ramsar site. It is also clear that the development proposals have not complied with the policies and guidance relating to the Dedham Vale AONB or its setting. The Parish Council is disturbed that the Council has, in Paragraph 54 of the Officer’s report, dismissed the first three criteria of Policy EB6 without an afterthought, when it is clear that the impact of the development on the AONB has not been assessed.

The Parish Council also considers that the development tests in Paragraph 116 of the NPPF, a requirement under Policy EB6 of the East Bergholt Neighbourhood Plan, which is a part of the Development Plan.

Policies within the NPPF can and should be given full weight by the Committee in considering this application, even where Paragraph 14 is engaged – the tipped balance is in favour of development except where policies within the NPPF and (by virtue of footnote 9 and the Supreme Court decision) the Development Plan suggest development should be restricted.

The Parish Council do not consider that the developer has responded positively to the special qualities or scenic beauty of the AONB, and consider that the developer has failed to engage in this element of EB6(3).

The Parish Council do not consider that the developer has taken full account of the capacity assessment set out in the Landscape Sensitivity and Capacity Assessment, which is an appendix to the East Bergholt Neighbourhood Plan and therefore considered part of the Development Plan. The proposals are therefore contrary to Policy EB6(4) and contrary to the Development Plan.

Further, the Parish Council disagree strongly with the assessment the Officer's Report makes of the review of the Landscape and Visual Impact Assessment. Paragraph 65-70 consider the assessment made on behalf of East Bergholt Parish Council, which found significant concerns with the LVIA published by the developer. However, these have been dismissed by the Officer's Report, despite the LPA not commissioning an independent study of the LVIA (Para 71).

At Paragraph 74 of the Officer's Report, members of the committee are told that while the review found that a number of receptors "would suffer significant residual effects" this does not identify that the proposed development is unacceptable. The Parish Council rejects this proposition, which is clearly nonsense. A significant effect, which is adverse, is clearly an unacceptable adverse impact. The Committee should consider that the proposal is contrary to Policy EB6(5).

Policy EB7 provides for protection of Local Green Spaces. The Examining Inspector amended the original proposals and identified the areas that qualify for formal protection. At Paragraph 63 of the Officer's Report, the Council acknowledges that the green space adjacent the frontage of the B1070 is protected Local Green Space. As the Council correctly identifies, development that would adversely affect the function of the Local Green Space will only be permitted in very special circumstances. Protection of Local Green Spaces is similar to the level of protection afforded to the Green Belt under Paragraph 78 of the NPPF, and we will return to this later.

This Local Green Space is important to the visual identity of the village as you approach from the A12 along the B1070. As noted in Paragraph 64 of the Officer's Report, "this space plays an important part in presenting an attractive entrance to the village," which the Parish Council hopes that the Committee will concede is an important consideration.

The Parish Council is of the opinion that it will be difficult for this protected Local Green Space to function as an attractive entrance to the village if the other side of the road, currently hedgerows backed by attractive Grade II arable land, is replaced by a poorly designed and ugly housing estate. The Parish Council considers that the application is therefore contrary to Policy EB7.

Policy EB8 provides for proposals to protect and enhance biodiversity and geodiversity and reflect the requirements of Paragraphs 109, 117 and 118 of the NPPF.

As previously detailed, the Parish Council does not consider that the proposals avoid potential impacts on the Stour and Orwell Estuary Special Protection Area and Ramsar site. We have detailed our concerns in previous paragraphs and will not repeat it now; however, the Parish Council is therefore of the opinion that the application is contrary to Policy EB8(6).

Policy EB9 provides that proposals must plan for the achievement of high quality and inclusive design reinforcing the locally distinctive and aesthetic qualities of the buildings and landscape in the Parish.

Contrary to the applicants' contention, as summarised by the Officer's Report in Paragraph 219, that the proposals are traditional and draw on 'Suffolk style' houses, this is a matter of deep contention for residents of the parish. It is the Parish Council's opinion that this housing estate, if approved, will be an unattractive development, entirely lacking in relationship to the village, appearing like so many modern housing estates. The Parish Council contends that, if Councillors allow this application, the development is built, and councillors return to the site in five years' time, they will realise that they could well be in any modern housing estate anywhere in the country. There is no local focus whatsoever, there are no features that reflect the local building pattern. The Parish Council is not against modern building for its own sake, and nor does it want to impose a design style. Nor does the Parish Council reject the idea of modern takes on traditional forms. The Parish Council does not want to see a pastiche of local styles. However, these proposals do not help blend the proposals into the village or into the landscape.

Rather the proposed development will forever be recognised as unwanted development on the outskirts of the village, unrelated to the heart and soul of the home of John Constable, but instead a dormitory stuck on the side of this ancient community. It will be an act of monstrous vandalism for the members of the committee to approve this application.

Policy EB10 provides for the protection of non-designated heritage assets. The Officer's Report acknowledges that harm is caused to heritage assets, but does not appear to have considered the harm caused to non-designated heritage assets.

Equally the Parish Council is concerned that there could well be unrecorded below ground heritage assets that will be lost if this development is allowed to proceed. As the Suffolk County Council Archaeological Service note, Policy EB10 Preservation of Non-Designated Historic Assets is relevant to the application. In their response of 21st April 2017, they say: "Further archaeological survey work is required on site to fully assess the impact."

Policy EB14 provides for new developments to “aim to reduce recreational pressure on Stour & Orwell Special Protection Areas.” It is clear that there has been no proposals made by the applicant to reduce such pressure, a concern raised by both Natural England and the Dedham Vale AONB and dismissed by the Officer’s Report. The Committee should recall that what is lost cannot be replaced. The Parish Council consider that this application is contrary to EB14.

Policy EB15 provides for the development of new and expanded businesses. The proposed development includes 4x B1 units, and is accompanied by a letter from a local estate agent indicating interest in these units. The Parish Council is concerned that the proposals should have no unacceptable impact on nearby residential or other uses, that they should not lead to an unacceptable impact on the local highway network, which has to include the A12/B1070 junction, and that they make provision for adequate vehicle parking.

The Parish Council notes that the applicant has not carried out a sequential test to assess the potential for this B1 business units to be procured elsewhere, whether in East Bergholt or in more appropriate sites elsewhere in the District. This out-of-town-centre development is not in keeping with the rural feel of East Bergholt, or with the supposedly “well” designed housing estate that these units will be sited in. The Parish Council is not against the principle of developing new business units within the Parish boundary, but is of the opinion that these proposals are both wrong for East Bergholt and wrong for the new residents. The Parish Council is concerned on the amenity impact for future residents and considers that this should be rejected on the grounds that it does not comply with Policy EB15.

Policy EB17 is very clear. New development not connected with agriculture should avoid the loss of best and most versatile agricultural land. The proposed site is Grade II agricultural land (Paragraph 10 of the Officer’s Report). The phrase “best and most versatile agricultural land” is given specific legal meaning by Annex 2 of the NPPF, which defines “Best and most versatile agricultural land” as being land in grades 1, 2 and 3a of the Agricultural Land Classification.

It is therefore clear that this is land which development not connected with agriculture should avoid. There has been no sequential test provided to indicate that lower grade land is not available, and therefore the proposals are contrary to EB17.

Policy EB22 provides for the promotion of sustainable transport solutions for East Bergholt. Councillors should require that the development provide the infrastructure to allow for electric car charging points; considering the announcement by the Government in relation to the banning of the sale of new petrol or diesel driven cars by 2040, this will soon become a substantial issue for residents in rural locations, and it would seem prudent to install the infrastructure before the development takes place, rather than trying to retrofit it.

[National Planning Policy Framework](#)

The NPPF is a material consideration in a planning decision. The Officer’s Report suggests that the application is to be considered under the tipped balance in Paragraph 14 of the NPPF.

Paragraph 14 of the NPPF states that at the heart of the NPPF 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.

Clearly, the application before the committee does not accord with the development plan. The Officer's Report claims that policies CS2, CS11 and CS15 are relevant policies which are out-of-date and therefore permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

The assessment of whether they do significantly and demonstrably outweigh the benefits is to be done against the policies in the Framework taken as a whole. Lord Carnwarth's speech in the Supreme Court case makes clear that this should include policies in the Development Plan.

The committee must also assess whether specific policies in the Framework indicate that development should be restricted.

While specific policies in the Development Plan, namely CS2, CS11, CS15 of the Core Strategy and EB1, EB2, EB4, EB5, EB6, EB7, EB8, EB9, EB10, EB14, EB15, EB17 and EB22 of the East Bergholt Neighbourhood Plan, are clearly indicating development should be restricted, the Officer's Report still recommends that the committee considers whether adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

However, the Parish Council is of the opinion that the application is also specifically restricted by the NPPF itself.

The proposals do not accord with Paragraph 17, the Core Planning Principles, which state that planning should be genuinely plan led, empowering local people to shape their communities. In this case, the Officer's Report sets aside the East Bergholt Neighbourhood Plan, despite the Written Ministerial Statement indicating that where a council can demonstrate a 3-year supply, they should give full weight to the Neighbourhood Plan.

Paragraph 17 also provides that planning should take account of the different roles and characters of different areas, promoting the vitality of our main urban areas, protecting Green Belts around them, [which mirror the Local Green Spaces in protection] and recognising the intrinsic character and beauty of the countryside.

Paragraph 17 requires planning to encourage the effective use of land by reusing land that has been previously developed, which this application does not.

The application is also contrary to Paragraph 24, which requires Local Planning Authorities to apply a sequential test of town centre uses that are not in an existing centre and not in accordance with an up to date Local Plan. The proposed 4x B1 use buildings should have been considered in a sequential test. While Paragraph 25 exempts small scale rural development from this requirement, the application cannot be simultaneously a major application and a small scale rural development. Paragraph 27 provides that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact, it should be refused.

Paragraph 56 of the NPPF requires that great importance is attached to the design of the built environment. Good design is seen as a key aspect of sustainable development. Committee members will recall that the presumption in favour is only in favour of sustainable development, so bad design is fatal to an application.

Paragraph 61 provides that planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment. This application will be a pimple on the outskirts of East Bergholt, entirely separate and not at all integrated into the built and historic environment.

Paragraph 64 provides that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This proposal fails to take those opportunities and should be refused.

There is no evidence that the applicants have taken into account the views of the local community, as required by Paragraph 66 NPPF. Had they done so, the application would not be in breach of quite so many of the policies contained in the East Bergholt Neighbourhood Plan, the embodiment of the views of the local community.

Paragraph 76 of the NPPF provides for the designation of land as Local Green Spaces. Paragraph 77 limits the areas that the designation can be used, while Paragraph 78 provides that “local policy for managing development within a Local Green Space should be consistent with policy for Green Belts”.

As identified earlier, the proposal is immediately opposite an attractive Local Green Space, which was so designated following an Inspector’s examination of the Neighbourhood Plan. This area is given the protection of the Green Belt. Babergh currently has no Green Belt policies, and so must rely on Chapter 9 of the NPPF to assess the impact.

Specifically, Paragraph 87 NPPF provides that inappropriate development is, by definition, harmful to the Green Belt [and therefore Local Green Spaces] and should not be approved except in very special circumstances.

Paragraph 89 NPPF provides that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt [and therefore Local Green Spaces]. There are limited exceptions within the Paragraph, none of which apply to this application.

It is therefore clear that harm will be caused to the Local Green Spaces, by virtue of inappropriate development immediately adjacent to the site, which effects the setting of the Local Green Space.

Inappropriate development such as housing should always be refused unless Very Special Circumstances are available. There are no Very Special Circumstances proposed by the applicant and therefore the Council should refuse the application.

Paragraph 112 provides that Local Planning Authorities should take into account the economic and other benefits of the best and most versatile agricultural land, defined as Grade 1, 2 and 3a land in the Agricultural Land Classifications. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to higher quality. No sequential testing was undertaken and it is not clear that the Council Officer's Report has even considered this issue.

Paragraph 115 provides 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. While not within the AONB, at a mere 300m from the AONB this application will clearly have an adverse impact, which will include greater pressure for recreational use.

The Parish Council considers that Paragraph 118 has not been properly followed and that the Council has not properly assessed the development proposals against the principles so espoused.

The Parish Council is concerned that harm is identified towards heritage assets, but that this has been dismissed by the Local Planning Authority. Paragraph 134 and 135 provide that a balanced judgment be provided; given the use of the tipped balance from Paragraph 14, this also weighs against approval.

Consideration should also be given by members to the harm to the cultural heritage of the home of John Constable and the tourist draw of Dedham Vale as "Constable Country".

The applicant's review of local housing needs does not accord with Paragraph 159 of the NPPF and should be set aside. While it could be a material consideration, it should be afforded very limited weight, especially against the policies within the Neighbourhood Plan, which must be afforded full weight under the Written Ministerial Statement.

The application is contrary to the principles of Paragraph 169 and Paragraph 170 of the NPPF. The recommendation for approval is contrary to Paragraph 196 of the NPPF which requires planning decisions to be plan-led.

This application is entirely without merit, and while it will solve a problem for Babergh District Council in terms of their 5-year housing land supply, it will create an unwanted development that is poorly related to East Bergholt. It should be refused by the Committee and they are invited to do so.