

Babergh District Council - Planning Committee Report - B/15/00673. Moores Lane, East Bergholt

Tony Brigden's (TWB) response to the Committee Report

OVERVIEW – The report for the August 2nd planning hearing is very similar to the report presented at the original meeting with virtually all arguments 'tipping' in favour of the recommendation for approval. There are however a number of clear weaknesses in certain of the arguments, errors of fact, failures to represent alternate views, incorrect assertions and failure to provide updates on key matters since the first meeting over a year ago.

The purpose of this response is to ensure such matters are brought to the attention of members of BDC's Planning Committee, before deliberating on the important August 2nd decision. The following are such matters;

1. Page 6. Summary – States

- “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 National Planning Policy Framework and all other material consideration have therefore been fully considered.”

TWB Response; This is not so and a number of material considerations have not been evaluated and considered, as covered later.

- “Furthermore, whilst harm is identified to heritage assets, this is at the low end of the spectrum of less than substantial harm where the public benefits of the proposal outweigh this harm.”

TWB Response; The subject site is at the main entrance to East Bergholt, the birthplace of John Constable, which together with Flatford and Dedham Vale is one of the district's, county's, region's, and country's most important heritage sites. Thus the identified harm can only be accurately described as considerable.

2. Page 12/16. Local Highway Authority – Response received March 1st 2016 – States; “I am aware that there are a number of other applications for large sites in Essex located between Colchester and Manningtree, but at this stage apart from the Dales Hall site on Cox's Hill, none of them are 'Committed development' and therefore should not be considered in that way in considering the current applications in Suffolk.”

Further response received June 16th 2017 – “No further comments to make.”

TWB Response; Many hundreds of homes are built, under construction or planned in the Essex area within a 3 mile radius of its border with Suffolk, with access to the B1070. Seemingly neither the Local Highways Authority or Babergh DC are concerned enough to consider the road safety impact on East Bergholt.

3. **Page 22. Suffolk County Council Archaeological Service** - Response received 21st April 2107 – States; “...due to the fact that the site has only been subject to a low level archaeological survey. Further archaeological survey work is required on site to fully assess the impact followed by appropriate mitigation for any heritage assets identified,”
TWB Response; As was always assumed, the original survey was an inadequate ‘low level survey’.
4. **Page 23/27. Corporate Manager – Strategic Planning** - No response provided since January 7th 2016
TWB Response; This key BDC respondent provided evidence in support of earlier consideration of this application. The lack of input on this occasion begs the question WHY?
5. **Page 33/34. Corporate Manager – Heritage** – Response received July 10th 2017 – States “The Heritage Team considers that the proposal would cause a very low magnitude impact on the scale of ‘less than substantial harm’ to the various designated assets in proximity to the site, by virtue of their proximity and the scale of the development which lies between them and the new site.”
TWB Response; What on earth does this mean?? The principal asset is East Bergholt with its inseparable connection with John Constable, Flatford, and Dedham Vale. The proposed site is at the entrance to the village. How can the impact be low magnitude?
6. **Page 36. The Proposal** – States; “The affordable homes would consist of both affordable rent and low cost shared ownership properties.”
TWB Response; A key consideration and test of every planning application is that the development be viable. Viability insofar as affordable homes are concerned, depends on the economics, the customer and the means of management. Nothing in the application references the viability of this part of the project, which I would suggest needs to be addressed and proven, before the application can be fully considered. The country is littered with affordable homes that ended up in the open market through lack of adequate viability/management consideration.
7. **Page 39, NPPF Paragraph 49 – Item 36** – States “Relevant Policies for the supply of housing should not be considered up to date if the LPA cannot demonstrate a 5 year supply of deliverable housing sites.
TWB Response; Key part of which is “the LPA cannot demonstrate”. More likely BDC would appear to have chosen ‘not to demonstrate’ a 5 Year Housing Land Supply (HLS), in 2017. In its calculation (refer to the 2017 Annual Monitoring Report), the difference between having/not having adequate HLS is just 371 housing units. In its assessment of HLS, any one or combination of three areas can be adjusted to reflect quite different results. These are;
 - **Land supply** – In the main, sites with planning permission qualify, but this year BDC chose to exclude a number of qualified sites without planning permission, despite qualifying under NPPF criteria.

TWB Response; BDC has failed to adequately explain why, even though NPPF guidance provides for it.

- **Dwelling completions targets** – BDC’s Core Strategy pre-determined its approach to targets, however NPPF guidance requires LPAs to “ensure that they carry out their annual assessment in a robust and timely fashion, based on up to date and sound evidence, taking into account the anticipated trajectory of housing delivery, and consideration of associated risks, and an assessment of the local delivery record. Such assessment, including the evidence used, should be realistic and made publicly available in an accessible format.”

TWB Response; BDC is suffering a major problem in not delivering upon its key Core Strategy of Housing Policy, with the trajectory of urban strategic/allocated sites continually slipping into the last period of the 2011-2031 plan period. Whilst it is on target to meet its overall 5,975 housing completions through to 2031, the phasing differs hugely from that originally anticipated, and so completions targets should clearly be adjusted.

- Instead of flat-line targets of 220 through to a 2016 increase to 325 pa, as originally conceived, targets in the three trajectory periods should be adjusted in the region of 280/320/375 pa. This assessment can only be approximate due to BDC’s failure to provide requested data.
 - With this single adjustment, the -101 historical completions shortfall is eliminated, and the 2017-2022 baseline target reduces to 1,400, a reduction of 225.
 - The net result of which is the 5 Year HLS supply figure exceeds 5.0.
 - Furthermore the future trajectory targets would be more closely aligned with real world delivery projections.
- **Windfall assumptions** – Despite exceeding the 82 pa Core Strategy assumed figure for the last 12 years, BDC maintains 82 as its future planning level of windfall completions.

TWB Response – NPPF guidance recommends adjustments to windfall, and an increase reflecting its historical achievement levels would seem appropriate.

Such adjustments in these three areas would reflect a more accurate assessment of the 2017 5 Year HLS figure, which would be comfortably ahead of 5.0 years. Why BDC has chosen such a path in its assessment is impossible to ascertain, although a number of Freedom of Information requests have been filed to obtain relevant data. Ten such requests have been denied by BDC as discussed further below.

8. **Babergh 5 Year HLS Obligations** – Where a LPA cannot demonstrate 5 Year HLS supply NPPF places a number of requirements upon them

- **Duty to Co-operate** – This existing duty is expanded in that it is required to co-operate with adjoining LPA’s in seeking to identify sites that can make up shortages in its own district.

- **Strategic/allocated sites** - It is required to closely examine its own strategic/allocated sites for opportunities to accelerate dwelling completions.
- **New sites** - It is required to proactively seek new additional sites in its own district over and above its normal 'call for sites' actions.

TWB Response; There is no evidence within BDC's Annual Monitoring Report of any such action being taken in these three key areas.

9. **TWB Comments - Babergh DC - Annual Monitoring Report (AMR)** This report is the vehicle through which BDC is required to report progress on all aspects of its Core Strategy, including its 5 Year HLS. In reviewing BDC's 2017 Interim 5 Year HLS data, and its subsequent AMR, significant weaknesses in reporting were noted and in overall terms the reports failed to provide the transparency and detail anticipated by the NPPF.

These shortfalls have resulted in calls for data and clarification from BDC Officers, but more recently they have been denied, culminating in data requests being directed through the Freedom of Information (FOI) system. Regrettably the ability to thoroughly assess BDC AMR data has been further compromised as a number of FOI requests have been judged 'manifestly unreasonable', and production of the responses "not in the public interest".

These shortfalls not only relate to 5 Year HLS issues, but lack of information on affordable housing, unoccupied housing and housing for the elderly and dependent people, and all have a place in any assessment of housing needs, dwelling completions and the like. None of which is reported on in the not fit for purpose AMR.

The failure of Babergh to adequately report Core Strategy status in its Annual Monitoring Report, and respond to critical FOI requests has been referred to the Secretary of State, Department of Communities and Local Governance, whose response and intervention is awaited.

Babergh's decision to withhold FOI responses has been appealed together with a request that all East Bergholt planning applications be held in abeyance until requested FOI information has been furnished. The result of the appeal and request for deferment are still awaited.

This denial of FOI responses is in clear breach of the Freedom of Information Act, and also a likely breach of The Human Rights Act. BDC has been apprised of such concern.

It is also probable that the hearing of East Bergholt planning applications prior to outstanding information being provided, will compromise those meetings and any decisions made.

10. **Page 40. Item 49 – SHMA 5 Year HLS** - States; . "...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.”

TWB Response; The alternate SHMA calculation uses the same questionable Land Supply data as in the Core Strategy calculation, but with a significant ‘tweak’ to the housing completions targets.. The as yet untested growth forecast in the SHMA data provides inflated housing completion targets of 355 pa, and even though these have only recently been produced these targets are utilized in the SHMA undersupply figure of -510. This figure contrasts with the CS calculation of undersupply of -101, derived by reverse engineering completions performance data. Thus the SHMA 5 Year HLS data has zero credibility, and should not be the basis for planning application determinations.

11. Page 41. Sustainable Development - Item 42 states; “The NPPF requires that development should be sustainable”, providing three pre conditions:

- An economic role – contributing to building a strong , responsive, and competitive economy.
- A social role – supporting strong vibrant and healthy communities.
- An environmental role – contributing to protecting and enhancing our natural built and historic environment.

TWB Response; These pre conditions very accurately describe East Bergholt today, and impossible to see how the imposition of a large edge of village, disproportionate housing development will add to the present excellent condition of a village that is well served in all respects. East Bergholt’s housing development and sustainability will be further enhanced by;

- **Neighbourhood Plan** - The Ongoing implementation of its NP with very clear direction on how the housing needs of the village will evolve. This work will be supported by;
- **The East Bergholt Community Housing** organization, established in 2017, which has already identified deliverable sites to provide the housing needs of East Bergholt and management of the Community assets for the long term benefit of the village.

12. Page 85. Item 280 – States, “..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 therefor made.”

TWB Response; Absolutely no evidence has been produced that the planned development is sustainable., or will improve upon the village’s ongoing sustainability plans;

- The development is disproportionate to the village and the setting; and seriously damages the heritage asset that is the village of East Bergholt.
- Sustainability of the village will be achieved by allowing the village to manage its own evolution, via the Neighbourhood Plan, its ongoing good governance, and through the Community Housing organization that will deliver identified local housing needs and manage key village assets.

- There is also an '**Elephant in The Room**'. The present owner of the option on the subject site is a well known Essex based property development company, which although now owning the option has been quoted as saying they have no interest in developing a 144 unit estate. They would though likely be interested in developing a 500 unit estate, and approval to this application will with 'concrete certainty' result in aggressive plans to expand the site into adjacent agricultural land for the benefit of greedy shareholders, local landowner's and the detriment of Babergh's prime heritage site.

13. Page 86, Item 281, Legal Implications

TWB Response; This section fails to include the Freedom of Information Act in its list of considerations and Babergh DC has been informed of its failings in this area, and Members of the planning Committee should be alerted to attendant risks in this regard, as identified earlier. This being so there are also potential failings under The Human Rights Act that members should be cognizant of, all of which places the hearing of East Bergholt planning applications potentially compromised until remedies are provided.

14. TWB Summary – Many other planning related matters are worthy of discussion but regrettably time available limits this response to the matters discussed. However one major concern emerges, as indeed it did in the Officer's report for the first meeting, which is the lack of attention given to the highly objective objections made by villagers.

There are pages of attachments with bullet point summary of comments, but none of this portrays the sense of concern and injustice felt by the residents of East Bergholt. There is no doubt that approval of this application will lead to massive over development of this village, destroying the heritage asset, all because a bunch of BDC planners and Councillors have failed to deliver on Babergh's Core Strategy commitment to the district's residents to protect the rural heritage and concentrate housing development where it is most needed, in the urban area. Furthermore BDC has failed to take steps required of it under the NPPF to offset short term Housing Land Supply, if indeed such really does exist.

We await seeing Babergh's responses to outstanding FOI requests, better enabling constituents to understand the true extent of 5 Year Housing Land Supply issues.

Nonetheless it is hoped that Members of the Planning Committee will see the need to tilt the balance in favour of East Bergholt's demonstrable desire and commitment to the evolved sustainability of its village, and refuse to approve this application.

July 31st 2017