

## **Committee Report**

**Item 7A**

**Reference:** DC/20/01677

**Case Officer:** Daniel Cameron

**Ward:** Elmswell & Woolpit.

**Ward Member/s:** Cllr Helen Geake. Cllr Sarah Mansel.

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## **RECOMMENDATION – GRANT PLANNING PERMISSION**

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### **Description of Development**

Outline Planning Application (access to be considered, all other matters reserved) - Site remediation works (Phase 1) and the erection of up to 65 dwellings with the safeguarding of land for the potential future delivery of a relief road, public open space and associated landscaping (Phase 2)

### **Location**

Land To The West Of The Former Bacon Factory, Elmswell.

**Expiry Date:** 29/07/2020

**Application Type:** OUT - Outline Planning Application

**Development Type:** Major Small Scale - Dwellings

**Applicant:** Harrow Estates Plc

**Agent:** The Planning Consultancy

**Parish:** Elmswell

**Site Area:** 3.11 ha

**Density of Development:** 29 d/ha.

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### **Risk Assessment of deferred application:**

The following risk assessment is provided to assist Members to understand the associated risks when determining application DC/20/01677 deferred from the Mid Suffolk Development Control Committee B which took place on the 5<sup>th</sup> August 2020.

This assessment provides a summary of key risk issues to be aware of in the event Officers' recommendation is not accepted by Committee.

It is important to recognise that some of the risks identified in this assessment are not of themselves material planning considerations, as issues of reputational and financial impact bear no direct relation to land use planning matters. They are nonetheless facets which reflect upon the reasonableness of the local planning authorities decision on planning merit.

It would not be appropriate, therefore and as an example, to allow the likely costs associated with defending an appeal to influence the planning balance being struck in determining an application for planning permission. That said, such risks are important for councillors to bear in mind as holders of public office and costs may, if awarded, bring into question the

reasonableness of the behaviour of the party they are awarded against. The costs would, in that sense, be a symptom of the unreasonableness.

The costs of defending an appeal or legal proceedings are not material to the planning merits of a particular decision and should not be given regard to in the making of a planning decision.

This risk assessment is provided, in the round, in the interests of transparency and disclosure.

It is appropriate that councillors as decision-takers are at least aware of the foreseeable implications of any decision to be taken and consider the extent to which any decision made at variance to an officer recommendation is adequately reasoned and capable of bearing scrutiny under challenge, as recognised in Planning Practice Guidance.

### **Background**

The combined legal duties of section 70(2) of the *Town and Country Planning Act 1990* and section 38(6) of the *Planning and Compulsory Purchase Act 2004* require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise (and such material considerations must be taken into account). This lies at the heart of the “planning balance” that Members exercise and thus, the development plan is the starting point, but not the end point, for the determination of planning applications.

Members will recall that the same proposal as this was previously considered by Committee under reference DC/19/03924. That application was previously refused for the following reason:

*“The application would result in the expansion of Elmswell to the west and would place a burden upon the infrastructure of the village to cope. The site is not allocated in the Local Plan (1998), Core Strategy (2008) or Focused Review (2012) and is not proposed to be allocated within the emergent Joint Local Plan as a sustainable development supported by services and benefiting from suitable access to those services.*

*While the emergent Joint Local Plan does allocate other development sites within Elmswell, the supporting Infrastructure Delivery Plan (2019) makes account for these and provision is made for the expansion of facilities and services in order to cope with the impacts of development on these allocated sites. This site is unallocated and as such sits outside of the scope of the Infrastructure Delivery Plan (2019) such that there may not be capacity within the existing services, including provision of school places, to accommodate the increased population that is expected were this application to be approved.*

*In conclusion, the emerging Joint Local Plan is given reasonable weight alongside the current policy position for proper planned development. In this case, as directed by the National Planning Policy Framework (2019), the merits and benefits offered by this application are not considered to outweigh the risk to sustainability of future development within this settlement.”*

An appeal in relation to that application has been lodged with the Planning Inspectorate and a hearing is expected. It is noted for the record that an award of costs is intended to be submitted to the Inspectorate in due course by the Appellant against the Council. Concurrently

with the appeal, Counsels opinion on the previous reasons for refusal has been lodged by the Appellant and this notes the following with regards to the reasons for refusal:

1. The reason for refusal does not allege any actual harm associated with the development. It states that infrastructure *may* not be able to provide sufficient capacity to accommodate the increased population of Elmswell.
2. The reason for refusal is not clear which aspects of infrastructure are of concern, save that education provision is explicitly noted.
3. There is no objection from Suffolk County Council, who as the Education Authority are responsible for providing adequate capacity for population growth. The County's strategy to address population growth is set out in the Infrastructure Delivery Plan which forms part of the emergent Joint Local Plan and identifies that primary school places are to be provided through the expansion of the existing primary school in Elmswell and the provision of an additional primary school within Woolpit. Secondary school capacity is to be provided through the expansion of facilities within Thurston. The Planning Policy team made clear in their comments that this approach would supply sufficient places to deal with planned growth as well as windfall development.

The Council has accordingly taken legal advice from it's own Counsel as to the present application consideration and the risk associated with this determination.

With regards to the Neighbourhood Plan for Elmswell, comment from the Parish Council at the meeting of the 5<sup>th</sup> August 2020 was clear that there is no published draft of the plan available. Therefore, that Plan, such as it is, should play no determinative role in the decision at hand and it can be afforded no weight.

The emergent draft Joint Local Plan (JLP) has progressed to Regulation 18 stage, at the time of writing, the degree of weight that can be attributed to it is limited as a material planning consideration. This being said, the draft JLP is useful in order to demonstrate the general direction of future growth across the District which has been agreed by the Council, as well as identifying the relevant infrastructure that will underpin and support that growth.

Elmswell is identified as a Core Village within the draft JLP which is consistent with the Key Service Centre designation within the current development plan. The Infrastructure Delivery Plan (IDP) supports the identified growth outlined through the draft JLP and envisions a shared approach to infrastructure provision in both Elmswell and Woolpit, another Core Village. The IDP has been prepared in support of the draft JLP and forms part of its underlying evidence base. It was prepared in consultation with the Council's infrastructure partners and identifies the required infrastructure required to support the strategic priorities and growth identified within the draft JLP.

The NPPF is naturally a crucial consideration as the presumption in favour sustainable development, "the tilted balance", is engaged (paragraph 11(d)) which has been consistently recognised by this Council and by planning inspectors in appeals within this District. Development plan policies CS1, CS2, and H7 are deemed out of date because of their inconsistency with the NPPF.

Whilst the Council can demonstrate a five-year housing land supply, it does so despite those policies, not because of them, due to the fact a significant proportion of that supply is, in reality, comprised of sites in the countryside in the absence of any new allocations or settlement boundary review. It is therefore reasonable and appropriate to apply limited weight to Core Strategy polices CS1, CS2 and Local Plan policy H7, especially in the context of applications

for development in sustainable locations. To do otherwise would be inconsistent with a clear line of appeal and Council decisions acknowledging paragraph 11(d) NPPF and would be potentially irrational in the absence of other material considerations.

In respect of the application subject to this risk assessment, taken in the round the most important policies for its determination are out of date. The existence of a five-year housing land supply has no material bearing on that.

For this reason, the “tilted balance” of policy FC1 and paragraph 11(d) of the NPPF is engaged. There is therefore as a material consideration a presumption that planning permission will be granted unless significant and demonstrable harm can be found.

Officers consider that there are significant risks posed should Members take an alternative view to the recommended decision, without good reason. For Planning Committee to depart from a positive Officer recommendation, which is commonly understood to provide the reasoning of Committee decisions where that is followed, it is appropriate for Committee to identify unacceptable planning harm and give coherent and thorough reasons for their decision.

### **Risks**

The primary risks identified by officers in relation to the determination of the applications are threefold:

- Application of planning policy risk;
- appeal risk; and
- reputational risk.

These will be treated in turn.

- **Application of Planning Policy risk**

Whilst every application must be considered on its own merits, it is also important for the Council to be consistent in its application of policy when determining applications of a similar nature. The Council, and Planning Inspectors, have consistently over time recognised that when assessing housing applications (and assuming no other key issues are present) the “tilted balance” will engage in Mid Suffolk due to the out-of-datedness of the District’s strategic housing policies.

There is also a need to examine consistency in the context of the previous application on site. Given this application is materially identical to the application previously refused and now submitted for appeal, the identification of other reasons for refusal that are not supportable at appeal or were not stated on the decision notice of the former is likely to demonstrate unreasonable behaviour.

In the context of the current application, Suffolk County Council have identified that expansion of primary and secondary education provision can be accommodated in line with the approach outlined within the IDP.

Looking more widely at infrastructure delivery, the NHS confirm capacity at the nearest health centre subject to expansion of that facility to be funded from Community Infrastructure Levy (CIL) receipts.

Suffolk County Council, commenting in their capacity as Highway Authority note no severe impact upon the highways network infrastructure sufficient to support a refusal. Giving specific attention to cumulative impacts on the highways network, the Highway Authority made clear that at present, the junction at School Road/Church Road is projected to hit its current capacity by 2023, meaning the junction is currently under capacity. This calculation by the Highway Authority includes additional traffic to come from permitted, allocated and known windfall sites but is assessed on the basis of no other traffic improvement measures being implemented. In saying this the Council presently have an application before it (DC/18/02146) which, if approved, would provide junction improvements to increase junction capacity here.

Comments from the Planning Policy team conclude that the infrastructure needs stemming from this development have solutions available to them subject to being secured via Section 106 Agreement. It is noted that the current format of securing contributions to meet infrastructure requirements through CIL and Section 106 Agreements both rely on planning permission being granted and implemented to ensure delivery of infrastructure.

To rely upon a generalised assertion about the proposal's impact upon infrastructure which is not supported by an objective analysis would potentially represent a reason for refusal that would be weak and difficult to defend.

In the absence of any clear and unacceptable planning harm or unacceptable policy breach, officers advise caution in finding against an application for development adjacent to a Key Service Centre. To significantly boost the supply of homes is of itself a significant benefit and material consideration identified in the NPPF. The Secretary of State acknowledged that consideration in his Long Melford decision (APP/D3505/W/18/3214377) notwithstanding the fact that Babergh Council could demonstrate up to date planning policies and a five-year housing land supply whereby the tilted balance was not engaged.

It has also been stressed in appeals affecting this District, that having a demonstrable five-year housing land supply is a target, not a ceiling. The Eye appeal (APP/W3520/W/18/3215534) can be distinguished due to the fact the advanced neighbourhood plan in that instance was proposing a significant level of housing above and beyond its identified requirement; in the Inspector's view, it was this factor that was '*decisive*'.

- **Appeal Risk**

In accordance with current National Planning Practice Guidance, a failure to substantiate a reason for refusal, or the prevention of development that clearly should have been permitted, is likely to lead to an award of costs against the Council at appeal. The risk of this occurring is higher where Members overturn the professional recommendation of their planning officers and especially so where their reasons or harm cannot be substantiated by professional or objective evidence. In short that would be unreasonable in a planning authority decision.

The risk in this application arises from the likelihood of submission of a further appeal to that which is already in train at this site. If the scope of the appeal were to be broadened by adding further reasons for refusal it would increase the length and complexity of the appeal and would not improve the Councils case at appeal.

- **Reputational Risk**

Reputational risks to the local planning authority will foreseeably arise from taking decisions that might be unreasonable, founded on vague, generalised or inaccurate assertions about a proposals impact and which are unsupported by any objective analysis or which are inconsistent with other prior decisions of the authority or by Inspectors at appeal.

It is expected that the local planning authority will make decisions which are reasonable in the round, have regard to relevant considerations and disregard irrelevant considerations.

**Conclusion:**

Counsel has reviewed the officers report and the present application and appeal circumstances and provided legal advice thereon. Counsels opinion is legally privileged and having regard to its relevance to the Councils defence of the outstanding appeal is not included in agenda bundle.

Counsel has concluded that the officer advice contained in the committee report is sound.

Clearly Committee is at liberty to take an alternative view and take a decision at variance to the officer recommendation. To do so it would be proper for Committee to identify clear, specific and accurate planning harm which would be unacceptable in the planning balance and which can be supported by objective analysis and up to date policies as appropriate.

**RECOMMENDATION:**

1. That the contents of this risk assessment be noted.
2. That Committee have regard to this risk assessment in their further consideration of this application.

Philip Isbell

Chief Planning Officer