

Planning application DC/20/00585: Risk Assessment report.

Background

This application was reported to Development Control Committee A on 22nd July 2020. The report recommended that planning permission be granted.

At Committee a motion to refuse the application was proposed and agreed. The minutes state:

“It was RESOLVED:

That the application be refused for the following reasons:

Contrary to Neighbourhood Plan Policies 1, 1D, 6A, 6B, 9. Contrary to Policies H7, CS1, CS2, CS5, FC1 and FC1.1. Contrary to paragraph 78 of the NPPF.”

In consequence of this resolution the applicant has challenged the decision making process as flawed having regard to the approach of the Committee to the interpretation of planning policies and to the application of the presumption in favour of sustainable development, particularly paragraph 11.d) of the NPPF and the operation known as the “tilted balance” found at 11.d)ii.. The applicant drew attention to various alleged defects in the decision making process including alleging, in summary,

- [a] Unclear that para 11 NPPF had been applied or not
- [b] that Policy 1 of the Thurston Neighbourhood Plan (TNP) had been misinterpreted
- [c] that the lead planning officer supporting the Committee may have misdirected Committee as to the proper approach to the matter of “weight” in the planning decision and the proper approach to the “interpretation” of planning policies
- [d] that there was a failure to take into account other material considerations and
- [e] that there was inconsistency between decisions

The applicant has provided copy of the legal advice that they have received from their own Counsel in relation to their challenge to the Committee's resolution.

Officers have subsequently taken Counsel's advice on the matter. This has confirmed that the interpretation of Policy 1 of the TNP appears to be in error of law and Counsel has advised that the reason for the decision as presently formulated would be inconsistent with the resolutions by Planning Referrals Committee in relation to two other sites beyond the built area of the village (Bloor and Gladman). Counsel has advised that the application consideration by Committee should be revisited to correct any error of law.

The application decision has not been issued and on the advice of the Monitoring Officer it is considered appropriate to report the application back to the determining Committee in order to address the error of law which has been alleged.

The original committee report is appended. In the circumstances it is appropriate to ensure that Committee are appropriately directed as to the key issues in re-consideration of the matter.

In the light of this the application is presented to Committee with this supplemental risk assessment and Committee are invited to reconsider the application determination afresh directing themselves appropriately.

[a] The presumption in favour of sustainable development

Whilst the Council can demonstrate at least 5 years housing land supply the NPPF also requires that its development plan policies which are most important for the determination of the application are not “out of date” as defined in paragraph 11(d) if the presumption (“the tilted balance”) is not to be engaged.

The tilted balance is engaged in relation to this application because taken in the round the most important policies for its determination are out of date and in particular policies CS1 and CS2 of the Core Strategy and H7 of the Saved Local Plan have been found to be “out of date” for the purposes of a decision on an application such as this. This has been consistently the case for housing applications in Mid Suffolk, and as confirmed in numerous appeals including those dealt with by way of public inquiry.

Where the proposed development conflicts with the housing settlement policies of the Council’s district development plan documents (principally through conflict with policies CS2 and H7) it does not accord with the development plan taken as a whole. In strict terms, it could be said that there is conflict with policy CS1 also – where the site falls outside of the Thurston settlement boundary – but as a development for a Key Service Centre it is nevertheless the case that the underlying spatial strategy for the District is being followed.

Members are accordingly advised that paragraph 11.d)ii., and its effect, is a material consideration which in your officers opinion indicates the decision should be made otherwise than in accordance with the above mentioned development plan policies. The “tilted balance” directs that planning permission should be granted unless there are significant and demonstrable harms.

As to the weight to which should be attached to this material consideration your Officers are particularly concerned with the notion of refusing housing for housing sake – the outcome of the SoS-determined Long Melford appeal in the adjacent Babergh district (and indeed all other committee overturn appeal decisions relating to Mid Suffolk in recent years) acutely highlights this point and the significant weight placed upon the national policy to significantly boost housing supply.

This is especially the case given that the Council relies upon unallocated sites to make up its current housing supply and such a supply is despite its out of date housing policies, not because of them.

[b] Thurston Neighbourhood Plan (TNP) and Policy TNP1

This Neighbourhood Plan is part of the development plan and thereby within the ambit of Section 38(6) whereby decisions should be made in accordance with that unless material considerations indicate otherwise.

The spatial strategy for Thurston is described in S1 of the Neighbourhood Plan where it states the aim as being:

“To develop and sustain the key service centre status of Thurston by ensuring any future development is sustainable and supports a range of employment, services and housing.”

The Plan acknowledges that there are “over 1,000 dwellings in the planning pipeline for Thurston, ie: with planning permission but not yet built or occupied” It is this that leads the Plan to conclude that: “..it is not expected that significant additional growth will need to be planned for in Thurston to support the emerging Joint Local Plan.¹” [para 4.2 page 10].

That said the Plan does recognise that it is for the Joint Local Plan to ultimately address the objectively assessed housing need of the two districts over the period to 2036 and also to determine Thurston’s contribution to that: “It is for the Joint Local Plan to ultimately address the objectively assessed housing need of the two districts over the period to 2036 and also to determine Thurston’s contribution to that.”

The Adopted Neighbourhood Plan is therefore predicated on the presumption that sites that are not allocated within the Plan should not be permitted to come forward for residential development. The application site is outside the defined village settlement boundary and is not included as an allocation on the policy maps referred to. It should however be noted that the Thurston Neighbourhood Plan does not allocate new sites for development but rather reflects the likely status quo arising from extant planning permissions. The Plan appears not to make any reference to the number of dwellings that are considered to be required within the plan period and nor does it suggest how the extended settlement boundary to include sites with extant planning permissions will or will not meet a predicted requirement up to 2036.

The application proposal is not, however, considered to directly conflict with the NDP which purposefully splits its housing strategy between local policies and the strategic housing policies of the District. It is acknowledged that the proposal does cause some tension between what is expected in terms of a constraint on future development within Thurston as envisaged in the Thurston Neighbourhood Plan and what is clearly a sustainable development proposal in line with the NPPF. This is because the NDP states that new development within the Parish is to be focused within the settlement boundary.

That said, the NDP clearly does not preclude development outside of that boundary and it is the strategic, District policies which apply in that respect. The housing strategy within the NDP is split between it and the rest of the development plan which is to be expected given the document recognises that it could not reflect the emerging JLP and that the housing need for the village is to be determined by that new Plan, where the village will need to play a key role in addressing the significant levels of growth anticipated.

Whilst the Neighbourhood Plan includes expansion of the village envelope this is to embrace sites that have already been granted planning permission the Neighbourhood Plan does not identify [allocate] sites for future expansion and this is left to the District Council in preparing the Draft Joint Local Plan.

Strategic planning for the delivery of rural homes is a matter for a District wide approach to housing.

The current District wide strategic approach to rural housing is set out in the Core Strategy and saved Local Plan policies. The District policies should be weighed having regard to their degree of conformity with the NPPF acknowledging that policies CS2 and H7 are “out of date” (see NPPF para. 213). In summary the current District Local Plan and Core Strategy approach, where settlement boundaries provide strict physical limits to development with categorised exceptions, is not in conformity and out of date with the approach of the NPPF to rural housing.

The NDP is open to the strategic management of rural housing through a Joint Local Plan policy. It is foreseeable that any emerging District wide strategic approach to rural housing will be expected to be in conformity with the NPPF. At this time any such draft policy will attract little weight.

In the absence of an up to date District housing strategy in the form of the emerging Joint Local Plan the treatment of rural housing outside development plan settlement boundaries, where the development plan policies are reliant in part upon [a] an “out of date” and out of conformity District approach to the delivery of rural homes and in part upon [b] a made Neighbourhood Plan requires a careful balancing of the weight which that any settlement boundary consideration attracts.

Bringing these issues together it is considered that, in this case, the development of this site for rural housing on the grounds that it would be beyond the settlement boundary should attract limited weight as a matter of planning harm in the present circumstances. Conversely greater weight should be attached to the NPPF policy considerations regarding rural housing.

[c] The interpretation of planning policy and the weight to be attached to material considerations.

It should be noted that the interpretation of policy is a matter of law.

The weight to be attached to particular material considerations is nevertheless a matter for the decision maker exercising a reasonable judgement on the planning merits.

[d] Other material considerations

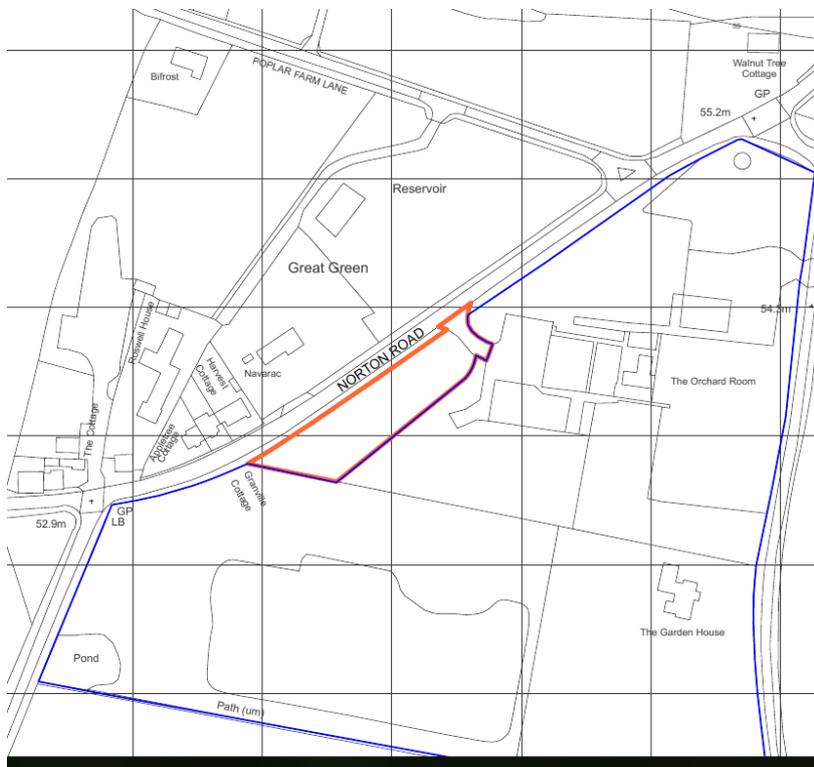
The applicant alleges that members failed to take adequate account of material considerations with specific reference to the Inspector’s conclusion as to sustainability

of the Site in a relevant appeal decision 12th June 2019 (APP/W3520/W/18/3216944) (Our Ref DC/18/02262). That appeal decision states under Para 18 that *“The location would not be unsuitable for the proposed development with regard to whether occupants of the proposed dwellings would have adequate access to services and facilities without undue reliance on private vehicle use. Consequently, there is no conflict with Policies FC1, FC1.1 or FC2 of the Council’s Core Strategy Focussed Review, concerning sustainable development and the distribution of housing; or with relevant guidance in the Framework...”*.

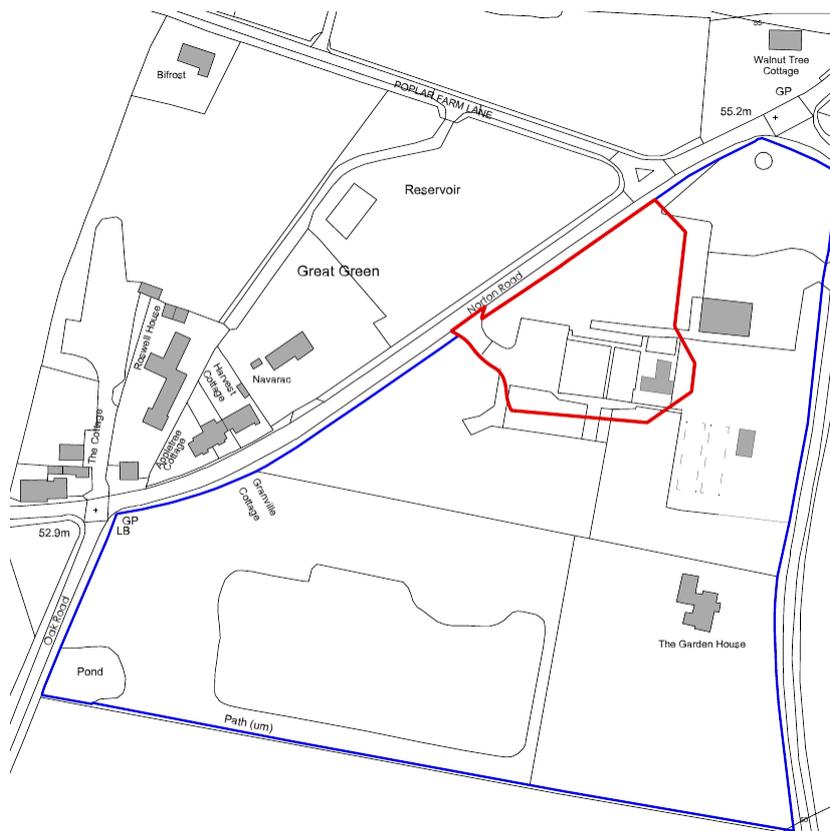
It is noted that instead this appeal was dismissed on other grounds. E.g. (para 11) *“I conclude that the proposed development of two dwellings in this location would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. Consequently, it is contrary to Policy H15 of the Mid Suffolk Local Plan, which requires development to reflect local characteristics, including the requirement that new housing should be consistent with the pattern and form of development in the neighbouring area and the character of its setting.”*

This appeal decision was raised in the officer’s report, and during the meeting. However, the applicant considers this was dismissed by members without adequate reasons for doing so especially as they consider the appeal and current application to be the same site.

For the avoidance of doubt, below is the site the subject of the appeal (APP/W3520/W/18/3216944) (Our Ref DC/18/02262).



This is the red lined site plan for the current case DC/20/00585:



On this basis, it is not accepted that the appeal site and application are exactly the same planning application/decision site, but both are within the wider Harvey Gardens Plants site.

Members can decide to disagree with the Inspector's conclusion and/or decide to give it less weight and there may be good reason to do this. Should this be Committees wish it is considered reasonable to state such reasoning in reaching a decision to expressly demonstrate that regard has been had to this material consideration.

[e] Consistency of decision making

As Members will be aware there is no principle of "precedent" in planning law. Cases are decided on their own merits.

Nonetheless there is an established principle that decision makers should act with consistency in reaching a decision. The consideration given to the NP and in particular to policy TNP1 as described above does give rise to the question of consistency in relation to the resolution reached below.

Committee is therefore advised that in the interests of consistency of decision making regard should be had to the above mentioned assessment of the application of that NP and TNP1 to this decision.

RECOMMENDATION:

That the Committee note the content of the above report and have regard to the alleged defects in consideration.

That the Committee proceed to consider the application afresh with regard to this report and revisit their resolution having regard to the above.