

# THURSTON PARISH COUNCIL

Parish Council Office  
New Green Centre  
Thurston  
IP31 3TG



Tel: 01359 232854  
e-mail: [info@thurstonparishcouncil.gov.uk](mailto:info@thurstonparishcouncil.gov.uk)

---

Mr. P Isbell  
Chief Planning Officer – Sustainable Communities  
Mid Suffolk District Council  
Endeavour House, 8 Russell Road  
Ipswich IP1 2BX

4<sup>th</sup> May 2020

Dear Mr Isbell,

**DC/20/00585 – Erection of dwelling with associated works, including provision of landscaping and internal access road @ Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds Suffolk IP31 3SJ**

**Case Officer: Mahsa Kavyani**

Please be advised that the Parish Council, having sought to be consistent in its approach for all applications outside of the settlement boundary as described in the made Thurston Neighbourhood Plan objects to this application and would ask that the following comments be considered in its recommendation of refusal:

1. As has been stated on the original application for this site, the proposal is outside of the adopted built-up area boundary and as such is contrary to not only policies within the Mid Suffolk Local Plan but also the made Thurston Neighbourhood Development Plan (NDP) POLICY 1: THURSTON SPATIAL STRATEGY which states that all new development in Thurston parish shall be focused within the settlement boundary of Thurston village as defined within the Policies Maps on pages 76-77 of the Thurston NDP.
2. As the proposed development is outside of the current defined settlement boundary allocated by Mid Suffolk District Council for Thurston, it is contrary to the spatial strategy in Policy CS1 of the Core Strategy. Being in conflict with Policy CS1 would also bring it in conflict with Policies FC1 and FC1.1 of the Core Strategy Focused Review (Adopted December 2012). The conflict with the development plan would therefore be an adverse impact of the proposed development.
3. Whilst the Parish Council is aware that there is an outstanding current legal challenge to the weighting of the Thurston NDP for another planning application in Thurston, albeit of a significantly larger scale, it should still be remembered that the Thurston Neighbourhood Plan is a statutorily made/adopted “development plan” within the meaning of s. 38(3)(c) of the Planning and Compulsory Purchase Act 2004 which provides by Policy 1: Spatial Strategy that “new development in Thurston Parish shall be focused within the settlement boundary...”, in accordance with which any planning application should be determined “unless material considerations indicate otherwise”, see s. 38(6).
4. Paragraphs 4.1-4.6 of the Neighbourhood Plan explain the reasoning behind the Spatial Strategy in the Neighbourhood Plan and the justification of why growth should be focused within the settlement boundary.

5. It is felt that the proposal, given its location would represent a detached and isolated new dwelling in a predominant rural countryside character which would have an urbanising effect on a rural area defined by informally placed dwellings.
6. The new dwelling would be incompatible with the wider rural open countryside character and visual appearance and would therefore have a negative adverse effect on the rural character of the area. The proposed development would therefore appear discordant when viewed against the established grain of development which would have a significantly detrimental effect on the character of the area. Policy 9 of the Thurston NDP requires all new development to be designed to ensure that its impact on the landscape and the high-quality rural environment of Thurston is minimised.
7. As has been stated previously, the general approach in the Thurston NDP, fully supported by the Parish Council is that growth will be focused on the 5 significant sites which were granted planning permission as of 2017 (which are located within the settlement boundary as amended by the Neighbourhood Plan) and on small scale infill sites within the settlement boundary. As these sites are expected to provide high quality schemes which generally enhance the public realm and improve accessibility for pedestrians and cyclists, it is felt that this proposal will neither enhance nor protect the village facilities given its location outside of the settlement boundary.
8. The Parish Council is concerned that the change in the use of land from agricultural to residential would see an intensification of activity on the site, which, coupled with movement from the new dwellings and customers / deliveries to and from the business and café throughout the day and any activity from the business itself will result in an intensified use of the area and will have cumulative impacts on the amenity of future occupiers of the new proposed dwelling and consequently may place unreasonable restrictions on the existing business jeopardising its viability.
9. The Parish Council contents that the proposals fails to achieve the environmental objective as outlined by the NPPF as, given its location, it can offer no measures that will contribute to the requirement to use natural resources prudently, nor will it minimise waste and pollution, and by the reliance of future residents on the use of the motor vehicle to access facilities and services, it will fail to achieve measures that will aid adapting to climate change, including moving to a low carbon economy.
10. As Thurston currently has approval for in excess of 1,000 new dwellings, it is felt that this site will offer little or no significant economic benefits either in the short term (the construction phase associated with the development will stimulate the local economy through the employment of construction workers/professionals and the sourcing of building materials) nor in the long term with future occupiers utilising local services and facilities and supporting the local economy.
11. Again, as has been previously stated elsewhere there are a significant number and range of dwellings currently being built in Thurston (four of the significant five sites have commenced work (pre-COVID19) to provide significant support to supporting strong, vibrant and healthy communities and as such the social objective to achieving sustainable development can easily be achieved without granting planning approval to further development within the countryside which will have limited or no social benefit.
12. Paragraph 78 of the NPPF seeks to promote sustainable development in rural areas, advising; 'housing should be located where it will enhance or maintain the vitality of rural communities'. Paragraph 103 of the NPPF also states: 'Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health. Given the location of the site, the Parish Council argues that the proposal will not be in accordance with POLICY 6: KEY MOVEMENT ROUTES as it fails to ensure that safe pedestrian and cycle access to link up with existing

pavements and cycle infrastructure is achievable and that the route to facilities and services in both Thurston and Norton will not be able to ensure that access by disabled users and users of mobility scooters is secured.

13. Furthermore the proposal has failed to demonstrate that it has addressed the impact of the additional traffic movements on the safety and flow of pedestrians and cyclists. A such the proposal also fails to accord with paragraph 109 of the NPPF as there are no footways linking the proposed area with the main settlement of the village or indeed the settlement boundary and as such little opportunity to encourage other modes of transport. Access on foot would require walking along stretches of Norton Road in the roadway as there is no footway nor is there any opportunity to create a new cycle route.
14. Paragraph 108 of the NPPF seeks to ensure that appropriate opportunities to promote sustainable transport modes can be or have been taken up, given the type of development and its location. Given that the site is in a rural location within a rural district, and there are limited sustainable transport solutions, it cannot be argued that there will not be a reliance for travel by private car. This is not only contrary to para. 108 but also contrary to the sustainability objectives of Policies FC1 and FC1.1 of the Mid Suffolk Core Strategy Focused Review (December 2012).

In summary, the Parish Council in objecting to this proposal requests that consideration be given to the following:

- The precedent for refusal has been set by MSDC on the grounds that this was development in the countryside and isolated from the main settlement;
- Outside of the curtilage of the settlement boundary – contrary to the made Thurston NDP;
- Impact on nearby heritage buildings;
- Given that future residents of the dwellings will be reliant on the private car to access facilities and services in Thurston and/or Norton, the proposal, by the very nature of its location, must be regarded as unsustainable;
- No safe means of alternative travel modes such as cycle or foot to access facilities and services in either Thurston or Norton;
- The proposal will result in an overdevelopment of a small area which will fail to enhance, protect or conserve the environmental conditions of this area nor will it enhance or protect the local character of the area;
- Concerns are also raised, at the relative ease, given the layout of the site, for a further two plots to be added back in at a later date;
- The principal to build does not change the Parish Council's position over dwellings in the countryside.

The Parish Council is most concerned at the implied suggestion by Officers in the Development Management – Sustainable Communities Department which in essence appears to hold to the premise that planning decisions are to be made on the basis that the Local Planning Authority did not want to have to defend an appeal further down the line. Concern is raised at the implied approach that it might be best to accept one dwelling as otherwise you could get three.

The Parish Council contends that made NDPs should not be ignored by claiming that the NPPF allows development to take place outside of the settlement boundary and that the made Thurston NDP is and should be used as an effective planning tool for applications within Thurston.

Yours sincerely

*Victoria S Waples*

V S Waples, BA(Hons), CiLCA  
Clerk to the Council

**From:** SM-NE-Consultations (NE) <consultations@naturalengland.org.uk>  
**Sent:** 24 February 2020 15:36  
**To:** BMSDC Planning Area Team Yellow <planningyellow@aberghmidsuffolk.gov.uk>  
**Subject:** DC/20/00585

Application ref: DC/20/00585  
Our ref: 309198

Natural England has no comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published [Standing Advice](#) which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on [ancient woodland and veteran trees](#) which you can use to assess any impacts on ancient woodland.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on [Magic](#) and as a downloadable [dataset](#)) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>

Yours faithfully

Dawn Kinrade  
Natural England  
Operations Delivery  
Consultations Team  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire, CW1 6GJ

Tel: 0208 0268349  
Email: [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk)

[www.gov.uk/natural-england](https://www.gov.uk/natural-england)

Mid Suffolk District Council  
Planning Department  
Endeavour House  
Russell Road  
Ipswich  
IP1 2BX

Fire Business Support Team  
Floor 3, Block 2  
Endeavour House  
8 Russell Road  
Ipswich, Suffolk  
IP1 2BX

Your Ref:  
Our Ref: FS/F304129  
Enquiries to: Water Officer  
Direct Line: 01473 260588  
E-mail: Fire.BusinessSupport@suffolk.gov.uk  
Web Address: <http://www.suffolk.gov.uk>

Date: 19/02/2020

Dear Sirs

**Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds IP31 3SJ**  
**Planning Application No: DC/10/00585**

I refer to the above application.

The plans have been inspected by the Water Officer who has the following comments to make.

**Access and Fire Fighting Facilities**

Access to buildings for fire appliances and firefighters must meet with the requirements specified in Building Regulations Approved Document B, (Fire Safety), 2006 Edition, incorporating 2010 and 2013 amendments Volume 1 - Part B5, Section 11 dwelling houses, and, similarly, Volume 2, Part B5, Sections 16 and 17 in the case of buildings other than dwelling houses. These requirements may be satisfied with other equivalent standards relating to access for fire fighting, in which case those standards should be quoted in correspondence.

Suffolk Fire and Rescue Service also requires a minimum carrying capacity for hard standing for pumping/high reach appliances of 15/26 tonnes, not 12.5 tonnes as detailed in the Building Regulations 2000 Approved Document B, 2006 Edition, incorporating 2010 and 2013 amendments.

**Water Supplies**

Suffolk Fire and Rescue Service records show that the nearest fire hydrant in this location is over 111m from the proposed build site and we therefore recommend that proper consideration be given to the potential life safety, economic, environmental and social benefits derived from the provision of an automatic fire sprinkler system. (Please see sprinkler information enclosed with this letter).

/continued

**OFFICIAL**

Consultation should be made with the Water Authorities to determine flow rates in all cases.

Should you need any further advice or information on access and fire fighting facilities, you are advised to contact your local Building Control in the first instance. For further advice and information regarding water supplies, please contact the Water Officer at the above headquarters.

Yours faithfully

*Water Officer*

Suffolk Fire and Rescue Service

Copy: [info@locusplanning.co.uk](mailto:info@locusplanning.co.uk)  
Enc: Sprinkler informationj

**All planning enquiries should be sent to the Local Planning Authority.**  
Email: planning@aberghmidsuffolk.gov.uk

The Planning Department  
MidSuffolk District Council  
Planning Section  
1st Floor, Endeavour House  
8 Russell Road  
Ipswich  
Suffolk  
IP1 2BX

For the attention of: Mahsa Kavyani

Dear Mahsa,

**TOWN AND COUNTRY PLANNING ACT 1990**  
**CONSULTATION RETURN: DC/20/00585**

**PROPOSAL:** Planning Application - Erection of Dwelling with Associated Works, Including Provision of Landscaping and Internal Access Road. Reason(s) for re-consultation: Amended plans and a change to the description proposal received by the Local Planning Authority on the 20th April 2020.

**LOCATION:** Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds Suffolk IP31 3SJ

Notice is hereby given that the County Council as Highway Authority recommends that any permission which that Planning Authority may give should include the conditions shown below:

Condition: The use shall not commence until the area(s) within the site shown on Drawing No. 206 for the purposes of manoeuvring and parking of vehicles has been provided and thereafter that area(s) shall be retained and used for no other purposes.

Reason: To ensure that sufficient space for the on site parking of vehicles is provided and maintained in order to ensure the provision of adequate on-site space for the parking and manoeuvring of vehicles where on-street parking and manoeuvring would be detrimental to highway safety to users of the highway.

Condition: The areas to be provided for storage of Refuse/Recycling bins as shown on Drawing No. 206 shall be provided in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.

Reason: To ensure that refuse recycling bins are not stored on the highway causing obstruction and dangers for other users.

Condition: Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) any means of frontage enclosure shall be set back 2.4 metres from the edge of the carriageway of the adjacent highway.

Reason: In the interests of highway safety, to avoid obstruction of the highway and provide a refuge for pedestrians.

Yours sincerely,

**Kyle Porter**  
**Development Management Technician**  
Growth, Highways and Infrastructure

-----Original Message-----

From: BMSDC Public Realm Consultation Mailbox <consultpublicrealm@baberghmidsuffolk.gov.uk>

Sent: 22 April 2020 09:00

To: BMSDC Planning Area Team Yellow <planningyellow@baberghmidsuffolk.gov.uk>

Subject: RE: MSDC Planning Re-consultation Request - DC/20/00585

Public Realm do not wish to offer any comments on this application

Regards

Dave Hughes

Public Realm Officer

## BMSDC Planning Area Team Yellow

---

**From:** BMSDC Local Plan  
**Sent:** 14 February 2020 15:44  
**To:** BMSDC Planning Area Team Yellow  
**Subject:** RE: MSDC Planning Consultation Request - DC/20/00585

Good afternoon

Strategic Planning Policy will not be making comment on this application.

Kind Regards  
Marilyn King

Strategic Planning Policy  
Email: localplan@aberghmidsuffolk.gov.uk  
Council Services: 0300 123 4000 option 5 then 4  
Web: www.abergh.gov.uk & www.midsuffolk.gov.uk

-----Original Message-----

From: planningyellow@aberghmidsuffolk.gov.uk <planningyellow@aberghmidsuffolk.gov.uk>  
Sent: 14 February 2020 14:30  
To: BMSDC Local Plan <localplan@aberghmidsuffolk.gov.uk>  
Subject: MSDC Planning Consultation Request - DC/20/00585

Please find attached planning consultation request letter relating to planning application - DC/20/00585 - Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds Suffolk IP31 3SJ

Kind Regards

Planning Support Team

Emails sent to and from this organisation will be monitored in accordance with the law to ensure compliance with policies and to minimize any security risks. The information contained in this email or any of its attachments may be privileged or confidential and is intended for the exclusive use of the addressee. Any unauthorised use may be unlawful. If you receive this email by mistake, please advise the sender immediately by using the reply facility in your email software. Opinions, conclusions and other information in this email that do not relate to the official business of Babergh District Council and/or Mid Suffolk District Council shall be understood as neither given nor endorsed by Babergh District Council and/or Mid Suffolk District Council.

Babergh District Council and Mid Suffolk District Council (BMSDC) will be Data Controllers of the information you are providing. As required by the Data Protection Act 2018 the information will be kept safe, secure, processed and only shared for those purposes or where it is allowed by law. In some circumstances however we may need to disclose your personal details to a third party so that they can provide a service you have requested, or fulfil a request for information. Any information about you that we pass to a third party will be held securely by that party, in accordance with the Data Protection Act 2018 and used only to provide the services or information you have requested.

For more information on how we do this and your rights in regards to your personal information and how to access it, visit our website.

**From:** Nathan Pittam <Nathan.Pittam@aberghmidsuffolk.gov.uk>  
**Sent:** 25 February 2020 09:00  
**To:** Mahsa Kavyani <Mahsa.Kavyani@aberghmidsuffolk.gov.uk>  
**Cc:** BMSDC Planning Area Team Yellow <planningyellow@aberghmidsuffolk.gov.uk>  
**Subject:** DC/20/00585. Land Contamination

Dear Mahsa

**EP Reference : 272943**

**DC/20/00585. Land Contamination**

**Harveys Garden Plants, Great Green, Thurston, BURY ST EDMUNDS, Suffolk, IP31 3SJ.**

**Erection of 3no Dwellings with Associated Works, Including Provision of Landscaping and Internal Access Road.**

Many thanks for your request for comments in relation to the above application. Having reviewed the application I can confirm that I have no objection to the proposed development from the perspective of land contamination. I would only request that the LPA are contacted in the event of unexpected ground conditions being encountered during construction and that the below minimum precautions are undertaken until such time as the LPA responds to the notification. I would also advise that the developer is made aware that the responsibility for the safe development of the site lies with them.

Kind regards

Nathan

**Nathan Pittam** BSc. (Hons.) PhD  
Senior Environmental Management Officer

**Babergh and Mid Suffolk District Councils – Working Together**

Email: [Nathan.pittam@aberghmidsuffolk.gov.uk](mailto:Nathan.pittam@aberghmidsuffolk.gov.uk)

Work: 07769 566988 / 01449 724715

Websites: [www.abergh.gov.uk](http://www.abergh.gov.uk) [www.midsuffolk.gov.uk](http://www.midsuffolk.gov.uk)



## MEMBER REFERRAL TO COMMITTEE

(Completed form to be sent to Case Officer and Corporate Manager – Growth & Sustainable Planning)

Planning application reference	DC/20/00585
Parish	Thurston
Member making request	Cllr Wendy Turner
Please describe the significant policy, consistency or material considerations which make a decision on the application of more than local significance	The planning application for three houses fall outside the NP. The land is currently used as a garden centre. The road is unsuitable for more development as there is no public transport available.
Please detail the clear and substantial planning reasons for requesting a referral	The PC rejected this application wholeheartedly and have rejected previous applications, because it falls outside of the NP boundary.
Please detail the wider District and public interest in the application	Other parishes will be interested to see if NPs are taken seriously and actually hold any weight when it comes to planning applications.
If the application is not in your Ward please describe the very significant impacts upon your Ward which might arise from the development	

Please confirm what steps you have taken to discuss a referral to committee with the case officer

I spoke to the case officer about 6 weeks ago who assured me that the plan would be rejected as it doesn't fit with the Thurston NDP and other valid reasons. Since then I've had another conversation with the CO who has taken advice from her line manager and it now looks like there will be a compromise offered to the owner as he has had previous applications approved (one actually DC/18/04714) although it looks like he has had 3 applications refused including a lost appeal (DC/18/00143, DC/18/02262 and lost appeal for AP/18/00250).

Most importantly the site is in direct opposition to the Thurston NDP – of which there is an outstanding JR for the failure to take account of the Thurston NP.



Locus Planning Ltd  
11 Charing Cross  
Norwich  
Norfolk  
NR2 4AX

Sustainable Communities  
Mid Suffolk District Council  
Endeavour House  
8 Russell Road  
Ipswich  
IP1 2BX

Date: 28<sup>th</sup> July 2020

Dear Sirs,

Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds, Suffolk, IP31 3SJ – Planning Application for Erection of Dwelling with Associated Works, Including Provision of Landscaping and Internal Access Road (DC/20/00585)

#### Introduction

1. This letter is sent by James Platt of Locus Planning Ltd, on behalf of Mr Roger Harvey, the owner of Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds Suffolk IP31 3SJ ("the Site"). I act as Mr Harvey's agent in respect of his planning application to Mid Suffolk District Council ("the LPA") for the erection of a single dwelling with associated works, including provision of landscaping and an internal access road (DC/20/00585).
2. On 22 July 2020, the LPA's Development Control Committee A ("the Committee") resolved to refuse permission. There has not yet been a formal decision with reasons for refusal issued.

#### The unlawfulness of the LPA's resolution to refuse

3. The application seeks full planning permission for the erection of a self-build dwelling to be occupied by the Applicant. The property is single storey, featuring three-bedrooms with associated garaging and amenity space. The proposal is of a broadly traditional design, featuring a palette of materials comprising brick, cladding, render and pantile. Vehicular access to the proposed development is provided via a reconfiguration of the existing entrance off Tinkers Lane.
4. As set out in the enclosed Counsel's Opinion, the Committee appears to have erred in law in their approach to the determination of the planning application:
  - a. In general, there appeared to be a common misunderstanding as to whether or not the tilted balance under para 11 of the NPPF applied, and if so, its effect. Although not entirely clear from the meeting, it does not appear to have been applied.
  - b. Moreover, and linked to that misunderstanding, there also seemed to be a misinterpretation of Policy 1 of the TNP as prohibiting development outside the settlement boundary of Thurston. Whilst other policies were cited as relevant to the resolution to refuse, this policy was central to the discussion.
  - c. In any event, contrary to para 14(b) of the NPPF, the neighbourhood plan does not contain policies and allocations to meet its identified housing requirement. This has been recognised by officers of the LPA in respect to the recent Bloor

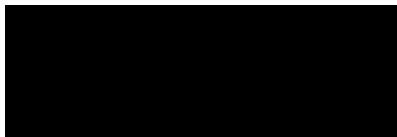
Home and Gladman Developments applications, referred to in the Opinion. The application is for the provision of housing (albeit a single dwelling).

- d. Unfortunately, the officer at the Committee meeting stated, shortly before the resolution to refuse was voted upon, that '*ultimately it is members'* opinion of how much weight to give both NPPF, the current local plan, or indeed the neighbourhood plan, and critically, '*how they interpret those policies.*' Whilst the application of policies is a matter of planning judgment, it is a misdirection to state that it is a matter of members' opinion or weight as to how to interpret the policies. This misdirection seems to have significantly contributed to the approach of members to the presumption of sustainable development, and the TNP.
- e. In addition, there appears to also have been a further failure to take account of material consideration: the Inspector's conclusion as to sustainability of the Site in a relevant appeal decision (APP/W3520/W/18/3216944). The Committee failed to adequately engage with the implications of the Inspector's conclusions. The Committee even expressly sought to rely FC1 and FC1.1 within its proposed reasons for refusal, despite the Inspector having deemed them to be out of date.
- f. Finally, there was no real engagement with its other relevant decisions, nor the intimated judicial review, during the Committee meeting. This again amounts to a failure to have regard to a material consideration.

#### What the LPA are required to do

- 5. Given the flaws identified in respect of the LPA's decision-making process, it is respectfully requested that the application be referred to the LPA's Development Control Committee B for re-consideration. The LPA must interpret the policies lawfully, and to apply the presumption of sustainable development.

Yours faithfully,



James Platt  
Director  
Locus Planning Ltd

[info@locusplanning.co.uk](mailto:info@locusplanning.co.uk)

## **Re Harveys Garden Plants, Great Green, Thurston**

---

### **OPINION**

---

#### **A. INTRODUCTION AND OVERVIEW**

1. I am instructed by James Platt of Locus Planning Ltd, on behalf of Mr Roger Harvey, the owner of Harveys Garden Plants, Great Green, Thurston, Bury St Edmunds Suffolk IP31 3SJ ("the Site"). I am asked to advise in respect of Mr Harvey's planning application to Mid Suffolk District Council ("the LPA") for the erection of a single dwelling with associated works, including provision of landscaping and an internal access road (DC/20/00585).
2. By way of background, on 22 July 2020, the LPA's Development Control Committee A ("the Committee") resolved to refuse permission. There has not yet been a formal decision with reasons for refusal issued.
3. In my view, the LPA appears to have erred in law in their approach to the determination of the planning application:
  - a. In general, there appeared to be a common misunderstanding as to whether or not the tilted balance under para 11 of the NPPF applied, and if so, its effect. Although not entirely clear from the meeting, it does not appear to have been applied.
  - b. Moreover, and linked to that misunderstanding, there also seemed to be a misinterpretation of Policy 1 of the TNP as prohibiting development outside the settlement boundary of Thurston. Whilst other policies were cited as relevant to the resolution to refuse, this policy was central to the discussion.
  - c. However, unfortunately, the officer at the Committee meeting stated, shortly before the resolution to refuse was voted upon, that 'ultimately it is members' opinion of how much weight to give both NPPF, the current local plan, or indeed the neighbourhood plan, and how they interpret those policies.' Whilst the application of policies is a matter of planning judgment, it is a misdirection to state that it is a matter of members' opinion or weight as to how to interpret the policies. This misdirection seems to have significantly contributed to the

approach of members to the presumption of sustainable development, and the TNP.

## B. FACTUAL AND PROCEDURAL BACKGROUND

### The site

4. The site area is .45Ha of agricultural land situated on the southern side of Norton Road, Great Green, Thurston. The site forms part of the 'Harveys Garden Plants' nursery, a horticultural business (defined as agriculture for the purposes of the Town and Country Planning Act 1990) operating from a series of growing tunnels, buildings and land distributed to the east of Oak Road and to the south of Norton Road. The application site itself relates to a parcel of land subject to an existing building (formerly occupied as a café) and areas of hardstanding, providing car parking and the previous location of display areas/tunnels.
5. An existing agricultural building lies to the east, subject to a recent grant of permission for conversion to two dwellings (DC/19/05392). To the north and west lies Norton Road and beyond that a residential property 'Navarac', where a number of recent permissions will collectively provide four dwellings.
6. The site is not located or near to any designated heritage assets (either buildings or Conservation areas), or areas designated for local or national environmental/landscape significance. The site is in Flood Zone 1.
7. The site is located outside any settlement boundary defined in the development plan.

### The planning application

#### *The proposed development*

8. The application seeks full planning permission for the erection of a single storey, four bedroom dwelling. The development includes a detached double garage sited adjacent the northwestern side of the dwelling.
9. External materiality includes black weatherboards over a red brick plinth with clay pantile pitched roofs. The existing vegetation at the road frontage, including hedgerow

and mature trees, is to be retained. No vegetation is proposed to be removed. Vehicle access will be via the existing access arrangement from Norton Road.

10. By way of background to the application, in recent years, the businesses income has transitioned from on-site custom to primarily internet based sales. To adjust to market demand, the business has adapted and phased out elements of the operation, whereby sales are now by mail order only. In light of the changes that have occurred, the application site is now a redundant part of the nursery and has no real prospect of being brought back into use.
11. The application site lies within the countryside for planning purposes; however, the site sits approximately 0.8 miles from the Thurston Settlement Boundary.

#### ***Relevant planning policies***

12. Paragraph 11(d) of the NPPF provides as follows:

*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

  - i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - ii. *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*

13. Para 12 provides:

*The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed*

14. Para 14 states as follows:

*In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:*

- a) *the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*
- b) *the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*

- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
- d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.

15. Moreover, insofar as relevant, the NPPF further provides:

- a. Para 77: *In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.*
- b. Para 78: *To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.*
- c. Para 79: *Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply: a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside; b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; c) the development would re-use redundant or disused buildings and enhance its immediate setting; d) the development would involve the subdivision of an existing residential dwelling; or e) the design is of exceptional quality...*
- d. Paras 103, 108 and 109 address sustainable transport.
- a. Paras 117 and 118 concern making effective use of land. In particular, para 118 of the Framework continues, identifying that planning policies and decisions should; '*promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively*'.

16. The development plan for the area comprises a combination of the Core Strategy 2008 ("CS"), the Core Strategy Focused Review 2012 ("CSFR"), and 'saved' policies of the Local Plan 1998. The Local Plan is significantly out of date, and the weight attached to it is therefore reduced.

17. In combination, these provide, insofar as relevant:
- a. CS1 (Settlement Hierarchy): it identifies various 'types' of settlement within the district, with Towns representing the most preferable location for development. Settlements not listed within the accompanying policy table, are designated as the Countryside and Countryside Villages. The Policy confirms development within these areas will be restricted to that which supports the rural economy, meets affordable housing, community needs and provides renewable energy.
  - b. CS2: (Development in the Countryside and Countryside Villages) of CS expands upon the principles established by Policy CS1, confirming that the countryside will be protected for its own sake, restricting proposals to specific categories of development, including rural exception housing.
  - c. CS5: (Environment) All development will maintain and enhance the environment, including the historic environment, and retain the local distinctiveness of the area... The Council will protect and conserve landscape qualities taking into account the natural environment and the historical dimension of the landscape as a whole rather than concentrating solely on selected areas, protecting the District's most important components and encourage development that is consistent with conserving its overall character.
  - d. Policy H7 (Restricting Housing Development Unrelated to the Needs of the Countryside): it seeks, in the interests of protecting its character and appearance, to strictly control proposals for new housing in the countryside.

18. The application site is within the adopted Thurston Neighbourhood Plan (2019) area ("the TNP"). The TNP was adopted in October 2019, and forms part of the development plan. Policy 1 states (insofar as relevant):

A. *New development in Thurston parish shall be focused within the settlement boundary of Thurston village as defined on the Policies Maps...*

19. Moreover, insofar as relevant, the TNP also provides:

- a. 6A Where appropriate, new developments must ensure safe pedestrian and cycle access to link up with existing pavements and cycle infrastructure that directly connect with the Key Movement Routes

- b. 6B: Proposals to enhance the identified Key Movement Routes will be supported. Development that is immediately adjacent to the Key Movement Routes will be expected to: a. Contribute towards the enhancement of the Key Movement Route in accordance with the statutory tests in the Community Infrastructure Levy Regulations 2012; and b. Not have a detrimental impact on the Key Movement Route.
  - c. 9: A. Development must be designed to ensure that its impact on the landscape and the high-quality rural environment of Thurston is minimised.
20. The Joint Local Plan is emerging, currently in Regulation 18 phase with the consultation period recently completed. In accordance with the requirements of Paragraph 48 of the NPPF, very limited weight is attached to the emerging Joint Local Plan in consideration of the merits of the proposal, given the preparatory stage of the document.

#### **The planning officer's report**

21. The LPA's planning officer recommended granting planning permission with conditions, pursuant to a report dated .
22. Insofar as material, the officer concluded that:
- a. The site represents a sustainable location for the housing density sought (at para 4.2).<sup>1</sup>
  - b. The site in its current form is of limited landscape value (at para 5.2).
  - c. Any urbanising effect is very limited given the proposal essentially comprises a replacement building and the development will present in the context of existing and approved development, most notably the converted dwellings to the rear (at para 5.3).
  - d. The proposal has been carefully considered, designed and sited in a manner that minimises the impact on the landscape and rural environment, responding positively and in support of Policy 4 and Policy 9 of the TNP. For the same reasons the scheme accords with Policy H13 and Policy H15 (at para 5.6).

---

<sup>1</sup> In May 2019, the Planning Inspectorate ("PINS") considered the sustainability of an appeal site adjacent to the Site, which shared the same access to it (DC/18/02262; APP/W3520/W/18/3216944). The Inspector concluded 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.*'

- e. There are no heritage grounds to justify withholding planning permission (at para 5.7).
- f. There was no harm to residential amenity (at paras 6.1 to 6.2).
- g. The proposed development did not pose an unacceptable impact on highway safety, nor caused severe residual cumulative impacts on the road network, and was compliant with the relevant highways policies (at paras 7.1 to 7.6).

23. As to the balancing balance, the officer concluded as follows:

*11.1 With the exception of relevant TNP policies, the development plan policies most important for determining the application are deemed out-of-date. Irrespective of Council's five year housing supply position, the weight to be attached to these policies has to be commensurately reduced and the default position at paragraph 11d of the NPPF engages.*

*11.2 The TNP focuses future development to within the Thurston settlement boundary. The proposal does not expressly support this policy because the site is outside the settlement boundary. However, for the reasons set out in this report, the policy departure is not fatal to the application when all matters are considered in the planning round. The scheme responds positively to the majority of all other relevant TNP policies.*

*11.3 The area has been confirmed by the Inspectorate as a sustainable location for housing (in-principle). The proposal offers some social and economic positives. The scheme contributes toward housing need in Thurston by way of providing a four bedroom bungalow, an expressly identified housing type needed in Thurston, as set out in the TNP.*

*11.4 The site does not play an important landscape role, rather, its landscape value is considered low. It is developed, is of commercial appearance and is well related to neighbouring built form. The removal of less desirable landscape elements like the visually dominant vehicle parking area is a positive landscape response. So too is the retention of frontage vegetation, which will help frame views of the development from Norton Road. The unobtrusive siting and scale of the domestic dwelling constitutes a more respectful character response than the existing commercial building. The site is visually well contained and generously proportioned such that the open character is maintained. The front setback is reflective of the general dwelling setbacks prevalent in the area. There are no overdevelopment symptoms arising from the scheme. The proposal offers an improved local character outcome, a not insignificant public benefit.*

*11.5 A number of the scheme aspects will not result in any harm and these are neutral in the planning balance, including residential amenity, highway safety and land contamination outcomes.*

*11.6 The adverse effects of granting planning permission are insignificant, outweighed by the scheme benefits, most notably the improved landscape character outcome. Accordingly, the proposal would deliver sustainable development. Planning permission should be granted.*

**The LPA's Development Control Committee Meeting 22 July 2020**

24. On 22 July 2020, the LPA's Committee considered the application. This followed a call-in to committee by Cllr Wendy Turner (Ward Member) who explained her decision to do so as follows:

*the proposed development falls outside of the BUAB (Built up Area Boundary) and beyond the settlement boundary as defined in the Thurston Neighbourhood Development Plan. The NDP states that "new development in the Thurston parish shall be focused within the settlement boundary of Thurston". This is particularly relevant as Thurston has 1,200 planning permissions already granted, with the majority of them in the core of the village. There is minimal public transport available, and the proposed development is situated on a winding road with no pedestrian or cycle ways into the centre of the village. Therefore, this application runs contrary to the NPPF section 9 (Promoting sustainable transport) point 103 states "development should be focused on locations which are or can be made sustainable through limiting the need to travel". As a resident of Thurston I can assure the committee that this road is unsuitable for walking and cycling due to it being narrow and winding and there are no street lights. This makes the likelihood of residents walking or cycling to the centre of the village even less likely and in consequence transport will be by private vehicle, directly contradicting the NPPF's policy of "moving to a low carbon economy". Precedent for refusal of this development has been set by the refusal of planning application DC/19/05113 for the reasons cited in asking for refusal of this application... Thurston has a need for affordable housing and not more large executive houses on the outskirts of the village.<sup>2</sup>*

25. I have listened to the recording of the Committee's meeting in full. Mr Platt as Mr Harvey's agent during the meeting. During the course of questions from the Committee, a number of questions were asked in respect of the tilted balance under the NPPF, and the relevant local planning policies. However, as discussed further below, there appeared to some confusion as to the basis on which the titled balance applied.

26. Cllr Julian West opposed the application, on behalf of Thurston Parish Council, on the following bases (among others):

- a. The proposed development is outside the curtilage of the settlement, contrary to the TNP.
- b. The proposed development would rely on the use of a private car, and it is therefore unsustainable. There is no safe means of alternative transport.
- c. A single dwelling could further expand, once the precedent for development has been established.

---

<sup>2</sup>

<https://aberghmidsuffolk.moderngov.co.uk/documents/s19706/DC2000585%20Representation%20from%20Cllr%20Wendy%20Turner.pdf> (last accessed 27 July 2020).

27. During the meeting, only two questions were put to Mr Platt. Both concerned sustainability, specifically, the accessibility of public transport to the proposed development (in particular, proximity to bus stops, and frequency of buses).
28. At the debate stage of the meeting, a number of comments were made in respect to the relevant policies:
- a. Cllr Handingham stated that the proposed development went against the TNP.
  - b. Cllr Field argued that the tilted balance should not be considered as it was engaged too readily, and the TNP should be of very great weight.
  - c. Cllr Matthissen also agreed that the tilted balance was too frequently engaged.
  - d. Cllr Stringer stated that he struggled with the idea that the tilted balance applies when the local plan is out of date, when the TNP applies. He stated that '*this is contrary to the neighbourhood plan and the NPPF para 79...to use the [tilted balance] in this case is wrong.*'
  - e. The Chair, Cllr Hicks, commented that he did not support that the application, and that it was '*about giving weight to the neighbourhood plan over everything else, where do we rank it, and where does it sit in the decision-making process.*'
29. Moreover, during the course of the meeting, the planning officer took members through the policies of TNP. However, in responding to a question from Cllr Stringer, the planning officer commented that '*ultimately it is members' opinion of how much weight to give both NPPF, the current local plan, or indeed the neighbourhood plan, and how they interpret those policies.*'
30. In summary, during the meeting, there was a particular emphasis on three considerations: (i) the application of the TNP to development outside the curtilage of the settlement of Thurston, (ii) the application of the NPPF tilted balance, and (iii) the sustainability of the site, due to the lack of transport access other than private car.
31. Cllr Stringer proposed refusal on the basis that the application:
- a. conflicted with policies of the TNP (6a and b), and;
  - b. on the basis of para 78 of the NPPF.
32. The planning officer then analysed the possible reasons for refusal as following:

- a. TNP, Policy 1: the emphasis that the development should be focussed in the settlement boundary, but '*this is contrary to that, and so it is not in accord with that.*'
  - b. TNP, Policy 6A: the proposed development does not meet this policy, which requires where appropriate, new developments must ensure safe pedestrian and cycle access to link up with existing pavements and cycle infrastructure that directly connect with the Key Movement Routes
  - c. TNP, Policy 6B: the proposed development also does not enhance the key movement routes.
  - d. TNP, Policy 9: the proposed development does not minimise the harm to rural environment.
  - e. Local Plan, Policies H7, CS1, CS2, CS5, FC1 and FC1.1. of the focus review are still applicable and may wish to be taken forward as well.
33. These were the reasons on which the vote was premised. The application was refused on the basis of 7 votes in favour, and 1 abstaining.

### **The TNP in other applications**

34. By way of further background, on 20 February, the Parish Council of Thurston issued a pre-action protocol letter for judicial review in respect of two planning applications:
- a. Bloor Homes and Sir George A. Agnew for development on Land South West of Beyton Road, Thurston, Suffolk (ref. DC/19/03486) for "*Outline Planning Application – Erection of up to 210 dwellings, means of access, open space and associated infrastructure, including junction improvements. [Means of access not a reserved matter]*" ("the Bloor Homes application") A resolution to grant planning permission was made by the Committee on 29 January 2020.
  - b. Gladman Developments Ltd for development on Land to the East of Ixworth Road, Thurston, Suffolk (ref. DC/19/02090) for "*Outline Planning Application (some matters reserved) – Erection of up to 210 dwellings and new vehicular access to include planting and landscaping, natural and semi-natural green space including community growing space(s), children's play area and sustainable drainage system (SuDS), to include 35% affordable dwellings*". ("the Gladman Application") A resolution to defer was made by the Committee on 29 January 2020, due to issues arising relating to transport, and the scheme's landscape buffer. It was then refused in May 2020.

35. In both applications, the issue of the proper interpretation of Policy 1 of the TNP was raised:

- a. The officer report in respect of the Bloor Homes application considered Policy 1 of the TNP, and observed as follows (insofar as material):

*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 won't meet a predicted requirement up to 2036*

...

*3.8.3 There appears to be a shortfall of sites identified within the Adopted Thurston Neighbourhood Plan to meet the current requirement of 1468 dwellings identified by Mid Suffolk District Council within Thurston in the period up to 2036. The shortfall equates to some 650 dwellings. 3.8.3 This shortfall is not negligible or even modest – it is significant. The Adopted Neighbourhood Plan appears therefore to have made reference to sites for only 55.7% of the identified requirement. In such circumstances it is reasonable to question whether the village can rely on its Neighbourhood Plan to resist the principle of more residential development as the situation runs counter to that expected by paragraph 14 [b] of the NPPF [2019] if the presumption in favour of refusal is to be applicable.*

*3.8.4 This is a fundamental point and cannot be dismissed. Whilst the status of the Draft JLP Preferred Options Document can be questioned the massive difference between the housing requirement in it for Thurston and that now in the Adopted Neighbourhood Plan draws attention to a serious conflict in approach. As set out in the NPPF, a Neighbourhood Plan should conform with the strategic plan and meet the identified housing need for the area. As the Thurston Neighbourhood Plan does not allocate sites to meet the identified housing need, paragraph 14 of the NPPF does not apply and the site not being allocated in the Neighbourhood Plan does not in itself represent an adverse impact that would significantly and demonstrably outweigh the benefits*

- b. Similarly, the officer report in respect of the Gladman application considered policy 1, and the TNP generally, in essentially identical terms:

*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 won't meet a predicted requirement up to 2036.*

...

*...Members are advised that the 'Tilted Balance' described in paragraph 11 of the NPPF [2019] is triggered by the fact that some of the Council's relevant adopted planning policies are 'out-of-date' and the fact that the Thurston Neighbourhood Plan [2019] fails to satisfy the requirement contained in paragraph 14b of the NPPF [2019]. The latter meaning the Neighbourhood Plan cannot in itself be relied on to resist sustainable development outside of the defined settlement boundary for reasons previously discussed. This will without doubt frustrate and anger many in Thurston.*

36. The judicial review claim was intimated on the following basis:

- a. Committee members were significantly misled by officers in officers' advice on the relative weight to be accorded to the now "made" Thurston Neighbourhood Plan (made on 24 October 2019) compared with the yet to be examined draft Babergh and Mid Suffolk Joint Local Plan.
- b. The Council's approach was equally fundamentally flawed in that granting planning permission on either or both of the above sites will prejudice the outcome of the draft Local Plan making process.
- c. The Neighbourhood Plan is a statutorily made/adopted "development plan" which provides within Policy 1: Spatial Strategy that "new development in Thurston Parish shall be focused within the settlement boundary...", in accordance with which any planning application should be determined "unless material considerations indicate otherwise".
- d. Notwithstanding the legal position, the Committee was advised by officers in the meeting that the Thurston Neighbourhood Plan could not be given appropriate weight as it was in conflict or "tension" with the Council's Consultation draft Plan and the draft allocations LA087 and LA089 within it.
- e. Officers also placed improper and misleading reliance on para. 4.1 of the Neighbourhood Plan which says that "the spatial distribution of this growth will be determined through the development of the Joint Local Plan", and ignored the explanations that followed in paras. 4.2-4.6 of the Neighbourhood Plan and the terms of Policy 1 itself providing an explanation of the reasoning behind the Spatial Strategy in the Neighbourhood Plan and the justification of why growth should be focused within the settlement boundary.
- f. The misleading nature of the advice given to Committee at the opening of the meeting by warning Committee Members of the consequences of not voting in accordance with officers' recommendations.

37. It is understood that the LPA did not concede the judicial review. I am not aware, but assume, that it maintained that its approach had been lawful.

## C. LEGAL AND POLICY FRAMEWORK

### Statutory framework

38. Section 70(2) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that, in dealing with an application for planning permission, the local planning authority must have regard to (insofar as relevant):

- a. the provisions of the development plan, so far as material to the application;
- b. any other material considerations.

39. The Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), s 38 provides that:

#### *38 Development plan*

(1) *A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).*

...

(3) *For the purposes of any other area in England the development plan is-*  
(a) *the regional strategy for the region in which the area is situated (if there is a regional strategy for that region)*  
(b) *the development plan documents (taken as a whole) which have been adopted or approved in relation to that area, and*  
(c) *the neighbourhood development plans which have been made in relation to that area.*

(3A) *For the purposes of any area in England (but subject to subsection (3B)) a neighbourhood development plan which relates to that area also forms part of the development plan for that area if-*

(a) *section 38A(4)(a) (approval by referendum) applies in relation to the neighbourhood development plan, but*  
(b) *the local planning authority to whom the proposal for the making of the plan has been made have not made the plan.*

(3B) *The neighbourhood development plan ceases to form part of the development plan if the local planning authority decide under section 38A(6) not to make the plan.*

...

(5) *If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.*

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

(7) *The enactments are-*

- (a) *this Act;*
- (b) *the planning Acts;*
- (c) *any other enactment relating to town and country planning;*
- (d) *the Land Compensation Act 1961 (c. 33);*
- (e) *the Highways Act 1980 (c. 66).*

- (8) In subsection (5) references to a development plan include a development plan for the purposes of paragraph 1 of Schedule 8.
- (9) Development plan document must be construed in accordance with section 37(3).<sup>3</sup>
- (10) Neighbourhood development plan must be construed in accordance with section 38A. (emphasis added)

40. What qualifies as a 'material consideration' is a question of law (see *R. (on the application of Wright) v Resilient Energy Severndale Ltd* [2019] UKSC 53).<sup>4</sup> The test of what is a material 'consideration' in the preparation of plans or in the control of development is whether it serves a planning purpose. A planning purpose is one which relates to the character of the use of land.

### NPPF and the titled balance

- 41. The presumption in favour of sustainable development (now prescribed in para 11 of the updated NPPF) has been the subject of judicial consideration by the Supreme Court in *Secretary of State for Communities and Local Government v Hopkins Homes Ltd* [2017] UKSC 37. In short, in the absence of relevant or up-to-date development plan policies, the balance was tilted in favour of granting permission, except where the benefits were significantly and demonstrably outweighed by the adverse effects, or where specific policies indicated otherwise.
- 42. In *East Staffordshire BC v Secretary of State for Communities and Local Government* [2017] EWCA Civ 893, the Court of Appeal distilled the Supreme Court's analysis as follows (at paras 22 to 23) in the context of a failure to demonstrate a 5 year-supply of deliverable housing sites:

*Under the Government's policy in the NPPF, a local planning authority's failure to "demonstrate a five-year supply of deliverable housing sites" when a decision is being made on an application for planning permission, or on a subsequent appeal, is not a failure without consequence. That is well illustrated by the recent decision of the Supreme Court, dismissing the appeals of the two local planning authorities (Suffolk Coastal District Council and Cheshire East Borough Council) in Suffolk Coastal District Council. In summary, there are five basic points to be taken from that decision:*

- (1) The "primary purpose" of the policy in paragraph 49 of the NPPF is "simply to act as a trigger to the operation of the "tilted balance" under

---

<sup>3</sup> s 37(3) states '*a development plan document is a local development document which is specified as a development plan document in the local development scheme.*'

<sup>4</sup> *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, *Westminster City Council v Great Portland Estates Plc* [1985] AC 661, *R v Plymouth City Council, Ex p Plymouth and South Devon Co-operative Society Ltd* (1993) 67 P & CR 78, *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 and *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] UKSC 20; [2011] 1 AC 437.

*paragraph 14" (see paragraph 54 of Lord Carnwath's judgment in the Supreme Court; and paragraphs 42 to 48 of the Court of Appeal's).*

*(2) In a case where "housing policies" are not up-to-date under paragraph 49, "it is not necessary to label other policies as "out-of-date" merely in order to determine the weight to be given to them under paragraph 14". As the Court of Appeal recognized, "that will remain a matter of planning judgement for the decision-maker". The weight to be given to "[restrictive] policies in the development plan (specific or not)" in such a case "will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the "tilted balance"" (paragraph 56 of Lord Carnwath's judgment). The operation of the "tilted balance" involves the two specific exceptions relevant to a case in which "the development plan is absent, silent or relevant policies are out-of-date". As the Secretary of State has expressly acknowledged and emphasized in this appeal, the second of those two exceptions does not "shut out" the "presumption in favour of sustainable development" simply because any of the "specific policies" - of which examples are given in footnote 9 - is in play (see paragraph 45 of my judgment in Watermead Parish Council v Crematoria Management Ltd. [2017] EWCA Civ 152). Once identified, the specific policy in question has to be applied - and, where that specific policy requires it, planning judgment exercised - before the decision-maker can ascertain whether the "presumption in favour of sustainable development" is available to the proposal in hand (see paragraphs 14, 55, 56 and 59 of Lord Carnwath's judgment, and paragraphs 79 and 85 of Lord Gill's; and paragraphs 26 to 30, 35, 45 and 46 of the Court of Appeal's).*

*(3) The contest between the different interpretations of the policy in the second sentence of paragraph 49 - to which Lord Gill referred (in paragraph 81 of his judgment) as a "doctrinal controversy", by contrast with what he called the "real issue" (paragraph 82) - was not decisive of the outcome in either appeal (see paragraphs 62 to 68 of Lord Carnwath's judgment, and paragraph 86 of Lord Gill's). The Supreme Court favoured the "narrow" interpretation of the policy - in preference to the "wider" understanding maintained by the Government in submissions made on behalf of the Secretary of State, and adopted by the Court of Appeal. But, as Lord Carnwath emphasized (in paragraph 59 of his judgment):*

*"... The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised [in paragraph 45 of its judgment], it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed."*

*(4) The Court of Appeal was "therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph*

14" (see paragraph 60 of Lord Carnwath's judgment, and paragraphs 80 to 85 of Lord Gill's). To achieve that, it is not necessary to treat restrictive policies – such as policies for the Green Belt or for an Area of Outstanding Natural Beauty – as "notionally "out-of-date"" – nor, of course, would one describe such policies in that way "merely because" the housing policies of the plan "fail to meet the NPPF objectives". Any relevant restrictive policy – Lord Carnwath's example was "a recently approved Green Belt policy" – is to be "brought back into paragraph 14 as a specific policy under footnote 9", and "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" (see paragraphs 60 and 61 of Lord Carnwath's judgment, paragraphs 29, 30, 39 and 45 to 48 of the Court of Appeal's).

(5) As Lord Gill observed, the "message to planning authorities [in paragraph 47 of the NPPF] is unmistakeable" (paragraph 77 of his judgment). The "obvious constraints on housing development" include, he said, "development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14", and the "rigid enforcement of such policies may prevent a planning authority from meeting its requirement to meet a five-years supply" (paragraph 79). If an authority "in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated". In those circumstances, said Lord Gill, it is "reasonable for the guidance [in paragraph 49] to suggest that ... the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date" (paragraph 83). In such cases, "the focus shifts to other material considerations", and "the wider view of the development plan policies has to be taken" (paragraph 84). And the decision-maker "should ... be disposed to grant the application unless the presumption [in favour of sustainable development] can be displaced" (paragraph 85).

Those five basic points show how the "presumption in favour of sustainable development" in paragraph 14 of the NPPF is engaged and how it is operated in cases where a local planning authority has failed to "demonstrate a five-year supply of deliverable housing sites". But they also provide the context in which the court has to consider the opposite case – such as the one we are dealing with here – in which the authority has done what Government policy in the NPPF requires it to do, has put in place an up-to-date local plan, and is able to demonstrate the necessary five-year supply.

43. Local planning authorities and planning inspectors can weigh development-plan policies in the tilted balance in para.11(d)(ii) (as per Holgate J in *Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 518 (Admin)<sup>5</sup>).

---

<sup>5</sup> Appeal outstanding.

44. More recently, in *Chichester DC v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640, the Court of Appeal observed as follows:

31. The relevant legal principles are well known (see my judgment in *Crane and Gladman v Canterbury City Council*, at paragraphs 20 to 22, citing previous authority in this court and above). The decision-maker's duty under section 38(6) of the 2004 Act creates a statutory presumption in favour of the development plan (see the speech of Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at, pp.1449, 1450 and 1458 to 1460, and my judgment in *Secretary of State for Communities and Local Government v BDW Trading Ltd.* (T/A David Wilson Homes (Central, Mercia and West Midlands)) [2016] EWCA Civ 493 , at paragraphs 18 to 23). The presumption applies to the statutorily adopted plan as a whole (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 18 and 21 to 23). To apply the statutory presumption, the decision-maker must interpret the relevant provisions of the plan accurately (see the speech of Lord Clyde in *City of Edinburgh*, at pp.1450 and 1458 to 1460), with a focus on its policies for the development and use of land in the local planning authority's area (see the judgment of Richards L.J. in R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council [2014] EWCA Civ 567 , at paragraph 16). The interpretation of planning policy is ultimately a task for the court, reading the policy sensibly and in its full context (see the judgment of Lord Reed in *Tesco Stores Ltd.*, at paragraphs 18 and 19). Where the real complaint is that a particular policy has simply been misapplied, the court will only intervene where the decision-maker has fallen into "Wednesbury" error (see the judgment of Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 , at paragraph 26, and my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893 , at paragraph 50).

32. As the authorities show, the circumstances in which those basic principles are applied will vary widely. Reading the analysis in one case across into another can be mistaken. No two plans are the same. The policies of each are unique, crafted for the area or neighbourhood to which they relate, not to fit some wider pattern or prescription. Often there will be more than a single component of the development plan relevant to the proposal. In many cases – and this is one – there will be both an adopted local plan and a "made" neighbourhood plan. In such cases the court must keep in mind that the "development plan" to which section 38(6) applies is the statutory plan in its totality, its constituent parts taken together. Relevant policies may be found both in a local plan and in a neighbourhood plan. But the statutory presumption applies to the entire plan – the local plan and the neighbourhood plan together.

45. The relevant principles that apply to the tilted balance were comprehensively summarised by Holgate J in *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 1993 (Admin) (insofar as relevant):

- a. The presumption in favour of sustainable development in paragraph 11 does not displace s.38(6) of the 2004 Act. A planning application or appeal should be determined in accordance with the relevant policies of the development plan unless material considerations indicate otherwise;

- b. Subject to s.38(6), where a proposal accords with an up-to-date development plan, taken as a whole, then, unless other material considerations indicate otherwise planning permission should be granted without delay (paragraph 11(c));
  - c. Where a proposal does not accord with an up-to-date development plan, taken as a whole, planning permission should be refused unless material considerations indicate otherwise...<sup>6</sup>
46. A policy that is inconsistent with the NPPF may render it 'out of date' (*Telford & Wrekin BC v SSCLG* [2016] EWHC 3073).<sup>7</sup>

### **Interpretation of planning policies**

47. In *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said (at para 18):

*The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.*

48. Lord Reed added, however, that such statements should not be construed as if they were statutory or contractual provisions (at para 19):

*Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be*

---

<sup>6</sup> An appeal is currently outstanding.

<sup>7</sup> See also *R. (on the application of Gare) v Babergh DC* [2019] EWHC 2041 (Admin), para 62; *Wokingham BC v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 3158 (Admin), para 38.

*challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per Lord Hoffmann)...<sup>8</sup>*

49. Moreover, as summarised by the Court of Appeal in *Barwood Strategic Land II LLP East Staffordshire Borough Council* [2016] EWHC 2973 (Admin) (at paras 8):

*statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration.*

50. Moreover, the Court of Appeal clearly demarcated the interpretation of a policy, an exercise which readily lends itself to the jurisdiction of the court, and the application of a policy, which is a matter of planning judgment (at para 9):

*The interpretation of policy will be suitable, in principle, for legal analysis – though only to a degree that depends on the context and content of the policy in question. The role of the court must not be overstated. The application of policy, however, involves an exercise of planning judgment by the planning decision-maker – which is, of course, not for the court.*

51. However, Lord Carnwath recently emphasised the limitations of the court's role in *R. (on the application of Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3, at para 21:

*The respective roles of the planning authorities and the courts have been fully explored in two recent cases in this court: *Tesco Stores Ltd v Dundee City Council* (Asda Stores Ltd intervening) [2012] UKSC 13; [2012] PTSR 983 , and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865. In the former Lord Reed, while affirming that interpretation of a development plan, as of any other legal document, is ultimately a matter for the court, also made clear the limitations of this process:*

*"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse ..." (para 19)*

*In the Hopkins Homes case (paras 23-34) I warned against the danger of "over-legalisation" of the planning process. I noted the relatively specific language of the policy under consideration in the Tesco case, contrasting that with policies:*

*"expressed in much broader terms [which] may not require, nor lend themselves to, the same level of legal analysis ..."*

---

<sup>8</sup> See also *Secretary of State for Communities and Local Government v Hopkins Homes Ltd* [2017] UKSC 37.

52. In short, therefore:

- a. Planning policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.
- b. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract.
- c. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration.

### **The consistency principle**

53. It is well established that, in principle, previous appeal decisions are capable of being material considerations in planning decisions, given the importance of consistency in decision-making.<sup>9</sup> Moreover, In *R (Midcounties Co-operative Limited) v Forest of Dean District Council* [2013] EWHC 1908 (Admin) Stewart J held that this principle also applies to decisions of a local planning authority. At para 16, he said:

*The principle is not limited to decisions of an Inspector/the Secretary of State. It requires an earlier material decision to be taken into account. A decision is material unless it is distinguishable. A decision maker in a subsequent matter therefore should*  
*(a) decide whether the earlier decision is distinguishable;*  
*(b) if not distinguishable, then any disagreement must weigh the earlier decision and give reasons for departure from it...*

54. Moreover, in *The Queen (on the application of the Midcounties Co-operative Limited) v Forest of Dean District Council v Aldi Stores Limited* [2017] EWHC 2056 (Admin), Sing J held, at para 107:

*[a]lthough the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision-making.*

55. Accordingly, LPA's are required to have regard to the importance of consistency in their decision-making, and, if it considers that an earlier material decision is distinguishable, it should explain why.

---

<sup>9</sup> *Tate, R (on the application of) v Leffers-Smith* [2018] EWCA Civ 1519 (29 June 2018), per Lindblom LJ at para 25.

## D. THE LAWFULNESS OF THE LPA'S RESOLUTION TO REFUSE

### Lawful approach to interpretation of policy

56. In my view, there is a real risk that the LPA has erred in law in their approach to the determination of the planning application:

- a. In general, there appeared to be a common misunderstanding as to whether or not the tilted balance under para 11 of the NPPF applied, and if so, its effect.
- b. Moreover, and linked to that misunderstanding, there also seemed to be a misinterpretation of Policy 1 of the TNP as prohibiting development outside the settlement boundary of Thurston. Whilst other policies were cited as relevant to the resolution to refuse, this policy was central to the discussion.
- c. However, unfortunately, the officer at the Committee meeting stated, shortly before the resolution to refuse was voted upon, that '*ultimately it is members' opinion of how much weight to give both NPPF, the current local plan, or indeed the neighbourhood plan, and how they interpret those policies.*' Whilst the application of policies is a matter of planning judgment, it is a misdirection to state that it is a matter of members' *opinion or weight* as to how to interpret the policies. This misdirection seems to have significantly contributed to the approach of members to the presumption of sustainable development, and the TNP.

### The application of the titled balance

57. The tilted balance under para 11(d) of the NPPF should have applied on the basis that:

- a. The LPA were required to properly assess whether the existing policies were consistent with the NPPF.
- b. Had they done so, they would have concluded that the relevant policies were inconsistent with the NPPF and therefore out of date.

58. The LPA should have then applied the presumption of sustainable development.

Indeed, this is the clear the conclusion of the planning officer in her report (at para 3.9):

*Having regard to the advanced age of the Mid Suffolk settlement boundaries of the settlement hierarchy set out at Policy CS1, and the absence of a balanced approach as favoured by the NPPF, the policies most important for determining the application are deemed out-of-date, a position well established by the Inspectorate in recent Mid-Suffolk appeals. This conclusion is reached irrespective of Council's five year housing supply position. As a result, the weight to be attached to these policies has to be commensurately reduced and the default position at paragraph 11d of the NPPF is engaged, that is, granting permission unless (i) the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing*

*the development or (ii) the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.*

59. Moreover, and in any event, contrary to para 14(b), the neighbourhood plan does not contain policies and allocations to meet its identified housing requirement. This has been recognised by officers of the LPA in respect to the Bloor and Gladman reports cited above. The application is for the provision of housing (albeit a single dwelling).

60. It would have remained open to the LPA to conclude that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This is a balancing exercise and matter of planning judgment. However, it was not open to the LPA not to apply the presumption at all, and therefore, not approach the exercise of its planning judgment lawfully.

#### ***Interpretation of Policy 1 of the TNP***

61. There also appears to have been a material error in the interpretation of Policy 1 of the TNP. The policy seeks to *focus* development within the settlement boundary. Policy 1 of the TNP, interpreted objectively in accordance with the language used, and read in its proper context, does not prevent or impose a restriction on development in the countryside outside of the settlement boundary. It appears to have been relied upon as an absolute bar or prohibition.

62. Indeed, if it is a cap on development outside the settlement boundary, then it is contrary to the NPPF. Again, as summarised by the officer's report:

*This blanket approach is inconsistent with the NPPF, which favours a more balanced approach to decision-making. The NPPF does contain a not dissimilar exceptional circumstances test, set out at paragraph 79, however it is only engaged where development is isolated. The definition of isolation in the context of this policy has been shown within court judgements to relate to physical isolation only. The subject land is not physically isolated and it must follow that paragraph 79 does not engage.*

63. It is understood that the LPA's legal advice confirms this interpretation.

64. Accordingly, in the premises, the TNP cannot in and of itself be relied on to resist sustainable development outside of the defined settlement boundary. This amounts to having regard to an immaterial consideration.

### **Failure to take account of other material consideration**

65. In any event, there appears to also have been a further failure to take account of material consideration: the Inspector's conclusion as to sustainability of the Site in a relevant appeal decision (APP/W3520/W/18/3216944). The Inspector had concluded that (at para 18):

*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...*

66. This was raised in the officer's report, and during the meeting, but dismissed without adequate reasons for doing so. For the avoidance of doubt, the 'location' was exactly the same: Harveys Garden Plants. The Inspector recognised that in rural areas, travel by private vehicle is likely.
67. In addition, the Inspector noted that Thurston was not so distant that long car journeys would occur to gain access to services necessary for day-to-day living. In addition, the Inspector considered that, due to the existing dwellings in Great Green, the addition of two dwellings would not significantly add to the journeys that already occur from this location. This application, of course, is just for a single dwelling.
68. The Committee failed to adequately engage with the implications of the Inspector's conclusions. The Committee even expressly sought to rely FC1 and FC1.1 within its proposed reasons for refusal, in direct contradiction of the Inspector's conclusions. These conclusions also have a material and critical bearing on the application of the TNP policies 6A and 6B (insofar as relevant), relating to transport and sustainability, which were also expressly relied upon.

### **Inconsistency between decisions**

69. Finally, there also seems to be an inconsistency in approach as between the LPA's decision-making in respect of the Bloor application, and its defence of the same in response to the intimated judicial review proceedings (as is my understanding).

70. The LPA was required to have regard to the importance of consistency in their decision-making, and, if it considers that an earlier material decision is distinguishable, it should explain why.
71. There was no real engagement with its other decisions, nor the intimated judicial review, during the Committee meeting. This again amounts to a failure to have regard to a material consideration.

#### **E. CONCLUSION AND NEXT STEPS**

72. The LPA has not yet issued its refusal, and therefore, this Opinion has been drafted based on the audio and video of the committee meeting recording (rather than on the final reasons for refusal).
73. Given the flaws identified in respect of the LPA's decision-making process, reconsideration of the application should be sought, requiring the LPA to interpret the policies correctly, and to apply the presumption of sustainable development.
74. For completeness, I have not considered the wider planning merits of the application. In the event that the LPA refuse planning permission, therefore, further advice should be sought as to the merits of an appeal.

**Gethin Thomas**

**39 Essex Chambers**

**27 July 2020**