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REFUSAL OF OUTLINE PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015

Correspondence Address:

La Ronde Wright Ltd
74 Bracondale
Norwich
NR1 2BE

Applicant:

Mr P Davidson
C/O Agent

Date Application Received: 25-Apr-17

Application Reference: 1648/17

Date Registered: 26-Apr-17

Proposal & Location of Development:

Application for outline planning permission with all matters reserved for up to 24 dwellings and associated roads, infrastructure and open space

Land At Post Mill Lane, Fressingfield, IP21 5BL,

Section A – Plans & Documents:

This decision refers to drawing no./entitled 3325-TD-LW-XX-DRG-AR-1004 received 25/04/2017 as the defined red line plan with the site shown edged red. Any other drawing showing land edged red whether as part of another document or as a separate plan/drawing has not been accepted or treated as the defined application site for the purposes of this decision.

The plans and documents recorded below are those upon which this decision has been reached:

Defined Red Line Plan 3325-TD-LW-XX-DRG-AR-1004 - Received 25/04/2017

Section B:

Mid Suffolk District Council as Local Planning Authority, hereby give notice that **OUTLINE PLANNING PERMISSION HAS BEEN REFUSED** for the development proposed in the application in accordance with the particulars and plans listed in section A for the following reasons:

1. The proposed development lies outside of the settlement boundary for Fressingfield which is defined in the Council's Core Strategy as being a 'Primary Village' within the Settlement Hierarchy. Primary Villages sit below Towns and Service Centres in that hierarchy and are expected to accommodate 'small-scale' development to meet local needs. The construction of up to 24 dwellings is considered by the Council to be a significant and

inappropriate level of development that in any event falls outside of the settlement boundary of the village, contrary to Core Strategy Policy CS2. This level of growth is considered unacceptable and inappropriate for the reasons demonstrated and on that basis considerable weight is afforded the conflict posed with the development plan where the benefits posed would not significantly and demonstrably outweigh the harm and conflict identified.

2. There are currently hazards within Fressingfield to non-motorised users travelling on New Street or through Jubilee Corner. The layout of the village means that this is the desirable route to reach many services. The proposed development will result in increased vehicle and pedestrian movements through this core area, thus increasing the collective risk to safety that would be posed.

The nature of the existing highway network severely restricts practical opportunities for acceptable mitigation. The measures that have been proposed are the best solution available within existing constraints and fall short of making the highway safe for pedestrians and would increase the likelihood of conflicts between them and vehicular traffic.

An approval of the development would increase pedestrian and/or vehicular movement through the core of the village without the provision of safe, practical alternatives.

Further traffic passing along New Street and/or through Jubilee Corner will result in an unacceptable impact on highway safety, particularly for vulnerable pedestrians. This risk is considered to be unacceptable and in its own right would significantly and demonstrably outweigh any benefits that would arise from the proposed development. The harm to pedestrian safety identified is contrary to Local Plan Policy T10 and contrary to Paragraph 109 of the NPPF.

3. Whilst the relevant drainage authorities have raised no objection to the proposed development it is acknowledged by them that Fressingfield experiences localised flooding problems in the vicinity of Low Road [the low point in the drainage system].

This flooding takes the form of overspill from the foul water system via 'manhole' inspection covers during periods of high rainfall. This flooding results in raw sewage and storm water standing in the road and on the verges. The adjacent Beck is also known to overtop.

It is acknowledged by Anglian Water that whilst the foul water system in Fressingfield is defined as 'closed' [foul water only] it does in fact contain an unknown number of surface water connections. The system when operating in effect as a 'partially combined' system [foul and surface water] cannot cope during periods of high rainfall and the pressure build-up in that system causes manhole covers to 'pop' [lift-up] thereby permitting raw sewage to escape into the street. The proposed development will exacerbate the known flooding and pollution problem in the Low Road area of the village not as a result of adding surface water to the foul water system [provided surface water is not connected to the foul system] but as a result of the fact that the foul system will contain more foul water from the significant new development when it floods during periods of heavy rainfall. Raw sewage can and does also enter the Beck. The resultant pollution is an unacceptable environmental and public health risk that appears unable to be reasonably mitigated by the drainage authority. It is not possible to seal the manholes in question because to do so would potentially cause a pressure build-up that would result in sewage backing-up in the system to a point where it might escape into homes via residents' toilet bowls.

The proposed development is therefore unlikely to be adequately serviced and would overburden existing infrastructure. The proposed development is also contrary to Paragraph 163 of the NPPF in that the proposed development will increase flood risk elsewhere [namely the Low Road area]. In addition it is also contrary to Paragraph 180 of the NPPF in that it will not ensure the new development is appropriate for its location as it does not take into account the likely effects, including cumulative effects, of pollution upon health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. This risk is considered in its own right to significantly and demonstrably outweigh the benefits that might arise from the proposed development.

4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duty of a decision-taker, where proposed development would affect a listed building or its setting and requires that they: "shall have special regard to the desirability of preserving [a] building or its setting or any features of special architectural or historic interest which it possesses".

The 'special regard' duty of the Act has been tested in the courts on numerous occasions and has been confirmed to require that considerable importance and weight should be afforded by a decision taker to the desirability of preserving a listed building along with its setting i.e. having special regard to the desirability of keeping designated assets from harm. Furthermore, the identification of harm gives rise to a strong presumption against planning permission being granted.

The revised NPPF of 2018 builds upon and transposes the statutory duty and associated legal principles into national planning policy. Policies HB1 and HB8 of the development plan seek to secure the preservation and/or enhancement of the historic environment, including listed buildings and conservation areas. As applicable to this case, the NPPF goes on to require that (at Paragraph 196) where 'less than substantial' harm to significance is identified, this harm should be weighed against the public benefits of the proposal. The revised NPPF does, however, go beyond the statutory duty in encouraging decision takers to take account of the desirability of sustaining and enhancing the significance of heritage assets, and the desirability of new development making a positive contribution to local character and distinctiveness (at Paras. 192(a) and (c)). In addition, whereas the similar 'special regard' duty applicable to conservation areas is clear that only relates to land falling within that designation, the NPPF (at Paragraph 194) makes clear that: "any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification"; this would include development within the setting of a conservation area.

This application proposes the development of 5 new dwellings [within an up to 24 unit proposal] on open land immediately to the rear of Ladymeade a Grade II listed building. This would result in harm to the setting of this historic building as a result of introducing intimate [proximity] unsympathetic modern built form into the vestigial area of open land behind the cottage which once provided it with a much wider backdrop and rural context.

The harm to significance that has been identified is 'less than substantial' within the meaning provided by the NPPF but is nevertheless of notable importance and it is not considered that the development would deliver any public benefits, individually or collectively, that would outweigh the harm that has been identified, nor is any such harm necessary in supporting such benefits. The proposed development is contrary to the

aforementioned policies and should be refused for this reason alone, noting the importance attached to the harm that has been identified.

SUMMARY OF POLICIES WHICH ARE RELEVANT TO THE DECISION:

FC01 - Presumption In Favour Of Sustainable Development
FC01_1 - Mid Suffolk Approach To Delivering Sustainable Development
FC02 - Provision And Distribution Of Housing
CS01 - Settlement Hierarchy
CS02 - Development in the Countryside & Countryside Villages
CS03 - Reduce Contributions to Climate Change
CS04 - Adapting to Climate Change
CS05 - Mid Suffolk's Environment
CS06 - Services and Infrastructure
CS09 - Density and Mix
GP01 - Design and layout of development
SB02 - Development appropriate to its setting
HB01 - Protection of historic buildings
HB08 - Safeguarding the character of conservation areas
HB14 - Ensuring archaeological remains are not destroyed
H07 - Restricting housing development unrelated to needs of countryside
H04- Proportion of Affordable Housing
H13 - Design and layout of housing development
H14 - A range of house types to meet different accommodation needs
H15 - Development to reflect local characteristics
H16 - Protecting existing residential amenity
H17 - Keeping residential development away from pollution
CL08 - Protecting wildlife habitats
CL11 - Retaining high quality agricultural land
T09 - Parking Standards
T10 - Highway Considerations in Development
RT04 - Amenity open space and play areas within residential development
SPG - Fressingfield Conservation Area Appraisal
NPPF - National Planning Policy Framework
CS07 - Brown Field Target
SB03 - Retaining visually important open spaces
T11 - Facilities for pedestrians and cyclists
T13 - Bus Service
RT12 - Footpaths and Bridleways
SPG - Fressingfield Conservation Area Appraisal

NOTES:

1. The proposal has been assessed with regard to adopted development plan policies, the National Planning Policy Framework and all other material considerations. The NPPF encourages a positive and proactive approach to decision taking, delivery of sustainable development, achievement of high quality development and working proactively to secure developments that improve the economic, social and environmental conditions of the area:

In this case the Local Planning Authority attempted to discuss its concerns with the applicant but was not able to secure the necessary improvements to the scheme that would have enabled the proposals to be considered more favourably.

Babergh and Mid Suffolk District Councils have adopted Community Infrastructure Levy (CIL) charging which affects planning permissions granted on or after 11th April 2016 and permitted development commenced on or after 11th April 2016. If your development is for the erection of a new building, annex or extension or the change of use of a building over 100sqm in internal area or the creation of a new dwelling or holiday let of any size your development may be liable to pay CIL and you must submit relevant documents to our Infrastructure Team telling us more about your development, who will pay CIL and when the development will start. You will receive advice on the amount you have to pay and what you have to do and you can find more information about CIL on our websites here:

[CIL in Babergh](#) and [CIL in Mid Suffolk](#) or by contacting the Infrastructure Team on: infrastructure@baberghmidsuffolk.gov.uk

This relates to document reference: 1648/17

Signed: Philip Isbell

Dated: 22nd November 2018

**Acting Chief Planning Officer
Growth & Sustainable Planning**

Appeals to the Secretary of State

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or consent, or to grant permission or consent subject to condition, they may appeal to the Secretary of State for Communities and Local Government. The applicant's right of appeal is in accordance with the appropriate statutory provisions which follow:

Planning Applications: Section 78 Town and Country Planning Act 1990

Listed Building Applications: Section 20 Planning (Listed Buildings and Conservation Areas) Act 1990

Advertisement Applications: Section 78 Town and Country Planning Act 1990
Regulation 15

Town and Country Planning (Control of Advertisements) Regulations 2007

Notice of appeal in the case of applications for advertisement consent must be served within eight weeks of receipt of this notice. Notice of Householder and Minor Commercial Appeals must be served within 12 weeks, in all other cases, notice of appeal must be served within six months of this notice. If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within six months of the date of this notice, whichever period expires earlier.

Appeals must be made on a form which is obtainable from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or online at <https://www.gov.uk/government/publications/modelnotification-notice-to-be-sent-to-an-applicant-when-permission-is-refused>

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he/she will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him/her that permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by it, having regard to the statutory requirements*, to the provisions of the Development Order, and to any directions given under the Order. The Secretary of State does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him/her.

2. If permission or consent to develop land or carry out works is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use by the carrying out of any development or works which has been or would be permitted they may serve on the Council of the district in which the land is situated, a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Section 137 of the Town and Country Planning Act 1990 or Section 32 Planning (Listed Buildings and Conservation Areas) Act 1990.

*The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70 and 72(1) of the Act.