

SAFE RESPONSE TO POST MILL LANE APPEAL APP/W3520/W/19/3227159

The original application and the appeal Statement are flawed in a number of respects:

1. The 'principle' of development – the Statement seeks to establish 'the principle' of development at paragraph 5. The case for the alleged 'principle' of residential development on the appeal site seems to be based the fact that in 2008 – 11 years ago- the layout plan submitted with 3216/08 (reserved matters for 10 of the houses in the existing Post Mill Lane site) labelled the appeal site 'Potential Future Development.' This is irrelevant. Planning law does not bind planning authorities to future approvals of further proposals to which oblique reference is made in an approved application.

Furthermore, paragraph 7.7 puts forward the existence of an infrastructure within the existing Post Mill Lane site alleged to be capable of accommodating additional houses, as justification for approval of such houses. Again this is irrelevant to the planning decision.

2. The baseline for assessing cumulative impact – whilst the Statement acknowledges that approvals 3872/16 and 4410/16 will bring an additional 46 houses, a regional scout hut and a Baptist chapel with extensive community facilities, it fails to acknowledge that the baseline from which all cumulative impact should be assessed will therefore change. The impact of these developments is as yet unseen. Therefore the assessment of the harm that the subject application might inflict is assessed from an out of date baseline. In particular, the cumulative impact of the appeal site with the 106 new residents¹ from the 46 approved houses, and the extra visitors to the village generated by the community facilities, has not been taken into account in:

- **Pollution** –The current level of pollution has been identified as a public health hazard by the Suffolk's Director of Public Health, who, in an email of the 11th April 2018, advised the following precautions on exposure to flooding/sewage:
 - *Keep children and pets away from the flooded areas*
 - *Wear protective clothing such as rubber gloves if you're cleaning up and cover any cuts and grazes*
 - *Food which may have been in contact with flood water should be thrown away*
 - *If you show any symptoms such as diarrhoea or vomiting after a flood, call a doctor straight away.*The cumulative impact on this public health risk of sewage from 106 new residents is not taken into account, as it has not happened yet.
- **Flooding offsite** - The original FRA predated the approved developments and no new FRA has been submitted in support of the appeal, so the cumulative impact on flooding off site has not been assessed, as it has not happened yet. A complication is that in 3872/16, adequate drainage solutions to mitigate flood risk off site are yet to be agreed.
- **Road safety** – The ATC measured *current* traffic levels. The cumulative impact of pedestrian and vehicular traffic generated by the cars owned by 106 new residents and their pedestrian journeys to the shop, school, pubs and surgery was not assessed, as it has not happened yet.

3. Policy Context

a) The Fressingfield Neighbourhood Development Plan - The Plan completed its Regulation 14 consultation on 17th May 2019 and will be submitted to MSDC on the 19th July. It is at an advanced stage, has strong support from the community and is consistent in many respects with the NPPF. It must be given some weight in the appeal decision. However, its draft policies are ignored in the Statement.

b) Babergh and Mid Suffolk Local Plan – according to MSDC's website, the draft Local Plan is due to be considered by the Council in June. Therefore it should be given weight in the appeal. Even without it, the MSDC Housing Land Supply Position Statement 2018/19 prepared in response to the challenge from the Woolpit appeal clearly demonstrates a five year housing supply so that current policies are not automatically out of date under the NPPF and must be considered in so far as they are consistent with it.

4. Sustainability – The NPPF defines sustainability under three headings: economic, social and environmental. There a number of flaws in the manner in which these are assessed in the Statement

4.1 Economic

a) Meeting housing need – the Statement quotes housing need in the district (para 3.8) but fails to assess whether the appeal site is an appropriate location to meet it, against the NPPF criteria, including

- Paragraph 103 '*Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel.*' No evidence is offered of employment opportunities which new residents could access without travel, other than temporary construction work

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- Paragraph 180: *'Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on 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.'*

It is important to note that the impact on the village's character of the subject application has been understated as it is in fact an extension to an existing recent development, making it the largest estate in a village which has experienced an increase in housing of roughly a third since the 1995. This is the context in which the issue of sensitivity needs to be assessed.

MSDC has accepted² the figure in the draft NDP of 60 houses for Fressingfield for 2018-2036. 54 houses in total have already been approved in village (3872/16 and 4410/16 plus windfall) but not yet built. Only 6 more houses are needed over the next 18 years, which the approved draft NDP anticipates will be met from windfall. The subject application would deliver four times this number, which is not sustainable.

The appeal site is outside the village's Built-Up Area Boundary and must meet the criteria in paragraph 79 of the NPPF, which include that the design which *'would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.'* In contrast this development would:

- feed additional traffic into the conservation area harming its character
- dominate two adjacent neighbouring listed buildings and their settings
- introduce a large housing estate entirely out of scale with existing housing, new and old.

3.2 Social

a) Numbers of houses and residents – paragraph 9.1.8 describes the 24 proposed houses as a 5.4% increase on the current 444 (in the village as opposed to the parish), and later asserts that this is not 'significant'. Significance is relative to context. Whilst a 5.4% increase in a town centre might not be significant, such an increase in a small village with constrained capacity and amenities, is both unsustainable and significant, especially as it would be on top of a 12% increase from the 54 approved.

However, it is the number of residents that is more relevant to the social objective than the number of houses, as it is they who will be using the infrastructure. Suffolk County council estimates³ that 24 houses would generate an additional 55 people. Fressingfield's population is already set to increase by some 124 residents for the houses already approved, making a total increase of 17.5% in its population of 1021 (Census 2011) if this development were to go ahead – definitely a 'significant' increase.

b) Capacity - at paragraph 7.7 the Statement represents that the existence of certain amenities in the village is of itself evidence that such amenities can accommodate additional demand sustainably. No evidence is offered that the shop, where parking is already very constrained, can accommodate additional customer parking. No evidence is offered that the surgery can accept more patients. Parking is currently severely constrained at the surgery and the 2018 national GP survey indicated that 42% of patients wait longer than 15 minutes for their appointment, a worse position than both the CCG and national averages (26% and 31%)⁴. This does not suggest additional capacity – quite the reverse.

c) Road safety – Accidents causing personal injury are specified in the Statement, but make up only part of the adverse impact on road safety to be expected from the subject development, because there are already hazards. Three years ago, a very large hole was made right through the front wall of Woodyard Cottage, which gives directly onto New St. by the mobile library van. More recently the windowsill on the same house was completely removed by a passing car. Mercifully, no one was injured but this is clear evidence that there is an already an impact on road safety, even before the 54 extra houses and community facilities are built, let alone another 24. This accident will not appear in the Crashmap data.

The transport and road safety issues are so extensive that they will be covered in a separate paper.

3.3 Environmental

a) Incomplete assessment of flood risk and flooding offsite - The original FRA considered flooding offsite, as required, but did not discuss the impact on flooding in Low Rd. even though the foul water from the site is to go to the sewer which runs alongside the Low Rd. beck, reducing the sewer's capacity to accommodate flooding from surface water connections yet further. This collocation, combined with surface water flooding at times of heavy rain has caused flooding and pollution for many years and with

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increasing frequency. The response to the application from the LLFA did not take account of this fact, perhaps because SCC was under the impression, as evidenced by their response to an application under the Environmental Information Regulations (16583 dated 6th August 2018) that the sewer was a combined sewer, permitting surface water connections, which Anglian Water, in response to a similar application on the 10th October 2018, confirmed it is not.

The Statement (9.6.4) offers the extraordinary conclusion that because two developments had recently been approved for the village (3872/16 and 4410/16), a third was also appropriate. The reverse is true. Ours is a rural historic village with a struggling infrastructure already subject to a worsening flooding.

b) Foul water - Anglian Water noted in their response of the 19th May 2017 *'that the development will lead to an unacceptable risk of flooding downstream'*, stating that a Condition requiring a foul water drainage strategy would be needed, which was not produced as permission was refused.

Since the original application, an email exchange of 19th October 2018 between the case officer, Vincent Pearce, and Hannah Wilson, Pre-Development Planning Manager at Anglian Water, sets out new evidence that extra sewage entering the sewer will exacerbate the flooding that occurs in heavy rain and the pollution and risk to public health and wildlife that has been repeatedly associated with it. Sewage will increase by 17%, if this development were to go ahead because of its cumulative impact on the number of residents when combined with those arriving through existing approvals.

In the email exchange, Anglian Water confirmed the unsustainable position: *'The additional development currently being proposed in Fressingfield and the sewage it will generate is not likely to significantly impact the capacity in the foul surface system in its own right. However it is reasonable to assume that in periods of high rainfall in a short period of time it will take less surface water to fill the capacity of the foul water system [because it now contains more foul sewage] and that as a result an equivalent amount of rainfall post-development as pre-development will increase the risk and quantity of flooding. This flooding is also likely to contain increased levels of foul sewage content because there will be more in the system due to the increase in population.'*

'Whilst this is not an issue that can be resolved by Anglian Water, as the regulatory funding framework in which they operate does not allow for water companies to invest in surface water re-connections, it is reasonable for the planning authority to conclude that the impacts described above can be expected even where no additional surface water is entering the foul water system from the new developments.'

The Statement, at paragraph 9.7.11, entirely misses the point about this issue: it is not that the proposed development will or will not solve the problem that is relevant – but that the existence of the problem makes the development unsustainable because the construction of these houses will worsen the problem.

Paragraph 11 of the NPPF is clear on two grounds that permit refusal:

a) where NPPF policies *'that protect areas or assets of particular importance provide a clear reason for refusing the development proposed'*. Footnote 6 includes *'areas at risk of flooding'* as such a protected asset while paragraph 163 provides such a policy: *'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.'*

b) where *'adverse impacts of doing so would significantly and demonstrably outweigh the benefits.'*

The evidence above presents a clear reason for refusal on both grounds.

c) Impact on wildlife - The site includes hedgerow boundaries which are a Protected Habitat under Section 41 of the Natural Environment and Rural Communities Act 2006. The recommendation of Place Services to MSDC⁵ was that *'a minimum buffer strip of 3m be left undisturbed along the field margins upon project completion to maintain some habitat connectivity with hedgerows, ditches and treelines'*. This was noted in the MSDC decision paper. It was originally proposed as a reserve matter. However the consequences of complying with this requirement for the viability of the development are such that it should surely be considered at the planning appeal stage.

d) Heritage – the 2018 MSDC *Heritage and Settlement Sensitivity Assessment* notes in relation to Fressingfield that: *'The historic core has already seen several areas of inappropriate modern development and the Local Authority should seek to avoid further exacerbating this harm.'* This is a clear indication that the decision to refuse this development on heritage grounds was correct. The harm to the conservation

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area and listed buildings (designated heritage assets as referred to NPPF Footnote 6) and their setting, the village, of such a large housing estate offers another *'clear reason for refusing the development proposed,'*

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that planning authorities pay *'special attention.. to the desirability of preserving or enhancing the character or appearance of the conservation area'*. This is in addition to the NPPF requirements. Although the Statement proposes a number of measures to mitigate acknowledged road safety problems along New St (which are evaluated separately), the impact of such changes on the conservation area is not assessed, as required by paragraph 189 of the NPPF. The argument in paragraph 9.11.2 that the appeal site is *'neither within nor adjacent to the conservation area'* is spurious because it will impact upon it, though increased traffic, both pedestrian and vehicular and parking congestion outside the shop and surgery which are within the conservation area.

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that *'special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'* Mount Pleasant, which adjoins the existing Post Mill Lane site is a Grade 2 listed building with a large pond in its grounds, from which clay lump was extracted to build the house in the 15th century. When the first Post Mill Lane development was completed, this pond dried up completely – the first time in living memory - and has remained dry ever since, with the loss of a crucial wildlife habitat as well as damage to the curtilage of a listed building, as shown below. There seemed no other possible cause than the adjacent development.

DRIED UP POND, MOUNT PLEASANT ADJACENT POST MILL SITE



Efforts to seek redress for this detrimental impact with the developer, the environment agency and MSDC have not progressed. To compound what appears to have been a failure to protect a listed building and its setting, by permitting further inappropriate development in its setting, would be unwise.

SAFE 12th June 2019

¹ Using the formula used by SCC of 2.3 people per dwelling.

² Letter from Paul Bryant Neighbourhood Planning Officer to Fressingfield NP Group 16th May 2019

³ Letter from SCC to MSDC 30th May 2017

⁴ [GP Survey 2018](#)

⁵ Place Services letter to MSDC 03.08.17