



Appellant's Final Comments

LRW Ref 20190710.1

Local Planning Authority:	Babergh & Mid Suffolk
LPA Application Ref:	1648/17
Appellant:	Mr P. Davidson
Agent:	Mr Fergus Bootman
Site Address:	Land at Post Mill Lane, Fressingfield
Description of Development:	Outline planning application for new residential development and associated new roads, infrastructure and open space.
Appeal ref	APP/W3520/W/19/3227159
Date of Document:	09/07/19

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1 Introduction

- 1.1 This document represents the Appellant's response to the Statement of Case prepared by Mid-Suffolk District Council, and commentary on Third Party correspondence received in response to appeal reference APP/W3520/W/19/3227159.

The document is divided into four sections:

- 1) Procedural matters
- 2) Consideration of the decision in *Wavendon*¹ and impact on the decision-making process in this appeal
- 3) Response to specific points made by Mid Suffolk District Council (MSDC/'the Council') in their Statement of Case (SofC), together with related issues identified by third parties
- 4) Response to remaining issues raised by third parties

2 Procedural Matters

2.1 Heritage Team Statement of Case

- 2.1.1 At para 6.24 in their SofC, MSDC state '*Whilst the Council's Heritage Team is preparing a Statement of Case in respect of this aspect of the Council's refusal of planning permission, this Statement will provide supplementary commentary*'.
- 2.1.2 Review of the information submitted to the Inspectorate (and subsequently made available to the appellant) shows no such SofC has been submitted. The Appellant informed the Inspectorate of this on the 4th July and, in turn, the Inspectorate requested this information from MSDC by email on the 5th July. At time of writing (10/07/19) no Statement of Case from the Heritage Team had been sent to the appellant for review.
- 2.1.3 As such, other than the views of the case officer (set out in text and sketches at para 6.30 – 6.33 of the SofC) the only comment on the appeal proposal from the council's Heritage Team remains their initial consultation response (dated 30/05/17).
- 2.1.4 It is noted that, in responding to the consultation request, the Heritage Officer does not object to the proposal.

2.2 Appendix 8: Minutes of meeting with Anglian Water

- 2.2.1 The SofC identifies Appendix 8 as '*Notes of meeting between Vincent Pearce [BMSDC], Anglian Water Representatives, Lavinia Hadingham (ward councillor) and representatives from Fressingfield residents*'.
- 2.2.2 Review of the information submitted to the Inspectorate (and subsequently made available to the appellant) shows that Appendix 8 has not been submitted. The appellant informed the Inspectorate of this on the 3rd July and, in turn, the Inspectorate requested this information from MSDC by email on the same day. At time of writing (09/07/19) no copy of Appendix 8 had been sent to the appellant for review.

¹ *Wavendon Properties v SSHCLG & Milton Keynes Council* [2019] EWHC 1524 (Admin)

2.2.3 Appendix 8 comprises the minutes of a meeting to which the developer was not invited and was not aware of until after the event. Neither minutes of the meeting, a list of attendees or an agenda have ever been published on the Local Authority's website for review.

2.2.4 Accordingly, at time of writing, the only information regarding this meeting available to the Appellant is the description of the meeting within the SofC (final page – unnumbered).

2.3 S106

2.3.1 This Final Comments document is accompanied by a s106 agreement between the Appellant and the Council. In the event the appeal is allowed, this document will have effect.

2.3.2 The agreement controls delivery of affordable housing and open space.

2.3.3 The agreement has been signed by both the Appellant and the Council.

3 Consideration of the decision in Wavendon

3.1 Justification for application of the test at paragraph 11 of the Framework

3.1.1 It is the Council's assertion that, following the judgement in Wavendon, the 'basket' of policies which are most important to determination of this application includes a majority of policies which are not out of date.

3.1.2 As such, the Council state that the appropriate test is not that at para 11 of the National Planning Policy Framework ('the Framework'), but to make an assessment against relevant adopted Local Plan and Cores Strategy Policies.

3.1.3 The Appellant's response to this is twofold:

- 1) The test at paragraph 11 should apply, as the 'basket' of policies most important to determination of this application are out of date. Furthermore, applying this test, there are no harms which significantly and demonstrably outweigh the benefits delivered by the appeal proposal; and
- 2) Even if it is not accepted that paragraph 11 applies, the 'basket' of policies against which the application must be assessed comprises policies FC1, FC1.1, HB1, H16, H17 and SC1. Assessing the appeal proposal against these policies and making this assessment in the context of and with regard to the most recent guidance in the Framework, it is the case that the appeal proposal represents sustainable development and should be approved.

3.1.4 Considering first the assertion that paragraph 11 is the correct test to apply in this instance, the decision in Wavendon Properties states in order to determine whether para 11 is engaged one must:

- A. Establish which policies are most important for determining the application (the 'basket' of policies')
- B. Examine each of the policies identified as 'most important' and determine whether or not they are out of date, applying guidance in the Framework and the approach set out in Bloor*
- C. Based on steps 1 and 2, come to an overall conclusion as to whether or not, taken as a whole, this basket of policies is to be regarded as out of date for the purposes of the decision.

* Bloor Homes states that “absence”, “silence” and “out of date” are three distinct concepts. With reference to determining whether or not policies were ‘out of date’ the decision states *‘And if the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now ‘out of date’.*

3.1.5 Considering the above, the starting point for applying the methodology set out in Wavendon is to identify the key issues in the decision then, based on these key issues, identify the policies most important for determining the application.

3.1.6 In this instance it is agreed by both parties that the key issues are identified as:

- Principle of development
- Harm to heritage assets
- Highways Safety
- Drainage.

3.1.7 In seeking to apply the approach in Wavedon, MSDC include in their statement a list of policies identified as ‘relevant’ and provide commentary on the weight to be afforded to those policies (Table 1). It is not clear that these are the policies MSDC identify as being ‘most important for the determination of the application’, however no other assessment is carried out elsewhere in the SofC. Consequently, when referring to the *‘balance of policies that sit at the heart of the appeal’* (para 7.8 of Council’s SofC), it is reasonable to conclude that the Council is referring to those policies in Table 1 identified as being afforded either full or partial weight in determining the appeal.

3.1.8 However, this is not, in fact, the correct application of the approach established in Wealdon: it simply represents a list of all policies the LPA considers relevant, rather than a list of those identified as being most relevant for the determination of the application (the list includes, for example, policies on provision of open space, affordable housing, parking standards etc – issues which are not in dispute and which in no way go to the heart of the key issues to be considered when determining this appeal).

3.1.9 Accordingly, Table 1A (submitted as Appendix 1 to this document), uses MSDC’s Table 1 and the list of policies identified in the decision notice, assesses the specific wording of each of the policies identified and (in accordance with the approach in Wealdon), considers which are most important for the determination of this application.

Step A – Identify the policies most relevant for determination of the application

3.1.10 Having worked through this assessment (see Table 1A (Appendix 1), the following policies are identified as being the most important for the determination of this application:

- Local Plan HB1 – Protection of historic buildings
- Local Plan H7 - Restricting Housing Development
- Local Plan T10 – Highways Considerations in Development
- Local Plan T11 – Facilities for Pedestrians and Cyclists
- Local Plan SC1 – Adequate Servicing of Infrastructure
- Core Strategy CS1: Settlement Hierarchy
- Core Strategy CS2: Development in the Countryside
- Core Strategy CS5: Mid Suffolk’s Environment

- Core Strategy CS6: Services and Infrastructure
- Core Strategy CS7: Brownfield Target
- Core Strategy CS8: Provision and Distribution of Housing:
- Core Strategy Focussed Review (CSFR) FC1: Presumption in favour of sustainable development
- CSFR FC1.1: Mid Suffolk Approach to Delivering Sustainable Development

Step B - Examine each of the policies identified as ‘most important’ and determine whether or not they are out of date, applying guidance in the Framework and the approach set out in Bloor

3.1.11 This assessment is carried out in Table 2A (attached as Appendix 2). Having assessed the above policies against the provisions of the Framework and mindful of the guidance in Bloor, the following policies are considered to be up to date:

- Local Plan T10 – Highways Considerations in Development
- Local Plan T11 – Facilities for Pedestrians and Cyclists
- Local Plan SC1 – Adequate Servicing of Infrastructure
- Core Strategy CS6: Services and Infrastructure
- Core Strategy Focussed Review (CSFR) FC1: Presumption in favour of sustainable development
- CSFR FC1.1: Mid Suffolk Approach to Delivering Sustainable Development

3.1.12 Having assessed the above policies against the provisions of the Framework, and mindful of the guidance in Bloor, the following policies are considered to be out-of-date:

- Local Plan HB1 – Protection of historic buildings
- Local Plan H7 – Restricting Housing Development unrelated to the needs of the Countryside
- Core Strategy CS1: Settlement Hierarchy
- Core Strategy CS2: Development in the Countryside
- Core Strategy CS5: Mid Suffolk’s Environment
- Core Strategy CS7: Brownfield Target
- Core Strategy CS8: Provision and Distribution of Housing:

Step C: Based on steps 1 and 2, come to an overall conclusion as to whether or not, taken as a whole, this basket of policies is to be regarded as out of date for the purposes of the decision

3.1.13 Considering the assessment above, it is concluded that 7 of the identified 13 policies considered most important for the determination of this appeal are out-of-date.

3.1.14 However, consideration of numbers alone is not a sufficiently robust approach to determine whether (in the parlance of Mr Honey, Wavendon case) ‘the basket of policies is rightly considered to be out of date’.

3.1.15 Looking more qualitatively, and considering the policies identified as up to date against the four key issues in this appeal:

- i) **Principle** - it is the case that none of the policies concerning principle of the development (i.e. CS1, CS2, H7) are up to date.
- ii) **Harm to Heritage Assets** – the only relevant policy concerning protection of heritage assets is considered out of date: whilst the council identify policy HB01 as being up-to-date, it fails to require decision makers to balance the public benefits of the proposal against less than substantial harm (test at para 196 NPPF). This is a significant omission. Tellingly, when assessing the heritage impacts of the proposal it is the test at para 196 the officer turns to, not any test in the adopted Local Plan: this is not evidence of an up-to-date policy. With reference to Bloor, Policy HB01 has been overtaken following changes in national planning policy and should be considered out of date. Accordingly, for the purposes of this decision, the policy is considered out of date and can only be afforded limited weight (given its compliance with the direction, but not the detail of the NPPF).
- iii) **Highways Safety** – Whilst development plan policies T10 and T11 are considered up to date, they do not reflect the test at para 109. Tellingly, the relevant technical consultee (Suffolk County Council Highways) refer to the test at Para 109 and do not reference T10 or T11 when assessing the policy.
- iv) **Impact on Drainage** – Whilst policies SC1 and CS6 are considered up-to-date, when one considers the detailed wording of the policy they are not necessarily directly relevant to the issue of infrastructure at the heart of this appeal: CS6, in particular, is more focussed on securing contributions from development to deliver the necessary infrastructure (this being a provision now largely superseded by the introduction of CIL)

3.1.16 The impact of the remaining two policies – FC01 and FC1.1 – on an assessment of whether the ‘basket’ of most important policies should be considered out-of-date is, at best, neutral.

3.1.17 Policies F011 and FC1.1 policies explain MSDC’s approach to determining applications in the event that relevant policies are silent, absent or out of date. Consequently, they do not impact substantively on an assessment of the basket of policies, rather they are engaged if the conclusion is reached that the basket of policies is out of date.

3.1.18 In considering how these two policies might be engaged, it is relevant to note that FC1 applies a now outdated version of the test at paragraph 11 of the Framework.

3.1.19 Having regards to the above, and following a systematic assessment of the policies identified by MSDC as relevant (in both the decision notice and, additionally, those introduced at Table 1 in the Statement of Case) using the methodology developed in Wavendon, it is the appellant’s view that, taken as a whole, the basket of policies relevant to this appeal should be regarded as out-of-date for the purposes of this decision.

3.1.20 Consequently, it is the appellant’s case that the correct test in this instance is the application of that at paragraph 11 of the Framework. Further to this, and as set out in detail within the submitted Statement of Case, it is considered that application of this test identifies significant benefits (detailed at paragraph 7.7) delivered by the development proposal, and only modest (by definition and with the agreement of all parties, less than substantial) harm: in short, there are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

3.1.21 For these reasons it is respectfully requested the Inspector allow the appeal.

3.2 Position if paragraph 11 is not engaged

- 3.2.1 Notwithstanding the above, and without prejudice, if the test at para 11 is not engaged then it remains the appellant's position that when assessed against relevant Development Plan policies (viewed in the context of the guidance in the Framework), the development represents sustainable benefit and present no significant conflict with any up-to-date policy.
- 3.2.2 This position is considered in detail within the submitted Statement of Case.

4 Response to specific points made by Mid Suffolk District Council (MSDC/'the Council') in their Statement of Case (SofC) and response to third party comments

4.1 Introduction

- 4.1.1 The Council's SofC is divided into 6 topic areas:

- i. Housing Land Supply and development outside the settlement boundary
- ii. Weight to be attached various Local Plan policies
- iii. The impact of the development upon Ladymeade Cottage
- iv. The impact of the development upon highway safety
- v. Foul Water
- vi. Cumulative impact
- vii. Is the development sustainable
- viii. Planning Balance and Conclusion

(Note, numbers differ from those in Council's SofC as it includes two iv's).

- 4.1.2 These areas are considered in turn, below, referring to relevant third-party comments as necessary.

4.1 Issue I - Housing Land Supply and development outside the settlement boundary

- 4.1.1 The Council identifies the site as falling outside the settlement boundary but recognises that policies regarding settlement boundaries are out of date.

- 4.1.2 However, the Council's position fails to recognise the provisions of paragraph 78 of the Framework, namely:

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

- 4.1.3 As noted in the submission by the Governors of Fressingfield Primary School, the appeal proposal would not simply bring new homes (and so new population). By delivering affordable and smaller family homes (necessarily required in order to achieve the density proposed) it would deliver the specific type of development which offers maximum benefit to existing key services such as the school.

4.2 Issue ii – Weight to be attached various Local Plan policies

4.2.1 This matter is considered in detail at section 3 of this document

4.3 Issue iii – The impact of the development upon Ladymeade Cottage

4.3.1 This matter is considered in detail at paragraphs 9.8.0 – 9.11.7 of the Appellant’s SofC.

4.3.2 In addition to those matters raised in the SofC, it is respectfully requested the Inspector has regard to the following points:

- Whereas the consultation response from the Heritage and Design Officer states ‘*we would recommend considering layouts which might avoid or reduce harm to the setting of the Listed Building*’ ; the Council’s SofC has advanced this relatively mild statement to form a view of the development as one which would ‘*encroach upon and destroy the traditional edge of village setting*’ of the building. In summary, this appears to be the view of the case officer rather than the view of the council’s heritage professional.
- The SofC refers to a sliding scale of harm used by the Council’s Heritage Team to quantify the degree of ‘less than substantial harm’ (para 6.28). The response from the Heritage Officer neither refers to this scale nor uses the categories of harm identified within the scale
- Paragraph 6.33 refers to the Council seeking to safeguard ‘traditional village morphology’. If ‘morphology’ in the context of planning is accepted as the study of evolution of form within the built environment, then the Council’s position in this instance does not safeguard the traditional village, rather it seeks to arrest it and hold it in stasis.
- Paragraph 6.34 refers to the Heritage Team’s Statement of Case. This has not been provided to the Appellant at time of writing.

4.4 Issue iv- The impact of the development upon highway safety

4.4.1 It is noted that neither the SofC from the Council nor that from Suffolk County Council address the information within the document titled ‘Supporting Statement: Transport’ or the Pedestrian Route Assessment submitted in support of the appeal.

4.4.2 Whilst disregarding this information, the Council’s SofC appears to rely on unsupported, ‘common sense’ assertions such as ‘*Even the most casual observer will see just how this possibility of myriad vehicle movements interacts poorly with pedestrian movement*’ (paragraph 6.57). This expressly ignores the well-evidenced reality that a road with a sense of risk (narrowing, access to driveways, pedestrians and vehicles sharing space etc) results in fewer collisions. The argument that the ‘lay perspective’ is often different from the evidenced reality is considered in detail in the information submitted in support of this appeal.

4.4.3 It is clear from the representations made by some local residents that there is a strong perception of risk along the local highway network. However, it is equally clear from the evidence (as submitted in the Supporting Statement and Route Assessment) that this perception is not translated into actual events: the evidence suggests an ‘intrinsically safe environment’ (para 4.2.2 Supporting Statement).

4.4.4 Considering Suffolk County Council’s response to consultation on the planning application, their comments and concerns expressly relate to cumulative impact, and consider the

development proposal alongside the two, much larger developments which were promoted in the village at the same time as the appeal application.

- 4.4.5 The SofC from Suffolk County Council in response to the appeal proposal not only fails to consider the information submitted in support of the appeal, it also fails to develop the County's response to the development proposal as an individual scheme, and in no way considers the individual impact arising from the (up to) 24 homes proposed in the appeal. Throughout the SofC, the County refer to 'cumulative impact', 'the development proposals' (i.e. plural, not singular) and viewing the proposals 'in the round'.
- 4.4.6 In short, the SofC from Suffolk County Council is not an assessment of the appeal proposal, it serves only to provide confirmation of how the council responded to the original application, at which time their comments explicitly considered all three development proposals in the village, rather than any one proposal individually.
- 4.4.7 Without reference to any proposal-specific assessment from the relevant technical expert (Suffolk County Council), and with no commentary on, or even acknowledgment of, the information submitted in support of the appeal, the Council's appeal case in respect of highways effectively amounts to the case officer's opinions on highways impacts. In analysis, these range from opinions based on no apparent evidence (and contrary to the evidence provided – for example the claim at paragraph 6.48 that 24 new homes would necessarily increase the risk to pedestrian safety) to a curious statement regarding the handling characteristics of modern farm vehicles (the Appellant – a farmer and agricultural building contractor – is particularly interested to understand the reasoning behind the statement at paragraph 6.52).

4.5 Issue v – Foul Water

- 4.5.1 Other than the repeated confirmation that they raise no objection to the proposal, the Appellant has been unable to secure any effective engagement with either Anglian Water or the Council in respect of their views on this matter.
- 4.5.2 As stated above, the Appellant were not invited to any meetings with the utility provider and has not been able to view any minutes of such meeting(s).
- 4.5.3 The statement made by Dr John Castro (Chair of the anti-development lobby group Supporters Against Fressingfield Expansion) that *'the appellant has made no mitigation suggestions to ameliorate significant problems which will be compounded by the building of a further 24 houses at Post Mill'* is incorrect.
- 4.5.4 Having been made aware of the extent of the concerns of some local residents and (belatedly) the Council, the appellant has used what limited access it has to liaise with Anglian Water in order to see if amendments to the scheme could help to limit any potential impacts on the existing foul water network.
- 4.5.5 The only route to discuss such matters with Anglian Water that is open to the appellant is submission of a Pre-development Enquiry Form. It is the case that the form submitted to support the original application afforded no opportunity for the Appellant's consulting engineers to ask questions: one could only provide the requested information and accept whatever response Anglian Water provided. The same was true of the submission made immediately prior to appeal (the responses confirming network capacity represent the capacity position at date of answer, a position which can change. Consequently, a fresh

enquiry was made regarding capacity prior to submission of the appeal). However, subsequent to this second response, the form was amended and there is now an opportunity to ask questions of the utility provider in respect of proposed new connections.

- 4.5.6 Accordingly a third submission was made in which the Appellant's consulting engineer enquired whether any measure could be included in the scheme to address concerns raised. To assist, potential measures were identified and proposed.
- 4.5.7 Anglian Water's response to this enquiry is included at Appendix 3 to this document. In summary, the response states that there is capacity within the network and, as such, Anglian Water would not ask the Local Planning Authority to impose a condition requiring submission of detailed strategy to mitigate impacts on the foul water network. As the relevant statutory undertaker, it would be for Anglian Water to adopt any infrastructure necessary to support the proposal and, in their view, additional infrastructure is not required to make this proposal acceptable.
- 4.5.8 In summary, the Appellant has had only very limited opportunity to discuss alternatives to a standard connection to the existing network to serve the appeal proposal. Having taken the only opportunity open to them, the Appellant has been informed that there is no requirement for any additional infrastructure.

4.6 Issue vi: Cumulative Impacts

- 4.6.1 It is noted that para 6.77 of the Council's SofC accepts that '*cumulative impact no longer requires assessment*'. This helps to clarify the weight which should be afforded Suffolk County Council's SofC, which appears to only consider cumulative impacts.

4.7 Issue vii: Is the Development Sustainable?

- 4.7.1 Whilst arriving at no explicit conclusions, the Council's assessment appears to identify that the proposal would result in positive Economic and Social Impacts. This accords with the Appellant's view.

4.8 Planning Balance and Conclusion

- 4.8.1 As stated above, it remains the Appellant's view that the correct test in this instance is that at Paragraph 11 of the Framework.
- 4.8.2 In summing up the Council appear conflicted as to the true nature, scale and impacts of the appeal proposal: on the one hand, reason for refusal 1 identifies the proposed development of 24 dwellings as 'significant and inappropriate', on the other hand, at 7.16, when discussing the benefits to local services derived from the introduction of new residents from the village, it is stated that '*the number represents a modest increase in overall population and therefore the benefits arising in this regard are considered to be low*'
- 4.8.3 Similarly, at 7.19 the impact of 24 new homes on the existing foul water system (an increase of 6% in terms of number of properties connected) is described as 'unacceptable and substantially adverse': this conclusion does not accord with the earlier acknowledgement that '*24 new dwellings may not in themselves add much sewerage to the system*'

5 Response to Third Party Submissions

- 5.1 The majority of objections submitted by local residents raise issues concerning highways, flooding, impact on services and impact on heritage assets. These issues are considered in detail within the Appellants' SofC and, further, in the document above.
- 5.2 The letter of representation from the anti-development lobby group Supporters Against Fressingfield Expansion (SAFE) repeats these key issues but raises several additional points in a detailed letter of objection.
- 5.3 In response to these points, it is respectfully requested that the Inspector notes the following:
- The designation of Fressingfield as a 'hinterland village' is proposed in the draft Local Plan. The draft Local Plan is at the 'Preferred Options' stage and, whilst preferred options for growth have been identified, the plan has not yet been consulted on. It is highly likely that objections to the proposed strategy for accommodating growth will be lodged. Given the lack of consultation and high likelihood of objections to reclassification of villages such as Fressingfield, it is the view of the Appellant that the emerging plan should be afforded no weight in determining this appeal.
 - Similarly, the emerging Neighbourhood Plan has not been to referendum and has not been adopted. Whilst it has been consulted on (consultation ran 29/03/19 – 17/05/19), significant objections were lodged against the consultation version of the plan and, given these unresolved objections and the lack of referendum, it is the view of the Appellant that the emerging plan should be afforded no weight in determining this appeal.
 - The Traffic Monitoring survey was conducted in accordance with best practice and relevant industry standards. The veracity of robustness of the data has not been challenged by the relevant technical consultee (Suffolk County Council).
 - The evidence for the statement that the Primary School is nearing capacity is unclear. The letter of support for the appeal proposal submitted by the Chairman of Governors to the School makes it clear that the threat to the school comes from a projected lack of pupils rather than a lack of capacity at the school. It is understood that the school are preparing to lose a teaching post next year due to falling pupil numbers.
 - The evidence for the total of 64 'whole time equivalent' jobs is unclear. Employment opportunities within the village include the Doctor's Surgery, Primary School, Nursery (providing care for up to 80 children) and C.E. Davidson Ltd (an agricultural building contractor employing 55 people and up to 50 subcontractors at any one time). Within a five-mile radius of the village there are several significant employers (for example Crown Chicken at Weybread, BQP and Skinners at Stradbroke, Rattlerow Pigs etc).
- 5.4 In addition to the above matters, it is noted that the SAFE website suggests that until the meeting with Anglian Water in October 2018, there was no clear understanding, or agreement, as to the cause of the problems. Given that the meeting with Anglian Water appears to have been prompted by fear of development and associated pressures on the

existing system, it can be considered that the net impact of approved and proposed new development on the foul sewer system in Fressingfield is, in fact, positive, with the concern regarding capacity prompting a proper investigation and understanding of the issues at hand.

6 Comments on proposed conditions

1 – Time Limit: The proposed time limits compress the usual 5 year period for commencing development on an outline site down to 36 months. Whilst the Appellant does not necessarily object to a compressed time period (evidence of past deliverability on phase 1 of the Post Mill Lane site is positive, with all dwellings completed within 12 months of approval of reserved matters), the justification for such a tight timescale is unclear. If a departure from the standard time period is considered appropriate, then a period of 3 years for submission of reserved matters and 18 months for commencement on site is proposed.

2 – No comment

3 – Drainage: This proposed condition is imprecise, unenforceable and unreasonable. It is not clear who's responsibility it is to agree the condition has been satisfied and, as such, the condition is not proposed in order to control impacts associated with the proposed development, but appears simply to provide a tool by which to frustrate the delivery of development.

4 – Developable Area: The condition removes a significant proportion of the development site. This is not necessary (mindful of the Appellant's position regarding heritage impacts) and, even if the Inspector is minded to agree with the Council in respect of heritage impacts, is more restrictive than even the Council's own heritage officer considered appropriate. As an outline application the Council reserve judgement over design and layout and, accordingly, a proposal to sterilise almost half the site is not relevant to the development permitted and unreasonable.

5 – Pedestrian Access: The proposed condition is imprecise, with reference to 'good visibility' and more so, as it is not clear who is to determine what constitutes 'good': the condition has not been requested by SCC Highways. The decision is contrary to Government's stated ambition of to speed up the planning process and avoid unnecessary delays to delivery of development. If further information is required (and this is not accepted), there is no reason why it cannot be required prior to (for example) commencement of any development above slab level.

6 – Materials – It is unclear why contemporary materials are considered unacceptable across the site. As worded, the condition is unreasonable and not supported by any adopted policy.

7 – Permitted Development Rights – The justification for removing all permitted development rights across the entire site is unclear. The proposed condition is unreasonable and unnecessary: if specific plots are considered to be of heightened sensitivity this can be controlled at reserved matters stage (including removing PD rights from certain plots as part of the approval of RM). The condition should be removed

8 – 11 – No comment

12 – Travel Plans – Both guidance from Suffolk County Council and para 111 of the Framework state that Travel Plans should be required where development would '*generate significant amounts of movement*'. Mid-Suffolk's validation checklist (adopted 1st July 2017) requires a Travel Plan only when applications seek consent for 'Major residential proposals of 80 homes or more'

A proposal for 24 homes within an village is – by any measure - substantially below this threshold. SCC have not requested a TP and there is no planning policy justification for doing so on a development of this scale.

13 - No comment

14 – Residents Travel Pack – It is not clear from the condition what this is nor why it is required. SCC do not require it. The condition is unnecessary

15-25 No comment.

Appendix 1: Table 1A – Exercise to identify those policies considered most relevant for the determination of the appeal proposal

TABLE 1A: IDENTIFYING THE POLICIES MOST RELEVANT FOR DETERMINATION OF THE APPLICATION (starting point for policies included is those listed on the Decision Notice as being relevant to the decision and those in Table 1 of LPA SofC)

Policy	Is policy considered to be 'most important' (does it go to the heart of the matter at hand)?
Local Plan SB2 – Development Appropriate to its setting	No – general principles policy which deals with a number of issues (design, highways, landscape) covered later in the plan by topic-specific policies
Local Plan SB3 – Retaining Visually important spaces	No – the policy applies to specific areas of open space identified on the Local Plan policy maps. None of these areas are adjacent to, or even close to, the appeal site (nearest being over 300m east, separated by houses and fields – see Appendix A1). Accordingly, policy is not applicable to appeal proposal
Local Plan GP1 – Design & Layout – general design policy chiefly concerned with layout, density, scale, materials, landscaping etc	No – this is a design policy which is applicable at Reserved Matters. At no point have the LPA identified the issue of density as a reason for refusal
Local Plan HB1 – Protection of historic buildings	Yes
Local Plan HB8 – Safeguarding the Character of Conservation Areas	No - Policy is clear that it applies only within C.A.s and on land ' <i>which lies adjacent to a Conservation Area</i> '. The appeal site is neither within nor adjacent to a Conservation Area and, as such, the policy is not applicable to appeal proposal
Local Plan HB14 – Ensuring Archaeological Remains are not Destroyed – enables MSDC to refuse an application or impose a condition where there is evidence of archaeological interest in the site	No – consultation response from SCC Archaeological officer states ' <i>there are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets</i> '.
Local Plan H4 – Affordable Housing – seek to secure 35% affordable housing (subject to viability)	No – Scheme proposes a policy-compliant level of affordable (to be secured by legal agreement submitted with the appeal). Consequently, the matter of affordable provision is not a key issue in determination of this appeal (as recognised by MSDC)
Local Plan H7 – Restricting Housing Development Unrelated to the needs of the Countryside	Yes – policy precludes new housing development outside identified development boundaries. Site lies outside DB.
Local Plan H13 – Design & Layout of Housing Development - chiefly repeats the considerations set out in policy GP1	No – Policy deals with matters relevant at RM stage
Local Plan H14 – A Range of House Types to Meet Different Accommodation Needs	No – Policy deals with matters relevant at RM stage

<p>Local Plan H15 – Development to Reflect Local Characteristics - <i>proposed new housing should be consistent with the pattern and form of development in the neighbouring area, the character of its setting, particular site constraints such as access and drainage and the configuration of the site including its natural features</i></p>	<p>No – Policy is concerned with design and layout of new development and accordance with character of the area. To the extent MSDC express concerns regarding the impact on the character of the area, these relate to impact on setting of the Listed Building and not general townscape or landscape concerns (see para 3.7 of MSDC’s SofC)</p>
<p>Local Plan H16 – Protecting Residential Amenity - <i>to protect the existing amenity and character of primarily residential areas, the district planning authority will refuse:-</i></p> <ul style="list-style-type: none"> - <i>change to non-residential use where such a change would materially and detrimentally affect the character and amenity of the area by means of appearance, traffic generation, nuisance or safety;</i> - <i>the loss of open spaces which contribute to the character or appearance of an area and which are important for recreation or amenity purposes;</i> - <i>development that materially reduces the amenity and privacy of adjacent dwellings or erodes the character of the surrounding area. the cumulative effect of a series of proposals will be taken into account.</i> 	<p>No – Considering the three-criterion set out in the policy:</p> <ul style="list-style-type: none"> i) The development would not result in a change of use to non-residential ii) The proposal would not result in loss of open space important for amenity or recreation purposes iii) The proposal would not result in material adverse impact on privacy and would not erode the character of the surrounding area (To the extent MSDC express concerns regarding the impact on the character of the area, these relate to impact on setting of the Listed Building and not general amenity concerns)
<p>Local Plan H17 Keeping Residential Development away from Pollution - <i>the district planning authority will refuse residential development in areas which are subject to, or are expected to become affected by, excessive road traffic noise or which would be exposed to excessive noise levels from industrial or other premises. residential development will normally be refused in areas which have, or are likely to have, significantly reduced amenity or safety by virtue of proximity to:-</i></p> <ul style="list-style-type: none"> - <i>noise, smell or other forms of pollution emanating from nearby agricultural or other premises;</i> - <i>industrial premises or other installations which involve the use, storage or handling of hazardous substances.</i> 	<p>No – Considering the specific wording of the policy, the appeal site is not:</p> <ul style="list-style-type: none"> • In an area subject to excessive road noise • Exposed to excessive noise from industrial or other processes • In proximity to emitters of noise, small or other forms of pollution from nearby premises • In proximity to any other industrial premises

Local Plan CL08 – Protecting Wildlife Habitats	No – Impact on ecology is not a substantive issue (see MSDC SofC para 3.7)
Local Plan CL11 Retaining High Quality Agricultural Land	No – No part of the application site is in agricultural use. Loss of agricultural land is not an issue identified by MSDC at any point on determination of the application.
Local Plan T9 – Parking Standards	No – this is a design policy which is applicable at Reserved Matters.
Local Plan T10 – Highways Considerations in Development	Yes – Impact on highways underpins a reason for refusal
Local Plan T11 – Facilities for Pedestrians and Cyclists - <i>the district planning authority, working in conjunction with the county highways authority, will seek improved facilities for pedestrians and cyclists as part of the following:</i> - <i>traffic management schemes, including cycle routes and facilities for parking cycles;</i> - <i>new highways or improvements to the existing network;</i> - <i>routes between housing and industrial estates;</i> - <i>parking schemes facilitated by policy t7.</i>	Yes – Impact on highways underpins a reason for refusal
Local Plan T13 – Bus Service - <i>the district planning authority will use its responsibilities for planning the development and use of land to locate housing, employment and other uses in ways which support Suffolk county council's efforts to maintain and improve an effective network of bus services, including community bus services and other self-help schemes.</i>	No – A development of 24 houses will not have any significant impact on the County Council's efforts to maintain and improve an effective network of busses
Local Plan RT4 – Amenity Open Space and Play Areas within Residential Development - <i>in residential estate development, comprising 10 or more dwellings, public open space should be provided in the form of play areas, formal recreation areas or amenity areas, unless the district planning authority is satisfied that adequate facilities already exist nearby.</i> <i>children's play spaces should be sited where they can be used safely, conveniently and without causing excessive noise and other disturbance to adjoining residents.</i>	No – The issue of amenity space is not referenced in the reasons for refusal and the submitted (at application stage) indicative layout and legal agreement (at appeal stage) demonstrate space can be accommodated within the and appropriate contributions secured.
Local Plan RT12 – Footpaths and Bridleways	No – the proposal would have no impact on any PROW

<p>Local Plan SC1 – Adequate Servicing of Infrastructure - <i>where proposals for development cannot be adequately serviced or will overburden existing infrastructure, the district planning authority will not grant planning permission until these matters are resolved.</i></p> <p><i>the district planning authority will seek to enter into planning obligations with a developer to secure an agreed programme for the development of the infrastructure necessary as a result of their development proposals.</i></p>	<p>Yes – Impact on infrastructure is a key consideration</p>
<p>Core Strategy CS1: Settlement Hierarchy</p>	<p>Yes – Policy seeks to control the location of new residential development such as that proposed</p>
<p>Core Strategy CS2: Development in the Countryside</p>	<p>Yes – Policy seeks to restrict development in the designated countryside</p>
<p>Core Strategy CS3: Reduce Contributions to Climate Change</p>	<p>No- Sets target for sustainable energy. Not dealt with at outline</p>
<p>Core Strategy CS4: Adapting to Climate Change</p>	<p>No- Sets guidance for adaptation. Not dealt with at outline</p>
<p>Core Strategy CS5: Mid Suffolk’s Environment - <i>All development will maintain and enhance the environment, including the historic environment, and retain the local distinctiveness of the area.</i></p>	<p>Yes – Impact on historic environment is a reason for refusal</p>
<p>Core Strategy CS6: Services and Infrastructure <i>New development will be expected to provide or support the delivery of appropriate and accessible infrastructure to meet the justifiable needs of new development. Consideration will be given to the timing of infrastructure provision and development may need to be phased to ensure the proper provision of infrastructure. Local priorities for which infrastructure contributions may be sought include utility provision, transport infrastructure, healthcare, education, libraries, social and community facilities, village service and facilities, community safety, open space, sport, cultural and leisure facilities, green infrastructure, improvements in public transport, improvements to pedestrian and cycle routes, public realm improvements, conservation and mitigation of the natural, historic and built environment, and improvement measures (aimed at achieving a net gain for biodiversity and geodiversity), waste minimisation and recycling initiatives and services, amenity</i></p>	<p>Yes – Impact on infrastructure is a reason for refusal is a reason for refusal</p>

woodlands for public access, and town centre management initiatives. The Council will help reduce the need to travel, reduce journey distances and make it safer and easier for people to access jobs, shopping, leisure facilities and services by public transport, walking and cycling.	
Core Strategy CS7: Brownfield Target: <i>The District Council proposes a target of 50% of dwellings being built on brown field/previously developed land in Mid Suffolk.</i>	Yes – The site is greenfield and consent would impact (albeit it in a small way) on achieving the 50% target
Core Strategy CS8: Provision and Distribution of Housing: Establishes a hierarchy of settlements and distributes dwellings across those	Yes – Appeal proposal is for new housing which, if up to date, should be controlled through application of policy CS8
Core Strategy CS9: Density and Mix	No – not dealt with at outline stage
Core Strategy Focussed Review (CSFR) FC1: Presumption in favour of sustainable development	Yes – replicates test at para 11 NPPF as drafted at time CSFR was adopted
CSFR FC1.1: Mis Suffolk Approach to Delivering Sustainable Development	Yes – Policy states that <i>Proposals for development must conserve and enhance the local character of the different parts of the district. They should demonstrate how the proposal addresses the context and key issues of the district and contributes to meeting the objectives and the policies of the Mid Suffolk Core Strategy and other relevant documents.</i>
CSFR FC02 Provision and Distribution of housing	Yes – Policy in concerned with housing

Appendix 2: Table 2A – Exercise to assess whether policies identified as most important are out of date

TABLE 2A: ASSESSMENT OF WHETHER POLICIES IDENTIFIED AS MOST RELEVANT ARE OUT OF DATE			
Policy	Out of Date?	Weight	Comments (assessment against NPPF)
Local Plan HB1 – Protection of historic buildings	Yes	Limited	<p>Policy HB1 must be considered in light of Framework guidance at paras 195 and 196.</p> <p>Para 196 seeks to balance the public benefits of the proposal against less than substantial harm: HB1 makes no such efforts.</p> <p>Consequently, policy HB1 is relevant (and compliant with the NPPF) to the extent that it serves as a statement of the LPA’s intent (they value heritage), however in terms of being an up-to-date policy against which applications can be assessed, the policy is superseded by the more detailed provisions of the Framework. This is perhaps best illustrated in the officer assessment, where the test applied is that in the Framework rather than an application of the provisions of policy HB1</p>
Local Plan T10 – Highways Considerations in Development	Partially	Moderate (note new test in NPPF 2019)	It should be noted that in respect of impact on highways safety the NPPF (2019) imposes a specific test – stating development should only be refused on highways grounds where the development would result in an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (para 109). This test is not reflected in the provisions of policy T10
Local Plan T11 – Facilities for Pedestrians & Cyclists	No	Significant	
Local Plan SC1 – Adequate Servicing of Infrastructure	No	Significant	
Local Plan Policy H7	Yes	None	It is presumed that MSDC agree this policy is not compliant with provisions of NPPF (it does is not referenced in the reasons for refusal)

Core Strategy CS1: Settlement Hierarchy	Yes	None	MSDC identify this policy as not compliant with provisions of NPPF
Core Strategy CS2: Development in the Countryside	Yes	None	MSDC identify this policy as not compliant with provisions of NPPF
Core Strategy CS5: Mid Suffolk's Environment	Yes	None	MSDC identify this policy as not compliant with provisions of NPPF
Core Strategy CS6: Services and Infrastructure	No	Significant	
Core Strategy CS7: Brownfield Target	Yes	Little	<p>Whilst the NPPF requires LPAs to promote the effective re-use of brownfield land (para 118), it does not mandate a specific target for percentage of new homes on such sites (whereas policy CS7 does). The NPPF is clear that <i>the preparation and review of all policies should be underpinned by relevant and up-to-date evidence</i> (para 31). The supporting text to policy CS7 is clear that the 50% mandated in the policy is '<i>a challenging target</i>' (para 3.5), but one which is considered achievable over the period across an initial ten-year period (2006-2016). The text is clear that achieving the target in this period realised implementation of existing consents and the realisation of several major housing projects (some of which have not come forward). The test is more circumspect when considering how achievable the target is beyond this initial ten-year period (i.e. the period we are in now), stating <i>Whether this target could be maintained beyond 10 years depends on other sites becoming redundant and available for redevelopment</i> (para 3.5). This reflects the largely rural nature of the district which, consequently, does not have a large number of significant brownfield sites.</p> <p>There is no evidence that this target has been reassessed to reflect the conditions following this initial ten-year period and, mindful of the requirement at para 31 for policies to be evidence-based, and guidance at para 33 which requires that <i>Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary</i>, it cannot be the case that policy CS7 is considered up-to-date.</p>
Core Strategy CS8: Provision and	Yes	None	MSDC identify this policy as not compliant with provisions of NPPF

Distribution of Housing:			
Core Strategy Focussed Review (CSFR) FC1: Presumption in favour of sustainable development	No	Significant	Note that the wording of C1 refers to ' <i>relevant policies are out-of-date</i> ', whereas para 11 NPPF (2019) identifies ' <i>the policies which are most important for determining the application are out-of-date</i> '
CSFR FC1.1: Mid Suffolk Approach to Delivering Sustainable Development	No	Significant	
CSFR FC02 Provision and Distribution of housing	Yes	None	Policy is recognised by MSDC as being out of date (conflict with para 73)

Appendix 3: Correspondence between Appellant's Consulting Engineer and Anglian Water

From: no-reply-InFlow@anglianwater.co.uk <no-reply-InFlow@anglianwater.co.uk>
Sent: 18 April 2019 15:18
To: Plandescil - Matthew Hare <matthew@plandescil.co.uk>
Subject: Response for the FurtherQuestion



Dear Matthew Hare,

Please find attached our response to your further question Used Water .

Good Morning We had our application refused (copy attached) one of issues is over the foul drainage. Are we able to provide additional mitigation on our site to help alleviate this? i.e. over size the sewer, Knife Valve? Is there anything you can advise to help alleviate the residents concerns?
Kind Regards Matthew Hare

Anglian Water Response

Hi Matthew, Thank you for your email. Anglian Water is not a statutory consultee, we can make recommendations to the LPA and suggest the implementation of drainage conditions, however the final decision lays with the LPA. In this case, we have given a positive connection direct to FRENTP Pumping Station in Post Mill Lane, at National Grid Reference (NGR) TM2564577390. Providing this strategy is adhered to, we would not recommend a foul water condition at planning application stage.

Please do not hesitate to contact the Pre-Development Team on 0345 606 6087 option 1 or via the portal should you have any questions related to our response.