

Mid Suffolk District Council's Final Rebuttal to the Appellant's Further Statement of Case [FINAL COMMENTS]

Appeal reference: APP/W3520/W/19/3227159

Mid Suffolk District Council reference: 1648/17

Appeal under Section 78 of the Town and Country Planning Act 1990 in respect of:

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

Site address: Land at Post Mill Lane, Fressingfield, IP21 5BL

Appeal by: Fergus Bootman of La Ronde Wright Ltd.

on behalf of: Peter Davidson [C.E.D. Farms Ltd.]

July 2019

TOWN and COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE)
(ENGLAND) REGULATIONS 2009

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Rebuttal to Appellant's Further Statement of Case [Final Comments]

Mid Suffolk District Council

1.0 Introduction

1.1 This Rebuttal Statement in respect of the Appellant's Further Statement of Case [Final Comments] has been prepared by Vincent Pearce, BA[Hons] MRTPI, Principal Planning Officer for Mid Suffolk District Council.

1.1 It relates to the Appellant's Final Comment reference *LRW Ref 20190710.1*, dated 9 July 2019.

2.0 The Council's Position

2.1 The Council will address only those points raised by the appellant agent in his Final Comments Document where it feels the appellants agent has placed an incorrect interpretation on matters or where the Council continues to disagree with conclusions being made. The Council continues to rely on its Initial Statement of Case and its Rebuttal to the Claim for Costs and will not seek to arbitrarily repeat its case.

2.2 Where appropriate this Statement will refer to specific sections or paragraphs of the appellants agents Final Comments document.

3.0 The Rebuttal

- Paragraph 2.1.4 [section 2.1]

The appellants agent has unfortunately misinterpreted the professional opinion of the heritage officer when he says he does not object to the "proposal"

What he actually says is:

Although the contribution of the farmland to the setting of the listed building is modest, and the importance of setting to the building's overall heritage significance is also modest, the impact of substituting modern suburban housing for undeveloped farmland is considerable, particularly as it would sever the building's last physical connection with the rural surroundings, and the harm should be rated between low and medium.

It is noted that the scheme includes an area of public open space. We would recommend considering layouts which might avoid or reduce harm to the setting of the listed building by locating some or all of the open space to its rear.

- The appellants agent is wrong to ascribe a lack of objection to this comment. If the heritage officer was of the opinion that no harm will arise to the heritage asset he would have said so. Therefore in the context of NPPF paragraph 196 it is absolutely clear that he does have concern and that he views this harm as 'less than substantial harm' [clearly not paragraph 195 because the harm is not total loss of the asset or complete destruction of its setting]. ie It should be refused unless the public benefits that arise outweigh the harm to the heritage asset. Helpfully the heritage officer described the extent of harm using the BMSDC method as low to moderate
- The Council's Statement of Case provides further explanation but for the avoidance of doubt the following is provided:

The Appellant Statement, when addressing the heritage reason for refusal, appears to overlook paragraphs 193 and 194 of the NPPF, which bear on all decisions where harm to heritage assets is identified. The balancing exercise is not a simple one, but in accordance with the statutory duty, should afford great weight to the conservation of the heritage asset, ie. avoiding harm, whatever the level of that harm. Any harm to a designated asset requires 'clear and convincing justification'.

In a context in which an illustrative scheme is put forward, selected from many notional alternative schemes, the statutory presumption in favour of preservation would indicate that the only potentially justifiable option would be the least harmful one (on the principle of the Forge Field ruling). These are the relevant tests set by legislation, case law, and policy. Contrary to the Statement's blithe assertions at 9.8.6, 9.8.8, 9.9.3 being near the centre of a rural village in East Anglia does not mean these statutory duties and national policies can be set aside. There are plenty of instances where villages cope with expansion and protection of heritage together, as the NPPF envisages.

At 9.11 the Statement addresses the reason for refusal on grounds of harm to the setting of the Conservation Area. As a matter of fact the refusal notice does not identify harm to the Conservation Area as a reason for refusal.

The Statement addresses harmful impact at 9.8.5 but unhelpfully and incorrectly describes it as inevitable, and as capable of being limited by boundary planting and by detailed layout of units adjacent to the listed building. It is clear that this claim rests on an unsound assessment of the contribution of setting to the listed building's significance, and of the proposal's impact. It has been established in numerous court cases that a narrow assessment of setting, on purely visual criteria, is inadequate. Historic England's guidance on setting

refers to numerous non-visual criteria, among which the character of the land is particularly pertinent to the present case.

- Section 2.2

The Council has adequately addressed this in its Rebuttal to the Claim for Costs and deals with the nature of the foul; water issues in Fressingfield in its SoC. [Statement of Case]

- Section 3.

The Council notes the appellants opinion in respect of the appropriateness of the 'Wavendon Case' to the appeal at hand. It is his opinion that the appropriate test is that provided by NPPF paragraph 11. This is a matter of judgement for the Inspector.

However the Inspector will have noted that the decision of the Council to refuse the application was taken before the Wavendon Case had been determined and reported. It was therefore determined within the context of paragraph 11 and the Council has made it clear in its Statement of Case [and reasons for refusal] that the tests within paragraph 11 (d) (i) and (ii) are engaged and the application fails.

- The Council continues to reiterate that the relevant policies described in the Council's SoC in respect of highways and heritage remain up to date and represent policies that must be given significant weight.
- If Wavendon reinforces the Council's position then that is welcome but the Council's case does not rest on Wavendon as the appellant knows.
- Section 4.1 Issue 1 Housing Land Supply and Settlement Boundary
- The Inspector is respectfully reminded that the appellants agent has chosen not to produce his own assessment of the Council's 5YHLS position to contradict the Council's own Statement that it can and has demonstrated that it has a 5YHLS.
- The Inspector will also have noted that the emerging Fressingfield Neighbourhood Plan does not allocate the appeal site for residential development.

- The Council has recognised that the appeal site is adjacent to the defined settlement boundary for Fressingfield and acknowledges the relevance of paragraph 78 and that policies should recognise opportunities to for villages to grow and thrive, especially where this will support local services. However it remains mindful that paragraph 78 also refers to the promotion of sustainable development.
- The Council does not believe this development is sustainable. Its very juxtaposition to New Street and its reliance on pedestrian movement along this pedestrian unfriendly route means it is unsustainable as there is no physical potential to retro-fit a footway to improve safety.
- It is the sites very juxtaposition to the settlement boundary that will result in less than substantial harm to Ladymeade Cottage. It will destroy the historic connection between Ladymeade Cottage and the rural landscape beyond. These are critical material considerations that in the opinion of the Council must be afforded significant weight.
- Section 4.2 Issue 2 Policy Weight

Previously dealt with

- Section 4.3 Issue 3 & Section 4.4 Issue 4
Impact on Ladymeade
Impact on Highway safety

The District Council and County Councils position in respect of these has been fully laid out in relevant SoC, Rebuttal to Claim for Costs and This Rebuttal Statement of Case.

- Section 4.5 Issue 5

The District Council has consistently reported that Anglian Water [AW] as the relevant foul water [sewage] authority has raised no objection.

However, herein 'lies the rub'. Their response is based on a false assumption. They recognise that but say the problems in Fressingfield are not of their making and so they are not required to acknowledge it or contribute towards its resolution.

To reiterate:

AW define the foul system in Fressingfield as a closed system. That is to say that it only carries foul water. That is how it was designed when first installed some 100 years ago. AW recognise that ever since its installation untold numbers of connections have been made to it from predominantly residential properties and that in reality it is effectively now a 'combined' system carrying both foul and surface water.

- In today's regime AW would not allow surface water to be connected to a foul system [except as a last resort] as this would reduce capacity and potentially impair the operation of the system. [AW will however not categorically rule out a connection of last resort]
- However such is the number of such historic surface water connections and such is the nature of the foul pipe that heavy rainfall events now push the foul system beyond its capacity. The only escape, if back surge of effluent into domestic properties is to be avoided, is to allow manholes to pop [by not sealing them] and allow the diluted raw sewage to escape into the street, the Beck and gardens.
- These events are recorded and local people have provided extensive evidence of these events and their frequency.
- These events are expected to increase with additional sewage being put into the system from new developments and with the effects of global warming increasing the likelihood of extreme weather events.
- AW acknowledge this to be the case but comment that they have no statutory duty to resolve the problems in Fressingfield even if exacerbated by new development as they do not have a budget for such work. They are only required to intervene to undertake remedial works to the system if and when the system backs up into domestic properties thereby depositing raw sewage directly into peoples houses. This is currently not the case in Fressingfield because raw sewage spewing into the road during high rainfall events depressurises the system.
- What ever the rights and wrongs of AW maintaining the system is theoretically a 'closed' system just for foul water the practical result whereby raw sewage stands in roads, the Beck and gardens cannot be acceptable in public health terms and in terms of sustainability. It is accepted that new development will most likely now have a separate surface water system as AW will only accept

flow into the foul system as a 'last resort'. However foul drainage [sewage] will; be connected to the existing foul system.

- This means that whilst surface water from this development is unlikely to add to existing capacity issues in the foul system in Fressingfield it will be adding more effluent. Therefore when the system fails in heavy rain as it does and will there will be more sewage in the system to spoil out when its bursts from the system via popped manholes. The more development, the more sewage, the more public health and the environment will be jeopardised.
- AW will not object to this or any other proposal in Fressingfield on the grounds of worsening the known sewage flooding problem. They will not in principle move from their position that the system in Fressingfield is closed and has adequate capacity. They recognise that the fact that raw sewage can escape into the street. The Beck and gardens prevents back surge into homes and therefore means they do not have to fund remedial works to remove the surface water ingress [and they have no such fund].
- It therefore seems as if parts of Fressingfield are expected to endure occasional flooding with diluted raw sewage as the alternative is worse. This 'medieval' scenario is surely unacceptable. Knowingly worsening it by allowing additional development without resolving the problems of the 'combined' system cannot be said to be supporting sustainable development.
- The appellant relies on AW's position for support. The people of Fressingfield affected by the problems of diluted raw sewage spilling into the streets are incredulous that the authorities can all look the other way and pretend that the flooding:
 - doesn't happen,
 - has limited geographic impact
 - doesn't last that long
 - only results in faeces, toilet paper and assorted sanitary and toilet products lying in the street until washed away or until an emergency team is dispatched to clear it up
 - isn't bad enough to warrant fixing because people carpets, living rooms and homes aren't yet being soiled with raw sewage,
 - events won't continue to happen and at a more frequent rate
 - won't be worsened as a result of new development leading to thicker concentrations of raw sewage when it spills into the street, the Beck and gardens
- In terms of other arguments made in the appellants rebuttal Statement of Case these have all been addressed by the Council in submitted documents, including this one.

- To reiterate it is the Council's case that this development is not sustainable.

It will result in unacceptable and harm to highway safety that is not capable of appropriate mitigation

It will result in less than substantial harm [paragraph 196 NPPF 209 definition] to the setting of Ladymeade Cottage without producing sufficient public benefits to offset that harm

It will worsen a known flooding problem in the village

- **The Inspector is once again respectfully asked to dismiss the appeal**