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## Appeal Decision

Site visit made on 6 August 2019

**by Rajeevan Satheesan BSc PGCert MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25<sup>th</sup> September 2019

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**Appeal Ref: APP/W3520/W/19/3227159**

**Land off Postmill Lane, Fressingfield, Suffolk**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Peter Davidson on behalf of C.E. Davidson Ltd against the decision of Mid Suffolk District Council.
  - The application Ref 1648/17, dated 25 April 2017, was refused by notice dated 22 November 2018.
  - The development proposed is for new residential development and associated new roads, infrastructure and open space.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Peter Davidson on behalf of C.E. Davidson Ltd against Mid Suffolk District Council. This application will be the subject of a separate Decision.

### Procedural Matters

3. The original application was made in outline with all matters reserved. I have had regard to the site location plan (Drawing No 3325-TD-LW-XX-DRG-AR-1004), and proposed site layout plan (Drawing No 3325-TD-LW-XX-DRG-AR - 1003) but have regarded all elements of these drawings as indicative only.
4. Reference has been made to the emerging Babergh and Mid Suffolk Joint Local Plan and the Draft Fressingfield Neighbourhood Plan. However, neither the emerging joint Local Plan nor the Neighbourhood Plan have reached a sufficiently advanced stage in their production for me to attach weight to them for the purposes of the determination of this appeal. I shall therefore make no further reference to either of the emerging plans.
5. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as the appellant was not present when I arrived at the site during the pre-arranged period and it was possible to see all that was required from the frontage of the site and from the roads in the vicinity of the site, in particular from Postmill Lane, New Street, Jubilee Corner and Low Road.
6. A s106 agreement has been submitted by the appellant, which is signed by both main parties. The agreement secures the delivery of affordable housing

and open space. I have taken the provisions of the s106 agreement into account in this decision.

7. For clarification, the Inspector has not considered any documents which were received outside of the timescales identified in the start letter of this appeal.

### **Main Issues**

8. The main issues are:

- whether the site would be an appropriate location for residential development having regard to the development plan and national planning policies and the character and appearance of the area;
- the effect of the proposed development on the setting of the Grade II listed Ladymeade.
- the effect of the proposed development on highway and pedestrian safety in the vicinity of the site; and
- whether the proposed development would exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall.

### **Reasons**

#### *Suitability of the location*

9. The appeal site comprises two adjoining rectangular fields. It is understood that the site which is currently vacant, was last in use for agriculture<sup>1</sup>. The site lies outside the settlement boundary of Fressingfield in the Mid Suffolk Local Plan, 1998 (LP), and therefore in planning policy terms is designated as 'countryside'. The site is bounded to the north and east by agricultural land<sup>1</sup>, with views of the open countryside beyond. The site is also bound to the south and west by modern housing development.
10. Fressingfield is designated as a 'Primary Village' by Policy CS1 of the Mid Suffolk Core Strategy 2008 (CS). CS Policy CS1 seeks to direct new development to towns and key services centres, but also permits some provision for meeting local housing needs in primary villages, in particular for affordable housing. CS Policy CS2 indicates that only development related to countryside uses should be allowed in the countryside which excludes housing for people not involved in agriculture. The justification for policy CS2 outlines that such exceptions might be for affordable housing where a local need is identified.
11. The amount of weight to be given to development plan policies is a matter of planning judgement for the decision maker. Being out of date does not mean that a policy carries no weight. CS Policies CS1 and CS2 takes a more restrictive approach to development in the countryside compared to the National Planning Policy Framework (the Framework). Nevertheless, these policies have some resonance with the Framework in terms of seeking to protect the character and appearance of the countryside and so still carries limited weight.

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<sup>1</sup> Taken from the Appellant's Statement of Case.

12. No substantive evidence has been submitted to demonstrate that the proposal would comply with any of the exceptions outlined within the CS. Nor is the development necessary for the purposes of agricultural or other activities appropriate to the countryside listed under CS Policy CS2. Therefore, the principle of the development in this location would be contrary to policies CS1 and CS2 of the CS.
13. Paragraph 78 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. The appellant contends that the site is highly deliverable and would be within reasonable access to services and facilities within the village, including Fressingfield Primary School. Therefore, the development would contribute towards the vitality of rural communities. I give these benefits some weight.
14. Turning to the character and appearance of the area, the site is broadly separated into two separate fields. The first section includes the area located around the existing road of Post Mill Lane<sup>2</sup>. The second part of the appeal sites relates to the smaller parcel of land adjacent to this field and to the rear of the Grade II listed Ladymeade Cottage<sup>3</sup>. The first part of the appeal site which fronts Post Mill Lane and is adjacent to the existing modern housing development appears more like open space associated with the existing housing development. As such its contribution to the open countryside is limited. Therefore, despite the site being outside of the settlement boundary for the village, I find that the principle of the development on this part of the site would not harm the character and appearance of the countryside.
15. However, the second part of the appeal site to the rear of existing properties on New Street, including the Grade II listed Ladymeade acts as a break in built development. Unlike the first part of the appeal site, the existing road of Post Mill Lane, does not surround this existing field. This part of the appeal site has a distinctly more natural and rural character surrounded by dense vegetation and mature trees which makes a positive contribution to the open countryside at the edge of the village. The proposed illustrative plan shows a new access driveway and the introduction of up to ten dwellings into this part of the site. The proposed development, regardless of access, scale, appearance, layout and landscaping would introduce a significant amount of built form and hard surfacing into this area and reduce the undeveloped qualities of the site which is currently laid to grass with dense vegetation and trees. As a consequence, the development would erode the contribution that this part of the site makes to the open countryside and would harm the character and appearance of the countryside.
16. For the reasons set out above, whilst the proposed development would contribute towards the vitality of rural communities, I conclude that the site is not a suitable location for new housing, having regard to the development plan and national planning policies, and the character and appearance of the area. In this respect the proposal would be in conflict with the aims of CS Policies CS1 and CS2, outlined above. It would also not meet the aims of paragraph 170 of the Framework, in terms of recognising the intrinsic character and

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<sup>2</sup> As shown in figure 2, highlighted in yellow on the aerial photograph in the Council's Statement of Case.

<sup>3</sup> As shown in figure 2, highlighted in red in aerial photograph in the Council's Statement of Case

beauty of the countryside. Whilst the submitted drawings are indicative only, there is no evidence before me which leads me to consider that an alternative layout would satisfactorily overcome the harm identified.

*Setting of the Grade II listed Ladymeade*

17. With regards to the effect on designated heritage assets, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
18. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 194 of the Framework states 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. The Framework defines the setting of a heritage asset in terms of the surroundings in which it is experienced.
19. Paragraph 196 of the Framework confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
20. The heritage asset relates to Ladymeade, which is a late C16 two storey Grade II Listed property, now divided into two cottages. Part of the appeal site is located directly to the rear of Ladymeade. The significance of the building in heritage terms mainly stems from its architectural and historic interest. The building is timber framed and plastered, with the facade lined to imitate ashlar. The steeply pitched pantiled roof is glazed with black tiles. The front of the property contains C18 and C19 casement windows and a C19 4 panel door (with the upper panels glazed), within a mid C20 enclosed porch.
21. The Council's Heritage and Design Officer explains that Ladymeade was once an isolate rural dwelling and is likely to have been a farmhouse benefitting from a spacious setting adjoining open farm land. Therefore, the appeal site's open and verdant setting helps illustrate the listed buildings historical use as a farmhouse. Similarly, given its proximity to Ladymeade, the undeveloped nature of the appeal site, surrounded by mature vegetation makes an important contribution to the setting and significance of the listed building.
22. The indicative site layout plan illustrates that the area to the rear of Ladymeade, would accommodate a new access driveway into the field together with plots 5, 6, 7, 8, 9 and 10 with associated of-street parking spaces. Irrespective of the access, design, scale, layout and landscaping, the proposed development would erode the openness of the site, altering the listed building's immediate open and verdant setting. As such, there would be a negative effect on the setting of the listed building and harm to its significance. It would also not be sympathetic to local character and history, including the surrounding built environment and landscape setting, as advocated by the Framework.

23. The appellant contends that the effect on the listed building could be mitigated by the retention of existing boundary vegetation. It is further stated that the careful design and siting of new dwellings could be considered at reserved matters stage. However, I do not consider that the retention of the existing boundary treatment would mitigate against the harm to the setting of the listed building outlined above. Much of the vegetation is deciduous, and therefore this would not provide a permanent throughout the year. Furthermore, there is no evidence before me to allow me to consider that the harm identified could be overcome at the reserved matters stage.
24. The harm to the significance of listed building would be less than substantial. Paragraph 196 of the Framework requires such harm to be weighed against the public benefits of the proposal. The proposed development would provide benefits in terms of up to 24 new houses. Eight of these would be affordable which would be secured by s106 agreement. This would provide a mix of dwellings in terms of size and tenure, thereby making a moderate contribution towards boosting the supply of housing, including affordable housing, in the area. The development would provide economic benefits in the short term through the construction period in addition to longer term benefits in terms of increased local spending in the village once occupied and CIL contributions. However, the harms identified above to the setting of the listed building would not be outweighed by the benefits.
25. Concluding on this main issue, the proposed development would not preserve the setting of Ladymeade and would result in harm to the significance of this listed building. Therefore, it would not accord with saved Policy HB1 of the Mid Suffolk Local Plan, 1998 (LP), which states that the Council places a high priority on protecting the character and appearance of all buildings of architectural or historic interest, and that attention will be given to protecting the settings of listed buildings. Whilst this policy is of some age, it is broadly consistent with the Framework policies on the conservation of heritage assets, including listed buildings, and therefore I attach significant weight to it.
26. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve the setting of the listed building as required by Section 66(1) of the Act, but instead would be harmful. This carries considerable weight and importance to my decision.

#### *Highway and pedestrian safety*

27. Both main parties have submitted their views on the effects of the proposal on Highway and pedestrian safety within the village. This includes a Transport Report and the Pedestrian Route Assessment<sup>4</sup>, in support of the appeal. From my examination of the detailed material submitted, I agree with the appellant that the proposal would not have a harmful effect on highway and pedestrian safety within the village.
28. Whilst I acknowledge concerns from the Council and local residents on this matter, the Council accepts that there is a low incidence of reported accidents in this area. Furthermore, there is little substantive evidence before me to

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<sup>4</sup> Both reports prepared by Royal Haskoning DHV.

demonstrate that the proposal would result in pedestrian and highway safety concerns.

29. As such I find no conflict against Saved Policy T10 of the LP and the Framework which together requires consideration of, amongst other things, safe access to and egress from a site, the suitability of existing roads giving access to the development, including the safe and free flow of traffic and pedestrian safety, and whether the needs of pedestrians and cyclists have been met. Whilst the LP is of some age, this policy is generally consistent with the Framework policies on promoting sustainable transport, and therefore I give it considerable weight in my decision.

#### *Flooding and pollution*

30. The Council and residents have raised objections to the proposal stating that the proposed development would exacerbate the existing flooding and pollution problem in the village as a result of adding further foul water to the existing system which already floods during periods of heavy rainfall. However, Anglian Water, raises no objections to the proposal subject to a condition requiring compliance with the agreed drainage strategy. This response from the relevant drainage authority confirms that the development would not cause harm to the capacity of the sewer system, and I have no reason to take a different view from their professional advice.
31. As such, I find that the proposed development would not exacerbate the existing flooding and pollution problem in the village during periods of heavy rainfall. In this respect, the proposal would not conflict with paragraphs 163 and 180 of the Framework which amongst other things, seeks to ensure that flood risk is not increased elsewhere and 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.

#### *Other matters*

32. The site is situated within approximately 50m of Mount Pleasanton on New Street which is a Grade II Listed Building and also approximately 120m from Fressingfield Conservation Area<sup>5</sup>. However, given distance away from these respective heritage assets, I consider that the proposal would neither harm the setting of the Fressingfield Conservation Area nor the setting of the Grade II listed Mount Pleasanton. In these respects, there would be no conflict with Policies HB1 and HB8 of the LP, which amongst other things, seeks to protect the character and appearance of the area and buildings of architectural or historic interest and to protect the character and appearance of conservation areas.
33. The appellant has also referred to a number of other decisions where permission was granted for residential development. However, whilst there are some general similarities, site-specific circumstances such as the character of the area, and the effect on nearby listed buildings will vary in each case. Furthermore, I do not have the full circumstances of those cases and cannot be certain that they offer a direct comparison to the appeal proposal before me.

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<sup>5</sup> Distances for both heritage assets taken from the Appellant's Statement of Case.



Therefore, I have determined the appeal based on the site specific circumstances, the relevant local and national policies and on its merits.

34. I appreciate the appellant may have experienced delays in waiting for a decision from the Council but the way in which the Council handled the application is not a matter for me to consider in the context of an appeal under section 78.

### **Planning balance and conclusion**

35. Although I have found no harm in relation to pedestrian/highway safety and flooding/pollution, I have found that the site would not provide an appropriate location for residential development having regard to the development plan and national planning policies and the character and appearance of the area. I have also found the proposal would harm the setting of the Grade II listed Ladymeade, and that the harm, albeit less than substantial, would not be outweighed by public benefits. This carries considerable weight and importance to my decision.
36. Applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the Framework, indicate otherwise. I recognise that there are policies in the development plan and the Framework that are supportive of the provision of additional housing. However, I have identified that the proposal would be in conflict with the development plan as a whole.
37. There is no dispute that the Council can demonstrate a 5 year housing land supply. However, the appellant considers that the 'basket' of policies most important for determining the application are out of date. However, even if this is the case, the 'tilted balance' within the Framework at Paragraph 11d)ii would not apply because the application of policies within the Framework that protect heritage assets, as set out within Paragraph 11d)i and Footnote 6 of the Framework, provide clear reasons for refusing the proposal. A presumption in favour of sustainable development does not apply.
38. There are no other material considerations of sufficient weight or importance to indicate that the decision should be taken otherwise than in accordance with the development plan.
39. Accordingly, for the reasons given above, and considering all matters raised, I conclude that the appeal should be dismissed.

*R. Satheesan*

INSPECTOR