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# Appeal Decision

Site visit made on 29 September 2021

**By Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2021**

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**Appeal Ref: APP/W3520/W/21/3266951**

**Land off Post Mill Lane, Fressingfield, Easting-625628 Northing-277396**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by C.E. Davidson Ltd against Mid Suffolk District Council.
  - The application Ref DC/19/05956 is dated 25 October 2019.
  - The development proposed is a new residential development of up to 18 homes 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 C.E. Davidson Ltd against Mid Suffolk District Council (the Council). This application is the subject of a separate Decision.

## Procedural Matters

3. As only the easting and northing co-ordinates of the appeal site were used for the address of the appeal site on the planning application form, for clarity I have also included the descriptive address used in other documents submitted by both main parties.
4. The planning application is for outline planning permission with all matters reserved. I have had regard to the site location plan (Drawing No 3325-TD-LW-XX-DRG-AR-1004-A), and proposed site layout plan (Drawing No 3325-TD-LW-XX-DRG-AR-1003-A), but have regarded all elements of these drawings as indicative only.
5. Although the application was submitted in outline, it was accompanied by an alternative layout plan and a raft of supporting technical documentation in relation to highways, heritage, ecology, and flood risk and drainage. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with, either by condition or planning obligation.
6. Reference has been made to the emerging Babergh and Mid Suffolk Joint Local Plan. However, this emerging joint Local Plan has not reached a sufficiently

advanced stage in its production for me to attach weight to it for the purpose of my determination of this appeal.

7. A s106 agreement<sup>1</sup> signed by both main parties has been submitted by the appellant. This secures the delivery of affordable housing, the open space and wildlife area and transport contributions. I have taken the provisions of the s106 agreement into account in this decision.

### **Main Issue**

8. Based on the submitted policies, my site visit and the representations from the appellant, consultees and local residents, I find that the main issue is whether the proposal would provide a sustainable form of development in accordance with national and local policy, having particular regard to the settlement strategy of the development plan.

### **Reasons**

9. The appeal site is located on the western edge of the village of Fressingfield and is an L-shaped plot of land comprising a large rectangle of land on the north side of Post Mill Lane, with an existing pumping station, along with a smaller rectangle of land on the south side of the lane. The appeal site is bounded to the north by agricultural land and the northern and eastern boundaries are formed by mature hedgerows, with views of the open countryside beyond.
10. The proposal is for outline planning permission for the erection of up to 18 dwellings, with access from Post Mill Lane, 6 of these being proposed as affordable units. The proposal would result in the existing dwellings on the lane and the proposed dwellings forming a full cul-de-sac form of development. It is intended that an area of the appeal site would be laid out as a publicly accessible open space secured by a s.106 agreement.
11. The appeal site is outside of the settlement boundary for the village and the principle of the development on the site would introduce built form along with hard surfacing in substantial quantities. This would result in a reduction in the undeveloped and open qualities of the site which is currently laid to grass. As a consequence, the development would erode the contribution that this part of the site makes to the open countryside and would appear as an encroachment on its rural character and would harm the character and appearance of the countryside.
12. Whilst the Council is meeting its housing delivery targets, these are not capped and windfall sites that provide for additional dwellings do collectively make an important contribution to housing stock. However, the benefit of 18 dwellings is a relatively modest contribution to the Council's overall housing stock within this context and is, therefore, a matter of only moderate weight in favour of the appeal scheme.
13. The appellants submission sets out that the proposal is highly deliverable, and I find that the construction of the proposal could potentially lead to temporary construction jobs and the occupancy of the dwelling could potentially lead to spending in shops and other local services. The proposed development would also be within reasonable access to the somewhat limited services and facilities within the village, including Fressingfield Primary School. Therefore, the development would contribute towards the vitality of rural communities. As Paragraph 78 of the

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<sup>1</sup> Section 106 of the Town and Country Planning Act 1990 (TCPA 1990)

Framework states that housing should be located where it will enhance or maintain the vitality of rural communities, I give these benefits some weight.

14. The National Planning Policy Framework (2021) (the Framework) sets out a presumption in favour of sustainable development and, in this regard, it is a key consideration as to whether the policies which are most important for determining the application are out-of-date. It is, therefore, necessary for me to first identify which are the policies most important for the decision, then to examine each policy to see if it is out-of-date and finally to assess the entire 'basket' of these policies to reach a conclusion on whether, taken overall, they are out-of-date for the purposes of the decision.
15. The development plan for the purposes of this appeal comprises the Mid Suffolk Local Development Framework Core Strategy Development Plan Document (2008) (the CS), the Mid Suffolk Local Plan (1998) (the LP) and the Fressingfield Neighbourhood Development Plan (2020) (The FNDP).
16. The appeal site is situated on the edge of Fressingfield, outside of the defined boundaries of any developed area and is defined as countryside by Policy CS1 of the CS. Policy CS2 of the CS also restricts development to defined categories in accordance with other CS policies. The appeal proposal is not for any of the development types listed in these policies. Policy H7 of the LP repeats the strict control over new housing in the countryside and directs development to existing settlements. In so far as they provide a spatial strategy for the distribution of development within the Council area, these policies are consistent with the Framework, especially Paragraph 119. However, the Framework does set out a less restrictive approach to housing outside of defined settlements, and in this regard these policies are not in conformity with the Framework.
17. Policy FRES 1 of the FNDP, seeks to provide for housing sites that are an appropriate size for the village and in keeping with its character, and to permit proposals for new residential development outside of the defined settlement boundary, other than development in accordance with the exceptions in the National Planning Policy Framework (the Framework), where it can satisfactorily be demonstrated that there is an identified local need for the proposal. The policy requires such a proposal for housing developments to be supported by a housing needs assessment and to show that it cannot be satisfactorily located within the Settlement Boundary.
18. In terms of this decision, I consider that Policy FRES 1 of the FNDP is, therefore, in full conformity with the Framework and is the most important policy of the 'basket' of important policies and sets the key criteria by which compliance is to be assessed. Further, the adoption of this policy has the result of making Policy CS1 and CS2 of the CS and Policy H7 of the LP relevant to local circumstances and context, irrespective of whether parts of these policies are out of date in considering housing development proposals elsewhere in the Council area.
19. On this basis, I find that the 'basket' of policies, when considered overall, is not out-of-date. The tilted balance outlined by Paragraph 11d) ii of the Framework is, therefore, not engaged in this instance and the proposal must be assessed for its compliance with the development plan.
20. The appeal site is not allocated for development in the development plan, is not within the defined settlement boundary, would not result in isolated homes in the countryside, where the application of paragraph 80 of the Framework would be

relevant, and the appellant has not provided a housing needs assessment in support of their proposal. The proposal is, therefore, in significant conflict with the development plan.

21. A previous appeal for a larger development, on a more extensive site than just the site that is the subject of this appeal, was dismissed in 2019. The decision to dismiss was on the basis of the planning policy context at that time, as they related to that particular proposal. This was on the grounds that the 'tilted balance' within the Framework at Paragraph 11d) ii did not need to be considered for the purposes of that decision, because the application of policies within the Framework that protect heritage assets, as set out within Paragraph 11) i, along with the relevant Footnote, provided clear reasons for refusing the proposal. The inspector in their decision did, however, indicate that they considered that the large rectangle of land, which forms the major part of the appeal site that is the subject of this appeal, makes a minimal contribution to the open countryside. I have, however, found that the proposed development would harm the character and appearance of the countryside for the reasons given above. I have, therefore, only afforded this appeal decision, which was dismissed on the basis of harm to designated heritage assets and relates to a larger site than that of this appeal proposal, and which was determined prior to the making of the FNDP, moderate weight in my considerations.

### **Other Matters**

22. The appeal site has a very minimal visual relationship with Fressingfield Conservation Area and the Grade II listed houses at Mount Pleasant and Ladymeade Cottage. These are heritage assets to which I have a statutory duty under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. I must have special regard to preserving the setting of a listed building and pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Both the main parties have concluded that there would be no harm to the significance of designated heritage assets. Although there is a minimal visual relationship between the appeal site and the identified designated heritage assets, given the distances involved, any adverse effect on their setting would be very minor, therefore, I also find no harm in this regard.
23. Concerns have been raised by interested parties in relation to the effect of the proposal on highway safety. The Council has indicated that there is a low incidence of road traffic collisions in the local area, which it characterises as 'rare', and the County Council as Highway Authority do not object to the proposed development. I see no reason to demur from this conclusion and find that the proposal would not cause undue harm to road safety in the local area. It is noted that the appellant has proposed by the applicant to minimise existing pedestrian related risks on local streets and these form part of the s.106 agreement detailed above.
24. Concerns have also been raised by interested parties with regard to Flood Risk and Drainage. Whilst it is acknowledged that there is a flooding and pollution issue in parts of the village during periods of heavy rain, the occurrence and severity of which is projected to increase, there is no information before me to suggest that the proposal, which is not in proximity to the known areas of flooding, would result in any worsening of this situation.

25. Anglian Water, the responsible authority in this regard, have not objected to the proposal on the basis that there is capacity in the network to deal with the flows associated with the proposed development. It is noted that it is proposed that the surface water run off from the development would be attenuated and would not be directed to the foul water network. The effect of the proposal would, therefore, be neutral in this regard. For these reasons and with regard to Paragraph 188, which states that planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes emissions (where these are subject to separate pollution control regimes) and should assume that these regimes will operate effectively, I do not find this forms a reason for refusing planning permission.
26. The appellant has proposed the creation of a wildlife area on land adjacent to the appeal site, which formed part of the site that was the subject of the earlier appeal detailed above. Although this area would result in a net gain to biodiversity and is secured through the provisions of the s.106 it is not considered necessary to make the development acceptable in planning terms.

### **Planning Balance and Conclusion**

27. Set against any potential benefits would be the harm to the settlement strategy. The FNDP is a relatively recently adopted plan, prepared in accordance with the NPPF, and has been found sound at examination. Policy FRES1 of the FNDP sets out how the identified requirement of around 60 dwellings would be accommodated and how development proposals outside of the defined settlement boundary will be considered and does not preclude such proposals.
28. The amount of housing currently committed is in line with the target provision for Fressingfield, although the appellant questions the deliverability of some of the sites within the timescales anticipated. Whilst the appellant has suggested that the proposal would compensate for the potential failure of such sites coming forward, I have been provided with very limited information in this regard and it is agreed by both parties that the Council is meeting its housing delivery targets as a whole.
29. Further, the appeal proposal would significantly increase the overall number of units set out by this policy. This would affect the thrust of the spatial strategy for the village, which is clearly focused on moderate planned expansion envisaged by the CS for these settlements, and would, when considered alongside the committed housing, increase the size of Fressingfield, which is by definition a place with limited services. This would contribute to an unsustainable pattern of development.
30. For the reasons given above I consider that the appeal proposal's benefits, either singly or cumulatively, would not provide material considerations that would overcome the conflict with the development plan, taken as a whole. A decision other than in accordance with the plan would not be justified and I conclude that the appeal should be dismissed.

*Victor Callister*

INSPECTOR