

STATEMENT OF CASE Mid Suffolk District Council

Appeal reference: APP/W3520/W/23/3317494

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

‘Application Outline Planning Application (some matters reserved) - Erection of up to 210 dwellings and new vehicular access to include planting and landscaping, natural and semi-natural green space including community growing space(s), children's play area and sustainable drainage system (SuDS), to include 35% affordable dwellings.’

Site address: Land East of Ixworth Road, Thurston, Suffolk

Appeal by: Gladman Developments Ltd

April 2023





CONTENTS

INTRODUCTION	2
THE APPEAL SITE	3
PROPOSED DEVELOPMENT AND APPLICATION BACKGROUND	4
PLANNING POLICY AND DECISION-TAKING FRAMEWORK	6
THE CASE FOR THE COUNCIL	10
PLANNING OBLIGATIONS AND CONDITIONS.....	17
CONCLUSION.....	18
APPENDICES	19

INTRODUCTION

- 1.1 This Statement of Case ('Statement') has been prepared in response to an appeal submitted by Gladman Developments Ltd ('Appellant') against the failure of Mid Suffolk District Council ('Council') to give notice within the prescribed statutory timescale its decision on an application for planning permission in respect of a proposed residential development of up to 210 dwellings at Land East of Ixworth Road, Thurston ('Site').
- 1.2 At its Planning Referrals Committee ('PRC') of 8th March 2023, the Council followed the recommendation of its officers and resolved to agree a putative reason for refusal ('RfR') for that application i.e., that it would have refused planning permission if the appeal against non-determination had not been made. It is on that basis that the Council hereby responds to this appeal. The putative reason being as follows:

'The proposed development located, as it would be, outside the defined settlement boundary for Thurston and within the countryside, is contrary to Mid Suffolk's Core Strategy policies CS1 and CS2 and Local Plan policy H7. The application would not comply with the development plan as a whole. In applying the tilted balance, and recognising the primacy of the development plan, the harm in allowing a significant number of further dwellings to be released in the absence of any real and demonstrable district or local need, contrary to the development plan, significantly and demonstrably outweighs the benefits.'

- 1.3 A copy of the officer report ('OR') supporting the RfR is found at Appendix A to this Statement, alongside the draft Minutes of the meeting at Appendix B.

The Council will subsequently submit evidence in connection with the principal issues referred to in this Statement; specifically, matters relating to planning policy and the planning balance, with reference to housing supply.

- 1.4 In accordance with the resolution of the PRC, the Council recognises that the topic of highway impacts has been of concern locally. To assist the Inquiry the Council (with the aid of Suffolk County Council as the Local Highway Authority) will provide a Note explaining this consideration and the works proposed by the Appellant.



THE APPEAL SITE

- 2.1 A description of the Site and its surroundings is to be settled within the Statement of Common Ground ('SoCG').

PROPOSED DEVELOPMENT AND APPLICATION BACKGROUND

- 3.1 The Appellant seeks planning permission in outline, with all matters reserved save for access, for the following development:

'Erection of up to 210 dwellings and new vehicular access to include planting and landscaping, natural and semi- natural green space including community growing space(s), children's play area and sustainable drainage system (SuDS), to include 35% affordable dwellings.'

- 3.2 The illustrative material submitted with the application demonstrates how development might be brought forward, should the appeal be allowed. Those plans and documents that the Inspector is expected to take a decision based upon, will be agreed with the Appellant in the SoCG.
- 3.3 The Council originally resolved to grant planning permission for the appeal development, subject to a Section 106 legal agreement, on 20th September 2020. The required obligation was completed and signed by all parties on 25th November 2021.
- 3.4 The Council did not issue the planning permission at that time on the basis that there was an outstanding judicial review brought by Thurston Parish Council against the grant of planning permission for another housing development in the same settlement (application by Bloor Homes), the hearing of which took place on 20th/21st October 2021. The decision to grant planning permission was quashed by the High Court in February 2022 and was appealed by the Council. The Court of Appeal reversed the High Court's decision in October 2022 and found that the permission had been lawfully granted (CD6.4). An appeal to the Supreme Court was rejected.
- 3.5 The claim raised issues about the proper interpretation of the Thurston Neighbourhood Plan which, in the Council's view, were relevant to this application for permission and the Council considered that it should await the outcome of the claim before determining this application.
- 3.6 In January 2022, the Council also raised with the Appellant the concern that the progression of the JLP required further consideration (as CD4.7).

- 3.7 During the above period the Appellant did not appeal against non-determination.
- 3.8 A significant period of 30 months / 2.5 years elapsed between the date that the Council first resolved to grant planning permission and the PRC that resolved to defend the present appeal, for the putative RfR set out. It was the opinion of planning officers that in the intervening period material planning considerations had materially changed, and the application required reconsideration. Of note, the appeal site / development is no longer proposed to be allocated in the emerging plan that is currently at examination. This along with several other matters – including the level of housing supply at a District and more local level had materially changed in a way relevant to a planning balance.
- 3.9 This reconsideration was an appropriate response having regard to the *Kides* case¹ where the Court of Appeal held that:

‘where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of section 70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision.’

- 3.10 It was in that context that the Council has reached its position in response to this appeal. The relevance of the emerging plan is considered below. The Council will explain in evidence that it is plain there have been material changes in circumstances since the earlier resolution to grant and the Appellant’s case (which appears to depend on there being no material changes – see paragraph 2.4.2 of their statement of case) is obviously flawed.

¹ *Kides v. South Cambridgeshire DC* [2002] EWCA Civ 1370.

PLANNING POLICY AND DECISION-TAKING FRAMEWORK

Development Plan

4.1 Relevant to this appeal the statutory development plan comprises the following:

- saved policies from the Mid Suffolk Local Plan (1998)
- Core Strategy (2008)
- Core Strategy Focused Review (2012)
- Thurston Neighbourhood Development Plan 2018-2036 (2019)

4.2 Within the development plan, those policies considered to be most important for the determination of this appeal are as follows:

Core Strategy 2008 –

- CS1 – Settlement Hierarchy
- CS2 – Development in the Countryside & Countryside Villages

Mid Suffolk Local Plan 1998 –

- H7 – Restricting housing development unrelated to the needs of the countryside

4.3 The policies of the Thurston Neighbourhood Development Plan ('TNDP') remain of relevance. A list of the policies relevant to the determination of the appeal will be set out in the SoCG and is subject to consideration in the OR.

Joint Local Plan

4.4 The Council has prepared a new Joint Local Plan ('JLP') with the Babergh District Council which will replace the existing Mid Suffolk development plan documents and will be used to manage development in both districts up to 2037, from a base date of April 2018. The JLP is currently subject to examination.

4.5 At hearing sessions held in the week of 18th October 2021 in respect of Matter 4 – Settlement Hierarchy, Spatial Distribution of Housing and Housing Site Selection Process, the Examination Inspectors raised a number of concerns about those aspects of the JLP.

4.6 In a letter dated 18th November 2021, the Council responded to the Inspectors' concerns, proposing that further work be undertaken in support of the JLP. [Document G08 of the JLP Examination Core Document Library – Appendix C]

4.7 On 9 December 2021, the Inspectors wrote to the Council to make clear that, in their view, a more fundamental review of the approach to the abovementioned aspects of the JLP was likely to be necessary. At paragraph 7 of their letter, the Inspectors noted that:

'[...] across the two districts, around 90% of the housing requirement figure detailed in policy SP01 is already provided for by existing completions, sites under construction, sites with full or outline planning permission, sites with a resolution to grant planning permission subject to s106 agreement, allocations in made Neighbourhood Plans and the, reasonable, allowance for 1,000 windfall dwellings. This unusual situation means that demonstrating a supply of developable housing land for the vast majority of the plan's overall housing requirement figure is, for some years to come, unlikely to be dependent on the allocation of the housing sites included in the submitted plan.'

4.8 The Inspectors noted that, aside from the settlement hierarchy, spatial distribution of housing and housing site selection process, the plan was likely to be found sound, subject to the main modifications that were discussed at the hearing sessions.

4.9 The Inspectors therefore recommended, among other things, deleting policies SP04, LP09, LP30 and the LS01 and LA housing allocation policies and retaining the settlement boundaries in the current (as opposed to proposed) policies map and adopting a 'Part 1' plan to be followed by the preparation and adoption of a 'Part 2' plan. The Part 2 plan would include, among other things an up-to-date, robust settlement hierarchy and a spatial distribution for any housing allocations included insofar as are necessary to provide flexibility and ensure that the plan period housing requirement can be met. [Document G09 of the JLP Examination Core Document Library – Appendix D]


4.10 The Council agreed with the Inspectors' recommendation, by letter dated 10 December 2021, that the JLP be modified to progress a 'Part 1 Plan' that will retain existing settlement boundaries and remove the proposed housing allocation policies. This was because, in the Inspectors' opinion outlined above, a fundamental review of settlement

hierarchy, spatial distribution of housing and the housing site selection process is required. The Inspectors recommended that the Council adopt 'Part 2 Plan' outside of the currency of the present examination which would be likely to include an up-to-date, robust settlement hierarchy and a spatial distribution for any housing allocations included insofar as are necessary to provide flexibility and ensure that the plan period housing requirement can be met. [Document G10 of the JLP Examination Core Document Library – Appendix E]

- 4.11 The Council has recently published its proposed Main Modifications to the JLP for consultation which runs from 16th March 2023 to 3rd May 2023. As recommended by the Inspectors, the policy allocating the site for housing has been deleted and is no longer part of the emerging plan.
- 4.12 The status of the JLP will be a material consideration in the determination of the appeal and the weight to be attached to the JLP as it continues to progress through examination will be dealt with in the Council's evidence.
- 4.13 At the present time the Site does not need to be allocated for development in the future.

National Planning Policy Framework

- 4.14 The *National Planning Policy Framework* ('NPPF'), last revised in 2021, sets out the Government's planning policies for England and how they should be applied; it is a material consideration for decision-taking purposes though it makes clear that it cannot displace the statutory primacy of the development plan.
- 4.15 In December 2022, the Government proposed changes to national planning policy. Those changes (and corresponding draft version of a new NPPF) have been subject to consultation. Currently, the outcome of that consultation is awaited.
- 4.16 The NPPF is complemented by the national *Planning Practice Guidance* ('PPG'). The guidance provided by the PPG is advice on procedure and elaboration of NPPF policies rather than explicit additional policy and is an online reference as a living



document. The Council considers that it too is an important material consideration alongside the NPPF.

4.17 The Council accepts that the “tilted balance” of policy FC1 of the CSFR and paragraph 11d(ii) of the NPPF is engaged as a consideration for the purposes of this appeal. This is because it has been agreed that the most important policies for the determination of the appeal are confined to policies CS1, CS2, and H7, and collectively those policies are out of date at a District level because they are not entirely consistent with the NPPF (as recognised in previous appeals). This finding does not, however, direct for a particular weighting to be afforded to those policies when accounting for local circumstances and how matters may have evolved on the ground.

THE CASE FOR THE COUNCIL

- 5.1 The planning balance to be struck under section 38(6) of the *Planning and Compulsory Procedure Act 2004* must consider (a) whether the appeal application accords with the statutory development plan taken as a whole, and (b) whether other material considerations (including the NPPF) indicate that a decision should be taken other than that which accords with the development plan. The Council would answer both considerations in the negative.
- 5.2 The Council's case follows the RfR and is outlined as follows.

RfR 1 – Principle of Development

- 5.3 The appeal site falls outside of the defined settlement boundary for Thurston and is considered to fall within the countryside. The appeal proposal does not fall within any of the permitted types of development for the countryside and therefore conflicts with policies CS1 and CS2. As a development in the countryside that would not form part of the existing settlement, the appeal proposal would also conflict with policy H7.
- 5.4 While there is no express conflict with Policy 1 of the TNDP, there nevertheless remains a tension with that policy because the appeal scheme would not represent a focussing of development within the settlement boundary.
- 5.5 Because of the importance of those policies which are infringed and the clear nature of their breach, the appeal scheme is contrary to the development plan as a whole. It is not anticipated that this should be a matter of contention between the parties, noting para. 7.1.2 of the Appellant's Statement of Case.
- 5.6 The starting point for the determination of this appeal must therefore be that the proposal conflicts with the development plan and should be refused unless material considerations indicate otherwise. There is no in principle development plan support for the proposal in this location. The site falls outside the settlement boundary as updated by the TNDP and is open countryside in policy terms.

5.7 As will be dealt with further in evidence the Council will contend that,

(i) The proposal would not accord with the emerging JLP and is now no longer proposed as an allocation. This is a new material consideration weighing against the proposal. It is noted that at the time the Appellant produced a statement of case this was not appreciated (see 2.3.11 of that document). The Council assumes that the Appellant will now acknowledge this as a material consideration for the appeal and update its statement of case as soon as possible.

(ii) the proposal, whilst not technically in conflict with Policy 1 of the TNDP, would cause tension with what is expected in terms of a constraint on future development within Thurston as envisaged in it.

(iii) Moreover, neither the TNDP nor the emerging JLP identify sites for future expansion in Thurston and Thurston already has a considerable and sufficient amount of housing so that this proposal is not needed. Indeed, the Council will provide evidence to explain how Thurston has been and is being heavily developed – more so than any other town or village in the District.

(iv) in this context, The Council will provide evidence to demonstrate that the appeal site is not needed to meet any identified requirement for Housing during the plan period to 2037. Green field sites such as this will not be required to deliver housing in the context of a 10.88 year housing land supply. The proposal does not accord with the strategy for housing either in the extant or the emerging development plan.

5.8 As will be discussed below, and dealt with in evidence, the NPPF places emphasis on a planning system that is genuinely plan-led and sustainable. This proposal is neither of those.

Planning Balance

Legal Framework

5.9 Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that applications under the Planning Acts be determined in accordance with the development plan, unless material considerations indicate otherwise.

5.10 The development plan is therefore the starting point for the determination of this appeal and the decisive direction of the plan would be to dismiss the appeal.

5.11 As the Council has acknowledged, notwithstanding the direction of the development plan the appeal is likely² to be determined through an application of the “tilted balance” (see §4.17 above). This means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (as para. 11.d)ii. of the NPPF).

5.12 However, there are a number of important points to make in respect of the application of that balance which will be developed in evidence. In particular, and having regard to the judgment of the Court of Appeal in *Gladman*³:

- Firstly, a decision-taker may take into account development plan policies when applying the tilted balance.
- Secondly, whether and how policies of the plan are taken into account in the application of the tilted balance will be a matter for the decision-maker’s planning judgment, in the circumstances of the case.

5.13 Even if policies are considered to be out of date, that does not make them irrelevant: their weight is not fixed. There will be many cases where restrictive policies are given sufficient weight to justify refusal despite their not being up to date⁴.

² In the event that the JLP has not been adopted.

³ *Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC* [2021] EWCA Civ 104.

⁴ *Suffolk Coastal District Council v Hopkins Homes and Richborough Estates v Cheshire East* [2016] EWCA Civ 168, paras 46-47; [2017] UKSC 37, paras 51, 56.

5.14 Further, and in respect of the datedness and weight to be afforded to planning policies that are taken into account in that planning balance, the *Ewans* case is instructive. At paragraph 47 of that judgment, Holgate J held:

'I accept that a planning authority may consider it appropriate to carry out a comparison with NPPF policies in a generic manner which would apply to, or be capable of applying to, any proposal coming before it within the scope of the relevant local plan policies. But as a matter of law, it is not restricted to acting in that way. The language used in para.11(d) of the NPPF is 'the policies which are most important for determining the application are out of date'. That plainly encompasses inter alia the manner in which a policy operates in relation to the determination of a particular application, although that may be judged to affect the determination of other applications as well. Accordingly, the operation of development plan policies in relation to a particular proposal may properly be compared with the way in which the operation of NPPF policies affects the determination of that proposal.'

5.15 In the context of Thurston in particular there is no identified need for further housing at this time. Moreover, conflict with the development plan as a whole constitutes an adverse impact in any tilted planning balance which the Council contends is of considerable weight. The Council will make legal submissions as necessary in respect of the proper approach to the tilted balance. It is anticipated that the aforementioned cases (and any others relevant to the Council's evidence) can form part of the Core Documents library to be agreed with the Appellant or be appended to the Council's evidence.

The Tilted Balance


A number of points will be addressed in evidence relevant to the application of both the statutory and tilted planning balance. In particular:

- (i) the conflict with the extant housing strategy in the development plan as an adverse impact within the tilted and statutory planning balance
- (ii) the conflict with the housing strategy in emerging policy
- (iii) the current level of housing land supply (market and affordable) in both the District and at the Thurston level.

(iv) The benefits relied upon by the Appellant in the balance, where the above factors have a bearing on the weightiness of market and affordable housing.

- 5.16 As will be explained further in evidence, the Council benefits from an exceptional housing land supply of 10.88 years and continues to pass the Housing Delivery Test. The projected supply of housing for the district of Mid Suffolk is so extraordinary that it may not be necessary for the Council to allocate any sites (not least the appeal Site) as part of the 'Part 2' JLP to meet its identified housing requirement. The position as to the level of supply has materially changed since the time that the Council resolved to grant permission.
- 5.17 The Council will as part of its evidence provide an update (which it will seek to agree with the Appellant) explaining the basis of the Council's latest housing land supply position: a summary of its methodology with reference to planning guidance and precedent. This will demonstrate to the Inspector that the Council's supply position is robust in terms of the methodology and approach taken resulting in the strong land supply concluded.
- 5.18 The Council will as a part of that evidence also provide an overview of the methodology that informed the original JLP trajectory first submitted for examination. This will demonstrate that the trajectory was based on a sound and robust methodology; informing the JLP Inspectors' conclusions on allocations (as aforementioned in Section 4 of this Statement of Case). It will also explain the latest trajectory shown in the Main Modifications consultation; commenting on the supply position concluded beyond the five-year period.
- 5.19 The Council considers that there are in this case material factors that have a real bearing on the weight to be applied to the policies that fall within the "tilted balance" having regard to their datedness on the ground. Contrary to the contention in the Appellants statement of Case at 2.2.4 the planning balance has materially changed since the time when there was a resolution to grant permission.

- 5.20 In that context the Council also considers that the benefits of the appeal development must be contextualised having regard to the present, local circumstances. The Council will deal with the weightiness of the benefits of the appeal scheme, including market and affordable housing, in its evidence.
- 5.21 The Council will accordingly address the supply of housing at the Thurston level. This will set out:
- i. The number of homes delivered and expected to be delivered in and adjacent to Thurston (from specific sites) in the remaining years of the JLP plan-period.
 - ii. The expected number of affordable homes delivered and expected to be delivered (1) in and adjacent to Thurston (from specific sites); and (2) at a District level in the remaining years of JLP plan-period.
- 5.22 The evidence on highway matters will show that a dismissal of the appeal would not result in any unacceptable impacts in highway terms. The package of highway measures to be secured would primarily serve a mitigatory purpose.
- 5.23 The Council will explain through legal submissions and/or in evidence how this case differs from the Bloor Homes case recently considered by the Court of Appeal contrary to what appears to be an implicit contention by the Appellant in the Statement of case that matters have remained the same (see section 3.6 thereof). The matters informing relevant judgments as to weight relating to housing supply and the emerging plan 'direction of travel' in particular are materially different than in that case. Contrary to the contention in the Appellant's Statement of case at 2.1.9 it is not unclear why the Council has refused planning permission.
- 5.24 The Council will show that the adverse impacts of the development significantly and demonstrably outweigh its benefits, noting the importance of the planning system being genuinely plan-led as emphasised by Government.
- 5.25 Accordingly, the Inspector will be invited to dismiss the appeal because both: a) the development is not in accordance with the development plan; and b) there are no



considerations which indicate that permission should be granted contrary to the direction of the plan.



PLANNING OBLIGATIONS AND CONDITIONS

- 6.1 The Council will seek to reach agreement with the Appellant in respect of suitable planning conditions and obligations.

CONCLUSION

- 7.1 It is the Council's position that the proposed development is contrary to the development plan and would result in clear harms as identified in the reasons for refusal. Evidence will be adduced on those matters to demonstrate the nature of the harm caused and an assessment of that in planning terms against the policies of the development plan and other material planning considerations.
- 7.2 The Council will explain that, even under a "tilted" balance, the appeal development does not comply with the development plan as a whole and that there are no material considerations which indicate that planning permission should otherwise be granted.
- 7.3 On that basis the Inspector will be invited to dismiss the appeal.
- 7.4 The Council reserves the right to make reference to:
- The relevant policies of the Development Plan;
 - Authority Monitoring Reports and HLS position statements;
 - The NPPF and associated guidance;
 - Relevant planning and appeal decisions, case law, legislation and other documents relevant to the appeal;
 - Any of issue that might arise in light of the Appellant's evidence.



APPENDICES

(under separate cover, with page numbers for bundle)

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| A. PRC Officer Report (and appendices) | (page 1 (and 19-144)) |
| B. PRC Minutes | (p. 145) |
| C. JLP Examination Document G08 | (p. 150) |
| D. JLP Examination Document G09 | (p. 156) |
| E. JLP Examination Document G10 | (p. 160) |