

Gladman Developments Ltd

Land east of Ixworth Road, Thurston

Against the non-determination of an outline planning application

for:

“Outline planning application for up to 210 dwellings, introduction of structural planting and landscaping, natural and semi-natural green space including community growing space(s), children's play area, sustainable drainage system (SuDS) and vehicular access from Ixworth Road IP31 3QE. All matters to be reserved except for access.”

Statement of Case

LPA Ref: DC/19/02090



Feb 2023

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1 INTRODUCTION

1.1 Context

1.1.1 This Statement of Case is submitted by Gladman Developments Ltd (the Appellant) and it relates to an outline planning application submitted for:

“Outline planning application for up to 210 dwellings, introduction of structural planting and landscaping, natural and semi-natural green space including community growing space(s), children's play area, sustainable drainage system (SuDS) and vehicular access from Ixworth Road IP31 3QE. All matters to be reserved except for access.”

1.1.2 The application was considered by Mid Suffolk District Council (MSDC or the Council) under reference DC/19/02090.

1.1.3 The Appellant considers a public inquiry is the most appropriate forum in which to test the appeal proposal. A justification is set out in Chapter 4 below.

1.2 Background

1.2.1 The planning application for the proposed development was registered with a start date by MSDC of 1st May 2019. The application was supported by a comprehensive suite of technical reports (CD1), in accordance with the Council's planning application validation requirements, which are set out in the Planning Statement (CD1.16) that accompanied the application. A series of supplementary reports were submitted to resolve matters from the Council and Statutory Consultees (CD2).

1.2.2 The Council resolved to grant planning permission on the Site subject to Section 106 on 20th September 2020.

1.2.3 A Section 106 obligation was completed and signed by all parties on 25th November 2021 (CD5.7).

1.2.4 Given the resolution and the completed Section 106 agreement, the permission should have been issued promptly. However, it was not and still has not been issued.

1.2.5 The Council's reason for declining to issue the planning permission related to a then outstanding judicial review brought by Thurston Parish Council (TPC) against the grant of planning permission for another housing development in the same settlement. That application by Bloor Homes had been determined against a similar committee report and addressed similar policy issues. Further detail on this site and situation is set out in Section 2 and 3 of this Statement.

1.2.6 The judicial review was heard in the High Court and Court of Appeal. An application for case to be heard by the Supreme Court has been rejected. The case has now concluded, and planning permission has been found to have been lawfully granted.

1.2.7 The current position regarding the Appellant's application remains as it has been since November 2021; the Section 106 obligation has been completed however no permission issued, the status of the site in the Development Plan and the basis upon which the resolution to grant was determined is unchanged.

1.2.8 Given the Council's unwillingness to issue the permission, the Appellant has been left with no option but to lodge this appeal for non-determination.

1.3 Site and Surroundings

1.3.1 The 8.87 ha site lies adjacent to the existing residential development on the edge of Thurston, Suffolk. The settlement lies approximately 9km east of Bury St Edmunds and 15km north west of Stowmarket.

1.3.2 The appeal site comprises one field in agricultural use but is extremely well contained and related to the urban area of Thurston. The development would infill between two sites with extant permissions - 4963/16 on the western side of Ixworth Road (250 dwellings under construction by Persimmon Homes), 5070/16 to the east (200 dwellings and primary school site under construction by Linden Homes) and Thurston Rugby Club to the north. It would not result in built form extending further north than already existing development.

1.3.3 The site is situated within approximately 1km from the centre of Thurston and it is therefore close to existing shops, services and employment opportunities in the village allowing easy access by foot and bicycle. These include, but are not limited to:

- Bus Services to nearby centres including Bury St Edmunds, Woolpit and Stowmarket
- Direct hourly rail services (approximately 0530 to 2300) to Bury St Edmunds (8 mins), Cambridge (45 mins), Ipswich (30 mins) and Stowmarket (13 mins)
 - Additionally a limited number of services also provide direct trains to Peterborough and Harwich International¹
- Connections to National Cycling Network Route 51 providing quiet routes into Bury St Edmunds and other nearby settlements
- Thurston Community College providing education for 11-18 year olds
- Primary School(s)
- Pubs
- Supermarket
- Pharmacy
- Takeaways
- Coffee Shop/Café
- Village Hall

¹ Information correct at time of submission

- Places of Worship
- Sports clubs including Thurston Rugby Club to north of Site

1.3.4 Access to these services and facilities will be further improved for residents of the appeal site and existing residents of Thurston through the measures set out in Section 6.

1.4 Core Documents

1.4.1 Submitted with this appeal is documentation considered during the planning application process including all documents submitted and assessed by the Council (CD1 – applications submitted at the time of the planning application, CD2 – submissions post validation), consultation responses (CD3), relevant correspondence (CD4), and the Council’s Committee Report (CD5).

1.4.2 A copy of the completed Section 106 obligation is also provided in CD5. Given the application is now subject to an appeal, this will need minor revisions to reflect the decision maker is no longer the Council. It is expected the new Section 106 document can be agreed with the Council with a revised obligation submitted in accordance with the Appeal timetable.

1.4.3 Copies of documents relating to the Judicial Review set out in Section 3 are at CD6.

1.4.4 A further list of relevant documents will be added to the Core Document library that will be referred to during the course of the Appeal. These documents may be added to by the Appellant or Council prior to the commencement of the Appeal and an agreed list will be provided when evidence is exchanged.

1.5 Statement of Common Ground

1.5.1 A draft Statement of Common Ground (SoCG) is submitted with this appeal. It is expected a signed SoCG will be available prior to the inquiry commencing.

1.5.2 Further statements of common ground on technical matters may be produced should this be necessary to assist the Inspector in highlighting any areas of agreement or disagreement between the parties.

1.6 Summary of Appeal Proposals

1.6.1 The appeal proposals will provide:

- Up to 210 dwellings at the sustainable settlement of Thurston;
- 35% affordable housing;
- Vehicular access point from Ixworth Road;
- Significant sustainable/active travel improvements throughout the village;

- Significant areas of informal and formal public open space, with full details of composition to be agreed at Reserved Matters stage;
- Neighbourhood Equipped Children's Play Area and community growing spaces to be provided on-site;
- Contribution to wheeled play in the village or facility provided on-site; and
- Section 106 contributions or matters secured by condition as detailed in section 6.

2 THE COUNCIL'S RESOLVED POSITION

2.1 Consideration of the Application at Planning Committee

- 2.1.1 Planning law requires that applications for planning permissions be determined in accordance with the Development Plan unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by an applicant in writing.
- 2.1.2 The Appellant worked closely with Officers of the Council to address matters raised by consultees. Extensions of times were agreed in order for further information to be provided and consulted upon.
- 2.1.3 Following additional information provided, consultees were satisfied any technical impediment to the delivery of the site had been satisfactorily addressed. Where there were impacts of subjective assessment (e.g. landscape and visual matters) these were assessed by the Case Officer in their report.
- 2.1.4 The Case Officer recommended planning permission be granted to the Council's Planning Committee. The Planning Application was debated at Planning Committee first on 29th January 2020 and was deferred pending the submission of further highways details. This was supplied promptly by the Appellant and the application was again considered at Planning Committee on 16th September 2020.
- 2.1.5 Following the detailed Officers Report, Members debated at length in both planning committees the balance of considerations. This included conflicts with the adopted development plan, as the site is currently regarded as Open Countryside where major residential development will not normally be permitted, and material considerations including national policy and benefits arising from the scheme.
- 2.1.6 After this debate, Members of the Planning Committee on 16th September 2020 resolved to grant the application, subject to conditions and the completion of a Section 106 obligation.
- 2.1.7 The Appellant worked with MSDC and Suffolk County Council in order to complete the Section 106 obligation for the site.
- 2.1.8 The Section 106 obligation was completed and signed by all parties on 25th November 2021. The Council however declined to issue the planning permission, citing the judicial review to a separate planning permission in Thurston (as discussed in Section 3).
- 2.1.9 The Appellant has throughout the past 14 months sought to have the permission issued (see written Correspondence in CD4 and CD4.9 specifically). Whilst the Council have at times indicated that it did not wish to issue the decision given the legal matter was ongoing, it remains unclear why, given the resolved position of the Council and the judicial clarification of the lawfulness of its approach, it has not issued the planning permission.

2.2 Five Year Housing Land Supply

- 2.2.1 At the time permission was resolved to be granted and the Section 106 obligation was signed, the Council could demonstrate a supply of housing in excess of five years.
- 2.2.2 This position has not changed and the Council is still able to demonstrate a supply of housing in excess of five years.
- 2.2.3 The Council has given permission for a number of housing schemes with others granted on appeal whilst adopted policies of the development plan have been out of date. This has resulted in the Council in being able to demonstrate a housing land supply in the early part of its emerging plan period. It will however be necessary for the Council to continue to grant planning permissions for the time life of its plan period as supply will drop off once these developments granted have been constructed.
- 2.2.4 The Council took all of this into account when resolving to grant permission for the Appeal scheme. This planning balance the Council took has not materially changed - the status of the Site in the Development Plan has not changed as explained in the next Section and at the time it resolved to grant planning permission and signed the Section 106 obligation it could and still can demonstrate a five year supply of housing.

2.3 Status of the Site in the Development Plan

- 2.3.1 The relevant adopted Development Plan documents are as follows:
- Saved policies from the Mid Suffolk Local Plan 1998
 - Core Strategy 2008
 - Core Strategy Focused Review 2012
 - Thurston Neighbourhood Plan 2019
- 2.3.2 It is accepted that the site is not allocated for development in any of these documents and is regarded as 'Open Countryside' for planning purposes. The settlement boundary was defined in the Mid Suffolk Local Plan (1998) however growth has been permitted outside of this boundary since that time.
- 2.3.3 The Neighbourhood Plan updated the settlement boundary to include permitted developments, following the request of the Examiner. The Site is outside of the settlement boundary in the Thurston Neighbourhood Plan.
- 2.3.4 The site was identified as a site to be allocated for approximately 200 dwellings in the emerging Babergh and Mid Suffolk Joint Local Plan (2018-2037) under reference LA089 and its requirements are set out below:

LA089 – Allocation:

Land east of Ixworth Road, Thurston Site Size - 8.7ha Approximately 200 dwellings (with associated infrastructure)

The development shall be expected to comply with the following:

- I. The relevant policies of the Plan and Thurston Neighbourhood Plan;*
- II. Development is designed to conserve and where appropriate enhance Manor Farmhouse (Grade II*), Range of Farm Buildings Immediately North of Manor Farm (Grade II), Church of St Peter (Grade II) and their settings;*
- III. An archaeological assessment and measures for managing impacts on archaeological remains are provided;*
- IV. Rights of Way within the site and within the vicinity of the site should be retained and enhanced to enable access to the countryside and active transport;*
- V. Contributions, to the satisfaction of the LPA, towards highway improvements, including footways and cycle ways;*
- VI. An ecological survey, and any necessary mitigation measures are provided;*
- VII. Protected trees within the site are retained and protected together with retention and enhancement of hedgerows;*
- VIII. Contributions to the satisfaction of the LPA, towards secondary school provision, a new pre-school and primary school; and;*
- IX. Contributions to the satisfaction of the LPA, towards healthcare provision.*

2.3.5 At the time of consideration of the planning application at planning committee the site was identified as an emerging allocation in the Babergh and Mid Suffolk Joint Local Plan: Preferred Options (Regulation 18).

2.3.6 The Planning Officer in his report gave the emerging plan 'limited weight' and set out his considerations of its policy requirements and those of the Neighbourhood Plan. The Officer recommended the application for approval and the Planning Committee voted in favour of granting planning permission on the site.

2.3.7 Members and Officers agreed that material considerations including the presumption in favour of sustainable development outweighed any limited harms arising from the granting of planning permission.

2.3.8 The Core Strategy Focused Review [2012] within Policy FC01 sets out a ‘Presumption In Favour Of Sustainable Development policy’. The Officers Report also went on to consider the Presumption in Favour of Sustainable Development contained within the Framework:

3.57 In view of much of the Adopted Development Plan for Mid Suffolk being ‘out-of-date’ and the Council having been advised through appeal decisions that certain of its policies [some of which are relevant to the application at hand] are no longer consistent with the NPPF the Framework must now form a significant material planning consideration. To that end we need to explore which of the Framework policies are relevant to the discussion of the acceptability or not of the principle of residential use on this site.

3.58 What is however clear is that as the Council can demonstrate that it has a 5YHLS it is not required to skew consideration of the merits to enable unallocated land to be brought forward where a proposed development is sustainable for the purpose of rapidly closing the 5YHLS gap.

2.3.9 The Officers Report is clear that the Neighbourhood Plan did not set a housing requirement and this is expected to be set by the emerging Joint Local Plan:

3.59 That said Members are advised that the ‘Tilted Balance’ described in paragraph 11 of the NPPF [2019] is triggered by the fact that some of the Council’s relevant adopted planning policies are ‘out-of-date’ and the fact that the Thurston Neighbourhood Plan [2019] fails to satisfy the requirement contained in paragraph 14b of the NPPF [2019]. The latter meaning the Neighbourhood Plan cannot in itself be relied on to resist sustainable development outside of the defined settlement boundary for reasons previously discussed.

2.3.10 The Regulation 19 Joint Local Plan was consulted upon in November/December 2020. Following completion of the consultation, it was submitted to the Secretary of State for examination and retained the site as a proposed allocation for approximately 200 dwellings.

2.3.11 The sites status in the adopted and emerging Development Plan remains the same at the time of writing – it is accepted that the site is outside the adopted settlement boundary but it remains an emerging allocation.

2.3.12 The Neighbourhood Plan does not prohibit the granting of planning permission or indicate it should be refused or the Officer would have set out that in his committee report. If he had been incorrect in his assessment, the Court of Appeal likely would have upheld the challenge by Thurston Parish Council to the granting of planning permission.

2.4 Council’s Last Resolved Position

2.4.1 In correspondence (CD4.9) the Council has advised given the passage of time and changes in material circumstances since the application was heard by committee, it would be appropriate for the

application to return to committee for fresh consideration. The Council have cited potential legal risk, without making clear what has changed to create such a risk.

- 2.4.2 The Appellant does not agree there has been any such changes in material circumstances which the Council has explained (or rather failed to explain). Despite the resolution by the Courts as set out in the next Section, the Council has not taken the application back to committee.

3 THE JUDICIAL REVIEW

3.1 Background

3.1.1 The application subject of this appeal was first heard at Planning Committee on 29th January 2020 and was the second site to be heard on the committee that day. Immediately prior to the application being considered at the first committee, an application for 210 units at Beyton Road, Thurston by Bloor Homes was considered (DC/19/03486).

3.1.2 The Bloor application was granted subject to Section 106 following in excess of 3 hours of presentation and debate. The Gladman application was first heard at the same committee but deferred for further highways information to be considered.

3.1.3 Planning permission for Bloor was issued on 23rd December 2020.

3.2 Pre-Action Protocol Letter (CD6.1 + CD6.2)

3.2.1 Ashton's Legal sent Gladman a copy of a letter sent to Mid Suffolk District Council ahead of a proposed challenge into the Bloor Homes application. Gladman was notified by Ashton's as a potentially interested party on 24th February 2020. This was issued following the resolution to grant on the Bloor scheme but before planning permission was granted.

3.2.2 A further Pre-Action Protocol Letter (PAP) was issued on 5th March 2020.

3.3 High Court Judicial Review (CD6.3)

3.3.1 A Judicial Review claim was lodged by Thurston Parish Council into the decision of Mid Suffolk District Council to grant planning permission at Beyton Road following the granting of planning permission on 23rd December 2020. The case was heard by Timothy Mould QC sitting as a High Court Judge on 20th and 21st of October 2021.

3.3.2 Thurston Parish Council was the respondent, Mid Suffolk District Council was the defendant and Bloor Homes (East) was an interested party.

3.3.3 The Parish Council's claim was successful and the order of Mr Timothy Mould KC dated 21 February 2022 would have led to the quashing of Bloor's permission. However, the matter was appealed.

3.4 Court of Appeal Judicial Review (CD6.4)

3.4.1 The Council (as defendant) sought leave and were granted permission to have the claim heard in the Court of Appeal.

3.4.2 The Claim was heard on Tuesday 18th October 2022 before Lord Justice Lewison, Lord Justice Singh and Lady Justice Whipple.

- 3.4.3 The Court of Appeal allowed the appeals by Mid Suffolk District Council and Bloor Homes Limited on 28th October 2022 and set aside an earlier decision of the High Court.
- 3.4.4 Singh LJ giving the lead judgment, agreed with the submissions made on appeal by the Council that its decision to grant planning permission did not in fact involve any misinterpretation of policy in a neighbourhood plan. He held that the judge below fell “into the error of confusing the interpretation of a planning policy with its application” (CD6.4).
- 3.4.5 The Court explained the correct approach to decision making under section 38(6) of the 2004 Act often involved a consideration of context and gave practical examples of situations that would be matters of planning judgment and application rather than of ones of legal construction.
- 3.4.6 The Court held that the Council’s planning committee had properly weighed the benefits and disadvantages of the proposed development against the background that there was a conflict with the Development Plan as a whole, despite not finding a conflict with a particular policy in the neighbourhood plan. The Court held that the Council was entitled to reach the conclusion it did in accordance with the terms of section 38(6) of the 2004 Act. The permission was therefore upheld.

3.5 Supreme Court Challenge

- 3.5.1 Upon the dismissal of the claim in the Court of Appeal, Thurston Parish Council sought leave to have the claim heard in the Supreme Court:
Order from the Supreme Court - R (on the application of Thurston Parish Council) (Appellant) v Mid Suffolk District Council and others (Respondents) UKSC 2022/0173
- 3.5.2 The Supreme Court is the Highest Court in the UK and hears appeals on arguable points of law of the greatest public importance, for the whole of the United Kingdom in civil cases.
- 3.5.3 Leave sought by Thurston Parish Council did not meet this threshold with the Court confirming grounds of appeal did not raise an arguable point of law of general public importance. The decision of the Court of Appeal was retained that the planning permission on the Bloor scheme was confirmed as lawful.

3.6 Relevance of the Judicial Review to the instant Appeal

- 3.6.1 As above, Gladman was served a PAP Letter on behalf of Thurston Parish Council regarding the Bloor scheme as an interested party.
- 3.6.2 The same Case Officer prepared the Officer’s Report and made presentations at all the Planning Committees where the Gladman and Bloor Homes sites were considered. The presentation to Committees was also supported by the Council’s Chief Planner who verbally advised Members.
- 3.6.3 The relevance of this point is that the same judgments and balance of considerations given to Bloor scheme also featured in the Committee Report and presentation in the Gladman scheme. Having had

regard to potential outcomes, Gladman understands that the Council did not wish to issue the permission for the application subject to this appeal until matters concerning the Bloor scheme were resolved.

3.6.4 Despite the Court of the Appeal decision, the Council has still elected not to issue the permission. It is understood that this may relate to issues regarding the emerging plan and the passage of time.

3.6.5 The Council has issued a new Local Development Scheme for its emerging plan but no contents/amendments of any documents are yet known. At present full details of how exactly the emerging Local Plan will progress have not been made by the Council following interim comments in correspondence from the Examining Inspectors.

3.6.6 Whatever further steps may be taken in the plan making process in the future, it however remains the fact that the status of the site in the adopted and emerging Development Plans have not changed since the time of the decision. It is also noted that, when resolving to approve the proposal, only limited weight was given to the emerging plan in the committee report (CD5.4) and verbal presentation to Members.

3.6.7 The examination process is on-going, and the Inspectors have made clear any comments so far are not binding and are subject to their final report in due course.

3.7 Interests of Thurston Parish Council in the Application Subject of this Appeal

3.7.1 In seeking to challenge the Bloor decision and in communication with Gladman during the determination of the planning application, it is clear that Thurston Parish Council take significant issue with the development of the appeal site.

3.7.2 It is further clear that in seeking leave to go to the Supreme Court it is likely to still have unresolved objections to the decision-making process and legal framework regarding the status of the Development Plan which it is likely to seek to advance in the instant appeal.

3.7.3 Submissions and correspondence from Thurston Parish Council indicate they may well take issue with a number of matters.

3.7.4 These issues could well include:

- Principle of development in accordance with the Thurston Neighbourhood Plan and other development plan documents
- Impacts on social infrastructure
- Cumulative development impacts

3.7.5 Whilst the Appellant cannot be certain of whether Thurston Parish Council will seek to participate in this appeal nor what their resolved position may now be following the dismissal of the Supreme Court

challenge, the Appellant considers its extremely likely that TPC would seek to be a Rule 6 party irrespective of whether MSDC seek to defend the appeal or not.

4 JUSTIFICATION FOR A PUBLIC INQUIRY

4.1 Introduction

4.1.1 The Appellant deems (with reference to Annexe F of The Planning Inspectorate's Procedural Guide for Planning Appeals – England - 21 December 2022)), that a **Public Inquiry is the most appropriate mode for this appeal**, for the reasons set out below.

4.2 Reasons a Public Inquiry is Necessary

4.2.1 The core legal principle of decision making on planning applications and appeals is that decisions must be made in accordance with a local planning authority's development plan unless material considerations indicate otherwise.

4.2.2 Court judgments are not there to undertake or re-run planning based judgements of Decision Makers but to conclude whether a decision was lawfully granted. A barrister will be necessary from both sides to explain the outcomes of the Court (as detailed in the next Section) to the Inspector and the Third Parties.

4.2.3 Legal submissions from Counsel are likely to be required to explain the outcomes of the judicial review and its implications. The stance of the Parish Council is also likely to require a number of technical matters to be explored through detailed evidence and cross examination should they wish to participate as a Rule 6 party.

4.2.4 There is interest and objection to the appeal proposals beyond the Parish Council in Thurston and these third parties may wish to participate in the appeal process and may also seek to become a Rule 6 party.

4.2.5 Given the Council's reluctance to issue the permission, cross examination will be required to challenge the basis of the Council's reasoning for this and to address whatever stance they now adopt should they advance putative reasons for refusal. The extent to which these depart from their own previous position will also be contentious matters for cross examination.

4.2.6 The Appellant has held informal discussions with Officers at Mid Suffolk District Council and it is the shared view that a Public Inquiry is likely owing to public interest in the scheme. Appeal ref APP/W3520/W/22/3308189 (Land North of Barking Road, Needham Market) commenced as a Public Inquiry on 7th February 2023. It is understood that this appeal was submitted as a Hearing but upgraded to a Public Inquiry, owing to local interest.

4.2.7 Needham Market is approximately 14 miles from Thurston in the same district and the appeal has dealt with similar locational and policy issues.

4.2.8 In summary:

- There is a need for explanation by a barrister the outcomes of legal judgments related to this appeal.
- Need for the Evidence to be tested through formal questioning by an Advocate regarding weight to be given to planning policy.
- It is possible that the Council may seek to defend the appeal and provide a position contrary to its adopted position in the Committee Report and this position would be explored through explanation and testing of evidence through cross examination.
- Should the Council alter its position on technical matters, contrary to the position of statutory consultees, this evidence would need to be tested.
- Significant interest from third parties in this site and appeal who may well form a Rule 6 party and look to challenge conclusions of Statutory Consultees even if the Local Planning Authority does not.

4.3 Time Expected to be Needed for a Public Inquiry

- 4.3.1 The issues to be covered will exceed the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances).
- 4.3.2 In addition to the time required for examination of evidence there will be the need for the undertaking of a site visit, discussion of conditions and section 106 obligations as well as hearing from interested third parties which could well include a Rule 6 Party.
- 4.3.3 As set out regarding the matters above and the Procedural Guide, Gladman considers **four sitting days may be necessary** to hear general planning matters between the mains parties.
- 4.3.4 Should matters be expanded by the MSDC or any Third Party or Rule 6 group, further days may be necessary, upon receipt of any Statement of Case by respective parties Gladman reserve the right to comment further and more sitting days may be required.

5 MATERIAL CONSIDERATIONS

5.1 The National Planning Policy Framework

5.1.1 The Appellant will demonstrate that, having regard to the proper application of the Framework, the following can be said of the appeal proposals.

Sustainable Development

An economic role

5.1.2 Evidence will be adduced to demonstrate the beneficial economic impacts of the appeal proposal. Delivery of new market and affordable homes now in Thurston is a key contributor that will enable Mid Suffolk District Council to promote and sustain a strong, responsive, and competitive economy.

A social role

5.1.3 It will be demonstrated that the appeal proposals will deliver new homes of the right type and mix, at the right place and at the right time to meet market and affordable housing need and in turn will support Thurston's growth aspirations including delivery of highways and sustainable transport infrastructure, in accordance with the targets set out in the (emerging) Development Plan and other key parts of national policy.

5.1.4 It will be demonstrated that the site is located in an accessible and sustainable location close to key services and facilities, and the wider area, that will help support the health, social and cultural wellbeing of Thurston in the context of Mid Suffolk District.

An environmental role

5.1.5 It will be demonstrated that the appeal proposals have no unacceptable adverse effects on environmental considerations. The proposals involve the provision of a significant area of informal and formal public open space, landscaping and ecological management mitigation works which together deliver a net gain to biodiversity.

The Presumption in Favour of Sustainable Development

5.1.6 The presumption in favour of sustainable development sits at the heart of the Framework. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.

5.1.7 The appeal proposals will deliver a package of sustainable development to enable the continued growth and vitality of Thurston.

5.1.8 As the Council fairly accepted in its Officer's Report (CD5.4, September Committee Report), the tilted balance and the presumption in favour sustainable development of the Framework applied:

3.59 *That said Members are advised that the 'Tilted Balance' described in paragraph 11 of the NPPF [2019] is triggered by the fact that some of the Council's relevant adopted planning policies are 'out-of-date' and the fact that the Thurston Neighbourhood Plan [2019] fails to satisfy the requirement contained in paragraph 14b of the NPPF [2019]. The latter meaning the Neighbourhood Plan cannot in itself be relied on to resist sustainable development outside of the defined settlement boundary for reasons previously discussed.*

5.1.9 Notwithstanding the point as to the tilted balance being engaged, it is considered that the limited harm arising from the proposed development would be outweighed by the benefits of the scheme. Planning permission is therefore considered to be justified based on the general planning balancing exercise i.e. 'other material considerations' as per Section 38 of the Planning and Compulsory Purchase Act 2004.

5.1.10 Evidence will be adduced to demonstrate this position.

5.2 Consistency of Decision Making

5.2.1 As per the Council's decision to grant planning permission on the Bloor Scheme and the Judgment of the Court of Appeal, the approach of the Council and Case Officer in his recommendation to grant planning permission on both schemes was correct.

5.2.2 Consistency in planning decision-making is an important consideration. The Council should have issued a planning permission as it had resolved to as the applications were for same form of development, in same district, for housing on emerging allocations.

5.2.3 The Appellant will invite the Inspector to do the same in the case of this Appeal and follow a consistent approach in decision taking.

6 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS

6.1 Planning Conditions

6.1.1 A list of subjects/areas needed to be considered by Condition was listed in the committee report. The Appellant and Council discussed a series of conditions, based upon the Council's standardised list and the matters discussed at Planning Committee, that were expected to be attached the planning permission to be granted on the site.

6.1.2 These were discussed immediately prior to the signing of the Section 106 obligation. This list, as agreed in draft in November 2021, is enclosed at CD5.8.

6.1.3 This list will be further reviewed between the Council and Appellant ahead of the Planning Inquiry. It is not expected that any substantial changes will be required.

6.2 Section 106 Obligations

6.2.1 As set out earlier, a planning obligation pursuant to the heads of terms resolved by Committee has been negotiated, agreed and signed by all parties. Given this is now appeal, this will need minor revisions to reflect the decision maker is no longer the Council, but it is expected this can be agreed with the Council with a revised obligation submitted in accordance with the Appeal timetable.

6.2.2 The obligation as drafted provides the following:

- Affordable Housing
 - 35% of total units on-site
- Sustainable Transport and Highways Improvements
 - Microprocessor Optimised Vehicle Actuation (MOVA) improvement works at the Bunbury Arms Junction, Thurston (£45,000)
 - A new shared cycleway on the east side of Ixworth Road linking with footways at the junction with Norton Road
 - Tabletop traffic calming at Norton Road/Ixworth Road junction with zebra crossings
 - Controlled pedestrian crossing on Barton Road near junction with Heath Road to provide a safe link for pedestrians and for cyclists for the NCR51 to the village.
 - £30,000 towards a feasibility and design study for improvements to platforms at Thurston Station
- Travel Plan and Active Travel Measures

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- £150 voucher for each property towards a bicycle purchase
 - Car Club facility to be provided on-site with provision for 2 vehicles (or sum of £50,000 payable to the District Council for this purpose in the event it is not provided on-site)
 - Communal Electric vehicle charging point provided on-site or contribution toward communal facility within the village of Thurston.
 - Education
 - Contribution to a new pre-school facility serving the development
 - Contribution to a new primary school facility serving the development
 - Community and Play Facilities
 - Neighbourhood Equipped Play Area to be provided on-site
 - Wheeled Play Facility on-site or £200,000 contribution to existing facilities within the village of Thurston.
 - Contribution to install five 'dog bins' within the site and regular maintenance and emptying.
 - provisions for the management of on-site open space and Sustainable Drainage Systems.

6.2.3 Should any new Section 106 requests arise before the commencement of the Inquiry, the Appellant will review these with the Council and include in the revised obligation where necessary.

7 THE PLANNING BALANCE AND CONCLUSIONS

7.1 The Planning Balance

7.1.1 The Appellant will adduce evidence to show that there is no conflict with the Neighbourhood Plan as confirmed by the Court of Appeal.

7.1.2 Whilst it is accepted there is an overall conflict with the Development Plan when read as a whole, there are significant benefits arising from the appeal scheme. These are noted in the above sections but principally include a range of sustainability/active travel benefits and the provision of new market and affordable housing.

7.1.3 It is accepted that the landscape character of the site will change but this is inevitable of any greenfield site, including allocated sites. Greenfield sites have been required in order for the Council to maintain a five year housing land supply and delivering its housing need.

7.1.4 The scheme lies between existing residential developments that are under construction and with further development/sporting facilities to the north.

7.1.5 The Appellant in evidence will demonstrate that there will be no loss or deterioration to irreplaceable habitats/species, no undue highways impacts with sustainable travel improvements and implementation of the appeal proposals will bring about net gains in biodiversity.

7.1.6 The Appellant will evidence that the benefits from the proposal, in all three spheres of sustainable development.

7.1.7 The Appellant will explain that in the tilted planning balance, the level of harm which would be required to displace the presumption in favour of sustainable development is very substantial and is not met. The Committee Report outlined:

3.59 That said Members are advised that the 'Tilted Balance' described in paragraph 11 of the NPPF [2019] is triggered by the fact that some of the Council's relevant adopted planning policies are 'out-of-date' and the fact that the Thurston Neighbourhood Plan [2019] fails to satisfy the requirement contained in paragraph 14b of the NPPF [2019]

7.1.8 The Appellant will also discuss matters relating to the flat balance in evidence there is considerable safety and sustainability/active travel benefits arising from the granting of planning permission at this location (as set out in Section 6). There is only minor harms arising from development of the appeal site, which principally arises from the change of an agricultural field to that of built development. The site is extremely well contained and enclosed by built development on all sides.

7.2 Conclusion

7.2.1 The appeal scheme has significant benefits and very limited adverse impacts.

- 7.2.2 There are no good reasons why the Council has not issued a planning permission following the completion of a Section 106 obligation and outcome of the Courts regarding the Bloor scheme.
- 7.2.3 There are no specific policies of the Framework which would either preclude or restrict development, therefore material considerations indicate that permission should be granted.
- 7.2.4 Accordingly, the Appellant will invite that the Appeal is allowed, and permission granted to allow the scheme's benefits to be realised.