

APPEAL BY M S OAKES LIMITED

BRICKFIELDS BARN, SAXMUNDHAM ROAD, ALDEBURGH

PLANNING INSPECTORATE REF. APP/J3530/W/17/3172629

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. These submissions are structured in accordance with the issues for decision identified by the Inspector at the opening of the inquiry, namely,
  - (1) the effect of the appeal proposals on the landscape with particular reference to the AONB;
  - (2) whether the proposals would deliver a high quality design as sought by local and national policies;
  - (3) whether the proposals would represent “major development” within the AONB and if so whether exceptional circumstances exist;
  - (4) whether the development plan policies are up to date and whether the Council can demonstrate a five year housing land supply;
  - (5) whether the proposals are appropriately located in relation to local amenities and community facilities;
  - (6) the requirement for appropriate assessment.
2. At the request of Mr Walton on behalf of the Council, as additional issue arises of whether the appeal proposals comply with the development plan and, if not, whether material considerations indicate that a decision should be taken otherwise than in accordance with that plan.

3. I will address each of these matters in turn.

Effect of proposals on landscape and AONB in particular

4. It is acknowledged that the appeal proposals would have a degree of adverse impact on the landscape which of course is designated AONB, the highest designation of landscape value applicable under national and local planning policy.
5. This is acknowledged for instance in Mr Neesam’s reference to certain “adverse effects” on the AONB (albeit “localised” and “acceptable”) in his para. 7.6.2 and Mr Hart’s observation that the proposals result in “no overall harm” to the AONB, ie recognising that some harm would occur, see his para. 4.26, but concluding that this is mitigated by the sensitivity of the proposals’ design.

6. But the fact of the appeal site's location within the AONB – and the importance of giving great weight to conserving and enhancing its landscape and scenic beauty – were at the very heart of the appellant and the Council's consideration of all elements of the appeal proposals in the period of over a year leading up to officers' recommendation for approval of the proposals, see eg para. 5.91 of Mr Churchill's proof of evidence; para. 4.01(A)(8) of the Appellant's Design and Access Statement ("weight given to AONBs"); Mr Hart's para. 4.26 ("great consideration has been given to the landscape and character of the AONB") and paras. 5.11, 5.37 and 5.43 of the Council's committee report on the application in Mr Churchill's Appendix 1:

"para. 115... [of NPPF 2012] of particular importance";

"The location in the AONB clearly requires particular care/scrutiny and weight in coming to the "planning balance" and the decision on the application... NPPF para 115 requires that "great weight should be given to conserving landscape and scenic beauty" of the AONB";

"NPPF para. 115 requires great weight to be given...".

7. Despite the suggestion by Mr Walton on behalf of the Council that Mr Churchill had failed to accord "great weight" to the AONB in his assessment of the appeal proposals, it is manifest that at each successive stage of the conception and evolution of the appeal proposals, the great importance of safeguarding the AONB has been at the forefront of people's minds.
8. This is evident from the consultation comments of Mr Newton, the Council's Arboricultural and Landscape Manager, in Mr Hart's App. 5:

"The NPPF para. 115 requires great weight to be given to conserving landscape and scenic beauty in the AONB which has the highest status of protection in these terms... In the overall consideration of all landscape and visual impact issues, I do not consider that the AONB will be significantly compromised by this proposal, although there will be some localised harm".

9. Mr Neesam's ultimate conclusions are in similar vein. He states in his paras. 7.6.1-7.6.4 that

"7.6.1 I have considered the ability of the landscape of the AONB and Heritage Coast to the south of Aldeburgh to accommodate a residential development within a quarry associated with a former brickworks, without a significant detriment to its character and visual amenity.

7.6.2 I have shown that the development could be accommodated, by year ten, with only localised and acceptable adverse effects on the character of the surrounding landscape and surrounding visual receptors, and by year ten, with just one significant residual visual effect, experienced from localised windows in three properties located close to the site's western boundary.

7.6.3 Having undertaken a robust assessment process, using an industry-recognised methodology, I consider that the appeal scheme is acceptable in terms of residual landscape and visual effects.

7.6.4 Importantly, over the course of the application process the effects of the proposed development has been appraised by three different Landscape Architects – the Paul Robinson Partnership, Suffolk Coastal District Council, and The Landscape Partnership. None of these appraisals has demonstrated that the development would have anything but an acceptable effect on the landscape character and visual amenity on the AONB and Heritage Coast”.

10. Further, Mr Neesam appropriately reflects the location and characteristics of the appeal site, stating as he does in his paras. 3.3.3 and following that

“3.3.3 The dominant feature within the appeal site is the former sand and clay mineral extraction pit that was once provided materials for the adjacent brickworks. The quarry now has a post-industrial character with a distinctive and disturbed topography and encroaching vegetation. Remaining built structures are now in a poor condition and are likely to continue to deteriorate.

3.3.4 Part of the quarry floor is currently used as a builder’s storage yard with piles of materials and various items machinery and plant. The upper levels of the site constitute unmanaged grassland.

3.3.5 The man-made character of the land uses at the site have more associations with the adjacent residential development to the north and west than the agricultural land and estuary to the east and south.

3.3.6 Overall, the land uses give the site an unsightly and visually discordant character that does not contribute to the landscape qualities of the wider AONB”.

11. Indeed, in these respects there is considerable common ground as between him and Mr Flatman in that the latter accepts that “the use and appearance of the appeal site is not particularly representative of the primary key characteristics of the Estate Sandlands”, see his para. 3.1.11 and that “the current condition and appearance of the Appeal Site does not fit particularly well with the surrounding character of the AONB landscape”, para. 3.2.9. In his evidence in chief he said that “the condition of the site is not perfect by any means – its appearance with the existing uses are negative aspects”.
12. However, Mr Flatman took the view in his conclusions that “the proposals would detract from the rural character and streetscene resulting in a form of development which would be urban/suburban in appearance and harmful to the character and appearance of the surrounding area”, 4.1.5.
13. It is submitted respectfully that Mr Neesam’s considered assessment and conclusions should be preferred. His evidence sets out a clear methodology and analysis and reaches a balanced view according the requisite degree of weight to the landscape and scenic beauty of the AONB.

14. He took a structured approach in carrying out his analysis identifying a graduated methodology for assessing the significance of effects. As set out in his proof and discussed under cross-examination by Mr Walton, he did so by “assum[ing] that residual Major and Major-Moderate effects can be considered “Significant” and would therefore merit particular consideration in the planning process”, see his para. 3.1.2.
15. To that extent, and as explained in cross-examination, he acknowledged all impacts – major and minor – but gave particular weight to the “significant” ones as assessed by him according to their “degree” of harm.
16. On the other hand, Mr Flatman did not set out any structured methodology to substantiate his opinion. He said he had adopted the applicant’s (ie appellant’s) but that was nowhere apparent in his evidence which simply ascribed a higher degree of impact to each of the various effects identified in the original LVIA.
17. As stated in his proof he took the view that (even though the scope of the original LVIA and the viewpoints selected was agreed with the Council’s Landscape Officer) “there are aspects which understate the degree of harm caused” and “a limited number of receptors that are not covered by any assessment at all, even though I would consider them important to understanding the nature and scale of the proposed changes”, his para. 1.2.5.
18. But this view was reached without any stated methodology to substantiate it as noted above and in complete ignorance of the two successive LVIA’s undertaken subsequently by Mr Neesam which involved a repeat of the assessment process and reached the same essential conclusions. Mr Flatman’s only comment on this further work in his evidence in chief was that there was “nothing in it to lead him to change his view”.
19. One would have thought that even ordinary intellectual curiosity would have led him to make some kind of fuller response to the conclusions set out in it. Beyond the comment in his evidence in chief that it did not make any difference to his view he did not even acknowledge that Mr Neesam’s LVIA did cover the viewpoints he said (despite being agreed) had been omitted from the original LVIA.
20. It also emerged in cross-examination that he had formed the view that he could represent the Council by giving evidence against the appeal proposals after he had read the appellant’s LVIA (concluding that the appeal proposals were acceptable) but before he had even seen the site – which is a surprising state of affairs to say the least. His approach is in marked contrast to that of Mr Neesam who undertook a site visit in advance to satisfy himself that he could support the appeal application on landscape matters, see his para. 1.3.3.



21. Mr Flatman must have been aware that officers had recommended approval for the appeal proposals at the time when he formed the view that he would support members instead – because otherwise why did the Council need an external witness? – but he still determined that he could adopt a stance at variance with the other professionals already involved.
22. Despite accepting that a professional assessment “must always take an independent stance, and fully and transparently address both the negative and positive effects of a scheme”, see his para. 1.2.7, his evidence failed to respond to Mr Neesam’s assessment. He also wholly omitted any analysis of the Council’s conclusions on the acceptability of the appeal proposals in landscape terms in the committee report recommending approval of them. This is despite the advice in the NPPG that officers’ views should be a material consideration to be taken into account and given appropriate weight, see eg NPPG para. 20-011-20140306. It follows that he did not produce an appropriately balanced assessment in these respects.
23. His judgement was further undermined by the fact that he had evidently misread the background landscape character assessments in that he thought that the appeal site lay in the “Alde Estuary” character area in Touching the Tide in his App. B, see paras. 2.8.1-2.8.2 of his proof, and used that to justify his evidence as to the presumed “isolation and remoteness” of the appeal site by wrongly ascribing the qualities of that area to it: “The quietness of the Alde is interrupted only by the sounds of reeds in the breeze, or birdsong. The broad expanse of the estuary, lack of settlement, limited accessibility across the estuary except at Snape and expansive views from the valley side give this landscape a strong sense of remoteness and isolation”.
24. It turned out that the Touching the Tide document actually included the appeal site within the “urban” area of Aldeburgh, a fact which speaks to very much less tranquil and undeveloped landscape characteristics in the appeal site. Mr Flatman did at least acknowledge at this point in cross-examination that the area in which the appeal site was shown to lie did have “urban characteristics”.
25. Similarly, his treatment of neighbouring character areas AL1 and AL2 in the Suffolk Coastal Settlement Sensitivity Assessment in his App. F as having landscape characteristics which were “both relevant” to the appeal site, see his para. 2.10.4, resulted in characteristics being misattributed to the appeal site, see eg the quotation relating to AL2 in para. 2.10.4:

“The sensitivity of this [AL2] landscape is due to its open, natural, low lying, coastal character and its location within the Suffolk Coast & Heaths AONB. This land lies adjacent to the town Conservation Area and is valued as a high quality landscape setting which contributes strongly to sense of place...”
26. Such an emphasis risks overlooking the acknowledged characteristic of AL1 within which the appeal site does undoubtedly lie where the “Existing settlement edge” is concerned including the comment: “some recent development extends onto lower

slopes within the Alde Estuary altering settlement form and character”, see top of his page 30.

27. Generally, and even though his criticism of the appellant’s original LVIA was that certain of its judgements were “understated”, Mr Flatman’s own judgements seemed generally to be overstated. His table on page 40 of his proof under the heading “openness” states that the site “forms a crucial part of the open countryside landscape away from the settlement edge...” (emphasis supplied); under the heading “rural countryside character”: “site contributes to rural character of the countryside... gives rise to a feeling of being remote and isolated...”
28. Under cross-examination his judgements became even more emphatic. He said that in views of the appeal site looking back towards Aldeburgh “the influence of the town is very, very limited”. He described the appeal site as being “very exposed”. He insisted on the basis of a quotation commencing with the observation that “the [Estate Sandlands] LCA does not have a history of substantial settlements...” in his para. 2.7.4 that, despite Aldeburgh being a town and therefore a substantial settlement, the impact of the appeal proposals on the landscape would be “highly significant and damaging”.
29. It is submitted that Mr Flatman’s judgements in his Table 9.1 (uniformly recorded as major adverse, major moderate adverse and moderate adverse – even in long distances) are similarly overstated. As pointed out in the Inspector’s questions of Mr Flatman they do not admit of any mitigation even by year 10.
30. It is also noteworthy that he made no reference at all to the fact that the appeal site had been included at the Issues and Options stage as a potential housing site in the emerging Site Allocations DPD and so its suitability in principle as a site which could be developed for housing was expressly acknowledged by the Council even though it was not carried through to the final plan. This is a factor which should have influenced Mr Flatman’s assessment of the potential effects of development on the landscape but was another matter simply not addressed by him.
31. On that basis, therefore, the Inspector is respectfully invited to prefer the evidence of Mr Neesam to that of Mr Flatman, the evidence of the former being more measured, balanced, accurate and informed than that of the latter.
32. Indeed, Mr Neesam’s evidence and conclusions coincide with the majority of expert opinion in this case in as much as his predecessor at Paul Robinson Partnership who carried out the LVIA, the Council’s own expert Landscape officer, Mr Newton, and the case officer, Mr Milligan who wrote the committee report, all agree with him.
33. The Inspector is therefore respectfully requested to reach the same conclusions as theirs which are encapsulated by the Council committee report (NB although the ultimate decision was left to members, the views of expert officers were clear) see paras. 5.40-5.47:

“... [quoting without disapproval from the Paul Robinson LVIA] The development will be visible, but it is considered that the impact of the development will be reduced once planting and boundary treatments become established. It is considered that the proposals demonstrate potential for the development to assimilate into its context.

The development proposals have been brought forward with a view to utilising the site without introducing land uses that are uncharacteristic within the surroundings. The proposals for residential development also enable the protection of valuable site assets and an opportunity to effectively link and integrate the development into its valuable high quality setting.

It is considered that where visible the development will appear as a small extension to existing development form north and west of the site. Existing vegetation to the east of the site and the retention of undeveloped open space is expected to prevent the development from appearing as a direct extension of built form stretching from Aldeburgh to the west.

The development proposals have potential to improve ecological and amenity value and to protect some of the quality characteristics of the locality that provide site context.”

5. 41 The Landscape and Arboricultural Manager has assessed the application and considers that with regards to landscape impacts the conclusion to be realistic in that the magnitude of the effect of change will be moderate. He considers that the site displays few characteristics of the prevailing landscape character types; it has had previous industrial use, and is adjacent to existing housing land use. It is felt that the landscape impacts of this development are not significantly adverse to justify refusal...

5.42 The landscape strategy is largely appropriate and acceptable bar reservations that I have about one or two tree species. These can be resolved at detailed landscape design stage should consent be granted. The proposed measures will moderate the visual impacts for receptors within 1km range, although not remove them altogether....

5.47 The level of impact is mitigated by proposed landscaping and the proposed use of a darker palette of materials. The non-adoption of the highway allows more limited lighting/street lighting than an adoptable road. The impact of the built form against the backdrop of the trees/hedging on the north side of the site is not considered significant in its impact upon public views within the AONB, but it is this issue set against the public benefit of this level of housing and affordable housing provision which will determine whether the application can be accepted”.

Whether the proposals will deliver high quality design as required by policy

34. This is another issue on which there was a close correspondence of views between the professionals instructed by the appellant and those appropriately qualified in-house officers at the Council.

35. Again, the essential conclusions are summed up in the Council's committee report, in para. 5.68:

“One of the 12 Core Principles of sustainable Development identified in the Framework states planning should: “always seek to secure high quality design and a good standard of amenity for all existing and future occupants of buildings”.

36. This passage from the NPPF about seeking to secure high quality design is quoted in a passage in the report dealing also with residential amenity. But the proposals' compliance with policy DM21 is confirmed expressly in para. 6.5 of the report.

37. The preamble to policy DM21 states the Council's intention to require high standards of design, see para. 5.50-5.51 of the Core Strategy, CD1.1:

“5.50 High quality design should be sought for all types of development irrespective of location (be it in an urban, rural, designated or non-designated area) within the district”...

5.51 The NPPF highlights the important of high quality design. It states (paragraph 56):

“Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people”.

38. Policy DM21 states that

“Proposals that comprise poor visual design and layout, or otherwise seriously detract from the character of their surroundings will not be permitted. Development will be expected to establish a strong sense of place, using street-scenes and buildings to create attractive and comfortable places to live, work and visit...”

39. It can be taken from officers' confirmation that the appeal proposals comply with policy DM21 that the proposals accord with those aspects of it, including the invocation in the preamble to seek high quality design. The same applies to the criteria in the policy that “(a) proposals should relate well to the scale and character of their surroundings particularly in terms of their siting, height, massing and form” and “(f) attention must be given to the form, scale, use, and landscape of the spaces between buildings and the boundary treatment of individual sites, particularly on the edge of settlements”.

40. Likewise, as put to Mr Ivatt in cross-examination and accepted by him, the Council's officers evidently regarded the design of the appeal proposals as complying with development plan policies relating to quality of design and others such as strategic policy SP22 and criteria (a) and (e) which refer respectively to avoiding "town cramming" and to "retain[ing] the sensitive environment generally, particularly the setting and edges of the town". It follows that officers therefore regarded the appeal proposals as representing an appropriately high quality of design for their context.
41. The history of the evolution of the appeal proposals, in full accord with the policy guidance and encouragement of dialogue and engagement in the application process, is set out in the evidence of Mr Hart. Through that process of informed debate with appropriately qualified expert officers, a high quality design was arrived at which should have been regarded by members as being wholly acceptable in the appeal site's AONB and settlement edge context.
42. Contrary to what is alleged in the reasons for refusal, the contemporary design of the appeal proposals should be regarded as "acceptable" and the standard of design should be regarded as being of an appropriately high quality for its AONB location.
43. It is to be noted that, beyond stating (1) that "the design of the development is considered to be unacceptable, with the properties unrelated to the traditional characteristics of properties in the area/AONB and those in the immediate area" and (2) that the design approach is not considered to be outstanding or innovative and not of a quality suitable for such a sensitive AONB location, the Council's reasons for refusal do not actually specify what aspects of the development are unacceptable or what might be required by way of an "outstanding or innovative design".
44. Again, the appellant is content to rely on the productive process of liaison with the Council's expert professionals which led to the formulation of current high quality contemporary design proposals. As confirmed by Mr Robert Scrimgeour RIBA, the Council's Senior Design and Conservation Officer, in his comments reproduced in Mr Hart's App. 4, under the heading "Architectural design" he said this:

"The housetype designs have a strong inter-relationship in terms of their design approach and choice of materials that will impart a degree of coherence which is welcome. This approach is important also in integrating the varied house types and tenure across the site. Because of the nature of the site and its lack of connection to the existing townscape the proposed layout needs to create its own townscape and sense of place independently. A strong and coherent architectural language contributes to this purpose and I judge that this is what the designer has achieved. The designs are bespoke and locally distinctive and reinforce a pattern of good quality contemporary design for which the town of Aldeburgh is becoming an exemplar (everyone, please note)".



45. He goes on to comment that the result of the “radical switch in stylistic approach” from traditional to contemporary “strengthens the design credentials for this scheme, which I welcome”.
46. He confirmed his view that “in respect of architectural design, the scheme does meet the aims of the NPPF [2012] at section 7 [“Requiring good design”] where the Government seeks to promote good design through the planning system for the reasons that I have described”.
47. He evidently regarded the design as being of a sufficiently high quality for its context and that was the basis on which he commended it to his colleagues.
48. For the Council, Mr Ivatt took it upon himself to raise objections to the appeal proposals in respect of several aspects which do not form part of the Council’s reasons for refusal, which are confined to the matters stated above.
49. He sought to maintain on behalf of the Council that the appeal proposals were objectionable on grounds of density, layout, materials and cumulative impact. Again, there is no reference to these matters either expressly or by implication in the reasons for refusal and the persistence with them as grounds of objection goes beyond the Council’s stated “full reasons for refusal” within the meaning of art. 37 of the DMPO.
50. Mr Walton sought to recover the position by asserting that these aspects were “central” to any consideration of design but the fact remains that there is no resolution to the effect that these matters should be regarded as reasons for disapproving the development.
51. In any event, there is no warrant for seeking to be prescriptive about such matters or for imposing any particular architectural tastes on the appellant. Moreover, this is not a case where there is any evidence that the Council, in line with the then applicable para. 60 of the 2012 NPPF, were seeking “to promote or reinforce local distinctiveness”.
52. But Mr Ivatt undertook an exercise of seeking to compare densities of different developments and suggest that the appeal proposals were out of keeping with them. But, again, the Council’s own expert professional officer had no objection on density grounds, see again Mr Hart’s App. 4:

“The density and scale of dwellings, however, will impart a much more urban character to this space – akin to a town square – than a village green and this should be acknowledged in our decision making. Having said that, of course, the built context for the application site is suburban Aldeburgh – that is, it is not a rural agricultural setting (where a village green concept would be applicable), it is a town-on-a-river setting and, thus, I have no objection at all to this layout having urban qualities”.



53. Equally, the density of the appeal proposals is in fact comparable to that of Phase 2 to the west which was confirmed to be acceptable by the grant of permission on the basis of a recommendation which commended the design and layout as “successful” and “highly distinctive”, see CD 5.5.
54. Moreover, Mr Ivatt’s analysis sought to downplay the much higher indicative density in the 2014 SHLAA and did not address at all the fact that the Issues and Options density which involved active consideration of the site as a potential one for development at the same density.
55. The layout was also accepted to be appropriate for and complementary to the design which Mr Scrimgeour approved. Once again, there is no warrant for saying that the appeal site’s design should be dictated by the features of any other development such as eg the Cygnets which itself has no particular precedent or antecedent in the locality.
56. Where materials are concerned, this aspect was closely considered in the course of the design process, see again Mr Scrimgeour’s comments. But there is no warrant at all for Mr Ivatt taking cues from the Aldeburgh Conservation Area Appraisal, see paras. 21.1.25-26 given that the site lies 0.8 km from its boundary. Furthermore, when Aldeburgh is looked at as a whole it includes an almost infinitesimal variety of materials and styles in its architecture.
57. Mr Ivatt’s cumulative impact argument also has no grounding or basis in any resolution of the Council’s. It is misconceived as an argument to the extent that it uses as a springboard the suggestion that the permissions for Phases 1 and 2 were errors on the Council’s part, an assumption which shows a questionable appreciation of the operation of the planning system and – equally – involves seeking to ignore highly relevant aspects of the appeal site’s existing context.
58. Mr Ivatt, like Mr Flatman, is in a minority of one in seeking to maintain an objection to the appeal proposals in his topic area. His evidence was unbalanced in its failure to address any of the NPPG advice on attaching weight to the collaborative design process. Also, despite saying that he had “reviewed” the case with the Council’s urban design officer, he did not seek to reconcile or explain their fundamental difference of views.
59. He ultimately accepted in terms that he was “only dealing with the cons, you do not give a well-rounded view do you? In that regard, yes”. He was in error as to the location of the appeal site in landscape character area AL2, saying that he should have said the site was “adjacent” to it and then persisted in arguing in cross-examination that “the site derives its character from AL2 as it takes its setting from all sides”.
60. He did not address the Issues and Options identification of the appeal site as one which might be developed and ultimately confirmed that some other form of development on the appeal site might actually be acceptable which was not a matter

he weighed against his stated objections to this form of development on the appeal site. That is, if some other form of development could be acceptable, what really makes this current proposal so bad?

61. In the light of all the above, the Inspector is respectfully requested to prefer the appellant's evidence on design issues (including the considered professional comments of Mr Scrimgeour's) to the evidence called by the Council.

Are the proposals "major development" in the AONB/do "exceptional circumstances" exist?

62. As determined by case law and as now confirmed by footnote 55 to the NPPF, the question whether development in the AONB is "major development" is "a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined".
63. Here, the nature, scale and setting of the appeal proposals are such that there is no necessary reason to regard them as "major". Even though the appeal proposals comprise 43 units, the actual number of new residential buildings totals 32 which is the same number as in the Kingsbridge appeal decision referred to in para. 5.105 of Mr Churchill's proof of evidence. But even if one goes by the number of units, 43 dwellings still only represents a 2.5% increase on the size of the town.
64. As for whether the development "could" have a significant adverse impact on the purposes for which the area was designated, it is not accepted that the use of the word "could" intentionally imports the "precautionary principle" from European Law so that if a proposal "might" have an impact then the development concerned is automatically "major". It is submitted that the judgement is more straightforward than that.
65. Here, taking account of Mr Neesam's assessment of the characteristics of the site and its relation to and limited impact on this part of the AONB, that the appeal proposals should not be considered as a matter of fact and degree to amount to "major development" according to whether they would be likely to have a significant adverse impact on the purposes for which the area was designated, see his para. 5.4.3: "the character of the appeal site is strongly influenced by its proximity to the town of Aldeburgh and displays few, if any, of the typical agricultural, heathland or estuarine qualities of the wider landscape in which the town is located".
66. His view was again consistent with of Mr Scrimgeour, the Council's Senior Design and Conservation Officer, who assessment was as follows: "the built context for the application site is suburban Aldeburgh – that is, it is not a rural agricultural setting", see again Mr Hart's App. 4.
67. It is to be borne in mind that the NPPG emphasises the relevance of the "local context" in making an appropriate judgement, see para. 8-005-20140306.

68. Finally under this aspect of this heading, it is to be recalled that the Council did not actually address the correct test in concluding that the appeal proposals represented “major development” and were apparently influenced by the definition in the DMPO whereby any development of 10 dwellings or more is to be regarded as a “major development”, see para. 5.11 of the committee report. Also, as emphasised by Mr Churchill, one would have expected an objection from Natural England on AONB grounds if the appeal proposals were to be regarded as “major development”.
69. For all of these reasons, the appellant submits that the appeal proposals are not to be regarded as representing “major development” within the AONB.
70. But even if the proposals were to be so regarded, there are indeed exceptional circumstances and public interest considerations which apply here such that the appeal proposals do satisfy the requirements of para. 172 of the NPPF.
71. Where the criteria in para. 172 are concerned, the first criterion (a) requires consideration of the need for the development and the impact on the local economy of permitting or refusing it. My submissions on the five year supply issue are set out below but they would apply equally under this heading, assuming of course that the Inspector agreed that there was a shortfall in supply and noting that the appellant does not regard the five year supply issue as critical to success in this appeal.
72. But the significant point I would emphasise here is the critical need to provide affordable housing in Aldeburgh. This is a matter required to address the “major problem” of lack of affordable housing provision in the district as a whole and, where Aldeburgh is concerned specifically, to ensure “the retention of a balanced, cohesive and socially inclusive community”, see Strategic Policy SP22. This is a policy imperative which “must not [be] outweigh[ed]” by the towns physical and natural constraints”. This is why the policy wording expressly acknowledges that development is merely “anticipated” to occur within the defined physical limits of the town, a fact confirmed by the Inspector’s examination of the terms of the original policy which initially sought to define development to within the settlement boundaries.
73. Mr Churchill’s evidence on need for affordable housing in his para. 5.70 and following of his proof of evidence is commended as a whole. The Council quite properly recognises the provision of affordable housing as a “significant planning benefit” in para. 16 of their opening submissions. This to be contrasted with Mrs Hutchinson’s conclusion that it was a matter which should be accorded only “moderate” weight, see her para. 6.11. But as I go on to submit below, Mrs Hutchinson’s evidence showed the same lack of balance as her colleagues Messrs Flatman and Ivatt.
74. As for criterion (b) the essential question is whether the pressing need for affordable housing in Aldeburgh can sensibly be met elsewhere. Likewise, the need for

affordable housing in Aldeburgh cannot be met save by providing affordable housing in Aldeburgh.

75. As Mr Churchill points out in para. 5.116 of his proof, the provision of housing in settlements other than Aldeburgh would only result in encouraging greater out-migration of families and local people from the town. Accordingly, providing affordable housing in the town would result in residents not having to move away from the place where they have home and family connections and will contribute to the objective of retaining a balanced cohesive and socially inclusive community as referred to above.
76. As for criterion (c) and the issue of detrimental effect on the environment, landscape and recreational opportunities and the extent to which that could be moderated, I repeat my general summary of Mr Neesam's evidence above and note again Mr Churchill's evidence at para. 5.118 and following.
77. It is also relevant to note again that the appeal site was recognised as having the potential to be developed as an "available" housing site in the 2014 SHLAA, CD 2.4, and at the Issues and Options stage of the preparation of the Site Allocations DPD – for a larger indicative quantum of development than is proposed in the appeal – so its alleged vulnerability in landscape terms should not really be an issue.
78. In the context of recreational issues, the appeal site will offer the facility for people to make use of the footpaths across it for dog walking and onwards circuits through the AONB which is also a benefit of the proposals.
79. The Inspector is therefore requested to find that exceptional circumstances and public interest considerations do exist such as to justify the appeal proposals, even if she took the view that they amounted to "major development".
80. Characteristically, Mrs Hutchinson's view on this issue was that "there are no exceptional circumstances to justify this development and none put forward by the appellants", see her para. 5.113. This again failed to address the careful consideration of the question in paras. 5.12 and following of the committee report.
81. Paras. 5.85 and 6.4 of the report also refer to the public benefits flowing from the proposals such as to amount to exceptional circumstances as follows (and see further comprehensive list below):

"The sustainable location of the site, well related to the town and associated facilities and services;

Economic benefits including both spending in the local economy and job opportunities in the construction industry;

Helping to meet and sustain the rolling supply of housing;

Provision of affordable housing where there are few opportunities in the town for such provision;

Provision of a range of housing types; generally in accordance with Policy SP3 (Table 3.6);  
CIL contribution to be spend on infrastructure projects, a proportion of which would be directed to the Town Council (15% of receipts);  
New Homes Bonus”.

82. In the circumstances, the Inspector is once again respectfully requested to prefer the appellant’s position on this issue to that adopted by the Council.

Whether development plan policies are up to date/five year housing land supply?

83. As I stated in opening, success in the issue arising under this heading is not critical to the appellant’s case since the Council’s professional officers reached their conclusions on the acceptability and sustainability of the appeal development (despite regarding the proposals as constituting major development and) despite maintaining the existence of 6.3 years of housing land supply.
84. But as set out in Mr Churchill’s composite table, the Council’s supply of housing land only meets the five year requirement in two out of five of the scenarios considered. In his “DC Scenario” and “Scenario 2” the Council only achieves 4.8 and 4.7 years respectively in accordance with the assumptions on buffer and lapse rate which he applies. In his Scenario 3 no more than 3.66 years would be achieved.
85. The Council did not accept the 20% buffer in Mr Churchill’s DC Scenario on the basis of para. 73 in the 2018 NPPF (despite having accepted its application in their originally submitted evidence, see Mrs Hutchinson’s para. 5.25). But Mr Churchill maintained that some adjustment was necessary – whether the addition of a buffer or the application of a lapse rate – to take account of the inherent inaccuracy of forecasting on the Council’s part as set out in his Table 5.3 in his para. 5.58 (supported by the current trend nationally of 30% more permissions being granted than actual completions achieved nationally as set out in his table 5.4).
86. So Mr Churchill could not accept that it was appropriate to include only a 5% buffer as Mrs Hutchinson did if she was not going to apply any lapse rate as well. It is therefore respectfully submitted that some means of adjustment is required to reflect the uncertainties involved and on that basis the appellant maintains that the Council is unable to demonstrate a five year supply.
87. The above figures for supply in year are based on a “supply” figure of 2,852. The Council asserts on the basis of the various disputed sites on the parties’ spreadsheet of supply that the overall figure should be higher.
88. The appellant simply does not accept that on the basis that the Council has included allocations and sites with outlines permission which cannot be counted towards the total supply figure unless “there is clear evidence that housing completions will begin



on site within five years”, in accordance with the terms of the definition of deliverable in the glossary to the new NPPF.

89. On this basis (and taking a leaf for these purposes out of Mrs Hutchinson’s book!) there is simply NO evidence that housing completions will begin on these sites within five years which has been produced by the Council and submitted in evidence, beyond hearsay references to developer proformas (which the Council admitted had not been scrutinised at all closely) and certainly no “clear evidence” as required by the NPPF.
90. It follows that the Council is unable to demonstrate a deliverable five year supply of housing land and, accordingly, the “most important” policies for determining the application are “out of date” including the settlement boundary references in Policy SP19 (but not the directory focus of development on Market Towns) and Policy SSP2 in the Site Allocations DPD which establishes settlement boundaries.
91. Again, therefore, the appellant respectfully requests the Inspector to agree with the appellant’s case on this issue as well.
92. Once again though, the appellant repeats the point that this argument is not determinative in this appeal given that the Council’s professional officers were prepared to approve the development even when they assumed the existence of a five year supply.
93. Also relevant in this regard is the fact that the Council’s Policy and Delivery Team officer confirmed in her consultation response on the appeal application that, on approval of the application, the settlement boundary could simply be amended to reflect that fact, see App. 12 to the appellant’s statement of case, in which she went on to say “in the particular circumstances of this site I do not consider that the fact that it is not included within a proposed revised physical limits boundary for Aldeburgh as drafted in the Proposed Submission document should carry much weight”.

#### The location of proposals in relation to local amenities and community facilities

94. The conclusion on this issue is self-evident. The appeal site is located even closer to the facilities of Aldeburgh than the Rose Hill site which the Council has seen fit to allocate for development without any apparent concerns about its sustainability.
95. Further, in terms of the site’s sustainability, the committee report notes

“5.14 The current application site is approx. 770m on foot from the supermarkets at the Saxmundham Road roundabout, whilst the site of SSP3 lies approx. 1280m away. The application site does have a sustainable relationship to the town, arguably better than the SSP3 site and along with the SSP3 site, is the only (other) available site able to provide a scale of development which can provide a mix of affordable and market housing and which lies adjacent to the settlement boundary”.



And, in para. 5.20, under the heading from Policy SP1 of “Relat[ing] new housing development to employment, services, transport and infrastructure – for the achievement of which “a defined Settlement Hierarchy, itself based on sustainability principles, has been created and applied”:

“5.20 The site is within 770m of local supermarkets and abuts the settlement boundary of Aldeburgh which is defined in the Settlement Hierarchy as a Market Town. The settlement boundary lies both to the north and west. Whilst the Local Plan acknowledges the limited employment opportunities within the Town, the scale of this development is clearly proportionate to a Market Town of this size and any concerns about infrastructure can be addressed through CIL. The size of the land allocated under The Site Allocations and Area Specific Policies DPD and limitation on unit numbers set out in policy SSP2 appears to provide significant constraint on the provision of housing in the town, with opportunity for affordable housing limited by site size, flood risk etc on redevelopment and infill opportunities within the identified town limits”.

96. Regrettably, Mrs Hutchinson had difficulty accepting even this simple question as to the more sustainable location of the appeal site relative to Rose Hill (saying at first that she agreed with members “up to a point” in respect of the allegation in reason for refusal that the appeal site is “poorly related to services and facilities within the town” then that she did agree with members but then confirming in reply to a question from the Inspector its location relative to the town was sustainable. Subsequently, she has come back with further measurements on the basis of which to assert that the site is further away from the Coop etc than the 770m referred to in the committee report but this cannot change the situation on the ground as to the site’s acceptable location relative to the amenities and facilities in the town.
97. Mrs Hutchinson also raised the question (not in the reasons for refusal) that the footway on Saxmundham Road is somehow inadequate. But this is not a matter supported by any evidence – she said she had “lifted it” from the statement of case, least of all any objection from the highway authority whom one could have expected to say something if there were an objection on sustainability grounds to development of the appeal site. As confirmed in the inquiry, and contrary to the question raised by Mrs Hutchinson about it, the highway authority withdrew a request for the provision of a bus stop from the requirements for the section 106, confirming the acceptability of the appeal site in locational terms.
98. Finally under this head, the lack of any objection to the appeal site on grounds of (un)sustainability of location is manifest in the fact that the site was put forward for development at the issues and options stage. No issue was raised as to the sustainability of its location although there were concerns initially on landscape and SPA grounds but, as we know, these were regarded as being capable of resolution.

### The requirement for appropriate assessment

99. This issue only arises in consequence of the decision of the Court of Justice of the European Union in *People over Wind* that if mitigation measures are required to address any anticipated effects on a European site then appropriate assessment under the Habitats Regulations will be required.
100. Before this ruling, Natural England were satisfied that there were no likely “significant effects” arising from the appeal proposals as a result of the mitigation proposed, see Natural England’s letter of 8 April 2016 in Mr Churchill’s App. 4.
101. As referred to in the letter, it was contemplated under the Core Strategy that visitor management measures including a warden service etc would be developed to be funded by developer contributions or, since the Council had not by that time developed a strategy to implement those measures, Natural England had advised on an interim approach to ensure that development proposals coming forward in the interim were compliant with the Regulations.
102. The outcome of that process was the Council’s requirement of a contribution of £150 per dwelling as secured in the section 106. Natural England have confirmed that they would “anticipate that an appropriate assessment based on these [mitigation] principles [referred to in their letter of April 2016 – ie including the interim strategy] could reasonably reach a conclusion of no adverse effect on integrity”, see their email of 8 August 2018 also in Mr Churchill’s App. 4. The Council is to update the inquiry on the current situation with development of the mitigation strategy/interim strategy. But no concern has been expressed that the appellant’s contribution to the mitigation “pot” is not adequate to address the issue and on that basis the Inspector is respectfully invited to reach the same conclusion as Natural England that a contribution towards the strategy would result in “no adverse effect on integrity” of the SPA.

### Accordance with the development plan/material considerations

103. As noted above, the Council requested that this be included as an additional issue, presumably in hopes of redrawing the battle lines in a manner which would favour their position given the very clear terms of the reasons for refusal.
104. But there are various problems with the Council’s argument, not least the conclusion of their professional officers in para. 6.4 of the committee report that

“When the proposal is tested against the policies in the Framework as a whole, it is on balance considered a sustainable form of development which does accord with national planning policy and Local Plan policies SP1, SP3, SP22, SP29, DM20, DM21, DM23, DM27 and DM28”.

105. The argument advanced in the inquiry, relying as it did on alleged non-compliance with a variety of policies, is also at variance with the fact that in terms of the requirement in art. 35 of the DMPO to “specify all policies and proposals in the development plan which are relevant to the decision”, only policies DM3, SP22(e) and DM21 were identified in the Council’s reasons for refusal.
106. Further, the Council’s statement of case confirmed the Council’s contention that “the development does not accord with the statutory development plan for the reasons given in the notice of refusal”, see para. 7.1.2.
107. Be that as it may, the appellant maintains that the appeal proposals do comply with the development plan as a whole for the reasons set out in Mr Churchill’s proof at para. 5.7 and following.
108. It was put to Mr Churchill that his argument that the Council’s reliance on the development plan was “flawed” as a result of the Core Strategy’s predication on housing figures which all parties were agreed were out of date was similar to the argument in the Bell Lane decision, CD 6.1 at para. 17 that the development plan was “infected” by the out of dateness of policy SP2.
109. The Bell Lane Inspector disagreed with the argument, saying that no authority was cited for the proposition that that he should take account of the reduced weight of policies as part of the first stage of consideration under section 38(6) rather than the second.
110. With great respect to the Inspector, there are numerous authorities to the effect that development plan policies should not be applied “slavishly” and it is respectfully submitted that this is just the sort of situation that they should not be so applied, just as the Council is seemingly striving to do.
111. Here, also, a major point of distinction where Bell Lane is concerned is that the site was not to be recognised as a “near miss” (not a “rejected”) site in the Site Allocations DPD. As noted by the Inspector on the examination into the Plan, it looked only at settlement boundaries based on the out of date Core Strategy housing figure of 7,900 and acknowledged that the “omission sites” which were not included at that stage could still come forward through the application process, see CD 1.2 paras. 26 and following and 33.
112. Again, the Council’s Policy and Delivery Team officer confirmed in her consultation response on the appeal application that she did “not consider that the fact that [the appeal site] is not included within a proposed revised physical limits boundary for Aldeburgh as drafted in the Proposed Submission document should carry much weight”.
113. However, having said all that, the balance of material considerations combine so that come what may, the appeal proposals can be permitted in accordance with

their manifest planning merits, whether or not this is done at the first stage of the section 38(6) consideration process or at the second stage.

114. Here there are very many “material considerations” which support the grant of permission for the appeal proposals, including the out of dateness of the development plan, the directional thrust of the settlement policies and the fact of identification of the appeal site both in the SHLAA and in the Issues and Options document for the Site Allocations Plan as a site for (a greater quantum of) development.
115. There are a considerable number of very real benefits which the appeal proposal would bring with them, not the least of which is the provision of much needed affordable housing in Aldeburgh for the people of Aldeburgh. As the Prime Minister is to announce today: “I want to see social housing that is so good people are proud to call it their home... our friends and neighbours who live in social housing are not second-rate citizens”. This must include providing it in the right place for them, ie where the need for it arises in their own home town.
116. Despite what was put to Mr Churchill about there being no particular benefit in the provision of more market housing, it is respectfully submitted that there must be some benefit (also in terms of spin-offs such as construction wages and the policy imperative to boost substantially the supply of housing). Also, it is not to be forgotten that there is no prospect of achieving any more affordable housing in Aldeburgh if it does not come forward as part of a housing development. As it well known, there is no other site in Aldeburgh which could accommodate the same quantum either of market or affordable housing. It was pointed out in evidence that the last site to be developed on any scale was Church Farm commencing in 1971.
117. It also cannot be said that provision of market housing would somehow lead to positive disbenefit for the town in accordance with the supposition that some of the houses might be purchased as second homes. It is acknowledged that there is no means of preventing second home purchases but there is no evidence that people owning them would cause any disbenefit, other than not realising a benefit of providing a full time residence.
118. But the appellant has done his best, in this respect as in all things, to seek to minimise the attraction of the development to second home purchasers through the design and mix of the dwellings, which was welcomed and approved by the Council’s officers and is not objected to in this appeal, see para. 5.60 and following of the committee report and para. 5.62 in particular.
119. National policy remains that to address the affordability crisis, which is most acute in Aldeburgh, a significant and demonstrable boost to the supply of housing, including, market housing is required. The provision of 29 market homes will provide a significant contribution to providing greater choice within Aldeburgh, going some way to countering the ever worsening affordability in the town.

120. A comprehensive list of all the other benefits of the appeal proposals will bring with them is as follows (with cross-references to the evidence):

- New footpath connecting the river wall and brick dock with Saxmundham Road [DC 5.121 and OR 5.25]
- Link to public footpaths along the river wall and on Aldeburgh Marshes [DC 5.121]
- Increased recreational opportunities in the AONB [DC 5.122]
- Creation of publicly accessible, safe and well-maintained POS [OR 5.25]
- Support to local shops and services in Aldeburgh [DC 5.141]
- Seeks to contribute to the housing market – the extent of the problems associated with it are clear in the context of the advice provided by Government and the urgency of proposals to address the matter i.e. ‘Fixing our broken housing market’
- Economic [DC 5.140 to 5.150 and OR 5.23]  
Economic contribution per home [DC 5.144 and DC 5.146] £1.16m spending, £215,000 one-off spending, £1.56m GVA for wider economy  
Local financial contribution [DC 5.147] £71,249 tax receipts  
Creation of jobs [DC 5.148 and DC 5.149] – 65 construction jobs, 129 jobs in the supply chain, 297 jobs in the wider economy
- Social  
Market and affordable housing – significant weight [DC 5.151]  
CSDMP Para 5.09 ref the extent of affordable housing need  
Need is 24% of the whole (or 2,640) over period 2010-2027 equates to 155 affordable dwellings per annum, or 97 per annum against the SHLAA  
Affordable housing delivery (7 years 2010/11 – 2016/17) is 391 dwellings, at an average of 56 per annum  
Health and leisure benefits of improvements to the site and the provision of access to the countryside  
CIL and Planning Obligations [DC 5.209]  
Abnormal and socially exclusive settlement, with extremely limited proposals for future provision – any opportunity to reverse should be embraced
- Environmental  
Partially brownfield  
Well related to the existing settlement  
No objection from the statutory bodies  
Open space provision  
View opportunities  
Footpath

121. In all the circumstances therefore, it is respectfully submitted that the appeal proposals should be approved as representing a sustainable form of development which would be appropriate and acceptable in its location, whether on the basis of complying with the development plan or because material considerations indicate otherwise. As agreed with Mrs Hutchinson in cross-examination, if the appeal proposals can comply with each of the successive steps in what is now para. 11 of the

NPPF, then there is no reason that the presumption in favour of development should not apply, despite the terms of para. 177.

### Third parties

122. As submitted in opening and with respect to the third parties made representations or who have attended and/or spoken up in this inquiry, there is nothing to change the fact that this remains a development which is in reality something which should have been permitted in accordance with the Council's professional officers' recommendation. None of the matters raised by third parties or by Mr Ward on behalf of the Town Council lead to a different conclusion.

123. As put to Mr Ward in cross-examination, none of his quasi legal arguments amounted to an objection to the appeal proposals on their merits and in any event were unsupported by any of the authorities who might have been responsible for carrying forward the contentions he made. The same applies to the issues raised on the section 106 which has been accepted by the Council as an effective means of securing the measures contained in it.

124. His arguments on affordable housing provision were flawed for the reasons set out in Mr Churchill's para. 5.84 and following.

### Conclusion

125. In the light of all the above, it is respectfully requested that the Inspector allows the appellant's appeal.

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19 September 2018



**Introduction**

1. These submissions do not rehearse the evidence the Inquiry has heard over the previous five days. Rather, they set out a route-map to assist the Inspector determine the appeal in accordance with the relevant legal and policy context, with reference as appropriate to the key arguments / evidence.

**Section 38(6)**

2. The starting point is section 38(6) of the 2004 Act. This provides that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. This is the plan led-system, with primacy given to the plan.

**Stage 1 – does the scheme comply with the Development Plan?**

3. So, the first question is whether or not the appeal scheme complies with the Council's development plan. [As set out further below, it is now common ground that it does not]
4. At this stage of the process other material considerations do not come into play. Please see the approach set out by Inspector Murray in the Bell Lane decision letter – CD 6.1 paragraphs 17 -19. The approach Mr Churchill took in his proof was flawed, as he considered the question of whether the scheme complied with the development plan by adjusting the weight to be given to various policies by reference to the fact that the OAN set out in SP2 is out of date. As Inspector Murray rightly points out, this is the wrong approach. Mr Churchill's written assessment of whether the scheme complies with the plan is thus wholly unreliable.
5. Here, the development plan comprises:

- Suffolk Coastal District Local Plan – Core Strategy and Development Management Plan Document (July 2013);
- Site Allocations and Area Specific Policies (January 2017); and
- Saved policies of the Suffolk Coastal Local Plan, incorporating 1<sup>st</sup> and 2<sup>nd</sup> Alterations 2001 and 2006, (saved July 2013).

6. As set out in Mrs Hutchinson's written evidence and as she explained effectively unchallenged in her oral evidence, the scheme is in clear breach of the plan.

7. This is because the scheme plainly and obviously conflicts with the Settlement Hierarchy. The Settlement Hierarchy is the backbone of the plan and has been very carefully devised in order to direct development to sustainable locations in the District in accordance with nationally defined principles of sustainable development and sustainable communities. In particular:

- (i) Policy SP1 states that the achievement of sustainable development is central to the Core Strategy, and that the Strategy will (inter alia) relate new housing development to employment services, transport and infrastructure and that to achieve this a Settlement Hierarchy has been created and applied; and will achieve a local balance between employment opportunities, housing growth and environmental capacity.
- (ii) SP2 explains that land for new homes will be distributed in accordance with the Settlement Hierarchy (SP19) and confirms, again, that this is drawn up on the principles of sustainable development and sustainable communities.
- (iii) Policy SP19 establishes a Settlement Hierarchy as a "key tool" with which the Council will achieve its Vision for the district in 2027, meeting the scales of development as set out in the Core Strategy whilst maintaining and enhancing the quality of the built, natural, historic, social and cultural environments in a manner which accords with the nationally defined principles of sustainable development and sustainable communities;
- (iv) SP19 states that Tables 4.1 and 4.2 of the Core Strategy are to be used to determine the scale of development appropriate to a particular location. Table 4.1 classifies

Aldeburgh as a Town and Table 4.2 states that in relation to Market Towns allocations in the form of estate scale development may be appropriate where consistent with the Core Strategy and that within the defined physical limits certain types of residential development may be acceptable. With regard to development in the Countryside DP19 foreshadows policies SP29 and DM3 by stating that no residential development will be acceptable “other than in special circumstances” (as to which see DM3) or where it comprises “infilling in clusters well related to sustainable settlements” (as to which see policy DM4);

- (v) In turn, Policy SP22, which is one of a suite of policies which amplify the Settlement Hierarchy, sets out the Council’s strategy for Aldeburgh, stating that this is “set within the context of the acknowledged physical and natural constraints” though noting that “these must not outweigh the retention of a balanced, cohesive and socially inclusive community”. It continues that “New Development is anticipated to occur through the development of previously developed land including infilling” and “ within the defined physical limits or in accordance with other policies in the Core Strategy”.
- (vi) Aldeburgh’s settlement limits are as shown on the Policies Map accompanying the SAASP 2017. The site is outside the settlement limits. Policy SSP2 states that:

“In accordance with Core Strategy policy SP19 Settlement Hierarchy, physical limits boundaries have been drawn for all settlement listed as Major Centre, Town, Key and Local Service Centre. These are settlements which the Core Strategy has defined as sustainable. The physical limits boundaries identify the parts of those settlements to which new development, particularly new housing development is directed. Accordingly, in principle, proposals for development within the defined physical limit boundary will be acceptable, subject to other relevant policies in this Site Allocations Document, the Core Strategy and Neighbourhood Plans. Proposals for new residential development outside physical limits boundaries will be strictly controlled in accordance with national planning policy guidance and the strategy for the countryside as set out in Core Strategy Policy SP29”.

- (vii) Paragraph 2.20 of the SAASP 2017 explains this further: “Outside the physical limits boundary, opportunities for housing development are considerably more limited as countryside policies of restraint will apply (Core Strategy policies SP28 and SP29). More limited opportunities for housing in the countryside do however exist through Core Strategy policies DM1, DM3, DM4, DM6 and DM9.
  - (viii) Inspector Hill concluded that the SAASP settlement boundaries were justified, effective and positively prepared: CD 1.4 paragraphs 53 – 56. See further below.
  - (ix) Core Strategy policy SP29 explains that the countryside comprises an important economic, social and environmental asset within the District, which it is important to retain and states that the strategy for new development outside physical limits is that “it will be limited to that which of necessity requires it to be located there ... or would otherwise accord with special circumstances outlined in paragraph 55 of the [NPPF]”.
  - (x) The Core Strategy’s development management policies are designed to ensure that all new development accords with the Council’s Vision and Objectives as set out in the Core Strategy. Policy DM3 states that new housing will “firstly and primarily be directed to, and integrated within, the settlements for which physical limits boundaries have been defined or in accordance with Policy SP19”. DM3 criteria (a) – (f) explain when development outside physical limit boundaries will be allowed.
8. In his proof of evidence Mr Churchill accepted that the scheme would breach DM3 and SP29 but – remarkably – contended that the scheme would comply with the development plan as a whole – see paragraph 6.8.
9. Mr Churchill entirely abandoned that contention under cross examination, accepting in clear terms that the scheme would not comply with the development plan.
10. **It is therefore common ground between the parties that for the purposes of s.38(6) the scheme would not comply with the development plan.**
11. Applying s.38(6) the scheme must therefore be refused unless there are material planning considerations to justify determining the appeal contrary to the development plan.

12. The Council's position is that the Appellant has not come close to justifying a departure from the plan led system here.

**Stage 2: other material planning considerations**

13. Applying section 38(6) the second question is then whether there are material planning considerations to justify determining the appeal other than in accordance with the development plan.
14. Plainly, the new NPPF is a highly material consideration but there is nothing in it that could properly lead to the conclusion that the appeal should be determined other than in accordance with the plan. Quite the reverse: its policies support refusal.
15. **Tilted balance**. It is common ground that this is not a titled balance case as the scheme requires appropriate assessment, see NPPF 177; DC proof 4.22; AH proof 5.122 and 7.17. In any event, as set out below, the Council can show a 5 year supply of housing so even if this was not an AA case, the titled balance would still not be engaged.
16. **5 year housing land supply**. The Council can comfortably demonstrate a 5 year housing land supply.
17. It is common ground - for the purposes of this inquiry – that it is appropriate to calculate the OAN using the new standard methodology. On this basis the OAN is 509dpa.
18. It is also common ground that the Council has delivered more than 509dpa in each of the last three years. On this basis it is appropriate to apply a 5% buffer – see NPPF paragraph 73.
19. On this basis, even ignoring all allocations and outline permissions (as per Mr Churchill's approach) the Council can comfortably demonstrate a 5 year supply: see Mrs Hutchinson's update note<sup>1</sup>.
20. Mr Churchill accepted the force of paragraph 73 of the NPPF (he had not considered it in his proof) but sought to counter it by putting forward various other permutations in relation to

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<sup>1</sup> The Council could also demonstrate a 5 year supply with a 10% buffer – see Mr Churchill's update note - although it would be contrary to the NPPF to impose a 10% buffer here

different buffers and (for the first time) lapse rates “for the Inspector to consider”. Importantly, he did not say which (if any) option was appropriate – i.e. he did not put forward a positive case on this issue. Nor, importantly, did he suggest it would be appropriate to impose a lapse rate on a 5% buffer – see his note.

21. Further and in any event, the Council provided the Inquiry with clear evidence that many of the allocations and outline permissions are likely to come forward inside 5 years<sup>2</sup>. Even on a conservative approach the Council considers that these sites will generate a little over 850 new homes, increasing its housing land supply to well over 7 years.

22. In this context:

- a. Whilst Core Strategy policy SP2 is out of date on the basis that it promotes “at least 7,900 new homes across the district in the period 2010 to 2027” this does not diminish the weight to be given to the remaining strategic policies that are in play: see the approach taken by Inspector Murray at Bell Lane (CD 6.1 paragraphs 60 – 63); and
- b. Whilst the scheme will deliver new housing, this needs to be considered in the light of the fact that the Council has identified ample land to meet its up to date housing requirement.

23. **Harm to the AONB** NPPF 172 states that “great weight” must be given to conserving and enhancing landscape and scenic beauty in AONBs, which along with National Parks and the Broads have the highest status of protection in relation to these issues.

24. It is common ground that the scheme would harm the AONB, both in terms of its landscape character and visual impact.

25. In determining this appeal, great weight must be given to that harm.

26. That harm weighs very heavily against the grant of planning permission.

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<sup>2</sup> See NPPF Glossary – definition of “deliverable” and NPPG updated 13.9.18.



27. The Inspector is particularly asked to note that:

- a. Mr Neesam's conclusion that the scheme would not cause "significant" harm to the AONB must be understood by reference to the fact that by "significant" Mr Neesam means "major" or "major-moderate" harm – see Appendix 1 to his LVIA at paragraphs 2.4.2 and 3.4.2. But Mr Neesam accepts that the scheme would be harmful (e.g. to "Moderate" level) in a number of respects. All the harm must be weighed in the balance, and be given great weight.
- b. Mr Neesam's assessment was underpinned by a number of flawed assertions, including: the contention that the character of the appeal site is strongly influenced by its proximity to the town (5.4.3) – it plainly is not; that there was support for the appeal scheme in the LCA guidance which says that some former mineral workings can be the focus for new development because the land is perceived to be of low value (proof 3.2.19) – whereas Mr Neesam's own evidence says this is a high value area; and the assertion that the built form of the appeal scheme would be compatible with the existing suburban development within this part of Aldeburgh, a point expressly disavowed by Mr Hart<sup>3</sup>. All of these points cause Mr Neesam to underplay the harm caused. Mr Flatman's measured evidence is to be preferred.
- c. Mr Churchill was given several opportunities to point out where in his evidence he had given great weight to the harm the scheme would cause and was unable to do so. No reliance can be placed on his assessment of the planning balance.

28. The scheme would comprise major development in the AONB. This is a matter of judgement for the decision maker, taking into account the scheme's nature, scale and setting and whether it could (not would) have a significant adverse impact on the purposes for which the AONB was designated. Here "significant" is not confined to major / major-moderate impacts. The scheme would cause major harm even a decade on from completion– see Mr Flatman's evidence, but even on Mr Neesam's analysis the scheme would cause serious – i.e. material – and permanent harm to the AONB.

29. The Council considers that referring to other schemes is unhelpful as each scheme must be considered on its own merits. See Mr Churchill's unpersuasive attempt to equate the

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<sup>3</sup> XX by PSQC

number of building proposed on the appeal site with the number proposed in Kingsbridge (proof 5.105) where that scheme was proposed in a landscape that, unlike the appeal scheme and its environs, was not particularly sensitive<sup>4</sup>.

30. Similarly, comparing the scale of the development with the number of houses in the town is not particularly helpful, as it tends to downplay the impact of the scheme in the AONB, which must surely be the primary consideration, given the policy aim of protecting the AONB from harmful development. The scheme would not be “read” in terms of a comparison of its unit numbers against the units numbers in the town as a whole. It would be read as an urban intrusion into a highly valued landscape.
31. The matters listed in NPPF 172 (a) – (c) are not “tests” but are rather criteria against which to judge whether the Appellant has demonstrated that there are exceptional circumstances to justify the development. The Appellant has not even sought to address all the issues, e.g. the cost of / scope for developing outside the AONB; and makes no claim in relation to others (e.g. national considerations) but stepping back from all of this it cannot credibly be contended that there are exceptional circumstances to justify the scheme.
32. The scheme would cause significant and permanent landscape and visual harm, to both the AONB and the Heritage Coast. Even if the scheme was not major development that harm would weigh very heavily against the grant of permission; the scheme is however major development and there are plainly no exceptional circumstances to justify the harm.
33. Additionally, the scheme would constitute poor design. It would be wholly unrelated to Aldeburgh (as Mr Hart memorably accepted in XX by PSQC): it would have a density that is wholly uncharacteristic of the area, an uncharacteristic layout and form, and materials that simply don’t relate to Aldeburgh in any meaningful way. All of this in the context of clear guidance that requires the highest standards of design here<sup>5</sup>. The scheme falls woefully short in this regard. Mr Ivatt’s evidence explains this in a clear and rational way. Mr Hart made no such attempt, simply pointing to Officers’ views that the scheme was acceptable.
34. Further, the site is isolated, inward looking and in an unsustainable location.

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<sup>4</sup> And, of course, it is not known how many buildings were proposed there ...

<sup>5</sup> See e.g. the Suffolk Coastal Character Assessment – Neesam paragraph 3.2.26

35. The scheme would deliver some significant planning benefits, including of course the provision of new open market and affordable housing, together with economic benefits arising (e.g.) from construction. These do not however justify the grant of permission contrary to the development plan.

36. The scheme would deliver some benefits, the main benefit comprising the delivery of more open market and affordable housing. But these benefits – taken all together – do not get close to justifying a departure from the development plan such as to authorise development which will, on any analysis, cause serious harm to the AONB.

37. With regard to Mr Churchill's "rebalancing Aldeburgh" point:

- In preparing and adopting the development plan the Council (endorsed by the CS and Allocations Plan Inspectors) has sought to balance the competing interests that are in play in ensuring that Aldeburgh remains a sustainable community. That approach manifests itself in the carefully drawn settlement boundaries and the categorisation of land outside the boundaries as countryside<sup>6</sup>, where development will be strictly controlled and will only be permitted in certain circumstances, none of which apply here. The Appellant has already sought to argue that the site should be allocated to allow Aldeburgh to grow in a sustainable way but this was rejected by Inspector Hill only last year. Nothing has changed. Yes, the Inspector was concerned with ensuring that the Allocations Plan would deliver the housing identified in the Core Strategy, but that did not mean that arguments as to the need for allocations for particular settlements to grow sustainably were not in play – they plainly were, see table 4.2 of the Core Strategy which expressly endorsed housing allocations where they could be justified by the Core Strategy, which of course includes SP22, a policy specifically designed to ensure that Aldeburgh grows sustainably<sup>7</sup>.
- It is pure speculation (as Mr Churchill agreed in xx) as to whether the new market housing will be bought by people who are looking to live permanently in Aldeburgh,

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<sup>6</sup> It is common ground that the site is countryside for the purposes of the Development Plan: Churchill xx.

<sup>7</sup> As to the Appellant's repeated insistence that the Inspector did not rule out sites coming forward speculatively: (i) she obviously had no ability to rule them out; and (ii) in any event she only envisaged such sites coming forward *where housing is supported by policy* - see Decision letter para 33. It is common ground that the appeal scheme is not in a location where housing is supported by policy.

or whether, as appears to have been the case with Phases 1 and 2, they will be snapped up by more second home owners. That is not of itself objectionable, but it does mean that Mr Churchill cannot use the open market homes in support of his (already misconceived) “rebalancing” point.

- The Council considers that moderate weight should be given to the provision of new affordable homes. That is perfectly reasonable, see by comparison Inspector Murray’s conclusions in relation to the 100 units of affordable housing to be provided at Bell Lane (CD 6.1): see paragraphs 94 – 95, including Inspector Murray’s conclusions as to the affordability ratio of 8.95 in play in that case compared to the 5.74 ratio advanced by Mr Churchill.

38. As to other benefits: Mr Neesam’s “tidying up the site” point is a non-starter, as the tidying up comes in the form of a 43 unit housing estate that harms the AONB; the increased public access to the site is a very minor point, its attractiveness diminished by views into the development which Mr Neesom accepts will cause major harm to users of the current footpath down Brick Dock Road; and no benefits accrue in terms of any wider footpath network at the permissive path is already required pursuant to condition 9 of the 2014 permission – see CD 5.4.

39. There will be some economic benefits too, but nothing out of the ordinary; social benefits accrue in terms of the provision of more housing (see above as to weight) and the scheme would plainly not be sustainable in environmental terms, bringing widespread harm to the AONB and the Heritage Coast.

## **Conclusions**

40. Overall, properly applying s.38(6), it is clear that the scheme should be refused as being contrary to the development plan and with no material considerations which justify the grant of permission contrary to the plan.

41. The Appellant points to the fact that Officers recommended the scheme for approval. Whilst that is of course a relevant consideration, it must of course be remembered that Officers recommend, Members decide. The Committee resolved to refuse permission in clear terms and the evidence bears out their decision as wholly justified.

**Robert Walton**

**19.09.18**

**BRICKFIELDS BARNs**  
**APPEAL BY M S OAKES LTD**  
**APPEAL REF APP/J3530/W/17/3172629**

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**CLOSING SUBMISSIONS**  
**ON BEHALF OF ALDEBURGH TOWN COUNCIL**

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**Introduction**

1. In opening I began by contextualising this appeal by reference to its most important feature: that it proposes, in its local context, a substantial residential development in the AONB and Heritage Coast. It is within an area that benefits from special protection at both local and national level. The relevant and most important policies that bear on this proposal are up to date. There is no substantial support for the proposal in the development plan and there are no other material considerations that would indicate that an exception to the development plan should be made in this case. Indeed, we know that the presumption in favour of sustainable development does not apply in this case by virtue of para.175 NPPF, and in considering the appeal a very important “other” material consideration is whether or not the requirements of the NPPF, para.172 are satisfied.

**The Development Plan**

2. **SP22.** The development plan is in the course of review and the Strategic Policy, SP22, of the current plan finds re-expression in the emerging plan. It is, along with other policies to which reference will be made, a principal and most important policy relevant to the appeal and it anticipates no expansion outside the physical limits of



the town, albeit recognising that natural constraints should not outweigh the retention of a balanced and socially cohesive community. Aldeburgh, as opposed to other towns in the district, is unique in its geographical position (being on the coast adjoining the Alde estuary and within the AONB) and its functionality. It relies substantially on the prosperity generated by its tourist and visitor industry, it is poorly related in transportation terms to the remainder of the district and provides limited other employment opportunities. It also lacks a secondary school which means that all children of secondary school age must travel out of the town on a daily basis to meet their educational needs. It has an age imbalance and there is a need to provide opportunities for local people to remain in the area. These issues are identified in the very policy that seeks, with other policies, to protect the AONB and the Town's character. Opportunities for new housing, both market and affordable, are being provided without the need further to harm the setting of the Town or the AONB that surrounds it. This is the established policy approach and there can be no argument but that SP22 remains an up to date policy that should carry full weight irrespective of the housing supply position and the status of SP2. The proposed development is counter to its objective and derives no support from this policy.

3. This policy and its requirements must be seen in Aldeburgh's geographical and demographic contexts. It is the only town in the District wholly within the AONB and Heritage Coast. Its hinterland is constrained by the coast and it is served only by road. It has little employment other than that related to the tourism and retail sectors.

4. **SP1.** This is an overarching policy. It requires new housing to relate to employment services, transport and infrastructure. It thus requires development to accord with the settlement hierarchy. It also requires a balance to be achieved between employment opportunities, housing growth and environmental capacity. It requires enhanced accessibility to all services, conservation and enhancement of the natural environment and the maintenance and enhancement of a sense of place, creating and promoting inclusive communities. The proposed development meets none of these objectives. It accords with the NPPF and should attract full weight. The appeal development fails to meet any of these criteria. There are no employment allocations for Aldeburgh in the Site Allocations DPD and the town has never had an employment allocation in any preceding Local Plan. As NW stated in evidence, Aldeburgh is the only Suffolk Coastal market town not to have a dedicated industrial estate. The last new employment generators of note in the town were the Co-Op supermarket approved in 1998 and the Tesco Express food store approved in 2013 both of which are located at the eastern end of Saxmundham Road and, of course, the town experienced employment losses when the Aldeburgh Brickworks closed.
5. **SP15.** This policy requires the protection and enhancement the various landscape character areas within the district through, inter alia, opportunities linked to development. For reasons I deal with below, this is not achieved through the proposed development. It accords with the NPPF and should attract full weight.
6. **SP19** is the settlement policy. It remains up to date in terms of the functionality of the settlements based upon their size and the services offered. It expressly incorporates

by reference policies SP20 to SP29 and Tables 4.1 and 4.2. The market town of Aldeburgh is identified in Table 1 as a Town by reason of its extensive range of services and Table 2 requires housing development to be within the defined physical limits comprising modest estates where consistent with local scale and character, groups of

7. dwellings or infill development. It should attract substantial weight even if it is found that there is no 5 years' supply.
8. **SP29** and **DM3** protect the countryside. Development which of necessity has to be located outside the physical limits of the settlements will be permitted if it accords with other relevant policies. DM3 provides particular circumstances where an exception might be made. They should carry substantial weight even if it is found that there is no 5 years' supply.
9. **DM21** deals with aesthetics. Development is required to meet its criteria. Of specific relevance here are requirements (a) that development should relate well to the scale and character of their surroundings particularly in terms of their siting, height, massing and form (e) that layouts should incorporate and protect existing site features of landscape. Overarching is the requirement that proposals should not detract from their surroundings and should establish a strong sense of place. This policy should attract full weight.
10. As has been established in light of the above, no support for the appeal scheme can be found from the development plan or the emerging plan. Indeed, it contravenes

many of its provisions. It follows that permission should only be granted if the scheme can be found otherwise to be sustainable or acceptable by reference to other material considerations including the policy requirements of the NPPF. In this behalf, it is apposite that DC plays down the ultimate significance of this conflict and he has failed properly to undertake the requisite balancing exercise and little weight can be placed on his analysis and conclusions.

### **Landscape and Visual Impact**

11. This is the main issue before the inquiry, yet there is good reason to keep this section of my closing submissions short. It is incontrovertible, and the Appellant's own landscape evidence confirms, that significant harm will be caused to the AONB in terms of both landscape and visual impact.

12. SN's whole approach to the critical element of his analysis, the overall assessment, was wrongly nuanced from the beginning: he undertook his task "*with a view to demonstrating whether the site might be developed without significant detriment to the character or visual amenity of the surrounding area*" [SN PoE para.1.3.1]. All impacts that are registerable are significant. His analysis and his conclusion on the acceptability of the scheme in landscape and visual impact was tainted by the use of his arbitrary threshold (utilised without reference to a methodology that endorses it) whereby he effectively discounts all impacts but those of moderate to major significance. Not only is this arbitrary, it cannot be countenanced at all when the impacts affect an AONB given the national imperative to preserve and enhance its landscape and scenic beauty [NPPF paras. 170, 172]. Thus, his conclusion that "*the*

*appeal scheme is acceptable in terms of residual landscape and visual effects” [SM SPoE para1.6.4] is, with due respect to him, valueless in the context of the specific policy scheme.*

13. The appeal site is not influenced to any meaningful degree by the existing properties along Saxmundham Road which are separated by long gardens and and relatively dense planting. The lawful uses carried on at the appeal site are of a low key nature and do not impose themselves on the landscape from near or distant views. MF’s conclusion that the proposed development would materially reduce the openness of the rural landscape and constitute an adverse change to the character of the site and surrounding area is indisputable. The appeal site falls wholly within an area of high landscape sensitivity. The landscape is a valued landscape. Its development as proposed would effectively extend the existing incursion caused by phase 2 across the landscape into the valley side. There is, thus, both a potential solus and cumulative impact. Phase 2 cannot be considered as a precedent for the appeal development in part because that agument could be applied time and time again but also because Phase 2 can be distinguished from the appeal site in that it now lies within the settlement boundary.

14. The sensitive valley side and one’s appreciation of it will be significantly adversely affected, both in terms of close views from the north and more distant views form the south. In terms of his analysis, SN underplays impact on AONB from more distant views. Buildings will be seen in the distance from the South. They will have a marked effect will extend the impact already created by phase 2 and Cygnets. These

developments should be abhorred for their impacts. The further imposition of an apparent unbroken mass of new buildings will significantly compound the harm they cause. The proposed development will result in the houses closest to the southern extent of the site rising above the quarry edge by 4 to 7.5 metres. This is a substantial height. The living accommodation will, in several of these particular houses, be at first floor level in order to give unobstructed views across to the estuary and its AONB context. Moreover, during twilight and night time hours the windows will shed light. The increased light pollution from houses and road lighting at night which will result from this development will exert an urban influence which will detract from the quality of the riverside area and add to the impact of the appellant's Phase 2 development. The visual and landscape impacts will not be effectively mitigated by the southern boundary planting which, save for intermittent trees, is to be kept below 1.8m in height and is to be native (largely deciduous).

- 15 Short term impacts should not be assigned to the long grass. They are important in the context of the AONB and should also be given considerable weight. The NPPF does not distinguish them. The Appellant's LVIA indicates, incorrectly, that mitigation will be effective in the medium to long term, but it thereby confirms the prospect of there being short-term adverse visual impacts in the short and medium term in addition to locally significant adverse impacts in the long term all of which should be considered unacceptable in the absence of any overriding need.
- 16 The current condition of the appeal site is the result of unauthorised activities of the appellant's own making and could be the subject of enforcement action. No weight



should therefore be placed on the benefits of remediating that condition. The use of the remaining lawful use area is inconsequential in landscape and visual terms.

### ***Site layout and Design***

**17** Good design is at the heart of good planning and is central to achieving sustainable development. That is made clear at Paragraphs 8 and 124 of the NPPF and Paragraph 3 of the design advice under Planning Policy Guidance. Key design considerations at NPPF Paragraph 127 (c) and (d) are whether the proposed development:-

- ensures that it is *'...sympathetic to local character and history, including the surrounding built environment and landscape...'*; and
- establishes or maintains *'...a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.'*

**18** National design guidance is reflected in development plan guidance at Paragraphs SP1(k). DM21 and DM22 of the Council's Core Strategy and Development Management Policies DPD. **Policy DM21** requires proposals that comprise poor visual design and layout, or otherwise seriously detract from the character of their surroundings not to be permitted and expects development to establish a strong sense of place. **Policy DM22** requires the design and layout of the development provides and maintains safe and convenient access for people with disabilities.

19 What is the local character in this appeal? In the built environment it derives from the immediately adjoining residential development in Saxmundham Road and Brick Dock Lane the key components of which are clear - large, mainly two-storey, detached properties within large landscape-dominated gardens arranged fronting their respective access roads in a linear pattern. The surroundings do not include the area to the north of Saxmundham Road, as suggested by BH, which has a totally different character and no visual or physical relationship with the appeal site.

19 In terms of landscape the site is within the countryside, AONB and Heritage Coast , which, outside of the built-up areas, is characterised by the absence of residential buildings, a tapestry of fields, marshes and river interspersed by hedgerows, trees and woodland belts and copses. However, the constituent parts of this landscape are characterised and delineated, the appeal site forms part of a visual continuum which extends from the southern edge of the built-up area southwards to the Alde Estuary and beyond. Housing estate development is not one of the limited forms of development which might be considered appropriate with the AONB and BH in cross examination was unable to pinpoint any characteristic of the appeal scheme which has been designed to accord with its AONB location apart from perimeter landscape proposals designed to screen it.

20 The elements which the appellants say will be remediated by the appeal development- the quarry pit and the stored materials and structures within it do not feature to any appreciable extent within the wider landscape surrounding the site. None of SN's photographs of key viewpoints around the site provide evidence of any serious visual

intrusion created by the current lawful use of the appeal site. Moreover, the condition of the appeal site is solely the result of commercial activities, lawful or otherwise, and display no characteristic which suggests that it is part of, or influenced by, the proximity of the urban area as urged upon you by both SN and BH.

21 The appeal scheme pays little or no regard to the character of its surroundings.

Indeed, in relation to the built environment, it is far removed from its surroundings as it could be in terms of its location and relationship to the built-up area, its density, layout, dwelling design and use of materials and this stark contrast would be given added force by its incongruous appearance within the landscape as from many viewpoints it would be seen as a 'wall' of development above the rim of the pit.

22 The design objection to the appeal proposals is not a superficial one. It is not something which can be addressed by tweaking materials, individual design elements, house types or density. It is an objection to the principle of the scheme which derives from the appellant's preliminary decision to pursue the appeal development based on the single fact that it would be contained within a hole in the ground. There was no consideration of whether the development would be sympathetic to the character or Aldeburgh and its immediate surroundings and whether it could be integrated into the urban fabric of the town.

23 The consequence of this is that the development must necessarily be inward-looking as acknowledged by the appellant and it would turn its back on the town. It would appear as an isolated, self-contained, island of development unrelated to the form

and pattern of existing development. It would seriously detract from the quality of its urban and landscape surroundings and would therefore be in direct conflict with the principal objective of Policy DM21 and the aims of Policies SP1 and SP15 and national guidance at NPPF para.127 and 130.

### **Other Material Considerations: The Alleged Benefits of the Scheme**

#### ***Five Years' Supply of Housing***

24. The TC has not sought to provide evidence on this issue, but defers to the Council. In any event, even if a five years' deficit is found, it will not be significant and is incapable of influencing the planning balance to any significant degree. It will simply mean that greater weight will be afforded to the provision of the housing which the proposal provides, but this is a district wide need and does not justify the development within the AONB at all.

#### ***Affordable Housing Provision***

25. There is a nationwide shortage of affordable housing as we all know. The shortage is as apparent in the SCDC area as it is in other areas. However, within the district the need is greatest elsewhere, including the Ipswich Policy Area and the larger towns. The actual need in Aldeburgh has been evidence by NW in correspondence with the Council's housing section.

26. The statistics do demonstrate, however, that the situation in Aldeburgh is not such as to require exceptional action, especially in its district context. It certainly does not

require the development of the AONB with both affordable and market housing in the manner proposed.

27. Moreover, with the larger conurbation of Leiston only four miles away, and fundamentally less constrained than Aldeburgh, some of the local need can be accommodated there, and in a more sustainable manner. There are a further six units coming forward on the police station site and it would be open for the Council to approve an exception site for affordable housing in accordance with policy DM1 for a smaller number of houses than is proposed here and on a site that has less sensitivity. At the moment the Council has not sought to do this to any great degree within the district but, should the need locally be considered to warrant such action, it could call for sites to meet this requirement.

28. The current social rented housing need as derived from the Council's Housing Register as at 21st July 2017 is a total of 16 applicants with a current postal address in Aldeburgh and a further 30 applicants who have applied for accommodation in Suffolk Coastal District but have indicated a local connection with Aldeburgh (NW Appendix 7). The local connection is only verified at allocation stage and, on average, 30% of applicants fail to substantiate a connection at that point which means that approximately 21 of the 30 will qualify making a current total need, irrespective of priority, of approximately 37 individuals. The social housing stock in 2017 was 129 units with a turnover of 8-10% per year or 10-13 dwellings per year. The current need arising from within Aldeburgh would therefore be addressed within 12-18 months and the overall need within 3-4 years assuming that applicants have sufficient priority.

29. Additional affordable housing provision is also being addressed in a more sustainable location by a housing development of 19 dwellings on a site in Leiston Road, Aldeburgh by Flagship Housing Developments limited (NW Appendix 6). The scheme includes 6 affordable housing units and the application is expected to be determined in August of this year.

### ***Site Condition and Planning History***

30. Although in 1999 an application for a Certificate of Lawful Established Use or Development (CLEUD) relating to a small part of the site was granted by the District Council in 2000 (Ref.C99/0282) (NW Appendix 10), a significant part of the former quarry has been used for the disposal of waste construction material arising from the adjoining development sites. This is unauthorised development and constitutes a breach of planning control. The appeal proposals will necessarily involve the excavation and removal of most of these deposits which have taken place within the northern, central and eastern parts of the quarry. The deposits appear to be substantial in extent and will require specific permission for its transfer and disposal as waste to another receptor site.

31. The certificate describes a use of land and does not identify any structures as lawful<sup>1</sup>.

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<sup>1</sup> *"use of land for storage of building materials including (but not limited to) bricks, paving slabs, moulded water tanks, sanitary fittings, coping bricks, tiles, pallets, security fencing, sand, gravel, and clay, hardcore and building rubble, but excluding portable buildings, plant and machinery."*



It refers to storage of materials which mostly if not exclusively were stored outside any building and were not dependent on any building. A use of land which is not dependent upon and not ancillary or incidental to an existing structure falls outside of the definition of brownfield land. The position in relation to the appeal site is that only a very small area is occupied by buildings or structures. There is one building measuring approximately 20m x 8m, some walled materials enclosures and a small area of hard standing for which permission was granted in May 2001. At best only a very small area of between 300m<sup>2</sup> and 500m<sup>2</sup> could be said to be brownfield land which equates to about 1.0% of the total site area not 29% as claimed by the appellant.

32. The appellant has not, in evidence to this inquiry, sought to justify the existing use as a lawful use. Through DC and SN it has promoted the idea that the appeal proposals would have the benefit of removing despoiled and degraded land constituting a visual and landscape intrusion and that this benefit should be considered as a factor in assessing the benefits of the scheme (both generally and for the purposes of NPPF Paragraph 172). The evidence demonstrates that the current appearance of the site is largely the result of unauthorised activity which should rightly be the subject of enforcement action to restore the site to its former natural appearance. The appellant should not benefit from its unauthorised activity in the determination of this appeal and no weight should be given to the alleged benefit, therefore. The condition marks not the inherent quality of the site put to a lawful use, but its owner's stewardship.

### ***Public Access***

33. It is accepted that the proposed footpath would provide a modest advantage to those who live close by if there is no public access at the moment (a matter raised at this inquiry but not a matter that the TC is able to comment on at this stage), but this assumes that it will be delivered and maintained for public access through an appropriate s.106 obligation.

### ***Ecological Benefits***

34. The ecological benefits are of modest significance and provide no more than would be expected of any development scheme where it is capable of providing ecological enhancement in line with policy requirements. They do not provide assistance in meeting an exceptional need nor do they lend the development any exceptional quality.

### **The Balancing Exercise: Major Development and Para.172 NPPF**

35. It is essential to apply the provisions of para.172 with care. Firstly, whether or not the proposed development is “major”, the decision maker is required to place great weight to the conservation and enhancement of the landscape and scenic beauty of the AONB. It follows that if a proposal fails to do this, it should be regarded as contrary to this policy requirement and *any* significant<sup>2</sup> harm should be accorded great weight on the other side of the balance.

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<sup>2</sup> By “significant” I mean registerable and more than negligible as explained below.

36. As my analysis of the landscape evidence above demonstrates, that significant landscape and visual impact will occur is incontrovertible. Even if, therefore, it is found that the development is not “major”, the additional weight which has to be applied to the harm by reference to para.172 couple with the s.38(6) exercise provides firm justification for dismissing the appeal.

37. However, the appeal proposals do amount to “major” development and the presumption against granting permission unless exceptional circumstances justify it and the public interest is served.

38. There is no prescribed formula for the assessment and is a matter to be determined by reference to context. It requires an examination of the development’s nature, scale and setting and an assessment of its impact on the purposes for which the AONB was designated; that is, its intrinsic landscape value. It matters not whether it is localised in its impact or more widespread. The only issue is whether any such impact is significant. Significant means it causes material harm to these purposes of whatever registerable degree. By reason of the Appellant’s own landscape and visual impact analysis, such harm will be caused.

39. Moreover, and contextually, this 43 dwelling development is the largest housing proposal in Aldeburgh since the Church Farm allocation was made in 1971. It is a major development in its local context given the constrained nature of the Town and the careful approach taken to maximise development opportunities, for whatever purposes, within rather than outside, the settlement boundary. Of course, there has

been a neighbouring exception to this approach, but the exception was justified by reference to very different circumstances and should not be used as a precedent (and it is an example that should exhort extreme caution, not permissiveness)<sup>3</sup>.

40. The local context is not simply that it is a large site lying within the designated AONB and Heritage Coast. It is in one of the more sensitive parts of the AONB and is open to views over a wide area encompassing a significant part of the Alde estuary. Moreover, it is a site which is poorly related to the existing built-up area of the town. For all these reasons, relating to the nature of the proposal and its local context, the appeal proposals should be deemed to amount to 'major development' and therefore subject to the presumption that permission should be refused.

41. Are the circumstances *exceptional*? The Appellant can only point to the modest advantages of the scheme in terms of satisfying housing need as indicating that the circumstances are exceptional. These have been dealt with above and it is clear that on any measure that they are not. It follows that the public interest which these benefits serve are of scant significance. This also disposes of the requirement to demonstrate a need for the development because paragraph 172 also requires consideration to be given to the need for the development and the impact on the local economy, the cost and scope of developing elsewhere outside the designated area; and any detrimental impact on the environment, landscape and recreational opportunities and the extent to which that could be moderated.

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<sup>3</sup> Phase 1 was within the boundary and replaced the managers house. Phase 2 was brownfield development and replaced a substantial array of industrial buildings and so can be distinguished

42. The development cannot be justified by reference to housing need and neither are the other advantages identified necessary to cure any pre-existing environmental, economic or social deficit.

43. The appellant has made no serious attempt to consider the cost and scope of developing outside the designated area for the same purposes, nor the extent to which the housing need, such as it might be adjudged to be, can be met in other locations in the area or by other means.

## **Conclusion**

44. As I said in opening, the benefits of the proposed scheme are ubiquitous and modest. Its impacts are not. The proposals have no support from the development plan and gain insufficient support from other benefits to outweigh the very harms the policies seek to avoid and come nowhere close to satisfying the requirements of para.172 NPPF, irrespective of whether the development is or is not “major” development. In the premises we invite you to dismiss the appeal.

18<sup>th</sup> September 2018

**PAUL SHADAREVIAN QC**

**Cornerstone Barristers**