

Evidence Paper – Review of Impact of Policy and Rationale for KE1

1. Introduction

This paper sets out the recent and current policy setting at the district level and its impact in practice as experienced in Kesgrave. This is by way of background to explain the approach that the Kesgrave Neighbourhood Plan Sub-committee (KNPS) seeks to adopt through the Kesgrave Neighbourhood Plan (KNP) via Policy KE1 on the matter of infill and residential garden development. We believe KE1 adheres closely to, and takes a lead from, NPPF (Paragraph 70).

Matters related to conformity represented by East Suffolk Council (ESC) during Regulation 14 pre-submission consultation are also addressed and this paper should be read in conjunction with:

- Section 5 (paragraphs 5.2 to 5.8) in KNP;
- the evidence presented in Appendices A and E to KNP; and
- the responses and actions set out in Appendix O (Items 19 d), e) and f)) of our Consultation Statement in response to the aforementioned representations.

2. General Conformity

KNPS fully recognises that KNP must be in general conformity with the district authority's strategic policies. As confirmed in our Basic Condition Statement (Table 4.1, page 13) it is our position that the KNP is in all regulatory respects in general conformity with the district Core Strategy 2013 (SCCS) and the emerging Local Plan of the former Suffolk Coastal District Council (SCLP).

It is noted that there appears to be no regulatory definition of the qualifying term "general" in this context. We suggest that if the intended meaning was for absolute, complete or total conformity then such a qualifying term would have been used and not the term "general". "General" implies broadly, mostly, reflected across the KNP as a whole, but not necessarily every single word of every single policy.

Policy KE1 addresses infill and residential garden development respectively based on the local circumstances within Kesgrave as justified by the evidence we have submitted. We believe that this is a sound approach to the development of a neighbourhood plan in general and specifically, in regard to conformity with SCLP5.7 which states in the final paragraph, "*Neighbourhood Plans are able to set their own policies on this type of development in response to local circumstances.*"

3. Development Criteria

Our exchanges with ESC on this matter have been extensive:

- before Regulation 14 public consultation;
- in the ESC formal representation during Reg14 consultation (see Consultation Statement Appendix O: KNP Regulation 14 Representations, Responses & Actions, Items 19. d), e) and f)); and
- in a series of further informal exchanges prior to Regulation 15 submission.

ESC has queried our evidence and strongly recommended wording policy KE1, (specifically sub-paragraph b) regarding residential garden development) to permit development subject to "clear criteria" designed to restrict development. To address ESC concerns:

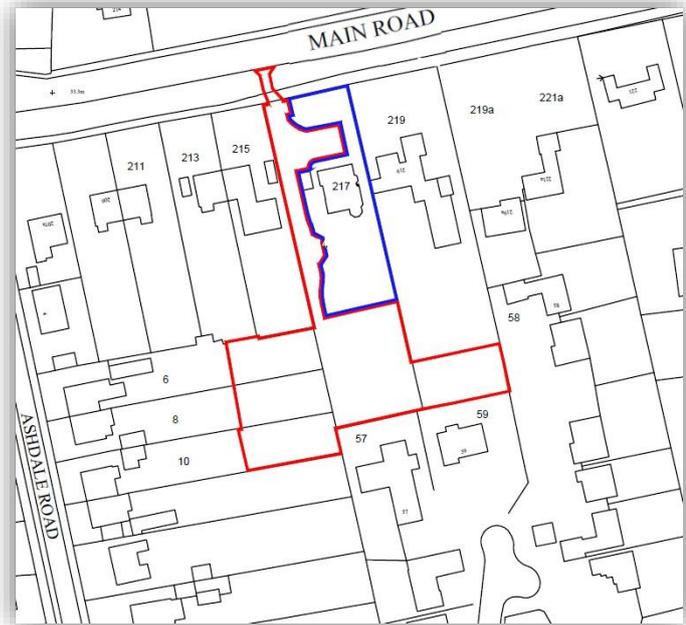
- clarification has been introduced to the policy wording;
- amendments have been made to paragraphs 5.2-5.6 and 5.8 in KNP; and

- further evidence has been added (Appendix E to KNP) as a result of Suffolk County Council's Reg14 representation (Item 18.b in the above-mentioned Appendix O).

However, there are two key reasons why KNPS prefers an approach which is to resist all development in residential gardens:

1. KNPS has identified (see paragraphs 5.2-5.6 in KNP) issues contributing to cumulative harm which past decisions on individual planning applications have not taken into account and would not take into account in future.
2. The drafting of prevention criteria based on a starting position of supporting development leaves decision-making on the weight and/or validity of such criteria on individual applications open to subjective opinion - of planning department personnel and/or others involved in the planning regime, such as appeal inspectors.

By way of evidence, in the Appeal Decision in APP/J3530/A/13/2208386 Refusal of Planning Permission ref: C13/0080 (see plan outline opposite), the Inspector having found the proposal (for four bungalows) at odds with Policy DM7 in creating a cramped form of development that would be out of character with the area, at the same time:



- concluded that the proposal **would not cause unacceptable harm to the living conditions of neighbouring residents** and that there would, therefore, be no conflict with sub-section (b) of Local Plan Policy DM7 which seeks to resist back-land development where this would significantly reduce residential amenity; and
- confirmed that he had no objections to the development based on **loss of privacy and outlook**, highway safety, **loss of trees, effects on wildlife**, security and **increased pressure on local services**.

These qualifications were included despite very strong objections from several neighbours, Kesgrave High School and Kesgrave Town Council. It was an archetypal case and these comments fuel a concern that *no* criteria relevant to resident peace and tranquillity (amenity/noise/privacy/traffic), loss of trees and wildlife habitat or impact on services can ultimately be relied upon to carry sufficient weight and effect.

4. Related Examples In Other Neighbourhood Plans

The following extracts, all taken from made neighbourhood plans, are evidence of policies found to be sound that resist or heavily restrict developments in broadly the same way that policy KE1b) intends.

- a) **Aymestrey (Herefordshire Council)** made 28 June 2019 - Policy AYH2 (Settlement Boundaries) includes,

*"Within these boundaries, and with the exception of land proposed for housing in Policy AYH1 (an allocated site), new housing development will be **restricted to sensitive infilling, alterations or extensions.**"*

- b) **Brimfield and Little Hereford (Herefordshire Council)** made 22 July 2016 - Policy BLH8 (Building Design Principles includes in 2.,
*"Proposals which do not demonstrate a locally distinctive design **will be resisted.**"*
- c) **Callow and Haywood (Herefordshire Council)** made on 1 December 2016 - Policy CH1 (Protecting and Enhancing the Rural Landscape) 8. Includes,
*"Development which involves the proposed loss of archaeological features **will be resisted.**"*
- d) **Dogmersfield (Hart District Council)** made 26 September 2019- DNP1 (A Spatial Policy for the Parish) includes,
*"Any proposals for inappropriate development of **residential garden land**, for example where development would cause harm to the settlement or its setting, **will be resisted.**"*
- e) **Downton (Wiltshire Council)** made 9 January 2017 - Policy LC 6 includes,
*"New development will be expected to reflect the character and appearance of the rural landscape. Proposals that fail to do so **will be resisted.**"*
Policy LH 1 includes,
*"...new residential development proposals will be supported to achieve the strategic housing requirement... Residential development elsewhere in the Plan area **will be resisted.**"*
- f) **Eaton Bishop (Herefordshire Council)** made 21 August 2017 - Policy on Landscape Design 2. includes,
*"The demolition of buildings and structures that contribute to the character and appearance of these areas **will be resisted.**"*
- g) **Hampton Bishop (Herefordshire Council)** made 16 August 2019 - Policy HB6 includes,
*"3. Development reflects the existing settlement pattern and density of the village which predominantly comprises single dwellings set in large garden plots. Residential development **in rear gardens will be resisted** where there would be an unacceptable impact on the character of the local area in terms of loss of openness, mature trees, and a substantial increase in the density of built form."*
- h) **Idmiston (Wiltshire Council)** made 25 April 2017 - Policy 19 (New Development Sites) includes,
*"The NP will facilitate the delivery of approximately 32 homes. Delivery will be monitored... (and) consideration then given for the development of the sites shown in Figure 1. New residential development proposals will be supported to achieve the housing requirement. Residential development elsewhere in the Plan area **will be resisted.**"*
- i) **Martlesham (East Suffolk Council)** made 25 January 2018 - Policy MAR2 includes,
*"Areas to be protected from development, as identified on the Policies Map (covering a large proportion of Martlesham Heath village), comprise local scale sites, gaps, **gardens** and spaces that make an important contribution to the character and setting of Martlesham in their undeveloped form. Accordingly, development within these areas will be **severely restricted.**"*

5. Residential Extensions and Annexes Development

This section sets out the evidence and rationale for extending Policy KE1 to Residential Annexes development (in reference to paragraph 5.8 of KNP).

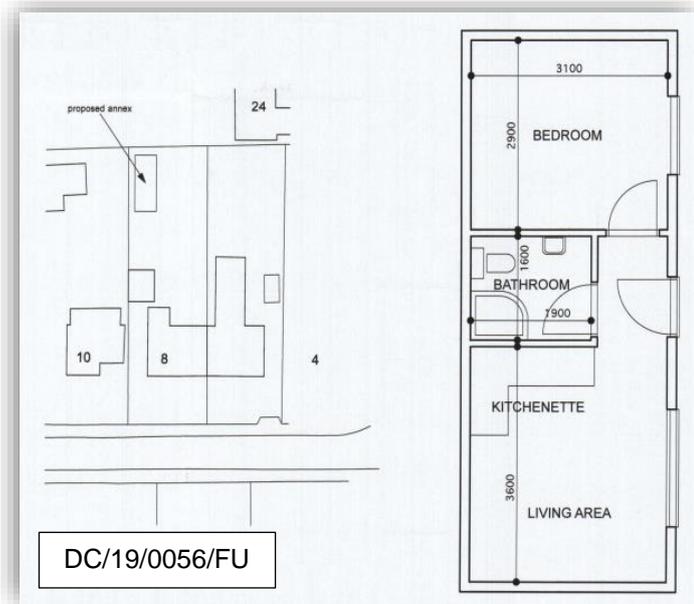
in January 2019 under application ref DC/19/0056/FUL permission was sought for a single storey extension (8mtrs x 8mtrs) and the erection of a detached annexe in the rear garden. The KTC Planning & Development Sub-Committee took the view that this would have the potential to impact adversely on nearby residents' amenity (current and future) and objected on the grounds

that it was backland development contrary to policy DM7 in SCCS. KTC was wary that such developments become a starting point – the thin end of the wedge - in manipulating the planning system to establish a larger development in due course, for example, extending under permitted development or otherwise.

Consideration was given by ESC to suitability in terms of policy DM6 including neighbour amenity impact. On this the opinion was, *"The use of a small residential annexe is not likely to generate significant noise and disturbance..."*. In practice, however, the added presence of a baby/small child or a barking dog can come irrespective of size and represent a considerable potential for infringement of nearby resident's amenity in regard to their peace and tranquillity.

The Planning Committee granted permission subject to conditions preventing use as an independent dwellinghouse and occupation by a relative, employee or parent of the householder.

It was also noted that *"no neighbour objections have been received"*. The further evidence below supports a view that neighbours who regularly see their objections ignored lose the incentive to make them. This is where KTC has a role as a statutory consultee to represent their interests. It is well known to ESC planning that KTC views any residential detached annex or separate dwelling in the same way as harmful on a cumulative basis and in individual circumstances.



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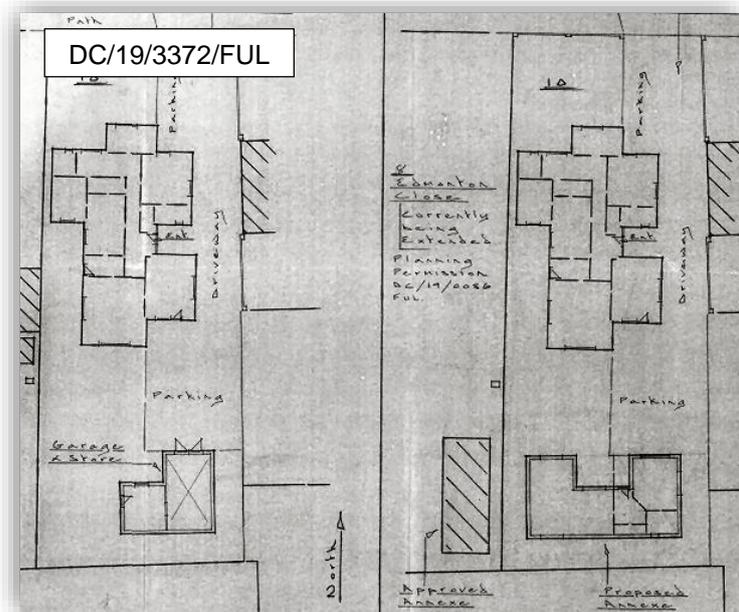
In December 2012 application C/12/2542 was for the conversion of a garage and storehouse that had been built two years earlier in the back garden of the next door property to the one above. It received 7 neighbour objections regarding cramming, over development, additional traffic, noise, loss of amenity. One neighbour stated he was, *"...convinced that the garage was always going to be converted to living accommodation as it had been built with insulated cavity walls and double glazed windows with an absolutely large/high tiled roof"*. The application was refused as being contrary to Policies AP19, AP26 and AP39 of the Suffolk Coastal Local Plan (incorporating First and Second alterations) and Policies **DM7**, DM21 and DM23 of the Pre Submission SCCS.

In August 2019 a similar plan for the same property (one bedroom rather than two this time) was brought forward under planning application ref DC/19/3372/FUL. Despite repeat objections from some of the original objectors (inc KTC P&D) permission was granted on the basis that the revised plan was now *"small in size and well related to the existing dwelling, it can be considered an annex and not a new independent dwelling"* and therefore no longer contravened DM7, nor evidently any of the other several policies previously listed. KTC P&D noted with consternation that the decision also stated: *"A neighbour had a similar sized annex approved earlier this year in roughly the same location, at the rear of the garden, leaving a precedent (sic) for a similar proposal like this one to be approved."* This was case reference DC/19/0056/FUL explained above.

It is noted that paragraph 5.21 in SCCS states, “...it is important to prevent normal independent housing use in the future.” Paragraph 5.72 in the January 2019 final draft of SCLP states annexes “...should not have their own separate curtilage or access”. The plan here shows the development clearly has separate access. It also states, “Proposals will be expected to demonstrate the way in which the annex has been designed to prevent it being used as an independent dwelling in the future.” With separate vehicular access and parking space the annex could easily be used as an independent dwelling in future.

“Matter 4 – Note on Policy SCLP5.13 Residential Annexes” set out by ESC in response to a question (4.3) from the Inspector during the SCLP hearing resulted in adding the following in regard to conditions: “...(they) will ensure that annexes are not used as dwellings in locations, or under circumstances, where a new dwelling would not usually be permitted.” And yet this application was approved by the planning committee on 22 October 2019 as the examination process was still underway.

SCLP5.13 states “...where an annex is proposed as an extension, it should be designed in a way which will enable it to be incorporated into the host dwelling when no longer required.” It does not stipulate design conditions for an annexe that is erected as a separate building from the host dwelling on the plot and in any event this begs the question what is the definition of an annexe? In the Collins English dictionary it is defined as: “A building which is joined to or is next to a larger main building.” That cannot be said



to describe the development in either of the two cases illustrated above where the annexes were clearly well separated from the main dwelling. However, the planning authority took the position in DC/19/3372/FUL that the “host dwelling” was the garage and storehouse being converted.

The nearby residents were outraged that this development was granted permission and felt that they had been badly let down. KTC P&D was unable to provide reassurance that this could be prevented in future, rather the reverse.

6. Further Information

KNPS fully appreciates that the KNP and its examination is not a legitimate forum to represent on the setting of policies in the district local plan and that is not the objective here. However, it is considered helpful to appreciate the development of policy in order to enhance understanding of how decisions have been reached by KNPS on the policies within KNP, in particular KE1.

6.1 Addressing NPPF on Residential Garden Development

a) Current Policy Context

SCCS states at paragraph 5.23 (Infilling and Backland Development): “Infill development is essentially development that takes place on vacant land between existing buildings. Residential

infill development often occurs on garden land either adjacent to or to the rear of existing dwellings.” Development in gardens is therefore treated as a sub-set of Infill Development.

Paragraph 5.24 states: *“Infill development represents an important source of new small-scale housing supply. Such incremental provision forms an important contribution to the district’s overall housing supply. However, it is important that ‘town cramming’ does not occur, the cumulative effects of which could damage the character and amenity of established residential areas.”* The cumulative effects of these, which are our particular concern, primarily caused by garden developments are therefore well recognised.

The above was translated into policy in SCCS through Development Management Policy DM7 – Infilling and Backland Development within Physical Limits Boundaries which states:

“Proposals for the sub-division of plots to provide additional dwellings will be permitted provided that:

- a) it would not result in a cramped form of development out of character with the area or street scene;*
- b) it would not result either in tandem or similar unsatisfactory types of backland development that would significantly reduce residential amenity, mainly as a result of increased noise and loss of privacy, or result in the erosion of the particular character of the surroundings;*
- c) the proposal is well related to adjacent properties and not designed in isolation;*
- d) appropriate provision is made for a reasonable size curtilage for the existing buildings and proposed dwelling(s); and*
- e) the proposed development would make efficient use of land and not prejudice the potential for comprehensive development on adjacent land.”*

Recent planning application ref DC/19/2986/OUT (construct pair of dwellings, existing single dwelling (marked in pink on the plan opposite) to be removed) - was permitted on 06 Sep 2019. KTC Planning & Development Committee (KTC P&D) objected on the grounds that it breached a) and d) above in Policy DM7. These stipulations are, of course, open to subjective opinion and clearly the district planning officer had a different opinion to that of KTC P&D.

In the latter's view, irrespective of the design, it was a clear case of a cramped overdevelopment of the site, with very little curtilage at the side boundaries and between the dwellings. SCCS policy was interpreted otherwise making it unfit for purpose where a) no harm is judged to come from this cramming; harm is only ever judged on a very limited construction of what is “local”, and in so saying how can the policy serve the purpose of avoiding *“the cumulative effects of which could damage the character and amenity of established residential areas”* stated in paragraph 5.24 of SCCS?



b) The Emerging Local Plan (SCLP)

This has to consider Paragraph 70 in NPPF which states in the final sentence: *"Plans should consider the case for setting out policies to **resist inappropriate development of residential gardens**, for example **where development would cause harm to the local area.**"*

Paragraph 122 in NPPF also states that *"planning policies and decisions should support development that makes efficient use of land, taking into account: d) the desirability of maintaining an area's prevailing character and setting (**including residential gardens**), or of promoting regeneration and change."*

SCLP does not respond to the need to differentiate in policy between Infill Development and Residential Garden Development. These are the areas relevant:

- SCLP5.3: Housing Development in the Countryside determines that for areas within a neighbourhood plan area but outside the defined Settlement Boundary, new residential development is subject to several limitations.
- SCLP paragraph 11.45 states: *"Areas to be protected from development are a long established policy across the District. These areas make an important contribution to the setting or character of a Town, Village or surrounding countryside. The identification of these areas is necessary to resist infilling development that could be detrimental to the character, spacing or density of a particular area."*
- Associated Policy SCLP11.9 identifies Areas to be Protected from Development (on the Policies Map) that *"comprise local scale sites, gaps, **gardens** and spaces that make an important contribution to the character and setting of a settlement in their unaltered form. In some locations these areas maintain settlement separation. Accordingly, development within these areas will be severely restricted to maintain the character of the area and ensure settlement coalescence is not compromised."* Noted that *"infilling development"* in 11.45 becomes *"local scale sites, gaps, gardens and spaces"* in the associated policy. This serves to overlap the two whereas our approach in Policy KE1 is to mirror the SCLP stance in regard to Infill Development but, given the evidence of cumulative harm, seeks to resist Residential Garden Development which appears to be entirely compatible with NPPF.

Setting this aside, the only area in Kesgrave specified on the SCLP Policies Map under the jurisdiction of this policy falls outside the settlement boundary and therefore in countryside. This puts it also under the jurisdiction of SCLP5.3 above and when queried ESC responded that there are circumstances where a development could fall foul of one but not the other, albeit no example was provided. The designation under this policy (shown on the KNP Policies Map) encompasses Dobbs Wood including an area stretching west and south to arbitrary boundary lines that take in a small proportion of the Sportsground and some land under commercial ownership. It seems that the footprint owes much more to overhang from historical strategic plans going as far back as 2000 than any up to date consideration of what the Kesgrave community considers an *"important contribution to the setting or character of a Town"* that could have been embraced by this policy.

- Paragraph 5.35 states: *"Infill development can have the potential to harm the character of a streetscape if not carefully designed or if it takes place on unsuitable sites such as those which are too small. In addition, development of backland or **garden plots** can impact on the landscape if they encroach into the countryside, or can raise amenity issues within built up areas."* Policy SCLP11.9 identifies Areas to be Protected from Development and within these areas infill policies would not apply. Noted importantly again that *"Infill"* and *"development.in... garden plots"* are still locked together in addressing NPPF Paragraph 70 guidance that refers specifically to *"residential gardens"*. This continues in the policy wording SCLP5.7 which replaces SCCS Policy DM7 (see above) on an almost like for like basis. This demonstrates no

account has in practice been taken of NPPF Paragraph 70. This is a gap Policy KE1b) in KNPF seeks to address.

In summary, there is a dissonance between what NPPF provides for as a framework for residential garden development and the way in which ESC in practice seeks to address it in Local Plan policy. SCLP5.7 does, however, state that "*Neighbourhood Plans are able to set their own policies on this type of development in response to local circumstances.*" That is very much the purpose of Policy KE1b), to set local policy based on local circumstances which is appropriately justified and evidenced.

6.2 Local Plan Policies

a) Strategic and Non-strategic

The final draft of SCLP at paragraph 1.46 states that all policies are strategic. However, this was queried in reference to NPPF during the examination (Hearing Day 2: 23 August 2019) by the Inspector (Ref document I10 re Matter 2C). ESC stated:

*"The Council has reconsidered the policies within the Final Draft Local Plan in the context of the National Planning Policy Framework (paragraphs 20-30). In doing so the Council has identified strategic policies as being those which contribute to the overall pattern, scale and quality of development, as per paragraph 20 of the NPPF. Policies which relate only to the local level or which set out specific **development management criteria**, and which do not form a part of the overall pattern, scale and quality of development, have been identified as Non-Strategic."* Eight policies were thus listed non-strategic.

In fact, paragraph 21 in NPPF states that strategic policies should be "*limited to those necessary to address the strategic priorities of the area*" and "*should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.*"

Arriving so late in the Local Plan review process has allowed no opportunity for KNPS to represent on this matter nor does it seem likely it will fall within the limited scope to do so when the Inspector's report is published in 2020. But in the absence of analysis or other information from ESC to justify the selection of non-strategic policies an assessment in reference to the guidance at NPPG Paragraph: 076 Reference ID: 41-076-20190509: **How is a strategic policy determined?** would be lead to a different conclusion:

"When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- *whether the policy sets out an overarching direction or objective [It does not.]*
- *whether the policy seeks to shape the broad characteristics of development [It does not.]*
- *the scale at which the policy is intended to operate [Assuming scale means impact and significance for the delivery of the plan, SCLP5.7 addresses a very low level aspect.]*
- *whether the policy sets a framework for decisions on how competing priorities should be balanced [It does not.]*
- *whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the local plan or spatial development strategy [It does not.]*
- *in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the local plan or spatial development strategy [Not applicable.]*
- *whether the local plan or spatial development strategy identifies the policy as being strategic."]Yes, it does.]*

SCLP5.7 does not appear to comply with any of these considerations except the last one – merely that the policy has been listed as strategic (technically, it has not been listed as non-Strategic). Is the mere listing in the emerging Local Plan the final arbiter? What then is the point of the guidance? As mentioned, paragraph 21 in NPPF states, "*These [strategic policies] should be*

limited to those necessary to address the strategic priorities of the area...” SCLP5.7 does not address the strategic priorities of the area otherwise a lot more would depend on it terms of delivering outcomes than is clearly the case.

Paragraph 21 in NPPF also states: “Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.” Is this not precisely what SCLP5.7 does?

b) Minimal Dependence On Windfall From Residential Garden Development

SCLP Spatial Distribution of Residual Housing Requirement states at paragraph 3.38:

“The figures do not include any assumptions around windfall development which it is expected will come forward at a rate of at least 50 dwellings per year from 2020/21 onwards, and would therefore provide at least an additional 800 dwellings over the plan period.”

There is therefore no strategic dependence upon windfall development and considering residential garden development is a very small sub-set of this, even less dependence on that.

c) SCLP5.7 Replaces SCCS DM7

It is noted that in SCCS the equivalent policy DM,7 not least by its notation and that it primarily lists development management criteria, appears to be a non-strategic policy. There is little difference between DM7 and SCLP5.7 and the stipulations in SCLP5.7 are very similar development management criteria.

d) Inconsistency With Waveney Local Plan

These are the policies listed by ESC as non-strategic:

SCLP5.5 Conversion of buildings in the countryside for housing	SCLP6.6 Existing tourism accommodation
SCLP5.6 Rural Workers Dwellings	SCLP11.5 Conservation Areas
SCLP5.13 Residential Annexes	SCLP11.6 Non-Designated Heritage Assets
SCLP6.5 New Tourist Accommodation	SCLP11.7 Archaeology

The equivalent policies in the Waveney Local Plan made in March 2019 are shown as strategic policies as are all its policies. There were no material differences in make-up and character between the two authorities before they merged that were sufficient to account for their differing approaches. There is no evidence to suggest that a review of NPPG (Paragraph: 076 Reference ID: 41-076-20190509) was a factor in reaching their differing opinions. If it had presumably they would have reached the same conclusions? The inconsistency is disconcerting.