



Town & Country Planning Act 1990

APPEAL UNDER SECTION 78(1)

By

Mr Anthony Hardy (Capital Community Developments LTD)

At

Land North of Gardenia Close and Garden Square

Rendlesham

Suffolk

PLANNING PROOF OF EVIDENCE OF

BEN WOOLNOUGH BSc(Hons) MSc MRTPI
MAJOR SITES AND INFRASTRUCTURE MANAGER

03.03.2020

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1.0 Qualifications and Experience

- 1.1 My name is Ben Woolnough I am a Chartered Member of the RTPI and have an MSc in Town Planning from Anglia Ruskin University and a BSc (hons) in Environmental Science from the University of Portsmouth.
- 1.2 I am employed by East Suffolk Council as the Major Sites and Infrastructure Manager as part of the planning service. This involves management of Major Sites Planners and our Infrastructure Officers, with responsibility for the largest and strategic housing and employment sites in the District along with Section 106 agreements, CIL and RAMS contributions. I have been employed in my current role since December 2018. Prior to this I was a Major Projects Advisor for the Council and also a Senior Planning Officer.
- 1.3 I was first employed by the former Suffolk Coastal District Council as a Senior Planning Officer between September 2012 and February 2016. Subsequently I was employed in private planning practice for 9 months. I have been employed as a planner for 13 years with the majority of that time spent as a Development Management Officer within Local Planning Authorities across Suffolk.
- 1.4 Recently I have been a lead officer for East Suffolk involved in the ‘Suffolk Design’ initiative, which is introducing a Design Charter and Design Management Process across Suffolk authorities. This has involved close working across all Suffolk Authorities, sharing skills, experience and design knowledge and extensive engagement with the private sector. I am also the East Suffolk representative on the Recreational Disturbance Avoidance Mitigation Strategy (RAMS) Executive Board, recently established to address the delivery of strategic mitigation measures required through developer contributions to protect the integrity of Habitats Sites along the whole Suffolk coast.
- 1.5 I have previous experience as an expert planning witness in planning public inquiries and I am competent in dealing with Major planning applications, including those requiring Environmental Impact Assessment and Habitats Regulations Assessment.

2.0 Scope of Evidence

- 2.1 The appeal is against the decision of East Suffolk Council (the Council) to refuse full planning permission for a phased residential development of 75 dwellings at Land North of Gardenia Close and Garden Square.
- 2.2 The main issues to be considered in this appeal and raised by the reasons for refusal and information obtained subsequently relating to those issues are as follows:
- 2.2.1 Whether the proposed development accords with the statutory Development Plan. I conclude, following policy analysis, that it does not accord with the Plan through its poor design and that therefore permission should be refused unless material considerations indicate otherwise.
 - 2.2.2 Whether material considerations indicate that permission should be granted notwithstanding these issues. The benefits of housing and Public Right of way funding and the NPPF, against which the proposals fails in respect of design paragraphs, are not such that they indicate a decision should be other than in accordance with the development plan.
 - 2.2.3 Whether the development would constitute sustainable development. I conclude that it would not.
 - 2.2.4 Whether any policies important for determination of this application are out of date and therefore triggering the NPPF paragraph 11 tilted balance. I conclude that no policies important in decision making are out of date and the relevant and most important policies are not affected in the weight given to them.
 - 2.2.5 That in the unlikely event of applying the tilted balance, the adverse impacts will significantly and demonstrably outweigh the benefits of the development when considered against the policies in the Framework taken as a whole.
- 2.3 Upon receipt of this appeal I was allocated the responsibility to act as a planning witness for the appeal as the original case officer had since left the Council. Prior to the appeal I had provided the case officer with some advice as a senior member of the planning team and undertook some communication with the agent on behalf of the Head of Planning.

- 2.4 So albeit I did not write or sign off the Delegated Report, I have reviewed it and agree that the site is in a sustainable location, with no significant impacts on the landscape or heritage assets, no adverse effects of traffic on the highway network and no flood risk or land contamination issues.
- 2.5 I focus in this proof of evidence on my own analysis which follows section 38(6) of the Planning and Compulsory Purchase Act 2004 closely and conclude that the appeal proposals:
- 2.5.1 Do not accord with the Development Plan taken as a whole, and
 - 2.5.2 That material considerations do not indicate that a decision should be made otherwise than in accordance with the Plan.
- 2.6 The decision notice was issued with eight reasons for refusal. I have reviewed the reasons and I am professionally satisfied that the appeal should be dismissed. The Council has recognised within its Statement of Case areas where the Council's position has moved on since the refusal due to information now made available by the appellant, policy progress, and my professional independent judgement of the reasons
- 2.7 The latest position on the reasons for refusal is:
- 2.7.1 Reasons for refusal 1, 4 and 7, due to progress and appeal submissions these reasons have been withdrawn by the Council.
 - 2.7.2 Reason 2 (affordable housing) based on appeal submissions this reason has progressed but remains, pending the s106 agreement. At the time of writing the affordable rented tenure proposed by the appellant had changed from affordable private rented to affordable rent. It appeared that affordable housing obligations had good potential to be agreed.
 - 2.7.3 Reason 6 (Habitats Regulations) disagreement remains over aspects of this refusal. Based on discussions with the appellant formal information may be provided in their proof of evidence. The Council notes that the appellant has in the last week agreed to meet the County Council's public right of way funding request, pending further detail through the s106. I am yet to be fully aware of what influence this may have on the appellant's case. As set out in the Council's Statement of Case, there is scope for this reason to be withdrawn and an agreed

Public Right of Way may be a material consideration for the Council on this. Irrespective of the status of this reason, the Council has prepared a Habitats Regulations proof of evidence from James Meyer, Ecologist. The Inspector may still need to undertake an Appropriate Assessment and therefore this is required to ensure that the Inspector is informed fully on the Council's position.

- 2.7.4 Reason 8 (Section 106 agreement) in association with reasons 2 and 6, this remains but it appears that there is good potential for a section 106 agreement to be signed and for this reason to be withdrawn.

Remaining reasons which will remain defended in the inquiry

- 2.7.5 Reason 3 (Design) the Council maintains this reason in full and will demonstrate that the proposal is poor design, contrary to the development plan and NPPF. This reason is supported by the Design proof of evidence from Robert Scrimgeour, Principal Design and Conservation Officer.

- 2.7.6 Reason 5 (Residential Amenity) the Council maintains this reason, though as set out in our Statement of Case, it has been refined down to impacts on privacy of future residents through extensive overlooking between side first and second floor windows of properties. This proof of evidence demonstrates how the proposal is not compliant with policy DM23 and the development plan in this respect.

- 2.8 The Council's Housing Land Supply Assessment, published in June 2019 [CD 9.22] of the Council's Statement of Case] states that it can demonstrate a 7.03 year housing land supply. The appellant does not dispute the Council's Housing Land Supply position, the process it undertook to reach this and the status it has in decision making. In terms of the Housing Delivery Test, the 2019 results demonstrate that the Suffolk Coastal area of East Suffolk is exceeding expected delivery at 127% and therefore the Council is a 'no action required' authority. The Council has however produced an East Suffolk Housing Action Plan and will continue to do so a positive way of improving housing delivery.

- 2.9 I consider the progress of the Council's emerging Local Plan to a main modifications consultation to be a significant and expanding material consideration during the course of the Inspector's consideration of this appeal. Policies of the emerging local plan are therefore considered briefly in this proof, though further representations on those

following the commencement of a main modifications consultation will be necessary, most likely before the inquiry.

2.10 The evidence which I have prepared and provide for this appeal in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.

3.0 Background matters relevant to the Inspector

- 3.1 This proof of evidence does not seek to repeat site descriptions and descriptions of the proposal which will be covered in the Statement of Common Ground. This section does however provide some relevant context and background for the inspector.
- 3.2 The residential side of what was previously known as USAF Bentwaters Air Base, was referred to as the Domestic Base. It contained air force housing and community facilities for military personnel. Upon the USAF use ending it was allocated for residential development, and the technical base allocated for employment. When the site was master planned it comprised of a mix of re-use of existing properties, brownfield redevelopment areas and greenfield sites for expansion of the village. By 2013 most of the base had been or was being developed and one remaining parcel of the domestic base allocation remained undeveloped – the appeal site.
- 3.3 Based on the original allocation – development on the domestic side of the airbase, under policy AP160, sought to create a comprehensive community [CD 9.18]. That policy no longer applies but this longstanding allocation remains. Unlike other Rendlesham housing parcels previously built out as part of the creation of the new community, the village is now well established as a cohesive community. This site is an allocation in the same light as other allocations on the edges of villages and towns. It should be viewed as an expansion of the comprehensive existing community up to its likely ultimate northern edge.
- 3.4 Over the course of two pre-application enquiries and two planning the design and residential amenity issues with this development have been ongoing issues highlighted in advice, reports and decision notices (Residential amenity summarise din Appendix 1). Whilst design changes have been made the proposed development has consistently sought a uniform layout heavily defined by east facing rows of houses. This has maintained the design and amenity conflicts present in each layout proposed.

4.0 Policy Consideration

The Development Plan

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. This requirement is confirmed at various points in the NPPF.

4.2 The NPPF also confirms:

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

4.3 In considering the development plan I have had regard to and considered the proposals against the following development plan policies:

Policies the proposal complies with

Core Strategy

DM2* Affordable Housing on Residential Sites

SP2 – Housing Numbers and Distributions

SP15 – Landscape and Townscape

SP18 - Infrastructure

SP17 – Green Space

DM28 – Flood Risk

DM32 – Sport and Play

SP27 – Key and Local Service Centres

SP16 – Sport and Play

Site Allocations Document

SSP1 – New Housing Delivery 2015-27

SSP2 – Physical Limits Boundaries

Policies the proposal does not comply with

Core Strategy

SP1 – Sustainable Development **

SP1A – Presumption in favour of sustainable development **

SP11** - Accessibility

SP14* - Biodiversity and Geodiversity

DM21 – Design: Aesthetics

DM22- Design: Function

DM23 – Residential Amenity

DM27* - Biodiversity and Geodiversity

SP3* – New Homes

Site Allocations Document

SSP12 – Allocation - Land north of Garden Square, Rendlesham

** - these depend upon information submitted for the appeal and signing of a section 106 agreement for compliance.*

*** - These policies are not referenced in the reason for refusal though SP1 and SP1A duplicate sustainable development considerations contained within the NPPF. Policy SP11 duplicates expectations of DM22 in respect of the provision of safe and convenient walking routes. In undertaking a fair assessment of policy compliance, non-compliance with these policies must be noted, however the Council does not rely on these policies in its justification for the appeal being dismissed.*

4.4 As I explain, the proposal does not accord with the development plan taken as a whole. I acknowledge that albeit this development would accord with policies for the location of development, the provision of housing, protection of the landscape and general expectations of site and application requirements, it would not comply with some of the most important policies for consideration of an allocated major housing scheme as a full application, those being, SSP12, DM21, DM22 and DM23.

4.5 I will now assess the appeal scheme against the policies referred to in the reasons for refusal.

(i) Core Strategy

4.6 As this was adopted before allocation policies and informed allocations, consideration is given to these first, also recognising that many allocation policies refer back to them, were influenced by them or reflect the similar requirements. Irrespective of whether a site is allocated or noted, it would be assessed in detail against relevant design policies and for a major housing scheme that would always include DM21, DM22 and DM23 relating to design in terms of aesthetics, function and residential amenity.

Design Policies (DM21 and DM22)

4.7 Policy DM21 – Design Aesthetics – is a clearly worded policy consistent with the NPPF and well established 21st Century design policy and expectations. It starts by stating 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.”

4.8 It is then positively worded to support the development will be permitted where, amongst other things:

(a) **proposals should relate well to the scale and character of their surroundings particularly in terms of their siting, height, massing and form;**

(b) **in areas of little or no varied townscape quality, the form, density and design of proposals should create a new composition and point of interest, which will provide a positive improvement in the standard of the built environment of the area generally;**

(e) layouts should incorporate and protect existing site features of landscape, ecological, heritage or amenity value as well as enhance such features e.g. habitat creation;

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.

4.9 DM22 – Design: Function – Is focussed on the design of development in how it enables movement, transport, waste management, crime prevention and safety. Its supports granting permission for developments where:

(a) **the design and layout of the development provides and maintains safe and convenient access for people with disabilities;**

(b) **New development generally makes adequate provision for public transport, cars, cycling, garages, parking areas, access ways, footways, etc in a manner whereby such provision does not dominate or prejudice the overall quality of design and appearance;**

(d) **Proposals for development take into account the need for crime prevention. Particular attention will be paid to such features as secure design, natural surveillance,** adequate lighting and visibility. Proposals aimed at reducing crime within existing development areas will be supported provided that they are not in conflict with the objectives of other plan policies.

As a point of my interpretation of (a) above. This is not exclusive to people with disabilities. It sets the bar at its highest in terms of standard and quality of access routes for safe and convenient access for people with disabilities and equally for all.

- 4.10 In both policies I have highlighted the parts which the proposed development conflicts with. In my 13 years of Development Management experience I have always read and considered aesthetic and functional design policies and matters side by side. They may pull design in similar or different directions and it is essential to strike a balance between exemplary aesthetic design and a site that functions well for all. Idealistic design principles can cause fundamental failures in design. For example, estate design which seeks to minimise the visual effect of car parking can cause a development to have poor social interaction and low levels of human activity in streets.
- 4.11 Such balance also includes matters such as designing out crime, where a desire for permeability in good design terms creates fear of crime concerns. The balance in that example is to instead maximise passive surveillance and active frontages onto routes and spaces and create well defined and welcoming public spaces and routes. A design preference for unadopted roads may create a pleasing hard landscaping aesthetic but it also creates conflicts in respect of safe movement, the integration of a whole community and legibility of public and private spaces and routes. These two balances are highly relevant to this appeal scheme and the considerations above are well covered in the Design proof of evidence, demonstrating poor design in these areas is harmful.
- 4.12 I agree with the aesthetic and functional failures noted by the case officer and in the reasons for refusal 3. As a result of the in-depth assessment of design contained in Robert Scrimgeour's design proof, the refusal is elaborated into the detailed failings of the layout, routes and spaces of the proposed development including how they will be used and enjoyed by existing and future residents. The proposal is fundamentally at fault as a result of the uniformity in its design which is very much at odds with established urban design principles and concisely listed in development plan policies. The NPPF and National Design Guide back these policy requirements up and are well aligned with the Council's expectations of good design.
- 4.13 Policy DM21 should be applied to all decision making involving development. A proposal which is assessed as being poor design on the whole, will almost always outweigh policies

which weight in favour of the development and other material considerations. The appeal is contrary to DM21 in comprising poor visual design and layout.

4.14 The Core Strategy was adopted under the original NPPF which then stated that “that good design is indivisible from good planning” at paragraph 56, a statement I believe remains very true, even though it is no longer contained in the current NPPF. When applying this to some of the fundamental design failings evidenced in this appeal there is no doubt that those failings would persist for the lifetime of the development and could not be mitigated in the future. Particularly the way in which the development integrates with its adjacent community and enables positive improvement and sustainable movement within a well-designed environment.

4.15 It is evident throughout the submission and previous submissions that the adjacent Garden Square and Gardenia Close developments are of fundamental influence on the design. They are regularly referred to as the key surrounding influence on design and particularly as a precedent. The design for that site was consented in 2004 and built out from then up until 2017. The finishing and adoption of some roads on that site remains the final uncompleted element. I have dealt with that site multiple times through its various applications and I have recognised good design elements there and reported that in recommending applications for approval.

4.16 In doing so, it was in recognition of the design of development contained wholly within that site and designed to align with that site only, with reference to its pattern of development. A new major development alongside it and equally alongside another different modern estate development, requires a consideration of the design on its own merits and based on the influence of all of its surroundings.

4.17 As a full application relating to an allocation, where there has been no design brief, design code process or master planning process it is highly unusual – and indeed totally unjustified – for the appellant to claim that their design and layout has already been ‘signed off’ in their Statement of Case:

*“1.4 The appellant’s position from the very start is that the planning context for the determination of this proposal was very clear; the site is allocated, 75 dwellings can easily fit, **the design and layout has already been ‘signed off’ by the local planning authority**”.*

4.18 It is assumed that this claim relates to the point made at 1.28

“Turning to the design policies DM21 and DM22 we will demonstrate that the proposals demonstrably meet their requirements and as demonstrated by the Council in approving the Garden Square and Gardenia Close proposals. Nothing in the policy context has changed since then”.

Aside from the fact that the final sentence is plainly wrong, it is presumptuous – and it is incorrect – to assume that a 16 year old approval demonstrates compliance with current policy now, it also suggests that any developer’s layout and house types approved in this District is equally acceptable to attempt to replicate elsewhere in the District and remain interpreted as good design.

4.19 Throughout the Appellant’s case, it attempts to justify this design on the adjacent development as an isolated design precedent. The two sites do include similar house designs and a similar design and layout concept based around uniformity and symmetry. However, they are different sites, in a different context and influenced by very different routes and edges.

4.20 Garden Square and Gardenia Close comprises of just one of three residential estates adjacent to the site. Garden Square and Gardenia Close were unique as one of the parcels of the Rendlesham-wide masterplan. This presented an opportunity for development less consistent with typical housing layouts at that time because of the mix of existing ex-military homes, undeveloped parcels and repurposed military buildings. They have also been considered under entirely different development plans (a Local Plan origination from 1994 and subject to alteration in 2001 compared to a 2013 Core Strategy) and an entirely different national planning framework. The appellant’s attempt to draw direct comparison between the design policy used in 2004 and those used in 2020 is of no merit. The proposed development should be considered against the current development plan and emerging plan and not policies originating from 1994 and which ceased to exist in 2013.

4.21 The only policy which has had some overlap is the AP160 Rendlesham (Creation of new Community) which was saved upon adoption of the Core Strategy and retained the appeal site as the only outstanding allocation. It was replaced in 2017 by the Site Allocations DPD.

4.22 A further incorrect statement made in the appellant’s Statement of Case is at 4.52

*“Policy DM21 deals with aesthetics and design generally. **Here it is the site layout that is in dispute, not design generally.**”*

To separate layout as being different to design generally is a huge misconception of what design is in planning terms, particularly as DM21 actually addresses layout.

4.23 Expanding upon the design proof, with planning interpretation, the poor social inclusivity or integration of the development is apparent in its design failings clearly set out in the design proof. Through a development driven by rigid uniformity, the layout adversely affects the integration of this site with the village as a whole. No design attention has been paid to the interface of the site with the most direct primary access and existing homes in the village at Tidy Road. The Design proof explains how arrivals into the site are confronted by the back ends of culs-de-sacs, back fences and no active frontages. It truly represents an arrival through the back door of the development.

4.24 This is exacerbated by the poor pedestrian connectivity through the majority of the site, with limited footways, footways which terminate illogically for pedestrians, privately enclosed walkways and a dominance of privatised space. It fails therefore to be socially inclusive to both future and existing residents and fails to provide good and safe opportunities for sustainable travel on foot - increasing risk of conflicts between pedestrians and vehicles and perception of compromised safety. The uniformity in orientation creates poorly observed spaces, in particular through dwellings and apartments which are not orientated to front onto open spaces and streets. Also, through the rigid alignment of properties front to back, the opportunities for encounters with neighbours are limited to those properties to each side. This is unlike an interactive dual sided street or cul-de-sac. As has been highlighted in the design proof, the private nature of much of the site appears to be the design driver and that is a fundamental failure in creating socially inclusive and well-integrated urban design.

4.25 It is therefore very apparent through this proof of evidence and the design proof of evidence that the proposal is poor design. The appellant’s Statement of Case does not attempt to consider the circumstance for decision should poor design be accepted by the Inspector. The conclusion of their Statement of Case is limited to “any other “harms” that might be identified could be no more than of minor significance”. With the level of current government attention to good design, including though the recent Building Better, Building

Beautiful Commission – Living with Beauty report, the recent National Design Guide and strength of the NPPF design section it is impossible to view a recognition of poor design as being of minor significance. This will be addressed later in the planning balance.

Residential Amenity/Living Conditions (DM23)

- 4.26 The Council’s Statement of Case is clear in how residential amenity impacts have been reviewed and refined in the Council’s case, and well in advance of proofs of evidence. The remaining area of disagreement relates to the design impact of the proposal to include side first and second floor windows throughout the development. The presence of these windows being down to the appellants design preference rather than any need for them. The design of the development is described in the Design and Access Statement [CD 1.3] paragraphs 5.11 – 5.21 as being a development which continues the styles and materials of Garden Square and Gardenia Close which drew on architectural principles to promote health and well-being of occupants, with a particular focus high levels of natural light into homes. It goes on to state *“The key principles are right direction, placement of rooms, right proportion, and the use of natural and non-toxic materials”*. It should be recognised that these final principles which may be of little or no planning merit in consideration have affected design of the development throughout, particularly in negotiations on the layout, orientation and amenity residential impacts.
- 4.27 The Council has been engaging with the appellant on this reason for refusal. It was discussed in a meeting with the appellant’s planning consultant in early January 2020 and the Council then volunteered to produce a set of reference plans which enabled layouts, floor plans and elevations to be seen on one page as groups of buildings through the Statement of Common. When these were shared for constructive discussion, the appellant misinterpreted their purpose, claimed that they were the Council’s evidence and produced their own version. These plans or a final agreed set will be a part of the topic focussed Statement of Common Ground where each window relationship will be listed Ground so this matter can be covered in an efficient manner in the inquiry. The Council has identified 67 side windows serving habitable rooms and landings, 5 bathroom windows which could have views across to another window. The vast majority of these will provide ability to view into opposing windows. There are 6 half moon windows and 25 rooflights which appear to be high level though floor to cill heights have not been demonstrated. The gaps between widows are between 3.5 metres and 11.5 metres, side elevation to side elevation.

4.28 When assessing the layout of estate scale development it is important to ensure that all homes inter-relate in a way which avoids residential amenity conflicts, particularly in terms of privacy, overshadowing and dominance. Across all housing estate scale developments I have considered over my career I have never found a situation where a developer or housebuilder has purposefully designed rooms at first or second floor between adjacent properties which have facing side windows. Such a relationship is not designed into developments because of the negative privacy effect and particularly in new homes where the design and planning should have first avoided such impacts. Walking around any modern development it can be seen that this is not generally part the design of new homes. Particularly where that separation is across short side-to-side distances, in some instances 5.5 metres, and between habitable rooms.

4.29 This impact has been noted by the Council throughout past engagement with the appellant it has been recommended that such side windows should be removed or impacts addressed. Written feedback from the Council at each point of engagement is provided as Appendix 1. The Design and Access and Planning Statement [CD 1.3] supporting the application said, at paragraph 6.40:

residential amenity". The further pre-application advice has focussed the applicant's attention on issues of overlooking and separation between dwellings. The applicants have developed the layout plan specifically to minimise instances of overlooking by moving dwellings types or by inserting narrowed windows on flanking elevations. The applicants have also provided a drawing which compares the separation distances between the proposed dwellings and those previously deemed acceptable by the local planning authority at Garden Square and Gardenia Close showing that the separation distances within this proposal are greater, in compliance with this policy.

4.30 It is clear from this that the appellants are convinced that the side-to-side windows are acceptable in their submitted form. Properly addressing this point has been resisted and therefore side-to-side windows presenting harm to occupiers through poor levels of privacy are still apparent in 35 side-to-side interactions across the site, as will be set out in the Living Conditions Statement of Common Ground.

4.31 The appellant's Statement of Case attempts to justify these relationships through the fact that they are 'narrow 0.5m windows'. In response to this point, 0.5m wide windows allow a considerable width angle of view when standing close to them. The view between two 0.5m wide windows would still allow each resident to view people going about daily business in the opposing room and in the closer relationships conversations would be heard

between open windows when in a confined side-to-side enclosure of 2 or 3 storey buildings. This impact is particularly acute where bedrooms have windows facing each other.

4.32 Their Statement of Case also goes on to state in relation to various window relationships from page 30-35 *'in the rooms that face each other, there are other windows and rooflights on the east or west, so the occupants are not reliant on the windows that overlook or are overlooked'*. I do not understand the explanation that because there are other windows the occupants will not look out of the side windows. They are windows with a view and many of the interactions they are windows which regularly be passed or walked towards in using the room. In my own home, I regularly look out of my side landing window, even if just to admire the bricks on my neighbour's flank elevation, thankfully they do not have a window opposite.

4.33 If, based on this statement, there are other windows that the appellant believes would be of more use for views, ventilation and illumination of the room - then an impactful side windows are an unnecessary part of the design. Under such circumstances offending windows would be removed from the design by the designer prior to seeking planning, as a matter of common sense. As they remain, the impacts in poor levels of privacy and compromised living conditions have justifiably been raised in the refusal.

4.34 The plans do not indicate any measures to attempt to mitigate this and clearly from the statement of case the appellant didn't feel that any form of mitigation was necessary to overcome the reason for refusal. As the impacts are so widespread the issue is purposefully designed in and not a minor oversight to address through conditions. The appellant's very recent suggestion that the Council may impose a condition for obscure glazing is not a reasonable solution. The Council would welcome amended plans which remove the windows, or one window from each inter-relationship, as has been consistently communicated in the past. In the absence of the removal of the windows it is not appropriate to attempt to mitigate their harm through obscure glazing and non-opening form. Inherently, and in my experience, this type of attempt to mitigate presents long term enforceability issues, particularly when having to be applied on a widespread basis. It may be a suitable solution where those rooms are not served by other windows, for example, serving a bathroom or WC and otherwise they would not benefit from natural light, but that is not the case in this proposal.

4.35 In respect of this reason for refusal the sole policy for consideration is DM23 – Design – Residential Amenity. This is a relatively generic policy, consistent with most Development Plans in listing the residential amenity considerations which usually be applied to all forms of development. As well-established planning considerations is necessary but speaks for itself. It states:

When considering the impact of new development on residential amenity, the Council will have regard to the following:

- (a) privacy/overlooking;
- (b) outlook;
- (c) access to daylight and sunlight;
- (d) noise and disturbance;
- (e) the resulting physical relationship with other properties;
- (f) light spillage, air quality and other forms of pollution;
- and (g) safety and security.

Development will be acceptable where it would not cause an unacceptable loss of amenity to adjoining or future occupiers of the development.

4.36 The appellant considers this policy on the basis that these are residential amenity considerations and 'it does not rank them'. The appellant is correct, they are not ranked, and the Council has not claimed that any are more important than others. They equally require consideration and the policy should not be considered based on meeting most of the considerations. Impacts on residential amenity/standard of living for should be a starting point in designing residential layouts and floorplans. Where impacts do exist, they should be designed out not justified through assumptions of how the occupiers may use the windows. The need to address privacy has been an ongoing concern for the Council throughout its engagement with the appellant on this site and it is not apparent that this concern has been taken seriously.

4.37 The appellant goes on to state at 4.94 of their Statement of Case:

"The proposed dwellings conform to a design code which adds variation to the housing market. There is market demand for housing 'products' conforming to this code as demonstrated by the success of Garden Square and Gardenia Close.

In this case purchasers place a premium on access to daylight and sunlight, property orientation and elegant and distinctive architecture. The residential amenity of the future occupants will not be unacceptably impacted.”

4.38 The code is not a design code in the true planning sense of the term. It is the appellant’s design preference based on an assumption of what future occupiers may favour. It is the Local Planning Authority’s responsibility to consider the level of residential amenity enjoyed by future residents unfettered by any assumption of what the personal preferences of future occupiers may be. In this instance I am recognising clear conflicts in respect of privacy between properties through what are entirely unnecessary windows. As has always been advised by the Council, the privacy impacts should have been addressed through removal of the windows I do not consider that this impact, which is very imbedded in the design should now be addressed in any other way. Particularly as the appellant’s Statement of Case suggests, the windows are part of the appellants own design code so have purposefully been provided in this manner and were justified as they are drawn.

Biodiversity policies (SP14 and DM27)

4.39 Reference to these policies in reason for refusal must be read alongside the Habitats Regulations requirements of the site. They establish the need to establish no likely significant effects or no adverse effects on the integrity of designated sites.

4.40 Policy DM27 (Biodiversity and Geodiversity) states:

“Development proposals that would cause a direct or indirect adverse effect (alone or combined with other plans or projects) to the integrity of internationally and nationally designated environmental sites or other designated areas, priority habitats or protected/priority species will not be permitted unless:

- (i) prevention, mitigation and, where appropriate, compensation measures are provided such that net impacts are reduced to a level below which the impacts no longer outweigh the benefits of the development*; or

- (ii) with regard to internationally designated sites that the exceptional requirements of reg. 62 of the Conservation of Habitats and Species regulations 2010 (as amended) relating to the absence of alternative solutions and Imperative reasons of overriding Public Interest have been met. Improved site management and increased public access to sites will be encouraged where appropriate.”

4.41 The scheme’s failure to accord with this policy is fully covered with the Habitats Regulations Assessment proof of evidence. In respect of this area, the Council made clear from the outset that with swift attention from the appellant this reason for refusal and policy conflict could be addressed, subject to sufficient information being submitted. The Statement of Case was explicit at paragraphs 5.57 and 5.58 that commitment from the appellant to the delivery and/or funding of a new Public Right of Way route could be a material consideration for this purpose. Whilst the draft s106 contained an obligation for PROW creation it was limited to a short route within the site along its eastern edge.

4.42 A great deal of time has been spent on this important matter and the appellant failed to confirm its position to the Council within 2 weeks of the sharing of the Statement of Common Ground and therefore the Council has proceed with a proof of evidence in this respect.

4.43 I fully endorse the professional opinion of the James Meyer, the Council’s Ecologist in coming to his conclusion that the information supporting the appeal is insufficient and the mitigation expected is not adequately demonstrated.

(ii) Site Allocations DPD

4.44 In this development plan document it is the policy which allocated the site which needs to be assessed to conclude consideration of the development plan, including its association with the Rendlesham Neighbourhood Plan. That is Contained with the Site Allocations and Area Specific Policies Development Plan Document (Site Allocations SPD) [CD 4.2]. The introduction of that document (page 2) states:

1.03 The first and central part of the new Local Plan is the Core Strategy, adopted by the Council in July 2013. The Core Strategy provides an overall vision and strategic policies for the district and its communities to 2027. The Core

Strategy also includes Development Management Policies used in the determination of planning applications.

1.04 The following documents assist in implementing the objectives, policies and proposals in the Core Strategy through settlement specific land use policies and the identification of sites for new development:

- Site Allocations and Area Specific Policies Document;
- Felixstowe Peninsula Area Action Plan;
- Neighbourhood plans prepared by local communities for some parishes.

4.45 As set out in the Council’s Statement of Case (paragraph 5.17), Reason for Refusal 1 is not being defended based on the relevant parts of SSP12 in the Council’s case on design are largely dealt with through Development Management Policies. However, SSP12 in respect of the design requirements and link to the neighbourhood plan is addressed below.

SSP12 – Site Allocation Policy

4.46 This states (with my commentary):

Development will be expected to accord with the following criteria (lettered for ease of reference) :

- Meet the minimum distance from the Water Recycling Centre within which new residential development is considered acceptable as advised by Anglian Water; Now satisfied based on information submitted as part of the appeal.*
- Provision of a flood risk assessment; Complies*
- Accommodate the sewers that cross the site; Complies based on plans now provided as part of the appeal demonstrating the route and depth of sewers.*
- The development will need to demonstrate there is adequate capacity in the foul sewerage network or that capacity can be made available; Complies*
- The design, layout, mix and type of housing proposed is compatible with the housing and transport objectives set out in the ‘made’ Rendlesham Neighbourhood Plan; This requires consideration of the Neighbourhood Plan in parallel. It should be noted that*

there are no policies of the neighbourhood plan which the development conflicts with but this point draws its 'objectives' into consideration. In respect of design, this point should not be assessed in isolation of other design policies of the development plan.

- f. *Provision of affordable housing; Subject to receipt of a satisfactory s106 it would comply*
- g. *The remaining greenspace should be used for a mix of informal open space suitable for daily dog walking, allotments or orchards in accordance with Rendlesham Neighbourhood Plan policy RNPP3; Complies in respect of Open space, subject to agreed phasing. Daily dog walking is an element of Reason for Refusal 6 and compliance with this relies upon consideration of that matter later into this proof.*
- h. *Provision of a substantial landscape buffer to the northern and western boundaries where it abuts open countryside; Complies.*
- i. *An archaeological assessment will be required; Complies*
- j. *A transport assessment. Complies*
- k. *In addition, the air quality impacts of traffic from cumulative development at Melton crossroads and the Air Quality Management Area declared in Woodbridge will need to be investigated in the form of an Air Quality Assessment, together with a mitigation appraisal. Complies*

In addition, the air quality impacts of traffic from cumulative development at Melton crossroads and the Air Quality Management Area declared in Woodbridge will need to be investigated in the form of an Air Quality Assessment, together with a mitigation appraisal.

4.47 Whilst much of the policy performs as somewhat of a validation list of supporting document expectations, it is very clear that design expectations were to be applied alongside Development Management policies. Albeit the scheme complies with several parts of the policy, overall it is in conflict due to the objections on design.

4.48 Based on e. of this policy it is important to consider, in respect of housing and transport how compatible the development would be with the housing and transport objectives of

the Rendlesham Neighbourhood Plan, alongside Core Strategy Development Management Policies.

- 4.49 The development demonstrates conflicts with Objective 3c (Street Scene) on page 68 of the Rendlesham Neighbourhood Plan [CD 4.3]. This states that *'the street scene is an important part of the aesthetics of any housing development and should be guided by the design principle in this NP'*. The Council has made very clear in other design considerations of Robert Scrimgeour's Design Proof of Evidence that many of the design flaws of the proposal relate to the street scene. Particularly in design failures relating to the interface of the development with its primary access onto Tidy Road, which is an entirely negative street scene.
- 4.50 The 'Top 9' design principles on page 68 of the Neighbourhood Plan [CD 4.3] which 3c refers to are recognised as one set of considerations in considering street scene. However, it not apparent that these are design principles, but a very basic list of features listed as the most popular responses from the public on materials and type of property. These can all be apparent in both well designed and poorly designed street scenes. Their existence is justification alone that a street scene would be design policy compliant. It is therefore important to note that the objectives and design principles are not policy in themselves. In respect of the Neighbourhood Plan seeking well designed street scenes it is clear that the Council has assessed the development as failing to present good quality design, particularly where it edges onto its public and private streets.
- 4.51 The other design objective where a conflict arises is in Objective 3d – Sustainable Transport. As is demonstrated in Robert Scrimgeour's Design Proof of Evidence, the majority of roads in the site will be of a private unadopted form, without provision of footways and with poor connectivity across the site. This objective seeks off road sustainable transport provision for artery roads. The central axial route noted in the design proof of evidence is an arterial route within the site but with no safe sustainable transport provision in the form of footways.
- 4.52 Based on some of the most fundamental design failures, the proposal cannot be found to be compliant with the SSP12 policy requirement in respect of design (listed e. above) through its failure of two important design and sustainable transport objectives of the Neighbourhood Plan. Whilst in principle the proposed 75 homes is deemed acceptable an 'approximately 50' allocation it is not possible to detach the additional 25 homes and the

cause and effect on design that they may have. In my opinion, well design schemes for 50 and 75 homes could be achieved on this site, but not with the design approach submitted.

Development Plan conclusion

4.53 I have demonstrated that allowing the appeal would not accord with the development plan in terms of individual policies and when taken as a whole.

5.0 Other material considerations

- 5.1 Having considered compliance with the development plan, the next step of 38(6) requires the consideration of other material considerations. The following are two material considerations of relevance.
- 5.2 Benefit of housing and affordable housing – the context of a five year housing land supply existing and this being an allocated site that the Council anticipates coming forward in the current plan period, this has limited weight in this test to overcome the policy conflict.
- 5.3 Benefit of funding to facilitate a new public right of way – I have recognised that the public right of way funding and the conduit the site forms in its delivery is beneficial beyond the needs of the development. In potentially enabling a public right of way link to the north, the consenting of this scheme is of moderate benefit to the community as a whole. However, this would be expected of a well-designed development anyway and therefore its benefit is not great enough alongside the limited housing benefit to overcome the policy conflict.

(i) Emerging Local Plan

- 5.4 The policies of the emerging Local Plan strengthen the position of the existing design policies, and the allocation policy strengthens the policy expectations of information and assessment of this site for approximately 50 dwellings. I address the additional weight of those emerging policies to bolster the adopted policies later in this proof.
- 5.5 In respect of the emerging Local Plan, the Local Plan Inspector has set out some areas for attention in a main modifications consultation which begin in the middle of March 2020. At present the Council is not able to release the schedule of all modifications put forward by the Inspector, however those that were specifically referred to in the Inspector's letter did not cover any important policies affecting this appeal. It is worth noting that the emerging plan sought to deliver a housing need of 10,476 homes (582 dpa), in his letter the Local Plan inspector reduced this to 9756 homes (542 dpa) though no significant housing allocations are affected by the letter and the plan still seeks to allocate in excess of the need.
- 5.6 The most relevant policies of the Emerging Local Plan for this appeal are;
- Policy SCLP3.1: Strategy for Growth in Suffolk Coastal District
 - SCLP5.8 – Housing Mix

- SCLP5.10 – Affordable Housing on Residential Developments
- SCLP8.2 – Open Space
- SCLP9.6 – Sustainable Drainage Systems
- SCLP10.1 – Biodiversity and Geodiversity
- SCLP10.2 – Visitor Management of European Sites
- SCLP11.1 – Design Quality
- SCLP11.2 – Residential Amenity
- SCLP12.62 – Land West of Garden Square, Rendlesham

5.7 Based on the expected main modifications, upon that commencing, all policies which are not subject to significant modifications or are largely as written in the examination (or agreed through common ground) should attract substantial weight because of their examination, the progress of the plan and the overall optimism from the Inspector that the plan can be found sound. As it is anticipated that this will be ahead of the inquiry the Inspector has already indicated that this may require further submissions from both parties.

5.8 The current stage of progress of the emerging plan, particularly in the context of later points on the status of SP2, should be given moderate weight because of its progress. The council has shown swift determination its preparation, consultation and examination over the past 2.5 years. The Inspector’s letter states “Overall, I consider that, subject to main modifications, the Plan is likely to be capable of being found legally compliant and sound”. Certainly from the perspective of the overall number of homes being planned for, design polices and in relation to this allocated site, I do not foresee any indication of the soundness of those policies being in question. Subject to progress on consultation and the Inspector’s report, the Council anticipates adoption of the Local Plan in early summer 2020.

5.9 In respect of Section 38(6) and the emerging allocation. Emerging policies will need to be assessed fully based on the main modifications consultation and the position of each party on weight to be demonstrated at that time. Weight given to them under current circumstances as material considerations outside of the development plan is limited but is

set out below. Across those policies, based on the final draft Local Plan form, I am of the opinion that important emerging policies are:

- 5.10 Policy SCLP3.1: Strategy for Growth in Suffolk Coastal District – this sets out the number of homes planned for. The appeal site contributes to meeting that but in no greater way than it does already in the adopted plan. Because the plan allocates sites in excess of the housing need the continued ability for the site to meet this policy is not a material consideration over the development plan.
- 5.11 SCLP12.62 – Land West of Garden Square, Rendlesham – the appeal site is already allocated and has been for many years. The emerging allocation adds no greater weight in support of the appeal. Had this been a new allocation then the emerging policy may afford positive weight as a material consideration outside of the development, but that is not the case. The content of the emerging policy and its expectations better enforce the existing allocation policy expectations.
- 5.12 SCLP11.1 – Design Quality – This policy provides no greater weight in support of the scheme, due to its more recent relationship with the NPPF and its more holistic approach to aesthetics and function it would achieve a stronger defence against this poor design. It is of no greater weight in support of the appeal, though subject to the representations on the main modifications consultation, it may provide greater negative weight against the appeal scheme. It is already being used in practice as a tool by the Council as it is covered in a recently adopted policy already a policy for use in the Waveney Local Plan area of East Suffolk, through the policy WLP 8.29, which closely aligns with emerging policy SCLP11.1. This provides the pre-text below:

8.176 The Council has received feedback indicating there is a perception that design of development in the District is not as strong as it should be. Effective design policies alongside understanding and enhancing the distinctive qualities of the District are key to addressing this issue. 'Building for Life 12' is a Government backed standard for well designed homes and neighbourhoods. It is intended to guide discussions between Local Planning Authorities, developers and other stakeholders and encourage better designed development. It features a traffic light scoring system across 12 categories to guide assessment of a development. In order to raise design standards, major residential developments¹² will be expected to perform extremely positively when assessed

using Building for Life 12. This will mean scoring green outcomes of the vast majority of indicators and avoiding red outcomes unless there are exceptional circumstances.

5.13 SCLP11.2 – Residential Amenity – This policy largely reproduces the existing DM23 policy. As a material consideration outside of the development plan it is neutrally positioned against the development plan.

(ii) NPPF

5.14 As a result of the objections I outline above, my view is that the proposal does not meet the expectations of the social and environmental objectives of sustainable development.

5.15 The application in this case was refused as being contrary to the development plan and with no material considerations which would indicate otherwise. The refusal also cited the NPPF and in respect of Design referring to paragraphs 127 and 129. The NPPF places great weight on good design and the creation of high quality places – being fundamental to what the planning and development process should achieve. The following paragraphs support the reasons for refusal and the design criticisms that are previously set out in this proof and within the Design Proof. Commentary specific to the appeal proposal is therefore not repeated.

5.16 Paragraph 124 states that:

“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.”

5.17 In respect of the last two sentences of this paragraph, the Council has been clear through past planning applications and pre-applications on the design failings of the scheme, in particular the uniformity of layout and its effect on design quality as whole. The have been different schemes but generally some of the prominent design principles informing the

layout have not changed and amendment have continued to fail to meet good design expectations.

- 5.18 Reflecting on the appellant's distinction in their Statement of Case between design and layout, paragraph 127 makes clear that these are both elements of design and go hand in hand. Relevant points in bold.

Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain 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;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁶; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience

- 5.19 In respect of design assessment, whilst not constituting a conflict in what it seeks it endorse the use of assessment frameworks such as Building for Life 12. As emphasised, this does not dictate poor design but is one tool and its appraisal. Paragraphs 129 sets out the importance of a good level of attention to design assessment in decision making.

Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for Life⁴⁷. These are of most benefit if used as early as possible in the evolution of

schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

47 Birkbeck D and Kruczkowski S (2015) Building for Life 12: The sign of a good place to live.

5.20 Whilst this is not a policy it is closely associated with design considerations and is a tool for consideration of design. The results of a Building for Life Assessment are not presently a material consideration in themselves but they support the consideration of the effects of the designs and the application of design policy and its use is endorsed by the NPPF in this paragraph , this therefore justifies reference to it in the decision.

5.21 The appellant appears to have taken great issue in the first place with the Council’s use of Building for Life 12 (BFL12) in the consideration of the application. Both in terms of the principle of its use and the way it was used. They claim in their Statement of Case at paragraph 1.33:

“the local planning authority have, instead, sought to rely on a superseded informal design guidance document (BFL12 – 2015 editions) of no statutory significance and in doing so have used it inappropriately in a manner the authors of that guidance say it should not be used”

5.22 It is a well-structured set of common sense and well-established good planning and design considerations for major housing sites. The Council has provided a Design proof of evidence by the Council’s Principal Design and Conservation Officer who is an qualified architect and well experienced and skilled in urban design. This proof assesses the development independently without the confines of the Building for Life and arrives at much the same conclusion of poor design.

5.23 The Appellant suggests that the Council’s use of Building for Life 12 is somewhat invalidated because the 2015 edition was used. A 2018 edition does exist but only on the ‘Building for Life’ website. It is not hosted or referred to in any government document or on any government website and importantly the 2019 NPPF still refers to the 2015 edition. The Design Council, the government’s advisor on Design, still hosts the 2015 version and appear to have not publicised the 2018 version at all. Based on a telephone conversation with one

of their advisors, the 2015 edition is still valid for use. Whilst the facts do not appear to be publicly available I assume that the Government’s production of the National Design Guide, and that now being the PPG referenced design tool, superseded the need for government endorsement of the 2018 version.

5.24 Finally, the design chapter of the NPPF concludes with the supporting statement made in Paragraph 130, which is well relied upon in the Councils Design Proof of evidence.

“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions,”

5.25 The refusal also places emphasis on the social inclusivity of the development and the way that it would integrate as an extension to the community of Rendlesham. The NPPF backs this up in its promotion of healthy and safe communities in paragraph 91.

Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas;

and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

5.26 The NPPF requires the application of the presumption in favour of sustainable development under paragraph 11. This largely replicated in the Development Plan in SP1a.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

5.27 Paragraph 11 c) has been addressed above. As I have explained, allowing the appeal scheme does not accord with the statutory development plan taken as a whole.

5.28 The development plan is up to date, so paragraph 11 d) is not engaged. I note that because the Core Strategy was adopted over 5 years ago, that in itself does not make the development plan out-of-date. The appellant incorrectly asserts in their Statement of Case (paragraph 1.20) that:

“Currently in Suffolk Coastal the Council is operating under an aged local plan. This, by their own admission (Appendix 1), places them in tilted balance territory.”

5.29 I return to this below. Nonetheless and for completeness, I will also consider the appeal scheme against the tilted balance at 11(d)(ii).

5.30 Determining which policies “are most important for determining the application” is a question of planning judgment.

- 5.31 In this case the Council has identified that it is the development management design policies and the allocation policy SSP12 which are of most importance in assessing the compliance of this proposal with the development plan.
- 5.32 In contrast, the appellant places great emphasis on policies SP2 and SSP1 being most important for determination. These policies play a part in justifying the allocation, but they have little influence on the decision making process or the assessment of design.
- 5.33 SP2 **did** set a housing figure for the Core Strategy and Site Allocations DPD to achieve and distribute. That figure of 7,900 homes is now largely irrelevant apart from it being the housing number that the plan was tested against. For example the Appropriate Assessments of the Core Strategy and Site Allocations Document were based on it, with anything extra potentially requiring cumulative assessment. The Council has and is planning in excess of that number through the emerging Local Plan.
- 5.34 The expectation for a Full Objectively Assessed Need (FOAN) in SP2 is now redundant and irrelevant in decision making and plan making. Both housing delivery and emerging plans are now addressing a higher and up-to-date figure based on Local Housing Need as required by the NPPF, in fact the Inspector has proposed that it is lowered further. It is historic background reading to reflect on SP2 expectations and it has influenced past appeals, but in 2020 it does not influence the determination of this appeal. Therefore SP2 is out of date due to it being overtaken by events, but those events also favour the current plan. SP2 is no longer in the position that inspector's have found it in recent years, where wider reaching out of date effects (through not reviewing the plan in 2015) were found.
- 5.35 As a result of past housing need SSP1 of the Site Allocations DPD then went on to strategically address how that need would be distributed across the former Suffolk Coastal area in accordance with the Core Strategy. The fulfilment of SSP1 was not a matter of casting out sites across the District to place those figures, it was as a result of suitable, available and deliverable sites being identified to then inform a complete spread in order to meet the need. SSP12, in allocating this site for approximately 50 dwellings, was one of those which built a complete plan. SSP12 is clearly therefore a more important policy for determination in making up the housing need than a policy setting that need.
- 5.36 This position of considerably reducing the effect of SP2 being out of date is supported by the judgement on *Wavenden Properties vs. Secretary of State* [CD 9.19], which said:

*To answer the question posed by paragraph 11(d) it is necessary, having identified those policies which are most important for the determination of the application, to examine them individually and then consider whether taken in the round, bearing in mind some may be consistent and some inconsistent with the Framework, and **some may have been overtaken by events** and others not, **whether the overall assessment is that the basket of policies is rightly to be considered out-of-date**. That will, of course, be a planning judgment dependent upon the evaluation of the policies for consistency with the Framework (see paragraph 212 and 213) taken together with the relevant facts of the particular decision at the time it is being examined.*

5.37 Allocation policy SSP12 and Development Management Policies should be examined individually. In terms of being more consistent with the framework and more relevant to the appeal's consideration at hand. They are clearly more important in decision making than SP2 and SSP1.

5.38 So it is very clear, in determining the importance and relevance of SP2 that it is not 'a most important' policy. As a result of events, it has very little influence on the determination of planning applications. Instead we are now required, by the NPPF (paragraph 60) to use the NPPF Local Housing Need so SP2 is largely irrelevant. The NPPF, Housing Land Supply Assessment and the emerging Local Plan are based on the current local housing need, rather than numbers that originate from 2010 which informed SP2.

The hypothetical tilted balance

5.39 I have explained that the paragraph 11 of the NPPF tilted balance is not engaged, but I address it anyway for completeness.

5.40 The proof of evidence has already identified that the proposal creates adverse impacts in the following ways:

Adverse Impacts

5.40.1 Poor design – Should receive substantial weight, recognising the importance of this in the development plan and the NPPF.

5.40.2 A layout which fails to safely and inclusively connect existing and future residents – should receive substantial weight. This is a permanent impact on the

way that people on the development will lead healthy, happy and sustainable lives.

5.40.3 Poor internal pedestrian routes and connections – This should receive substantial weight as permanent and significant shortfall in the ability for residents to move through the site safely, sustainability and inclusively.

5.40.4 Design which causes adverse impacts on the living conditions of future occupiers - should receive substantial weight as it will permanently affect the living conditions of all future occupiers.

5.40.5 The potential habitats regulations assessment shortfalls which may conclude that the integrity of Habitats sites could be adversely affected – If this is found to be an adverse impact it would instead disengage the tilted balance (paragraph 177 of the NPPF) so it doesn't form part of the tilted balance process.

5.41 I therefore note four adverse impacts all affording substantial weight.

Benefits

5.42 The benefits listed by the appellant are set out below plus any others I have identified. My comments are provided again beside these.

5.42.1 Providing high-quality housing and contributing to the established mix of housing in Rendlesham and the district. Irrespective of the struck out part, in the context of the Council having a 5 year Housing Land Supply and meeting the Housing Delivery Test at 127% then the benefit of 75 homes (including 25 in excess of those planned) affords limited weight whether high quality or not. This was confirmed by the Inspector in the Bell Lane, Kesgrave appeal, (paragraph 92) against 300 homes in a similar context [CD9.20]

5.42.2 Provision of affordable housing above the evidenced need in the district. Subject to the homes being secured in the s106 agreement, the provision of affordable homes, even with a five-year housing land supply would afford moderate weight. As above, this position has also been confirmed by an inspector in a similar context for 100 affordable homes on a 300-home development [CD 9.20] (Paragraph 95).

- 5.42.3 Local finance considerations’ and the contribution towards local infrastructure through the Community Infrastructure Levy (CIL) which is increased through the uplift in the number of houses proposed. The benefit is limited to the 25% Neighbourhood CIL which can provide local benefits. This is given moderate weight. The 75% of CIL is to fund infrastructure required for this growth so it is mitigation to ameliorate the effects, it does not deliver additional benefit. This is therefore given limited weight.
- 5.43 Additional benefits not noted by the appellant but which I have noted in undertaking a fair and complete professional balance.
- 5.43.1 The provision of funding for rights of way creation – Whilst this is mitigation and therefore to ameliorate the effects of the development, it can afford moderate benefit because of wider benefits it would provide for the community (had this have been landowner commitment to deliver the rights of way it would afford substantial benefit through greater certainty)
- 5.43.2 Public Transport RTPI board funding – whilst a form of mitigation, because it has wider strategic benefits it should afford limited weight.
- 5.43.3 Economic benefits to the area during construction – Jobs would be created in the areas and businesses sustained – as a normal outcome from development in a District facing considerable construction investment, I give this moderate weight
- 5.43.4 A range of types and tenures of housing – this is a planning expectation, but it afforded moderate weight in the Bell Lane appeal and therefore I give the scheme this moderate benefit.
- 5.43.5 Modest on-site biodiversity gains – again a planning expectation of the site – on the scale proposed this affords limited weight.
- 5.44 Benefits listed by the appellant which are not benefits
- 5.44.1 The provision of significant on-site pedestrian links to the wider village and village centre. Due the disagreed position on this, it has been applied in both adverse impacts and benefits.

- 5.44.2 Very limited environment or landscape impacts. This can only be neutral as the alternative is that they are impacts. They are only benefits where a proposal is beneficial to the landscape and environment (as say in brownfield development). That is not claimed in this case.
- 5.44.3 Making efficient use of land on an allocated housing site. This is a duplication of the benefit of housing.
- 5.44.4 Boosting the supply of housing in the context of an out of date housing and distribution policy. Again, duplicates the housing benefit and the context part is not relevant.
- 5.44.5 The sustainable location of the site within the settlement boundary of a key service centre. If it wasn't sustainable then it wouldn't be considered in the tilted balance. The allocation already accepted is sustainable location. It is therefore a neutral point.
- 5.44.6 Contribution towards ongoing housing land supply beyond the minimum Core Strategy delivery figures. Another duplication of the housing benefit. This site is not part of the five-year housing land supply sites and has cautiously been included in the past. Plans are now well advanced to deliver allocations considerably in excess of the Core Strategy. This is not a benefit.
- 5.44.7 A development density and layout reflecting local character. This would be a planning and policy expectation anyway, the alternative is an impact and therefore it is a neutral point and not a benefit.

In addition

- 5.44.8 The School Travel s106 contribution is mitigation to ensure pupils on the site can reach school and not a benefit.

5.45 I have therefore found four moderate benefits and four limited benefits.

5.46 In weighing up the tilted balance, there are four impacts of substantial weight against four moderate benefits and four limited benefits. Substantially weighted adverse impacts clearly outweigh the moderate benefits and considerably outweigh the limited benefits. The proposal would therefore fail the titled balance with benefits significantly and

demonstrably outweighed by the identified adverse impacts. That is if the tilted balance is triggered and if the development is considered to represent sustainable development.

Planning Balance Conclusion

5.47 In undertaking this fair planning balance, based on paragraph 11 of the NPPF, I conclude in the full planning balance that:

- i. Whether allowing appeal would accord with statutory development plan taken as a whole:
 - I conclude that it would not due to the fundamental failure of the proposal against important policies addressing the design of the development.
- ii. If not, whether other material considerations – including the tilted balance – indicate that a decision should be taken other than in accordance with the development plan. -

I conclude material considerations in two scenarios do not indicate that a decision should be taken other than in accordance with the development plan, those being a) housing benefits and potential public right of way delivery benefits, and b) those benefits plus the full benefits of development weighed against the four adverse impacts identified, as a result the benefits would not significantly and demonstrably outweigh the adverse impacts of the development.

- iii. Alternatively, if against the Council's case the Inspector were to decide that allowing the appeal does accord with the statutory development plan taken as a whole, that other material considerations would still then indicate a refusal.

The consideration in this respect being 'as a whole', so the inspector may still find conflict with design policies but find that overall, the development would comply with the development plan. In that circumstance I remain of the view that the NPPF provides considerable strength in its commitment to seeking good design. The design failures of this development assessed against the NPPF are great enough as any other material consideration, outside of the development plan, to justify dismissing the appeal.

6.0 Conclusion

- 6.1 The Council set out a clear and concise Statement of Case, which pragmatically addressed the reasons for refusal including the new required information made available for the appeal. The Council very clearly set out the position in relation the status of SP2 and the overall weight to be given to the Development Plan. Despite requesting that the appellant reconsider their position in this respect, draft Statements of Common Ground do not suggest that they have done. They have since confirmed that they no longer challenge any aspect of the Council having a five-year housing land supply.
- 6.2 This proof sets out the events that have occurred and changes in policy position which dictate that the Paragraph 11 tilted balance is not applicable to decision making in Est Suffolk. It also sets out why the policies referred to in the decision notice and which the proposal does not comply with, are also the most important policies for the determination of this appeal. It is an allocated site in a location where new housing could be sustainable and supported. The detailed aspects of SSP12 (allocating the site) and the development management policies (DM21, DM22 and DM23) are of greatest relevance in decision making on the design, safe and sustainable movement, functioning, integration and living conditions on any major housing development. They are undoubtedly the most important policies, a fact the appellant is dismissive of. The overall focus of this appeal may
- 6.3 This proof of evidence is supported by two critical proofs of evidence for design and habitats regulations. Essential due to the proposals considerable design failings and the ecological sensitivity of areas in close proximity of the site and the unique recreational shortfalls of this very large village.
- 6.4 The appeal must be considered in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004. The Inspector will need to determine this appeal in accordance with the development plan (which includes the Rendlesham Neighbourhood Plan), unless material considerations indicate otherwise.
- 6.5 I conclude in this proof of evidence that,
1. the proposal is not in accordance with the development plan
 2. That there are material considerations of the benefit of housing and the benefit of the appeal funding delivery of a public right of way route which are not great

enough in weight to indicate that a decision should be taken other than in accordance with the development plan

3. I have demonstrated how the proposal also fails to accord with critical design paragraphs of the NPPF.
4. Even in the case the titled balance applies, the proposal, based on the Council's position, would not have benefits which significantly and demonstrably outweigh the adverse impacts.

The Inspector will therefore respectfully be requested to dismiss the appeal.

Appendix 1

Advice and commentary provided by the Council on residential amenity impacts resulting from side-to-side elevations.

DC/PREAPP/17/5049 - pre-application enquiry submitted in November 2017.

Advice from the Council:

“No information has been submitted on the application in regards of the design of the properties and their internal layout, parking and a curtilage is demonstrated for each of the properties, however there is no indication on the amount of parking available, and the boundary treatments to be provided.”

In regards of the impact on the amenity on the current residents of the area and the future residents of the site, this cannot be fully considered as there is no information on the height and openings that are proposed on the properties. It is recommended that there is no direct overlooking between windows and onto any private rear amenity space. There should be no overshadowing between the properties to the habitable rooms and rear amenity spaces.”

DC/18/2374/FUL - planning application submitted June 2018

Case Officer’s report:

“All of the properties within the proposal site are east facing, therefore the front of the dwellings will face into the rear gardens of the properties to the east. There are different heights and styles of building, however the majority of them are three storey and therefore have windows on both flank elevations to allow for additional space and bedrooms in the roof space. The separation distances between the flank elevations are between 5m and 10m. There would be direct overlooking between the flank elevations and in some instances, these are the only windows for these bedrooms and living spaces, this is not acceptable.”

DC/PREAPP/18/4778 2018 - pre-application enquiry submitted November 2018

Advice from the Council:

“Thank you for the separation distances, but this does not make it clear if there would still be direct looking between windows the houses appear to be staggered slightly but this could appear messy once developed if they are not lined up. Further detail would be required on the design of the dwellings and their relationship between each other.”

DC/19/1499/FUL - Planning Application received April 2019

Case Officer’s report:

“Due to the close proximity of the properties and their scale, with windows on all elevations of the building there will be overlooking between properties. Which are detailed below, some of the properties are staggered, so there will not be direct overlooking, but it would be close enough to cause concern at the overlooking between properties”