



**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

**SUMMARY PLANNING PROOF OF EVIDENCE OF**

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

03.03.2020

## **1. 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.

## **2. 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 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
- 2.3. The latest position on the reasons for refusal is:
  - 2.3.1. Reasons for refusal 1, 4 and 7, due to progress and appeal submissions these reasons have been withdrawn by the Council.
  - 2.3.2. Reason 2 (affordable housing) based on appeal submissions this reason has progressed but remains, pending the s106 agreement.
  - 2.3.3. 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.

- 2.3.4. 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remains but it appears that there is good potential for a section 106 agreement to be signed and for this reason to be withdrawn.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

- 2.3.5. 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.
- 2.3.6. 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.

### 3. 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.

### 4. Policy Considerations

#### The Development Plan

- 4.1. The following matters are defended by the Council in this inquiry:
- 4.2. That the proposed development does not accord with the statutory Development Plan. I conclude, following policy analysis, that the poor design demonstrates that through consideration of Section 38 (6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed unless material considerations indicate otherwise.
- 4.2.1. Reason 3 (Design) the Council demonstrates that the proposal is poor design, contrary to the development plan. The development plan is clear in DM21 (Design: Aesthetics) “**Proposals that comprise poor visual design and layout, or otherwise seriously detract from the character of their surroundings will not be permitted.** This for refusal reason is supported by the Design proof of evidence from Robert Scrimgeour, Principal Design and Conservation Officer which provides a comprehensive appraisal of the design of the proposal and informs my planning judgement.

- 4.2.2. Between this proof, including demonstration that the proposed design fails to be socially inclusive, and the Design proof the Council demonstrates that the proposal does not comply with the most important policies for determination – those being DM21 (Design: Aesthetics), DM22 (Design: Function) and SCLP12 (Land West of Garden Square).
- 4.2.3. Reason 5 (Residential Amenity) as an aspect of the design, 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 (Residential Amenity). I demonstrate that the appellant's approach to designing this scheme has failed to properly consider effects of the interrelationship of windows to protect the privacy of future residents
- 4.2.4. 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.

### **Habitats Regulations Assessment**

- 4.3. In association with Reason for Refusal 6 (Habitats Regulations) the Council provides its full position on the Habitats Regulations consideration necessary in this appeal, and the current failure to comply with Policies SP14 and DM27 (Biodiversity and Geodiversity). For this purpose, the Council's Ecologist, James Meyer has produced a Habitats Regulations proof of evidence. It will be for the inspector to consider this as part of the Appropriate Assessment which must be carried out if intending to allow the appeal.
- 4.4. The Council demonstrates that the measures as included in the application were considered to be insufficient to provide available and attractive regular, circular, dog walking routes which are outside of the Sandlings SPA. It is considered that it cannot be concluded that there will be no Adverse Effect on the Integrity of the Sandlings SPA based on the mitigation measures as currently presented. Should alternative measures be presented by the appellant and taken into consideration during the course of the appeal, then the Council may confirm that it is of the view that there would be no adverse effects on integrity. This point may have an effect on other considerations in disengaging the tilted balance if adverse effects on the integrity of the Sandlings SPA is concluded by the inspector.

## **5. Other Material Considerations**

- 5.1. In considering the second part of section 38(6) I demonstrate that other material considerations are not of sufficient weight to overcome the design based failure to accord with the development plan and material considerations include further contrary outcomes.
- 5.2. I also include positive weight to the benefit of housing that the appeal could deliver and the contributions the appeal could make in the delivery of a new public right of way providing wider community benefit. However, I weigh that these positive other material considerations do not overcome the failure to accord with the development plan.

### **The emerging Local Plan**

- 5.3. I also include consideration that the relevant policies of the now well advanced emerging local plan would support the refusal with greater strength of policy and would not provide any additional support for the proposal. 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.

### **NPPF**

- 5.4. I demonstrate the importance of good design in the NPPF and the paragraphs supporting the refusal of this application. I confirm that as a result of the poor design outcomes the proposal would not constitute sustainable development in failing to meet the social and environmental objectives set out in the NPPF.
- 5.5. Through a detailed assessment of the NPPF paragraph 11 tilted balance I conclude that it does not apply to consideration of this appeal. It is common ground that the Council has a five year housing land supply. 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. In particular, it is demonstrated that policy SP2 is out of date but of no effect on the potential engagement of the titled balance.

- 5.6. 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.

## 6. Conclusion

- 6.1. 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 East 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.

- 6.2. 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 potentially delivering 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.