

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78 APPEAL: M S OAKES LTD**

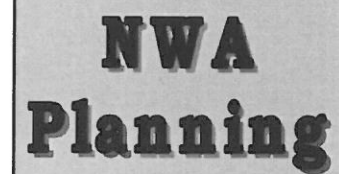
**BRICKFIELDS BARNs, SAXMUNDHAM ROAD, ALDEBURGH, SUFFOLK  
(APPEAL REF. APP/J3530/W/17/3172629)**

**REPRESENTATIONS  
ON BEHALF OF**

**ALDEBURGH TOWN COUNCIL**



**Chartered Town Planners  
Planning Development & Design Consultants**



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**July 2017**

**Appeal ref.: APP//J3530/W/17/3172629)**  
**Suffolk Coastal DC ref.: DC/15/3673/FUL**  
**NWA Planning ref.: P1887**

**NWA Planning**

**Globe House, 4 St Georges Street Ipswich Suffolk IP1 3LH**

**Tel. 01473 213523**

**Fax. 01473 213524**

**Email: [neil.ward@nwaplanning.co.uk](mailto:neil.ward@nwaplanning.co.uk)**

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## **1.0 INTRODUCTION**

- 1.1 NWA Planning is instructed by the Aldeburgh Town Council to submit its very strong objections to the proposed development of land at Brickfields Barns off Saxmundham Road, Aldeburgh for the “Demolition of Existing Redundant Stores, Change of Use of Builders Yard and Redevelopment of Quarry Site to Provide 43 No. Dwellings, Including 14 No. Affordable Dwellings” which is the subject of an appeal under S78 Ref. APP/J3530/W/17/3172629. The Town Council considers that the proposed development is in fundamental conflict with Development Plan policy in respect of the location and siting of new housing development, the protection of the environment, design and highway safety and that there are no material considerations which should be judged to outweigh that conflict. The appeal also raises procedural matters which it is considered impact on the validity of the appeal application and on the determination of the appeal.

## **2.0 PROCEDURAL MATTERS**

- 2.1 The appellant has proceeded with this appeal with, it would appear, scant regard to ensuring the accuracy of the submission, consistency between various submitted documents and adherence to appeal procedures and statutory regulations. That has resulted in appeal documents not being submitted to the Council at the required time leading to rearrangements of submission dates and, potentially, has misled third parties into consideration of incorrect plans and documents.
- 2.2 Secondly, there is the question of whether the construction of the access road to the site from Samundham Road is part of the application. The submitted Design and Access Statement and Transport Statement suggests that it is and that the improvements outlined in the submitted plans were intended to be considered as part of the application. However, the application, as currently submitted, does not refer to the construction of an access road and the original application location plan (drawing no 7162-02A) did not include the access road within the application site red line boundary. The location plan was later amended to include the access road within the red line (drawing no. 7162/02C) but no revised certificate under S65 appears to have been submitted and the application form has not been amended to include reference to the access road in the description of the proposed development.
- 2.3 The access road, because of its length independent of the proposed housing development and its use by a substantial number of existing properties means that it is not a mere incident of the appeal development but a separate related component for which planning permission is required. In the Town Council’s view, the access road should have been separately identified in the description of the



development for which planning permission is sought. It is pertinent that all advertisement and consultation on the appeal application has been undertaken on the basis that it did not expressly include provision for construction of the access road. The appellant has proceeded to pre-empt consideration by construction of the access road without submitting details of its construction or surface water drainage and without first assessing the impact on adjoining trees.

- 2.4 Thirdly, and most importantly, it has emerged during the preparation of these representations that a significant part of the former quarry has been used for the disposal of waste construction material arising from the adjoining development sites. It appears that most of the deposits have occurred after the site was surveyed and after contamination, ecological and landscape assessments were carried out. This is considered to be unauthorised and a breach of planning control for the reasons set out in section 9.0 of these representations. The appeal proposals will necessarily involve the excavation and removal of most of these deposits which have taken place within the northern, central and eastern parts of the quarry.
- 2.5 The deposits are substantial in extent but the precise amount of material to be removed has not been quantified or considered as part of the current appeal application. The scale and nature of the excavation is such that it is more than a mere incident to the proposed building works and goes substantially beyond the simple modification of the enclosing cliff faces to the original pit contemplated in the appeal application. As such it amounts to a separate waste activity for which application should have been made to Suffolk County Council as minerals and waste planning authority. That application would need to be for the use of land for undertaking the waste operations involved which is not encompassed by the planning application. Without such an application, no consideration will have been given to the nature and extent of the operations, the extent of any contamination, the traffic implications of excavation and transfer and the environmental implications of waste removal.
- 2.6 Similar issues were raised in *West Bowers Farm Products v Essex County Council (1985) JPL 857* (Appendix 1) in which the Court of Appeal held that construction of a farm reservoir also involved mineral excavation so that the scheme amounted to two separate activities each requiring planning permission. The court stated that whether a development involved two activities was not a matter of fact and degree. If it involved two activities, each of substance, so that one was not merely ancillary to another then both required permission.
- 2.7 The issue was again considered by the High Court in *Kane Construction v Secretary of State for Communities and Local Government (2011) JPL 304* (Appendix 2) where

planning permission for the “use of land as lakes for breeding fish and fishing” had been granted subject to conditions relating to the construction of the lakes. The court held that the permission was in respect of a change of use only and that the conditions could not change the clear meaning of the grant so as to encompass operational development.

- 2.8 In the case of the current appeal, the permission sought does not expressly provide for either the construction of the access road or the use of land for the excavation and transfer of waste material. In the Town Council’s view both matters amount to separate forms of development for which separate planning permission is required and cannot be granted under the current appeal. The compass of the appeal application cannot be extended by the imposition of conditions so as to include this additional development because conditions must necessarily relate to the development for which planning permission is sought. As both developments are critical to the transparent consideration of the appeal proposals, in the Town Council’s opinion, it follows that their omission from the appeal application or the absence of any independent permission for the separate developments that planning permission cannot be favourably considered in this appeal.

### **3.0 DEVELOPMENT PLAN CONTEXT**

- 3.1 The development Plan in this case comprises the saved policies of the Suffolk Coastal Local Plan First Alteration 2001 and Second Alteration 2006; the Core Strategy and Development Management Policies 2013; and the Site Allocations and Area Specific Policies DPD 2017. These policies need to be considered in the context of the National Planning Policy Framework (NPPF), government advice set out in the Planning Guidance (PPG) and locally adopted supplementary planning guidance. There are no saved policies of relevance to the appeal but relevant extracts of other development plan documents are set out at Appendices 3 and 4 and the Aldeburgh Proposals Map is attached at Appendix 5.
- 3.2 The appeal site lies outside the recognised physical limits boundary of Aldeburgh in a Countryside location which is also within a sensitive part of the designated Suffolk Coast and Heaths Area of Outstanding Natural Beauty and Heritage Coast; contains the Aldeburgh Brickfields SSSI; and lies close to the River Alde which is part of the Alde – Ore Estuary Special Protection Area, the Alde – Ore Estuary Ramsar site, the Alde – Ore Estuary Site of Special Scientific Interest and the Alde – Ore and Butley Estuaries Special Area for Conservation (SAC). The site is approached by a private roadway direct from Saxmundham Road to the north which currently serves a small number of existing properties and continues southwards as an unmade trackway to the river bank adjoining the Alde Estuary.

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**(a) Settlement Policies**

- 3.3 The proposal is for an estate-scale housing development of 43 dwellings located within the former clay quarry for Aldeburgh Brickworks on the southern boundary of the built-up area of the town. Under the adopted Suffolk Coastal Core Strategy and Development Management Policies DPD 2013 Aldeburgh is designated as a Town for settlement purposes under **Policy SP19** which requires the scale, form and location of development to be determined by criteria set out in Tables 4.1 and 4.2 and in settlement-specific policies SP20-SP29.
- 3.4 Table 4.1 determines that Towns will be the focal point for employment shopping and community facilities as well as transport hubs. Table 4.2 determines that Market Towns, which includes Aldeburgh, are suitable for:-
- (i) allocations in the form of estate scale housing development *“if appropriate and where consistent with the Core Strategy”*;
  - (ii) development within defined physical limits in the form of *“modest estates where consistent with local scale and character”* or groups or infill;
  - (iii) affordable housing within larger developments or on exception sites; or
  - (iv) housing development in accordance with *“specific policy guidance available for specific market towns.”*
- 3.5 The specific policy guidance for Aldeburgh is set out in **Policy SP22** which recognises the physical and natural constraints on development and anticipates that new development will occur within the defined physical limits, or in accordance with other policies in the Core Strategy or through the development of previously developed land including infill sites. **Part (e) of Policy SP22** specifically aims to retain the sensitive environment of Aldeburgh *‘particularly the setting and edges of the town’*. Sensitive sites, particularly those providing the setting and edges of the town, are to be retained undeveloped. The proposed development, being outside the settlement boundary, in a sensitive location and on a site which is wholly or mainly greenfield rather than brownfield and which is not allocated for housing development is contrary to the provisions of **Policy SP19** and **Policy SP22**. The sensitivity of the site arises because of its location within the AONB and Heritage Coast, the location of an SSSI within its boundaries and its proximity to the Alde-Ore SPA, SAC, SSSI and Ramsar site.
- 3.6 It follows that the development is also contrary to **Policy SP29-The Countryside** and **Policy DM3 -Housing in the Countryside** because it falls outside of the very limited

group of minor exceptions to the general restraint on development in the Countryside which is set out in those policies.

- 3.7 The appeal development therefore represents a substantial departure from the Local Plan's settlement policies. It is perhaps pertinent that in seeking to rebut the District Council's grounds of refusal the appellant has failed to address the development plan policies relevant to the appeal proposals.

**(b) Sustainability**

- 3.8 The NPPF creates a presumption in favour of sustainable development. In doing so it emphasises the primacy of the development plan and confirms that NPPF policies should be regarded as material considerations when decisions makers apply the statutory duty of determining planning applications in accordance with the development plan unless material considerations indicate otherwise. NPPF guidance is reflected in Core Strategy **Policies SP1 – Sustainable Development and SP1A – Presumption in Favour of Sustainable Development**.
- 3.9 **Policy SP1** confirms that the settlement policy of the Core Strategy is based on sustainability principles so that development which does not comply with the policy, as in the case of the current appeal, is inherently less sustainable than development which conforms with the Plan and potentially unsustainable. The Policy sets out the key objectives which should be met in order to secure sustainable development. These include:-
- (i) **Part (b)**-to relate new housing to employment services, transport and infrastructure;
  - (ii) **Part (c)** - achieve a local balance between employment opportunities, housing growth and environmental capacity;
  - (iii) **Part (e)** - give priority to re-using previously developed land and buildings in and around built-up areas, where possible ahead of greenfield sites;
  - (iv) **Part (g)** – reduce overall need to travel;
  - (v) **Part (j)** conserve and enhance the area's natural, historic and built environment;
  - (vi) **Part (k)** - maintain and enhance a sense of place.
- 3.10 The appeal development fails to meet any of these criteria. It fails to meet parts (b) and (c) in that there are no employment allocations for Aldeburgh in the Site

Allocations DPD and the town has never had an employment allocation in any preceding Local Plan. In fact, Aldeburgh is the only Suffolk Coastal market town not to have a dedicated industrial estate. The last new employment generators of note in the town were the Co-Op supermarket approved in 1998 and the Tesco Express food store approved in 2013 both of which are located at the eastern end of Saxmundham Road and, of course, the town experienced employment losses when the Aldeburgh Brickworks closed.

- 3.11 The main employment opportunities in Aldeburgh are in town centre services and tourism-related activities which are relatively static and seasonal in nature. Consequently, new housing on the scale proposed and beyond the limited infill development anticipated by Policy SP22 would not be well-related to employment and would create a disbalance with employment opportunities. Furthermore, as it would fail to conserve and enhance the area's natural environment it would be in conflict with Part (j) of the Policy and exceed the environmental capacity of the area contrary to Part (c). In addition, for the reasons as set out below in relation to landscape impact and design, the appeal development would fail to maintain and enhance a sense of place contrary to Part (k) of the Policy.
- 3.12 The relative remoteness of the town, its lack of a rail connection and poor bus services coupled with the lack of employment opportunities and the absence of secondary education facilities means that the appeal development would be bound to increase the overall need to travel out of the town to get to essential school and employment facilities contrary to Part (g) of the Policy.
- 3.13 The one criterion the appellant claims in support of the appeal development is that it re-uses previously developed land and consequently it would conform to Part (e) of Policy SP1 although the appellant has not stated as much in terms. However, the Town Council rejects the appellant's claim in respect of brownfield land for the various reasons set out at section 9.0 in respect of the existing use of the site. Consequently, it is very clear that the appeal development, being in breach of five key components of sustainable development set out in Policy SP1 is contrary to that policy and cannot be regarded as sustainable development.

#### **(c) Other Development Plan Policies**

- 3.14 **Policies SP14-Biodiveristy and Geodiversity and DM27 – Biodiversity and Geodiversity** seek to protect and enhance designated sites, wildlife corridors, rivers and estuaries, landscape character area and protected species. As the appeal site includes an SSSI site; is in close proximity to the Alde Estuary which is subject to international designations; and is part of the natural landscape forming the Alde



Valley between the built-up area of the town and the river the Policy is relevant to the appeal development. **Policy SP15 – Landscape and Townscape** seeks to protect and enhance the various landscape character areas within the district with particular significance attached to the AONB landscape and the Alde Valley. **Policy DM26-Lighting** requires development to minimise light pollution which could have an adverse effect on the countryside. **Policies DM-21 – Design: Aesthetics and DM22 – Design: Function** are both concerned with achieving good design in new development.

- 3.15 The appeal development is contrary to Policies SP14, SP15 DM26 and DM27 in that it fails to protect and enhance the biodiversity, geodiversity and landscape character of the site and will not minimise light intrusion. The extent of the conflict with these policies and with Policies DM21 and DM22 requires assessment of the particular development concerned to determine whether it protects and enhances the environment and these issues are addressed separately below.

#### **(d) Conclusions**

- 3.16 It can be concluded from the above analysis that the appeal development is comprehensively in conflict with the settlement and AONB landscape protection policies of the development plan and potentially in conflict with other environmental and design policies subject to detailed assessment. In fact, there are no development plan policies which specifically support the appeal proposals. It is immediately clear from the appellant's grounds of appeal as set out in its statement of case that it places no reliance on the development plan at all to support the proposals. It hardly addresses any specific development plan policy, doesn't claim any support from the development plan and fails to consider whether the other material considerations to which it does refer outweigh the development plan objections. If the appellant company doesn't consider the issues in this appeal in the context of the statutory framework provided by S70(2) of the 1990 TCP Act and S38(6) of the PCP Act 2004 in order to establish the weight to be given to any conflict with development plan provisions then the required balancing of considerations cannot be properly undertaken and little weight can be placed on the conclusions which may be reached.

## **4.0 NPPF GUIDANCE**

### **(a) Housing Supply**

- 4.1 The approach to be adopted in the determination of planning applications is set out in paragraph 14 of the NPPF. Sustainable development which accords with the development plan should be approved without delay unless material considerations

- indicate otherwise. Where the development plan is absent, silent or relevant policies are out of date planning permission should be granted unless adverse impacts of the development significantly and demonstrably outweigh the benefits having regard to the policies of the NPPF as a whole providing that the development does not conflict with any restrictive policies set out in the NPPF.
- 4.2 In this case the development plan is not silent or absent but the appellant suggests that relevant housing policies should be regarded as out of date because it is alleged that the Council does not currently have a 5-year supply of housing land. This is based on Paragraph 49 of the NPPF which requires Local Planning Authorities to consider relevant policies for the supply of housing as being out of date in the absence of a five-year housing supply. If Paragraph 49 is engaged then the approach advocated at Paragraph 14 applies.
- 4.3 This is the so-called “tilted balance” approach which has recently been clarified by the Supreme Court in *Suffolk Coastal District Council –v- Hopkins Homes Ltd and Another and Richborough Estates Partnership LLP and Another –v- Cheshire East Borough Council (2016) EWCA Civ168* (Appendix 6). If there are no specific restrictive policies in the NPPF which weigh against the proposals then the approach which must be followed is that the appeal application should be approved unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits.
- 4.4 Firstly, it should be pointed out that Suffolk Coastal District Council states in its Housing Land Supply Assessment 2017 -2022 published in June 2017, (Appendix 7) that it has a 7.1 year’s supply of available housing land if a 5% buffer allowance is made and a 6.2 year’s supply if a 20% buffer is applied as recommended by the Framlingham appeal inspector. As these current figures have been produced much later than the Framlingham appeal decision referred to by the appellant and take into account additional house completions and new housing planning permissions little weight can be placed now on the conclusions of the Framlingham appeal decision. In those circumstances, the policies for the supply of housing should be considered to be up to date and development plan policies for the supply of housing should be applied in the normal way with full statutory weight.
- 4.5 If, however, it was to be concluded that a 5-year supply of housing does not exist then Paragraph 49 requires relevant housing policies to be judged to be out of date and Paragraph 14 requires the tilted balance approach to be pursued unless NPPF restrictions apply. In a footnote to Paragraph 14 the NPPF gives as an example of such a restriction those policies relating to, inter alia, a Site of Special Scientific Interest, an Area of Outstanding Natural Beauty or Heritage Coast. The view is taken that the NPPF does impose specific restrictions on the development of the appeal

site because of its AONB location, as explained in relation to landscape impact below, and in those circumstances there is no requirement to apply the 'tilted balance' approach even if a 5 year deficit exists.

- 4.6 The Supreme Court judgment referred to above also indicated that the restrictive policies referred to in Paragraph 49 cannot mean only policies originating in the Framework itself but must also include the development plan policies to which the Framework also refers. In the Court's view it would be particularly inappropriate to give less than full statutory weight to fundamental policies *"like those in relation to the Green Belt or Areas of Outstanding Natural Beauty."*
- 4.7 Were it to be concluded that the Town Council is not correct in taking this view, then the Supreme Court's decision has clarified how the 'tilted balance' approach should be applied. Policies which are not directly related to the supply of housing should still be given their full statutory weight and should not be considered out of date simply because they affect the supply of housing indirectly. In considering the Suffolk Coastal case the Court accepted that if housing deficiencies were to be addressed as intended some relaxation of settlement boundaries would be required so that they could not be given full weight.

#### **(b) AONB Development**

- 4.8 **Paragraph 116** requires planning permission to be refused for major development in nationally designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Planning Practice Guidance in relation to the Natural Environment at Paragraph 04 advises that the question of what constitutes 'major development' will be a matter of judgement for the decision maker in each case taking into account the proposal in question and the local context.
- 4.9 The scale of the appeal proposals involving a site area of some 4.2ha, the erection of 43 dwellings, mostly two and two and a half storey buildings and construction of associated estate road means that it must be considered a substantial development. In fact, it would be the largest housing development to be approved in the town since the Church Farm development was allocated in the Aldeburgh Town Map in 1971. The local context is not simply that it is a large site lying within the designated AONB. It is in one of the more sensitive parts of the AONB for all the reasons previously identified at Paragraph 3.2 and is open to views over a wide area encompassing a significant part of the Alde estuary. Moreover, it is a site which is poorly related to the existing built-up area of the town. For all these reasons, relating to the nature of the proposal and its local context, it is considered that the



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appeal proposals should be deemed to amount to 'major development' and therefore subject to the policy guidance at NPPF Paragraph 116.

- 4.10 Under Paragraph 116 planning permission should only be granted:-
- (a) in exceptional circumstances; and
  - (b) where it can be demonstrated to be in the public interest.
- 4.11 Exceptional interest and public benefit are therefore pre-requisites for favourable consideration of an application under Paragraph 116. The appellant lists what is considered to amount to exceptional circumstances at Paragraph 5.18 of the PDAS (MDPC App 2). In doing so public benefits and exceptional circumstances have been conflated and clearly they are not necessarily one and the same thing. An exceptional circumstance is a pre-existing condition which is extraordinary. A public benefit is something positively useful to the public at large which arises from the development.
- 4.12 None of the items listed at Paragraph 5.18 amounts to an exceptional circumstance. Most of the items listed are attributes of the scheme and not necessarily benefits to the public at large. The contributions to housing need and affordable housing are public benefits but all housing developments in towns of over 6 dwellings contribute to meeting market housing and affordable housing needs and consequently the existing housing need, even if there was a 5-year housing deficit, would not amount to an exceptional circumstance unless it could be demonstrated that no other appropriate site could be found in non-designated areas. The appellant hasn't attempted that exercise.
- 4.13 The appellant also seeks to rely on the view of the planning officer in the Committee report at MDPC App3 that there are exceptional circumstances relating to:-
- (i) the different topography of the appeal site;
  - (ii) the area of brownfield 'use'; and
  - (iii) the lack of alternative sustainable development opportunities for a Market Town of this size.
- 4.14 None of these factors can be considered exceptional for Paragraph 116 purposes. Firstly, a mere depression in the ground is not unusual. There are numerous historic sand and clay pits all over the Suffolk countryside and the presence of one can hardly provide the basis for supporting development which is otherwise contrary to policy. There is a legally binding S106 obligation (Appendix 8) which requires any

infilling of the pit only to take place in accordance with a scheme of restoration agreed with the County Council and is designed to return the site to nature or to agriculture. Secondly, the amount of brownfield land within the appeal site is minimal for the reasons set out in section 9.0 below. The small part of the site which is brownfield provides no justification for the much larger area of development proposed.

- 4.15 Lastly, the lack of alternative sustainable sites in the town would only be a legitimate exceptional circumstance if there is an identifiable need for housing on this scale in the town. There is no policy recognition of there being a need in Aldeburgh as Policy SP22 clearly considers other development opportunities within the built-up area to be sufficient. That there are other windfall opportunities within the physical limits is demonstrated by the current Flagship Housing application for 19 dwellings on the former police station site in Leiston Road Aldeburgh (Ref 17/1462)(Appendix 9).
- 4.16 The Committee report's assertion ignores the fact that the Paragraph 116 requirement to consider alternative sites relates to all non-designated areas in addition to other alternatives and is predicated on the assumption that Aldeburgh should be treated in the same way as other Market Towns in providing for housing growth but that is clearly wrong as there are many reasons why it should not. These include its isolated location, the lack of a secondary school, the lack of employment opportunities, the poor public transport links, the high retirement population and the dependence on seasonal holiday activities, the fact that it lacks 75% of the hinterland available for most market towns due to the combination of sea and estuary. This is in addition to the environmental and landscape constraints. All of this makes Aldeburgh the exception and this is reflected in Policy SP22.
- 4.17 In determining an application for major development Paragraph 116 also requires consideration to be given to
- The need for the development and the impact on the local economy
  - The cost and scope of developing elsewhere outside the designated area; and
  - Any detrimental impact on the environment, landscape and recreational opportunities and the extent to which that could be moderated.

**(i) Need**

- 4.18 The appellant's case with regard to need appears to be based on the Icen Housing Land Availability and Sustainability Appraisal (MDPC App 10) which was submitted to the Council in November 2015. As the report was based on even earlier data it is

now almost two years old and the appellant has made no attempt to update the report and the information on which it relies. The conclusions of the report must therefore be treated with a great deal of caution and without further justification little reliance can be placed on them.

4.19 The report does not specifically address need in terms of Paragraph 116 but concentrates instead on the benefits which would accrue within the context of Paragraph 14 identifies various areas of need which at Paragraph 1.4 of the Sustainability Appraisal it argues the appeal development would meet. These are:-

- (i) a qualitative and quantitative need for additional housing;
- (ii) a need in, particular, for affordable housing;
- (iii) a need to make efficient use of a blighted previously developed site to enhance the environment;
- (iv) a need to protect and enhance sensitive ecological features; and
- (v) a need to maximise existing connectivity and amenity provisions.

4.20 These claims are spurious and unsupported:-

- (i) The housing need claims are contradicted by the latest SCDC housing land supply assessment (Appendix 7). These figures, in any event, relate to the housing needs of the district as a whole and are not specific to Aldeburgh;
- (ii) The current housing need as derived from the Council's Housing Register as at 21<sup>st</sup> July 2017 is a total of 16 applicants with a current postal address in Aldeburgh and a further 30 applicants who have applied for accommodation in Suffolk Coastal District but have indicated a local connection with Aldeburgh (Appendix 9). The local connection is only verified at allocation stage and, on average, 30% of applicants fail to substantiate a connection at that point which means that approximately 21 of the 30 will qualify making a current total need, irrespective of priority, of approximately 37;
- (iii) The current social housing stock is currently 129 units with a turnover of 8-10% per year or 10-13 dwellings per year. The current need arising from within Aldeburgh would therefore be addressed within 12-18 months and the overall need within 3-4 years assuming that applicants have sufficient priority.
- (iv) Additional affordable housing provision is also being addressed by a housing development of 19 dwellings on a site in Leiston Road Aldeburgh which has been submitted by Flagship Housing Developments Limited (Appendix 10), which is the development arm of Flagship Housing, a registered social landlord. The scheme includes 6 affordable housing units and the application is expected

to be determined in August of this year. The site is in a much more sustainable location than the appeal site being within the built-up area, on a bus route and in closer proximity to shops, school and the town centre;

- (iii) The S106 which has been submitted in support of the appeal is in draft form and has not been signed by the parties contrary to the Planning Inspectorate's current Procedural Guide -Planning Appeals. In the absence of a completed, binding and satisfactory S106 no reliance can be placed on the appellant's proposals to provide affordable housing;
- (iv) Far from protecting and enhancing sensitive ecological features the appellant has undertaken extensive unauthorised operations and use within the appeal site which has substantially increased the degraded appearance of the site and destroyed the previously existing natural habitat over a wide area (See comments on the existing lawful use at section 9.0). The effect of placing an estate of 43 houses in close proximity to a sensitive ecological area can only be negative;
- (v) Any improvement of connectivity and amenity would be for the benefit of the proposed residents. It does not meet an existing need which is the concern of Paragraph 116.

#### **(ii) Sequential Test**

4.21 The appellant has made no serious attempt to consider the cost and scope of developing outside the designated area. The housing need which the appeal application purports to address is a district-wide housing need and consequently the alternative areas which need to be considered are all areas within the Suffolk Coastal district which fall outside the AONB. The revised PDAS (MDPC App2) at section 5 attempts to apply a sequential test to demonstrate that the appeal site is the only available site to meet the housing need but fails to explain what is the basis for the test in development policy or national guidance and the position is not clarified in the appellant's statement. It is assumed that it is based on the requirement in Paragraph 116 in which case it must be considered to be a totally flawed exercise for a number of reasons:-

- (a) This requirement only comes into consideration if there are exceptional circumstances and the development is in the public interest. It can be seen from the above analysis that there are no exceptional circumstances and no public interest has been identified. Consequently, there is no basis for considering alternative sites;
- (b) The need identified is the shortfall in the 5 year housing land supply which relates to the District as a whole. Any assessment, therefore, would need

to be carried out in respect of all development land outside designated areas within the District as a whole to meet NPPF requirements and this has not been done. Instead the PDAS has concentrated on Aldeburgh and some ad hoc sites in other locations;

- (c) Furthermore, the PDAS concentrates on trying to establish that there is an overall housing land shortfall whereas the requirement of paragraph 116 is to determine whether there are any alternative sites outside the AONB which could accommodate the scale of development proposed without undue cost. It is very clear that there are many such locations throughout the District so that the exercise, had it been done properly, would have failed to support the appellant's case

- 4.22 It can be concluded that the appellant's attempt at addressing the potential for alternative sites for the proposed development in non-designated areas is flawed and totally inadequate. It therefore fails to meet the requirements in this respect.

### **(iii) Environmental and Landscape Impacts**

- 4.23 The detrimental environmental and landscape impacts of the appeal development have been assessed by the appellant as required by Paragraph 116 and are considered separately below. Adverse recreational impacts do not directly arise in this instance.

## **5.0 LANDSCAPE AND VISUAL IMPACT**

- 5.1 The appeal development, which is within the designated AONB and outside the defined physical limits boundaries for the town and outside sites allocated for development under the SAASP, fails to protect or enhance the AONB landscape and is therefore contrary to the objectives of **Policy SP15 -Landscape and Townscape**. It is also in conflict with **NPPF Paragraph 109** which requires the planning system to contribute to and enhance the natural and local environment *by* protecting and enhancing valued landscapes, geological conservation interests and soils;
- 5.2 **Paragraph 115** requires *"great weight should be given to conserving landscape and scenic beauty in .....Areas of Outstanding Natural Beauty which has the highest status of protection in relation to landscape and scenic beauty"*;
- 5.3 The application LVIA and the previous withdrawn committee report conclude that the development will have adverse impacts but that these can be adequately mitigated. However, the NPPF requires at Paragraphs 7 and 109 that developments do more than merely neutralise any adverse impacts and that they also positively

enhance their environment. That cannot possibly be achieved in this development which will have short, medium and long term adverse impacts.

- 5.4 There would be a substantial permanent landscape impact on the site itself which would set an undesirable precedent for other AONB locations and there would a visual impact on areas of the AONB to the south and south-east as well as in views from the existing access road and from adjoining residential properties to the north and west of the site which have an outlook across the site. Submitted reports do not quantify the extent that the new housing will intrude above the surrounding pit edge when viewed from surrounding areas to the south. It is clear, however, that the larger two -and-a-half storey dwellings will have a ridge height some 7.0m above ground levels to the south and will be seen from the sensitive riverside area.
- 5.5 Nor is the extent of any mitigating landscaping and the length of time it would take to become effective specified which is not surprising as precise landscaping details have not yet been submitted. As this is an application for full permission in a highly sensitive area it is absolutely critical that such details are considered concurrently with the application rather than left to be dealt with as an afterthought by a reserved detail condition. The long-term impact on the AONB cannot be determined with any certainty in the absence of such details and this is a critical material consideration.
- 5.6 The LVIA simply indicates that mitigation will be effective in the medium to long term and thereby confirms the prospect of there being long-term adverse visual impacts which should be considered unacceptable in the absence of any overriding need. In addition, the increased light pollution from houses and road lighting at night which will result from this development will have an urban character which will detract from the quality of the riverside area. the presence of the appellant's Phase 2 development.
- 5.7 The current condition of the appeal site is the result of unauthorised activities of the appellant's own making and could be the subject of enforcement action. No weight should therefore be placed on the benefits of remediating that condition. The appeal development will, in any event have a permanent adverse effect on the landscape of the appeal site itself and an adverse effect on views within the AONB from various locations. As such it would fail to meet the objectives of development plan **Policy SP15** an NPPF guidance at **Paragraphs 109, 115 and 116**.

## **6.0 ECOLOGICAL IMPACT**

- 6.1 The appeal application is supported by an ecological assessment and by addendum proposals to help mitigate any adverse consequences arising from the additional



activity which would be generated if the development was to proceed. The Town Council considers that this is not an acceptable approach in the circumstances of the case. In view of the international standing of the Alde Estuary and the importance of adjoining land within the riverside area to act as a buffer and to provide supporting habitat it is considered that in the absence of any overriding need for this development the precautionary approach should prevail. Development should not be allowed in such sensitive locations when alternative sites outside such sensitive areas are available. The appellant has undertaken no assessment of any alternative locations.

- 6.2 It should also be pointed out that the withdrawal of objections by Natural England and the RSPB are subject to appropriate mitigation measures being put in place. These include the provision of a dog walking area within the development site, additional mitigation in the form of fencing and signage alongside the footpath to the riverside.
- 6.3 The additional fencing and signage would be on land outside the appeal site and outside land under the applicant's control and would therefore need to be the subject of a S106 Obligation as would any contribution to environmental management measures. It is therefore of concern that the measures on which the appellant relies are not the subject of any precisely detailed scheme which has been submitted in conjunction with the planning application. Moreover, although the draft S106 makes provision for a contribution to *"a project of a type referred to in the response from Natural England to the application"* that agreement is only in draft form and therefore has no force and cannot be relied upon. Moreover, the mitigation project which is deemed to be necessary has not been identified, planned and designed and currently has no programme for implementation. In those circumstances, if mitigation is required in order to satisfactorily ameliorate the adverse impacts which will arise from the appeal development, and all parties appeared to agree that mitigation is necessary, then no reliance can be placed on the appellant's proposals for mitigation. The proposals have not been specified or programmed and there is no certainty that they will be implemented or, if they are implemented, whether they would be effective.
- 6.4 A particular concern of Natural England and the RSPB related to the potential adverse effect of an increased number of dog walkers in the riverside area. Part of the mitigation to minimise that concern is the applicant's proposal to provide a dog walkers' area within the eastern part of the appeal site. This is in practice a very small area, there is no reason why it would be persuasive in diverting dog walkers from the riverside area and the appellant has put forward no evidence to

- demonstrate that it would be successful in mitigating the adverse effects of dog walking in the area.
- 6.5 In considering the ecological impact of the proposed development regard should be paid to the fact that the site possessed much greater ecological diversity before it was despoiled by unauthorized waste tipping and extension of the builder's yard beyond the lawful development storage area. The photograph No 5 at Appendix 11 illustrates the extensive natural habitat which existed on the site before the appellant commenced his current activities. It is for the appellant to demonstrate that its current use of the appeal site is lawful if it wishes the degraded state of the site to be taken into account in consideration of the benefits which might arise from the proposed development.
- 6.6 In the absence of such justification the prospect remains open that the District Council will undertake enforcement action to either reinstate the land to its former condition or for the appellant to undertake remedial action to restore the land to a natural state. Paragraph 115 of the NPPF points out that within Areas of Outstanding Natural Beauty the conservation of wildlife are important considerations and paragraph 109 stresses that wherever possible impacts on biodiversity should be minimised and net gains provided. By removing the natural habitat which previously existed over the major part of the site and by introducing a housing estate which will place considerable pressure on the remaining "managed" perimeter areas of the appeal site the proposed scheme will fail to meet these objectives.
- 6.7 In addition, although the Ecological assessment purports to take into account the effect of lighting within the development, in practice it merely confines itself to the possibility that lights will be orientated downwards towards the ground so as to minimise any adverse effects on wildlife. The application advances no proposals for 'street lighting' within the development but, in any event, the assessment fails to consider the effect of lighting from houses which is likely to be much greater, particularly to the rear of properties where privacy is unlikely to be an issue.
- 6.8 Notwithstanding the fact that certain consultees have now withdrawn their environmental objections to the scheme, the fact remains that development as proposed in this location, being major in scale and within the designated AONB, and in close proximity to sensitive designated areas will fail to protect and enhance wildlife areas and will have the potential to cause harm to biodiversity interests for which no mitigation is in place or can be controlled by condition contrary to **Policies SP14, DM26 and DM27** and **Paragraphs 109 ad 118** of the NPPF. In those



circumstances, and in the absence of any overriding need, it is considered that the precautionary principle should apply and that planning permission be refused.

## **7.0 DESIGN**

- 7.1 The appeal proposals involve the erection of 43 dwellings within the confines of the former clay and sandpit associated with the now redundant Reades brickworks. As such, the form, shape, scale and location of the development is not determined by any consideration of its relationship to the built-up area of Aldeburgh but rather by geology, geomorphology and an accident of history. It is little surprising, therefore, that the proposed development would appear as an isolated, self-contained, island of development unrelated to the form and pattern of existing development in the town and a stark contrast to the properties which back onto its northern boundary.
- 7.2 The dislocation of the site from the established built-up area of the town is emphasized by the length of the access road approach from Saxmundham Road, the location of the site within an area of open countryside to the east of the access road and to the south of the Saxmundham properties and by the severe and somewhat impersonal and unfriendly facades of the proposed dwellings which relate more to the character of the existing 15 dwellings under construction to the southwest of the site than to anything else within the built-up area of the town. The development would be inward looking and turns its back to the existing built-up area rather than integrating with it.
- 7.3 Core Strategy Policy SP1 requires new development to maintain and enhance a sense of place. Policy DM21 requires proposals to relate well to the scale and character of their surroundings and to establish a strong sense of place. The NPPF at Paragraph 57 states that it's important to plan positively for the achievement of high quality and inclusive design for all development. Paragraph 58 advises that planning policies on design should be based on an understanding and evaluation of the defining characteristics of the area and that decisions should ensure that developments, inter alia, are visually attractive as a result of good architecture and appropriate landscaping.
- 7.4 Paragraph 60 advises that decisions on applications should not attempt to impose architectural styles or particular tastes nor stifle innovation but it is proper that they seek to promote or reinforce local distinctiveness. Apart from the use of soft red brick and clay red pantiles there is little in the appeal proposals which could be said to promote or reinforce local distinctiveness. However, in the Town Council's view it is the combination of all the above factors which leads to the conclusion that the appeal proposals would fail to create a sense of place or a development which

is in keeping with the character of the town and of the site surroundings and would therefore be contrary to **Policies SP1 and DM21** and NPPF guidance at **Paragraphs 57, 58 and 60**.

## **8.0 ACCESS**

- 8.1 The access approach to the appeal development is some 270m long between Saxmundham Road and the estate road spur which serves the proposed housing. The access road at present serves three established properties, four dwellings in Phase 1 of the appellant's overall development and 15 dwellings in Phase 2 which remains to be completed. In total, including the appeal development, the access road would serve 65 dwellings plus the Aldeburgh Yacht Club's boathouse.
- 8.2 At the present time details of the layout of the new road have been submitted as part of the appeal application and although the plans were not originally included within the boundaries of the application site amended plans were submitted at a later stage with the application site boundary extended so as to include the road. However, the construction of the road was not expressly included in the description of the proposed development set out in the planning application forms and that description was not subsequently amended. Moreover, when the revised location plan reference dwg no. 7162/02C was submitted it was not accompanied by a revised certificate as to ownership as required under S65 of the Act and Article 14 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. In those circumstances, the Town Council must challenge the validity of the amended location plan which has been submitted as part of the appeal application.
- 8.3 As far as the proposed improvements to the access road are concerned, these are indicated on dwg no. 7162/29B which indicates a 5.5m road tapering to 5.0m in width between the existing properties fronting Saxmundham Road with a 1.8m wide footpath on its eastern side and a narrow verge on its western side. These works appear to have been partially implemented in so far as the roadway has been laid out and surfaced. However, the submitted plan does not indicate details of the construction and surfacing of the access road and footpath. No long sections or cross-sections of the construction of the road have been submitted or agreed and no details of the arrangements for surface water drainage have been submitted and agreed although surfacing and drainage from the road has been alluded to in correspondence.
- 8.4 In addition, the works have been undertaken and the application pursued without any investigation or assessment of the effect of the works on trees which are

positioned on or adjoining the boundary of the road on either side particularly those trees within garden close to the northern end of the road. Also no provision appears to have been made for the prevention of discharge of surface water from the road onto the public highway at its northern end or evidence produced that there will be no such discharge. No provision is made for either street lighting or for the control of traffic speed.

- 8.5 Whilst the Town Council welcomes the improvement of the access because it enhances conditions for existing residents, it deplores the fact that this work has gone ahead in advance of agreement on precise details of construction, surface water drainage, arboricultural impacts and appropriate measures to control traffic.
- 8.6 The appellant is on record as indicating that the road will not be adopted as public highway and indeed it would not be capable of meeting adoptable standards laid down by Suffolk County Council as Highway Authority. The consequence is that a long section of road which could need to cater for up to 500 vehicle movements per day is being provided without any arrangements for its long-term maintenance and repair and would not be subject to any form of traffic regulation.
- 8.7 The Town Council would also draw to the inspector's attention the fact that in undertaking its Transport Statement the appellant's highway consultants have not sought to calculate the volume of traffic which would be generated by the appeal proposals nor has it taken into account the traffic which would be generated by the removal of the waste fill which is currently within the quarry. The Statement indicates that the County Highway Authority has agreed that the traffic resulting from the development will not exceed the traffic previously generated by the former brickworks but no information on the basis for that agreement has been provided.
- 8.8 In the Town Council's view it would be highly undesirable to allow a large development of 43 additional dwellings to use a substandard road in terms of width, lighting and, potentially, construction and drainage, which has a straight length in excess of 270m without any speed restriction or traffic calming and without any regulatory means of warning drivers to stop at its junction with Saxmundham Road. In consequence, the appeal development would be likely to result in increased danger to other road users contrary to NPPF guidance at **Paragraph 32** and in failing to meet the functional requirements for new development in terms of access and lighting would be contrary to **Policy DM22**.

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## 9.0 OTHER MATERIAL CONSIDERATIONS

### (a) Brownfield Land Status

9.1 The planning history of the appeal site is that:-

- (i) It was used as a clay and sand extraction pit in association with the adjoining brickworks from before 1948;
- (ii) Planning permission '*to continue the extraction of sand*' was granted in 1950 reference E1367 by the former East Suffolk County Council under the transitional arrangements of the TCP Act 1947 (Appendix 12)
- (iii) In lieu of imposing new after-care conditions under the provisions of Schedule 5 of the TCP Act 1990 a S106 agreement was concluded between Suffolk County Council with the then owner in 1995 (Appendix 8)
- (iv) in 1999 an application for a Certificate of Lawful Established Use or Development (CLEUD) relating to a part of the site was granted by the District Council in 2000 (Ref.C99/0282) (Appendix 13).
- (v) Planning permission was granted for a hardstanding within the CLEUD site area ref C00/1183 in May 2001 which was subsequently implemented. Planning permission was then obtained in 2006 for 4 dwellings on part of the adjoining Brickworks site (Ref 06/1972). The approved application site did not include any part of the application site for the current appeal apart from the common access to Saxmundham Road.
- (vi) Planning permission ref 12/2573 for the erection of 15 dwellings access roads and landscaping was granted on 15th January 2014 (Appendix 14). The approved application site did not include any part of the application site for the current appeal apart from the common access road to Saxmundham Road.

9.2 The appellant has at various times argued that his current use of part of the appeal site has involved the lawful storage of materials, a builder's yard or is permitted development under Part 2 Schedule II of the Town and Country Planning (Permitted Development) Regulations 2015 (formerly T&CP(PD) Regulations 1995) and has also claimed, and does so in this appeal, that the part of the appeal site subject to the CLEUD is brownfield development. It is for the appellant to substantiate any claim that part of the site is brownfield or previously developed land and it is notable that the appellant has made no attempt to do so.

- 9.3 Previously developed land is defined in the NPPF as *“Land which is or was occupied by a permanent structure, including the curtilage of the developed land although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:.....land that is or has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures.....; land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time*
- 9.4 The position in relation to the appeal site is that only a very small area is occupied by buildings or structures. There is one building measuring approximately 20m x 8m, some walled materials enclosures and a small area of hardstanding. The definition also includes adjoining land which may reasonably be said to form the curtilage of the developed land ie the land developed for the permanent structures.
- 9.5 There is no statutory definition of what constitutes a curtilage of a property but guidance has been provided by the courts as outlined at P55.54 of the Planning Encyclopedia. In *Sinclair -Lockhart’s Trustees v Central Land Board (1955) 1 P &CR 195* the Court of Session held that:-
- “...the ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked out or enclosed in any way. It is enough that its serves the purpose of the house or building in some necessary or reasonably useful way.”*
- 9.6 In *Dyer v Dorset County Council (1989) 1 QB 346* the Court of Appeal held that in the absence of any definition, “curtilage” bore its restricted and established meaning connoting a small area forming part or parcel with the house or building which it contained or to which it was attached. It is a matter of fact and degree, and it was not possible in that case to accept that the house occupied by the applicant within but on the edge of college grounds was within the curtilage of any relevant building. Nourse L.J. endorsed as *“adequate for most present-day purposes”* the definition of the Oxford English Dictionary:
- “A small court, yard, garth, or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings.”*

- 9.7 He added two comments: first, that the kind of ground usually attached to a dwellinghouse would be a garden; second, that it is permissible to refer to the curtilage of a building which is not a dwellinghouse.
- 9.8 In the light of judicial authority it can be concluded that the curtilage of the existing building and hardstanding on the appeal site is limited to a small area around the existing structures which might be held to be used for purposes incidental to use of the building or structure. That area does not extend to the area of the site for which a Certificate of Lawful Established Use or Development (CLEUD) was granted by the District Council in 2000 (Ref.C99/0282) (Appendix 13). The certificate describes the lawful use of the site as *“use of land for storage of building materials including (but not limited to) bricks, paving slabs, moulded water tanks, sanitary fittings, coping bricks, tiles, pallets, security fencing, sand, gravel, and clay, hardcore and building rubble, but excluding portable buildings, plant and machinery.”*
- 9.9 The certificate therefore describes a use of land and does not identify any structures as lawful. It refers to storage of materials which mostly if not exclusively were stored outside any building and were not dependent on any building. A use of land which is not dependent upon and not ancillary or incidental to an existing structure falls outside of the definition of brownfield land. The certificated site does not define the curtilage of the very limited structures of the site which were present in 1999/2000 and incidental to the lawful use for storage purposes. Those structures have a curtilage which may be restricted to the area no larger than their footprint if no additional land can be demonstrated to be reasonably necessary or useful for the purpose of using the building or structure concerned. The appellant company has made no attempt to support its brownfield land claim in these terms and consequently no reliance can be placed on the claim. At best only a very small area of between 300m<sup>2</sup> and 500m<sup>2</sup> could be said to be brownfield land which equates to about 1.0% of the total site area not 29% as claimed by the appellant.
- 9.10 Moreover, contrary to the claims of the appellant and Council officers the current use of the appeal site is unauthorised and a breach of planning control. The Town Council recognises that this appeal is concerned with the appeal proposals and not directly with the lawfulness of the existing use. However, appellant claims a lawful use and on the back of that claims brownfield status and, implicitly, improvement of despoiled land so that the question of lawfulness goes to the weight which can be attached to status and the current appearance of the site as a material consideration.



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**(b) Lawful Use Status**

- 9.11 The approach to establishing the lawful use of land is set out in the Planning Encyclopedia at P55.34. The current uses of the appeal primary uses of the appeal site can be determined as:-
- (i) the tipping of building inert waste materials;
  - (ii) storage of builder's materials, vehicles and equipment;
  - (iii) storage of builder's materials, vehicles and equipment.
- 9.12 The planning history of the site suggest that for many years from the pre-Second World War era until decades later the sole primary use of the site was for mineral extraction which after 1950 was subject to the conditions and terms of planning permission E1367. The permission provided for the extraction of minerals and the restoration of the quarry following extraction using the reserved topsoil and subsoil. The permission did not provide or permit the importation of waste material for the purpose of landfill or restoration. Use of a small part of the pit for the storage of builder's materials within the Nissan Hut and within the immediately adjoining area began at some stage after the Second World War and resulted in the application for a Certificate of Lawful Use which was granted in 2000.
- 9.13 That permission was for the storage of specified building materials and for the purposes of the statutory regime must be considered as conclusive although it should be noted that S191 of the Act requires the applicant for a certificate to specify the use class within which the use might fall, if there is one, and for the certificate to be expressed in terms of that use class and in this case the certificate is notable for its omission of any such reference. If the certificate was intended to be for a storage use within Class B8 of the Town and Country Planning (Use Classes) Order 1987 then clearly it should have said so.
- 9.14 When planning permission 06/1972 was submitted in 2006 the appeal site had been re-colonised by natural vegetation with the exception of the certificated area as indicated in the satellite photograph taken in 2007 at Appendix 11. The application was approved and details pursuant to conditions of the planning permission were submitted and approved during the course of 2013. The satellite photograph taken in May 2011 (Appendix 11) shows that the appearance of the appeal site does not change at that stage and work on the construction of the four dwellings had not yet commenced. When work did eventually start on the development later in 2011 it appears that excavation spoil from that development was taken onto the appeal site and spread over the floor of the quarry and at the same time the whole of the

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- appeal site, both lower and upper levels, was stripped of natural vegetation and levelled at least on the quarry floor. This is indicated in the satellite photograph 4 at Appendix 10. which also shows the Phase 1 development under construction.
- 9.15 Following the grant of planning permission for the Phase 2 dwellings a substantial requirement arose for the storage of waste material from the development site because the approved scheme required most of the proposed dwellings to be constructed at a finished floor level significantly below existing ground levels. That material was deposited within the central, northern and eastern parts of the appeal site quarry. In undertaking these various operations the appellant has created two compounds. The smaller compound within the southern part of the lawful use site is fenced and gated. Within this area there is a temporary storage building and vehicle parking area and appears to be used solely in connection with the adjoining building site.
- 9.16 The larger compound involving the remainder of the quarry pit is gated and fenced at its western end adjoining the Nissan Hut and is otherwise enclosed by the edge of the quarry. Within this larger area the western part is used for the storage of materials, equipment, portacabins, port-a-loos and other items normally associated with a builder's yard. The central and eastern section are largely occupied by areas of waste material deposits comprising mainly excavated sand with some builder's rubble which has originated from the approved building sites.
- 9.17 In so far as the smaller compound appears to be a temporary use of land in connection with the adjoining building site, the use appears to be permitted in development under Part 4 of Schedule 2 of the Permitted Development Regulations. The use of the larger compound, however, is quite different. The western part may contain some materials and equipment as well as vehicles which are used in connection with the current construction work but also contains a much greater number and range of items than can be considered reasonably necessary in order to undertake the approved work. It has the appearance and character of a builder's yard or depot rather than a low-key storage area which was the subject of the lawful use certificate and extends over a much larger area without the benefit of planning permission.
- 9.18 The remainder of the larger compound has been used for the deposit of a substantial amount of waste material excavated from the adjoining development sites in the course of implementation of the respective planning permission. It therefore has nothing to do with the original planning permission for mineral extraction and is not part of a mining operation. As such the operation can be considered to be unauthorised waste disposal or land filling.
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- 9.19 In determining the nature of the use to which the larger part of the appeal site has been put it is necessary to have regard to the principles laid down in *Burdell –v- Secretary of the State for the Environment (1972)1WLR1207* in relation to identifying the correct planning unit. The judgment formulated three principles:-
- (i) The whole unit of occupation should be considered as the appropriate planning unit where there is a single main purpose to which all secondary activities are incidental or ancillary;
  - (ii) The whole unit of occupation is also appropriate where there are a variety of activities and it's not possible to say that one is incidental or ancillary to another. For example, where there is a composite use where component activities fluctuate in intensity but are not confined within distinct areas of land; and
  - (iii) A smaller unit of land than that which is occupied where two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes.
- 9.20 In this case, it appears that the second proposition applies. The larger compound is occupied by two distinctly different activities. The use of land for the disposal of waste materials and builder's storage or builder's yard but those different activities are not confined with distinct areas of land. Both activities use the same access, are managed by the same staff and employ, in part at least, the same equipment. The equipment used for the transportation of excavated material are diggers which are kept within the western part of the site and which are also employed on the construction sites. Consequently, the two activities are not physically and functionally separate and therefore must be considered to be a mixed or composite use of the site, ie the larger compound, as a whole.
- 9.21 There can be no dispute that whether the two activities are considered on a composite basis or as separate activities no planning permission exists for their current operation and they amount to an unauthorised use and a breach of planning control. It should be noted that the appellant has not sought to justify the existing use as a lawful use but instead, in the various reports which have been submitted in support of the application, has promoted the idea that the appeal proposals would have the benefit of removing despoiled and degraded land which is currently a visual intrusion and that this benefit should be considered as a factor in assessing public benefits for the purposes of NPPF Paragraph 116. The Town Council is of the view that the current appearance of the site is the result of unauthorised activity which should rightly be the subject of enforcement action to restore the site to its

former natural appearance. It is not considered that the appellant should benefit from its unauthorised activity in the determination of this appeal.

## 10.0 CONCLUSIONS

10.1 This appeal is being pursued on the basis of an error-strewn and incoherent statement of case which does not seek to address the issues involved within the context of the statutory framework and which is supported by evidence which, in part at least, is out of date, incomplete or inadequate.

10.2 These representations have highlighted procedural irregularities in so far as the proposed development relies on the construction of an access road and removal of a substantial amount of waste material from the site which are not specified in the planning application and which in the Town Council's view amount to separate developments to that for which planning permission has been sought and cannot be brought within the compass of the appeal application by the imposition of conditions. That would not be within the statutory framework, would conflict with judicial authority and would deny public scrutiny of various aspects of these two matters which have not been considered hitherto. The exclusion of these two developments from the appeal application effectively precludes favourable consideration of the appeal proposals whatever judgment is made regarding the merits of the scheme in respect of other issues.

10.3 The basis of the appellant's case appears to be that the development is contrary to the provisions of the development plan but that the harm that arises is outweighed by other material considerations, principally that:-

- (i) there is a deficit in the 5-year supply of housing which triggers the tilted balance approach under Paragraph 14;
- (ii) the scheme provides for 14 affordable housing units which are needed and would not be provided elsewhere;
- (iii) the scheme involves the development of previously developed land to which Paragraph 17 of the NPPF advises that priority should be given;
- (iv) the scheme will provide economic benefits;
- (v) there will be environmental benefit.

None of these factors are considered to be of sufficient weight to override the clear objections to the development.

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- 10.4 The Town Council considers that the conflict with the development plan which arises as a result of the appeal development is comprehensive and substantial. The development would be contrary to Core Strategy settlement policies, Policies SP19, SP22, SP29 and DM9; to Focused Review sustainability policies Policy SP1 and SP1A and to Core Strategy Environment policies, Policies SP14, SP15, DM21, DM22 and DM26. All of these policies, being up to date and relevant, should be given full statutory weight in the absence of a 5-year housing supply deficit, and should be determinative of the appeal in the absence of any overriding material considerations.
- 10.5 The appellant's case in arguing that there is a housing supply deficit is out of date and contradicted by up-to-date housing supply figures published by the District Council which indicates a 7.1 years supply with a 5% buffer and 6.2 year's supply with a 20% buffer. On this basis there is no justification for treating policies for the supply of housing as being out of date and the 'tilted balance' approach under Paragraph 14 does not apply. Even if there were to be a deficit the approach would not apply as the appeal development should be regarded as in conflict with specific NPPF policies relating to AONB's and the environment.
- 10.6 The appeal development constitutes major development within the AONB because of its scale, sensitive location and poor relationship with the existing built-up area of the town. As such, under Paragraph 116 of the NPPF, it is a pre-requisite of favourable consideration that there are exceptional circumstances which support the proposals and that the development is in the public interest. There are no exceptional circumstances in this case and the appellant has not sought to demonstrate that any of the factors claimed in support of the development amount to exceptional circumstances for the purpose of Paragraph 116. In that case the appeal development is in conflict with the NPPF and cannot be favourably determined.
- 10.7 If, however, the Town Council is wrong on that point then the further requirements of Paragraph 116 apply. There must be an assessment of need and of alternative sites in addition to consideration of environmental impacts. The appellant has not undertaken adequate assessments of either need or of alternative sites to satisfy the requirements of Paragraph 116.
- 10.8 As far as landscape and visual impact is concerned, the submitted LVIA accepts that the development would have an impact in the surrounding AONB area up to the medium to long term. In the absence of any detailed landscaping scheme there must be considerable doubt about the effectiveness of any landscaping scheme but on the appellant's admission there could be long-term impacts on the sensitive part of the
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AONB surrounding the site and a permanent loss of landscape within the site itself. The development would therefore result in significant adverse impact contrary to development plan policies SP15 and NPPF guidance at Paragraphs 109 , 115 and 116.

- 10.9 On the question of ecological impact, notwithstanding the conditional withdrawal of objections from statutory consultees its considered that the development would result in the permanent long-term loss of natural habitat which would have an adverse effect on biodiversity; it would result in increased light pollution with potential adverse effects on wildlife which have not been assessed; and it would result in increased visitor pressure on the Alde estuary SAC, SSSI and Ramsar site without provision for any effective mitigation. In the absence of any demonstrable overriding need for the development it is considered that the precautionary principle should be applied. Not to protect and enhance biodiversity is contrary to development plan policies SP1, SP14, and DM27.
- 10.10 Of the material considerations claimed in support of the appeal development none have been demonstrated to carry any appreciable weight:-
- (i) the case for a housing deficit has not been substantiated nor the Council's latest statement of the position addressed or repudiated and consequently no weight can be placed upon it;
  - (ii) the case for affordable housing addresses a real need, albeit one which does not entirely relate to Aldeburgh, but it fails to objectively consider whether this need can be better met on alternative sites elsewhere in Aldeburgh or elsewhere in the District as required under NPPF Paragraph 116. In particular, it dismisses brownfield sites in Aldeburgh and fails to acknowledge the current application proposals for the police station site in Leiston Road which is likely to meet a substantial part of the existing affordable housing local need in a more sustainable location.
  - (iii) the case for the site having brownfield status has been asserted but not been substantiated as a matter of law nor has the extent of any brownfield land been properly quantified to enable any reliance to be placed on the claim. The Town Council acknowledges that there is a small area involving a building, structures and their associated curtilages which falls within the NPPF definition of previously developed land but on such a small scale that it carries insufficient weight to affect the outcome of the appeal.
- 10.11 In addition to the settlement policy, environmental and landscape objections to the scheme it is also considered that the scheme falls short of what should reasonably be required in terms of design and access arrangements. The Town Council
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considers the design of the proposed dwellings to be severe and unattractive but its principal design objections relate to the isolated and inward-looking character of the scheme which bears no relationship to the character of its surroundings or to that of Aldeburgh. Its location means that it has a wholly unsatisfactory relationship to the built-up area resulting in a development which has no sense of place and which fails to identify with Aldeburgh or with local distinctiveness. With regard to access the necessary conditions to ensure that the access road has been and will be constructed to an acceptable standard without undue damage to adjoining trees cannot reasonably be imposed if the road does not form part of the appeal application but in any event no measures are proposed by the appellant to satisfactorily control vehicle speed and highway safety. In those circumstances it is not considered appropriate to allow further substantial intensification of use of the access.

- 10.12 In summary, the Town Council considers that the appeal development gives rise to substantial conflict with Development Plan policy as well as NPPF guidance justifying refusal of planning permission and that there are no material considerations of sufficient weight to warrant overriding those objections. The inspector is therefore requested to dismiss this appeal and refuse planning permission.

