

# Forest Heath District Council

## **DEVELOPMENT CONTROL COMMITTEE**

**7 DECEMBER 2016**

**DEV/FH/16/040**

### Report of the Head of Planning and Growth

#### **UPDATE TO THE APPEAL CASE: PLANNING APPLICATION DC/14/2073/FUL - LAND ADJACENT 34 BROOM ROAD, LAKENHEATH**

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

#### **Recommendation:**

**That Members note the update to the appeal case the Council will make to the forthcoming Public Inquiry and confirm the draft 'ghost' reasons for refusal.**

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# Committee Report

<b>Date</b>	12 <sup>th</sup> November	<b>Expiry Date:</b>	15 <sup>th</sup> January 2016
<b>Registered:</b>	2014		(with extension)
<b>Case Officer:</b>	Gareth Durrant	<b>Recommendation:</b>	Appeal should be dismissed
<b>Parish:</b>	Lakenheath	<b>Ward:</b>	Lakenheath
<b>Proposal:</b>	Planning Application - 120 dwellings together with associated access, landscaping and open space, as amended.		
<b>Site:</b>	Land adjacent 34 Broom Road, Lakenheath		
<b>Applicant:</b>	Necton Management Limited.		

## Background:

**As Members will be aware, the applicants lodged an appeal against the 'non-determination' of the planning application within the prescribed decision making periods.**

**The Council is no longer able to determine the planning application which will now be considered by an appointed Inspector. The appeal will be determined following a public inquiry which is due to open on Tuesday 28 February 2016.**

**The Council is able to make representations and submit evidence to the public inquiry and is able to carry on to resolve and represent to the public inquiry how it would have determined the planning application.**

**Accordingly, in accordance with established procedures, the matter was reported to the Development Control Committee at its meeting on 6 July 2016. A copy of the Committee report is attached as Working Paper 1.**

**The Committee resolved that had it been in a position to determine the planning application at that point in time, planning permission would have been REFUSED.**

**The Committee, at its July meeting, also requested an update of progress in the appeal be reported to the December 2016 sitting of the Development Control Committee; hence this report is before Members.**

**Proposal:**

1. The development proposed by this application is described at Paragraphs 1-8 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Application Supporting Material:**

2. The material supporting the planning application is listed at Paragraph 9 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Site Details:**

3. The application site is described at Paragraphs 10-13 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Planning History:**

4. Relevant planning history is set out at Paragraphs 14 and 15 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Consultations:**

5. Consultation responses received are summarised at Paragraphs 16-81 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).
6. Two further letters from the Defence Infrastructure Organisation were received following the committee meeting in July. The letters, which are attached as Working Papers 3 and 4, are discussed later under the 'Officer Comments' section of this report.

**Representations:**

7. Representations received are summarised at Paragraphs 82-88 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Policy:**

8. Relevant Development Plan policies were listed at Paragraphs 89-92 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1). In recent weeks the Courts have provided further clarification on the relationship between the Development Plan and national policy in the Framework, having regard to the 'plan-led system' and the requirements of section 38(6) of the Planning & Compulsory

Purchase Act 2004. This is discussed later under the 'officer comments' section of this report.

**Other Planning Policy:**

9. Other relevant planning policies were discussed at Paragraphs 93-101 of the report to the 6th July 2016 meeting of Development Committee (attached as Working Paper 1).

**Officer Comment:**

10. At the Development Control Committee meeting of 6<sup>th</sup> July 2016, Members resolved that had they been in a position to determine the planning application, they would have resolved to refuse planning permission. Members' decision was informed by an Officer assessment of the planning application at Paragraphs 102-335 of the report (attached as Working Paper 1).
11. The purpose of this report is to update Members of changes in circumstances that have occurred since they considered the Council's case in July 2016.
12. In this case a number of changes in circumstances are relevant. These are; i) the role of Lakenheath Parish Council in the appeal, ii) two letters received from the Defence Infrastructure Organisation on behalf of the Ministry of Defence, iii) a draft Unilateral Undertaking circulated by the appellant and, iv) transportation matters, including cumulative impacts upon key local junctions.
13. This section of the report also updates Members with respect to the status of the emerging Development Plan (The Single Issue Review (SIR) and Site Allocations Local Plan (SALP) documents) and greater clarity will be provided with respect to why the proposals are considered contrary to the Development Plan (including specific policy references) and how these policy conflicts should be seen in the light of recent Court decisions.

*Lakenheath Parish Council*

14. Lakenheath Parish Council has formally requested to be a party at the appeal (often referred to as a 'Rule 6 party'). The Parish has been granted that status by the Planning Inspectorate. This means the Parish Council will be formally represented at the forthcoming Public Inquiry and will be able to give evidence and opinion and cross examine the expert witnesses. The Parish Council's Statement of Case submitted to the Planning Inspectorate is attached to the report as Working Paper 2.

Defence Infrastructure Organisation on behalf of the Ministry of Defence (MoD)

15. Two separate letters have been received by the Council from the MoD. The first relates to the MoD's interests with respect to the impact of the proposed development upon the safe and unfettered operation of the RAF Lakenheath airbase. The second is formal representations to the Planning Inspectorate regarding the noise impact of the operation of the airbase upon the potential occupants of the proposed development.
16. At the July 2016 meeting of the Development Control Committee, Members were informed the MoD had expressed concerns about the implications of a potential (likely) increase in use of the Maids Cross Hill Site of Special Scientific Interest given that land is situated within the inner safeguarding zone of munitions storage facilities within the base. The matter is discussed at Paragraphs 180 to 183 of the Committee report (attached as Working Paper 1).
17. On this point, the Committee report concluded;
  - Whilst the implications of increased recreational use of the SSSI upon the viability of the explosives handling operations of the airbase is not entirely clear at present, it would at the very least, count as a dis-benefit of the proposals. Further clarification will be sought from the MoD in advance of the appeal.
  - The apparent conflict also lends support to the prematurity arguments cited against the development elsewhere in this report and adds further weight to the Local Plan (Site Allocations) strategy of providing new housing development at locations away from the Maids Cross Hill SSSI and airbase.
18. The MoD was asked to provide further clarification with respect to their concerns about the increased recreational use of Maids Cross Hill as a consequence of the appeal development. Their response is attached to this report as Working Paper 3.
19. Members will note from the latest letter (Working Paper 3) the MoD does not formally object to the appeal proposals on this ground, but it remains concerned that the development may lead to increased usage of the Maids Cross Hill reserve. Accordingly, officers consider this matter remains a disbenefit of the development proposals to be taken into account in consideration of the overall planning balance and is not an over-riding reason to object to the proposals (i.e. it does not, on its own, constitute a reason to refuse planning permission). Accordingly, the Council's position at appeal remains unchanged from the July report to committee with respect to this matter.
20. Under separate cover (and prepared by a separate component of the Defence Infrastructure Organisation), the Ministry of Defence has submitted formal objections to the appeal proposal. Whilst not a statutory safeguarding issue, the MoD is concerned the appeal proposals would be

prejudiced by noise from aircraft movements at the nearby RAF Lakenheath airbase to such an extent that it would not be possible to properly mitigate the impact of aircraft noise. The letter also criticises the content of the noise assessment submitted with the planning application. A copy of the MoD's letter is attached to this report as Working Paper 4.

21. The following conclusions were drawn with respect to noise from the operation of the airbase in the July 2016 Committee report:

- *The Council's Public Health and Housing Officers do not object to the planning application subject to the imposition of a condition on any planning permission granted to ensure maximum noise levels are achieved in living rooms, bedrooms and attic rooms. Whilst the impact of unmitigated aircraft noise upon the external areas of the application site is not fatal such that it renders the scheme unacceptable on this ground alone, the matter is a clear disbenefit of the development proposals to be considered in the overall planning balance.*

22. The MoD's objections to the planning application on noise grounds add weight to officers' conclusions that the noise impact of the operation of the airbase upon the dwellings proposed by the planning application is a disbenefit of the development proposals. It does not, however, alter the overall conclusion that adverse impacts arising from aircraft noise is to be afforded appropriate weight in the planning balance when considering the benefits against the disbenefits of development. The MoD's position that noise impacts to the scheme are not capable of mitigation differs from that taken by the Council's Public Health and Housing team (PH&H). The PH&H team requested maximum noise levels are achieved within the dwellings by means of appropriate construction and attenuation techniques, recognising that external areas (gardens and public open spaces) cannot be mitigated at all. Strict accordance with specified internal noise levels was requested by means of a restrictive planning condition.

23. Noise events occurring at the RAF Lakenheath airbase are short natured and sporadic such that dwellings at the appeal site would not be adversely affected for the majority of any given day. Notwithstanding the MoD's plans to expand activities at the base in future, the operation of the airbase, and consequently, its noise impacts, differ significantly from a civilian airport where the frequency of aircraft movement is much greater and the noise disturbance prolonged. This important fact cannot be overlooked. Accordingly, and recognising residents of the appeal scheme will be adversely affected by aircraft noise from the operation of the base during aircraft movements, it is not considered the matter is so severe as to warrant a refusal of planning permission in its own right.

24. The effects of aircraft noise upon the appeal scheme are nonetheless far from ideal and it has already been identified as a disbenefit of development. The matter should therefore carry significant weight against granting planning permission in the balance and officers concerns with respect to noise, supported now by the Ministry of Defence, adds weight to the overarching officer view about the premature nature of the scheme.

Alternative sites for housing development with less severe and sensitive constraints are available and should be developed as part of the plan-led system ahead of the appeal proposals.

*Draft Unilateral Undertaking*

25. The appellants have prepared a draft Unilateral Undertaking which comprises their offer of infrastructure and other provision to mitigate the impacts of their development proposal. The following contributions (cash or kind) are included in the draft (summary):

- Public Open Space contribution (the Undertaking does not specify what this is for)
- Health contribution
- Libraries
- Education contribution (towards land and build costs for a new primary school)
- Pedestrian crossing contribution (to the Parish Council towards the provision of a pedestrian crossing of the High Street close to the doctors surgery).
- A Parish Council contribution (£30,000 towards an extension to the pavilion in the village and £150 towards dog bins, litter bins, notice boards and park benches, and an unspecified sum towards improving the Parish Council's children's play area)
- Provision of public open space on site.
- Affordable housing (30% = 36 dwellings)

26. Negotiations will carry on with respect to the draft Unilateral Undertaking with a view to appropriately securing measures which are required from the development proposals (in the event the appeal is allowed and planning permission is granted). It is likely additional measures to those listed above will need to be included into the Undertaking, including further highways related matters (e.g. a crossing of the Eriswell Road at the bottom of Broom Road has been discussed) and wardening of the Maidscross Hill SSSI to offset some of the adverse impacts.

27. At appeal, the Unilateral Undertaking will be subjected to rigorous testing against the law (as discussed at Paragraphs 303 to 306 of the July Committee report (Working Paper 1). In this regard, the Council will seek to agree only those measures deemed to be lawful and these items will be agreed in advance of the Public Inquiry by means of a Statement of Common Ground.

28. If the content of the Unilateral Undertaking can be agreed and the document is properly completed before the end of the Public Inquiry, the Council would be able to withdraw its objections to the appeal proposals on this narrow ground (i.e. draft reason for refusal no.3 as set out below). This action would represent reasonable behaviour by the Council in response to changed circumstances since the appeal was lodged (in line with the Planning Inspectorate's procedural guidance) and so should not expose the Council to a potential claim for costs. Acceptance of the document would not prejudice the wider planning objections the Council

will be expressing against the appeal proposals.

Transportation matters.

29. Matters pertaining to highway safety and accessibility are discussed at Paragraphs 143 to 157 and 279 to 287 of the July 2016 report (Working Paper 1).
30. Members will note that two matters were outstanding; i) amendments to the design of the vehicular access requested by the County Council and, ii) consideration of the potential cumulative impact of development upon the local highway network from a number of current planning applications for development at Lakenheath.
31. The applicant has agreed to make the design changes requested by Local Highway Authority. To date amended plans have not been received in this respect, but on the assumption they are (and are subsequently deemed acceptable) access into the appeal site would not be considered a disbenefit of the development.
32. A technical highway note to accompany the Lakenheath Traffic Study focussing in on the Sparkes Farm junction (Eriswell Road and B1112 junction) has been received (23<sup>rd</sup> November 2016). The technical note, prepared independently by consultants working on behalf of the Local Highway Authority examines the potential likely traffic capacity of the 'Sparkes Farm' junction (with mitigation works). The Committee will recall from the report to the July committee meeting (paragraph 286 of Working Paper 1) that the ability of the 'Sparkes Farm' junction to accommodate additional traffic from the emerging SALP sites had not been established at the time. The latest study addresses the gap in evidence.
33. A copy of the technical highway note is attached to this report as Working Paper 5. A copy of generic comments received from the Local Highway Authority in response to the note is attached as Working Paper 6.
34. Members will note that with achievable mitigation (i.e. signalisation within the existing highway boundaries) the level of housing growth included in the emerging SALP is achievable. Indeed, the highway authority has confirmed 850 dwellings could be provided in the village without severe traffic impacts arising (subject to the prior signalisation of the 'Sparkes Farm' junction). Beyond this it is possible that severe impacts would arise unless third party land is acquired to further improve the junction capacity (i.e. to provide additional entry lanes onto the arms of the junctions). Indeed, the technical note confirms that, even following works to signalise the junction, severe impacts would occur at an unspecified tipping point below 1500 new dwellings.
35. It is presently not clear whether the 850 dwellings considered acceptable to the Local Highway Authority represents a 'tipping point' for severe impacts arising at the Sparkes Farm junction. Indeed, the technical note is suggesting that traffic from 915 new homes is tolerable (in terms of waiting times and queue lengths). It is presently not clear whether all of



the Local Plan growth and the appeal proposals could be accommodated without severe impacts arising at the Sparkes Farm junction, or whether an approval of the appeal proposals would lead to either one or more of the Local Plan allocated housing sites being displaced or rendered undeliverable on highway capacity grounds. This is a matter the appellants Transport Assessment should have scoped out, but it has so far failed to do so. The continued absence of this key information and the uncertainty created, not only for the appeal scheme, but the emerging Local Plan as a whole, is unacceptable and is presently a factor weighing heavily against the appeal proposals.

36. The appeal site is not included as an allocation in the emerging Site Allocations Development Plan document and, if it were to be granted planning permission at appeal, it could (because of the highway capacity issues identified) lead to at least one of the sites currently allocated being removed from the plan altogether. There is only one site currently allocated in the emerging plan that does not have either a planning permission in place or is awaiting determination (presently with committee resolutions to grant planning permission). This is site L2(d) at Land north of Burrow Drive and Briscoe Way to the north of the village. The site is allocated for delivery of around 165 dwellings. This site is a likely candidate for removal from the SALP if a reduction in 'planned' housing in Lakenheath were to be required as a consequence of the appeal proposals being approved.
37. At face value, this perhaps does not seem to raise significant planning issues given the appeal scheme is not significantly different in the number of dwellings proposed (45 dwellings fewer than emerging site allocation L2(d)) and it appears the emerging allocated site could simply be replaced with the appeal scheme in the SALP before adoption if required. The emerging allocated site L2(d), however, delivers far greater benefits than simply the provision of housing, particularly with respect to greenspace provision (which would be above normal policy requirements).
38. Not only would the appeal scheme deliver less greenspace provision than emerging site L2(d), it would also be positioned in a less favourable location close to the Maids Cross Hill SSSI (relying upon that site for the bulk of its recreational activities).
39. The emerging SALP Plan site L2(d) would also provide a higher quantity of greenspace infrastructure, with a strategic intention to facilitate recreational use (dog walking in particular). All of the housing allocations within the emerging SALP adhere to an over-arching greenspace strategy for the village to provide high quality greenspace for recreational use and dog walking from north to south straddling the west boundary of the village. Indeed, the emerging policy supporting the housing site allocations at Lakenheath in the emerging SALP requires the developments to contribute towards implementation of the green infrastructure strategy. The appeal proposals do not contribute towards the overall greenspace strategy but instead threaten to undermine it.

40. The greenspace strategy seeks to reduce recreational pressure upon the local SPA and SSSI designations (where recreational pressure is evident and leading to the degradation of those sites) by providing alternative greenspace in the village, particular for dog walkers. The emerging allocation L2(d), which would be placed under particular pressure if the appeal scheme were subsequently to be granted planning permission, provides a key component of the greenspace strategy via a green 'buffer' link through the site along the south bank of an existing drainage channel.
41. Officers consider, in the absence of sufficient information with respect to the cumulative traffic implications of the development proposals, an approval of the appeal scheme is likely to significantly prejudice and undermine the greenspace strategy to the ultimate detriment of the Maidscross Hill SSSI and the Breckland SPA. Whilst the impact to the SPA is not likely to be significant (such that an appropriate assessment would be required before the appeal proposals can be approved), it would represent a significant disbenefit of the appeal proposals to consider in the planning balance.

*Status of the Emerging Development Plan documents and latest 5 year housing supply position.*

42. When Members considered this matter in July 2016, the 'Preferred Options' version of the Site Allocations Local Plan and Single Issue Review Development Plans were out to public consultation. The consultation period expired shortly afterwards. Consultation responses have been considered and, by the time the Development Committee sits on 7<sup>th</sup> December, Submission Draft versions of these documents will have begun passage through the Council's Committee structure.
43. These Documents will ultimately be reported to Full Council on 21<sup>st</sup> December 2016 when it is expected Members will be asked to approve them for formal public representations to be made and (without further amendment) submission to the Planning Inspectorate for examination. It is likely the documents will be submitted to the Planning Inspectorate around the time of the public inquiry date. Once submitted (and depending upon the nature of representations received) the policies contained within the documents are likely to be afforded significant weight in Development Control decision making.
44. Members were advised in July that the Council is able to demonstrate a 5 year supply of deliverable housing sites. The five year housing supply evidence has been updated since July and forms part of the evidence base supporting the latest 'Submission Draft' versions of the Site Allocations and Single Issue Review Development Plan Documents. Members will recall that in the Hatchfield Farm appeal decision (issued on 31 August 2016) the Secretary of State concluded that, based on the material submitted to that appeal, including updates in February 2016, there was a 5 year housing supply.

45. The refreshed 5 year housing supply position remains in draft form pending any changes to the emerging Development Plan Documents which may be subsequently be made by Full Council (or prior to that). However, should no further amendments be made to the Plans as part of their progress through the Council's Governance Structure, the 5-year housing supply statement will effectively be ratified by Full Council at their meeting on 21<sup>st</sup> December 2016.
46. The 5-year housing supply statement will be relevant to the Planning Inspectorate's consideration of the appeal proposals. The latest 5-year housing supply evidence confirms (subject to the plan moving forward as drafted) the Council is able to demonstrate at least 5.7 years supply of deliverable housing sites if historic shortfalls are to be provided over the 5 year period. On the other hand, if the historic shortfall is distributed over the remainder of the plan period (as opposed to the next five years) the supply increases to 6.4 years. Both alternatives have a 5% buffer applied, as is required by the NPPF.

Conflict with the Development Plan

47. Members will be aware of the obligation set out in section 38(6) of the Planning & Compulsory Purchase Act 2004 for decision makers to determine planning applications (and appeals) in accordance with the Development Plan unless material considerations indicate otherwise. The Framework does not displace this statutory duty but the policies in the Framework are themselves material considerations which need to be brought into account. Those policies may support a decision in line with the Development Plan or they may provide reasons which 'indicate otherwise'. A key aspect of the judgment to be made on this matter is whether the relevant Development Plan policies are 'up to date' or 'out of date'. In relation to this issue, the July report suggested that:

*...the requirement in Core Strategy CS10 [for settlement boundaries to be reviewed as part of the SALP], combined with the fact that settlement boundaries and policies underpinning them, have not been reviewed since the introduction of the NPPF means the current settlement boundaries are to be afforded reduced weight (but are not to be overlooked altogether)...*

*...given the absence of 'up-to-date' policies for housing provision at Lakenheath, a key determining factor in the forthcoming appeal will be whether the proposed development can be deemed 'sustainable' in the context of the policies contained in the Framework (as a whole).*

*Relevant housing policies set out in the Core Strategy are consistent with the NPPF and, in your officers view, carry full weight in the decision making process...the Council is able to demonstrate an up-to-date 5 year supply of deliverable housing sites which means policies in the Core Strategy relating to the supply of housing carry full weight in determining this planning application.*

*With this background in mind, but with particular regard to the continued absence of an adopted Development Plan document identifying sites to deliver the housing targets of Core Strategy Policy CS7, national planning policy is clear that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.*

48. This advice was perhaps not as clear as it could have been on whether it was being suggested that the relevant policies of the Development Plan were 'up-to-date' or 'out-of-date' or on the extent to which the proposal could benefit from the presumption in favour of sustainable development as set out in the Framework.
49. The importance of these issues has been heightened by recent Court cases, and so officers consider that some further explanation should be provided. First, it is now clear from the Court of Appeal judgment in Daventry District Council v SSCLG (23 November 2016) that simply demonstrating that there is a 5 year housing land supply does not automatically mean that Development Plan policies relating to the supply of housing are 'up-to-date' and should carry full weight. The existence of a 5 year supply means that the guidance in paragraph 49 of the Framework (which deems policies to be 'out-of-date' where there is no 5 year supply) does not apply. However, policies can be out-of-date for other reasons, and this could be because of material inconsistency with the relevant policies in the Framework or because of some other change of circumstance since the policies were adopted.
50. The Daventry case also confirmed that the fact that a development plan policy was chronologically old was irrelevant for the purpose of assessing its consistency with the policies in the Framework. In the Daventry case the only development plan policies that applied to the proposal were saved policies from a local plan prepared in the 1990s, adopted in 1997, and with a plan period that ended in 2006. Those policies had then been saved as part of the development plan by the Secretary of State in 2007. The appeal was decided in June 2015. The Court of Appeal said that the Inspector was obliged to test the relevant policies against the advice in para 215 of the Framework (concerning their degree of consistency with the Framework's policies) before he could properly conclude that the policies were not 'up-to-date'.
51. The Court of Appeal also said that where there was a demonstrated 5 year housing land supply, that would tend to show that there was no compelling pressure by reason of unmet housing need which would require the development plan's housing policies to be over-ridden. It also found that it was only the advice in the second bullet point of paragraph 47 of the NPPF (which requires the 5 year supply) that was relevant to decision taking and that all of the other bullet points were concerned with plan-making (including the advice on the provision of a supply for years 6 -10 and 11 – 15). The Court of Appeal said (at paragraph 49):

*"But if the standard set out in the second bullet point of para 47 is being complied with, as it was in this case, then in my view para 47 has no*

*implications for decision-taking by a planning authority.”*

52. Two other recent cases have held that the presumption in favour of sustainable development, as expressed in the Framework, is only applicable in the circumstances set out in para 14 of the Framework. These cases are East Staffordshire Borough Council v SSCLG (decided on 22 November 2016) and Trustees of the Barker Mill Estate v Test Valley Borough Council & SSCLG (decided on 25 November 2016). Both High Court judgments disagreed with an earlier High Court decision, Wychavon District Council v SSCLG (decided on 16 March 2016), which had found there was a general presumption in favour of sustainable development even when the presumption in para 14 did not apply. It is understood that the East Staffordshire case is now to be considered by the Court of Appeal.

53. In relation to decision taking, para 14 of the Framework covers the following cases:

- Cases where a proposal accords with the development plan;
- Cases where the development plan is absent;
- Cases where the development plan is silent;
- Cases where relevant policies of the development plan are out-of-date.

54. In the present case, for the reasons set out in the earlier sections of this report, the proposals do not accord with the development plan, even viewing the position as a whole. There are too many policies that are not complied with (as identified in draft Reason for Refusal No. 1 below) and the non-compliance involves substantial rather than nominal breaches of important policies. Nor is this a case where the development plan is absent. Nor is the development plan silent: there is a clear body of policy which is sufficient to determine whether the proposals on this particular site are acceptable in principle. Thus, the critical question is whether the relevant policies are 'out-of-date' or 'up-to-date'. Attached as Working Paper 7 is a schedule which identifies the relevant Development Plan policies, relates those policies to the comparable guidance in the Framework on the same or similar subject matter, and expresses a conclusion on the degree of consistency of the policies with the Framework. In overall terms there is a high degree of consistency, at least for as long as the Council continues to be able to demonstrate that it has a deliverable 5 year housing land supply. Officers therefore conclude that this is not a case where the relevant policies are 'out-of-date' or a case where the proposals can benefit from the presumption in favour of sustainable development.

55. However, even if the presumption did apply, officers are satisfied that the proposals are in conflict with significant policies in the Framework, and that when the Framework is taken as a whole, the adverse effects of the proposals significantly and demonstrably outweigh the benefits.

56. The Statement of Case (which sets out the parameters of the appeal case) submitted by the Council in connection with the appeal confirms the

development proposals are contrary to the development plan. It also confirms matters which are of concern to the Council. The statement does not, however, confirm precisely which Development Plan policies the Council considers would be breached by the appeal proposals.

57. The Council intends to address the matter by means of submitting a 'ghost' decision notice. This would include specific reasons for refusal the Council would have resolved had it been in the position to determine the planning application. The Committee is recommended to note and agree the reasons for refusal in order to enable these to be submitted with the appeal.

58. The draft reasons for refusal are as follows:

*1) The proposals for the erection of 120 dwellings (etc.) at land adjacent 34 Broom Road, Lakenheath are contrary to the following policies of the statutory Development Plan: saved Policy 14.1 of the Forest Heath Local Plan (1995) by reason of the matters listed in Reason 3 below; Policy CS2 of the Forest Heath Core Strategy (2010) by reason of the matters listed in Reason 2(i), (ii), (ix) and (x) below, Policy CS5 by reason of the matters listed in Reason 2(iv) below, Policy CS7 by reason of the matters listed in Reason 2 (xiv) and Reason 3 below, Policy CS9 by reason of the matters listed in Reason 3 (affordable housing) below, and Policy CS12 by reason of the matters listed in Reason 2 (xiv) below; Policy DM1 of the West Suffolk Joint Development Management Policies Document (2015) by reason of the failure of the proposals to constitute sustainable development having regard to their adverse impacts as set out in Reason 2 below, Policy DM2 by reason of the matters listed in Reason 2 (i), (ii), (iv), (ix), (x), (xii), (xiii) and (xiv) below, Policy DM5 by reason of the failure to protect the countryside from unsustainable development and reason 2 (vii) below, Policy DM10 by reason of the matters listed in Reason 2 (i), (ii), (iv), (ix), (x) and (xiii) below, Policy DM11 by reason of the matters listed in Reason 2 (ix), (x) and (xiii) below, Policy DM12 by reason of the matters listed in Reason 3 (SSSI wardening contribution) below, Policy DM22 by reason of the matters listed in Reason 2 (iv) and (vi) below, Policy DM27 by reason of the matters listed in Reason 2 (vii) below, Policy DM42 by reason of the matters listed in Reason 3 (public open space) below and, Policy DM45 by reason of the matters listed in Reason 2 (xiv) below. Having regard to these policy conflicts, the Council is not satisfied that there are material considerations of sufficient weight to justify a decision that is not in accordance with the Development Plan. The Council is satisfied that the Development Plan's policies have a high degree of consistency with the Framework and should not be treated as 'out-of-date' in circumstances where there is a deliverable 5 year housing land supply.*

*2. Even if it was concluded that the relevant Development Plan policies are 'out-of-date' so that the presumption in favour of sustainable development were applicable, the proposals are*

*contrary to national planning policies set out in the National Planning Policy Framework (NPPF) insofar as the benefits of the development would be significantly and demonstrably outweighed by its disbenefits. In this regard, the benefits of development, namely the delivery of housing, including affordable housing, and the economic activity associated with its construction and subsequent occupation have been weighed against all of the disbenefits arising. The disbenefits of the development which, in combination, are considered to significantly and demonstrably outweigh the identified benefits in the 'planning balance' are (in no particular order):*

*i) Adverse impact upon the Maidscomb Hill Site of Special Scientific Interest (SSSI) from a reduction in its separation from the built form of the village and degradation of its features of interest arising from increased recreational use of the SSSI as a direct consequence of the development, contrary to paragraphs 17(7), 109, 113 and 118 of the NPPF.*

*ii) Indirect adverse impacts upon the Breckland Special Protection Area (from increased recreational activities as a consequence of this development), contrary to paragraphs 17(7), 109, 113, 118 and 119 of the NPPF.*

*iii) Adverse impact upon the unfettered operation of the RAF Lakenheath airbase as a consequence of increased recreational activities within the 'safeguarding area' drawn around below ground munitions storage facilities (located within the airbase) which include large areas of the Maidscomb Hill SSSI, contrary to paragraphs 70, 121 and 172 of the NPPF.*

*iv) Poor design with respect to a) the location and delivery of Public Open Spaces as part of the layout of the site which does not seek to safeguard trees or incorporate trees into the public realm of the scheme nor encourage recreational activity to remain on site, and b) the vehicular access into the site and associated visibility, contrary to paragraphs 17(4), 57, 58, 64 and 69 of the NPPF.*

*v) The premature nature of the proposals, which would prejudice the proper planning of the area by pre-empting decisions that should be properly taken locally as part of emerging Site Allocations Development Plan document. In particular, the Green Space Strategy (included in the evidence base supporting the emerging Site Allocations Development Plan) underpins the approach the Council has taken to deciding which sites it intends to allocate for new housing development at Lakenheath via the Site Allocations DPD. The sites allocated in the document purposefully intend to offset indirect impacts of the new developments upon the Breckland SPA and Maidscomb Hill SSSI by providing (directly and indirectly via the allocated sites) sufficient new alternative greenspace, footpaths and other connections around the village to offset adverse, in-combination recreational impacts upon the Breckland*

*SPA and Maids Cross Hill SSSI. The Council is concerned that a premature approval of the appeal proposals would conflict with and undermine the successful delivery of the greenspace strategy if a key housing allocation to the north of the village was not then required to be included in the plan or otherwise did not come forward as a consequence of a grant of planning permission for the appeal proposals, contrary to paragraph 17(1), 114, 196 and 216 of the NPPF.*

*vi) Adverse impact upon the viability of trees protected by Tree Preservation Order, owing to the close proximity of new development and failure to properly incorporate the tree belt as an integral part of the design and layout of the scheme, contrary to paragraphs 17(7), 61, 64, 113 and 118 of the NPPF.*

*vii) Adverse impact upon the countryside; the site is outside the settlement boundary of the village, contrary to paragraphs 17(5), 55, and 154 of the NPPF.*

*viii) Unmitigated loss of a parcel of 'Best and Most Versatile' agricultural land, contrary to paragraphs 17(7) and 112 of the NPPF.*

*ix) Unmitigated loss of habitat for skylarks, contrary to paragraphs 17(7), 109, 113 and 118 of the NPPF.*

*x) Unmitigated destruction of the grape hyacinth rare plant species present at the appeal site, contrary to paragraphs 17(7), 109, 113 and 118 of the NPPF.*

*xi) Current absence of capacity at the local village primary school which means, until new school places can be provided, pupils will need to travel out of the village to meet their primary educational needs. The existing primary school is not capable of further extension to increase capacity permanently or temporarily. A new school is required in the village and, at the present time, its delivery cannot be guaranteed, contrary to paragraphs 34, 38, and 72 of the NPPF.*

*xii) Residents of the scheme being exposed to noise levels significantly above WHO levels during military aircraft take-offs (in particular) from the nearby RAF Lakenheath airbase. These impacts would impact particularly to the external areas (gardens and public open spaces) and are not capable of mitigation against the noise impacts arising. The amenity of the residents of the dwellings would also be adversely affected by the 'sealed box' approach to mitigation of the internal areas of the dwellings in order to ensure maximum noise levels are not exceeded, contrary to paragraphs 109, 120 and 123 of the NPPF.*

*xiii) Unmitigated adverse impact upon bat species using the established hedgerow and trees along the eastern site boundary,*



*contrary to paragraphs 113 and 118 of the NPPF .*

*xiv) Adverse impact upon the local highway network, particularly in-combination with other plans and projects which would all contribute towards a significant increase in traffic on these roads, particularly during peak hours. In the absence of any evidence accompanying the planning application material which examines cumulative traffic impacts, the impact of traffic generated by the proposed development in addition to schemes already consented or which have Committee resolutions to grant planning permission may be severe. Owing to the extent of traffic queuing which is likely to arise at key junctions during the peak hours, the traffic impact of the scheme, in combination with other projects, is likely to be at least significant, contrary to paragraphs 32 and 34 of the NPPF.*

3. *Policy CS13 of the Core Strategy (2010) and saved Policy 14.1 of the Forest Heath Local Plan (1995) require proposals for new development to demonstrate it will not be harmful to (inter alia) educational attainment, services and health and confirms that arrangements for the provision or improvement of infrastructure to the required standards will be secured by planning obligation. Core Strategy policy CS6 sets out the Council's requirements for affordable housing provision. The following policy compliant package of and infrastructure and affordable housing provision are required to mitigate the impacts of this development:*

- 36 (no.) units of affordable housing (30%)*
- Contributions (pro-rata) to be used towards land and construction costs of a new primary school in the catchment.*
- Developer contributions towards early years education (pre-school facilities for children aged 2-5).*
- Libraries contribution.*
- Health Contribution.*
- Off-site provision of public open space.*
- Strategy for maintenance of the on-site public open space.*
- Contribution towards wardening and other provisions relating to the nearby Maids Cross Hill SSSI.*
- Highway mitigation, including a pedestrian crossing of the Eriswell Road*

No mechanism is in place to secure the required package of mitigation measures arising from this development and, in the absence of appropriate mitigation the development would have significantly adverse impacts upon the delivery of affordable housing and infrastructure

necessary to mitigate the impacts of the proposed development, further reducing its sustainability credentials. The proposals are therefore also contrary to the Framework and the aforementioned Development Plan policies in this respect.

### **Conclusion:**

59. The updates to the Council's case set out in this report do not alter earlier conclusions with respect to the position it will be adopting at the forthcoming Public Inquiry. The appeal proposals are contrary to the Development Plan and the NPPF and represent unsustainable development.

60. Reasons for refusal are recommended as the basis of the Council's case at the forthcoming public inquiry appeal.

### **Recommendation:**

61 It is recommended that

1. The Committee notes the updates set out in this report; and
2. In addition to its resolution in regard to this appeal at the July 2016 meeting; the Committee resolves that had it been in a position to determine the planning application in the normal way, it would have resolved to **REFUSE** planning permission for the reasons set out in this report.

### **Documents:**

Working Paper 1 – Report from the July 2016 Development Control Committee meeting.

Working Paper 2 – Statement of Case of the Lakenheath Parish Council.

Working Paper 3 – Correspondence received from the Defence Infrastructure Organisation (26<sup>th</sup> September 2016).

Working Paper 4 – Correspondence received from the Defence Infrastructure Organisation (25<sup>th</sup> August 2016).

Working Paper 5 – Technical Note REV3 (Lakenheath B1112/Eriswell Road Junction)

Working Paper 6 – Suffolk County Council, Local Highway Authority advice with respect to Technical Note REV3.

Working Paper 7 – Officer assessment for the purposes of para 215 of the Framework of the degree of consistency of the Development Plan policies identified in draft Reason for Refusal No.1 with the policies in the Framework relating to the same or similar subject matter.