



*St Edmundsbury*  
BOROUGH COUNCIL

# DEV/SE/18/045

## Development Control Committee 6 December 2018

### Planning Application DC/18/1222/OUT – Land East of 1 Bury Road, Stanningfield

<b>Date Registered:</b>	19.07.2018	<b>Expiry Date:</b>	13.09.2018 E.O.T 21.12.18
<b>Case Officer:</b>	Charlotte Waugh	<b>Recommendation:</b>	Grant
<b>Parish:</b>	Bradfield Combust with Stanningfield	<b>Ward:</b>	Rougham
<b>Proposal:</b>	Outline Planning Application (all matters reserved) - 9no. dwellings		
<b>Site:</b>	Land East Of 1 Bury Road, Stanningfield		
<b>Applicant:</b>	Trevor Smith		

#### **Synopsis:**

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

#### **Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

#### CONTACT CASE OFFICER:

Charlotte Waugh

Email: [charlotte.waugh@westsuffolk.gov.uk](mailto:charlotte.waugh@westsuffolk.gov.uk)

Telephone: 01284 757349

# Committee Report DC/18/1222/OUT

---

## **Section A - Background:**

1. This application was deferred from consideration at the Development Control Committee meeting on 4<sup>th</sup> October 2018. Members resolved that they were minded to refuse planning permission contrary to the officer recommendation of approval. At this point, the risk assessment protocol was invoked requiring the further reporting of this matter before a decision is able to be made.
2. A Committee site visit was undertaken on 27<sup>th</sup> September 2018. At the subsequent Development Control Committee meeting on 6<sup>th</sup> September 2018 Members were minded to refuse the application given the lack of detail included as it has been submitted in outline form as well as concerns over flooding.
3. The purpose of this report is to provide an update on additional information received as well as a risk assessment for Members in accordance with the Decision Making Protocol, which sets out the potential risks that might arise should planning permission be refused.
4. The previous officer report for the 4<sup>th</sup> October 2018 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper for details of the site and development, summaries of consultation responses and neighbour representations, and for the officer assessment of the proposal.

## **Proposal:**

5. Please refer to Working Paper 1 for a description of the proposal.

## **Site Details:**

6. Please refer to Working Paper 1 for a description of the site and surroundings.

## **Planning History:**

7. Please refer to Working Paper 1 for a summary of the relevant planning history.

**Consultations:**

8. Please refer to Working Paper 1 for a summary of consultation responses received.

**Representations:**

9. Please refer to Working Paper 1 for a summary of third party comments received.

**Policy:**

10. Please refer to Working Paper 1 for a list of policies and guidance that have been taken into account in the consideration of the application.

**Officer Comment:**

11. Please refer to Working Paper 1 for the officer assessment of the proposals.

**Section B - Update:****Flooding**

12. Following October's Committee meeting the applicant has commissioned a Flood Risk Assessment (FRA). This report, produced by WtFR Ltd identifies the site as at high risk of surface water flooding (pluvial). High risk means that the probability of flooding in any given year is greater than 1 in 30 (3.3%). It also confirms that surface water flows into the site from surrounding plots.
13. It states that the site is positioned over a major aquifer intermediate. An aquifer is an underground layer of water-bearing permeable rock, rock fractures or unconsolidated materials (gravel, sand, or silt). As such, the site is considered a groundwater source protection zone. The FRA states that minimal groundworks are required and consequently, the impact on ground water is negligible. This is a common situation encountered and is not considered a reason for refusal of planning permission.
14. The report confirms that the site is not at risk of fluvial (river) flooding or tidal flooding and is located within Flood Zone 1 (low probability).
15. There is a water course running to the West of the site and it is proposed within this report that surface water is dispersed via this watercourse. Other recommendations are made including the use of water butts, permeable paving, attenuation storage and a further ditch on the boundary to intercept flows onto the site from elsewhere.
16. Suffolk County Council Flood and Water Engineer agrees that as the site is

within a hollow the majority of the water comes from a much wider area than just the application site. Whilst SCC have queried some of the recommendations (in respect of infiltration) SCC's solution to protect the site is a new ditch system to intercept flows from elsewhere and channel it around the site. As well as potentially the use of SuDS.

17. On this basis, whilst it is acknowledged that there is an issue with surface water flooding at present, it is possible to manage this with a variety of simple solutions to ensure that it will not threaten the proposed dwellings or increase flooding elsewhere. Consequently, it is recommended that a further condition is added which allows the Local Authority to evaluate the proposed solutions in conjunction with proposed layout plans which are likely to have a bearing on mitigation measures.

*'Prior to commencement of development details of the implementation, maintenance and management of the strategy for the disposal of surface water on the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.'*

#### **Outline form**

18. It is acknowledged that Members have concerns regarding the outline nature of the application as this leaves a number of questions over the development unanswered in relation to scale, layout, appearance, occupation etc.
19. The National Planning Practice Guidance (NPPG) confirms that an application for outline planning permission allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more 'reserved matters'. Reserved matters are those aspects of a proposed development which an applicant can choose not to submit details of with an outline planning application, i.e. they can be 'reserved' for later determination. These are defined in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as:
- Access
  - Appearance
  - Landscaping
  - Layout
  - Scale
20. An application for outline permission does not need to give details of any reserved matters. Whilst this makes it difficult to make a full assessment of the proposal, this outline application seeks to establish the principle of development only.

21. The site is outside the Housing Settlement boundary and as such, the dwellings will be affordable, as specified in the signed Section 106 agreement. They will meet a clearly identified need and will be available to those with a local connection, controlled through a S106 agreement. The Local Authority is satisfied with this approach. Should outline planning permission be granted a reserved matters application will be submitted subsequently which fully details the development proposed and will give Officers and Members (should they wish) the opportunity to scrutinise the specifics of the proposal. If those reserved matters fall short for any reason then a refusal can be justified.
22. Strategic Housing have been in discussions with the applicant and support the scheme which would provide much needed affordable housing. Housing Officers have started the process of engaging a registered provider to bring this site forward and already have two who are interested in building an exception site in Stanningfield. The applicant has confirmed their acceptance of a section 106 agreement to ensure the site is only developed on this basis and as such, members should have some comfort that this process is being managed by their Housing Officers.

### **Section C – Refusal Reasons:**

23. The Officer recommendation for this current application remains one of approval with the conditions listed below as well as that recommended above in relation to flooding.
24. However, in response to concerns articulated by Members at the October Committee meeting, Officers have drafted the following potential reasons for refusal.

*Due to the unique topography of the site which sits in a hollow it appears to be subject to high risk of surface water flooding. Whilst a flood risk assessment has been submitted listing various recommendations to combat this risk these are not fully detailed and neither is it identified how they would be achievable within the site. Without further comfort that this issue can be overcome the scheme is considered to conflict with DM6 of the Development Management Policies Document which requires schemes to detail the management of on-site drainage so as not to cause or exacerbate flooding elsewhere and to paragraph 155 of the National Planning Policy Framework which states that development should be directed away from areas at highest risk.*

*The application site is located within the Countryside where locally adopted policies seek to restrict unsustainable development. Without submission of a fully detailed scheme and commitment from a registered provider the Local Authority is not satisfied that an entirely affordable housing development is achievable. As such, the proposal conflicts with CS5 of the Core Strategy which requires the mix, size, type and tenure of affordable homes to be identified as well as DM5 of the*

*Development Management Policies Document which allows residential development outside of Housing Settlement Boundaries in exceptional circumstances only.*

**Section D – Implications of refusing planning permission:**

25. If Members remain of the opinion that this application should be refused then they must be aware of any potential risks that may arise. The most significant potential risk is that the applicant will lodge a successful appeal which, if the Authority is unable to defend its reason for refusal, may leave it vulnerable to an award of costs.

26. The Local Planning Authority is required to defend any reason for refusal at appeal and this is clearly outlined in the National Planning policy Guidance (NPPG) which also provides guidance on awards of costs against planning authorities. Officers would draw Members attention to the following paragraph:

*Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:*

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*
- *refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage*
- *imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations*
- *requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligation.....*

27. For the reasons set out above, it is Officers strong advice that neither reason for refusal will withstand an appeal and the application therefore, would have a very reasonable prospect of success. Furthermore, an award of costs

against the Authority is very possible on the basis that it is unable to defend these reasons for refusal.

28. The other risk to the Authority from a refusal is considered to be reputational and financial, particularly if an application for costs against the Council is awarded, which is considered likely in this case if the above reasons for refusal are maintained.
29. Members are also advised of the risk relating to any S106 agreement. The applicant has confirmed their willingness to enter into such in order to ensure that not only are the dwellings proposed affordable but also that the dwellings will be available to those with the greatest local need. The specific wording of this agreement remains the gift of the Local Planning Authority at present but a refusal would leave this at the discretion of the applicant and the Planning Inspectorate.

### **Section E – Conclusions:**

30. For the reasons outlined above and also set out within the original report to Development Control Committee, Officers have attached great weight to the benefit of affordable housing and consider that matters in relation to scale, layout, appearance, landscaping and flooding can be adequately dealt with in the future to create a successful scheme that is in compliance with adopted policy. It is recommended that the reasons for refusal as set out above are not defensible at appeal and will leave the Local Authority susceptible to costs.
31. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to refuse the application the reasons for the decision must be clearly articulated and should a planning appeal be submitted, members of the Development Control Committee should be available to defend their decision.

### **RECOMMENDATION:**

32. That planning permission is **GRANTED** subject to the submission of a signed Section 106, and with the following conditions:
  1. 001B - Application for the approval of the matters reserved by conditions of this permission shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:-
    - i) The expiration of three years from the date of this permission; or

- ii) The expiration of two years from the final approval of the reserved matters; or,  
In the case of approval on different dates, the final approval of the last such matter to be approved.
- 2. 001H - Prior to commencement of development details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out as approved.
- 3. 009A - No development shall take place on site until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. The scheme of investigation shall include an assessment of significance and research questions; and:
  - a. The programme and methodology of site investigation and recording.
  - b. The programme for post investigation assessment.
  - c. Provision to be made for analysis of the site investigation and recording.
  - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - e. Provision to be made for archive deposition of the analysis and records of the site investigation.
  - f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
  - g. Timetable for the site investigation to be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.
- 4. 009B - No building shall be occupied or otherwise used until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 3; and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 5. 004C - Demolition or construction works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:30 hours on Saturdays and at no time on Sundays, public holidays or bank holidays.
- 6. 012A - No development above ground level shall take place until a scheme for the provision and implementation of water, energy and resource efficiency measures during the construction and occupational phases of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the construction and occupancy of the development. The scheme shall be constructed in accordance with the approved details and the measures provided and made available for use in accordance with the approved timetable.
- 7. 008B - Prior to commencement of development details of the implementation, maintenance and management of the strategy for the



disposal of surface water on the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.

**Documents:**

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online.

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PAV7M7PDH2I00>