

TENDRING DISTRICT COUNCIL

PLANNING COMMITTEE

ALTERATIONS AND ADDITIONS TO PLANNING COMMITTEE

22nd SEPTEMBER 2022

A.1 – Planning Application 20/00594/FUL Land Adjoining Ipswich Road and Wick Lane, Ardleigh, Essex, CO7 7QL.

Following the publication of the committee report (report dated 22 September 2022) the LPA has been informed that Ardleigh Parish Council have now published their regulation 14 Pre-Submission draft Neighbourhood Plan. At the time of writing this update the draft Ardleigh Neighbourhood Plan (DANP) is the subject of a 6 week informal consultation (running between 8 August and 23 September 2022). Please note this is not the formal consultation process. In addition to the above, a further objection letter was received from Ardleigh Parish Council (dated 12 September 2022).

This update sheet contains specific responses to the points raised in the Ardleigh Parish Council letter dated 12 September 2022 (from here-on referred to as the APC letter), as well as an assessment of the application against the relevant draft policies contained in the DANP. This update sheet should be read alongside the above mentioned committee report.

The APC letter states that the committee report fails to acknowledge and properly assess the form and extent of the locational policy conflict (PP13 and PP7) and argues that this is a significant omission that calls into fundamental question the legal soundness of the decision-making process.

First and foremost, the committee report contains a detailed assessment of the proposal and an ultimate officer recommendation. Turning to the cited policies, both Policies PP7 and PP13 are referred to in the committee report. Policy PP13 concerns itself with the Rural Economy, and policy PP7 covers Employment Allocations, the policy (PP7) also covers those eventualities where new employment-related development on land outside of the allocations are proposed.

Policy PP13 specifically lists ‘types’ of development (in points a)-d) of the policy) that may be permissible in the countryside and outside of defined settlement development boundaries. It is clear the list in the policy should not be read as a closed list. Nevertheless, use Classes B2 and B8 does not feature in that list.

The policy PP13 then turns to farm and other land based diversification schemes that benefit the rural area, and proposals for re-use or redevelopment of rural buildings. Whilst the policy is relevant in the consideration of the scheme the subject of this update sheet (and therefore cited in the committee report), it is not the key and overarching policy governing B2 (General Industry) and B8 (Storage and Distribution) development proposals

Policy PP7 is specifically tailored for B2 and B8 uses and is therefore the key and most important policy insofar as the principle of development is concerned.

The first 6 pages of the APC letter also refers to policies SPL1 and SPL2 and argues that the scheme is in clear conflict with these policies as well as policy PP7 and PP13. The APL letter also accuses the author of the committee report of *'a failure to acknowledge and properly assess the form and extent of the locational policy conflict'* and states that this *'is a significant omission that calls into fundamental question the legal soundness of the decision-making process'*.

Taking these issues in turn:

Policy SPL1 (Managing Growth) sets out the Settlement Hierarchy in the District of Tendring, and this hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services. The supporting text to the policy provides clarity on the 4 different settlement hierarchy classifications (Strategic Urban Settlements, Smaller Urban Settlements, Rural Service Centres, and Smaller Rural Settlements), and what it means. The settlement of Ardleigh is a Smaller Rural Settlement, clearly at the bottom of the settlement hierarchy. The committee report repeatedly refers to the semi-rural nature of the site and the rural nature of the surround area, the committee report, when read as a whole, also makes it very clear that site is in the countryside, and the village of Ardleigh (again see policy SPL1 which is referred to in the committee report) is some 2.5km further to the east. Policy SPL1 does not preclude development outside of settlement development boundaries.

The relevant part of policy SPL2 states 'Outside of Settlement Development Boundaries, the Council will consider (emphasis added) any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in this plan' (emphasis added).

The committee report engages extensively with the 'principle of development' consideration in paragraphs 6.23 – 6.27 of the report, and the remaining 31 pages engage extensively with all the other key and most important material planning considerations, as well as all the other relevant policies in the local plan. The report then reaches a balanced conclusion and it will be up to the ultimate decision makers (the Planning Committee) to now consider the committee report, debate the scheme and reach a decision. The LPA therefore strongly disagree that the report *'fails to acknowledge and properly assess the form and extent of the locational policy conflict', it is fully acknowledged and assessed and so can not be considered as absence. It is appreciated that other opinions will apply the weighing of the considerations differently and that is a matter of judgement*

The APC letter then turns to the application of weight as well as the NPPF paragraph 12, the APC letter argues that there are no material considerations in this case that indicate the development plan should not be followed and that permission must consequently be refused.

The NPPF should be taken as a whole, but looking at Para 12 Members should consider the entire paragraph.

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

It should be noted that the development plan is a starting point for decision making, but as a starting point other material considerations are a consideration, including the NPPF itself. The NPPF provides as such material consideration that when there is conflict with an up to date development plan, permission should not usually be granted. This is not the same as saying must be refused. Finally, it is clear that the NPPF does accept departures, but subject to material considerations.

In response, the application of weight to various benefits and dis-benefits of a scheme is a matter for the ultimate decision makers (in this case the Planning Committee). The committee report carefully sets out the various benefits and dis-benefits of the scheme, all material considerations and then reaches a balanced conclusion, but sufficient to argue that the plan should not be followed on this occasion and for the reasons the report outlines. It will be up to the ultimate decision makers (the Planning Committee) to now consider the committee report as well as all the objections to the scheme, including the objections from Ardleigh Parish Council, debate the scheme and ultimately reach a decision.

The APC letter then provides confirmation that Draft Ardleigh Neighbourhood Plan (DANP) is at regulation 14 stage and that the informal consultation period opened on 08/08/2022 and closes on 23/09/2022. Ardleigh Parish Council is of that the opinion that the scheme conflicts on multiple counts with emerging Ardleigh Neighbourhood Plan.

While of very limited weight given the stage, the DANP has some weight and must be considered. In response, the following DANP Policies are considered relevant to this planning application:

Policy GDP - General Approach to Development
Policy EP - Natural, Built & Historic Environment
Policy LGP - Local Green Spaces
Policy TP - Transport & Parking

The relevant parts of draft Policy GDP states:

New development outside of the Settlement Development Boundaries will not generally be permitted unless it is consistent with all other relevant Neighbourhood Plan policies and the proposal is modest in scale and impact; and it would provide necessary support for a new or existing business that is appropriate to the rural area; or it would directly provide for the conservation, enhancement or appropriate enjoyment of the countryside.

The principle of providing a new food storage and distribution facility and associated logistics yard and office in this location is therefore not positively supported by draft policy GDP because the site is outside the Settlement Development Boundary of Ardleigh and because the proposal is not consistent with other draft policies in the DANP (see sections below).

The relevant parts of draft Policy EP states:

Development that is consistent with all other relevant Neighbourhood Plan policies will be supported provided its design pays due regard to the contents of the Village Design Statement, including by way of its:

- i. Siting;
- ii. Layout;
- iii. Form and scale;
- iv. Architectural style;
- v. Materials;
- vi. Relationship to surrounding development;
- vii. Impact on built/landscape features;
- viii. Landscaping and boundary treatments;
- ix. Car parking;
- x. Accessibility; and
- xi. Biodiversity efforts;

Furthermore, the draft policy states (b) no urbanising effect is had on a rural lane or street (for example, as a result of resurfacing, hedgerow removals or loss of an open landscape view); (c.) There is no urban intrusion (including as a result of light/noise pollution or increased vehicular traffic) into currently rural and/or tranquil areas; Ardleigh Neighbourhood Plan; (d) There is no net loss of good quality green landscape features (including trees, hedges and shrubs) and all new green landscape features are of appropriate local or native species; (e) Appropriate opportunities are incorporated to support local biodiversity and wildlife; (f) There is no permanent loss of best and most versatile agricultural land to non-compatible uses (the onus will be on the developer to establish the quality of any agricultural land proposed for other uses); (g) Development in the Conservation Area or within its setting preserves or enhances its significance and has regard to the contents of the Conservation Area Appraisal; and (h) Development affecting a Listed Building or its setting preserves or enhances its significance and is supported by a proportionate Heritage Impact Assessment.

At the end the policy states exceptional support is provided for any development that, in the view of the Parish Council, would secure material benefits for the natural, built and/or historic environment of Ardleigh. In all cases, the benefits will be weighed against any dis-benefits of the development, including potential conflict with strategic policies. Support will only be provided if the benefits are assessed to outweigh any dis-benefits.

For the same reasons as set out in paragraphs 6.51 – 6.58, 6.75 – 6.97 and 6.112 – 6.118 of the committee report, the proposal is considered to result in clear conflict with the relevant sections of draft policy EP. In terms of the remaining areas covered by draft policy EP (ie Car parking and Biodiversity) – for the reasons set out in the relevant

sections of the committee report the proposal is considered to result in no conflict with these areas subject to conditions and a section 106 legal agreement.

The relevant parts of draft Policy LGP states:

Inappropriate development on or adjacent to a Local Green Space (as identified in both the Local Plan and this Neighbourhood Plan) will be refused except in very special circumstances.

The nearest identified green spaces (as per the DANP) likely to be impacted on by the development proposal is local green spaces GS08 and GS12 as indicated in Map 7 of the DANP – these spaces are located along Harts Lane. The impact of the development proposal on areas to the north and north east of the site (long distance views) is covered in paragraphs 6.88 and 6.89 of the committee report. The ‘Planning Balance and Conclusion’ section of the committee report weighs up the benefits vs the dis-benefits of the scheme.

The relevant parts of draft Policy TP states:

1. Development likely to generate significant amounts of movement and/or to have significant transport implications will be strictly resisted throughout the parish.
2. Development that is consistent with all other relevant Neighbourhood Plan policies will be strongly supported where it would:
 - a. Improve road safety;
 - b. Reduce parking pressures or the occurrence of inappropriate parking;
 - c. Provide appropriate traffic control;
 - d. Improve existing cycle or walkways; or
 - e. Provide new cycle or walkways.
3. Permission will be refused for any development that is likely to materially exacerbate existing transport, congestion, accessibility or parking issues, particularly along and in proximity of The Street and Old Ipswich Road.
4. Parking provision should be considered as an integral feature of a development’s design, addressed in the earliest design stages.
5. All new development should provide parking in accordance with both the Essex Parking Standards and the Essex Design Guide, to include:
 - a. Number of spaces;
 - b. Location of spaces (i.e. in or out of the curtilage); and
 - c. Layout, size and design of spaces.

All transport and parking matters are comprehensively covered in paragraphs 6.126 – 6.156 of the committee report. Subject to the conditions and obligations to mitigate against the identified transport and highways impacts, it is considered that the proposal would be in general accord with the requirements of draft policy TP of the DANP.

Due to the status of the DANP only very limited weight can be afforded to its policies at this stage and this increases through the process.

Notwithstanding the above, conflict arises with the relevant policies of the DANP in terms of landscape harm, and the harmful impact of the ‘in depth’ part of the

warehouse and HGV hardstanding area on the character and appearance of Wick Lane (which is a protected lane) and the immediate hinterland to the east, and future public amenity areas to the south of the site, heritage harm, as well as the impact of the large warehouse on residential amenity by way of light pollution and being overbearing and dominant in nature to nearby residents, especially those residents to the north west and east of the site. These harmful elements continue to attract significant weight in the overall planning balance. The proposal will also result in the loss of agricultural land and there is therefore in conflict with the relevant DANP policy EP, again this weighs against the proposal as per the position outlined in the committee report.

Against this harm, it is the view of the LPA that the benefits to the local and wider economy, the benefits to the food distribution sector in particular, and direct and indirect job retention/creation would be substantial, and it is now up to the ultimate decision makers (the Planning Committee) to apply weight to the various benefits and dis-benefits of the scheme.

The APL letter then turns to Colchester Borough Councils' comments and draw a comparison between the application the subject of this update sheet (and committee report) and a public enquiry held in 2018 for a housing development (145 dwellings) on land south of Bromley Road. The LPA agrees that the policy and general circumstances of the current application are materially different to the 2018 appeal and the committee report is specifically tailored towards the assessment of a storage and distribution warehouse as oppose to a housing development for 145 dwellings.

The APC letter then refers to the lack of a travel plan being provided as part of the application. The committee report repeatedly makes clear that the vast majority of users of, and visitors to the site will use the private car as a mode of transport, and that locational infrastructure shortfalls weighs against the proposal. In mitigation and to promote sustainable transport, a workplace travel plan is proposed. The report does not suggest that a workplace travel plan will address the locational infrastructure shortfalls, it is proposed in mitigation. The LPA feels it is appropriate for details of a workplace travel plan to be provided as part of a planning condition.

The APC letter then questions the accuracy of the Landscape and Visual Impact Assessment (LVIA) and the TDC landscape officers' comment due to the failure to mention the impact of the proposal on a future public open space to be delivered on the east of Wick Lane. In response, the committee report provides a detailed assessment of the impact of the proposal on the areas along the south side of Wick Lane and indeed the area that is secured as a future public open space as part of ESS/57/04/TEN, and concludes that the proposal will result in clear conflict with policies SP7, PPL3 and SPL3.

The APC letter the questions the accuracy of paragraph 6.6 of the committee report. In response, paragraph 6.6 simply provides a factual position of surrounding land uses and sites with planning permission in the immediate vicinity of the application site. Indeed the committee report includes a very detailed description of the site and surrounding area in paragraphs 6.1 – 6.13 of the report.

Ardleigh Parish Council then question the officer's approach towards the assessment of the 'Principle of Development' and indeed subsequent sections of the committee report – the Parish Councils reasons for this are outlined in pages 15 – 23 of the APC letter. The rationale for the LPA's position which is to seek a site based sequential assessment to review the suitability of all six of the B2 allocated sites in the district of Tendring is set out in paragraph 6.28 of the committee report.

The APC letter then critiques the Heritage section, and the Planning Balance and Conclusion section in the context of the heritage assessment. In response, in terms of paragraphs 6.103 – 6.111 of the committee report the author is specifically engaged with heritage matters. A total of 3 different public benefits are set out in paragraph 6.110 of the committee report. Insofar as the heritage balance, weight given by the LPA as the authority responsible for the committee report is given respectively as 'moderate', moderate' and 'very modest' (in that order) and for the reasons outlined in the same paragraph. Insofar as the heritage balance is concerned the LPA then concludes that collectively the public benefits is considered to outweigh the low and very low levels of less than substantial heritage harm as identified. Again the LPA as the authority responsible for the recommendation is perfectly entitled to apply rational weight individually as part of that section of the report (in this instance the heritage section), and then as a basket of public benefits the position is that the heritage harm is neutralized by the public benefits. However, the heritage harm is nevertheless still an element of harm in the overall planning balance and if sufficiently clear in the report, it is stated now. For the avoidance of doubt that the officer's recommendation includes consideration of heritage harm both against public benefit, and considered again as harm in the overall balance.

The APC letter then raises issues in respect of bats as a protected species. The Parish Council is of the view that because of the position outlined in paragraph 6.118 of the committee report, it '*appears very likely*' (emphasis added) that the same external lighting - no matter the mitigation - would also cause material harm to local bat populations, whose presence is evidenced within and close to the site. In response, Essex County council Ecology reviewed all the ecological information available and concluded that they are satisfied that there is sufficient ecological information available for determination of this application, and this is subject to conditions to include the mitigation measures identified in the Amended Preliminary Ecological Appraisal (Iceni Ecology, April 2022), which is necessary to conserve and enhance protected and Priority species particularly reptiles, nesting bird, bats (emphasis added), Badger, and Stag Beetles. These conditions have been included in the recommendation, and will include a Construction and Environmental Management Plan (CEMP) for biodiversity, and a specific condition seeking details of a lighting scheme and to identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging.

Finally, the APC letter refers to 'inconsistent' application of weight to public benefits and the lack of specific reference to the heritage harm in the Planning Balance section. In terms of the first point, the application of weight is a matter for the ultimate decision maker. The so called 'inconsistent' application of weight is already covered in the paragraphs above, and finally, as outlined in the Heritage section of the report, the heritage harm is outweighed by the public benefits, but the heritage harm is nevertheless still an element of harm in the overall planning balance.

Conclusion

In conclusion, for the reasons outlined in the committee report and this update sheet document that should be considered together by members, the officer recommendation remains unchanged subject to the conditions and heads of terms as outlined in section 1 and section 7 of the Committee Report.