

Objection Statement:

Revised Application B/17/00122 - Hopkins Homes Development, Land North and West of
Capel Community Church, Capel St Mary

6th September 2017

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Planning Direct**

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Instructions

Planning Direct has been instructed by Capel St Mary Parish Council to prepare an objection to the revised Hopkins Homes Outline Planning Application: B/17/00122 - Land to the North and West of Capel Community Church Road Capel St Mary Suffolk.

The Parish Council has also asked Mr Andrew Cann, of Planning Direct, to attend the Babergh District Council Planning Committee Meeting when this matter is discussed of determination.

Capel St Mary Parish Council has already objected to this application. This objection should be read in conjunction with the objection already made by the Parish Council.

5 year housing supply

At the core of both applications Baberghs lack of 5 year housing supply is key. However the issue is not a clear cut as made out by Hopkins.

An email between the council and one and the developer of a former failed application at Capel states:

Email of 27th March 2017

Dear Helen,

I am able to advise that the 5 year supply of land for housing(5YSLH) in Babergh has now fallen below 5 years. This means that the requirements of paragraph 49 of the National Planning Policy Framework (NPPF), now apply to applications for housing development. Para 49 states "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

Our position on supply has fallen because of a number of factors acting in concert. These include the declining annual rate of housing delivery (the numbers built) in the District since 2013. Moreover, since the adoption of the District's Core Strategy in 2014, delivery in the rural area has been managed, amongst other things, through policy CS11. However, following the recent High Court challenge, the interpretation and implementation of the application of this policy is subject to review. In consequence the Council has now received a number of challenges to the Council's stated position on the 5 year supply. Therefore, a draft interim position is now being prepared which will indicate that the supply position has dropped to 3-4 years (depending on whether an estimated new OAN number is used or that stated in the current Local Plan). This interim assessment of land supply will also be informed by the our emerging evidence for the new local plan and the need to respond to the implementation challenges which the District is facing, alongside the increasing emphasis on delivery as set out in the Government White Paper 'Fixing Our Broken Housing Market'.

Subsequent to this email the council reviewed their 5 year housing supply position, 'Babergh District Council: Interim 5 year housing land supply statement' (April 2017). In this document the council states that there is a three year housing supply based upon the emerging OAN and a formal challenge to the published 5 year supply position.

However the council makes plain in the introduction to this report that they intend to adopt as quickly as possible the Governments White Paper ‘Fixing Our Broken Housing Market when regulating the OAN in the future.

The upshot of the 3 years supply position is that Babergh must take into account (**but not exclusively**) the National Planning Policy Frameworks ‘presumption in favour of sustainable development’. The council, indirectly, has indicated it will still take into account ‘relevant Local Plan policies and other material considerations’.

Many developers are currently seeking to rely on the uncertainty regarding the application of local plan (and other material considerations policies) that prevent development to promote speculative schemes. The argument goes that as a council does not have a 5 year housing supply it cannot rely on it’s Local Plan Policies and must let the NPPF *presumption* take precedent. However this is not the case and the Planning Inspectorate have allowed and disallowed planning applications made on this basis. Hopkins make much of the number of appeals won on this basis. They fail to mention that equally a large number of appeals **have not** been upheld despite a lack of a 5 year housing supply.

The matter is now at the Supreme Court:

Suffolk Coastal District Council rejected planning permission for 26 houses in Yoxford in Suffolk, and the refusal was upheld by a planning inspector. The applicant, Hopkins Homes, overturned the decision at the High Court, because the Council had failed to provide certainty about the provision of housing land, and the planning inspector had erred in law when making his decision.

The High Court said that the lack of sufficient housing supply for the next five years left the Council’s Local Plan policies relating to the supply of housing being out of date for planning purposes, which meant weight should only be given to them in accordance with the degree of consistency with the National Planning Policy Framework.

The Court of Appeal confirmed that this included policies which restricted the supply of housing as well as policies that provided for extra housing, even if the proposed development was in the Green Belt. The Court of Appeal was asked to look at the case, because a planning inspector had allowed an appeal for 146 homes in Willaston, near Nantwich in Cheshire. Cheshire East Council had refused permission and then asked the High Court to overturn the planning inspector’s decision.

The Court of Appeal considered both cases together, because the High Court had come to two different conclusions on two very similar cases relating to the same points of law. Last year the Court of Appeal concluded that Paragraph 49 of the National Planning Policy

Framework should be interpreted very widely, and therefore applies to all policies which have the effect of restricting where housing development should go, including the open countryside and Green Belt policies.

In rejecting the Councils' claims that Paragraph 49 only applies to policies relating to the distribution and numbers of houses to be built, the Court of Appeal found that when read in the context of the Government's stated ambition to "boost significantly the supply of housing" then Paragraph 49 clearly should apply to all policies which have the effect of restricting housing development.

The outcome of the case is still awaited and Babergh District Council would be unwise to allow the *presumption* to override legitimate local policy concerns and grant planning permission when the situation regarding applicability of Local Plan Policies, when a 5 year housing supply cannot be demonstrated, has not been determined by the highest court in the land. The Supreme Court could, in effect, issue a judgement supporting the developers here or indeed one that does not and that judgement is due.

Committee Meeting Speech - 5th July 2017.

At the Committee meeting of 5th July 2017 Andrew Cann of Planning Direct made the following speech:

"Members will be aware that the neighbouring authority, Suffolk Coastal, recently won a case at the Supreme Court.

That case, combined with the High Court decision in East Bergholt which went against this authority, mean that this application should not be considered in this way.

Members will already know that the starting point for all planning decisions is the local development plan; this has been underlined in countless court cases, including Suffolk Coastal v Hopkins Homes, and in East Bergholt v Babergh.

Essentially the Suffolk Coastal case means that, even where a 5-year supply of housing land can't be demonstrated, it is a matter for decision takers, not the courts, to decide how much weight to give the development plan policies.

It therefore remains open for this council to follow the narrow approach taken by Suffolk Coastal and endorsed by the Supreme Court, and for members of this committee to uphold their own development plan policies.

It is clear that this proposal is counter to CS2 and CS11, policies which govern the development in the Countryside. Both these sites are outside the built up area boundary.

Your own officers have capitulated to the developers, and told you (incorrectly), that Policy CS11 is up for review following the High Court decision.

The High Court was very clear: interpretation is a matter of law, but they are not to be read like a statute or contract. The Supreme Court underlined that the weight to be given to policies is for decision makers – it is up to you how much weight you give local plan policies.

The correct interpretation of CS11 is that development CAN take place outside the built-up area boundaries if it fulfils the requirements of CS11, and the Council are satisfied that the circumstances are exceptional and subject to a proven justifiable need.

The Council's local plan core strategy Policy CS2 says that:

Core Villages will act as a focus for development within their functional cluster and, where appropriate, site allocations to meet housing and employment needs will be made in the Site Allocations document.

Significantly, CS2 says that “*in all cases the scale and location of development will depend upon the local housing need... and the views of local communities as expressed in parish... neighbourhood plans.*”

CS2 goes on to add that “*In the countryside, outside the town/urban areas, Core and Hinterland Villages defined above, development will only be permitted in exceptional circumstances subject to a proven justifiable need.*”

Meanwhile, Policy CS11 says that

Proposals for development for Core Villages will be approved where proposals score positively when assessed against Policy CS15 and the following matters are addressed to the satisfaction of the local planning authority (or other decision-maker) where relevant and appropriate to the scale and location of the proposal.

The additional matters referred to are: the landscape, environmental and heritage characteristics of the village; the locational context of the village and proposed development; the site location and sequential approach to site selection; locally identifiable housing need – housing and employment and specific local needs such as affordable housing; locally identifiable community needs; and the cumulative impact of development in the area in respect of social, physical and environmental impacts.

As Mr Justice Mittings said, in the East Bergholt case, “only if both requirements [Policies CS2 and CS11] are met should planning permission be granted for a development outside the built-up area boundary of a Core Village.”

It is clear that the High Court case in East Bergholt has a direct applicability to this case. The Council must satisfy itself that building outside the built-up area boundary is necessary in exceptional circumstances.

I don't think the applicants have demonstrated exceptional circumstances to comply with CS2, I don't think they've demonstrated local housing need, and I don't think they have demonstrated that they have given thought to the cumulative impact of development in the area in respect of social, physical and environmental impacts.

Unless members are sure that the applicants have demonstrated that they have satisfied both CS2 and CS11, then the Supreme Court decision on 5-year housing supply, that narrow interpretation of what is and what is not a policy for the supply of housing, makes very clear that it is for the decision maker - that's Members in this case – to decide how much weight to put on local plan policies. I urge you to give maximum weight to these policies in the planning balance, and therefore to determine that the adverse impacts of granting permission significantly and demonstrably outweigh the positive benefits.

If you give sufficient weight to your own policies, and conclude that adverse impacts significantly and demonstrably outweigh the positive benefits, any refusal you make will be lawful and of sufficient rigour to withstand a challenge at appeal.”

Decision of the council: rejection.

The Councillors decided to reject the application and cited that the application was

1. The proposed development, including the erection of 100 dwellings, would be contrary to policies CS2 and CS11 of the Babergh Local Plan Core Strategy, which states that development will only be permitted in the countryside, in exceptional circumstances

subject to a proven justifiable need and that the scale and location of the development will depend upon the local housing need and the capacity of existing physical and social infrastructure to meet forecast demands (CS2) and that for proposals within Core Villages the cumulative impact of development in the area in respect of social, physical and environmental impacts have been addressed to the satisfaction of the local planning authority.

The proposal has not adequately addressed the exceptional circumstances or the proven justifiable need for the development in this location contrary to policy CS2. Furthermore, the proposal would be contrary to policy CS11 having an unacceptable effect and cause harm to local health infrastructure, due to insufficient capacity with no prospect of expansion of the doctors surgery on existing site. In addition, increasing traffic movements along Days Road to the detriment of the locality, due to insufficient provision of footpaths and the impact on existing residents who currently walk or travel along Days Road. The impact on the physical and social infrastructure of the village (schools, healthcare and increased traffic within the village core), which would not secure a good standard of amenity for existing and future occupants of land and buildings.

2. The proposed development, would be contrary to policy CS15 of the Babergh Local Plan Core Strategy, and policies CN01 and CR07 of the Babergh Local Plan, Alteration No. 2 which states that development must respect the local context and character of the district and should make a positive contribution to the local character of the area (CS15) and if planning permission is granted for development in the countryside a high standard of landscaping will be required (CR07) and that proposals must create interesting and attractive public and private spaces in and around the development (CN01). The development would lead to parking on green areas outside of the proposed dwellings, due to the lack of surfaced pavements along unadopted roads.
3. The development fails to secure a good standard of amenity for occupiers of the proposed dwellings contrary to paragraph 17 of the NPPF because there is an unacceptable risk of air pollution as a result of potential odours from the neighbouring Capel Mushroom Farm.
4. The development would represent a significant development of Grade 2 agricultural land contrary to the principles of the NPPF paragraph 112, which states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land, and that consideration should be given to use areas of poorer quality land in preference to that of a higher quality.

The councillors rejected the recommendations of the officers, as they are entitled to do, and concluded that the application was contrary to policies:

CS02 Settlement Pattern Policy, CS11 Core and Hinterland Villages, CS15 Implementing Sustainable Development, CN01 Design Standards and CR07 Landscaping Schemes. The Councillors also concluded that the application was contrary to paragraph 17 of the NPPF (unacceptable risk of air pollution) and and paragraph 112 loss of agricultural land.

Overall it was a very comprehensive rejection of the application based upon the Councillors correct interpretation of planning law with regard to the five year supply and their responsibilities in weighing planning gain versus benefit.

The new application.

Hopkins have revised their application but in small measures:

They have reduced the number of units from 100 to 97;

4 additional car parking spaces have been added (for visitors);

A five bed house has been replaced by a three bed bungalow and a 2 bed bungalow provided on plot 43.

These changes are minimal in scope and fail to address the main issues with the development and indeed the principal of development:

Local Policy does not support the applications.

Babergh District Council adopted the Core Strategy in 2014. That Strategy includes policy CS11 which sets out how development in the Core and Hinterland Villages must be approached.

The Core Strategy provides for 1050 additional dwellings to be located in Core and Hinterland Villages between 2011 and 2031 via Site Allocations. The Site Allocations have not yet been adopted and therefore the councils position is to follow the policy without the allocations at present.

Capel St Mary is a Core Village and as such the criteria for assessment of a planning application includes:

- The landscape, environmental and heritage characteristics of the village
- The locational context of the village and the proposed development (particularly the AONBs, conservation areas and heritage assets)
- Site location and sequential approach to site selection
- Locally identified need – housing and employment, and specific local needs such as affordable housing
- Locally identified community needs
- Cumulative impact of development in the area in respect of social, physical and environmental impacts

Sequential Approach

The application states that it satisfies the sequential site selection requirements of policy CS11.

Hopkins Homes have done a sequential exercise. Their conclusion? Their site is not only the best one available but scores full marks - 5/5! Hopkins claim their site receives full marks despite it not being ideal. The site is over 1km from local services which, whilst Hopkins may believe is 'acceptable' is not. The site, which will generate a lot of traffic to and from the A12, is also at the western edge of the village meaning that all A12 traffic will travel throughout the village adversely affecting traffic issues and the character of the village. Hopkins site may well score well but it does not score 5/5.

The council should take Hopkins assertions regarding the sequential test with a heavy pinch of salt and examine this matter in detail.

Hopkins cannot demonstrate (believably) that they have passed the sequential test and therefore the application should be refused under policy CS11.

Housing mix

The Hopkins application makes much of the various consultations and reports regarding housing mix. This are all carefully noted in the Design and Access statement. The outcome of this is very clear. The priority for housing mix is two and 3 bed homes with a significant number of bungalows. This is the need. Hopkins have recorded this and then ignored it.

Damming themselves with their own report they, in the original application, point out that 29% of the proposed housing mix will be 4 and 5 bedroom homes. Hopkins have therefore demonstrated that they are not meeting the demand and their housing mix is inappropriate. It is of course not surprising that Hopkins seeks to include as many 4 and 5 bedroom houses in their development as possible for commercial reasons but they cannot claim as well to be reflecting the identified need and therefore cannot claim to be complying with policy CS11. The removal of one 5 bedroom house does not address this issues.

The application should be refused on these grounds.

Accident rates on the A12

Whilst a considerable amount of work as been done looking at the impact not the local road network the effect on accident rates on the A12 has received only perfunctory attention.

In the last 5 years there have been 20 accidents in the immediate vicinity of the Capel St Mary junction(s) on the A12. The Highways England I believe have been remiss on not looking at accident rates here.

Clearly there is a high risk of additional accidents which has not been assessed. It is this authors views that the council must require a detailed assessment of accident risk on the A12 in the immediate area before making any decision on this application. It is clear from the evidence given, which is not disputed, that a large proportion of the additional traffic generated by both proposals will use the A12 (there is little other choice) and therefore the effects of this must be assessed.

The application should at minimum be deferred on the grounds pending further investigation.

The former reasons for refusal:

Looking at the former reasons for refusal Hopkins has done little to alter the conclusions of the Councillors:

CS02 Settlement Pattern Policy;
CS11 Core and Hinterland Villages;

The new application does nothing to address the principle of development in Capel which is addressed by policies CS02 and CS11. Councillors have already been very clear on this matter and as there is no change to this the officers must recommend refusal.

The application remains contrary to paragraphs 17 and 112 of the NPPF.

The application fails to make a contribution to the character of the area (policy CS15) and the landscaping remains unaltered and therefore against local policy CR07.

The additional parking should go some way to addressing policy CN01 concerns regarding parking places.

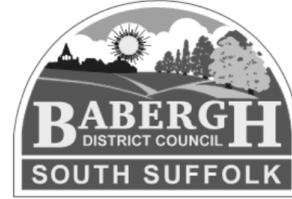
Given how little the applicant has done to make any changes addressing the refusal conditions of the Councillors and given the clear decision of the Councillors to refuse the former application one can only assume that officers will be recommending refusal and councillors ratifying that position.

Appendix 1. Decision Notice.

Philip Isbell - Corporate Manager
Growth & Sustainable Planning

Babergh District Council
Corks Lane, Hadleigh, Ipswich IP7 6SJ

Website: www.babergh.gov.uk



REFUSAL OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015

Correspondence Address:

Armstrong Rigg Planning
The Exchange, Colworth Science Park
Sharnbrook
Bedford
MK44 1LQ

Applicant:

Hopkins Homes
Melton Park House
Melton
Woodbridge
Suffolk
IP12 1TJ

Date Application Received: 10-Oct-16
Date Registered: 13-Oct-16

Application Reference: B/16/01365

Proposal & Location of Development:

Erection of residential development comprising 100 dwellings (including 35 affordable units) with associated vehicular access from Days Road, landscaping, open space, car parking and pedestrian links.

Land North And West Of Capel Community Church, Days Green, Capel St Mary,

Section A – Plans & Documents:

The plans and documents recorded below are those upon which this decision has been reached:

Plans and Documents as set out in **Schedule of supporting documents prepared by Armstrong Rigg Planning received 14th July 2017.**

Section B:

Babergh District Council as Local Planning Authority, hereby give notice that **PLANNING PERMISSION HAS BEEN REFUSED** for the development proposed in the application in accordance with the particulars and plans listed in section A for the following reasons:

1. The proposed development, including the erection of 100 dwellings, would be contrary to policies CS2 and CS11 of the Babergh Local Plan Core Strategy, which states that development will only be permitted in the countryside, in exceptional circumstances

subject to a proven justifiable need and that the scale and location of the development will depend upon the local housing need and the capacity of existing physical and social infrastructure to meet forecast demands (CS2) and that for proposals within Core Villages the cumulative impact of development in the area in respect of social, physical and environmental impacts have been addressed to the satisfaction of the local planning authority.

The proposal has not adequately addressed the exceptional circumstances or the proven justifiable need for the development in this location contrary to policy CS2. Furthermore, the proposal would be contrary to policy CS11 having an unacceptable effect and cause harm to local health infrastructure, due to insufficient capacity with no prospect of expansion of the doctors surgery on existing site. In addition, increasing traffic movements along Days Road to the detriment of the locality, due to insufficient provision of footpaths and the impact on existing residents who currently walk or travel along Days Road. The impact on the physical and social infrastructure of the village (schools, healthcare and increased traffic within the village core), which would not secure a good standard of amenity for existing and future occupants of land and buildings.

2. The proposed development, would be contrary to policy CS15 of the Babergh Local Plan Core Strategy, and policies CN01 and CR07 of the Babergh Local Plan, Alteration No. 2 which states that development must respect the local context and character of the district and should make a positive contribution to the local character of the area (CS15) and if planning permission is granted for development in the countryside a high standard of landscaping will be required (CR07) and that proposals must create interesting and attractive public and private spaces in and around the development (CN01). The development would lead to parking on green areas outside of the proposed dwellings, due to the lack of surfaced pavements along unadopted roads.
3. The development fails to secure a good standard of amenity for occupiers of the proposed dwellings contrary to paragraph 17 of the NPPF because there is an unacceptable risk of air pollution as a result of potential odours from the neighbouring Capel Mushroom Farm.
4. The development would represent a significant development of Grade 2 agricultural land contrary to the principles of the NPPF paragraph 112, which states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land, and that consideration should be given to use areas of poorer quality land in preference to that of a higher quality.

SUMMARY OF POLICIES WHICH ARE RELEVANT TO THE DECISION:

NPPF - National Planning Policy Framework
CS01 - Applying the presumption in Favour of Sustainable Development in Babergh
CS02 - Settlement Pattern Policy
CS03 - Strategy for Growth and Development
CS11 - Core and Hinterland Villages
CS15 - Implementing Sustainable Development
CS18 - Mix and Types of Dwellings
CS19 - Affordable Homes
CS21 - Infrastructure Provision
HS31 - Public Open Space (1.5 ha and above)
CN01 - Design Standards
CN06 - Listed Buildings - Alteration/Ext/COU

CR07 - Landscaping Schemes
TP15 - Parking Standards - New Development

Babergh and Mid Suffolk District Councils have adopted Community Infrastructure Levy (CIL) charging which affects planning permissions granted on or after 11th April 2016 and permitted development commenced on or after 11th April 2016. If your development is for the erection of a new building, annex or extension or the change of use of a building over 100sqm in internal area or the creation of a new dwelling or holiday let of any size your development may be liable to pay CIL and you must submit relevant documents to our Infrastructure Team telling us more about your development, who will pay CIL and when the development will start. You will receive advice on the amount you have to pay and what you have to do and you can find more information about CIL on our websites here:

[CIL in Babergh](#) and [CIL in Mid Suffolk](#) or by contacting the Infrastructure Team on: infrastructure@baberghmidsuffolk.gov.uk

This relates to document reference: B/16/01365

Signed: Philip Isbell

Dated: 21st July 2017

**Corporate Manager
Growth & Sustainable Planning**