

SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
22nd April 2014

Agenda item 4

Application ref 13/00990/OUT

Land rear of Rowley House Moss Lane Madeley

Since the preparation of the agenda report a **further 6 letters of objection** have been received the majority of the concerns raised have already been addressed in the main report. On the matter of the ecological impact of the development a third party has provided comments that have been made to him by Staffordshire Wildlife Trust (which the Trust has not provided the Authority). They are that it is difficult to see how no net loss of biodiversity can be achieved unless more (green) space is provided on site and all gardens and buildings are made as wildlife friendly as possible or an area off-site is enhanced. With this type of development it is very hard to recreate the same type of habitats as are present unless a large enough area is left. The Council needs some ecological expertise to advise them as to the accuracy of the survey report and the overall impacts, some councils buy-in a consultant to help in some cases where they do not have in house expertise. The third party criticises certain aspects of the report and expresses the view that it is essential that the Council seek further independent expert advice.

The other 'new' points are:

- The proposal conflicts with both National and Local Planning Policy
- The proposal has similarity to the recent refused proposal at Baldwins Gate
- Recent appeal decision at Bar Hill and at West Sussex where the appeal was dismissed although the Council could not demonstrate a five year housing supply
- An approval would put the Borough Council in a position where it exceeds its authority and is guilty of procedural negligence placing it in danger of serious legal and financial consequences, most particularly affecting the Council's ability to defend its decision at Baldwins Gate and its position in relation to any claims for an award of costs in those appeal proceedings.

A further letter of representation as been received from **Madeley Conservation Group** raising concerns regarding the potential stability of the adjacent railway cutting.

A further of letter as been received from the **applicants agent** which generally re-emphasises the key issues within the main report, it also advises of a recent planning appeal decision in Cheshire East where the Inspectorate allowed a proposal for residential development at Elworth Hall Farm, Sandbach (94 dwellings). The Council could not demonstrate a five year housing supply. One of the reasons for allowing the development concerned the site's alleged ability to provide housing within the next five years and to reinforce this point the Inspector imposed a reduced time limit condition for the submission of details and the commencement of development. This correspondence also provides some suggested detailed conditions as outlined in the agenda report.

Following reports of trees being felled on the application site, the Borough Council has made a provisional Tree Preservation Order on three trees on the boundary between the field and the existing garden of Rowley House. The trees which are the subject of the Order are a Sycamore and two Birch trees – as indicated in the course of the site visit. None of the trees felled were the subject of a Tree Preservation Order, the arboricultural survey submitted with the application classified them as either Category B or C, some (those classified B) were shown as being retained, others (those classified C) to be removed, but it is understood the Council's Landscape Development Section considered some of the Category B trees in

question to be Category C. According to the agent the immediate requirement to remove them arose as a result of requirements of statutory undertakers .

Your Officer's comments

New issues raised within the letters of objection:-

Is the Council in a position to determine the application without further ecological advice?

The application is accompanied by an Ecological Walkover study report prepared by Leigh Ecology Limited. Enquiries have confirmed the experience and professional qualification of the person involved. The site survey is indicated as following appropriate guidelines. No express reference is provided to the interrogation of the Staffordshire Ecological Records Service, but your officers are checking those Records.

Conflict with National and Local Planning Policy

The agenda report expressly goes through a process of assessing the proposal against both national and local policy in the context of the Council being unable to demonstrate that it has a 5 year supply of housing. As the report indicates paragraph 49 of the NPPF indicates that relevant policies (within Local Planning policy) for the supply of housing should not be considered up to date in such circumstances, and sustainable development should be approved unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole or where specific policies in the Framework indicate development should be restricted. That there is conflict with Local Planning policy on the supply of housing is accepted, but that policy has to be considered, at least for the moment, as out of date

Similarity of this proposal with the recently refused Baldwin Gate decision

Whilst there are some similarities between the two proposals such as the development of the greenfield site outside the existing village envelope, there are also some distinct differences. For example Madeley is identified in CSS as a Rural Service Centre whereas Baldwin's Gate is not, Madeley provides a higher level of facilities and services to serve its community, and the proposal at Madeley does not involve the use of best and versatile agricultural land whilst that at Baldwin's Gate does.

Each application should be dealt with on its own merits and as such this proposal has been assessed and the recommendation reached on the merits of this particular submission.

Appeal Decisions

Whilst the Bar Hill decision is referred in the main report (paragraph 2.11), the other appeal decision referred to (West Sussex authority) whilst verbally reported to the Committee at its previous meeting on 3rd April it has not been referred to in the main agenda report. In that case the Inspector dismissed an appeal for 100 houses on a greenfield site as the proposal was poorly laid out and turned its back on the surrounding area even though the Council could not demonstrate a five year housing supply and their Local Plan was out of date.

The Inspector was satisfied that the impact arising from the layout of the development outweighed any benefits of that particular proposal. It should be noted that the reasons for dismissing the appeal related to a poor layout and its relationship to existing properties.

Members are reminded that the application under consideration is an outline planning application, with all matters reserved with the exception of the means of access to the site and the layout plan provided with the application is for purely indicative purposes. Urban Vision Design Review Panel indicated their conditional support for the development of this site for residential purposes.

The danger of legal or financial consequences if the application is permitted

The assertion made is of a general unspecific nature – reference being made to the Council exceeding its authority, being guilty of procedural negligence and in danger of serious legal and financial consequences. Aside from a complaint about the manner in which the views of the Wildlife Trust were reported, which has been corrected in the current report, your Officer is not aware of the alleged procedural negligence. The application has been appropriately publicised, representations that have been made have been taken into account, and appropriate advice has been sought and taken with respect to a number of issues, including from the Environment Agency and the Highway Authority. There is no reason to consider that the Council if it were to grant planning permission would make its liable to a claim of negligence. The Borough Council as the Local Planning Authority does have the power to approve the application. Any party with an appropriate interest in the matter can apply for a Judicial Review of the decision if they wish, but they would have to demonstrate to the Court the basis for such a challenge. The Council has received no substantive notification of such an intention to seek a Judicial Review and the basis for it.

The argument is put that refusal would undermine the Council's decision with respect to Baldwin's Gate (13/00426/OUT, which is now expected to go to appeal, and could expose the Council to an award of costs. The fundamental principle is that each application (and appeal) should be considered on its own individual merits. As indicated above there are significant dissimilarities between the two cases. It is the case that the first reason given for the refusal of the Baldwin's Gate application refers to that development as being contrary to the targeted regeneration and spatial principles set out in the Core Spatial Strategy. That said the Core Strategy does expect a certain level of residential development within the rural areas, albeit primarily within the village envelopes of the Rural Service Centres. Your officer's view would be that whilst reference might be made by an appellant as to inconsistency a valid counter argument would be that by permitting development such as that at Madeley that it considers to be in a sustainable location the Council is acting responsibly, is taking into account the NPPF, and that such developments assist in the provision of a 5 years supply of housing (and thus strengthen the Council's position where it considers that the harm arising significantly and demonstrably outweighs the benefits of a proposal).

Stability of the railway embankment

Network Rail have been consulted regarding this proposal and have raised no objection to the proposal in respect of the stability of the railway embankment as a result of the proposed development.

The early delivery of residential development on the site

As indicated above the applicant's agent has advised of a recent appeal decision where the Inspector in allowing a proposal for residential development, imposed a reduced time limit condition for the submission of details and the commencement of development. The agent is indicating his client's willingness to accept conditions which would require the submission of the reserved matters within two years of the outline permission date and the development to commence one year after the date of approval of the last reserved matters to be approved, providing a commencement of development within a maximum of 3 years of the approval of an outline permission. This second period is normally 3 years – providing a commencement within a maximum 5 years of the date of the outline consent.

The Authority does have the power to vary such conditions, having regard to the provisions of the development plan and any other material considerations.

There is a justified interest (on the part of the Planning Authority) in giving weight to the probability that if granted housing development does come forward promptly – hence the significance of the correspondence between the applicant and a potential developer purchaser of the site that is referred to in the agenda report. The suggested conditions if imposed might be interpreted as securing an early delivery of the development, however,

Members should be aware that these conditions relate to the commencement of the development only rather than its completion. There is always the possibility that a developer will make a lawful commencement of the development but not then pursue the completion of the development. Whilst there is no reason to consider it will happen in this instance, some developers will make a lawful commencement of development to keep a permission live to then be able to complete the development when market factors are more favourable.

Your officers whilst acknowledging the offer of a shorter time limit to commence the development are not recommending this revised time limit condition.

The recommendations remain one of approval of the application unless the sought for planning obligations are not secured by 20th May, all as detailed in the Agenda Report.