

ADVANCE SUPPLEMENTARY REPORT

TO THE PLANNING COMMITTEE

18th February 2014

Agenda item 4

Application ref. 13/00426/OUT

Land off Gateway Avenue, Baldwin's Gate

Since the preparation of the agenda report, the updated comments of the **Highway Authority** have been received. Their comments are as per those in the agenda report with the additional requirement that demolition/construction traffic does not utilise Sandy Lane/Woodside and confirming that the submitted construction access plan is considered acceptable for its purpose subject to a condition requiring a Construction Traffic Management Plan.

Two further letters have been received from **Whitmore Parish Council (WPC)**. A summary of the comments made is as follows:

- The construction access proposal submitted by Richborough that is accompanied by a copy of an appeal decision should not have been accepted. It appears to be a 'frightener' for the Planning Councillors and an attempt to put them under pressure. The Parish Council went to Moulton (the appeal site) to investigate how it compared with Baldwin's Gate and they have a full report that says it is five times the size of Baldwin's Gate and has five times the facilities and no Class A road is involved.
- The farm site suffered from foot and mouth disease in 1967/68 however there is no mention of this in the application. It is believed that there is a burial site close to the newly proposed entrance and, according to the Foot and Mouth code, could have devastating consequences on a site that slopes west to east and is prone to flooding. Seepage/leakage can escape from such burials for over 100 years.
- During the building of the existing Gateway/Hillview site major flooding issues were encountered. The Inspector, when turning down the last application for development of the site at the end of Gateway Avenue, stated that 'there were technical difficulties of disposing of surface water which had not been resolved'.
- Your officers are seeking to deal with matters by condition where that is inappropriate
- The concerns of the residents of Baldwin's Gate village should be considered and all those in public office should at all times demonstrate a balanced and impartial approach in fulfilling their duties.
- The Parish Council note that vehicles approaching the village travelling towards Newcastle do so down a long straight stretch of road and frequently enter the 30 mph limit at speed. They then have to brake fairly hard in order to slow down sufficiently as they enter a fairly tight bend before proceeding past the proposed access route junction some 100 yards further on. Vehicles are frequently observed straying partly into the opposite land as they come out of the bend. The Parish Council believes that the placing of the proposed construction access in the proposed location on the A53 would present very real danger of frequent vehicle collisions, and request that if the application is permitted, the Highway Authority should be required to install very visible traffic calming measures at the western entrance to Baldwin's Gate for the duration of the construction period..

- The Highway Authority has advised that construction vehicles should not use either Woodside or Sandy Lane. For those travelling from the south, the turning onto the A53 from the A51 at the Swan with Two Necks junction is not suited to such vehicles and so presumably they would have to travel via the A34 Trentham. This route constraint should be formalised by condition.
- The removal of 45m of hedgerow needs to be organised with considerable care due to the legal constraints relating to nesting birds.

Further comments have been received from **Maer and Aston Parish Council**. They object to the proposed construction access road on highway safety grounds.

Three further letters have been received from **Baldwin's Gate Action Group (BGAG)**. A summary of the comments made is as follows:

- The submitted PTB Parking Surveys Document refers to an appeal decision for a site in Moulton and states that the Moulton development and the Gateway Avenue proposal are similar for a number of reasons. Members of the Action Group have been to Moulton, taken evidence from local residents, measured dimensions of road network systems and confirmed details of the appeal with the Clerk of the Parish Council. They have submitted a table which compares the two sites and they comment that Moulton is significantly larger than Baldwin's Gate, the road network at Moulton has been constructed as part of a new housing development and the facilities within Moulton are comprehensive and would enable residents to shop locally for the majority of their needs. There are significant differences in the size, scale and location of the two sites and it would be inappropriate and inaccurate to carry out a direct comparison between the two.
- The Officer's report gives an interpretation of the NPPF but it is just an opinion and open to dispute and challenge. Judgements of adverse impacts and whether they significantly and demonstrably outweigh the benefits are largely a matter of opinion and there have been many appeals which have been refused despite the lack of a five-year supply because greater weight was given to other adverse effects of granting planning permission.
- Two appeal decisions are referred to which are more relevant to the Gateway site than the examples put forward by the applicant – Land to the rear of Nos. 12 and 13 Gaston's Lane, Bower Hinton, Somerset and Land at Bentfield Green, Stanstead Mountfitchet, Essex.
- In the Bower Hinton appeal, the Inspector took the view that demonstrably harmful impacts on the countryside were not outweighed by the Council's lack of a five-year housing land supply, the benefits of the scheme or the NPPF's presumption in favour of sustainable development.
- In the case of the Stanstead Mountfitchet appeal, the housing land supply was reappraised between application and appeal. It is considered that not enough time has been given for other sites to come forward which would be more sustainable and not involve the loss of best and most versatile agricultural land.
- The Group strongly disagrees with the Officer's opinion that Baldwin's Gate is a sustainable location and that this proposal represents sustainable development for reasons stated previously.
- It is suggested that the application should be refused on the grounds of inconsistency with the Development Plan, inconsistency with the principles of sustainable development, inconsistency with the protection of the best and most versatile agricultural land, and non-conformity with the protection afforded to the open countryside and landscape character.

- A witness statement has been submitted confirming the existence of ransom strips at the head of Gateway Avenue and Hillview Crescent. Land registry searches have confirmed that neither the applicant nor the site owners have registered ownership of these strips. Residents who have maintained and tended these strips for 18 years have submitted applications for adverse possession of the strips.

Since the preparation of the agenda report **22 further letters of representation** have been received. A number of the points made are ones already made by other parties – these include concerns regarding land which is reportedly where large numbers of cattle were buried during a foot and mouth outbreak, highway safety concerns regarding the construction access, issues relating to housing policy, flooding concerns, the loss of best and most versatile agricultural land, that the scheme is overdense, that the applicant's photographs are distorted, and that for assorted reasons already documented in the representations section of the agenda report the development is an unsustainable one.

A summary of the **additional points** raised is as follows:-

- Part of the HS2 High Speed Rail project proposes to bring local railway lines and stations back into use and one of the railway stations proposed for reopening is Whitmore. The development jeopardises the proposals to reopen Whitmore railway station on the basis that part of the application site is likely to be the favoured option for the siting of a station car park and access to the station car park will probably need to be made via Gateway Avenue. Any approval for the proposal in order to satisfy a short-term requirement but which might have severe adverse implications for a much larger long-term scheme, is clearly counter-productive and not in the interests of Newcastle Borough as a whole, nor in particular to those communities that might be prevented from regaining a rail service. It would therefore be inappropriate for the planning application to be approved at least until such time that the HS2 Bill is passed by Parliament and the final HS2 route known.
- Examination of 1890-91 and 1925 Ordnance Survey maps shows that the mound at the northern end of the proposed construction access route is a pre-existing feature of the landscape and therefore was not a site for the disposal of animal carcasses during the 1967 foot and mouth disease epidemic, however the mound is a prominent feature in a landscape that otherwise is flat/drops away to the west and it is also very regular in shape. The hill fort of the Iron Age tribe of the Cornovii at Berth Hill lies about a mile and a half away to the south-west of the site. All these factors combine to suggest that the mound could be a site of archaeological interest and should be investigated as such.
- The applicant's Flood Risk Assessment refers to soakaway tests which were supposedly undertaken in June 2013 which was a very dry period. Nothing is soaking away now due to the height of the water table. Two photographic reports have been submitted and residents adjacent to the field are extremely concerned about the future flood risk to their properties. It is queried whether the Borough Council will be prepared to indemnify residents for future flood damage to their properties caused by run-off from the hard surfaces and increase in the height of the water table caused by developing the field.
- Although a number of conditions are recommended, the Borough Council's Report on Open Enforcement Cases shows that the Planning Department's record on enforcement of conditions is inadequate. Residents can have little confidence that the conditions would be rigorously enforced.

Your Officer's comments on the above

The conditions recommended by the Highway Authority are already reflected in the recommendations in the agenda report.

Contrary to the view of WPC, your Officer considers that it was entirely appropriate for the Local Planning Authority to accept the applicant's submission of the construction access route details provided it publicised its receipt and gave an opportunity for interested parties to comment upon the submitted details - which it has now done.

As detailed in the agenda report the Borough Council has received representations concerning the possible presence of an animal carcass burial site along the route of the access, and officers have undertaken consultations with the Environment Agency, the Animal Health Team at Staffordshire County Council and the Environmental Health Division. The applicant has informed the Planning Authority that they have been advised by the landowner that some carcasses were buried to the west of the farmhouse between the farmhouse and the properties on Madeley Road but not in the field where the construction access would cross. The views of the **Animal Health Team** are still awaited, and officers will provide a supplementary report on this matter.

The proposed construction access and the issue of highway safety is considered in the agenda report. The Construction Access Plan document produced by the applicant's Transport Consultant recommends that construction vehicles routing from the A34 (Stone) area and approaching via the A51 continue along the A51 before turning eastwards (at the Swan with Two Necks junction) along the A53 to access the site. Subject to a condition requiring construction traffic to not use Sandy Lane/Woodside, the Highway Authority has no objections to the proposed construction access so they must be assumed to accept use of the Swan with Two Necks junction. The HA do not consider that further traffic calming measures in the vicinity of the construction access are required to ensure a safe access. Further conditions are not proposed by your officer in this respect because there is no substantive reason to dispute the advice of the Highway Authority on this matter.

WPC's suggestion that there be a condition about the timing of works to the existing hedgerow is reasonable and this is reflected in the recommendation made below.

With respect to the case that there may be ransom strips at the end of Gateway Avenue and Hillview Crescent, even if this were established to be the case (which is not the position) it is not material to the determination of the planning application.

WPC refer to a previous appeal decision, presumably the appeal decision dated 5th April 1965. The quotation referred to is not from the decision of the Minister, but rather is an extract from the report to the Minister by the Inspector and it comes from the section headed the "case for the planning authority". The Inspector in paragraph 25 of that report makes a number of 'findings of fact' including "*(h) there are difficulties in the disposal of sewage and surface water from the proposed houses and roads but these difficulties are not insurmountable*". The issue of drainage did not form one of the bases upon which he recommended dismissal of the appeal, or of the Minister's decision.

The adequacy of soak away tests which were undertaken in a very dry period in 2013 has been questioned. Whilst there is detailed guidance available on the undertaking

of soakaway, or percolation, tests this guidance refers to those situations where consideration is being given to the treatment and disposal of sewage without a foul sewer - which is not the scenario in this case. The Report that is referred to states that the soakaway testing was undertaken to BRE Digest 365 methodology which your Officer understands is an industry recognised standard, and there is no evidence that this was not the case. The Local Planning Authority upon receipt of the document referred to undertook a consultation with the Environment Agency. The Environment Agency, in their response to this consultation dated 30th September 2013, raised no concerns about the adequacy of the soakaway tests that were referred to within the document, and they noted that infiltration drainage is possible on the site as means of surface water disposal. The agenda report includes a condition recommended by the Environment Agency - that no development should take place until a surface water drainage scheme for the site, based on sustainable drainage principles, and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority; and that the scheme shall also include details of how surface water runoff up to and including the 1 in 100 year event plus climate changes will be retained on site and details of how any surface water drainage scheme will be maintained. The recommended condition accordingly does not expressly indicate that the submitted Flood Risk Assessment is approved.

It is queried whether the Borough Council will be prepared to indemnify residents for future flood damage to their properties caused by run-off from the hard surfaces and increase in the height of the water table caused by developing the field and it is suggested that it would be culpably negligent for the Council to allow the development. Whilst Local Planning Authorities do not enjoy blanket immunity from claims of negligence arising from the operation of their development control functions, it is your Officer's understanding that development control functions do not involve a duty of care that may give rise to liability as determining planning applications is a regulatory matter in which the authority must act for the benefit of the area as a whole, having regard to policies. In this case having taken appropriate advice and provided it follows that advice, appropriate care has been taken and so no duty of care would arise. Legal advice has been sought on this matter and Members will be provided with an update.

The issues of the sustainability of Baldwin's Gate, the loss of agricultural land and the impact on the landscape have been considered at length in the agenda report and it is not considered necessary to comment any further on these issues now.

The Moulton appeal decision is referred to by the applicant in their Parking Surveys and Site Access document and in response, BGAG state that there are significant differences in the size, scale and location of the two sites that make it inappropriate and inaccurate to carry out a direct comparison between the two. It is acknowledged that the two locations are different in terms of size but the reference to the decision by the applicant relates particularly to consideration of access. There do appear to be some similarities in terms of the limited width of the access (from the main highway, although Gateway Avenue is narrower) and the Inspector's consideration of the issues of increased traffic and on street parking.

Two further appeal decisions have been referred to by BGAG. In the Bower Hinton case, the Inspector concluded that the potential contribution of the scheme to the supply of housing is outweighed by the unacceptable harm that would be caused to the area's character and appearance and in the Stansted Mountfitchet case, the Inspector concluded that the appeal proposal would not meet the environmental dimension of sustainable development and therefore, it follows that the general

presumption in favour of sustainable development does not apply. Whilst it is acknowledged that appeals have been dismissed despite the lack of a 5-year housing land supply, there are many factors that need to be weighed in the balance in each case, and in this instance, your Officer remains of the view that this proposal represents sustainable development and the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal.

Regarding the objection that has been received on the grounds that the development jeopardises the proposals to reopen Whitmore railway station (in that it would use a site that might be used as a car park for a reopened station, or the same access), given the very early stage which the HS2 Phase 2 proposal has reached (the consultation on route alignment has just closed), the possibility that in any event there may be alternative locations for any such facility, and the lack of safeguarding for such a facility within any development plan, it is not considered that this argument can be given any weight by the Planning Authority.

Regarding the alleged site of archaeological interest, the Historic Environment Record (HER) which is a record of all the historic and archaeological sites and finds within the county, includes no record at Baldwin's Gate Farm. In addition, your Officers have visited Baldwin's Gate Farm to view the mound. Contrary to the assertion of the resident, the mound is an irregular 'tear drop' shape and whilst it is approximately 4m in height it slopes more steeply in some places than others, although none of the slopes are particularly steep. There are other undulations within the surrounding landscape. On the basis of what was seen on site and the information on the HER, it is not considered that there is any evidence to suggest that the site is of any archaeological interest.

The visit has confirmed the location of the track relative to the mound. It would run up the ridge of the mound to the highest point. In landscape terms that is not desirable and such an alignment would make it more difficult to achieve an appropriate relationship between the track and adjoining residential properties – simply because of the elevation (about 4 metres above adjoining ground level). A more appropriate route would be along the western side of the mound. Although that would be beyond the current application site boundary, such a proposal could be achieved an appropriately worded negative condition.

The RECOMMENDATION therefore remains as set out within the main agenda report with additional conditions relating to the alignment of the track within the field and the timing of the removal of the hedgerow (to avoid the bird nesting season).