

APPEAL BY RICHBOROUGH ESTATES LTD AGAINST THE DECISION OF THE COUNCIL TO REFUSE OUTLINE PLANNING PERMISSION FOR UP TO 113 DWELLINGS AND ASSOCIATED WORKS AT LAND AT GATEWAY AVENUE, BALDWIN'S GATE

<u>Application Number</u>	13/00426/OUT
<u>Recommendation</u>	Approval subject to prior securing of various planning obligations
<u>LPA's Decision</u>	Refused by Planning Committee 10th March 2014, following site visit
<u>Appeal Decision</u>	Appeal allowed and planning permission granted
<u>Costs Decision</u>	Partial award of costs against the Council
<u>Date of Appeal and Costs Decisions</u>	12th January 2015

The appeal decision

The full text of the appeal decision is available to view on the Council's website (as an associated document to application 13/00466/OUT) and the following is only a brief summary.

The Inspector concludes that the main issues in this case are:

- i. The impact of the proposal on the Council's housing strategy and whether this is a sustainable location for housing; this will include the impact on the form, character and rural setting of Baldwin's Gate and whether the loss of agricultural land is justified;
- ii. The impact on the safety and convenience of highway users in the locality;
- iii. The adequacy of the proposed affordable housing provision; and
- iv. Whether the proposal would give rise to undue flooding of neighbouring properties.

In allowing the appeal, the Inspector makes the following comments:

Housing strategy/sustainable development

- The site is outside the village envelope of Baldwin's Gate, beyond which new housing would be resisted by Policy H1 of the Local Plan (LP). Policy SP1 of the Core Spatial Strategy (CSS) seeks to direct housing to sites within the inner urban core and other significant urban centres. Priority is given to previously developed land where it can support sustainable patterns of development. In the CSS Baldwin's Gate is identified a village where no further growth is planned. The proposal would therefore conflict with the provisions of the development plan.
- Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development and goes on to indicate that where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted except in 2 instances. These are where any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole or where specific policies in the NPPF indicate development should be restricted.
- The broad principles (set out in the LP and the CSS) of directing development towards the most sustainable locations and prioritising the use of brownfield land are broadly consistent with the principles of sustainable development set out in the NPPF
- However the NPPF seeks to boost significantly the supply of housing by a number of means including by requiring LPAs to identify and update annually a supply of specific, deliverable sites sufficient to provide 5 years' worth of housing against their

housing requirements. To this should be added a 5% buffer or 20% where there has been a record of persistent under-delivery.

- Although the Council agreed in the Statement of Common Ground that it could only demonstrate a 3.12 year supply of housing land and that the 20% buffer should apply, the Council's planning witness, Mr Bridgwood, submitted to the inquiry that the Council could demonstrate a 5.29 year supply, based on a 5% buffer. His analysis was based on a re-appraisal of a number of sites excluded from the Council's April 2014 assessments but which he now considers should have been assessed by the Council as being deliverable. This is an unusual situation in which the Council's official position differs from that of its witness.
- It is found unnecessary to examine in detail either the claimed additional supply of housing land or the appellants' counter-argument that the housing requirement should be increased to reflect the full, objectively assessed needs for affordable and market housing. This is because even accepting all of Mr Bridgwood's assertions regarding land supply and housing requirement, he himself accepts that if the 20% buffer is applied, the 5 year supply cannot be met.
- In assessing the correct buffer to apply, it is good practice to look at the Council's housing delivery figures over a significant period of time to iron out short-term fluctuations. The Council's evidence is that the target has been met in only the last 2 of the last 8 years. The fact remains that there is a large cumulative deficit of some 303 dwellings, which amounts to more than a full year's requirement. The evidence clearly demonstrates persistent under-delivery, thereby requiring a 20% buffer to be applied.
- On this basis, the Council cannot demonstrate a 5 year housing supply and therefore the relevant policies for the supply of housing should not be considered up-to-date. The weight given to them, and to the defined village envelope, should therefore be significantly reduced.
- There appears to be no obvious reason why housing delivery should not take place on the appeal site within the latter years of the 5 year period. The Council accepts that this is in a high value rural market with a very high likelihood of delivery.
- The development would have tangible economic benefits in generating jobs, injecting spending into the local economy and contributing to the Council by way of the New Homes Bonus. Whilst some of the above benefits would occur wherever in the District the housing was located, they still amount to a significant economic benefit for the locality.
- There would also be social benefits. The provision of both market and affordable housing in a District that lacks the minimum 5 year supply will contribute to meeting housing needs and help to create a mixed and inclusive community. The education contributions in the planning obligation should ensure no undue detriment to local schools and the provision of public open space and play facilities on site should benefit the whole village. The influx of new residents should help support local services and contribute to the vitality of this rural community.
- Although not one of the 3 defined Rural Service Centres, Baldwin's Gate has a significant range of facilities within walking distance of the appeal site and there are additional services at nearby Whitmore. There is an hourly bus service along the A53 and although it does not run very early in the morning or late at night and is limited at weekends, it still provides the opportunity for the use of public transport for some work and/or leisure trips. Whilst there would inevitably be a high level of dependence on the use of the private car and the thrust of strategic policy is to direct most development towards the main urban areas, this is not a remote, rural location and the journey distances to higher order settlements and facilities are fairly short.
- The development of Baldwin's Gate has largely taken place in the form of small to medium sized post-war housing estates on either side of the A53. These contain predominantly detached houses and bungalows in a variety of sizes and styles. Although the densities vary, the predominant characteristic is of frontage development and in places dwellings are very closely built together. The proposed density, at 26 dwelling per hectare in the developable area, strikes an acceptable balance between reflecting the character of the village housing and making efficient use of housing land.

- In any event, density alone is not a good indicator of the character or appearance of a development. Subject to control over detailed design, form and materials of the development at reserved matters stage, a development of suitably high design quality could be achieved, so long as the principles set out in the Design and Access Statement are followed..
- There is little doubt that the proposal would be a significant encroachment of the village into what is presently open countryside. The site's main role in the landscape appears to be its openness as a foreground to distant views of the hills, when looking outward, and to the village when looking inward.
- Looking out from the village, the proposal would result in a considerable impact on the private views from the adjoining dwellings. However, the indicative layout shows that breaks in the built development could maintain visual corridors to extend public views from the 4 cul-de-sacs that lead out into the countryside beyond. Those walking north out of the village along the public footpath would lose the experience of being in agricultural surroundings for the first 90m or so of entering the site but this could be mitigated to a considerable degree by the proposed landscaped area through which the footpath would pass.
- Walking along the public footpath towards the village, the present village fringe is a mix of garden vegetation interspersed with the hard built form of dwellings and fences. The indicative scheme shows a landscaped perimeter around the proposed dwellings of between 20 to 50 m in depth and whilst it would take time for the landscaping to become effective, in due course it should lead to a more attractive village fringe than at present, consistent with the aims of the Urban Design Guidance SPD.
- From more distant elevated vantage points the visual intrusion would be moderate or slight when the impact of the landscape mitigation is taken into account.
- Accordingly, whilst there would be considerable short term visual harm caused by the development and the construction access, the proposed mitigatory planting would help to integrate the development into the wider landscape without undue harm to the rural surrounds of the village.
- Whilst best and most versatile agricultural land (BMVAL) is an important national resource, there is no information as to whether the Council is aware of deliverable housing sites that could contribute to the shortfall in the 5 year housing supply which are on lesser quality land. The loss of BMVAL however weighs against the proposal.
- In conclusion, the lack of a 5 year supply of housing land is an important material consideration which means that the housing policies in the development plan, including the definition of the village envelope, have significantly reduced weight. Although Baldwin's Gate performs less well than other, larger settlements in terms of accessibility and range of facilities, it can be regarded as a reasonably sustainable location. The intrusion into the countryside and the loss of BMVAL are negative aspects of the proposal but there are economic, social and environmental benefits, most notably related to increasing the supply and variety of housing, which outweigh any harm to the aims of the development plan.

The safety and convenience of highway users in the locality

- The Highway Authority has no highway objections but the Council raised 3 issues in its highways reason for refusal: the inadequate width of Gateway Avenue, the inadequacy of its junction with the A53 and the inadequacy of the junction of the proposed construction access with the A53.
- Gateway Avenue is a residential cul-de-sac which is wide enough to allow 2 cars to pass safely and for a car to pass a refuse vehicle at low speeds, save at the point in the road where there is a very gentle bend. As with any normal residential access road, parked cars would inhibit traffic flow but all the present frontage dwellings have adequate driveway parking and the level of on street parking appears generally low.
- The road has sufficient capacity to accommodate the projected traffic flows. Its limited width and presence of occasional parked cars make it most likely that traffic speeds would remain low. The occasional overrun of the footway by impatient drivers cannot be ruled out but this is likely to be infrequent and at low speed, thereby minimising the risk to pedestrians.

- With respect to the A53, residents pointed to a number of unrecorded traffic incidents but to take account of 'unofficial' statistic would not allow a fair comparison to be made nationally. The A53's accident record does not appear to be unusually high for a village of this type.
- Crucial to the question of the adequacy of the Gateway Avenue junction is whether the visibility standards set out in Manual for Streets (MfS) or those in Design Manual for Roads and Bridges (DMRB) should apply. The junction meets the standards of the former but not the latter. Whilst it would be appropriate to apply the DMRB standards on the A53 generally, it would not be so in this case where it is passing through a built up area with a 30mph speed limit in force. MfS indicates that the application of MfS advice to all 30mph speed limits should be the starting point and a place-sensitive approach should be used to take account of local circumstances. Here, traffic surveys indicate that vehicles speeds on the A53 are not excessive and there is a Community Speed Watch programme in place which, along with other measures set out in the Travel Plan, should ensure this remains the case.
- The proposed pedestrian crossing appears beneficial to the safety of both future and existing residents, particularly as the primary school and both shops are on the opposite side of the road to the proposed development. Moreover it would be an additional feature helping to moderate traffic speeds on the A53. There appears to be sufficient footway width for its efficient operation.
- The proposed construction access onto the A53 appears to have adequate visibility splays for its location and measured traffic speeds. There is a potential hazard in the event that 2 large vehicles were to meet at the entrance but as this is likely to be rare and the drivers would each have elevated driving positions with good forward visibility, it is unlikely to give rise to a highway safety problem.
- The NPPF indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. That does not appear to be the case here and the proposal would not unduly harm the safety and convenience of highway users.

The affordable housing position

- Policy seeks the provision of 25% affordable housing on sites of this size. The appellants seek a hybrid approach to affordable housing provision with 16% provided on site and the balance made up by a commuted sum for provision elsewhere in the Borough. The Council seeks to have the whole of the affordable housing provision on site to provide a balanced and well-functioning housing market. The NPPF indicates that ,where it has been identified that affordable housing is needed, it should be provided on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified
- The appellants submitted an Affordable Housing Delivery Plan which considered local need and supported the hybrid approach. The Council has no up-to-date needs survey for Baldwin's Gate to justify the 25% on-site provision and acknowledges the high level of need for such housing in other areas of the Borough.
- The appellants' hybrid approach is considered entirely appropriate for this site.

Flood risk

- A flood risk assessment has been carried out to seek to address the surface water issue and the intention is to incorporate a sustainable drainage system to limit surface water run-off in storm events. The Environment Agency is content that this matter can be suitably addressed and subject to the design and installation of suitable drainage systems, there would be no undue additional risk of flooding to neighbouring dwellings.
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Conclusion

- The weight to be attributed to the housing policies in the development plan is significantly reduced by the failure of the Council to demonstrate a 5 year supply of developable housing land.
- The NPPF reflects Government policy to achieve a step change in housing delivery and this proposal accords with the aims of the NPPF.
- The test of paragraph 14 of the NPPF is whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF when taken as a whole. The loss of an area of countryside, which is BMVAL, and the likelihood of a high level of private car use are factors weighing against the proposal. However, the benefits of contributing to the shortfall in housing, including affordable housing and the diversification of the housing stock, of contributing to the local economy and to the support of local facilities, are matters of greater weight and lead to the conclusion that the appeal should succeed.

Costs Decision

The Costs decision letter records the submission by the appellants and the response by the Council. The letter is available in full to view on the Council's website (as an associated document to application 13/00466/OUT). The costs application is made because of the Council's unreasonable behaviour with regard to i. the issue of the 5 year housing land supply and ii. the matter of density. In allowing the application for a partial award of costs, the Inspector made the following comments:

- The (National) Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
- The PPG refers on procedural matters "to introducing fresh and substantial evidence at a late stage necessitating...extra expense for preparatory work that would otherwise not have arisen."
- With respect to the issue of the **5 year housing land supply** the Council had agreed a Statement of Common Ground (SOCG) with the Appellants on 15 August 2014 in which the question of housing land supply was expressly addressed. The Council accepted that the appropriate buffer to apply was 20% and that it could not demonstrate a 5 year supply of housing land.
- Had that position remained the case at the inquiry, the appellants would not have needed to address the matter any further. However, the Council's witness, Mr Bridgwood, contacted the appellants 2 days prior to the date for the exchange of proofs indicating that he would be arguing a different position at the inquiry. This position was not supported by any Council publication or internal report, nor did it even appear to be the formal position of the Council. The case promoted by Mr Bridgwood relied upon his own re-appraisal of housing sites in which he came to a conclusion on deliverability which differed from that of the Council in its April 2014 Annual Assessment. He differed from the Council on the use of the 20% buffer and he 'retro-fitted' to the Assessment sites which had obtained planning permission since April 2014.
- The process seemed to be very much 'on-the-hoof' and lacking in transparency and there was little evidence of consultation with relevant interested parties on the developability of sites. There appeared to be little respectable basis for the adoption of a 5% buffer and the use of hindsight to alter the April 2014 assessment appears at best a questionable approach.
- This late introduction of fresh and substantial evidence required the appellants to address the matter of housing land supply and to produce a rebuttal proof. The full list of sites relied upon by Mr Bridgwood was not supplied to the appellants until the first day of the inquiry, requiring additional research to be undertaken during the course of the inquiry.

- On the question of **density**, the reason for refusal relates to the impact on the character of the village. The Council made little attempt to assess the existing character of the village as a starting point from which to evaluate the impact. The evidence said little more than that the proposed density would differ from the existing densities which were set out in the appellant's Design and Access Statement. Yet the appellants produced ample illustrative matter upon which an assessment of character impact could be based and they consulted MADE, an independent design review panel based in Birmingham. The Council failed to provide a respectable basis to justify this reason for refusal.
- In conclusion, the Council behaved unreasonably thereby causing the appellants to incur additional expense. The application for a partial award of costs is allowed.

Your Officer's comments

It is intended to provide by means of a supplementary report comment upon the appeal and costs decisions, it being considered important that the Committee have the opportunity to discuss these decisions at the meeting on the 3rd February and to be able to ask officers for comment on any steps to be taken with respect to these decisions.