

Supplementary Report

Agenda Item 11

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

Your Officer's comments upon the appeal and cost decisions.

1.1 -Members will by now have had an opportunity to read the summaries of the two decisions and perhaps even the original decision letters.

1.2 The application when it came before the Planning Committee on the 18th February 2014 was, subject to the applicant entering into a planning obligation to secure various contributions including ones for education, travel plan monitoring and both on site affordable housing and a financial contribution towards offsite provision, recommended for approval subject to various conditions. In giving that recommendation it was indicated that *"in the context of the Council's inability to demonstrate an up to date 5 year plus 20% supply of deliverable housing sites, it is not appropriate to resist the development on the grounds that the site is within the rural area outside of a recognised rural service centre. The adverse impacts of the development- principally the extension of the village into the open countryside and the loss of best and most versatile land – do not significantly and demonstrably outweigh the benefits of the development, which is sustainable, and accordingly planning permission should be granted, provided the contributions and affordable housing indicated in the recommendation are secured"*

1.3 The Planning Committee had prior to the 18th February held a site visit, which had been attended by 11 members of the Committee and as a consequence it was only those members who were able to take part in the decision on the 18th, although other members of the Committee did make contributions to the debate. The Committee also heard submissions from the local member Councillor Loades, a representative of the Baldwin's Gate Action Group and a representative of the applicant.

1.4 In refusing the application the Committee gave some 10 reasons for refusal. Neither the mover or the seconder of the proposal had discussed with officers their proposal to move refusal, notwithstanding the previous resolutions of the Planning Committee that members are strongly encouraged to do so. The reasons given for the refusal, as moved, were as follows

- 1. Inconsistency with the Development Plan Strategy within the Core Strategy and the Newcastle Local Plan, and with paragraph 17 of the NPPF*
- 2. Inconsistency with the principles of sustainable development as set out in paragraphs 6 to 16 of the NPPF*
- 3. Inconsistency with the protection of best and most versatile agricultural land*
- 4. Non-conformity with the adopted Local Plan proposals map and the protection afforded to open countryside and landscape character(including policies H1, N17, ASP6 and CSP1)*
- 5. Highway safety both with respect to use of Gateway Avenue and the construction access traffic route*
- 6. Overdevelopment by reason of density*
- 7. Potential for flooding*
- 8. Inadequate local services, Baldwin's Gate not being a Rural Service Centre*
- 9. Failure to provide onsite 25% affordable housing*
- 10. Adverse impacts on landscape in general*

1.5 Members will recall that subsequent to the 18th February decision, the Committee agreed to withdraw its reason for refusal relating to flood risk.

The appeal decision

2.1 The approach taken by the Inspector in his decision letter both in terms of his identification of the Key Issues and the conclusions that he comes to broadly follows the approach adopted by your officer in the report given to the Planning Committee at its meeting on the 10th March 2014.

2.2 In terms of his detailed assessment of the issues and without repeating sections of the summary of the appeal decision there are a number of points which it is considered relevant to reflect further upon

2.3 With respect to the **Development Plan** the Inspector noted that local residents had referred to the Whitmore Parish Plan. He observes that this Parish Plan had not been adopted by the Borough Council, appeared to him to have no formal development plan status and furthermore it did not appear, to him, to be consistent with the NPPF. This Member may recall was the advice given to the Committee.

2.4 With respect to the **Housing Strategy/Sustainable development issue** before him having noted that the proposal conflicted with the development plan the Inspector then moves to indicate that the NPPF is a significant material consideration in the case. Of interest at this point is his observation that he was content that the broad principles (within the Local Plan and the CSS) of directing development to the most sustainable locations and prioritising the use of brownfield land are broadly consistent with the principles of sustainable development set out in the Framework. However having indicated this he then proceeds to draw out the full message of the NPPF – its focus on boosting significantly the supply of housing and the key paragraph 49 which states that relevant planning policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a 5 year supply of deliverable housing sites.

2.5 Insofar as the evidence of the Council's witness was concerned the Inspector did not find it necessary to examine in full his claimed additional supply of deliverable housing land or the appellant's counter argument that the housing requirement (a key factor in the calculation) should be increased to reflect the full objectively assessed needs for affordable and market housing. He was able to do this because the Council's witness had accepted that if the 20% buffer is applied, the 5 year supply cannot be met.

2.6 Undoubtedly his conclusion on the buffer issue in paragraph 17 are of considerable importance looking forward to the next calculation in April 2015 of the Council's housing land supply position. Critically the Inspector states "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 own evidence is that the CSS target of 285 dwellings per annum has been met in only 2 of the last 8 years. Even though the Council can demonstrate a surplus in the last two published years, and Mr Bridgwood (the Council's witness) submits that the current year appears to be on a similar upward trajectory, the fact remains that there is a large cumulative deficit of some 303 dwellings, which amount to more than a full year's requirement. To my mind the evidence clearly demonstrates persistent under delivery, thereby requiring a 20% buffer to be applied".

2.7 The conclusion he then draws, not surprisingly is that the relevant policies for the supply of housing – which he identifies as Local Plan policy H1, and CSS policies SP1 and ASP6 "should not be considered up-to-date" and "the weight given to them, and to the defined village envelope" should therefore be significantly reduced. Such an approach is not one that is open to dispute, in that it takes on board the legal requirement, set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 that the determination of an application must be made in accordance with the development plan unless material considerations indicate otherwise.

2.8 A comment in paragraph 21 of the decision letter as to the New Homes Bonus is of interest. In this paragraph the Inspector is considering the economic dimension of sustainable development, following the definition of sustainable development in the Framework. In this context he refers, in considering a list of what he describes as tangible economic benefits, to the development contributing some £1.1 m per annum spending into the local economy by

way of the New Homes Bonus, and he concludes “whilst I accept that some of the above benefits would occur wherever in the District the housing was located, they still amount to a significant benefit for the locality”. Your officer given the advice in the National Planning Practice Guidance on when should a local finance consideration be taken into account as a material planning consideration, and in the light of knowledge, which the Inspector did not have, of the purposes for which the Borough uses New Homes Bonus, was somewhat surprised to see the reference to the New Homes Bonus

2.9 That is not however the Inspector’s final word on the matter. Much latter in drawing what he terms the Planning balance and setting out his overall conclusion it is quite apparent that New Homes Bonus did not factor in his final conclusion.

2.10 Your officers are preparing a report on the consideration of ‘local finance considerations’ for a future Planning Committee to assist members. This is an action referred to in the agreed Planning Peer Review Action Plan.

2.11 There is of course much else in this section of the Inspector’s decision letter on this first issue – some of which is site specific and some with a wider relevance to practice – the above is just a selection of points

2.12 Members will note from the summary of the original reason for the recommendation that officers whilst recommending approval identified two particular elements of harm - the extension of the village into the open countryside and the loss of best and most versatile land. The Inspector’s assessment of these two subissues is of particular interest as a result.

2.13 With respect to the former the Inspector whilst he readily accepts that the proposal would be a “significant intrusion into what is presently open countryside” he eventually concludes after several paragraphs of analysis as follows in paragraphs 36 and 37 *“Accordingly, whilst there would be considerable short term visual harm caused by the new development and the temporary construction access, the proposed mitigatory planting would help to integrate the proposed development into the wider landscape without undue harm to the rural surrounds of the village”*
“Furthermore, to some degree offsetting the visual harm would be the potential improvement to the biodiversity of the site by creating more varied habit and the provision of play facilities, with access for the whole village”.

He later on refers to the intrusion into the countryside as a negative aspect of the proposal

2.14 With respect to the issue of best and most versatile land (BMVAL), it is fair to say that officers viewed this, at least at the time of the determination of the application, as a significant issue that counted against the proposal. The Inspector makes the observation, which does need to be taken into account should the issue occur again, that “whilst BMVAL is an important natural resource, (he had) no information as to whether the Council is aware of deliverable housing sites that could contribute to the shortfall in the 5 year housing land supply which are on lesser quality land”, although he agreed that the loss of BMVAL “weighs against the proposal”. This is a matter which officers will need to reflect further upon and the challenge which providing such information would have involved.

2.15 Paragraph 40 is his key wrapping up conclusion on the first key issue. It justifies being repeated *“In conclusion, the lack of a 5 year supply of housing land is an important material consideration which leads me to the view the housing policies in the development plan, including the definition of the village envelope, as having 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.”*

3.1 With respect to his second key issue – **the safety and convenience of highway users in the locality**, whilst the Inspector’s conclusions are of course critical to his determination of

the appeal the wider implications of the decision are less clear in this respect, although his judgement as to whether the visibility standards set out in Manual for Street or those in Design Manual for Road and Bridges should apply is potentially transferable to other locations.

4.1 With respect to his third key issue – the **affordable housing provision** – it is notable that in coming to a conclusion the Inspector noted that the absence of an up to date needs survey for Baldwin's Gate to justify the 25% on site provision was accepted by the Council and secondly that it acknowledged the high level of need for such housing elsewhere. Possible responses to the situation are being considered and will be the subject of a separate report to a future meeting of the Committee, once the conclusions of the Strategic Housing Market Assessment are known.

5.1 Finally with respect to his fourth key issue – flood risk – the Inspector inter alia notes that the Environment Agency is content that the matter can be suitably addressed and observes “ I have to trust that the statutory authority is competent in its own field and, having been made aware of the local problems, can ensure that the issue will be properly addressed. Planning conditions could ensure that a suitably efficient and effective scheme is installed. In terms of the proposed dwellings, control over finished floor levels should ensure no harm”. As members will know the use of conditions to address issues is a recognised requirement of the planning system, and a failure to do so puts the Council at risk of being considered to have behaved unreasonably.

The Costs award decision letter

6.1 The cost decision letter is more challenging to the Authority, in that in concluding that a partial award of costs is justified, the Inspector is finding that the Council behaved unreasonably, thereby causing the appellants to incur additional expense.

6.2 The details of the Inspector's conclusions in his costs decision have been provided almost verbatim in the Committee report.

6.3 Taking the simpler matter first - that is the failure of the Council to submit evidence on urban design, your Officer accepts that there is a learning point here - in that every effort needs to be made to ensure that evidence covering all the grounds of refusal is presented to support the Council's case in future Inquiries. Officers considered that the matter was covered in the procurement of the Council's witnesses but clearly the Inspector was not satisfied on this point. Notably he was of the view that the Council made little attempt to assess the existing character as a starting point from which to evaluate the impact, but he also in the appeal decision itself pointedly remarks that density alone is not a good indicator of the character or appearance of a development – and that bearing in mind the application was in outline – the Council would have control over detailed matters of design, form and materials at the reserved matters stage. The issue was thus about more than just the procurement of an appropriate witness but also is about the difficulty of evidencing a ground of refusal of an outline application which refers to adverse impact on the character of a locality.

6.4 With respect to the position that the Council's witness adopted in this appeal with respect to the 5 year housing land supply, this was sanctioned by the Council and was expressly on the advice of the Council's barrister. If members wish to explore this matter further it might be possible to arrange at a future date for the barrister to provide an explanation of the position to the Committee, although there would be a not insignificant cost to the Council in arranging this. At the same time the Inspector has identified significant delays in the provision of the full evidence of the Council's witness on the 5 year housing land supply issue to the appellant. This is a matter which will need to be considered and reflected upon very carefully, and it is not appropriate to refer to in detail in a public report, bearing in mind potential contractual issues, and any 'lessons learnt' for future inquiries will then need to be put into practice.

6.5 When the amount to be paid (to the appellant) is agreed a further report will be made to the Committee, and if necessary to Cabinet. Members are reminded that in addition to any costs due to the appellant the Council will have to pay its own costs as well.