

SUPPLEMENTARY REPORT
TO THE PLANNING COMMITTEE
13th August 2019

Agenda item 5

Application ref :18/00507/OUT

Matter of urgency decision with respect to the Croft Farm, Hill Chorlton appeal

Since the report on your agenda about the Matter of urgency decision taken by your Officer was prepared the Council has now received both the appeal decision and a decision with respect to an application for an award of costs against the Council. To complete this item it is considered appropriate to now report these decisions to the Committee and this supplementary report does that

The appeal decision

The appeal has been by decision letter dated 2nd August been allowed and planning permission has been granted subject to various conditions. The application was recommended by your Officer for refusal on two grounds – the reliance upon the private motor car by reason of the site's location significantly and demonstrably outweighing the benefits of the development and the proposal thus being unsustainable, and in the absence of a secured planning obligation the development failing to make an appropriate contribution towards the provision of affordable housing. The application at the 26th February Committee was refused for these reasons and an additional reason that the development would be detrimental to the character and form of existing linear development at Hill Chorlton and to the wider landscape.

In allowing the appeal the Inspector took into account a signed and dated planning obligation relating to the provision of affordable housing.

He determined the main issues in the appeal to be whether the appeal site represents a suitable location for housing, having regard to local and national policy; the effect of the development on the character and appearance of the area; the effect of the development on the provision of affordable housing in the area; and whether there are material considerations sufficient to outweigh any conflict with the development plan and any other harm arising from the development.

Suitability of the location

The Inspector confirmed that in terms of the current development plan the site lies outside any of the areas identified for new open market housing, and therefore the proposal would conflict with policies SP1 and ASP6 of the Core Spatial Strategy (CSS) and Policy H1 of the Newcastle Local Plan (NLP).

Character and Appearance

The Inspector noted that the site slopes significantly down from the A51 and much of it is hidden from public view due the properties either side of the site fronting the road, with the low density of the small group of dwellings that the site falls within, making a positive contribution to the openness and spaciousness of this rural setting.

With respect to the Council's contention that the development would be set back from the road and would not follow the general surrounding linear pattern of development the Inspector did not consider the linear pattern to be a strongly defining character of the area, (and one only discernible when travelling along the A51) and furthermore due to the lower site levels, the likely lower profiles of most of the proposed dwellings (11 bungalows) compared to the surrounding 2 storey properties, and the screening effect of hedgerows, the development would only be readily visible from localised views. Furthermore the density of the

development would be low reflecting the surrounding development and sympathise with its rural setting.

In conclusion with respect to this issue the Inspector found that the proposal would not significantly harm the character or appearance of the area. As such he found it would comply with policies such as CSP1 and CSP4 of the CSS, as well as with policies N17 and N19 of the NLP, and advice contained in the Urban Design Guidance SPD.

Affordable housing

The Inspector noted that the signed and dated obligation before him had two options – the provision of 25% affordable housing (3 units) on site, or the provision of 1 unit on site and a financial contribution of £12,000 towards off site affordable housing provision. With respect to the proposal not to provide all the affordable housing on site the Inspector noted that the Affordable Housing SPD acknowledges that where it can be robustly justified, off-site provision in lieu of on-site provision may be accepted as long as the agreed approach contributes towards the creation of mixed communities in the local authority area.

The Council had confirmed (in its Statement of Case) that the most recent Housing Needs Assessment for the Neighbourhood Plan area indicates that demand for affordable housing is relatively low and therefore the hybrid approach, a mixture of on-site provision and financial contribution is appropriate. Based on the evidence before him he found no reason to conclude otherwise. The Council had also confirmed that the viability appraisal undertaken by the District Valuer (DV) had concluded the hybrid approach was viable, and the Inspector concludes that the provision of one affordable unit on site and a financial contribution of £12,000 towards off site provision to be the most appropriate obligation.

The obligation is necessary to make the development acceptable in planning terms, is directly related to the proposal, and fairly related to it in scale and kind. As such it meets the three tests in Regulation 122 of the CIL Regulations and para 56 of the Framework, and it accords with various development plan policies.

Other considerations

Paragraph 11 d) of the Framework

Although two recent decisions (Gravel Bank and Tadedale Quarry) had found policies ASP6 and H1 to be out of date and attributed little weight, in a more recent decision (Station Road, Onneley) the Inspector in that case had found the general thrust of such policies, to locate new developments towards settlements with a range of facilities and access to public transport, generally accords with the Framework and thus attributed them significant weight. Based on the evidence before him the Inspector here concurred with this view.

The Council stated that it could demonstrate a 5 year supply of deliverable housing land. The appellants disputed this on the basis that there had been consistent underdelivery between 2011-17. Furthermore the 5 Year Housing Land Supply Statement relies heavily upon student accommodation freeing up market housing. The appellants had referred to an appeal decision from Exeter in which the Inspector concluded that student accommodation should not be included as part of the housing land supply as there was no evidence to indicate that this would release market housing. The Council had not, in its Statement of Case, disputed this, and there was no evidence before him to indicate that students would migrate from houses to purpose built student accommodation, particularly to the extent that the Council seem so heavily reliant upon. Based on the evidence before him, given the consistent underdelivery of housing and that the Council rely so heavily upon student housing he found that the Council cannot demonstrate a 5 year supply of housing land.

Given that there is not a demonstrable five year supply of housing land and the most important policies for determining the proposal (policies ASP6 and H1 of the LP) are out of date, paragraph 11 d) is engaged.

Accessibility

The Inspector notes within 500 m of the site are at Slaters two restaurants, a public house, a hotel, a bowling green and multiple craft shops. Baldwins Gate is to the north where there are further shops, services, and facilities. The Inspector finds these to be within reasonable walking distance, approximately a 10 -15 minute walk via a public footpath. Whilst this is reached via an unlit land with no footway, it is a very lightly trafficked lane that only serves a small number of properties. The footpath is well maintained and likely to be useable even in inclement weather. Being unlit the land would not be attractive during the hours of darkness, but this is not uncommon for many footpaths in rural areas. During daylight hours it would be a realistic and attractive walking route for the occupants of the proposed development to utilise. Whilst the Council referred to other appeal decisions where the walking and cycling route to Baldwin's Gate was undesirable, these routes were not along the same footpath but along busy roads, and furthermore in one case the inspector was not provided with details of supermarkets, doctor's surgeries or schools. The appeal site here would be within reasonable walking distance of the surgery (albeit of limited service) and the school in Baldwins Gate, Whilst it was likely that occupiers would use the weekly car to carry out a weekly food shop this is not uncommon in rural areas.

As to the bus service, it is within a reasonable walking distance and it provides a service to and from Market Drayton, Newcastle and Hanlely where there is a wider range of services, facilities and employment opportunities. Whilst he agreed with his colleagues that the service is unlikely to be used by commuters there is a reasonable likelihood that it would be used for accessing various services and facilities in the wider area.

On this issue the Inspector concludes that whilst occupants of the proposed development would likely use the private car for some needs, they would have good access to alternative forms of transport to access many everyday needs. He attributes this significant weight in favour of the proposal.

Previously developed land

Whilst the reuse of this previously developed land involved weighs in favour of the proposal given this only covers part of the site, he attributes it only limited weight

Economic Benefits

The Inspector opines that the proposal would create some economic benefit during construction, and the occupants would likely utilise local shops and facilities thus contributing to the local economy. However given the scale of the development this is attributed only moderate weight

Social benefits

The proposal is for occupants aged 55 or over and would make a positive contribution to meeting a need identified in a Neighbourhood Plan survey, and as such that should be attributed moderate weight. The contribution the proposal would make to the provision of affordable house is a further benefit

Planning balance

The Inspector finds conflict with the development plan, but policies ASP6 and H1 are out of date. Furthermore he has found the Council cannot demonstrate a 5 year supply of deliverable housing land. In such circumstances the Framework states that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The Framework is an important material consideration.

The proposal would be located in an accessible location that would provide alternative forms of transport to the private car. Furthermore it would provide 11 additional dwellings, which

would contribute to an identified need in the local community and make a contribution towards affordable housing in the area. Moreover there would be economic benefits and there would not be any significant harm to the character and appearance of the area.

Overall he reasons, whilst the proposal would conflict with the development plan, the adverse impacts of doing so would not significantly and demonstrably outweigh the social and economic benefits of the appeal scheme, when assessed against the policies of the Framework as a whole. Consequently the proposal would represent sustainable development as defined in the Framework. Taking account of the Framework and the benefits of the development, he finds that material considerations indicate that planning permission should be granted for the development, despite the conflict with the development plan..

The costs decision

The appellants sought an award of costs against the Council on the grounds that the DV's report which they had incurred costs in paying served no purpose whatsoever. The Inspector notes that the DV's appraisal concluded that the scheme could provide one affordable dwelling on site and a contribution of £12,000 towards off-site provision. By entering into the S106 agreement the appellants accepted this position. The appraisals including that of the DV did in the view of the Inspector serve a purpose and in any case these costs were not incurred during the appeal process. Unreasonable behaviour resulting in unnecessary expense during the appeal process had not been demonstrated and accordingly an award of costs is not justified.

Your Officer's comments on the appeal decision

The appeal decision is disappointing. It is apparent that the Council was unable to persuade the Inspector of the central part of its case – that this is not a location which is sufficiently accessible to services to avoid significant use of the private motor car. The Council had already conceded that it accepted that paragraph 11 d) of the Framework was engaged and having failed to convince the Inspector that there was any material harm, the appeal decision followed.

The decision is noteworthy in that the Inspector has seen fit to conclude that the Council cannot demonstrate a 5 year supply of deliverable housing land. This is the first such decision since the publication last September of the Council's latest supply statement

The Inspector with respect to the 5YHLS position refers to the Council not disputing certain evidence presented by the appellant and that there is *"no evidence before (him) to indicate that students would migrate from houses to purpose built student accommodation, particularly to the extent the Council seem so heavily reliant upon"*. *"Based on the evidence before (him), given the consistent underdelivery of housing and that the Council rely so heavily upon student housing (he finds) that the Council cannot demonstrate a five year supply of housing land"*. He then in paragraph 21 concludes that *"given that there is not a demonstrable five year supply of housing land and that the most important policies for determining the proposal (Policies ASP6 of the CSS and H1 of the LP) are out of date, paragraph 11d) of the Framework is engaged"*.

The Inspector's reference to consistent underdelivery concerns your officer – for the following reasons:-

- 1) The Council's housing land supply calculation (as set out in its supply statement agreed in September 2018 setting out the position as at 1st April 2018) does take into account, as required, the issue of underdelivery.
- 2) Footnote 39 to NPPF paragraph 73 (c) indicates that "significant underdelivery of housing over the previous three years" means from November 2018 where a Council's Housing Delivery Test (HDT) result has been below 85% of the housing requirement, and the paragraph itself indicates that where there has been "significant underdelivery of housing over the previous three years" the supply of specific

deliverable sites should in addition include a buffer (moved forward from later in the plan period).

- 3) The Council assumed on the basis of estimates, in preparing its supply statement in September 2018, that it would receive a November 2018 HDT score of less than 85% and accordingly the Council used a 20% buffer to ensure a robust assessment was provided.

There is therefore a degree of “double counting” within the Inspector’s decision

As it turned out Newcastle when the Housing Delivery Test 2018 measurements were announced in February 2019, in part as a result of the transitional provisions, was calculated to have delivered 100% of its “requirement” over the last 3 years, and it could arguably have assumed a lower buffer of 5% - (giving it a supply of 6.2 years rather than the 5.45 years claimed in the Supply Statement).

Your officers relied upon the agreed 5 year housing land supply statement and in retrospect this may not have been sufficient. Inevitably the decision was made by the Inspector on the basis of the evidence that was before him.

In any case it is recognised that account will need, when the next 5YHLSS statement is produced, to take further account of the definition of deliverable land and emerging case law. Guidance suggests that such statements should normally be prepared on an annual basis.

Insofar as whether there is an undue reliance upon student housing in the supply calculation the Inspector came to his view on the basis of what was before him. It is of interest that in a very recent appeal decision relating to land off Meadow Lane, Trentham, Stoke-on-Trent, the Inspector addressing a similar concern that building new student housing produces no benefit to the general housing stock, concluded that seemed to him to be an unlikely outcome and that he saw nothing in the Planning Practice Guidance that would justify such an approach. The Inspector comments that rather, what the PPG advocates is that such a contribution is recognised, based on a realistic, evidence-based assessment, and that this is reflected in the overall housing figure. In that case the Inspector concluded that a figure of 702 dwellings resulting from new student housing should be accepted as part of the City Council’s 5 year supply. The Borough Council will need to take this on board when it prepares its next 5 year housing land supply statement. This is not a simple matter.

The revised recommendation with respect to this item is now as follows:

- A. **That the decisions of your Officer taken on 5th July under the Matters of Urgency provisions, following consultation with the Chair, that:**
 - a) **the Council should agree to enter into a Section 106 agreement that secures 25% affordable housing on the appeal site, should the appeal be allowed;**
 - b) **the Council enter into an agreement that secures, in the alternative, one affordable dwelling on site and a payment of £12,000 (for offsite affordable housing provision), should the appeal be allowed, and that its position in such negotiations be that the agreement include a financial reappraisal mechanism in the event of the development not being ‘substantially commenced’ within 18 months of the grant of the outline planning permission;**
 - c) **if the appellant refused to include such reappraisal mechanism the Council still be prepared to enter into the agreement; and**
 - d) **officers had authority in commenting upon any agreements that may be submitted by the appellant to the Planning Inspectorate to put the case to the Inspector for the inclusion of a financial reappraisal mechanism;**

be noted.

B. That the appeal and costs decisions now received be noted, and

C. That your Officer’s comments above on the appeal decision be noted

