

**APPEAL BY MR PETER BOWER AND DAVID WILSON AGAINST THE DECISION OF THE COUNCIL TO REFUSE FULL PLANNING PERMISSION FOR THE DEMOLITION OF EXISTING STRUCTURES ON SITE AND RE-DEVELOPMENT FOR FOUR RESIDENTIAL UNITS AND ASSOCIATED WORKS AT BALTERLEY GARDEN CENTRE, BALTERLEY GREEN ROAD, BALTERLEY**

<b><u>Application Number</u></b>	<b>19/00923/FUL</b>
<b><u>LPA's Decision</u></b>	<b>Refused on the 13<sup>th</sup> March 2020</b>
<b><u>Appeal Decision</u></b>	<b>Allowed</b>
<b><u>Costs Decision</u></b>	<b>Refused</b>
<b><u>Date of Decisions</u></b>	<b>26<sup>th</sup> October 2020</b>

**Appeal Decision**

The Inspector identified the main issues to be whether the appeal site is in a suitable location for residential development having regard to local and national planning policy and the effect of the development on the Black Firs and Cranberry Bog SSSI and Midlands Meres and Mosses Phase 2 Ramsar site.

Subject to the imposition of conditions, the Inspector considered that the proposal would not adversely affect the integrity of the SSSI/Ramsar site.

He concluded that whilst the development is outside of the village envelope and would be contrary to the development plan in this regard, the policies which are most important for determining the application are out of date. In these circumstances, Paragraph 11 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

In addition to the conflict with the development plan, the Inspector considered that the appeal proposal would have relatively poor accessibility to services, facilities, and public transport, and future occupiers would be reliant on the use of a private car. However, he acknowledged that it would replace an existing retail use that generates significantly more car journeys. The development would therefore result in a significant reduction in vehicle movements in the area and would remove a busy retail use from a rural location. It would also provide 4 new dwellings on a previously developed site, and there would be some economic benefits generated during the construction phase. The Inspector attached significant weight to these benefits.

Overall, it was concluded that whilst there would be some conflict with Paragraph 103 of the Framework, the adverse impacts of development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this case, the conflict with the development plan would therefore be outweighed by other material considerations.

**Costs Decision**

The appellant submits that the Council has acted unreasonably in that it failed to have regard to a recent appeal decision relating to its 5 year supply position, that it failed to provide all relevant information to Natural England, and did not act promptly to withdraw its second reason for refusal when new information was presented. Moreover, it is asserted that had the Council acted differently, then the appeal could have been avoided altogether.

The appeal decision referred to was issued on 2 August 2019 and concluded that the Council was unable to demonstrate a 5 year supply of deliverable housing sites. Despite this, the Council has maintained that it is able to demonstrate a 5 year supply in its submissions.

However, in doing so it has provided reasons why the situation had changed since the previous decision, including with reference to the results of the Housing Delivery Test 2018. Moreover, it is common ground that the policies which are most important for determining this appeal are out of date, and so Paragraph 11 d) of the Framework is engaged in any case. It is therefore unclear that an inability to demonstrate a 5 year supply would have significantly altered the planning balance in this case.

Whilst relevant material may initially have been overlooked, that does not appear to be the result of any action taken by the Council. In any case, from the email exchanges that have been submitted, it is clear that further work would have been required in any event. Whilst the Council could have allowed additional time for this matter to be resolved prior to its determination, there would have been little point in doing so if it had already concluded that the scheme was unacceptable on other grounds, as was the case here. Accordingly, the Inspector did not consider that the Council acted unreasonably in this regard.

The Council did not respond to an email that advised of an imminent appeal and included further correspondence with Natural England. However, the Officer who dealt with the application had left the Council by that point and so this email was not picked up. Once the Council became aware of this, it entered into discussions that ultimately led to the second reason for refusal being withdrawn. The Inspector did not consider that the Council acted unreasonably in relation to this matter.

Even if the Council had agreed that it could not demonstrate a 5 year supply, and had not included the second reason for refusal, it is not clear that an appeal would have been avoided. In this regard, the Inspector noted that the Council continued to defend its first reason for refusal even after it had withdrawn its objections in relation to ecology.

The Inspector concluded that he did not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, had been demonstrated.

The planning decision setting out the reasons for refusal and the Appeal Decision and Costs Decision in full can be viewed via the following link

<https://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/19/00923/FUL>