

**FIRST SUPPLEMENTARY REPORT**  
**TO THE PLANNING COMMITTEE**  
**11<sup>th</sup> OCTOBER 2022**

**Agenda Item 4**

**Application Ref. 21/01041/OUT**

**Baldwin's Gate Farm, Newcastle Road, Baldwin's Gate**

A further objection has been received from a consultant writing on behalf of **Whitmore Parish Council** still raising concerns over the lawfulness of the officer report and recommendation on the following grounds:

- The fact that local plan policies may be out of date is not relevant in considering whether neighbourhood plan policies are out of date. Policy HG1 was found to meet the basic conditions, including having regard to national policy and guidance. There have been no changes to national policy or guidance that would make the policy out of date. The scheme is clearly contrary to policy HG1.
- Having regard to Paragraph 11 of the National Planning Policy Framework 2021 (NPPF) and footnote 8, there is no basis for application of Paragraph 14. There is a 5-year land supply.
- Clearly the fact that the Neighbourhood Plan is more than 2-years old is not relevant, given the current 7.3 year land supply.
- We have been involved with more than 150 neighbourhood plans and 4 national programmes. We are aware of no other local authorities that are applying NPPF Paragraphs 11 and 14 in this way.
- It is requested that the application be refused. Given the policy conflict, it is confusing and surprising that the local planning authority is so keen to approve the application. Inconsistent application of planning policy does little to maintain community confidence. However, concerns are not just over different planning judgements, but also legal compliance.

Three objections have been received from **Chapel & Hill Chorlton, Maer & Aston and Whitmore Neighbourhood Development Plan Steering Group**.

One states as follows:

- The agenda report statement that "*The NDP was prepared based upon the requirements of the now out of date position set out within Policies H1 and ASP6*" is incorrect.
- Supporting evidence for Policy HG1 cites and reviews the following evidence that was available and up to date at the time of drafting the Plan policies:
  - June 2017 SHMA update;
  - Government consultation: Planning the right homes for the right places (September 2017);
  - Five year housing land supply 2018–2023;
  - JLP Preferred Options Consultation February 2018, including:
  - Strategic Housing Land Availability Assessment;
  - Housing Technical Paper.
- The housing target for the NDP was based on a proportional share of the overall housing need identified for the borough.
- The NDP was thus prepared on the basis of requirements for the then emerging Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan.
- The NDP passed Independent Examination in August 2019 and was found to meet the Basic Conditions.
- Until such time as a new Local Plan has passed Public Examination and been adopted, Policy HG1 of the NDP is the most up-to-date policy for housing growth in

the Neighbourhood Area of the Chapel and Hill Chorlton, Maer and Aston, and Whitmore NDP.

The second states as follows:

- The Steering Group has been monitoring housing growth in the Neighbourhood Area since the commencement date of the Plan, 1 April 2013.
- To date, planning permissions have been granted for 181 new dwellings in the Neighbourhood Area. Of these, 170 have full permission and 11 are in outline. Of the 170 with full permission, at least 133 are known to be either completed or currently under construction.
- The Neighbourhood Plan specifies a range between 148 and 220 new dwellings to meet the Neighbourhood Area's contribution to the Borough.
- Newcastle-under-Lyme Borough Council made no comment on these numbers when its Planning Department reviewed and commented on the draft Plan at Regulation 16.
- The report of the Independent Examiner states: "The Neighbourhood Plan places no cap or limit on the number of homes that can be provided within the Baldwin's Gate village envelope. I conclude Policy HG1 will not lead to the Neighbourhood Plan promoting less development than set out in the Local Plan, as required by paragraph 29 of the Framework."
- The Steering Group notes that although Newcastle-under-Lyme has published Strategic Housing Market Assessments (SHMAs) in 2015, 2017 and 2020, the two earlier SHMAs have been superseded and the 2020 SHMA has not yet been tested at Public Examination.
- It is therefore concluded that the range of 148 to 220 new dwellings specified in the Neighbourhood Plan and accepted by the Independent Examiner represents the only up-to-date target for development of new housing in the Neighbourhood Area for the Neighbourhood Plan's period of 2013–2033. Further, it is noted that the parishes of the Neighbourhood Area have been delivering on and exceeding their housing target for the Plan period.

The third letter states as follows:

- The Council has a legal duty in relation to bat roosts on the site that would be destroyed by the demolition of buildings to make way for the development.
- The Council needs to be aware of the judgment in *R (on the application of Simon Woolley) v Cheshire East Borough Council and others* [2009] EWHC 1227 (Admin), 5 June 2009, in which the High Court quashed the local planning authority's decision to grant planning permission authorising demolition of a property containing a pipistrelle bat roost (a European protected species (EPS) under the Habitats Directive (92/43/EEC)).
- It is clear that the LPA will not have discharged its duty simply by conditioning that a licence be obtained from Natural England. And that the officer's report to the planning committee should identify and make clear the legal duty, such that the planning committee can seek to discharge it.

#### Officer's comments

The issues raised by Whitmore Parish Council are addressed in detail in the agenda report and it is not considered necessary to respond again.

In response to the comments of the Steering Group, at the time that the Neighbourhood Plan was examined, it was found to be in accordance with the Basic Conditions, one of which was to be in general conformity with the strategic policies of the adopted Local Development Plan, which would have included Policies H1 and ASP6. Those policies have since been found to be out of date in a number of appeal decisions. The 2009 Joint Core Spatial Strategy housing target is not formed on up to date evidence. Other reference documents cited in the representation are also no longer up to date including the 2017 SHMA (which was an update to the 2015 SHMA, not formed using the government's standard methodology). The

Neighbourhood Plan was formed using the most up to date information available at that time, but it is not incorrect for the Council to note that Policies H1 and ASP6 are out of date.

The 2020 Housing Needs Assessment is the only evidence which uses the government's standard methodology as a basis for calculating housing need. The process of Local Plan Examination is not required to validate the housing need figure of 350 dwellings per annum for Newcastle-under-Lyme Borough as this is the minimum housing need figure calculated using the standard methodology. It is the only borough housing need evidence which is up to date and national policy compliant, and all former evidence, including the 2015 SHMA and 2017 update, are out of date.

The Steering Group have effectively monitored the implementation of the plan policies and it shows that permissions and delivery is in line with the stated Neighbourhood Plan target. The Council does not contest this point. However, the borough wide housing need calculation has changed since the Neighbourhood Plan was adopted and the context in terms of land supply and potential distribution of development has altered.

Regarding the protection of bat roosts, Officers are aware of the Simon Woolley v Cheshire East Borough Council case. However, there have been various more recent court judgements which state that the position in Simon Woolley v Cheshire East Borough Council case went too far and that the LPA was in fact not expected to duplicate the licensing role of Natural England. In a Cheshire East Council v Secretary of State for Communities and Local Government, Rowland Homes Ltd [2014] EWHC 3536 case the judge stated that "It is not to be expected or inferred that the need to have regard to the requirements of the Habitats Directive requires a planning inspector to make a detailed assessment of matters that are primarily the responsibility of another body (ie NE)".

As set out in the main agenda report, Officers are satisfied that subject to the imposition of a condition requiring appropriate mitigation, an objection could not be sustained on the grounds of ecological impact.

**The RECOMMENDATION remains as set out in the main agenda report.**