

## SCRUTINY COMMISSION – 27 OCTOBER 2011

### REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION) RE: PLANNING AND ENFORCEMENT APPEAL DECISIONS

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#### 1. PURPOSE OF REPORT

To inform Members of the Planning and Enforcement appeal determinations that have been made contrary to the decision of the Local Planning Authority.

#### 2. RECOMMENDATION

The report is noted.

#### 3. BACKGROUND TO THE REPORT

Since the last report to the Scrutiny Commission in July 2010 there have been 12 appeal decisions made by the Planning Inspectorate. 3 appeals allowed, 6 appeals dismissed and 3 were withdrawn.

**Of those allowed 1 was an officer recommendation to committee where members decided to overturn the officer's recommendation and 1 was based on recommendations from the Local Highway Authority who withdrew their objection prior to the public inquiry.**

#### 4 APPEALS ALLOWED

##### 4.1 **Appeal by Flude Family Settlement 2004 against the refusal of outline planning permission (10/00661/OUT) for residential development (outline – access only) at land adjacent to Hinckley Golf Club, Leicester Road, Hinckley.**

4.2 In relation to this appeal, the Inspector considered the main issue to be whether in light of material considerations there is a pressing need to release the site in terms of housing land supply.

4.3 The Inspector considered that since the decision was made to refuse this application in December 2010 there has been a downwards trend in housing supply in a very short period of time. The council has accepted that it is below the required five year housing land supply needed. When a local authority cannot demonstrate a five year supply of deliverable sites they should consider favourably planning applications for housing as stipulated in PPS 3.

4.4 The matter of housing land supply was considered by the Inspector in the final report on the examination into the Core Strategy. Although it was acknowledged there would be a shortfall, this would be made good in the years post 2017/18 when the Sustainable Urban Extensions (SUEs) would come fully on stream. However, delays in progressing the Site Allocations document and impediments to developing the Area Action Plan for Earl Shilton and Barwell were noted by the appeal Inspector.

4.5 The Inspector considered that the need to overcome constraints regarding the uncertainty of decommissioning the Waste Water Treatment Works reduced the developable area for housing within the SUE. It was considered by the Inspector that there is a strong chance the SUEs will not deliver the projected 4150 dwellings in the plan period up to 2026.

- 4.6 With reference to the Core Strategy Inspector's report, it was always anticipated there would be a shortfall of housing land in the early years of the plan. Nevertheless, this period of shortfall looks to continue beyond that originally anticipated. When combined with the present situation of a falling housing land supply, the appeal Inspector noted that the issue starts to become more worrying.
- 4.7 The appeal site before the Inspector was considered to form a remedy as part of a wider contingency strategy reviewing sustainable sites identified in the SHLAA, where this site is identified as being achievable, available and deliverable.
- 4.8 The Inspector took the view that whilst recent appeal decisions have considered housing land supply issues in the borough and found the lack of housing to not be an overriding reason to permit further development, it was pointed out by the Inspector there have been a number of material changes in circumstances since then. These changes include the delay in delivering the SUEs, the shortfall of housing land supply that has increased dramatically over a short space of time and importantly it was stressed the other recent appeal sites are within areas defined in the development plan as lower order settlements.
- 4.9 The Inspector was of the opinion that this proposal would remedy the slippage in the Borough wide housing land supply. The proposal would accord with Core Strategy Policy 1 and the clear objectives of PPS3.
- 4.10 The need to release the land to make up the housing land supply was considered against the effect of development on the character and appearance of the surrounding area (including the Green Wedge). The appellants case, as presented to the Inspector, was that there is no material role of the appeal site in any of the defined functions of the Green Wedge as set out in Policy 6 of the Core Strategy. The appeal site currently contains crops and is not accessible to members of the public. It does not fulfil the functions of providing a 'green lung' or a recreational resource.
- 4.11 By contrast large parts of this Green Wedge do fulfil these roles including the adjacent golf course, sports ground, Sheepy Wood and Burbage Common which is accessible to the public. Development of the site would not result in the coalescence of Hinckley, Barwell and Earl Shilton.
- 4.12 The Inspector drew upon the SHLAA review where it was concluded the site would provide a natural extension to the settlement boundary and took the view that the location of Hinckley Golf Club already acts as a green space between Hinckley and Barwell. Indeed, the Inspector agreed the proposal would extend housing out along Leicester Road to only a marginal degree, given the position of dwellings on the opposite side of the road. The development could be viewed as 'infilling' between existing built development and would be appropriately landscaped.
- 4.13 On balance the loss of this part of the Green Wedge would be acceptable and would not result in pressure to release other parts of it, which are materially different. A well designed housing scheme would not harm the character and appearance of the surrounding area, including the green wedge.
- 4.14 Other matters were then addressed by the Inspector regarding local concerns about loss of privacy, highway safety, and surface water drainage problems all of which were considered and could be mitigated. Noise and traffic resulting from the development will not be unduly harmful.
- 4.15 The Inspector considered that on the basis of the detailed evidence provided by the Council, the provisions in relation to affordable housing, footpath improvement works, public transport, library facilities, primary care trust, civic amenity, public open space, the provision of bus stops and raised kerb works and the education contribution are

necessary, relevant to planning, directly related to the development and would fairly and reasonably relate in scale and kind to the development. As such, they meet the tests of Circular 5/05 and also those set out in CIL Regulations 122. However, the Inspector considered the travel pack contribution and bus passes unnecessary to make the development acceptable and these were not requested.

- 4.16 There is a noted difference in the assessment by this Inspector of the acceptability of contribution requests when judged against the tests in the CIL Regulations and when compared with previous decisions, particularly in relation to Library, Civic Amenity and PCT requests. Officers will need to review the approach to such requests in light of this decision and to assess whether the current approach and interpretation needs to be amended
- 4.17 In summary the proposal is not considered to harm the character and appearance of the surrounding area including the green wedge. Given the Council's lack of a demonstrable 5 year supply of housing land there is a pressing need to release this sustainable site for housing in Hinckley. It is important to note the Inspector's reference to the written ministerial statement, 'Planning for Growth' which he gave substantial weight to.
- 4.18 **Inspectors Decision:** Appeal allowed (committee decision)
- 4.19 **Appeal by Mr John Knapp against the refusal of outline planning permission (09/00915/OUT) for the erection of 62 dwellings and associated access at land south of 26-28 Britannia Road, Burbage.**
- 4.20 The Inspector considered there were two main issues, the first was the effect of the proposal on highway safety and the second was whether in light of the prevailing housing supply situation in the Borough; the site should be brought forward for housing.
- 4.21 In relation to the first issue, there were two different aspects to the concerns expressed about the proposal in terms of highway safety. The first was the impact of additional traffic that would be generated by the proposal on Britannia Road and its environs.
- 4.22 With regards to the methodology employed by the appellant on measuring the volume of traffic on Britannia Road and Freemans Lane the Inspector went along with the Highways Authority's expressed satisfaction and saw no good reason to differ from their conclusions.
- 4.23 It was made clear by the Inspector that housing development of this kind will generate additional traffic passing along Britannia Road and the surrounding junctions. For this reason the Inspector addressed the concerns raised. After conducting on-site observations, it became evident to the Inspector that people do park vehicles awkwardly and this does restrict movement of vehicles. Nevertheless, this is not an unusual situation locally or nationally. Indeed, it was considered by the Inspector that this can have the positive effect of slowing down traffic, to the benefit of highway safety.
- 4.24 In relation to the concerns expressed about the adequacy of the proposed visibility splays at some of the junctions, the Inspector concurred with the appellants approach that junction improvements can be secured by condition. If the highway authority is satisfied that they could accept the additional traffic generated by the development without detriment to highways safety the Inspector saw no reason to disagree with their professional assessment.

- 4.25 The second aspect related to the access into the site from Britannia Road and circulation within the site. Concerns were raised at the appeal about the junction proposed with Britannia Road but the Highways Authority expressed their satisfaction with it and took the view that having regard to technical documents (Manual for Streets), adequate visibility would be available.
- 4.26 The Inspector then had regard to what was termed a 'pinch point', which was used to describe the section where the access road narrows a little as it passes between existing dwellings. It was considered by the Inspector this would still be of a width adequate to allow the safe passage of pedestrians and traffic, including emergency vehicles or waste collection vehicles. Subject to suitably worded conditions, the proposal need cause no difficulties in terms of highway safety in the area around the site, or within the site itself.
- 4.27 As with the Leicester Road appeal decision, the second issue was the Councils lack of a 5 year supply of housing. Again the Inspector referred to PPS3 stating that if an up-to-date five year supply of deliverable sites cannot be demonstrated, planning applications should be considered favourably.
- 4.28 The decision was considered against whether the landscape structure of the land falls within Landscape Character F of the Councils Character Assessment, the weight to be given to development in the countryside and changes to village character. The following policies and documents were considered relevant; Core Strategy Policy 4, Local Plan policies NE5 and RES5 and the Burbage Village Design Statement.
- 4.29 Taking the above policies and documents into account, the Inspector considered the degree of harm would be limited. The site is on the urban fringe of the village with existing built development to the north and north east, and playing fields to the west. Development of the site for housing would not cause any significant harm to the setting of the village. The landscape character assessment acknowledges that sensitivity varies across the diverse urban fringe character area. For the reasons set out the appeal site is not considered to be particularly sensitive to change. If housing needs to be provided on land that is not previously developed, it is not an unsuitable site for that purpose.
- 4.30 Reference was then made to a significant development site at Sketchley Brook that still needed to be resolved. This site is on previously developed land and may include as many as 375 new homes meeting the figure of 295 dwellings as stipulated in Policy 4 of the Core Strategy. Nevertheless, it was pointed out by the Inspector that this is clearly expressed as a minimum. Based on a recent appeal decision (land East of Groby Village Cemetery, Groby Road, Ratby), it was important to consider whether the provision of 62 dwellings on the appeal site would prejudice the spatial vision of the Core Strategy.
- 4.31 If Sketchley Brook is implemented in the manner envisaged, it is not considered sufficient to prejudice the spatial vision. Whilst the appeal site would cause some harm in landscape terms it would not be significant. This was then weighed against the existing housing supply position in the Borough, since the proposal would provide significant benefits, if brought forward now. In addition, the proposal provides for affordable housing as part of this proposal in excess of the requirements of CS Policy 15. This represents a significant benefit that weighed in favour of the proposal.
- 4.32 Other matters were then addressed by the Inspector with regards to flooding in the area and concern over drainage. The Inspector referred to professional judgements highlighting there was no objection from the Environment Agency on the basis of the revised Flood Risk Assessment (FRA) and, conditions can be applied to secure the measures needed.

- 4.33 The Inspector then addressed the issue of localism that has yet to come into force. In the opinion of the Inspector, the overriding factor is that a 5 year housing supply cannot be demonstrated and therefore planning applications should be considered favourably notwithstanding the evidence that local residents held very strong views.
- 4.34 A detailed account of the conditions and obligations that can be attached to the decision is then made in the final section of the Inspector report.
- 4.35 In summary the proposal would not cause any difficulties in terms of highway safety, there would be a degree of harm to the landscape and to the setting of the village, but nothing of great significance. The proposal would not prejudice the spatial vision for the area. Other impacts and aspect can be mitigated through the UU and controlled by conditions. On this basis and given the absence of a demonstrable five year supply of housing the proposal would provide great benefits in meeting the shortfall and the appeal is therefore allowed.
- 4.36 **Inspectors Decision: Appeal allowed (committee decision)**
- 4.37 **Appeal by Mr. J Singh against the refusal for full planning permission for the change of use from Retail (Class A1) to Hot Food Takeaway (Class A5) and the erection of external flue retrospectively (10/00908/FUL) at 102 Rugby Road, Hinckley, LE10 0QE**
- 4.38 The Planning Inspector considered the single main issue for consideration is the effect of the proposal on the living conditions of neighbouring occupiers. The appellant has since sought to address the concerns of the previous Planning Inspector, principally reducing the opening hours and introducing soundproofing measures to the party wall with the adjoining residential property no. 100.
- 4.39 The appeal premises is in an edge of town location with shops, takeaways and a mixed use redevelopment site nearby therefore the areas character has a transitional element rather than completely residential.
- 4.40 Observing the comments made by the Councils Environmental Health Officer he was satisfied that the soundproofing now proposed would reduce noise to an acceptable level. It was also noted that the extraction system will be sufficient to deal with odours. The proposed change in closing time from 20:00 to 18:00 would address concerns about noise and general disturbance in the mid-evening. All the previous concerns are now considered to be satisfactorily addressed by the current proposal.
- 4.41 Whilst mitigation measures aim to overcome original concerns, the Council maintains that the issue in essence comes down to a non-conforming use in a residential area. As previously stated the area is not exclusively residential in the Inspectors opinion.
- 4.42 In light of suitably worded conditions the Planning Inspector believes the proposed use would not materially harm the living conditions of neighbouring occupiers with regards to the potential for noise and disturbance which would conflict with saved Policy BE1 of the Hinckley and Bosworth Local Plan 2001.
- 4.43 Reference was also made to the flue where it was considered by the Planning Inspector no material harm will arise to the outlook of neighbours and therefore to their living conditions. The Planning Inspector considers the change of use is acceptable and then recommends suitably worded conditions to be attached to the decision.
- 4.44 **Inspectors Decision: Appeal allowed (committee decision)**

**5. FINANCIAL IMPLICATIONS [DMe]**

5.1 It is anticipated that the award of costs for appeals and any other associated costs will be funded from existing revenue budgets.

**6. LEGAL IMPLICATIONS [AB]**

6.1 None as the report is for noting only.

**7. CORPORATE PLAN IMPLICATIONS**

7.1 The Council needs to manage its performance through its Performance Management Framework in relation to appeals.

**8. CONSULTATION**

8.1 None

**9. RISK IMPLICATIONS**

9.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9.3 The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of Significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating Actions</b>	<b>Owner</b>
Financial implications to the Authority in defending appeals	Take into account the risk in refusing planning applications and the likely success of an appeal	Simon Wood/Tracy Miller

**10. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

10.1 None

**11. CORPORATE IMPLICATIONS**

11.1 None

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Background papers: Application files and appeal documentation

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