

PLANNING COMMITTEE – 22 January 2013

REPORT OF THE DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION) RE: APPEALS LODGED AND DETERMINED

1. PURPOSE OF REPORT

To inform Members of appeals lodged and determined since the last report.

2. RECOMMENDATION

That the report be noted.

3. BACKGROUND TO THE REPORT

Appeals Lodged

Appeal by Mrs F Clark against the refusal to grant planning permission for the erection of two dwellings at Land rear of 66-72 Church Street, Burbage.

Format: Written Representations

Appeal by David Wilson Homes against the refusal to grant planning permission for the erection of 24 dwellings and associated infrastructure at Land adj 108 Shilton Road, Barwell

Format: Informal Hearing

Appeal by Mr Jarvis against the refusal to grant planning permission for the conversion of a barn to a dwelling including replacement of upper walls and roof at 33 Newbold Road, Kirkby Mallory.

Format: Written representations

Appeals Determined

Appeal by Mrs Ashby against the decision to grant planning permission subject to conditions for the change of use of land from agricultural land to mixed use of agricultural and equestrian land and retention and erection of associated buildings (part retrospective) at Land at Markfield Lane, Thornton.

The appeal sought to remove conditions 4, 6 and 7 of planning permission 11/00755/FUL which state:

Condition 4 – “Within three months of the date of the decision notice, the stables, storage building and field shelters illustrated on plan numbers 40 and 50, received by the Local Planning Authority on the 16.9.11 shall be removed”.

Reason for condition 4 – “In the interests of visual amenity and to protect the character of the countryside, in accordance with Policy NE5 of the adopted Hinckley and Bosworth Local Plan”.

Condition 6 – “No buildings or structures, including any temporary buildings or structures, other than those approved by this consent, shall be erected within the application site as shown edged in red on plan no P60”.

Reason for condition 6 – “To reduce proliferation of development on the rural landscape in the interests of visual amenity and character of the countryside and in accordance with policy NE5 of the adopted Hinckley and Bosworth Local Plan”.

Condition 7 – “The development hereby permitted shall only be used for personal use and shall not be used in connection with a riding school/livery yard or any other business or commercial use”.

Reason for condition 7 – “To ensure that the use of the site is not to the detriment of highway safety and the requirements of Policies NE5 and T5 of the Adopted Hinckley and Bosworth Local Plan”.

Main issues

In respect of this appeal, the inspector considered two main issues;

- a) the impact of the proposals on the visual amenity of the site and surrounding countryside; and,
- b) the impacts on highway safety.

Reasons/consideration

Conditions 4 and 6

The Inspector initially comments that much of the appeal site is open to wider public views and an uncontrolled proliferation of buildings and structures within an area with extensive public access would have a detrimental impact contrary to Local Plan Policy NE5 which seeks to protect the countryside for its own sake.

Furthermore the Inspector accepts that the aim of conditions 4 and 6 is to impose a degree of control over the location of the various buildings and other structures on the appeal site and the avoidance of

uncontrolled proliferations of structures is clearly appropriate for the site.

However, in the opinion of the Inspector, the wording of condition 4 is imprecise as he understands that it was not the intention of condition 4 to remove all 6 structures shown, but rather to relocate the buildings which require planning permission to the positions as set out on plan 60 together with the additional structures to be permitted. Subsequently, the Inspector recommends rewording condition No.4.

The Inspector proceeds to make reference to two additional "goat shelters" on skids located close to the permitted group of buildings. These goat shelters were not the subject of the planning application as the applicant was under the impression that they did not require consent. The Inspector raises this point in relation to condition No. 6 which again sought to control the proliferation of buildings across this site by restricting the erection of buildings or structures, temporary or not, to only those approved by consent 11/00755/FUL. Here, the Inspector appears to acknowledge the need for these two smaller shelters for goats and explains that if they were located close to the permitted structures as at present, their visual amenity could not be said to amount to a material harm to the appearance of the countryside, although that would not be the case if such structures were allowed to proliferate across the site. Notwithstanding this opinion, the Inspector concedes that in view of the amount of buildings and structures already permitted for this site, any additional structures should only be permitted following a planning application submitted to and express permission granted by, the Council.

However, the Inspector concludes that condition 6 is defective as it makes reference to a red line on plan P60 when that plan neither shows the total extent of this site nor contains any red line and therefore the inspector recommends that the condition be reworded to remove this discrepancy.

Condition 7

The Inspector clearly acknowledges that the vehicular access to the appeal site is substandard in terms of width and visibility and expresses some concern over traffic travelling down hill (approaching from the north east) increasing normal stopping distance requirements on a length of road subject only to the national 60 mph speed limit. These points are raised because the inspector concedes that the condition restricting commercial activities, which could otherwise result in an increase in the volume of traffic attracted to this site is justified on grounds of highway safety.

The appellants raised concerns that as the animals were used as part of business purposes off site, i.e. the animals were housed on site but taken off site to shows and other activities that this condition would

prevent that existing activity. The Inspector acknowledges that while the possibility of the appeal site being used as a commercial activity needs to be addressed, the condition could be reworded to ensure that the use of the site is appropriately controlled without preventing the animals on the site being taken by the appellant to shows and other events off site.

Inspectors conclusion

The inspector considered that condition 4 be replaced to provide further accuracy and clarify that the 2 shetland pony mobile shelters and 2 horse mobile shelters shown on plan 40, be relocated to the positions shown on plan 60 and that only the mobile goat shelters shown on plan 40 are required to be removed. All of which is required to take place within 3 months of the date of the decision letter.

In relation to condition 6, the inspector replaced this condition with a condition which references both plan 60 and plan 10 as plan 10 contains the red edge of the application site and plan 60 clearly shows the location of the approved buildings. This condition still commands that no buildings or structures, including any temporary buildings or structures other than those approved by consent 11/00755/FUL shall be erected within the application site (without consent from the LPA).

The Inspector chose to amend condition 7 to remove the reference of "connection" to any livery school/livery yard or any other business or commercial use to allow the site to be used in conjunction with business/commercial activities which take place off site. However, the replaced condition still commands that the development site itself shall not be used for the purposes of a riding school/livery yard or any other business or commercial use.

Inspector's Decision – Appeal allowed – conditions varied

Conditions 4,6 and 7 relating to permission 11/00755/FUL are formally replaced by the following conditions;

4) Within 3 months of the date of this decision letter, the 2 Shetland pony mobile shelters and 2 horse mobile shelters shown on plan 40 shall be relocated in accordance with the proposed re-siting of these structures shown on plan 60. The mobile goat shelters shown on plan 40 received by the Local Planning Authority on the 16/09/2011 shall be removed;

6) No buildings or structures, including any temporary buildings or structures, other than those approved by this consent and located in accordance with plan 60, shall be erected within the application site as shown edged red on plan 10.

7) The development hereby permitted shall be for the stabling and grazing of horses and other livestock and shall not be used for the purposes of a riding school/livery yard or any other business or commercial use.

Appeal by David Wilson Homes East Midlands against the decision to refuse to grant planning permission for the erection of 28 dwellings and garaging, including, demolition of 261 Main Street at 261 Main Street, Stanton Under Bardon, Markfield Leicestershire,

In respect of this appeal, the Inspector identified the main issue as the effect of the proposal on the provision of housing within Stanton Under Bardon, with particular regard to its effect on the Hinckley and Bosworth Borough Council Local Development Framework (LDF) Core Strategy Spatial Vision.

Background

The Inspector initially outlines the circumstances in which this decision was made as it was considered by Planning Committee in June 2012 together with an outline planning application for a proposed development of 38 dwellings at land at the rear of 169 Main Street, Stanton Under Bardon. The Inspector notes that the Officer Report to the Committee offered 4 alternative options for consideration and suggested that there is only capacity for one of the residential developments within the village, but either of them were acceptable. The Committee resolved to approve the outline application at 169 Main Street, and the application subject to this appeal was refused on the grounds that it would result in an over provision of housing within Stanton Under Bardon and be detrimental to the Spatial Vision of the Council's Core Strategy.

The Inspector highlights that at the point of the consideration of the application mentioned above (June 2012), the committee report stated that the council was unable to secure a five year housing land supply of deliverable sites, based on October 2011 figures, however, since this date, the Council has identified a 5.02 year housing supply based on April 2012 figures. The Inspector proceeds to draw attention to paragraph 49 of the National Planning Policy Framework (Framework) which states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

The Council has recently changed its method of addressing its previous shortfall in providing the number of houses per year required to meet this target from spreading it over the current five year period, which is known as the Sedgefield approach, to spreading it over the residual period. This change in approach was justified by suggesting that the shortfall would be compensated for later in the plan period, in accordance with the Inspectors report on the Core Strategy. However,

the Inspector explains that circumstances have significantly changed since that report (with particular regard to the Area Action Plan) and as such the housing trajectories envisaged in that report have been significantly affected. In respect of this particular matter, having regards to all arguments and other appeal decisions, the Inspector found compelling reasons why the Sedgfield approach to calculating provision should be used as it would attempt to meet the shortfall experienced earlier in the plan period and thus be consistent with advice given in the Framework.

The Inspector moves forward to acknowledge the 5% buffer applied in the Council's calculations, consistent with para 47 of the Framework. However, it is explained that para 47 also requires that a 20% buffer be applied in instances where there is a record of persistent under delivery. On this point the Inspector accepts that the Council over delivered in the period between 2001 and 2006 but explains that this is outside the plan period and clarifies that between the period of 2006 and 2012, the council has sufficiently delivered in only one of these years.

The argument put forward by the Council on this matter was that this under provision was not because of a lack of granting planning permission, but a lack of implementation of consented schemes. The Inspector dismissed this approach explaining that the Framework does not give this as a reason for persistent under delivery. Based on this, the Inspector concludes that a persistent under delivery has taken effect in the period of 2006-2012 and as such, a 20% buffer should be applied.

On the matter of housing supply the Inspector acknowledged the appellant's argument in respect of sites which they considered undeliverable for various reasons. Various sites across the borough were sited including Westfield Nurseries (10 dwellings), 59 High Street, Barwell (10 dwellings), Markfield Road, Groby (20 dwellings), Trinity Vicarage Road (13 dwellings). While questioning the figures of approved sites, the Inspector also gave particular attention to the councils projection for the Sketchley Brook Site in Burbage concluding that because of delays resulting from an outstanding section 106 agreement and ground works being required the site was likely to incur about an 18 month delay before the start of construction of the dwellings. The inspector considered that this delay was likely to result in 45 fewer dwellings than allowed for in the five year housing supply (375). On this point and in relation to the Barwell Sustainable Urban Extension Scheme, the Inspector dismissed the appellants attempt to discredit the projected housing figures anticipated for this site on the grounds that permission is yet to be granted even though the appellant refers to footnote 11 to paragraph 47 of the Framework to support their argument. Here the Inspector acknowledged that the scheme was likely to receive a grant of planning permission in light of the level of negotiations which have taken place and that whilst the current

absence of planning permission provided a degree of uncertainty about the timescales and level of delivery on the site, the Inspector did not accept that this means that the development would not be deliverable given the level of commitment shown by the Council.

Summarising on the issue of five year housing land supply, the Inspector accepted the appellant's arguments with regards to the approach to address the shortfall (Sedgefield) and the level of buffer that should be applied (20%). The Inspector also finds that based on the evidence at the hearing, the Council has been optimistic with regards to the delivery of housing on some of the larger sites, even though he dismissed the arguments put forward in respect of the Barwell Sustainable Urban Extension. In conclusion, it is found that the housing land supply falls significantly short of what is required in the five year period.

The provision of housing

The Inspector explains that in the absence of a deliverable five year housing land supply, the relevant policies are not to be considered up to date and in accordance with the framework, and as such, the proposal should be considered in the context of the presumption in favour of sustainable development given in paragraph 14 of the Framework.

In respect of affordable housing, this scheme proposed eight affordable housing units and the Inspector draws attention to the Council's Affordable Housing report which identifies a substantial need for affordable housing in Stanton Under Bardon and policy 15 of the Core Strategy which requires at least 480 affordable dwellings in rural areas to contribute to its target of 2090 affordable homes in the Borough from 2006 to 2026. The Inspector reports that as the Council has not provided any evidence to show that there is not a substantial need for affordable housing in the village, the contribution to affordable housing contained within the proposal carries significant weight.

The inspector then turns to the matter which formed the basis of the Council's reason for refusal- the impact the proposal would have on the Core Strategy Spatial Vision. As part of the informal hearing the Council reiterated this concern identifying that by permitting this development it would set a precedent for other similar developments in Rural Villages and would undermine the Spatial Vision. The Inspector highlights that the Council has not provided any information regarding similar sites that may come forward should permission be granted for this proposal. The Inspector concludes that he cannot see any harm that the proposal would cause to the spatial vision and proceeds to clarify this by identifying that each future case should be dealt with on its own individual planning merits in the light of prevailing policies and guidance.

The Council gave reference to appeal decision APP/K2420/A/102138596 in its reason for arriving at the decision it made. However, the Inspector considers that this decision was made under different circumstances, and was decided prior to the publication of the most recent policies given in the Framework and as such, draws no comparison to between the appeal decision and current appeal.

Other matters

The Inspector chose to accept the proposed provisions set out for affordable housing and financial contributions toward civic amenities, libraries, play and open space, and the National Forest and is satisfied that they meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. However, regarding contributions towards bus and travel facilities the Inspector stated that insufficient information was provided to support the need for contributions toward bus passes, bus stops and travel packs and as such was not satisfied that the this particular contribution met the requirements of CIL Regulation 122 and paragraph 204 of the framework as it was not required to make the development acceptable in planning terms or was considered directly related to the proposed development.

Conclusion

Having considered all matters identified within the Inspectors decision the Inspector finds that the proposal would not have an adverse effect on the provision of housing within Stanton Under Bardon and that any potential harm that permitting this development would cause to the Hinckley and Bosworth Council LDF Core Strategy Spatial Vision is more than outweighed by the need for housing, including affordable housing within the Borough.

The Inspector subsequently concludes that having regard to all matters raised, the appeal should succeed and grants planning permission subject to conditions.

4. FINANCIAL IMPLICATIONS [PE]

None arising directly from this report.

5. LEGAL IMPLICATIONS [MR]

There are no legal implications arising from this report as the report is for noting only.

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 3 of the Corporate Plan

- Safer and Healthier Borough.

7. CONSULTATION

None

8. RISK IMPLICATIONS

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

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.

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

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
None	None	[

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This report is for information purposes only to draw member's attention to recent appeals lodged with the Authority and appeal decisions issued by the Planning Inspectorate. As this report is not seeking a decision it is envisaged that there are no equality or rural implications arising as a direct result of this report.

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

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| - Community Safety implications | None relating to this report |
| - Environmental implications | None relating to this report |
| - ICT implications | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications | None relating to this report |
| - Voluntary Sector | None relating to this report |

Background papers: Committee Reports and Appeal Decisions:

Land at Valley Fields Occupation Lane Appeal Decision
APP/K2420/A/12/2178944

Land to the rear of, and including 261 Main Street, Stanton Under Bardon
Appeal Decision APP/K2420/A/12/2180699

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