

PLANNING COMMITTEE – 15th October 2013

REPORT OF THE DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

RE: APPEALS LODGED AND DETERMINED



Hinckley & Bosworth
Borough Council

A Borough to be proud of

Wards affected – Desford, Hinckley, Barlestone, Osbaston, Burbage

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

- 3.1 **Appeal by Alexander Bruce Estates Ltd** against refusal for the erection of 49 new dwellings, landscaped public open space and creation of a formal wetland habitat with access at Land Off Spinney Drive and Brookside, Barlestone.

Format: Informal Hearing

- 3.2 **Appeal by Mr Chris Whitby** against refusal for the erection of eleven flats and one new dwelling at Beavers Bar, 5 London Road, Hinckley.

Format: Written Representations.

Appeals Determined

- 3.3 **Appeal by Mr A Ingram** against the refusal to grant planning permission for the change of use of existing lakes to a commercial fishing use. Change of use of fields for playing fields with portakabin style changing rooms. New access track and car parking to serve the fishing and playing fields at Gnarley Farm, Osbaston Hollow, Osbaston.

The application was refused under delegated powers for the following reasons:

- Unsustainable location some distance from Barlestone and Osbaston Tollgate requiring additional use of the private car.
- The proposed use and works would result in a harm and impact to the character and appearance of the surrounding countryside.

The Inspector considered the main issues of the appeal to be whether the proposed development is in a sustainable location for development having regard to local and national policy and the effect of the proposed development on the character and appearance of the area.

The Inspector considered that the appeal site access would only be located a few metres beyond the settlement boundary and that the playing fields would be in a reasonable walking and cycling distance for the village. The location of the playing fields would be sustainably located in relation to Barlestone. Furthermore, the Inspector noted that the proposed hardcore surface for the access would be a suitable surface for most bicycles to use and would not put people off cycling to the fields. In rural areas public transport is limited and the distances involved can make walking or cycling unrealistic.

The Inspector considered that the fishing lakes would also be sustainably located and with the amount of equipment that anglers use, travel other than predominantly by private car would be unrealistic.

The proposed development would therefore be in a sustainable location and in accordance with paragraphs 29 and 30 of the NPPF.

In terms of character and appearance the Inspector considered that whilst a minimum amount of hedgerow would need to be removed for visibility purposes the large depth of highway grass verge would result in the predominantly rural appearance of the northern side of Barton Road being retained. Whilst the access track would cut through arable land it would only be visible to passers-by in glimpsed views along the site access. As a result it would not have a material adverse effect on the character and appearance of the area.

The area of hard standing for car parking in relation to the playing fields would be relatively compact. Along with the proposed portakabin changing room it would be located in the second field beyond Barton Road close to the south western corner. As a result the Inspector considered that the development would be heavily screened from public vantage points by mature vegetation. The low prominence of the changing room could be further reduced by it being finished in an appropriate colour controlled by condition.

The Inspector stated that Policy NE5 of the Local Plan is supportive of new development in the countryside for sport and recreational purposes, subject to its scale, design and location complementing the character and appearance of the countryside and that the development would comply with this policy.

Conclusion

The Inspector considered the proposed development to be sustainably located in relation to the village of Barlestone and would not impact upon the character and appearance of the area. The appeal was therefore allowed and planning permission granted in accordance with the terms of application reference 11/00976/COU subject to conditions relating to plans, details of external materials for the changing room and surfacing of the access drive.

APPEAL ALLOWED

- 3.4 **Appeal by Mr H Chotai** against the refusal to grant retrospective planning permission for the installation of solar panels on the dental surgery roof at 18 Manor Road, Desford.

The application was refused under delegated powers for the following reason:

- The proposal would have a harmful impact upon the special character of the Desford Conservation Area.

The Inspector considered the main issue of the appeal to be whether or not the proposal would preserve or enhance the character of appearance of the Desford Conservation Area.

In the view of the Inspector, the conservation area is primarily characterised by the traditional layout, form and appearance of original buildings. These features make a positive contribution to the character of the conservation area and combined with the original footpaths or jitties that cross the village, are part of its significance as a designated heritage asset. Whilst the post-war appeal property is situated on the western boundary it is within the conservation area and the solar panels are clearly visible within the public domain. As a result, and by almost covering the front roof slope the solar panels are a prominent feature within the conservation area.

Whilst the Inspector appreciated that the dental practice is commercial in appearance and is set back from Manor Road behind a car park with boundary landscaping and trees, the total number of solar panels has resulted in a visually intrusive and incongruous form of development that dominates the front elevation. Combined with their prominence, the Inspector considered that the panels fail to remain in keeping with, and detract from the character and appearance of the surrounding area. Whilst the harm to the significance of the conservation area is less than substantial, it is nonetheless still material. The Inspector dismissed the appellant's proposition to re-configure the arrangement of the panels to create a more uniform and symmetrical appearance as it would not alter the prominence or number of panels on the front elevation.

The Inspector noted that the peripheral part of the conservation area surrounded by post-war housing where the appeal site is located is defined as 'weak' in the Desford Conservation Area Appraisal which describes the post-war housing as having a major detrimental impact on the character of the conservation area. However, these negative features do not justify allowing more uncharacteristic development that would further erode the traditional qualities of the conservation area, and only exacerbate its weakness.

The Inspector considered the proposal in light of the benefits of renewable energy, the strategic objectives of the Core Strategy to minimise the impact of climate change and the NPPF in supporting the transition to a low carbon future. However, he considered that this has to be balanced against the need to conserve heritage assets and that the environmental benefits of the scheme would not outweigh the material harm to a designated heritage asset.

Conclusion

By reason of the number of panels, their siting and prominence, the proposal would fail to either preserve or enhance the character or appearance of the Desford Conservation Area. As a result the proposal conflicts with Policy BE7 and Policy BE1(a) of the Local Plan. By failing to maintain the significance of the designated heritage asset the proposal also conflicts with one of the core planning principles of the NPPF. Consequently, it is not sustainable development for which there is a presumption in favour and the appeal is dismissed.

APPEAL DISMISSED

Call-In Inquiry

- 3.5 **Application by William Kendrick and Sons Ltd** for a mixed use development comprising Class A3 restaurant, Class B1 business, Class C1 hotel development, Class D2 assembly and leisure and associated car parking and landscaping at Land at Stretton Croft, Burbage, LE10 3JB.

The application site is located to the south of Burbage, adjacent to Junction 1 of the M69. A valid outline planning application was submitted to Rugby Borough Council on 31st March 2011 for a mixed use development comprising Class A3 restaurant, Class B1 business, Class C1 hotel development, Class D2 assembly and leisure and associated car parking and landscaping. A consultation letter in respect of the application was sent to Hinckley and Bosworth Borough Council on 5 April 2011.

A formal response was sent to Rugby Borough Council on 20 April 2011 advising that this authority considered that the proposed development was contrary to national planning policy contained in Planning Policy Statement 7: Sustainable Development in Rural Areas, Planning Policy Statement 4: Planning for Sustainable Economic Growth and Planning Policy Guidance 13: Transport along with 'saved' local plan policies of the Rugby Local Plan.

Following the approval of the planning application by Rugby Borough Council on 12 July 2012, the Secretary of State for Communities and Local Government made the decision to call in the application for determination as it was determined that "planning issues of more than local importance are involved" (SoS Direction Letter, 12/07/12). The matters in which the Secretary of State indicated that he was particularly interested were:

1. Consistency with the development plan for the area; and,
2. Conformity with the policies contained in the National Planning Policy Framework, in particular section two, ensuring the vitality of town centres.

The Inspector stated that from all the evidence submitted to the Inquiry, he found that it is clear that there is a definite need for additional office floor space in the form of a business park of the kind proposed by the application. Secondly, he stated that there is no other site which was credibly suggested as being suitable or available to meet that need and, further, the meeting of the need would not in any way undermine the spatial strategy for Hinckley or the vitality of Hinckley town centre. It was his opinion that the town centre sites are incapable of meeting the need targeted by the development and that commercial viability considerations mean that office uses could jeopardize their development.

The Inspector also concluded that suitable measures would be in place to ensure that the development is accessible. He stated that the proposals would contribute to the economic prosperity of the area by providing some 350 jobs as well as remediating the site and securing overall bio-diversity enhancements.

The Inspector agreed that the proposals are not consistent with a strict interpretation and application of Policy CS1 of the Rugby Borough Council Core Strategy and Policy LR10 of the Rugby Borough Council Local Plan, as these two policies were designed to meet Rugby's needs. Whereas this proposal is intended to meet the needs of Hinckley and the wider area which led to the limited conflict. However, because of its compliance with all other policies of these plans, he concluded that there is no overall conflict with the development plan. In all circumstances the development represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

In summary, the report concluded that:-

- (i) The scheme complies with the Rugby Core Strategy read as a whole even though it "may" not comply with the settlement hierarchy specified by Policy CS1.
- (ii) Any conflict with the development plan is outweighed by the demonstrable and pressing need for a business park development on the edge of Hinckley and the site would be especially suited to meeting that need.
- (iii) The scheme would have no detrimental impact on the appearance of the application site, which is degraded by Urban Fringe uses.
- (iv) The scheme will deliver specific benefits, particularly the reuse of a despoiled site and the provision of more diverse ecological benefits.
- (v) The site is relatively accessible by bus, can be made more so, and overall would constitute sustainable development that would contribute to economic growth.

As the Inspector's decision was considered disappointing, officers sought Counsel's opinion on the Borough Council's chances of success if a decision was taken to legally challenge the decision.

Counsel's opinion indicates that the Inspector's view that the scheme complies with the development plan could, in theory, be contested. In particular, as it suggests that an out-of-centre scheme ought to be viewed as policy compliant when the authority that is intended to benefit from it objects. That is not "partnership" as required by the subscript to Rugby's Policy CS1. It is mere consultation. However, Counsel's opinion is that another authority could not exercise some kind of right of veto over Rugby's decision-making process. Instead, Rugby could still grant planning permission, but would need to acknowledge a scheme is contrary to the development plan.

Counsel considers that the court would decide that the error is not fatal to the decision. This is because the Inspector considers the possibility his interpretation of the policy might be wrong and then indicates in clear terms that even if the scheme is not policy compliant he would still grant planning permission because of the need for the development and the scheme's particular benefits. The Secretary of State adopts that reasoning. Accordingly, a challenge on the ground that the Secretary of State misconstrued the development plan is not advised.

In other respects it Counsel's opinion is that it cannot be seriously argued that the Secretary of State failed to have regard to a relevant matter or took account of an irrelevant consideration. His decision and that of the Inspector was fully and properly reasoned. Further, whilst it might be said on Hinckley's

behalf that too much weight was attached to certain matters that can never be a ground for a legal challenge, the weight that is attached to a material consideration is exclusively a matter for the decision maker. The Inspector's report is comprehensive on the critical issue of need.

On that basis, Counsel advises there are no proper grounds which could be pleaded for challenging the decision in the High Court.

APPLICATION APPROVED

4. FINANCIAL IMPLICATIONS [DMe]

There are no financial implications arising directly from this report.

5. LEGAL IMPLICATIONS [MR]

Set out in the report in relation to the Stretton Croft appeal.

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 1 of the Corporate Plan

- Creating a vibrant place to work and live.

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 |

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