

PLANNING COMMITTEE – 7th January 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 – Hinckley, Burbage, Desford

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 Mr Roger Neep** against the refusal for the erection of 1 No. wind turbine measuring 24.6m to the hub and 34.2m to the tip and associated kiosk at Forest View Farm, Peckleton Lane, Desford.

Format: Written Representations

- 3.2 **Appeal by Rainer Properties Ltd** against refusal for the erection of up to 135 dwellings (outline – access only) at Land Surrounding Sketchley House, Watling Street, Burbage.

Format: Public Inquiry.

Appeals Determined

- 3.4 **Appeal by Mr C Whitby of Lighthouse Property Ltd** against the refusal to grant planning permission for the erection of a block of 11 No. flats and a single house on two parcels of land at the junction of Gladstone Terrace and London Road, Hinckley.

The application was refused on the grounds of highway safety and out of character with the surrounding area.

The Inspector considered the main issue to be the effect of the proposed development on highway safety.

The Inspector considered that whilst each proposal is assessed on its merits, planning permission had already been granted on the site for a similar development of 10 flats and a recent appeal in January 2013 was dismissed solely related to the lack of a S106 agreement. The Inspector felt that circumstances had not materially changed since the previous Inspector considered matters relating to parking and highway safety. In that case the Inspector found the level of parking proposed to be acceptable given the site's sustainable location within easy walking distance of the town centre. Whilst the previous Inspector accepted that parking congestion could

increase if residents of the proposed development had more than one car per dwelling, he did not consider that this would constitute a significant highway hazard. The Inspector in this case saw no reason to take a different view on the matter, particularly given the character of local roads in this built-up area, whereby vehicle speeds are likely to be low, and opportunities exist for walking, cycling and public transport.

The Inspector concluded that the proposed development would cause no significant harm in relation to highway safety and as such there is no conflict with saved Policies BE1 and T5 of the Local Plan in terms of ensuring adequate highway visibility and adequate provision for parking.

The Inspector was mindful that the NPPF seeks to focus development in sustainable locations to make the fullest use of public transport, walking and cycling. The site is ideally located to deliver those objectives. Furthermore, the NPPF makes it clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development, following any necessary improvements, are severe and the Inspector did not consider that to be the case here.

In other respects, the Inspector considered that as the local area includes buildings of varying height and scale the proposed development would sit comfortably in this context and would not be materially different to that previously considered at appeal which was found to be of an appropriate design. The Inspector considered the relationship with nearby properties to be acceptable in terms of the need to ensure acceptable living conditions in relation to matters such as light, outlook, privacy, noise and other forms of disturbance including light intrusion.

The Inspector rejected the Council's claim that the proposal would amount to overdevelopment of the site and considered that there are no compelling reasons as to why the appeal should not succeed.

Conditions have been imposed in relation to materials, landscaping, archaeology, parking, turning, cycle facilities and the parking of construction vehicles. A condition has been imposed in relation to obscure glazing to prevent undue problems from overlooking.

Conclusion

The Inspector considered the proposed development would be sustainably located and the proposal would not impact upon highway safety or the character and appearance of the area.

APPEAL ALLOWED

- 3.5 **Appeal by Mr Steve Powers** against the refusal to grant planning permission for the demolition of an existing timber garage and brick outbuilding, alterations to the existing vehicular access and off-site parking provision and the construction of three new dwellings at 82 Coventry Road, Burbage.

The application was refused on the grounds that the proposal would result in an overdevelopment of the site and would have an adverse impact on the character of the area. In addition the proposal would be detrimental to highway safety.

The Inspector considered the main issue of the appeal to be the effects of the proposed development on the character and appearance of the area and highway safety.

In the view of the Inspector, the proposal would be too far removed from the Coventry Road frontage, even allowing for views down the access drive to impact adversely on the spacious character of the long Coventry Road plots. The Inspector considered that the proposed dwellings would be more closely associated with the smaller residential plots in Maple Close and that the density, form and layout of the proposed dwellings would sit comfortably with its surroundings. The Inspector felt that there was ample space to accommodate the associated works and alterations to the access in a manner that would be consistent with the spatial characteristics of the area. Therefore the Inspector considered that the proposal would not cause significant harm to the character and appearance of the area.

In respect of highway safety the Inspector acknowledged that Coventry Road carries a substantial volume of traffic and at times the road may suffer from parking congestion and vehicle speeds may sometimes exceed the speed limit. However, there is no detailed evidence from traffic or parking surveys to substantiate these claims or evidence to indicate that the road has a poor safety record. The Inspector felt that the appellant had demonstrated that the proposed access would demonstrate a good level of visibility and whilst at times parked cars might impede this visibility this could be said of numerous other existing residential accesses along this section of Coventry Road. The Inspector saw no reason to conclude that the moderate additional traffic associated with the proposed development would interfere to any significant degree with the safe and convenient movement of vehicular traffic and other road users. Therefore the Inspector was satisfied that the proposal would cause no significant harm in relation to highway safety.

Whilst the NPPF seeks to restrict the inappropriate development of residential gardens, this does not preclude development in appropriate circumstances and the Inspector was satisfied that the development would respond to local character, reflect its surroundings and would optimise the potential of the site to accommodate development in an accessible and sustainable location within an existing centre. The Inspector considered that whilst not all the objectives of the Burbage Village Design Statement would be met by this proposal it was considered that the development would respond appropriately to its setting which would outweigh this issue.

The Inspector considered that the site is of an appropriate size and well screened with sufficient separation in relation to nearby properties to avoid any significant harm to the living conditions of neighbouring properties in relation to such matters as light, outlook, noise and disturbance. The Inspector stated that the use of the access drive would not cause disruption to neighbouring properties, given the separation distance and background noise associated with traffic using Coventry Road.

Conditions have been imposed relating to levels, materials, landscaping, drainage, a restriction on windows to certain elevations, compliance with the Code for Sustainable Homes, visibility splays, gates and surfacing for highway safety.

Conclusion

The Inspector considered the proposed development would not impact upon highway safety or the character and appearance of the area.

APPEAL ALLOWED

An application for full award of costs was made by the appellant.

Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this case the appellant claimed that the Council acted unreasonably by preventing development that should have been permitted having regard to the development plan and NPPF.

The Inspector reasoned that whilst the application was recommended for approval, the Council is not bound to follow the technical advice of its officers, provided that it can show reasonable grounds for taking a contrary decision and produce evidence to support that decision in all respects. In addition, whilst the views of local residents must be taken into account, the extent of local opposition itself is not a reasonable ground for resisting development. To carry weight opposition must be founded on valid planning reasons and supported by substantial evidence.

The Inspector considered that the Council's first reason for refusal involved a matter of judgement concerning the character and appearance of the area. An award of costs is rarely justified provided that realistic and specific evidence is provided about the consequences of the proposed development. The Inspector was satisfied that the Council provided appropriate evidence in its reason for refusal and written statement, which refer to matters such as density, plot coverage and the contribution of the site to the character and appearance of the area and therefore the Council's position was not unreasonable.

In respect of the second reason for refusal on grounds of highway safety, the Inspector reasoned that this relied exclusively on the extent of local opposition and 'local knowledge' without the support of objective appraisal and substantial evidence. In particular, the lack of detailed and specific evidence, such as parking or traffic surveys, means that the Council is not able to substantiate its claim that local conditions provide a clear and rational basis for rejecting the technical advice of the Highway Authority. Therefore the Inspector considered that the Council had relied on no more than vague and generalised assertions unsupported by appropriate analysis and evidence.

The Inspector concluded that whilst unreasonable behaviour had not been demonstrated in relation to the first reason for refusal relating to the character and appearance of the area, the Council failed to produce evidence to support its second reason for refusal and to show clearly why the development should not have been permitted for reasons of highway safety. This, the Inspector considered, constituted unreasonable behaviour, as per Circular 03/2009, and led the appellant to incur unnecessary expense, as there was no need for these matters to be dealt with at appeal. The Inspector reasoned that a partial award of costs is justified, limited to those costs

incurred in relation to the Council's second reason for refusal dealing with the effect on highway safety.

PARTIAL AWARD OF COSTS TO THE APPELLANT

4. FINANCIAL IMPLICATIONS [DMe]

None

5. LEGAL IMPLICATIONS [MR]

None

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:

- 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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