

PLANNING COMMITTEE – 4th February 2014

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 – Barlestone, 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 Alexander Bruce Estates Ltd.** against refusal for the erection of 49 dwellings, landscaped public open space and creation of a formal wetland habitat with access at land off Spinney Drive and south of Brookside, Barlestone.

Format: Informal Hearing to be held on 05 February 2014.

Appeals Determined

- 3.2 **Appeal by Mr D Martin** against the refusal to grant planning permission for the erection of a single wind turbine 275KW, 71 metres to tip height, 32 metre rotor diameter, access track and associated infrastructure at Coton House Farm, Leicester Lane, Desford.

The application was refused by Members following an officer recommendation to approve on the grounds of highway safety due to the distraction the turbine would cause to road users.

The Inspector considered the main issues to be the effect of the proposed turbine on the safety of highway users in the locality and its perception within the local landscape.

The Inspector considered that as the Highway Authority found no objection to the scheme in relation to highway safety and that as the turbine would not be located immediately alongside the highway, there was little to demonstrate that the turbine would be likely to distract drivers to an extent that it would prejudice the safety of highway users.

In addition, the potential for impact to drivers as a result of shadow movement could be avoided by shutting the turbine down at relevant times which could be adequately controlled by condition.

Accordingly, the Inspector found that the proposed turbine would not have a significant effect on highway safety and as such there was no justification to reject the proposal on these grounds.

The Inspector stated that whilst the subject of landscape impact was not raised as a reason for refusal, further guidance in the form of the Planning Practice Guidance for Renewable Energy and Low Carbon Energy had been issued by the Government which states that landscape and visual impact should be a key issue in determining such proposals.

The Inspector considered that the proposal would introduce a new structure into the landscape and this effect would be a negative one as it would introduce a manufactured structure with moving blades into this traditional farming landscape. However Policy BE27 of the Local Plan gives support to wind turbines, providing the development is sensitively located in relation to the existing landform and landscape features so that its visual impact is minimised and the proposal would not be unduly prominent in view from important view points. The Inspector felt that the turbine would appear as part of the wider landscape and would therefore conform to the requirements of Policy BE27.

The Inspector stated that the Planning Practice Guidance for Renewable and Low Carbon Energy sets out the type of information that can usually inform landscape and visual impact assessments in relation to the cumulative impacts of the proposal. The Inspector considered that the assessments made by the applicant in relation to cumulative impact had not fully taken account up-to-date information or the full extent of the guidance relating to cumulative impact assessments. Therefore the Inspector considered that it would be unwise to allow this turbine on the basis of the assessments that had been provided in support of the appeal. This shortcoming meant that a fully rounded conclusion in relation to Policy BE27 could not be made.

Conclusion

The Inspector considered that whilst there would be visual harm affecting the perception of the landscape in relation to the turbine by itself, this would not be sufficient to demonstrate conflict with Policy BE27. However, the visual harm that would arise would be additional to perceptions arising from existing turbines within the surrounding area. The Inspector felt that this change in the perception of the landscape should be properly assessed in respect of the cumulative effects that would follow in this instance and the assessments that had been made in relation to landscape and visual impact could be seen to be inadequate and incomplete in light of the current guidance.

APPEAL DISMISSED

3.3 **Appeal by David Wilson Homes and Andrew Grainer & Company** against the refusal to grant planning permission for the erection of 34 dwellings and associated infrastructure at land east of Wolvey Road, Three Pots, Burbage.

The application was refused by Members following an officer recommendation to approve on the grounds that the proposed scheme by virtue of its nature and location, constitutes new residential development outside the settlement boundary of Burbage.

The Inspector considered the main issues of the appeal to be whether the Council has a 5 year supply of land, whether Policy 4 of the Core Strategy and Policies RES5 and NE5 of the Local Plan are housing policies and whether the development harms the landscape or countryside setting of Burbage.

In the view of the Inspector, the Beta National Planning Policy Guidance issued by Government and the recently issued guidance by the Planning Advisory Service (PAS) advised that the Sedgefield approach is more closely aligned to the requirements of the NPPF as opposed to the Council's preferred Liverpool method for the calculation of housing land supply. Other Inspectors' appeal decisions have confirmed their preference for this approach.

The advice in the Beta guidance whilst in draft form only and the PAS document was considered by the Inspector as being consistent with the emphasis on delivering housing now and not at some vague time in the future. The Inspector stated that the Sedgefield approach was the most appropriate and that as the Council did not have a 5 year supply of housing land using the Sedgefield method of calculation, a 20% buffer to housing land supply should be applied given that there had been a persistent under delivery of housing.

The Inspector considered that in light of the above, the housing supply elements of Policy 4 of the Core Strategy should be discounted including the allocation of 295 dwellings. In addition, the Inspector found that as Policy RES5 deals with housing on unallocated sites it is out of date.

The Inspector found that Policy NE5 was not a policy concerned with the supply of housing itself and was primarily intended to protect the countryside. The Council could allocate sites within the countryside for the purposes of housing which would override this policy. However, as the wording of the NPPF does not include the phrase 'protection of the countryside for its own sake' it is in that sense not in conformity with the NPPF.

In terms of landscape impacts the Inspector considered that the proposal would not conflict with Policy 4 or NE5 in relation to landscape harm. The Inspector felt that the thickly wooded site lies in the angle of the B4109 and the A5 and would be heavily screened. Whilst the site slopes upwards towards Burbage, the slope is gentle and would have little effect on the visibility of the houses.

Conclusion

The Inspector concluded that the Council does not have a 5 year supply of housing land and as such the housing supply policies are out of date. Therefore the NPPF states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

The Inspector stated that he was aware of the two planning permissions at Groby (Bloors) and Barwell that are subject to a high court challenge and the Inspector accepts that should the court support the approach taken in those decisions, it could be that his decision on housing land supply would be undermined. However, the Inspector stated that even if the Council had a 5

year supply of housing land there are not enough brownfield sites within Burbage to accommodate the required 295 dwellings. Therefore the Inspector considered that as this was a sustainable site within the context of the NPPF, any harm to policy would be outweighed by the presumption in favour of sustainable development and the positive aspect of the proposal and planning permission should still be granted.

Conditions have been imposed to provide a footway on part of the edge of the site, car parking and garaging arrangements, deposition of construction materials, drainage, flood risk, the Code for Sustainable Homes and an archaeological scheme.

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. The 5 year supply position was far from clear cut, especially in light of the Groby (Bloors) and Barwell decisions.

The Inspector considered that had the Council been able to persuade him that there was a 5 year supply, it was not unreasonable to argue that the proposal would impact upon the landscape. Whilst the arguments developed as the Inquiry progressed this was not a significant problem and the Council did enough to avoid a charge of unreasonable behaviour.

AWARD OF COSTS REFUSED

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 |

Contact Officer: Simon Atha ext. 5919