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29th August 2016.

Rachael Simpkin
Senior Planning Officer (Majors)
Development Management,
Staffordshire Moorlands District Council,
Moorlands House,
Stockwell Street,
Leek. ST13 6HQ.

Dear Rachael Simpkin,

SMD/2016/0430: an outline planning application by Staffordshire Rural Development Ltd for up to seven dwellings on the frontage between Willowgate and Heybridge Cottage on Uttoxeter Road and a new access from Heath House Lane, Lower Tean ST10 4LJ.

In my recent email asking you to put this planning application on your Planning Committee's agenda for September I indicated that I would be writing explaining why I felt you should be more supportive of this planning application which has been submitted as a compromise following your Council's refusal of SMD/2015/0736.

This is that letter and I would start by apologising for including in it facts of which you will already be aware. Unfortunately, having considered the points made in the standard letter of objection currently doing the rounds locally and some of the technical responses you have had it would appear that it is necessary to explain in some detail what this application is asking your Council to determine and what has not been submitted for consideration at the September Committee meeting.

The first point I wish to make is that this is an outline planning application seeking approval for only two matters. The first is the access to Heath House Lane as shown on the submitted plan 15/474/02. That has been designed to meet the highway's authority's requirements in a position where, following pre-application consultations for SMD/2015/0736, that authority indicated it wanted to see the access in the interests of highways safety.

You have described that access as being "overly engineered" yet it has been designed to meet the requirements of the highway's authority. Given that it will be at ground level in the corner

of a field which contains none of the three heritage assets with which we are concerned it is difficult to see how it could have other than minimal impact on the significance of those assets.

Secondly there is the principle of up to seven dwellings being constructed between Willowgate and Heybridge Cottage within the red line shown on submitted plan 16/474/01. The reason why this is an outline application seeking to establish a principle rather than a specific layout or type of dwelling lies firmly at the door of your Council which has not been consistent in its approach to necessary development in Lower Tean and this site in particular.

You will recall that your Council original concluded that there was a need for Lower Tean to have an additional 25 dwellings in the period to 2031. Twenty of those dwellings were to be provided on the site which was the subject of SMD/2015/0736. That application was submitted to allow your Council to make a start on meeting the significant shortfall in your District of available housing sites and affordable housing sites in particular.

During the course of processing the application your Council changed its approach to development in Lower Tean. It is now suggesting there should be infill development only whilst drawing a proposed development envelope so tightly around the existing built up area that it is difficult to see how any such development could take place. Given that you accepted in the case of SMD/2015/0736 that little weight should be afforded to the emerging Site Allocations DPD at present and the fact that objections have been made to the proposals for Lower Tean, I shall not comment on this further in this letter.

Instead, I wish to compare the information submitted with this outline planning application with the requirements of the relevant legislation. You will know this to be the Town and Country Planning (Development Management Procedure) (England) Order 2015 with further guidance to be found in paragraph 14-034-20140306 of Planning Practice Guidance.

Your Council will have been fully aware of the issues relating to this site and the nearby heritage assets through processing the previous outline planning application but decided nonetheless not to invoke the powers available to it under Article 5(2) of the Order. That being the case this application falls to be determined on the basis of the information submitted with it which, as you will be aware, is extensive.

Specifically in relation to the use proposed this is residential for “up to seven dwellings.” An indicative sketch has been submitted to show that this frontage site is capable of accommodating that number of detached dwellings but that is the only reason it has been submitted. The types of dwellings eventually proposed as reserved matters may or may not differ from the indicative layout depending on the judgement of the eventual housebuilder and the discussions that will take place with your Council.

A similar situation exists with the link between the access and the proposed site for the dwellings. Again that has been shown for indicative purposes only to illustrate that vehicles

will be able to visit those dwellings in a forward gear then turn and return to Heath House Lane in a similar manner. My clients are willing to discuss any alternative arrangement to that shown to overcome your concerns. Given that pedestrians are more likely to use the link to Uttoxeter Road that is being proposed it could well be that a shared surface is the answer and that too could be discussed at reserved matters stage along with other aspects of the layout.

Those discussions will obviously also include the design, scale, number and massing of the dwellings to be erected within the application site. It is noted that in Historic England's letter of 16th August says "to be a success in terms of achieving a fully reduced impact upon the setting of the scheduled monument the roof line must be kept low and this will be determined, to a certain extent, by where the floor level of the new dwellings is set."

I would suggest that this may be achieved through the information submitted with this application and the use of appropriate conditions in accordance with paragraphs 203 and 206 of the NPPF at the appropriate time. You will know from the topographical survey of the whole site in Appendix A and paragraph 2.1 of my Design and Access Statement that the land owned by the applicant company rises steadily to the north so that the northernmost boundary is approximately 7.5 metres higher than the southernmost with the hedge rising above that.

My clients would be willing to accept an informative advising that it will be necessary to show slab levels for each dwelling proposed at reserved matters stage and that none of those dwellings should have a ridge height greater than 7.5 metres above the adjoining ground level. Obviously if some lowering of ground levels is proposed that too will need to be shown at reserved matters stage.

They would also welcome any design guidance your Council might wish to put forward at this stage as to the details you would wish to see coming forward with the reserved matters for the layout, the appearance of the dwellings which we envisage being constructed in 'traditional materials', landscaping and the scale of the development.

Turning now to the comments from Mrs Bayliss she says "the lack of detail with this application makes it very difficult to be able to assess the impact of the development on the setting of the surrounding Listed Buildings and historic character of the settlement."

When responding to similar comments in respect of the previous outline application I made the point that the "historic character" of Lower Tean has no official recognition. Your Council has had the opportunity over many years to designate this part of the village a Conservation Area and has rightly chosen not to do so. As the Heritage Impact Assessment in Appendix I explains at paragraphs 3.53 and 3.54 there is simply no justification for such a designation.

Nor has your Council identified this area as a non-designated heritage asset. Had it done so then it would be reasonable for your Council to give the significance of this site some weight in the planning decision even though this is not required by Policy DC2. As it has not then it would be unreasonable for your Council to treat this land differently from any other greenfield site which you are going to have to allocate to meet your housing requirement.

Mrs Bayless's other point relates to the setting of the surrounding listed buildings but that is not the issue your Council has to consider. Paragraphs 126-141 of the NPPF make it clear that in considering a development proposal what has to be assessed is the effect there would be, not on the setting, but on the significance of the heritage asset concerned. This has recently been confirmed by Inspector John Gray when allowing the construction of 400 dwellings on the estate lands at Kedleston Hall. (APP/M1005/W/15/3132791 paragraph 31.)

The significance of Willowgate (formerly Yew Tree Cottage) is discussed in paragraphs 3.25 to 3.33 of the submitted report in Appendix I. The conclusion is that the main two-storey block of Willowgate deserves its listing at Grade II, but its extensions and outbuildings, including the addition closest to the application site, do not have anything like the same degree of significance. The plot and Uttoxeter Road settings of the house make a positive contribution to the setting of Willowgate, with the second having a particular importance because there are good views of the principal elevation from the public realm."

Dwellings within this application site are not going to have anything but a minimal adverse impact on the significance of this listed building, particularly if they are constrained in height as has been suggested. The principal elevation is not visible in views from Uttoxeter Road across the application site and the less important outbuildings obscure ground floor views of the house from the east. Nothing proposed in this application is going to affect existing views of the main two storey block from Uttoxeter Road directly south of the property nor indeed will approval of this outline application affect the conservation of Willowgate itself so there is no conflict with paragraph 132 of the NPPF nor Policy DC2.

The significance of the dovecote at Heybridge Farm and the contribution of its setting to that significance are discussed in paragraphs 3.34 to 3.47 of the Heritage Impact Assessment in Appendix I. The conclusion is that "it is at least arguable whether the heritage significance of the dovecote merits its listing given the selection guidance which was subsequently published by English Heritage (now Historic England). The setting of the dovecote makes a mixed contribution to its significance, however views of the dovecote from many different directions including a number from the public realm do make a notable, positive contribution to its significance..." Those public views will be increased if this application is permitted because land that is currently private will become accessible to the wider public.

Given the number of alternative views of the dovecote that exist at present from the public realm it is doubtful if this proposal to increase those views should carry great weight in assessing the impact on the significance of the dovecote. Nonetheless it should carry some

positive weight and, as nothing proposed in this application is going to adversely affect the dovecote itself, so should compliance with paragraph 132 of the NPPF and Policy DC2.

The significance of the bowl barrow in the field north of that owned by the applicant company and the contribution of its setting to that significance is discussed firstly in paragraphs 3.10 to 3.24 and then paragraphs 4.6 to 4.15 of the Heritage Impact Assessment in Appendix I. That Assessment related to the whole of the applicant company's ownership but has been updated by the letter in Appendix J.

In the second paragraph of that letter it is pointed out that the majority of the applicant's ownership will be open space. "This means that the development will have no, or minimal, impact on key views of the scheduled barrow in the landscape such as from the opposite side of the valley. The barrow's landscape setting will not be harmed and the access from Heath House Lane and footpath from Uttoxeter Road will allow people to better appreciate the monument."

Historic England was consulted before this application was submitted and the views expressed at the site meeting which took place were taken into account in the choice of application site. The letter of 16th August replaces the earlier objection to development on the larger site and confirms that this proposal will have a harmful impact on the setting of the monument but that will not be so great as to prevent planning permission being granted provided a restriction is placed on the height of any dwellings constructed. The mechanism for achieving this has been discussed earlier in this letter.

Paragraph 134 of the NPPF says "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use." The last part of this paragraph is obviously not relevant in this case because none of the three designated heritage assets is under the control of the applicant company and this application will have no physical impact on those assets.

Before suggesting how your Council should carry out that weighing exercise, I wish to briefly comment on two other aspects of this application. Firstly there is the issue of this proposal providing some affordable housing because of what adopted Core Strategy Policy H2 says. This was adopted in March 2014 with an undertaking that it will be reviewed after this year. In November 2014 the government indicated that it would introduce a national policy giving a threshold below which affordable housing and tariff style contributions should not be sought. The threshold is ten units or less.

Paragraph 23b-031-20160519 in the Planning Practice Guidance now gives effect to the policy set out in the Written Ministerial Statement of 28th November 2014 and should be taken into account in the determination of this application. Policy H2 is no longer NPPF compliant and, therefore, should not carry much weight in the determination of this application.

Should you require further guidance on this matter I have attached a copy of a decision letter dated 18th August 2016 relating to an application for a partial award of costs against the London Borough of Richmond-upon-Thames. Paragraphs 4 to 9 are relevant to this application in my view.

Secondly there is the matter of the reasons given for refusing SMD/2015/0736. Reason 1 claimed “significant urban expansion of the village.” The applicant company does not agree with this assessment but in any event by no reasonable interpretation of those words could they be said to apply to this application which merely seeks to fill in a gap between two residential properties without extending beyond the boundary that would exist if the curtilages of those properties were joined at their northernmost points.

Reason 2 refers to the Upper Tean Settlement Character Assessment rather than any document that relates to Lower Tean. The plan of the area produced by Wardell Armstrong does not indicate that this application site has any relevance to the setting of Upper Tean although the field north east of the site is identified as having a “small scale landscape with hedgerows and hedgerow trees.” The appellants consider that it was unreasonable of your Council to refer to this document in relation to the determination of SMD/2015/0736 and that it would be more so to give any weight to it in the determination of this application with its strong urban rather than rural influences.

Core Strategy Policy SS6b identifies Lower Tean as a smaller village in which “appropriate development” would be allowed irrespective of the situation described in Reason 3 on the decision notice for SMD/2015/0736. Paragraph 7.16 explains that the strategy for development allows for limited housing. That will count towards the requirement in Core Strategy Policy SS3 for the rural areas in the District to provide the residual requirement of 928 dwellings set out in Figure 9 and be achieved by limited infilling as set out in the settlement hierarchy. This application complies with these policies.

It is assumed that reference to Policy SS5a in reason 4 on the decision notice for SMD/2015/0736 is a mistake as that refers to development in Leek but that reason does set out the process that should be followed in the determination of this application in accordance with paragraph 14 of the NPPF.

There can be no doubt that policies in the previous local plan restricting development outside the then development boundary for Lower Tean are out of date. The guidance in paragraph 14 of the NPPF, therefore, is that applications such as this should be approved unless specific policies in the NPPF indicate development should be restricted or that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in that document taken as a whole.

This application only seeks approval for two matters- the access to Heath House Lane and the principle of residential development across the frontage of this site infilling a gap between two established residential curtilages.

Details of the design of the access have been submitted and the Highways Authority has raised no objections in principle to those details.

A Heritage Impact Assessment has been submitted together with a further letter from the appellant company's consultants relating that Assessment to this revised application site. Minimal, if any, adverse impact is anticipated on the significance of the two designated heritage assets identified by your Council as having relevance to the determination of this application. There are no other non-designated historic assets to be taken into account.

Historic England has now accepted that housing on this application site will, using the terms in the NPPF, cause less than substantial harm to the setting of the third designated heritage asset of relevance to the determination of this application. The remaining concerns can be controlled by your Council at a later stage in the process when the outstanding reserved matters are submitted for consideration.

That being the case the three aspects of sustainable development outlined in paragraph 7 of the NPPF are all present in this application which should benefit from the presumption in favour of sustainable development in Core Strategy Policy SS1a.

I am sure that I do not need to remind you that the government is keen for the planning system to produce sites for many more dwellings, particularly where, as in your District, there is not a five year supply of developable sites. Sajid Javid, Secretary of State for Communities and Local Government, confirmed this as recently as 25th August 2016 in a press release. This site is available for development as soon as all the reserved matters are approved and will add to the portfolio of such sites in your District. I hope, therefore, that you will now support this application.

Please note that I wish to speak in support of the application at the Committee meeting on 15th September.

Yours sincerely,

John Wren.

Cc. client team.

Costs Decision

Site visit made on 12 July 2016

by Alex Hutson MATP CMLI MArborA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 August 2016

**Costs application in relation to Appeal Ref: APP/L5810/W/16/3148614
11 Tayben Avenue, Twickenham, Richmond upon Thames TW2 7RA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Jane Millar for a partial award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for "a GF rear extension, a GF and 1st floor side extension as well as a loft extension at the rear. The single detached house dwelling is proposed to be converted into 2 self contained flats. The first flat will occupy the GF and the second flat the 1st floor and loft extension".
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) 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 expense in the appeal process.
 3. The appellant claims that, in light of recent changes to national planning policy, the Council has acted unreasonably in that it has pursued, as part of the appeal, one of its reasons for refusal relating to the absence of a financial contribution for affordable housing under section 106 of the Town and Country Planning Act 1990. The appellant also claims that the Council has displayed a lack of co-operation and has delayed providing information.
 4. I acknowledge that the Council's position in respect of a financial contribution towards affordable housing was justified at the time of making its decision and at the time when the appeal was originally lodged. However, subsequently, on 11 May 2016, the Court of Appeal issued judgment on the Secretary of State's appeal against a previous High Court judgment of 31 July 2015 upholding a joint application by West Berkshire District Council and Reading Borough Council which challenged the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014 and his subsequent alterations to the Planning Practice Guidance (PPG) on planning obligations for affordable housing.
 5. The Court of Appeal has upheld the Secretary of State's appeal and therefore the policies in the WMS and the PPG, that seek to tackle the disproportionate
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burden of developer contributions on small scale developers, custom and self-builders with the broader aim of increasing housing supply, should once again be considered as national planning policy in defining the specific circumstances where contributions for affordable housing should not be sought.

6. The policies of the WMS and the PPG are therefore material planning considerations to which I afford significant weight in my consideration of the appeal, notwithstanding any local affordable housing needs. As set out in my appeal decision, had I been minded to allow the appeal, in light of the above, an affordable housing contribution in respect of two units would not be required.
7. The Council, in my judgement, has not afforded the proportionate amount of weight to the policies of the WMS and the PPG during the appeal process. This is notwithstanding a letter from the appellant's agent to the Council dated 3 June 2016, prior to the date of the Council's Appeal Statement, setting out and bringing to the Council's attention the changes to national planning policy as described above and requesting that the Council reconsider their position. Rather, the Council continues to rely on local planning policies, including within their Appeal Statement, that are now, in part, inconsistent with national planning policy. Any local planning policies, either adopted or emerging, that require an affordable housing contribution from small scale development should, as a result, be afforded limited weight where a proposal is for such development, including in respect of the proposal under consideration in this appeal. Therefore, I consider that the Council has acted unreasonably in pursuing its reason for refusal in respect of the lack of a financial contribution for affordable housing.
8. It seems to me that, as a result, the appellant has had to spend wasted time liaising with the Council and seeking professional advice in respect of the initial considerations in formulating a legal agreement that would overcome the Council's concerns in respect of a financial contribution towards affordable housing. Nevertheless, prior to the letter from the appellant's agent dated 3 June 2016, any time spent on this matter, including two brief emails, appears to be *de minimis*.
9. Having regard to the provisions of the WMS and the PPG, the Council's requirement for a financial contribution towards affordable housing should reasonably have fallen away during the early stages of the appeal process and notably so on receipt of the appellant's letter dated 3 June 2016. The Council's pursuit of such a financial contribution therefore, in my opinion, constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG and has resulted in the appellant's unnecessary expense in their attempts to overcome this matter.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended,

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the London Borough of Richmond-upon-Thames shall pay to Mrs Jane Millar, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on the matter of a financial contribution for affordable housing after 3 June 2016.

12. The applicant is now invited to submit to the London Borough of Richmond-upon-Thames to whom a copy of this decision has been sent, details of those partial costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Alex Hutson

INSPECTOR