

Response to Notice of Motion: Land at Oaks Road, Great Glen: Council 18th December 2017

1. Introduction

1.1 This matter concerns two planning applications for the same site at Oaks Road, Great Glen. The two planning applications have been made by the same applicant but the applications differ with the second application (ref. 17/00579/OUT) being supported by updated information including that concerning Landscape and Visual Impact.

2. Sequence of Events

Planning Application 16/0501/OUT

2.1 This planning application was received on 21st September 2016. A Planning appeal was lodged against non-determination of the application on 20th January 2017.

2.2 A report was made to the Harborough District Council's (HDC's) Planning Committee on 7th March 2017 to address the issue of what the Planning Committee would have resolved if they had been in a position to determine the application. The Planning Committee resolved that if it had been in a position to make a decision on this application it would have refused it.

2.3 The Planning Inspectorate notified the Council on the 6th July of a confirmed date of the 10th October for the Public Inquiry that was arranged to hear the planning appeal. The Planning Inspectorate had indicated prior to the meeting of the Planning Committee of the 4th July that the date for the Inquiry was likely to be the 10th October and this information was set out in the report to Planning Committee.

2.4 Advice to the Council received from Counsel on 17th August 2017 advised that the Council should attend the Public Inquiry but should offer no evidence against the planning application.

2.5 An update report concerning the planning appeal was made to the Planning Committee held on 5th September 2017. The Planning Committee accepted a recommendation that the planning appeal should not be contested by the Council. This committee report was informed by Counsel advice that, amongst other things, advised the Council's prospects of successfully contesting the appeal were considerably less than 50% for reasons including being unable to demonstrate an up-to-date 5 year housing land supply; the test set out in National Planning Policy Framework paragraph 14 would apply and any neighbourhood plan cannot set a maximum limit on new housing.

2.6 The Public Inquiry was held on the 10th, 11th, 12th 13th and 17th October 2017. A Section 106 Legal Agreement was completed on 16th October 2017 in case planning permission was granted. However, the Planning appeal was dismissed on 20th November 2017.

3. Planning Application 17/00579/OUT

- 3.1 This Planning application was received by the Council on 6th April 2017. It was considered by the Council's Planning Committee at their meeting of 4th July 2017 and the Committee resolved that the application should be approved subject to the completion of a Section 106 Legal Agreement.
- 3.2 As specified in the National Planning Policy Framework, it is incumbent on Local Planning authorities to approach decision making in a positive way and they should look for solutions rather than problems. In the light of this the Council was obliged to ensure that this planning application was considered by the Planning Committee at the earliest possible opportunity. The statutory target date for this planning application to be reported to Planning Committee was close and the Council has an obligation to process planning applications as efficiently and expediently as possible. It is not reasonable to seek to postpone consideration of a planning application to await the outcome of a separate planning application. It is also worth noting that Planning Committee were advised in their report that they considered on 4th July that some of the issues identified with application 16/01501/OUT had been addressed.
- 3.3 The Section 106 legal agreement was completed on 16th October 2017 and the planning permission was issued on 19th October 2017.
- 3.4 Instructions were prepared and issued to the Council's legal team on 21st November 2017 for advice on any options the Council have to review its approval of planning application 17/00579/OUT in the light of the appeal relating to planning application 16/01501/OUT being dismissed on the 20th November 2017. For example, should the Council seek a Judicial Review (JR) of its approval of 17/00579/OUT..
- 3.5 On 23rd November 2017 the Council's Head of Legal Services advised planning officers that the Council will not be seeking a Judicial Review (JR) of its resolution to approve 17/00579/OUT. There was a suggestion made that the Council judicially review the decision. It is not possible in law for a Council to apply for judicial review against its own decisions. The Planning decision can be revoked where the implementation of a planning permission has not yet commenced, however there has to be very unusual circumstances for this route to be taken. An application to revoke is not a matter to be taken lightly. Under the Town and Country Planning Act 1990 (as amended) (the Act) Section 97 a power exists to revoke planning permission "where it appears to the planning authority that it is expedient to revoke or modify any permission". There is a process to be followed and such an order would need to be confirmed by the Secretary of State as it would undoubtedly be opposed by the Applicant.
- 3.6 Compensation would be payable to the Applicant under Section of 107 of the Act and would place considerable financial burden on the authority as the compensation payable would cover all expenditure by the applicant from the inception of the scheme to the future loss incurred from an inability to carry out the development. The decision to revoke the grant of planning permission is not one that is considered by the authority to be expedient given that 17/00579/OUT is a valid planning decision taken in line with the democratic process. The objectors, could, had they considered an irregularity's had

occurred in the manner in which the Council dealt with the matter have sought judicial review they did not.

3.7 On 28th November 2017, Great Glen Parish Council requested that the Planning Committee's resolution to approve planning application 17/00579/OUT should be reconsidered.

3.8 On 30th November 2017 local residents requested that the Council revoke planning permission 17/00579/OUT.

4. In Conclusion

4.1 Planning applications 16/01501/OUT and 17/00579/OUT are separate planning applications each to be decided on its own individual merits. The Planning Inspector when considering planning application 16/01501/OUT appeared to accord significant weight to specific policies in the, at that time, unmade Neighbourhood Plan relating to avoiding wherever possible loss of ridge and furrow and hedgerow loss. He appeared to place less weight on the benefits of the delivery of housing and on factors such as the lack of a 5 year housing land supply in the Harborough District, for example that the shortfall 'cannot be described as a significant under supply'. The Planning Inspector thereby reached his conclusions concerning planning application 16/01501/OUT based on his planning balance judgement. His conclusion was to dismiss the appeal relating to this planning application

4.2 Turning to planning application 17/00579/OUT, the officer recommendation to the Planning Committee at their meeting on 4th July accorded appropriate weight to factors such as the, at that time, specific policies in the unmade Neighbourhood Plan relating to avoiding, wherever possible, loss of ridge and furrow and hedgerow loss. The Planning Committee gave due consideration to the officer recommendations when they were considering the separate planning application to application 16/01501/OUT, in the form of planning application 17/00579/OUT. The Planning Committee chose to place significant weight in the planning balance on the benefits of the delivery of housing and factors such as the lack of a 5 year land supply in the Harborough District. Whilst there is in law a definition of what constitutes a material consideration when taking a planning decision there is no legislation which dictates the amount of weight the decision maker must give to a particular document.

4.3 On reflection the specific concerns expressed by the Planning Inspector linked to his consideration of planning application 16/01501/OUT is unlikely to have resulted in an officer recommendation for refusal of planning application 17/00579/OUT either at the current time or when the application was considered by Planning Committee on 4th July. Officers remain of the view that appropriate conditions and reserved matters coupled with interpretation of 'wherever possible' with regard to loss of ridge and furrow would positively deal with those concerns expressed by the Inspector.

4.4 As stated above at paragraph 3.4 Local Planning Authorities have powers to revoke a planning permission in certain circumstances where the implementation of a planning permission has not yet commenced. Such a step is not to be taken lightly under the

Town and Country Planning Act 1990 (as amended) (the Act). Section 97 of the Act includes a power to revoke planning permission, “where it appears to the planning authority that it is expedient to revoke or modify any planning permission. There is a process to be followed and such an order would need to be confirmed by the Secretary of State as it would be likely to be opposed by the applicant.

- 4.5 Compensation would be payable to the applicant under Section 107 of the Act and this would place a considerable financial burden on the Council as the compensation payable would cover all expenditure by the applicant from the inception of the scheme to the future loss likely to be incurred from an inability to carry out the development.
- 4.6 The decision to revoke the grant of planning permission is not one that officers consider to be expedient given that planning application 17/00579/OUT is a valid planning decision. Any objectors could, if they had considered there had been any irregularity in the manner in which the Council dealt with the matter, have sought a judicial review, they did not.
- 4.7 In terms of lessons that can be taken from this matter. Should this scenario arise in the future we could endeavour to ensure that interested parties were made aware of the obligations of the Local Planning Authority in processing planning applications positively and without delay.

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