TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Comments on LPA Statement of Case prepared for Mr Frank Downes against the refusal of Hinckley and Bosworth Borough Council to grant planning permission for the erection of five dwellings, 9 Spa Lane, Hinckley, LE10 1JA.

Application Ref 10/00980/FUL was refused by notice dated 2nd March 2011.

4th November 2011

Reason 1

The LPA Statement of Case continues to maintain the primary reason for refusal relates to the impact upon the character of the area in terms of the density, massing, scale and footprint and not the direct impact on the occupiers of surrounding dwellings. In terms of the impact on residential amenity the committee report states the development:

"would not result in any significant overlooking, overshadowing or overbearing impacts over and above that expected from dwellings within built up areas."

Regarding the design and impact on the character of the area the report concludes:

"Each of the five dwellings of two storey proportions are individually designed with a mixture of architectural features such as projecting gables, dormer windows and porches. This adds character and interest to the elevations, reflecting the range of character of the surrounding dwellings. The design approach is therefore considered acceptable."

The changes to PPS3 introduced 9th June 2010 seek to prevent inappropriate and overdevelopment of sites in residential areas, however the above extracts from the committee report actually demonstrate this is not the case in this instance. Indeed paragraph 7.3 of the Council's Statement confirms the area is mixed in terms of the scale and footprint of dwellings which further supports the suitability of the scheme when viewed in the local context. The principle of residential development is already established and as such the proposal represents an efficient use of the site in accordance with National and Local Plan policy and guidance.

Reason 2

Paragraph 8.1 of the Council's Statement incorrectly states both trees are outside the control of the appellant. This issue is covered in paragraph 3.1 of the Grounds of Appeal which confirms tree T2 is within the grounds of Bala House which is included in the blue edge of the site location plan (OS Site Location M1210.16) that forms part of the application documents. The Tree Report also confirms T1, which is the smaller of the trees, could have the two lateral branches that extend into the site removed without detriment to its overall health. The trees could therefore be retained and maintained without the need to access third party land.

Reason 3

It is agreed this requirement can be secured via condition.

Reason 4

A certified copy of a Unilateral Undertaking will be submitted to the Inspectorate by 11th November 2011. The contribution will be conditional on the request is Regulation 122 compliant and confirmed in the decision notice.

Reason 5

In paragraph 11.9 of the Council's Statement it considers the relatively small number of dwellings does not constitute an overriding justification in favour of the development in relation to the lack of a 5 year housing land supply.

Paragraph 6.2 of the Grounds of Appeal cites a very similar scheme determined at the November Committee (2010) where members approved application 10/00453/FUL on land

rear of 38 Station Road, Ratby for six dwellings on former garden (Greenfield) land situated outside the current settlement boundary. The justification used in the committee report in relation to the Ratby application concluded:

“The general presumption within the planning system is to develop land as sustainably as possible to prevent the unnecessary loss of the countryside; however a realistic approach to the future pattern of development within the Borough needs to be considered. In line with the Core Strategy there is a commitment to deliver housing.”

In this instance the contribution of 6 dwellings to the shortfall in the 5 year supply was used as an overriding justification to approve the scheme despite the presumption against development in the countryside. It is both National and Local Plan policy that it is preferable to develop sites within settlement boundaries before greenfield or countryside locations are considered.

Appendix 5 of the Grounds of Appeal contains an appeal decision where paragraphs 12 – 20 focus on this specific issue. Not only is there a deficit in the 5 year supply, it is also growing due to the constraints associated with large schemes where phasing and infrastructure requirements delay the delivery of additional units in the short term.

The Council have demonstrated an inconsistent approach to the weight it attaches to the lack of 5 year supply and particularly the cumulative contribution modest schemes can play in the deficit reduction. Modest schemes such as the one subject to this appeal are both developable and deliverable in the short term.

Conclusion

Although the draft NPPF currently carries little weight, it does indicate the direction of travel in relation to sustainable economic growth the current Government wishes to support. This scheme would be sustainable and provide economic growth for local tradesmen during the construction phase and given the points raised above, the appellant respectfully requests the appeal is allowed on this basis.