

MISCELLANEOUS ITEM

TO: **PLANNING COMMITTEE**
27 February 2014

ANALYSIS OF PLANNING APPEAL DECISIONS
Head of Development Management

1 PURPOSE

- 1.1 With the introduction of the National Planning Policy Framework (NPPF) in March 2012 and more recently in November 2013 the adoption of the Sites Allocation Local Plan the policy environment within which planning decisions are made has changed significantly. This report sets out to examine those planning appeal decisions where planning policy has been a key consideration both in the Council's decision and in the Inspector's analysis. The report does not therefore cover appeals where the decision is based largely on local factors such as impact on neighbours' amenities.

2 RECOMMENDATION

- 2.1 **That the Committee considers and notes the implications of the changing policy context for determining planning applications.**

3 REASONS FOR RECOMMENDATION

- 3.1 To ensure that the Planning Committee is appraised of the changing policy environment and how this is being interpreted by Government-appointed Planning Inspectors. Through discussing these appeal decisions the Planning Committee will have greater understanding of how policies are being applied ensuring decisions reached are robust and less likely to be challenged successfully.

4 SUPPORTING INFORMATION

Background

- 4.1 In the first few months after the NPPF taking effect it appeared from appeal decisions that some Inspectors were themselves unclear on the weight to be given to and interpretation applied to the NPPF and local planning policy documents. However the last 12 months has seen across the country a significant shift, particularly in relation to decisions relating to developments in sensitive locations, such as Areas of Outstanding Natural Beauty (AONB) and Green Belt, as well as areas of open countryside not subject to any designation. This report will focus on appeal decisions relating to the following:

- Green Belt

- Countryside
- Parking Standards

Green Belt

Old Whitelocks, Warfield. Retention of residential units. (App. Ref 12/00773/FUL date of appeal decision 18 March 2013)

- 4.2 In this case the proposal was to convert a barn to a residential unit. In this case the Inspector noted that the barn stood in a relatively isolated location and the proposal included the change of use of an extensive area of surrounding land to residential curtilage. Here the Inspector concluded the extent of the residential curtilage together with the “typical domestic paraphernalia” that could be placed within it would be injurious to the openness of the Green Belt and as such constituted “inappropriate development”. The appeal was accordingly dismissed.

Whitelocks Farm, Warfield. Subdivision to provide additional residential units (App. Ref 12/00883/FUL date of appeal decision 11 October 2013)

- 4.3 This appeal related to refusal of an application to subdivide an existing redundant barn to provide 5 residential units. In referring to the approach the Council relied on Local Plan Policy GB4 and GB2 however, the Inspector concluded the policies are partially inconsistent with the more recent NPPF.
- 4.4 The Inspector concluded, as with Old Whitelocks, it was the impact of the intensification of residential use outside the building (such as additional cars) and the domestic paraphernalia that would cause harm to the openness of the Green Belt and thereby render the development inappropriate. This harm was added to by the extension of the domestic curtilage to the adjacent land. The appeal was accordingly dismissed.

Winkfield Lodge. Detached single storey building to be used for staff accommodation serving Winkfield Lodge. (App. Ref. 12/00723/FUL date of appeal decision 13 March 2013)

- 4.5 This proposal for staff accommodation within the grounds of Winkfield Lodge, a large detached house erected in 2001. The proposed staff accommodation was a self-contained unit of accommodation and treated as a new dwelling.
- 4.6 Whilst the dwelling was not visible from the public road, the Inspector concluded this made no difference to the effect on the openness of the Green Belt as the considerable impact of such proposals would be to undermine the purpose of designation as Green Belt. However, given its location the Inspector did not accept that the dwelling would harm the visual amenities or character of the area.
- 4.7 The Inspector also felt the dwelling by its isolated location did not constitute sustainable development. Arguments from the appellant over the need for security whilst away from the property did not outweigh the harm to the Green Belt and the appeal was dismissed.
- 4.8 The Inspector also noted the lack of consistency of Policies GB1 and GB3 with the NPPF.

Woodside, Winkfield. Replacement dwelling. (App. Ref 12/00768/FUL date of appeal decision 15 January 2014)

- 4.9 This proposal relates to the demolition of an existing dwelling and erection of a new house and four bay garage elsewhere in the residential curtilage. Again, the test is whether this development caused harm to the Green Belt and if it did then it would be inappropriate.
- 4.10 In cases where development is inappropriate then it falls to the appellant to demonstrate "very special circumstances". The Inspector referred to the NPPF which states replacement dwellings may be appropriate provided the new building is not materially larger than the existing.
- 4.11 In this instance, the appellant's argued that the proposed dwelling was not materially larger than the existing, in part because of an extant planning permission for a two storey extension and this was accepted by the Inspector as a material consideration but then he afforded this consideration only limited weight.
- 4.12 The appellant's case was that the proposal would not involve a significant increase in floor space, but the Inspector noted that in their calculations they had included the existing garage, and additionally there was a volume issue because of the extent of roof void area which the floor space comparison does not reveal. The Inspector concluded that having already used this garage floor space to argue in support of the replacement dwelling this could not then be off set against the new garage building.
- 4.13 The appellants had also argued that an outbuilding (described as a laundry building) elsewhere on the site was to be demolished. However, the Inspector stated that in assessing whether a replacement building was materially larger such outbuilding should not be taken as material considerations.
- 4.14 The Inspector went on to express concern over not only the size of the replacement dwelling but also its siting 30 metres away from the existing dwelling and in a more prominent location. This increase in built form together with its siting and the erection of a substantial new garage gave rise to the significant loss of openness.
- 4.15 The Inspector therefore upheld the decision of the Council reached by Planning Committee and dismissed the appeal.
- 4.16 For the avoidance of confusion, Members are reminded of a subsequent very similar proposal which was subsequently approved by the Planning Committee on the grounds of considerable weight being attached to the offer of the appellant to cease commercial activity on the nearby land and buildings. This offer by the applicant had not been put forward with the application, the subject of the appeal. This in the opinion of the Planning Committee amounted to such very special circumstances as to outweigh the harm to the Green Belt.

Ash Farm, Winkfield. Replacement dwelling. (App. Ref. 12/00742/FUL date of appeal decision 1 July 2013)

- 4.17 In the appeal the Inspector had regard to Policy GB1 of the Bracknell Forest Local Plan which seeks to restrict the size of new buildings within the Green Belt. National guidance refers to replacement dwellings not being “materially larger” but the Inspector notes that there is no definition which aids assessment. In this instance, the Inspector commented that the new building which had 55% greater floor area than the existing was materially larger. Additionally, the proposal compared to the existing chalet bungalow was considerably larger in volume, bulk and mass.
- 4.18 As with Woodside, the appellant made considerable play on the fall back position of an extant permission for extension of this chalet bungalow together with the removal of various outbuildings. Again as with Woodside, the Inspector however, did not consider that these arguments should be given a significant weight and dismissed the appeal on the basis that this inappropriate development would harm the openness of the Green Belt.

2 Brockhill Farm Cottages Warfield. Replacement dwelling. (App. Ref 13/00443/FUL date of appeal decision 30 January 2014)

- 4.19 This appeal related to the erection of a dwelling replacing an existing mobile home and adjacent warehouse as well as the extension of garden land. As with the other cases, the focus of the Inspector was on the interpretation of the NPPF and attention is drawn to the inconsistency of the Council’s Green Belt policies with that National Policy.
- 4.20 In this instance the appellant sought to replace a mobile home with a permanent dwelling and as with Woodside the key issue was how much larger in bulk and mass was the replacement structure. The Inspector concluded that the volume increase was 30% and he felt that this was not inappropriate. However the Inspector then turned to paragraph 89 of the NPPF which relates to previously developed sites as part of this site was in commercial use. In considering previously developed sites in the Green Belt the NPPF states that the new development should not have a greater impact on openness than that which it seeks to replace.
- 4.21 Notwithstanding the volume increase of 30% it was the height and massing of the new house in relation to the current mobile home and warehouse which led the Inspector to conclude that the development would adversely impact on the openness of the Green Belt, and therefore renders the dwelling inappropriate. The appeal was accordingly dismissed.

Fowlers, Malt Hill, Warfield. Extensions to a dwelling house. (App. Ref 13/00181/FUL date of appeal decision 23 September 2013)

- 4.22 This appeal relates to a proposal to erect a number of extensions to an existing dwelling within the Green Belt. Here the Inspector referred to saved policy GB1 of the Bracknell Forest Local Plan and the 40% guideline for extensions to original dwellings with which Members are familiar.

- 4.23 The Inspector noted under the Council policy “original” dwelling as it existed on or before the 12 May 1980. However, the Inspector considered this inconsistent with the NPPF which refers to the original dwelling as it exists on the 1 July 1948, or if constructed later, as it was when built.
- 4.24 The Inspector noted that the extension would result in an increase in size of 124% over the dwelling floor space as it existed in 1948. The extensions were to be a disproportionate increase in the size of the dwelling rendering it inappropriate development which by its nature is harmful to the Green Belt. The appeal was accordingly dismissed.

Binfield Lodge. Erection of Stables and outbuildings. (App. Ref. 12/00853/FUL date of appeal decision 16 July 2013)

- 4.25 This appeal related to the erection of stables for 8 horses and re-use of outbuilding in the grounds of Binfield Lodge, a listed building in the Green Belt.
- 4.26 The Council had refused the application on the basis of Core Strategy Policy CS9 and ‘saved’ Local Plan Policy GB1 which sets out a number of limitations on development in the Green Belt. One of these refers to recreational facilities (such as Stables) needing to be considered essential in a Green Belt location. The Inspector however concluded that policy GB1 was inconsistent with the NPPF in this respect. The test set out in the NPPF has moved to whether the use is appropriate to the use of the site (Para.89 NPPF).
- 4.27 In applying the “appropriateness” test the Inspector concludes that the extent of built development was not considered “appropriate” for the recreational use in connection with the dwelling house. The Inspector also concluded the extent of new buildings was such that it impacted adversely on the character and openness of the Green Belt.
- 4.28 Whilst the Inspector had applied a different test to that of the Council he reached the same conclusion and dismissed the appeal.

Countryside

- 4.29 Whilst the majority of appeal decisions that raise issues relating to interpretation of the NPPF related to the Green Belt there are several which relate to countryside outside of the Green Belt.

The Limes, Hayley Green. Erection of 14 dwellings. (App. Ref 13/00181/FUL date of appeal decision 23 September 2013)

- 4.30 In this case 14 dwellings were proposed on an area of grassland south of a recent housing development at The Limes. The appellant prayed in support of the Council’s lack of a 5 year housing supply. (This was prior to the adoption of the SALP). The Council’s case rested on the harm caused to the local landscape and trees on and adjacent to the site.
- 4.31 The Inspector accepted the Council’s evidence on the impact of the site in the local landscape setting of the area, particularly the contribution made by tree cover which could be harmed by the proposed development and the appeal was dismissed.

Eagle House Field, Crowthorne. Erection of 85 bed care home together with landscaping, parking and a new access. (App. ref. 12/00507/FUL date of appeal decision 10 October 2013)

- 4.32 This appeal relates to a nursing home to be erected in an area of countryside forming the gap between Sandhurst and Crowthorne. The Inspector had regard to policies within the Core Strategy relating to development outside defined settlement as well as saved policy within the Bracknell Forest Local Plan.
- 4.33 The appellant's case rested in part on the argument that Council policies for protecting the gap were out of date (this was prior to the SALP and Policies Map being adopted) and in part on the lack of a five year housing supply. The Inspector dismissed the argument on land supply as this was not development going towards the housing requirement for the Borough. He also concluded that the Council's policies were not inconsistent with the NPPF. Whilst the NPPF makes no statement of strategic gaps he concluded the site was important in separating communities and considered the Council's policies did accord with the NPPF as they seek to adhere to sustainable development.
- 4.34 The Inspector was provided with much evidence by the appellant on the alleged need for the Nursing Home but he felt that this did not outweigh the loss of the strategic gap; accordingly the appeal was dismissed.

Adherence to standards

- 4.35 As well as the appeal decisions referred to above in a number of instances Inspectors are far less willing to apply local policies or standards where the Council has failed to demonstrate the harm caused. This is particularly so in relation to decisions to refuse extensions involving additional bedrooms which our locally adopted Parking Standards SPD would require additional parking spaces on site.

43 Worlds End Hill, Bracknell. 2 storey and single storey rear extension. (App. Ref. 13/00752/FUL date of appeal decision 10 January 2013)

- 4.36 This is one of several appeal decisions relating to refusal on the basis of a lack of parking against standards where additional bedrooms are added. In this instance the dwelling increased from 3 to 4 bedrooms which under the Council standard required one additional off street parking space.
- 4.37 However the Inspector considered that one parking space shortfall was marginal and the Council did not provide adequate evidence to support the argument that there was inadequate parking in the vicinity of the property. He also considered that on-street parking was not a significant safety problem given the character and layout of the street.
- 4.38 This and other cases show that the Council should not strictly follow parking standards unless there is clear evidence on highway safety grounds.

5. CONCLUSIONS

Green Belt

- 5.1 In reaching decisions on appeals within the Green Belt it is important to note the current Local Plan policies (both Bracknell Forest Local Plan saved policies and Core Strategy Policies) are, in a number of important instances, inconsistent with the NPPF. In refusal reasons, officer recommendations were based on these policies and whilst in all instances Inspectors supported refusal their reasoning drew from the interpretation of the NPPF. As more decisions are reported not only within Bracknell Forest but across England and there is greater consistency between those decisions, officer recommendations will be based on ensuring that local policies are only applied where they are consistent with the NPPF. In some instances the NPPF effectively amends our local policies, most notably in relation to the relevant date for interpretation of what is the original dwelling house, i.e. 1948 rather than 1980 (or in the case of dwelling built after 1948 the as built date).

Countryside

- 5.2 Whilst elsewhere in the country appeals for residential development on Green Field sites are being allowed, the adoption of the SALP has given this Council the required 5 year land supply. Even before the adoption of the SALP the decision at The Limes shows a well argued case can result in the land supply argument being outweighed by other material considerations. The Eagle House decision also gives strong support for the Council's policy to protect strategic gaps between settlements.

Adherence to standards

- 5.3 The lessons from appeal decisions is that there should not be unquestioning adherence to local standards by officers and Members; clear evidence is now being sought by planning officers from consultees as to the harm arising from recommendations to refuse, for example on lack of parking spaces when additional bedrooms are being applied for. Where robust evidence is provided (for example a case at Jennetts Park where garages were undersized) then Inspectors will support our decisions.

6 ALTERNATIVE OPTIONS CONSIDERED

Not applicable.

7 SUPPORTING INFORMATION

Not applicable.

8 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 8.1 Not applicable.

Borough Treasurer

- 8.2 Not applicable.

Equalities Impact Assessment

8.3 Not applicable.
Strategic Risk Management Issues

8.4 Not applicable.
Other Officers

8.5 Not applicable.

9 CONSULTATION

Principal Groups Consulted

9.1 Not applicable.

Method of Consultation

9.2 Not applicable.

Representations Received

9.3 Not applicable.

Background Papers

Published documents.

Contact for further information

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