

Date Published: 02 December 2021



PLANNING COMMITTEE

02 DECEMBER 2021

SUPPLEMENTARY PAPERS

TO: ALL MEMBERS OF THE PLANNING COMMITTEE

The following papers have been added to the agenda for the above meeting.

These were not available for publication with the rest of the agenda.

Kevin Gibbs
Executive Director: Delivery

Page No

Planning Applications

(Director of Planning)

**The conditions for public speaking have been met in the applications marked 'PS'.
For further information or to register for public speaking, please contact Customer
Services 01344 352000.**

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Agenda Annex

BRACKNELL FOREST BOROUGH COUNCIL
PLANNING COMMITTEE
2nd December 2021
SUPPLEMENTARY REPORT

Correspondence received and matters arising following preparation of the agenda.

Item No: 05
20/00571/FUL
Land R/O 89 Locks Ride Ascot Berkshire

ADDITIONAL REPRESENTATIONS

Amendment to section 6.
Representations:

Following the publication of the committee report, one further representation was received requesting the Tree Service reviews the current Tree Preservation Order TPO 1230 served on 11.11.21

Officer Comment: The Tree Service report that it is currently reviewing the neighbour's request. However, Members should note this does not conflict with anything the applicant has put forward in that this boundary screening is shown to be retained in any case, and should further trees be identified for inclusion in the TPO it will mean they will be afforded a higher degree of protection.

Additional Correspondence received:

The Applicant has formally provided a written response to a number points raised at the Advisory Planning Committee of 11th November 2021. (A copy was published to the public file and circulated to members on the date of receipt 23.11.21)



22nd November 2021

Mr Paul Corbett
Planning Department
Bracknell Forest Council
Time Square
Market Street
Bracknell
RG12 1JD

Your Ref.: 20/00571/FUL

Land to the rear of 89 Locks Ride Ascot Berkshire SL5 8QZ
Construction of 1no. three-bedroom and 6no. four-bedroom dwellings,
with associated garages, parking, access and landscaping

Dear Paul,

In response to the discussion by Members at the Advisory Planning Committee meeting of 11th November 2021, I would like to provide the following response to comments made by the objector and Members:

Flooding at Locks Ride / Forest Road

- This point was raised by the LLFA during the consultation process and NKH consequently amended the drainage strategy to demonstrate to the LLFA that the proposed development would not result in an increase in run-off from the site, post development. The drainage strategy explains how water will be stored on site and released at the same rate as the existing rate of discharge into the surrounding water course. Qualified drainage engineers have confirmed that the drainage strategy is acceptable and it would therefore be unreasonable to suggest that the proposed development would result in additional flooding at the Locks Ride / Forest Road junction.

Southern boundary hedge

- The objector addressing the Advisory Planning Committee made reference to the "loss of an historic green amenity". As you will be aware, the right to view the green amenity is not a material planning consideration and therefore should not have any bearing in the determination of the application.
- During the consultation process, objectors to the planning application drew comparisons between the proposed Nicholas King Homes (NKH) application and the implemented scheme for 6no. dwellings, in terms of the landscaping and hedge treatment on the southern boundary. It might not be clear to everyone, but the approved planning application for 6no dwellings, which was not submitted by NKH, included a substantial house within 2m of the southern boundary (Plot 1). In order to accommodate this house, the approved landscaping scheme and tree protection plan indicated the removal of several trees along the southern boundary of the site. NKH therefore implemented an approved landscaping scheme and installed a close-boarded fence on the boundary, as indicated on the approved site layout drawing and did not breach any condition, as suggested by a Member.
- The current proposal does not have any houses on the boundary and contrary to the opinion of the objector that addressed the Planning Committee, the gardens are not compact. The smallest of the proposed seven gardens measures 145m², compared to 55m² for Plot 3 in the approved and constructed development.

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- The proposed landscape scheme reflects the first phase in terms of the proposed planting and boundary treatment. As you will be aware, since submitting the application, the TPO for the site was amended twice, in order to include 10 additional trees (8 located on the southern boundary) However, this does not have to be the case and NKH is willing to omit the close-boarded fence from the proposal in order to avoid disruption on this boundary. The attached photographs indicate that there is already a chain link fence on the southern boundary and this could be provided for the remainder of this boundary. The submitted tree protection plan already includes tree protection along the majority of the southern boundary, apart from the area where the double garage is proposed. **NKH is willing to accept a pre-commencement condition to agree the landscaping for the southern boundary in terms of the retained and proposed trees/landscaping.**
- The objector addressing the Advisory Planning Committee meeting stated that the position of the southern boundary is “disputable” because the ownership is not indicated by means of t-marks on the title plan. In the first instance, a boundary dispute is a civil matter and not material planning consideration. Secondly, the mere fact that there is not a t-mark on the title plan, does not mean that the boundary is “disputable” or that it is not possible to establish the position of the boundary. The attached photographs indicate several boundary features on the southern boundary and it is therefore not necessary to use the “centre of the hedge” as the boundary line, as suggested by the objector. It is understandable that the objector mentioned that an internet search provided information regarding the centre of the hedge being used as the boundary, when there is a boundary dispute. However, what the objector failed to mention is that this would only be relevant when there is no boundary fence.
- The presence of historic boundary features, such as a dilapidated close boarded fence, timber and metal fence posts as well as a chain link fence in very good condition, all of which are located to the south of a bank, removes any uncertainty about the position of the boundary. Even if neighbours want to argue that these features do not constitute the boundary, the Land Registry website provides commentary on situations where a hedge/ditch and a bank can be found on a boundary. It is stated under the heading Hedges and Ditches: “Where two properties are divided by a hedge (or bank) and a ditch the boundary is presumed to be on the far side of the ditch from the hedge. This presumption is based on the surmise that the owner of the land, standing on his side of the boundary looking towards his own land, dug his drainage ditch within his own land and planted a hedge on the mound of earth removed from the ditch.” The presence of a ditch/bank on the southern boundary is also consistent with the presence of a ditch/bank/hedge on the northern boundary. It is therefore considered that there is no uncertainty over the position of the southern boundary. Notwithstanding this, in order to demarcate the boundary, NKH is willing to provide additional native hedge planting on this boundary, for privacy and ecological purposes, in combination with a chain link fence, to match the existing rear fence of 67 Locks Ride.

Peel Investments (North) Ltd v Secretary of State for Housing, Communities & Local Government [2020] EWCA Civ 1175

- One of the Committee Members referred to a court judgement in September 2020, which defined “out of date” in terms of local plan policies. The member stated at one point that: “...this case that I’ve read is very similar to what we are listening today, what we are hearing today; it’s about the land supply argument, it’s about the out of date policy. Out of date does not necessarily means that our policies have expired.” The Peel judgement does relate to a residential development, although for two much larger developments of 600 and 165 dwellings.
- Legal commentary on this case explains that the two main issues arising in this appeal to the Court of Appeal were (1) the correct interpretation of the term ‘out-of-date’ in paragraph 11d of the National Planning Policy Framework (“NPPF”), and (2) the proper application of policies contained within development plan documents which are time-expired and/or where there is a lack of policy in respect of the strategic issue of housing supply.

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- The appellant did not argue that the 'tilted balance' was engaged due to a lack of 5-year housing land supply (5YHLS), as suggested by the Member of the Planning Committee, but that the local plan period has expired. The judgement did therefore not set a precedent in terms of 5YHLS, because it was accepted that the relevant Council could demonstrate a **13 year housing land supply**, which meant that the supposedly 'out of date policy' was not impeding delivery. This judgement is therefore undoubtedly not relevant to the current NKH application, because Bracknell Forest Council currently does not have a 5YHLS. The Assistant Director for Planning also confirmed that this shortfall is not marginal and therefore the Committee Report presented to the Planning Committee on 11th November stated that: *"whilst there is conflict with Policies CS9, EN8 and H5, this can be given limited weight given that they are considered 'out of date' as a result of footnote 8 of the NPPF."*

Five-year housing land supply calculation

- One of the Members suggested that the committee was making a "monumental decision", which will be based on "out of date information", due to the fact that the Council's 5-year housing land supply situation was published earlier this year. It was also suggested by another Member that *"three recent appeal decisions withstood the tilted balance arguments"*. As confirmed by Members during the discussion, each application should be judged on its own merits and the key to determining planning applications in this circumstance is established in the term "tilted balance", which confirms that decision makers should apply a weighing process. However, ultimately decision makers need to demonstrate that the adverse impacts of approving the application would **"significantly and demonstrably outweigh the benefits"**, when assessed against the policies in the NPPF as a whole. Members did not engage in any discussion about the actual harm to the countryside for this specific application and therefore did not provide any reasons why the harm would outweigh the benefits of the development.
- It is also worth stating that I could only find one appeal where the Inspector recently considered a back-land development in the countryside, with the 'tilted balance engaged', which is for the land to the rear of 42 Locks Ride. However, this appeal does not set a precedent for refusing the NKH application, because the Inspector for this appeal stated that *"the Meadow View and Neuchatel schemes are located where there are already several examples of backland and cul-de-sac development behind frontage properties. Consequently, these are in a different context to the appeal scheme and are not directly comparable to it."* (The Neuchatel development is Connaught Gardens and Meadow View is Littlehaven.) The Inspector's decision therefore confirms that the land to the rear of 42 Locks Ride, is not comparable to other sites where there are several examples of backland development.
- If Members want to reference appeal decisions in determining applications, then in undertaking a balanced assessment, they should also be mindful of appeal decision that have recently been allowed in the countryside. In the appeal for the land north of Hermitage Caravan Park, Herschel Grange, Warfield, RG42 6AS the Inspector concluded that the policies at the heart of the appeal decision are those included in the Council's first reason for refusal. *"These include Saved Policies EN8, EN20, H5 and CS1, CS2, CS7 and CS9 of the Core Strategy 2013. For this reason, I consider that these are the most important policies and when taken in the round, I regard them as out of date given that they are either predicated on a settlement policy which no longer reflects the Council's housing target or seek to protect the countryside for its own sake. For these reasons, and in line with Paragraph 11d) and Footnote 7 of the Framework the 'tilted balance' is engaged."* The Inspector came to this conclusion prior to the Council publishing the 5YHLS and therefore confirms that even if Members do not want to accept the fact that the Council does not currently have 5YHLS supply, it is possible to point towards precedent appeal decisions which confirms that the countryside policies are "out of date" and consequently the 'tilted balance' is engaged, regardless of the 5YHLS position.

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- Notwithstanding the above, the discussion regarding the 5YHLS demonstrated that Members do not completely understand how this figure is calculated, but this is a matter for the Council to resolve.

Planning gain

- It was stated at the Advisory Committee Meeting that the proposed application will result in "insignificant gain for a very high cost". The planning gain in terms of the contribution to the Council's housing land supply and considerable CIL contribution should be given the appropriate weight in the planning balance. In addition to this, NKH has also agreed to make the appropriate SANG and SAMM payment, to off-set the potential impact on the Thames Basin Heaths Special Protection Area. It is therefore possible to quantify the benefits of the proposed development, but Members have not provided any justification to support a case to refuse the application in terms of the impact on the countryside. It was suggested by Members that the countryside should be protected in the same manner as Green Belt, with one Member even stating that the site is within the Green Belt. However, as rightly stated in Committee Report and supported by the Inspector for the Hermitage Caravan Park appeal, the relevant policies relating to the protection of the countryside (Policies CS9, EN8 and H5) are out of date. Unlike the Peel judgement, these policies are impeding on housing delivery.
- NKH would like to confirm that in light of the announcement that it will be a legal requirement to install car charging points for new homes from next year, the proposed dwellings will also be fitted with car charging points to encourage sustainable transport. The provision of the car chargers can be secured by means of a pre-occupation condition.

In conclusion, NKH obviously supports the views expressed by officers in the Committee Report and during the debate at the Advisory Planning Committee meeting and is of the opinion that a decision contrary to the officer's recommendation would constitute unreasonable behaviour by the Council.

Kind regards,



Wesley McCarthy MRTPI
Senior Planning Manager
Nicholas King Homes

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Item No: 6
21/00743/FUL
7 York Way Sandhurst Berkshire GU47 9DE

ADDITIONAL REPRESENTATIONS

Representation received from applicant:

- o There is a fixed contract from the NHS with limited capacity.

- o There will be no increase in staff and no increase in patients. Happy with condition agreed in regard to numbers. The capacity is capped and they hit these limits prior to covid with the staff that they currently have; therefore, it would make no sense to employ more staff and up costs when they cannot increase output. There is no risk of increased customers and staff. They only get the money for let's say, 1000 canal treatments from the NHS, if they did 1100 they would be doing the extra 100 at detriment to themselves.
- o Due to no increase in staff or patients no impact on parking.
- o 2 additional surgeries are needed due to new regulations including: 20 minute fallow time, air ventilation system and cleaning requirements. These are permanent and not temporary changes. Especially in dentist surgeries and hospitals these regulations are permanent. The new Covid-19 wave shows that we will also have Covid of some sorts in the background just like flu now. We will still have these measures in place in "vulnerable spreading locations" like dentists to limit transfer.
- o Happy to downsize bins in accordance with previous discussions
- o If new surgeries are not approved, the NHS contract will not be able to be met with new cleaning/fallow time restrictions, the surgery will then have to close. The surgery provides a valued service to the community and if the additional surgeries are not approved in relation to these circumstances imposed on the practice, it will be lost.

If we can really clarify: no increase in staff, no increase in customers, fixed contract with limits, fallow times/cleaning requirements are permanent, and surgery will be lost if not addressed.