

### Summaries of recent decisions

**K B Tebbit Ltd and Davidsons Development Ltd – Outline application for 49 dwellings, community car park and coach drop-off facility, pumping station and associated infrastructure – Hurdleditch Road, Orwell – Appeal allowed. Appellant's application for costs refused.**

1. The Committee refused the application on the basis that the unsustainable location of the site for the proposed development, with particular regard to its access to services and facilities, and any resulting need to travel by the private car, and the effect of the proposed development upon the existing landscape character of the area and the setting of the village. The appeal was considered by way of a hearing attended by Cllr Van de Weyer and a member of Orwell Parish Council.
2. While the hearing took place before the *Hopkins Homes* Supreme Court judgement, the inspector received comments from the main parties following the judgement before issuing his decision. In doing so he confirmed that the Supreme Court Judgement makes clear that it is not necessary to label policies DP/1 (part a) and DP/7 of the Adopted Local Development Framework Development Control Policies Development Plan Document 2007 and ST/6 of the adopted Core Strategy Development Plan Document 2007 as being out of date.
3. However, whilst these policies are generally consistent with those aims of the Framework seeking to steer developments to accessible locations to reduce the dependency on the need to travel by the private car, their weight is reduced in this case due to the significant shortfall in terms of housing supply within the District and the difficulties faced by the Council in addressing the deficit.
4. As in other recent appeal decisions, the inspector considered there to be a very significant shortfall in the supply of housing. The proposal would provide for up to 49 new houses, of which 40% would be affordable dwellings. In the context of the Council's shortfall in the supply of housing, the scheme would make a substantial contribution to which he gave considerable weight.
5. In terms of the sustainability issue, he considered that that the site would be located close to existing local facilities and services providing for some day to day needs of residents and would allow for the opportunity for some journeys to be made by public transport to facilities and services located further afield. Nevertheless, the location of the development would result in the likelihood that residents would utilise the private car in order to access those services and facilities that are located further afield with only limited or no public transport accessibility. He concluded that the proposal would result in moderate harm to the objectives of policies DP/1, DP/7 and TR/1 along with the relevant provisions of paragraphs 7 and 17 of the NPPF.
6. In landscape terms, although the development would extend beyond the settlement edge, the inspector did not consider the protection of the existing settlement edge to be of such importance in this location to protect the setting of the village or the landscape character of the area. Representations were made by other parties on views to the Church of St Andrews from Hurdleditch Road. Given that the proposed development would only affect views to the church for only a limited section of Hurdleditch Road, no significant adverse impacts were found in this respect. New planting would be possible that provides the opportunity to soften the visual impact of the new housing in views on the approach to the village.

7. The inspector found no significant harm arising in terms of any impacts upon the future of the school. All other concerns could be satisfactorily mitigated by way of conditions. The proposed section 106 planning obligation including provision for affordable housing, on-site open space, off-site sports and play areas, Orwell Clunch Pits SSSI, bus-stop maintenance and traffic regulation orders were all accepted as being necessary and CIL compliant.
8. Overall the adverse impacts were not found to significantly and demonstrably outweigh the benefits. Consequently the proposal would represent sustainable development and the appeal was allowed.
9. The appellant claimed an award of costs based on the fact that the Council had allowed development outside of other Group Villages and it therefore should have done so in this case. In response, the inspector was satisfied that in this respect, each decision should be made on its merits and, whilst other appeal decisions can be relevant, just because a development has been carried out at one Group Village it does not necessarily mean that all Group Villages are suitable locations for residential development. He also noted that the Council has approved other housing development at Group Villages. He accepted that the Council had given consideration to the significance of its housing shortage in making its decision and has not acted unreasonably in this respect. While there were inconsistencies in the Council's evidence on landscape impact and the setting of the village these were not of such a magnitude to have resulted in the appellant incurring unnecessary expense.
10. Unreasonable behaviour resulting in unnecessary expense during the appeal process had not been demonstrated. An award of costs was therefore not justified.

*Comment: This decision is important as a planning inspector has confirmed the legal advice given to the Council regarding the status of policies ST/6, DP/1(a) and DP/7 as no longer being out of date. This allows the decision-maker to give weight in principle to the objectives of these policies, albeit this must still be considered in the light of paragraphs 14 and 49 of the NPPF and the Council's inability to demonstrate an up to date supply of housing land. The fact that this appeal was allowed confirms that the Supreme Court judgement does not alter the approach that needs to be adopted.*

**M Scott Properties Ltd – Outline application for 26 dwellings with associated access, parking and landscaping – Land west of the Cemetery and north of The Causeway, Bassingbourn – Appeal allowed. Appellant's application for costs dismissed**

11. Planning Committee refused the application on the basis that the proposal would have an adverse impact on the character of the landscape by developing within the open space between the eastern boundary of the settlement of Bassingbourn and the western boundary of the settlement of Kneesworth. The inspector also considered the impact on local infrastructure and the suitability of the site for housing. The appeal was determined by way of written representations. Although the decision post-dates the *Hopkind Homes* judgement of the Supreme Court, the inspector did not invite comments from the main parties on the significance of that decision.
12. The inspector noted that the site lies in an area which has no national or local designation although its open character is valued by local residents. It would nonetheless result in the loss of about 1ha of best and most versatile agricultural land. In visual terms, given the enclosed nature and the relatively level topography of

the site and immediate surroundings, the appeal site provides a minimal contribution to the wider surrounding area and the proposal would have limited harm on the character of the wider landscape. Nonetheless, the site, together with the adjoining cemetery and fields to the north and south of The Causeway, provides a contribution to the visual gap, preventing coalescence between the villages of Bassingbourn and Kneesworth and adds to the open character and appearance of this part of the village.

13. The development would undermine the gap between the two villages although the proposal would only be visible over short distances on the approach into the village along The Causeway. Whilst the inspector recognised that the impacts of the development could be mitigated by restricting the height of the buildings through planning condition to match those in the area and in time by the retention and enhancement of the hedgerow along the frontage of the site, he concluded the proposal would harm the landscape character of the local area and exacerbate the coalescence between the villages.
14. In considering the overall balance, the landscape harm carried significant weight. The loss of the agricultural land carried moderate weight. Against that, the proposal would provide 26 new dwellings, of which 10 would be affordable. Given the “severe” shortfall in housing provision in the area and the “chronic” shortage of affordable homes, this was a significant social benefit carrying very substantial weight. The contributions towards play equipment and the sports pavilion on the adjacent recreation ground; the contribution towards a new pavilion in Bassingbourn; and the provision of a LAP were viewed as social benefits of the scheme which carried moderate weight. The opportunities for biodiversity, renewable energy technologies, footpath improvements, general accessibility and economic benefits during construction all carried additional moderate weight.
15. The inspector was satisfied that the various infrastructure contributions (except a payment towards monitoring costs) were justified to make the development otherwise acceptable.
16. He concluded that the adverse impacts identified did not significantly and demonstrably outweigh the scheme’s benefits and the proposal would represent a sustainable form of development when assessed against the policies of the Framework taken as a whole. Consequently the proposal would represent sustainable development and the appeal was allowed.
17. The appellant’s claim for costs was that the reason for refusal was unnecessary as there was a delay in providing information and complying with deadlines. Committee members had also failed to appreciate and apply relevant national policy. The reason for refusal was considered to be vague and unsupported by any objective analysis and evidence from the Council, including that at application stage. The Committee had also failed to undertake a proper balancing exercise against the overall benefits of the development and principles of sustainable development.
18. In response the inspector found that given the complex and substantial nature of the application, the Council had actively engaged with the appellants during the application process. The reason for refusal was complete, precise, specific and relevant to the application and had been adequately substantiated by the Council. While the committee took a different view to that of its officers, the conduct of the committee had not been unreasonable and there were matters of planning judgement based on an assessment of fact and degree of the effects on the main issues relating

to the development. The Council had not acted unreasonably and no award of costs was justified.

*Comment: While the inspector agreed that the landscape harm carried “significant” weight, this still had to be considered in the light of paragraphs 14 and 49 of the NPPF and the Council’s inability to demonstrate an up to date supply of housing land. Once again, the balance has been tilted in favour of approval given the wider sustainability benefits of the development. Even if the Supreme Court judgement had been taken into account this is unlikely to have led to a different decision given the requirements of the NPPF.*

**Hallmark Hotels (Bar Hill) Ltd – 40 residential dwellings and associated parking, landscaping, play area and pedestrian access – Land south of Huntingdon Road, Bar Hill – Appeal allowed. Appellant’s claim for costs allowed**

19. Planning Committee refused the application for two reasons. First, that the identified need for affordable housing in this location outweighs the requirement for a design of the specification proposed in the application. The proposed scheme would incur high build costs and this had resulted in a provision of 20% affordable housing (inclusive of a commuted sum for the equivalent of two offsite units). It was considered that the development in the eastern part of the site in particular could be constructed to a reduced specification and the level of public art across the scheme could be reduced to release more funding for the provision of additional affordable units on site. It was considered that other planning objectives do not fully justify the level of affordable housing proposed. The second reason raised concerns that the bulk, scale and massing of the two blocks of apartments in the front (western) portion of the site were detrimental to the established character of the entrance to the settlement of Bar Hill.
20. The appeal was considered by way of a hearing attended by councillors Bunty Waters and Lynda Harford.
21. Given issues of viability, the appellant advanced the appeal scheme with no affordable housing but with a fall-back position that would be the equivalent of 20% affordable housing (comprising 6 shared ownership homes and a contribution of £185,500.71). In contrast, the Council were unable to provide a figure at the hearing as to the percentage of affordable housing it considered could be viably delivered.
22. In terms of policy HG/3 the abnormal costs of the development would mean that a 40% affordable housing level could not be achieved. The Council’s evidence queried the build costs and the public art strategy. The inspector found the build costs were likely to be slightly higher than necessary and it is therefore conceivable that the design specification could be reduced without the overall design quality of the proposal being unduly compromised. In this respect, it was difficult to justify the entire public art strategy given the compelling local need for affordable housing.
23. The Council were, however, unable to identify a financial figure for those build costs it considered to be unnecessary and therefore the inspector opined it was difficult to ascertain whether any savings would be significant. The viability position was unlikely to be as bad as suggested by the appellant and as such, it is likely that 20% affordable housing could be achieved with a slightly higher profit level for the appellant. Given the disagreements between the Council and appellant the independent report from Carter Jonas, which the appellants and Council’s Planning Officers confirmed should be given ‘maximum weight’, was a material consideration

of added importance. As a result, the inspector was not satisfied the appellants had demonstrated that the scheme could provide any affordable housing.

24. Nevertheless, in refusing the application, the Council had not accepted the recommendations of Carter Jonas. Instead, the Council had suggested that the level of affordable housing should be beyond a 20% equivalent. However, such a proposition was not supported by substantive evidence including a costing of savings that could be made. While some savings could be made, it was unlikely that the savings would be so great as to provide affordable housing beyond a 20% threshold and deliver a minimum 15% developer return. Consequently, with the equivalent provision of 20% affordable housing, secured through a planning obligation, the inspector concluded the proposal would provide an adequate level of affordable housing.
25. The inspector found that the concept of a flatted scheme would not be harmfully out of character with the area and its location. Whilst this would not be the case in all views of the proposed buildings, the bund, alongside the retention and provision of landscaping and green roofs, would soften the visual impact of the flats to an acceptable extent. As a consequence, the bulk, scale and massing of the proposed buildings would not harm the character and appearance of the area. The flats would be a landmark feature at the entrance to the village, but this was not considered to be a matter weighing in favour or against the proposal. Whilst the proposal would not enhance the character and appearance of the area it would at least preserve it.
26. In reaching this view the inspector found it important to note that at least 26 letters of objection were lodged, including Bar Hill Parish Council, many of which raised concerns with the design of the proposal. The District Council had suggested that the proposal would be at odds with the District Design Guide but at the hearing the Council were unable to refer to any specific section of the document that would support its proposition. As such, in the absence of evidence to the contrary, there was no conflict with the District Design Guide. The proposal would therefore integrate with, and thus preserve, the character and appearance of the area.
27. Taken together, the inspector concluded that the adverse impact of the proposal was of limited weight and the benefits were of moderate weight. Consequently, the appeal scheme would not have adverse impacts that would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. The proposal would be sustainable development for which the Framework carries a presumption in favour. The appeal was therefore allowed.
28. The appellant's claim for costs was that the Council had failed to substantiate its reason for refusal and in terms of the second reason had gone against the advice of both the Design Enabling Panel (DEP) and Urban Design Officer without proper rational justification. Late evidence had also been submitted in an attempt to alter its position at the hearing.
29. The inspector found that the Council had entirely failed to substantiate a proposition of more than 20% affordable housing which in any event was at odds with the independent review undertaken by Carter Jonas. There were no figures to support its stance that building costs were too high with only vague references to where savings could be made. There was no evidence to support what the level of affordable housing should be or why the independent advice had been ignored.
30. The design approach had followed a robust design process leading to amendments whereby it was ultimately endorsed by the DEP. The NPPF makes it clear that regard

should be had to the recommendations from a local design review panel and there was no justification as to why these had been set aside. Nonetheless, the Council was able to substantiate its case in terms of its impact and contribution to the rural setting of the village. A planning balance had been struck and this aspect of the Council's case had been adequately approached.

31. Officers also felt the need to submit late evidence in response to issues of viability. In reply, the inspector concluded that this exercise could have been done much earlier in the process. While the inspector accepted this evidence, he considered it had led the hearing been extended in order to examine the matters raised. The Council subsequently withdrew the evidence as it went outside the scope of the concerns raised by the planning committee. This had led to unnecessary expense for the appellant.
32. Costs were therefore awarded to the appellant on the grounds that the Council had acted unreasonably as it had failed to substantiate its first reason for refusal. This unreasonable behaviour had been compounded by procedural failings in the way it presented its case.

*Comment: This appeal provided a significant challenge for officers given the recommendation to approve the planning application. Members' decision not to accept the independent advice of Carter Jonas could not be satisfactorily addressed. While the inspector was critical of Committee's resolution to disagree with the advice of either the DEP or the Urban Design Officer, officers were at least able to substantiate a design case, which "on balance" was sufficient to prevent further costs from being awarded.*