

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

02 August 2017

**AUTHOR/S:** Joint Director for Planning and Economic Development

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**Application Number:** S/0415/17/OL

**Parish(es):** Castle Camps

**Proposal:** Outline application for the erection of up to 10 dwellings with all matters reserved except for access

**Site address:** Land off Bartlow Road, Castle Camps, CB21 4SX

**Applicant(s):** Arbora Homes

**Recommendation:** Delegated Approval subject to the completion of a section 106 agreement.

**Key material considerations:** Housing supply, Principle of development Density, Housing mix, Affordable Housing, Impact on services and facilities, Impact on landscape, local character and heritage impact, Ecology, trees and hedging, Noise and lighting, Residential amenity Highway Safety and Parking, Archaeology Surface Water Drainage and Foul Water Drainage Contamination, Renewable Energy, Waste, Developer contributions

All of these matters were considered in the report presented to Planning Committee in May 2017, when Members resolved to grant planning permission. This report focusses on the implications of the Supreme Court judgement relating to the extent of Local Plan policies which are considered to affect the supply of housing.

**Committee Site Visit:** Undertaken on 09 May 2017

**Departure Application:** Yes

**Presenting Officer:** Lydia Pravin, Senior Planning Officer

**Application brought to Committee because:** To consider the implications of the *Hopkins Homes* Supreme Court judgement relating to the extent of Local Plan policies which are considered to affect the supply of housing, an amendment to the S106 agreement and further consideration of the impact on the setting of the heritage assets

**Date by which decision due:** 31 July 2017 (Extension of time agreed)

## Introduction

1. This application was considered at the 10 May 2017 meeting of the Planning Committee. The Committee resolved to approve the application subject to:  
The prior completion of a Legal Agreement under Section 106 of the Town and Country Planning Act 1990 securing matters such as
  - a. a total of four affordable dwellings on site
  - b. waste receptacles – contribution of £888.00
  - c. informal open space provision on site including management and maintenance
  - d. drainage maintenance

The Conditions and Informatives set out in the report from the Joint Director for Planning and Economic Development with modification to condition (b) to now be "Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of 1 year from the date of this permission."

The application remains undetermined pending the completion of the section 106 agreement. A copy of that (and any update) report are appended to this report.

2. On 10 May 2017, the Supreme Court gave judgment in *Suffolk Coastal DC v Hopkins Homes Limited* and in the conjoined matter of *Richborough Estates Partnership LLP v Cheshire East BC* [2017] UKSC 37.
3. The Supreme Court Judgement narrows the range of development plan policies which can be considered as 'relevant policies for the supply of housing'. Those policies are now not to be considered out of date, even when a five-year housing land supply cannot be demonstrated.
4. In respect of South Cambridgeshire this means that the Local Development Framework Policies that were listed as being out of date at the time when this application was considered are no longer held to be out of date.
5. On 30 June 2017, the Court of Appeal issues a further judgement in *Barwood Strategic Land v East Staffordshire Borough Council*. The Court held that the "presumption of sustainable development" within the National Planning Policy Framework (NPPF) falls to be determined in accordance with paragraph 14 and there was not any wider concept of a presumption of sustainable development beyond that set out in and through the operation of, paragraph 14. Paragraph 14 of the NPPF has been applied in this supplementary report with the approach of the Supreme Court in *Suffolk Coastal* and it is not considered that the *Barwood Land* decision requires any further changes to the advice set out above.
6. The overriding issue however is not whether the policies are out of date but whether, in light of the continuing lack of a five year housing land supply, it can be shown that the "adverse impacts ... would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole". That is the test required by paragraph 14

of the NPPF, regardless of whether policies are 'out of date' or not. This test should be given considerable weight in the decision making process even though the definition of policies affecting the supply of housing has been narrowed by the Supreme Court judgement. Given the need to boost the supply of housing, the contribution of the proposal to the supply of housing (including affordable housing) is considered to outweigh the conflict with the policies of the LDF.

7. This report considers the officer advice given to Members at the 10 May 2017 meeting in relation to the policies relating to the supply of housing and the extent to which this has changed as a result of the Supreme Court decision.

### **Planning Assessment**

8. The Council accepts that it cannot currently demonstrate a five year housing land supply in the district as required by the NPPF, having a 4.1 year supply using the methodology identified by the Inspector in the Waterbeach appeals in 2014. This shortfall is based on an objectively assessed housing need of 19,500 homes for the period 2011 to 2031 (as identified in the Strategic Housing Market Assessment 2013 and updated by the latest update undertaken for the Council in November 2015 as part of the evidence responding to the Local Plan Inspectors' preliminary conclusions) and latest assessment of housing delivery (in the housing trajectory March 2017). In these circumstances any adopted or emerging policy which can be considered to restrict the supply of housing land is considered 'out of date' in respect of paragraph 49 of the NPPF.
9. The effect of the Supreme Court's judgement is that policies DP/1(a), DP/7 and ST/6 are no longer to be considered as "relevant policies for the supply of housing". They are therefore not "out of date" by reason of paragraph 49 of the NPPF. None of these adopted policies are "housing supply policies" nor are they policies by which "acceptable housing sites are to be identified". Rather, together, these policies seek to direct development to sustainable locations. The various dimensions of sustainable development are set out in the NPPF at para 7. It is considered that policies NE/4 (Landscape Character Areas), NE/6 (Biodiversity), CH/2 (Archaeological Sites), CH/4 (Development Within the Curtilage or Setting of a Listed Building), CH/5 (Conservation Areas) and NE/17 (Protecting High Quality Agricultural Land) and their objectives, both individually and collectively, accord with and furthers the social and environmental dimensions of sustainable development, and therefore accord with the Framework.
10. Any conflict with adopted policies DP/1(a), DP/7 and ST/6 is still capable of giving rise to an adverse effect which significantly and demonstrably outweighs the benefit in terms of housing delivery of the proposed development in terms of a residential-led development cannot simply be put to one side. Nonetheless, the NPPF places very considerable weight on the need to boost the supply of housing, including affordable housing, particularly in the absence of a five year housing land supply. As such, although any conflict with adopted policies DP/1(a), DP/7 and ST/6 is still capable, in principle, of giving rise to an adverse effect which significantly and demonstrably outweighs the benefit of the proposed development, any such conflict needs to be weighed against the importance of increasing the delivery of housing, particularly in the absence currently of a five year housing land supply.

11. A balancing exercise therefore needs to be carried out. It is only when the conflict with other development plan policies – including where engaged policies DP/1(a), DP/7 and ST/6 which seek to direct development to the most sustainable locations – is so great in the context of a particular application such as to significantly and demonstrably outweigh the benefit in terms of the delivery of new homes that planning permission should be refused.
12. The proposal is located outside the development framework of a group village. It is acknowledged that Castle Camps has a limited number of services and facilities and that travel to larger centres, such as Haverhill, is required to meet basic day to day needs and sources of employment. However, there is a bus service which would allow commuting to Haverhill which serves bus stops within a short walk of the development. This would provide an alternative means of transport to access a broader range of services and facilities without relying on the private car. The weight that can therefore be attached to the conflict with policies DP/1(a) and DP/7 which are intended to ensure that development is directed to the most sustainable locations in the district is reduced.
13. Policies HG/1 (Housing Density), HG/2 (Housing Mix), NE/6 (Biodiversity), NE/17 (Protecting High Quality Agricultural Land) and CH/2 (Archaeological Sites) were all policies that were previously considered to be relevant policies for the supply of housing. That is no longer the case. However, no conflict was identified with any of these policies and thus none of them require a reassessment in terms of any harm that might arise.
14. It is considered that the scheme includes positive elements which demonstrate that as a whole the scheme achieves the definition of sustainable development. These include:
  - the positive contribution of up to 10 dwellings towards the housing land supply in the district based on the objectively assessed need for 19,500 dwellings and the method of calculation and buffer identified by the Waterbeach Inspector
  - the provision of 4 affordable dwellings on site, making a significant contribution to the identified need in Castle Camps (requirement for 11 affordable dwellings as identified on the Housing Register) and the wider District
  - social and economic benefits as a result of the dwellings through the creation of jobs in the construction industry and an increase of local services and facilities, both of which will be of benefit to the local economy.
15. At Planning Committee on 10 May 2017 an additional requirement was added to the Section 106 agreement for responsibility of the developer to ensure that a management company is in place to deliver management and maintenance of those parts of the common areas, covering the lighting, refuse collection area, footpaths and roads.
16. Regulation 122 of the CIL Regulations states that a planning obligation as set out in a Section 106 agreement may only constitute a reason for granting planning permission for the development if the obligation is:
  - i Necessary to make the development acceptable in planning terms;

- ii) Directly related to the development; and,
- iii) Fairly and reasonably related in scale and kind to the development.

17. The Section 106 Officer has advised it would be unreasonable for the S.106 Agreement to require the management and maintenance of those parts of the common areas, covering lighting, refuse collection area, footpaths and roads as this would not be in line with Regulation 122 of the CIL regulations. The lighting and refuse areas will be detailed as part of a reserved matters application and will be addressed accordingly.
18. A verbal update will be given at planning committee on the planning obligations regarding the tenure split of the affordable housing.
19. At paragraph 167-168 of the Planning Committee Report, determined on 10 May 2017, reference was made to s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to the decision of the Court of Appeal in *Barnwell Manor*. The effect of that decision is that the Council, as decision maker, should attach great importance and weight to any harm to a listed building or its setting which arises as a result of a development proposal. The Council should therefore attached great importance and in respect of the harm, albeit less than substantial, which it is considered that the development proposed would cause to the setting of Wisteria Cottage.
20. At paragraph 176 of the Planning Committee Report, reference is made to paragraph 134 of the National Planning Policy Framework 2012 (NPPF), which states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. It is noted in the Planning Committee report that some harm, albeit less than substantial, will be caused to the significance of both Wisteria Cottage and to the Castle Camps Conservation Area.
21. Having taken legal advice, it is considered that the reference in paragraph 134 of the NPPF to “optimum viable use” is more closely directed to cases where development is proposed to a listed building or other heritage asset itself. That is not proposed as part of the present proposal. As such the issue of “optimum viable use” does not arise to any material extent in the context of these proposals and the balancing exercise which the Council is required to carry out. Paragraph 176 of the Planning Committee Report should be considered as modified in this respect.
22. Nonetheless, the development proposed will provide a contribution to the lack of 5 year housing land supply and chronic shortage of affordable housing, as well as providing significant economic benefits. These benefits are considered to outweigh the limited, less than substantial harm to the significance of the affected heritage assets, and justifies the grant of planning permission, notwithstanding the weight to be attached to harm to the setting of the listed building, as required by the *Barnwell Manor* decision.
23. Environmental Health have reviewed the application in light of the new ProPG guidance and there is no impact on the comments they made as a result. Therefore their comments made on the application presented at 10 May Planning Committee remain.

## **Conclusion**

24. Officers consider that notwithstanding the conflict with policies DP/1(a), DP/7 and ST/6, this conflict can only be given “limited” weight. The previously identified impact on the need to travel out of the village to access facilities to meet day to day needs and employment opportunities, setting of the Grade II listed building and Conservation Area still results in limited harm.
25. The provision of up to 10 dwellings, including 4 affordable dwellings can be given significant weight. Employment during construction to benefit the local economy and the potential for an increase in the use of local services can also be given some limited weight.
26. None of the disbenefits arising from the proposals are considered to result in significant and demonstrable harm when balanced against the positive elements and therefore, it is considered that the proposal achieves the definition of sustainable development as set out in the NPPF.

## **Recommendation**

27. Officers recommend that the Committee again resolves to grant planning permission subject to the conditions agreed at Planning Committee on 10 May 2017 with an amendment to the Section 106 agreement removing the additional requirement "responsibility of the developer to ensure that a management company is in place to deliver management and maintenance of the common areas, including the lighting, refuse collection area, footpaths and roads. Financial responsibility will rest with the occupiers of the dwellings".
28. The following items are appended to this report:

- a. Appendix 1 – report presented to committee on 10 May 2017

## **Background Papers:**

The following list contains links to the documents on the Council’s website and / or an indication as to where hard copies can be inspected.

- South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
- South Cambridgeshire Local Development Framework Supplementary Planning Documents (SPD’s)
- South Cambridgeshire Local Plan Submission 2013
- Planning File Reference: S/0415/17/OL

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