

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Planning Committee	1 October 2008
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APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION: SUMMARIES OF DECISIONS OF INTEREST – FOR INFORMATION

Purpose

1. To highlight recent Appeal decisions of interest forming part of the more extensive Appeals report, now only available on the Council's website and in the Weekly Bulletin.

Summaries

Stannifer Developments Ltd – Proposed new settlement at Mereham and associated improvements to A10 and the Jane Coston Bridge – Appeals dismissed. Applications for costs against the appellant dismissed.

2. These appeals concerned proposals to build a new settlement comprising up to around 5,000 homes; up to around 8,000m² retail and related uses, up to around 45,000m² employment uses and supporting leisure, community and education uses on land between Haddenham and Stretham. As part of the proposals, an application was made to South Cambridgeshire District Council to widen much of the A10 between the appeal site and the A10/A14 junction and to "improve" the Jane Coston Bridge to allow passage by buses.
3. The appeals were considered at a public inquiry lasting seven weeks during October and November 2007. The inquiry took place at Haddenham. East Cambridgeshire District Council, South Cambridgeshire District Council and the Cambridgeshire County Council gave evidence. Simon Bird of Counsel represented all the three Councils. Several members of the public gave evidence as did Cllrs Hazel Smith and Mike Mason. The Secretary of State recovered the appeals for her own determination. A separate appeal made to Cambridge City Council was dealt with by written representations.
4. The Inspector recommended that all three appeals were dismissed. In particular, so far as the road network is concerned, he concluded:

"... should Mereham proceed, the adverse effect of the traffic from the new settlement would be insignificant on the A14 trunk road, providing it is reconfigured in accordance with the amended proposals and the Milton interchange is improved as proposed by the appellant. The adverse effect in terms of delayed journeys and driver and passenger frustration and inconvenience would be appreciable on the B1049, discernable on the A1123 and above all, so significant on the A10 as in my view to seriously inconvenience a significant number of people and businesses in parts of South and East Cambridgeshire and thus adversely affect the regional economy."
(emphasis added)

5. By letter dated 28 August 2008, the Secretary of State agreed with the Inspector's conclusions.
6. The Secretary of State recognised that the housing numbers in the East of England Plan are minima and that there is a shortfall of housing land in the Cambridge Sub Region. She considered that the proposed level of affordable housing would accord with the development plan, although she was not satisfied that the proposed Section 106 Unilateral Undertaking would necessarily ensure the delivery of the proposed level of affordable housing. The Secretary of State considered that the proposed development has the potential to deliver other benefits including a high quality public transport service, a significant amount of employment and a number of sustainable measures, including a commitment to build in line with the Sustainable Buildings Code and BREEAM Code for non-residential buildings.
7. However, the Secretary of State considered that, overall, the appeal proposals did not accord with the development plan and the proposal had substantial deficiencies in terms of its failure to meet the locational policy set out in the East of England Plan. She further considered that ECDC has a 5-year supply of deliverable housing land. Whilst she recognised that, on the basis of available evidence, there appears to be a minor housing shortfall in the CSR, she did not consider this shortfall significant so as to justify permitting the appeal proposals. The Secretary of State also had concerns about the early deliverability of the site, owing to her reservations with the Section 106 Unilateral Undertaking and concerns regarding the timing of delivery of the necessary supporting infrastructure.
8. Whilst the Secretary of State acknowledged that there would be some transport benefit, including the proposed high quality public transport service, she considered this to be heavily outweighed by the increased traffic congestion on the already partially congested A10, which she considered would not only be unsustainable in the life of existing communities and businesses in the area and the proposed community at Mereham, but also prejudicial to the effective operation of the public transport service that the new settlement is intended to support. Overall, she considered that the transport proposals for this scheme, forming the two main appeals were inadequate.
9. In addition, the Secretary of State considered that the proposed settlement would clearly result in a physical change to the local landscape and, even with the proposed mitigation measures, the visual impact of the proposed development would be significant. She also considered that, with the additional traffic, there was bound to be some adverse environmental impact from the proposed development on other villages in terms of noise, vibration, severance and pollution. Furthermore, with respect to the proposals to widen the A10, the Secretary of State considered that the proposals would, on the evidence provided, harmfully impact on the landscape character of the A10 between Milton and the proposed new settlement.
10. The Secretary of State concluded that there were no material considerations of sufficient weight to indicate that the appeals should be determined other than in accordance with the development plan and that planning permission for the proposed new settlement and improvements to the A10 should therefore be refused. Furthermore, she considers that the appeal concerning the lawfulness of works to the Jane Coston Bridge should be refused and that a lawful development certificate should not be issued.

11. All three Councils were involved in substantial time and costs. In summary they argued the appellant should pay the parties' costs because it must have been obvious to the appellant that he had no chance of success; the proposed development conflicted substantially with the development plan, there were no material planning considerations which suggested a different decision; and the complexities of land ownership meant the development could not be delivered.
12. The inspector disagreed that the appellant had acted unreasonably in pursuing the appeals. The appellant's employment of junior and senior counsel and various professional witnesses did not support this; the government wants affordable housing; the appellant's case did not fly in the face of all national policies; and while the evidence fell somewhat short of a compelling case in terms of deliverability, it was acceptable in terms of the multiplicity of land ownerships. The Secretary of State agreed with these conclusions.
13. Officers have since considered there is no real merit in challenging the non-award of costs even though the appellant's case fell well short in many areas.

Mr H Price – Retention of Gypsy caravan site – Land at Moor Drove, Histon – Appeal allowed

14. The land has been occupied as a six-pitch Gypsy site since December 2003. Appeals against enforcement notices were dismissed in August 2005 with the effect that the occupants were to leave the site by November 2005. The appeals were dismissed on the grounds of harm to the Green Belt, highway safety and the residential amenities to the occupants of Beck Farm. In 2006, the Council declined to consider a further planning application. The occupants subsequently instructed consultants to proposed alternative access arrangements into the site and a further planning application was received in October 2007. This application was refused in November 2007 on the basis the Council did not consider the proposals overcame the previous reasons for refusal.
15. In light of the new Gypsy and Traveller Circular issued in February 2006, the Council carefully considered the appropriateness of a temporary permission. This was ruled out because of the harm to highway safety, residential amenity and concerns that the applicants did not own all of the land to which the application related. An appeal was lodged in December 2007
16. In April 2007, the Council had applied to the High Court for an injunction to evict the site residents. In a judgement dated 5 June 2008, the judge found that it would be disproportionate to grant the injunction as there was a real (i.e in the sense of "actual") prospect that the appeal might succeed.
17. The appeal was heard at a public inquiry lasting four days. The occupant of Beck farm gave evidence and the inspector visited her property during the inquiry.
18. The inspector found that there is harm to the Green Belt by reason of inappropriateness and there is limited additional harm to the character and appearance of the area. The issue of highway safety resulted in the appellant putting forward a number of different options to improve the junction of Moor Drove with Cottenham Road. The respective highways experts disagreed over many of the various technical requirements, but the inspector found that all four of the highway options put forward would be acceptable to maintain highway safety. These allow for a new right-angled junction to be constructed.

19. Ultimately, the inspector disagreed with his previous colleague in the impact on the residents of Beck Farm. He concluded that the noise and disturbance generated from traffic using Moor Drove would not be so great as to be unacceptable. Conditions could be imposed to control commercial use of the site and the stationing or parking of large commercial vehicles. There was nothing to be gained by moving the carriageway a few metres to the south as proposed in some of the highway options as the consequent loss of trees and shrubs would harm the character and appearance of the area.
20. Balanced against this harm, the inspector found there were a number of considerations when taken together carried significant weight. These included the need for Gypsy sites in the area, which will not be addressed on the ground for 3-4 years; the immediate needs of the appellant and other residents for a site; the lack of any identified suitable alternative, affordable sites; access to medical care; the children's education; the need for Mr Smith to live near land where he keeps his horses (as part of his livelihood); and the substantial hardship and costs the residents would face if forced to move with nowhere to go. These were sufficient to amount to very special circumstances which justified approval, subject to conditions.
21. Planning permission was therefore granted subject to conditions. These include occupation personal to the existing occupants; a limit on the number of pitches and caravans; no commercial activities or parking of commercial vehicles on the site; provision of a new access into the site; the provision of traffic signs to identify the junction; agreement for foul and surface water drainage, external lighting, tree hedge and shrub planting and a flood evacuation plan. The appellant has three months to submit the necessary details and once approved these will need to be implemented within an as yet unspecified time.

Comment:

22. This decision is disappointing, insofar as the inspector could have considered whether the grant of a temporary planning permission would have been sufficient to meet the family's needs. A temporary permission would have answered many of the identified very special circumstances as well as giving the Council the opportunity to find a site to which the families could relocate. Counsel has been asked to consider whether there is any merit in a challenge. His response is that there are no reasonable grounds on which the decision could be challenged.