SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Planning Committee	2 September 2009
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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. These form part of the more extensive Appeals report, which is now only available on the Council's website and in the Weekly Bulletin.

Summaries

Fulbourn LLP – Erection of 5 houses and 4 flats, garages and refuse store for people of retirement age without complying with a condition limiting occupation to certain persons – Hall Farm, School Lane, Fulbourn - Appeal allowed. Appellant's application for costs against the Council dismissed

2. In May 2007, planning permission was granted for a development of nine dwellings in the centre of Fulbourn. Permission was granted subject to a condition which, in summary, states that with the exception of the wardens'/relief warden's accommodation, the development shall not be occupied other than where at least one household member is of retirement age or is registered as disabled. The restriction shall not apply to a surviving spouse who is not of retirement age or not so registered where he/she continues to occupy the dwelling after the death of the other spouse who was of retirement age or registered as disabled. The condition was imposed because the car parking and refuse storage provision was not considered suitable for any other form of residential development.

3. English Courtyards had proposed to build and manage the scheme. The company went into liquidation and a developer wishing to build out the scheme entirely for market housing purchased the site. The Planning Committee refused the application to remove the condition on the basis that the scheme should now make provision for affordable housing.

4. The main issue was the extent to which the condition met the relevant tests set out in Circular 11/95 having regard to car parking, refuse storage and affordable housing.

5. Amended drawings had been submitted with the application to remove the condition. The Council was satisfied these provided suitable arrangements for car parking and the storage of refuse. However, the Council was unable to show that these arrangements were materially different than those previously approved. The inspector therefore concluded that the original condition had been unnecessary. Neither was there any wardens' accommodation in the approved scheme. The phrase "retirement age" was found to be imprecise and this would make it difficult to enforce.

6. As the reason for the original condition had been overcome and didn't meet the

relevant tests, the inspector concluded there was no reason to seek a contribution towards affordable housing. Both main parties had produced evidence on the viability of providing affordable housing but this was found to be unnecessary given the inspector's main conclusion.

7. The appeal was therefore allowed, subject to a single condition regarding cycle storage. The Council did request an off-site capital contribution towards open space and the developer provided a unilateral undertaking to this effect. The inspector accepted the need for the contribution was justified. The County Council had requested an education contribution, but as it had not justified the need for it, the inspector did not consider it should be required in order for the appeal to be allowed.

8. The appellant applied for a partial award of costs. He argued that the Council had asked for a financial appraisal in respect of affordable housing provision in a particular form, even though this was inappropriate. The appraisal had still been provided and showed it would be unviable to provide affordable housing. The planning officer accepted this. The Committee then decided, without any evidence, not to accept it. The appellant then had to obtain a further appraisal for the hearing. This amounted to unreasonable behaviour.

9. In reply, The Council argued that while it asked for an appraisal in a particular form, the appellant had not offered any alternative. The Council's approach was compliant with PPS3 and is the appropriate method to use. Furthermore, certain figures requested by the Council had not been provided. The submitted appraisal was received very shortly before the Committee meeting and should not have been accepted as sound. The appellant had now undertaken the work that was originally requested and this should have been done in the first place. No additional and unnecessary work had been undertaken.

10. The inspector agreed that the appellant's initial appraisal was flawed and that the later appraisal should have been done at application stage. The request for the appraisal was consistent with Policy HG/3 and was a necessary part of the proposal. The Council had not behaved unreasonably and an award of costs was unjustified.

Walker Residential Ltd – Change of use of former egg production buildings and alterations/extensions for light industrial and warehouse use without complying with a condition limiting occupation of a nearby bungalow – Mereway Farm, Butt Lane, Impington – Appeal allowed

11. In August 2006, planning permission was granted for a change of use to industrial and warehouse development. Permission was granted subject to a condition that the existing bungalow on the frontage of the site should only be occupied by a person(s) employed by the site owners or connected with one of the companies on the site. The reason for the condition was that its close proximity to the main commercial part of the site could lead to noise disturbance.

12. The main issue was the extent to which the condition met the relevant tests set out in Circular 11/95.

13. The bungalow lies with its side to the road on a relatively large plot, which is screened from the road, the industrial site to the rear and the new access to the industrial site by tall conifer hedging. The bungalow was originally the subject of an agricultural occupancy condition associated with the use of the adjoining site as an egg farm. However, the functional link between the building and the uses behind it has ceased with the change of use and the redevelopment of the land to the rear. At the time of

the inspector's visit, the development of the site was in its early stages and it was not clear whether any of the units were in use. It is therefore not known what businesses will occupy the site and there was no evidence to suggest that any of them will need an employee to occupy the bungalow.

14. The inspector saw that the access to the site runs around the perimeter of the site so that vehicles leaving the site would pass the rear of the bungalow at a distance of about 25-30m. There would be potential for some disturbance to occupants of the bungalow and that, in the absence of restrictions on the hours of use of the site, such disturbance could be during the night or at weekends. However, whatever the degree of disturbance, it would be experienced by the occupants of the bungalow whether or not they work on the site. There would be no reason why this should be more acceptable to an employee of one of the businesses on the site. The potential for noise and disturbance arose when the permission for the change of use was granted and the potential for such disturbance to be harmful is not changed by the condition restricting the occupancy of the bungalow.

15. While the dwelling would not have been permitted in this location had it not been for the connection with the agricultural use, that connection has gone. There is no longer a functional need for the dwelling to be occupied by an employee of a business on the site. The inspector was therefore satisfied there is no demonstrable need to retain the condition. A consequence of effective enforcement may be that the bungalow would remain empty for significant periods. It would be unreasonable to impose such a condition, which is likely to lead to it remaining vacant for long periods. This view is supported by guidance in PPG2 "Green Belts" and PPG7.

16. The condition was therefore no longer necessary or reasonable. The appeal was allowed.

Miss E Loveridge – Change of use of land to site mobile home and amenity portacabin – 3 Cadwin fields, Schole Road, Willingham – Appeal allowed. Appellant's application for costs against the Council allowed in part

17. The Planning Committee refused this application in February 2009. The substantive reason was that it would result in at least two children of school age being introduced into a village where the local primary school is currently at capacity and unable to service its existing catchment population. The proposal would therefore place a further unsustainable strain on the local school, contrary to government policy for gypsies and travellers, which seeks to enable access to services.

18. Following the submission of the appeal, the Headteacher confirmed on 8 May 2009 that the school was still oversubscribed in four of the year groups and that it was impossible for the school to take more children. However, in a letter dated 19 June 2009, the Headteacher confirmed that places had now been offered to the two children at Willingham Primary School. They had both started on Monday 15 June 2009. On 6 July 2009, the Council advised the appellant that this amounted to a material change in circumstances so far as the Council's objections were concerned. The Council no longer wished to pursue the reasons for refusal. The appellant was invited to withdraw the appeal and resubmit the application on the understanding that a re-submission would be approved. This would be on the basis of a temporary planning permission consistent with other decisions in the village.

19. This invitation was declined. The appellant pursued the appeal at a hearing and sought a permanent planning permission based on the family's individual needs. Cllrs Manning and Wright attended and spoke at the hearing.

20. The inspector considered the main issue was whether the educational needs of the appellant's children can be met without unsustainable strain on local educational services. In view of places now being available at Willingham Primary School for all the children, the inspector found no harm from the development in respect of placing undue pressure on local infrastructure and considered the appeal should be allowed. It was, however, necessary to consider whether permanent or temporary planning permission is justified.

21. The Council placed considerable weight on the need for the emerging Gypsy and Traveller DPD to be considered in the light of the proposed consultation process and the representations to be received. A permanent approval would seriously undermine this process. While the 6 plots in Cadwin Fields are included for permanent pitches, this does not mean that the sites will be in the adopted DPD. A temporary planning permission for three years was appropriate.

22. Due to its early stage in the adoption process, the inspector afforded the emerging DPD very limited weight. However, from the timetable given, the provision of 69 new permanent pitches by 2011 would seem not to be possible within the framework of an adopted Site Allocations DPD. The Council has provided gypsy and traveller sites in the past and the inspector was satisfied that it is likely sites will be allocated as part of the DPD process. Having regard to the transitional provisions within ODPM Circular 01/2006 and in the light of the emerging DPD, planning permission should only be for a temporary period to enable a proper evaluation of all potential sites through the DPD process. This would allow the most suitable sites to be allocated to meet the identified need. Taking all factors into account, a temporary planning permission should be granted. There could be slippage in the DPD timetable and to allow time for the identified sites to be established, a three year period would be reasonable.

23. Temporary permission was therefore granted subject to a range of conditions normally applied to gypsy sites.

24. The appellant submitted a detailed application for a full award of costs. She argued there were no reasonable grounds to take a decision contrary to Officer's advice and there was no substantive evidence to support the decision. The first reason for refusal is a statement of fact and does not include a precise reason for refusal nor cite relevant development plan policy or Government Circulars. Policy DP/4 is cited in the reason for refusal yet was not considered in the Officer's report. Members chose to ignore the particular circumstances of the appellant's family. It is not unusual for siblings to attend different schools for a variety of reasons, often due to parental choice or the relative ages of the children. The Council has failed to identify harm of any kind. The application was not considered in the same way as an application for a permanent dwelling, therefore there was discrimination. The decision to refuse planning permission, combined with the Council's decision to activate an injunction made in November 2006 to prevent gypsies settling on the site effectively made the family homeless.

25 In reply, the Council argued it had had regard to the development plan, insofar as it is material, and to any other material considerations. Planning authorities are not bound to adopt the professional or technical advice of their officers. There is no evidence that members of the Planning Committee simply chose to ignore the appellant's personal circumstances. The Council knew these, but the weight to be attached to them is a matter for the Council. Committee members are experienced and fully aware of the difficulties facing gypsies and travellers. The first reason for refusal was in effect a description of what was proposed and a statement of facts. This was made clear in the Council's statement and there was no substantive evidence from the

appellant on this aspect. The second reason for refusal identified the perceived harm based on development plan policy. While this was not covered in the Officer's report, this does not make it unreasonable. There is a requirement for the development plan to be considered as a whole. The Council was able to substantiate its second reason for refusal in its statement and in evidence at the hearing.

26. The inspector considered that the first reason for refusal was not a reason and, in this respect, she found unreasonable behaviour that may have resulted in unnecessary expense. Nevertheless, the appellant's case in respect of the first reason for refusal was minimal and there was no substantive evidence or a prolonging/extending of the hearing as a result. She therefore saw no justification for an award of costs in this respect.

27. It was acknowledged that the Council approached the appellant with a view to the grant of temporary planning permission on a new application when the Council became aware that all the children had places at Willingham Primary School. By declining to follow the route of withdrawing the appeal, it being at a very late stage for holding in abeyance, the appellant chose to have the matter considered through the hearing process. By the time the Council's offer was made, all statements and final comments had been exchanged. Nevertheless, the appellant could have withdrawn the appeal and the costs incurred in attending the hearing could have been avoided. There was no unreasonable behaviour on behalf of the Council in respect of the costs incurred after 6 July 2009 including attending the hearing.

28. Nonetheless, the inspector concluded that members had failed to take into account the advice in Circular 01/2006 or the Officer's considered opinion that there would be no increase in demand for services or infrastructure. Two of the appellant's children were in school in Willingham and the other two children had places at Over. Although the latter were not taken up because of concerns over transport arrangements, at the time the application was considered the children were all accommodated within the existing education system and therefore planning permission would not have placed any increased demands on the infrastructure. It is not ideal for siblings to be at different primary schools but this is not a unique situation and family difficulties as a result of children being in two different schools would not justify the refusal of planning permission.

29. Reasonable planning grounds for taking a decision contrary to Officer's advice were not substantiated and unreasonable behaviour resulting in unnecessary expense has been demonstrated. An award of partial costs is justified in respect of those expenses incurred in making the appeal but excluding those expenses incurred after 6 July 2009 including attending the hearing.

30. Finally, the inspector accepted the Council's evidence that it has not considered any applications for housing development since the appeal case was determined without taking account of educational concerns. She had heard nothing to make her take a different view. There had been no unreasonable behaviour In respect of human rights and neither had there been discrimination against the appellants.