

Application No: 12/4872C

Location: Land off Sandbach Road North, Alsager

Proposal: Proposed residential development for up to 155 residential units with associated infrastructure and access with all other matters reserved.

Applicant: Gladman Developments Ltd

Expiry Date: 22nd March 2013

UPDATE 13th March 2013

Additional Information

The applicant has now submitted a Supplementary Ecology Report dated 26th January 2013

Additional Representation

An additional representation has been received from the occupants of 41 Pikemere Road raising the following points:

- Based on the legal advice provided by DLA Piper LLP, the Council should not determine the application in the absence of the outstanding information requested by the Council to enable their ecological assessment.
- Natural England has re-iterated the legal position in relation to the Council's ecological assessment within their letter about this application, namely, that the outstanding ecological information be submitted to the Council prior to determination. I am concerned that Natural England's position in this regard has not been included within your Officer's Report to Committee.
- The Council's decision to validate this application in the clear absence of the information necessary in order to make an assessment to discharge their duties under the Habitats Directive 2010 was incorrect.
- By validating the application, even if the Committee refuse the application, the Council will have provided Gladman Developments with the option to press on to Appeal whilst they collect the outstanding information along the way. I believe that Gladman Developments will be well aware of the potential advantage that this may deliver in terms of ensuring that their application progresses ahead of other arguably more appropriate applications (MMU etc), in what appears to be the current 'race' we have between developers to secure housing quota.
- For this reason, I believe that the correct outcome of tomorrow's meeting would be the deferment of application 12/4872C pending the collecting of the outstanding information. This would ensure that (i) the Council act consistently with their position in relation to other schemes (ii) the Council would not send out a signal to other applicants that they can also adopt a similar approach to Gladman Developments and (iii) the Council can act within the advice

contained within Natural England's published guidance and the legal requirements of the Habitats Directive 2010.

Officer Comments

Ecology

Whilst the additional report contains a lot of information on the status of protected species at the site the full ecological surveys are still outstanding. The Council's Ecologist has considered the report and advises that planning permission should not be granted until the Council is able to make a fully informed assessment of the potential ecological impacts of the proposed development. Therefore the ecology reason for refusal still stands.

The comments made in the additional representation are noted. However it is not possible to invalidate the application and after the expiry date of 22nd March the applicant would be able to appeal for non-determination in any event.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places

(a) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, and provided that there is

(b) no satisfactory alternative and

(c) no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK has implemented the Directive in the Conservation (Natural Habitats etc) Regulations 2010 (as amended) which contain two layers of protection (i) a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and (ii) a licensing system administered by Natural England and supported by criminal sanctions.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. "This may potentially justify a refusal of planning permission."

The NPPF advises LPAs to conserve and enhance biodiversity: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) or adequately mitigated, or as a last resort, compensated for, planning permission should be refused.

Therefore it is considered that the application can be determined as per the officer recommendation.

Corrections

The first paragraph on page 72 includes the word 'not' twice. It should read:

However, given that Cheshire East can now demonstrate a five year supply of housing land it is considered that policies H6 and PS8 which protect Open Countryside are not out of date and the provisions of paragraphs 49 and 14 do not apply in this case.

The final paragraph on page 74 should be deleted and read as follows:

In this case the local harm to the landscape would not warrant the refusal of this planning application given that there are no landscape designations on the application site. Furthermore when viewed from the surrounding Public Rights of Way and the Salt Line Way the development would be viewed against the backdrop of existing residential properties which front onto Rydal Way and Heath End Road.

In terms of Agricultural Land Quality on Page 83 the final paragraph should be deleted and read as follows:

The issue of agricultural land will be included within the reason for refusal relating to the principle of development

RECOMMENDATION

The resolution as set out on pages 85 and 86 should also include the following:

Should this application be the subject of appeal, authority be delegated to the Development Management and Building Control Manager in consultation with the Chairman of the Strategic Planning Board to enter into a planning agreement in accordance with S106 Town and Country Planning Act to secure the Heads of Terms for a S106 Agreement as detailed above.