

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of Committee: 23 September 2015
Report of: David Malcolm – Head of Planning (Regulation)
Title: Outline application for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works

1.0 Purpose of Report

- 1.1 To consider amending the reasons for refusal relating to full planning application 14/5579C for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works

2.0 Decision Required

- 2.1 To agree to amend one of the reasons for refusal in respect of the impact on the listed building in the light of legal advice.

3.0 Background

- 3.1 On the 1st July 2015, Strategic Planning Board considered an outline application for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works
- 3.2 The application was refused for the following reasons:
1. *The proposed residential development is located within the Open Countryside and the Jodrell Bank Consultation Zone, and will result in impairment to the efficiency of the Jodrell Bank Radio Telescope. The proposal is therefore contrary to policies PS8, PS10 and H6 of the Congleton Borough Local Plan First Review 2005 and national guidance in the NPPF. These factors significantly and demonstrably*

outweigh the economic and social benefits of the proposed development in terms of contribution to boosting housing land supply, including the contribution to affordable housing.

2. *The proposal will result in harm to the setting of the Grade II listed building, Swanwick Hall. The harm is considered to amount to "less than substantial harm" as defined in the National Planning Policy Framework. The public benefits of the proposal, when taken as a whole, are not considered to be sufficient to outweigh this harm to the heritage asset. The proposed development is therefore contrary to policy BH4 of the Congleton Borough Local Plan First Review 2005 and national guidance in the NPPF.*

4.0 **Legal Advice**

- 4.1 The application is now the subject of an Appeal and the Council has begun work on preparing its case. As part of this process the barrister advising the Council has been advised by its Counsel that the wording of the second reason for refusal should be reflected to amend recent case law relating to the impact on listed building as defined in the Barnwell Manor case.
- 4.2 In that case, renewables developer West Coast Energy had proposed four turbines on the site, which was in the vicinity of 40 designated heritage assets, including the Grade I National Trust property Lyveden New Bield.
- 4.3 East Northamptonshire District Council, the National Trust and English Heritage had opposed the scheme, but it was granted permission by a planning inspector in March 2012. The inspector had concluded that, while the four turbines would appear as an "alien and incongruous feature in the landscape, especially one with such historic and literary association", the renewable energy benefits of the proposal would outweigh the harm to the setting of the assets, which he deemed "less than substantial".
- 4.4 Following a High Court battle, the case reached the Court of Appeal, where judges described the planning inspector's decision as "fatally flawed". The Court of Appeal cited the Planning (Listed Buildings and Conservation Areas) Act 1990, which says decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out a balancing exercise in planning matters.
- 4.5 Lord Justice Sullivan said he agreed with the High Court that the inspector did not give "considerable importance and weight" to this factor.
- 4.6 The Court of Appeal ruling is an important decision. The Court of Appeal has confirmed that, in considering whether or not to grant

planning permission to developments, decision-makers must give considerable weight to any harm caused to a listed building or its setting.

- 4.7 It is considered that in the light of this recent case law, the reason for refusal should be rephrased .

5.0 Recommendation

- 5.1 To agree to amend the second reason for refusal to read as follows:

The proposal will result in harm to the setting of the Grade II listed building, Swanwick Hall. The harm triggers the “strong presumption” against granting permission as established by the Court of Appeal in the Barnwell Manor case; the public benefits of the proposal when taken as a whole would not rebut this strong presumption. In addition, the harm is considered to amount to “less than substantial harm” as defined in the National Planning Policy Framework. The public benefits of the proposal, when taken as a whole, are not considered to be sufficient to outweigh this harm to the heritage asset. The proposed development is therefore contrary to policy BH4 of the Congleton Borough Local Plan First Review 2005 and national guidance in the NPPF.

6.0 Risk Assessment and Financial Implications

- 6.1 Although changing a reason for refusal can result in a successful claim for appeal costs against the Council on the grounds of unreasonable behaviour, the change relates only to the wording and does not change the substance of the Council’s case. Furthermore, the case law is an important material consideration as the interpretation of policy is now a matter for the courts. It would therefore need to be taken into account by the Inspector in any event and by making clear to the Appellant early in the case how the Council intends to structure it’s argument the risk of any costs award can be minimised.

7.0 Consultations

- 7.1 None.

8.0 Reasons for Recommendation

- 8.1 To avoid the costs incurred in pursuing an unsustainable reasons for refusal at Appeal

For further information:

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Background Documents:

Applications 14/5579C