

**PLANNING COMMITTEE – 19 AUGUST 2021**

**PART 5**

Report of the Head of Planning

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Decisions by County Council and Secretary of State, reported for information

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- **Item 5.1 – Dawsons Row Water Lane Ospringe**

**PART ALLOWED / PART REFUSED**

**DELEGATED REFUSAL**

**Observations**

The Council's reason for refusal of this application related only to the garage proposed here, and the Inspector has supported our concerns in that regard.

- **Item 5.2 – Black Oast Godfreys Grave Hernhill**

**APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

Full support for the Council's interpretation of the law and the facts in this case.

- **Item 5.3 – Land south-west Sittingbourne / Wises Lane Sittingbourne**

**APPEAL ALLOWED AND PART COSTS AWARDED**

**APPEAL AGAINST NON DETERMINATION**

**Observations**

Members will be aware that this appeal decision was issued on the 29<sup>th</sup> April. The Council reviewed the decision with its legal department and received external advice from Counsel, and has not challenged the decision. The decision was made by the Secretary of State, following call-in of the appeal, and was informed by the Planning Inspector's report and recommendation that is included in the appeal decision.

Members will recall that this was a highly controversial application, for a large-scale housing development, new primary school, local centre, rugby club facilities and sports pitches, and included a new link road through the site to connect Borden Lane with Chestnut Street and the A249. The majority of the site was in the local plan, but the proposal included additional housing development and the link road to Chestnut Street / the A2490 that went beyond the allocation.

The planning committee refused the application on a number of grounds, based largely around adverse highway and air quality impacts, adverse landscape impacts arising from the development of additional land beyond the site allocation (within an Important Local Gap), Loss / sterilisation of BMV agricultural land, adverse impacts (largely arising

from additional traffic) on surrounding conservation areas and listed buildings, impacts on biodiversity and failure to address climate change impacts.

The costs decision also highlights the difficulty that Local Planning Authorities face in dealing with appeals against non-determination under the newly introduced Roswell Inquiry procedure. This has condensed the timescale for submission of appeal statements and evidence, providing very limited time for the Council to establish its case and putative reasons for refusal when such appeals are made.

I have summarised the key points from the appeal decision below.

On the matter of traffic impacts, Members will recall that the Planning Committee gave greater weight to the concerns raised by a Transport Consultant employed by the Parish Council, than the advice received from the Kent County Council Highways and Transportation team. The same consultant gave evidence on behalf of the Council at the Inquiry. The Appeal Inspector noted that the transport modelling had been undertaken in accordance with industry standards, and that both KCC and Highways England were able to robustly assess the impacts, and to conclude that highway impacts (with mitigation) were acceptable. However, this reflected the constraints to the Council both in terms of resourcing and having the time available (given the Roswell Inquiry procedure) in being able to provide alternative modelling to demonstrate that highway impacts would be unacceptable and the ability to adequately critique the concerns raised over the appellants modelling and KCC's/Highways England assessments through the Inquiry. The Council has since adopted the option for procuring our own highways and transportation advice for major schemes in assessing major planning applications prior to determining planning applications.

The Inspector also considered the concerns raised in relation to rat running but noted that no objective evidence on the scale of rat running had been produced to justify such concerns. The Inspector concluded that in the absence of evidence that cumulative impacts would not be severe, and on the basis of the conclusions of both KCC and Highways England, that the scheme would not result in unacceptable highway impacts.

On the matter of landscape impacts, the Inspector agreed with the Council that the scheme would cause adverse landscape impacts through development in the north west part of the site (beyond the site allocation) and by reducing the Important Local Countryside Gap.

With regard to effects on heritage assets through rat-running, the Inspector did not consider that the Council had produced any objective evidence to demonstrate the scale and effect of this, and that its evidence was unreliable for this reason. In the absence of such data, the Council's case that vehicle movements would adversely affect the setting of surrounding conservation areas and listed buildings was largely considered unfounded and contradictory to the traffic modelling that had been provided. Whilst the Inspector did note that traffic would increase through Chestnut Street, this would not materially affect heritage assets when considered against existing traffic levels. The impact of the new roundabout to the east of Chestnut Street would be minor, as would the effect of the new roundabout on Borden Lane in relation to Riddles House (Grade II listed).

The appeal decision highlights the current dilemma relating to climate change. As Members will know, the Council pursued a case that the development should meet much higher standards to reduce carbon emissions – particularly given the likely long build-out timescale for a development of this size. It employed an external consultant to advise on the impending need to address climate change on a wide-ranging scale. The Council's case was largely on the basis that the current climate change emergency needs addressing now, and that policy is simply too slow to catch up with this. The

appellants position was that they had simply done what current policy requires (i.e. a minor increase above current building regulations requirements). The Planning Inspector gave weight to the Council's emergency climate change declaration, and the recognition at local, national and international level that the need to act on climate change is urgent. On this basis he recommended that the Council's conditions should be imposed to require dwellings to be built to achieve at least a 50% reduction in carbon emissions (rising to 100% after 2028).

However, the Secretary of State disagreed with the Inspector's recommendation and deleted these conditions from the decision. He agreed with the appellants position that the development complies with current policy and that it is not possible or desirable to predict what policies may apply in the future and impose them now. He concluded that the Council's guidance had not been through public examination as planning policy, and that the conditions were not reasonable or necessary.

In respect of biodiversity, the Inspector considered that the Council's criticism of survey work undertaken and mitigation was unfounded and he placed weight on the advice received from Kent County Council during the application. He considered that the scheme had demonstrated a measurable Biodiversity Net Gain.

On the matter of air quality, Members will recall that the Planning Committee placed greater weight on the findings of the air quality report produced on behalf on the Parish Council than the applicants report, the advice from the Council's in-house Environmental Health Manager and advice from a consultant employed by the Council at application stage to review air quality impacts. The Council subsequently used the air quality consultant who produced the report for the parish council to provide evidence at the Inquiry.

The Inspector found the air quality modelling undertaken by the appellant to be in accordance with current guidance and best practice. He noted that whilst some receptors showed increased concentrations of pollutants would occur, these would remain under statutory limits. Other locations would show beneficial reductions. The scheme included various elements that would help reduce / mitigate air quality impacts including the link road, EV charging, cycle and footpaths, the Travel Plan and landscaping. The Inspector found the Council's argument that development would introduce additional pollution to be unrealistic, based upon the local plan allocation for much of the site and the need for new dwellings.

On other matters, the Inspector did not consider the loss / sterilisation of BMV land to be significant. The housing sway towards larger units and the level of affordable housing was led by unchallenged viability evidence, would provide 25 more affordable units than a scheme on the allocated site, and that a viability review was built into the S106 Agreement. Impact on residential amenity was acceptable. The link road would not cause any significant adverse harm to the character or appearance of the development or surrounding area.

In balancing the benefits of the development against the harm, the Inspector gave substantial weight to economic benefits, including from construction, employment generation (including the school) and local spending by new residents. In social terms, the Inspector gave significant weight to the provision of housing, including affordable housing, and substantial weight to the new road link between Borden lane and Chestnut Street and the suite of associated highway mitigation measures. He also gave substantial weight to the new and improved facilities for the rugby club. The Inspector considered that the public benefits of the proposal outweighed the less than substantial harm to designated Heritage Assets – but overall still gave substantial negative weight to this. He also gave significant negative weight to landscape impacts including the reduction in the Important Local Countryside Gap. He did not consider the highway or

air quality impacts attracted any negative weight. Overall and in applying the “tilted balance”, he concluded that the benefits significantly and demonstrably outweighed the conflict with the development plan and the harm identified.

In making his formal decision on this appeal, the Secretary of State agreed with the Inspector’s report, other than the removal of conditions relating to climate change, and allowed the appeal.

The Inspector concluded that the Council had acted unreasonably, in part, and recommended partial costs to be awarded against the Council. The unreasonable behaviour was highlighted as –

- Failure to provide clear and precise reasons for refusal from the outset.
- Failure to follow the timetabling of the Inquiry.
- Failure to provide evidence to substantiate the highways reason for refusal.
- Failure to substantiate the heritage reason for refusal.
- Failure to provide clear and precise reasons for refusal on biodiversity grounds.
- Failure to substantiate the refusal based on harm caused by the link road.

The Secretary of State, in considering the Inspector’s recommendation, formally determined that the award of costs be limited to the unnecessary or wasted expense incurred in respect of the Council’s failure to substantiate its reasons for refusal relating to ecology, the effect of the link road on character and appearance, and harm to heritage assets.

The main areas of the Council’s case that attracted criticism or received little weight from the Inspector were those elements that are more technical rather than subjective in nature. For example, the Council did not accept the highways modelling and assessment that had been carried out to industry standards, despite not undertaking its own transport or modelling analysis. The same can be said for the air quality impacts and ecology reasons for refusal. The heritage reason for refusal was also heavily linked to perceived traffic movements. Invariably, the Inspector was minded to accept the appellants modelling and technical work that had been carried out in accordance with the relevant guidelines and standards.

This highlights that if the Council is minded to refuse applications on such technical grounds and against advice from key consultees, it should carefully consider the ramifications of doing this if it has no alternative robust modelling, data or assessments to support refusal. To this end, as already mentioned, the Council has the option available to employ its own highways and transportation expertise in order to review transport models and assessments as well as critique KCC Highways and Transportation and Highways England assessments of the applications.

On the other hand, more subjective reasons for refusal can be easier to argue at appeal – as demonstrated by the landscape evidence provided by the Council witness, which simply reached a different subjective conclusion on the level of landscape harm arising from the development to that produced by the appellant. Whilst ultimately this was not sufficient to dismiss the appeal, there was no criticism of the Council’s case in this respect.

It is also very clear that the Inspector gave significant weight to the fact that a significant proportion of the site had been allocated in the Local Plan highlighting the primacy of the development plan in the decision-making process. Whilst the Council attempted to argue that the extension of the site beyond the allocation boundary would bring about significant adverse environmental impacts beyond those impacts arising from the

allocation, the Inspector and Secretary of state, in applying the 'tilted balance' weighed the balance in favour of allowing the wider development site beyond the boundary given their view of the potential benefits arising from the wider scheme in terms of housing provision, including the additional affordable housing and transport infrastructure as opposed to the potential adverse environmental impacts such as landscape harm.