

**AGENDA ITEM**

**REPORT TO COUNCIL**

**5 MARCH 2014**

**REPORT OF CABINET MEMBER  
FOR REGENERATION AND  
TRANSPORT**

**Residential Development Applications within the South Stockton Area**

**Summary**

1. This local authority proactively fulfils its planning role, and actively promotes sustainable development, it approaches development management decisions positively – looking for solutions rather than problems so that applications can be approved wherever it is practical to do so. It also attaches significant weight to the benefits of economic and housing growth.
2. However, the National Planning Policy Framework guidance minimises a Local Planning Authority's ability to influence development proposals to achieve quality outcomes; enable the delivery of sustainable development proposals on the basis that economic necessity will normally outweigh any other consideration. The Government's insistence on Local Planning Authorities having to demonstrate that they have a 5 year supply of deliverable and available Housing Land together with a buffer between 5 and 20% at a time of such significant economic difficulty and uncertainty results in previously considered robust and sound housing policies being treated as out of date and the vision and objectives of the Local Plan being overridden. Consequently the Planning Committee is severely constrained when it considers residential planning applications which accord with the National Planning Policy Framework but are at odds with its adopted policies in the Core Strategy and Saved Local Plan Policies.
3. The concern raised by residents about residential development on greenfield sites within the Borough has centred on the decisions to approve applications because they accord with the National Policy Framework which has drawn criticism that the Council has ulterior motives in granting planning permission. What appears to have been missed in the analysis and criticism is that National Government has produced the sea change in planning policy with the National Planning Policy Framework and this outweighs Core Strategy and Local Plan policy in certain circumstances, including where the local planning authority lacks a five year housing supply. This was underlined in a High Court ruling R (Save our Parkland Appeal Ltd) v. East Devon District Council [2013] EWHC 22 (Admin). HHJ Sycamore QC that given the government guidance in relation to refusal on prematurity grounds that a refusal on the basis of prematurity would not have been consistent with national planning policy and would have been in breach of central government guidance.
4. A petition collected by Save Stockton South Action Group has been received by Stockton-on-Tees Borough Council.
5. The petition stated that "as a result of the recent planning decisions we believe that the heritage, future and safety of Stockton South is under serious threat. Urban Sprawl is destroying our green spaces and many residents are concerned that our already creaking infrastructure will struggle to cope with this level of development.

6. In the light of this, we have lost confidence in Stockton Borough Council and its Planning Committee and request a full investigation into its practices and development decisions since 1 January 2011”.
7. The petition contained 2408 valid signatures; therefore exceeding the threshold of 2,000 signatures required for petitions to be debated at Council.

### **Planning Committee procedures**

8. The Planning Committee currently comprises of a Chairman and Vice-Chairman and 12 Members of the Council.
9. The training requirements for Members are assessed annually in relation to changes to primary planning legislation and material planning considerations. The annual training is delivered by a nationally recognised Planning training specialist company and has recently included:

The essential elements of determining planning applications  
The National Planning Policy Framework (NPPF): A Briefing for Councillors

A Planning Update for Councillors including:

the Government’s reforms for the planning system  
changes introduced by the Growth and Infrastructure Act 2013  
the Judicial Review process  
the NPPF and planning guidance  
Environmental Impact Assessment

10. Sound bite training sessions relate to current issues such as the Draft affordable housing Supplementary Planning Document where it can be explained and clarification of the issues can be discussed which adds to Members understanding.
11. The range reflects the issues facing the Borough and covers any issue Members have either requested a session or a current issue such as changes to secondary legislation or the planning appeal system.
12. All officers presenting have a Royal Town Planning Institute recognised planning degree and are Chartered Town Planners.
13. The Planning Committee are statutorily required to consider and determine planning applications in accordance with the development plan unless material planning considerations indicate otherwise. By granting planning permissions for housing and industrial/commercial developments the needs of the community are addressed with the provision of new and affordable homes and employment opportunities protecting the environment and the promotion of sustainable forms of development across the Borough.
14. The role of the Planning Committee is to determine applications under the Town and Country Planning Act 1990 and related legislation in relation to cases which:
  - Warrant consideration by Planning Committee as defined in the Constitution;
  - Large scale development proposed by the Council

Those cases where there are more than 5 letters/emails(with name and address) by way of response which are contrary to the recommendation of the case officer, with the exception of mobile phone mast applications where they remain delegated regardless of the number of objections received;

15. The role of the Individual Members remains key in not only representing their constituents and the residents of the Borough as a whole but in questioning and testing the information and representations before them when considering planning applications. By debating the wide range of material considerations to balance and deciding the appropriate weight between them Members are able to make properly informed determinations of planning applications before them.

### **The Planning Committee Protocol**

16. In 2008 the Council had become concerned in by the number of occasions when elected members of the planning committee had refused planning permission contrary to officers' advice. Members of the planning committee may do this, but applicants have a right of appeal to the planning inspectorate, which then makes a final decision. Losing such appeals is expensive for councils.
17. The 2008 protocol provides that, where the planning committee acts contrary to officer advice, such a decision is provisional. Senior officers of the Council then investigate the issues raised. The officers' view may be the planning committee's decision cannot be supported on planning grounds and the Council would risk losing an appeal to the planning inspectorate. In such a case the planning committee is invited to consider the matter again. The planning committee is then free to reach its decision at its next meeting. The Council reviews its use of the protocol at regular intervals.
18. The protocol is democratic because the elected members of the planning committee still have the final say and the Council reviews the use of the protocol from time to time.

### **Background to decisions**

19. National Planning Policy Framework introduced March 2012.
20. The new Government advice makes it clear that the lack of a 5 year supply of deliverable housing means that the Local Planning Authority's relevant housing policies cannot be considered as up to date.
21. The application must be considered strictly in relation to the guidance in the National Planning Policy Framework.
22. The Government position is very clear in decisions by the Secretary of State while he acknowledged that it was important for Councils to be able to identify the needs and requirements in their area, this is not the same as allowing them to postpone their obligation to identify and maintain a five year supply of developable sites.
23. The Secretary of State decisions demonstrate this presumption by granting planning permission where there is a lack of a 5 year supply of deliverable housing.
24. In determining a planning application a Local Planning Authority has to pay due regard where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise.

25. TEWKESBURY BOROUGH COUNCIL and 1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2) COMPARO LIMITED (3) WELBECK STRATEGIC LAND LLP [2013] EWHC 286 (Admin) is particularly relevant providing a decision of the High Court as future case law. The essential question raised by the case was, whose view was to prevail as to whether these developments can go ahead, the local council's or the Secretary of State's?
26. The Council's case was there is a "fundamental requirement for the Council, post the Localism Act 2011, to be in the driving seat of spatial planning for its area, including housing land provision" which the Secretary of State ignored. It was the council's case that the 2011 Act and the policy which it embodies had brought about a sea change in the proper approach to planning decisions which require much greater priority than hitherto to be given to the views of local planning authorities. This view was not upheld however.
27. This decision actually supported the Secretary of State's approach that the delivery of housing supply land overrode the need to plan and a decision by a Local Planning Authority and this was lawful.
28. There have been 6 large scale residential development planning applications determined in the South Stockton Area since the introduction of the National Planning Policy framework (NPPF). The Borough is not currently able to demonstrate a 5 year supply of deliverable housing land. The Regeneration and Environment LDD will incorporate the results of the Core Strategy Review of housing options. The LDD will allocate sufficient deliverable and developable housing sites to ensure that the housing requirement to 2030 is met and that a rolling 5-year supply of deliverable housing sites is achieved.

#### **Large scale residential planning applications determined in the South Stockton**

29. **11/2842/EIS  
Allens West, Durham Lane, Eaglescliffe  
Outline application for the erection of a residential development comprising 845 no dwellings (Class C3) and a 60 no. Bed Care Home (Class C2) with associated retail, creche and community facilities, landscaping, roads, parking and infrastructure.  
(9 May 2012)**
30. Outline planning permission had previously been granted in 2009 for mixed use development on the site comprising warehousing, industrial, residential (500 dwellings), care home, retail and community uses plus associated parking, roads, landscaping and infrastructure.
31. The proposed development was considered in the context of the Environmental Statement and its associated impacts, in particular in respect to traffic and transport, noise, landscape and visual, wildlife, ground conditions, cultural heritage, safety, surrounding settlements and residential amenity and aviation. The impacts of the proposal were considered against national, regional and local planning guidance and the development as proposed was considered to be in line with general planning policies set out in the Development Plan, was acceptable in terms of highway safety, does not adversely impact on the neighbouring properties and character of the area, ecological habitat, flooding and land remediation.

32. The planning application was approved subject to a Section 106 Agreement and appropriate planning conditions.
33. **12/0980/OUT**  
**Morley Carr, Allerton Balk, Yarm**  
**Application for outline planning consent, with all matters reserved save for means of access, for residential development, community hall, public open space, outdoor recreational facilities and associated access arrangements and landscaping**  
**(22 August 2012)**
34. In terms of planning policy the NPPF states ‘Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise’. It was clearly highly relevant to this application that the Local Planning Authority was and still is unable to demonstrate a 5-year supply of deliverable housing land. The Government advice in the NPPF makes it clear that the lack of a 5 year supply of deliverable housing means that the Local Planning Authority’s relevant housing policies cannot be considered as up to date and the application must be considered strictly in relation to the guidance in the NPPF. The Government position is very clear in that in recent decisions by the Secretary of State while he acknowledged that it was important for Councils to be able to identify the needs and requirements in their area, this is not the same as allowing them to postpone their obligation to identify and maintain a five year supply of developable sites. The decisions show that the balance between the plan and delivery has been recalibrated to ensure delivery by granting planning permission where there is a lack of a 5 year supply of deliverable housing.
35. In terms of the core planning principles in the NPPF that underpin both local plan making and decision making, the government has emphasised that every effort should be made objectively to identify and then meet the housing needs of an area and respond positively to the wider opportunities for growth. Consequently the Government only provided a 12 month window for the full weight for policies in post 2004 DPDs to be applied even if there was only a limited degree of conflict with the Framework. In Stockton’s case the estimated adoption of the Core Strategy review at the time of this application was likely to be the beginning of 2014 which is clearly outside the Government’s timescale. As much as the Local Planning Authority would have wished to progress the consideration of the acceptability of the application site through the plan making process, the application had to be considered in accordance with the NPPF guidance in the context of the presumption in favour of sustainable development.
36. Other material considerations were considered in detail and the development as proposed was considered to be acceptable in terms of highway safety, it does not adversely impact on neighbouring properties or the ecological habitat and flooding and complies with Health and Safety Executive requirements.
37. It was considered the proposal would not give rise to any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF. It was considered that approval of this application was not so significant to the outcome of the Core Strategy Review of housing options that planning permission should or could be reasonably withheld.

38. **12/1990/EIS**  
**Land South of Green Lane, Yarm,**  
**Outline application for residential development for up to 370 dwellings, additional railway station car parking, access, infrastructure, open space and landscaping (all matters reserved except for access (4 June 2013))**
39. Members were aware that there was clearly a tension between the site being released for housing development and the core principle in the NPPF that states that planning should be genuinely plan-led. However, decisions by the Secretary of State strongly suggest that this principle is being accorded less weight than the need to demonstrate a five year supply of deliverable housing sites. This is notwithstanding the fact that the Core Strategy Review is housing-delivery led and the Council is seeking to put in place a five year supply of deliverable housing sites as quickly as possible through a plan-led approach.
40. As previously referenced the Council was and is not currently able to demonstrate a five year supply of deliverable housing sites and the Tees Valley Strategic Housing Market Assessment (TVSHMA) identifies an annual deficit in the provision of affordable housing. It was a benefit of this application that it would contribute to the provision of market and affordable housing. This is notwithstanding the Council's preference for addressing these issues through a plan-led approach.
41. It was considered the proposal would not give rise to any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF. It was considered that approval of this application is not so significant to the outcome of the Core Strategy Review of housing options that planning permission should or could be reasonably withheld.
42. **13/0776/EIS**  
**Mount Leven Farm, Leven Bank Road, Yarm**  
**Revised outline planning consent with all matters reserved except for means of access, for development of a retirement village including related leisure and social facilities and infrastructure. (10 July 2014)**
43. An outline planning application for a similar form of development, for a retirement village and associated facilities (ref; 12/1546/OUT) had previously been refused by the Planning Committee on 12th December 2012 due to the impact of the development on the green wedge and its impact on highway safety.
44. The Officer report made clear that significant weight should still be attached to planning policy regarding development in the green wedge and the harm that would arise out of the urbanisation of the land, the coalescence of the settlements of Ingleby Barwick and Yarm and the open character of the site and green wedge. In weighing up these policy constraints against the economic benefits of the scheme, it was considered that despite the benefits and merits that the proposed development would offer, these would not be sufficient enough to outweigh the conflicts with the adopted development plan policies.
45. However, notwithstanding the previous refusal and the officer recommendation for refusal, Members considered that the proposal was acceptable and the economic benefits of the scheme outweighed other policy considerations and granted planning permission subject to a Section 106 Agreement and appropriate planning conditions.

46. **12/2517/OUT**

**Land at Low Lane, High Leven, Ingleby Barwick**

**Outline application for the erection of Ingleby Manor Free School and Sixth Form and residential development (350 dwellings) including means of access (5 February 2013)**

47. It was considered that a benefit of the proposal was that it would boost significantly the supply of housing and along with the provision of a Free School would have significant social and economic benefits. However no evidence had been provided as to why the benefits associated with a Free School could not be achieved without coupling this proposal to a residential development on the scale of 350 houses. This was considered to be particularly substantial in respect of the impact on the Green Wedge, which would be less significant if the proposal were restricted to the provision of a Free School.

48. Whilst acknowledging the weight and importance which is required under the NPPF to be attached to the provision of housing to meet the 5 year supply and in bringing about education provision in the form of the Free School, it was considered that the provision of the housing development would have such a significant impact on the Green Wedge that the associated community benefits of the Free School would not be sufficient enough to outweigh these conflicts with the adopted development plan policies and the National Planning Policy Framework (NPPF). Furthermore insufficient information had been provided to satisfactorily demonstrate that there would be no significant harm to protected species or to justify a reduction in the provision of affordable housing from the required 20% level in the adopted Core Strategy Policy CS8 (5). The planning application was refused on two grounds.

49. The applicant appealed against the decision and the appeal was recovered by the Secretary of State for his determination. A Public Inquiry was held and the Planning Inspector reporting to the Secretary of State recommended that the appeal be allowed and planning permission be granted.

50. The Secretary of State acknowledged that the proposals failed to accord with the development plan in terms of its impact on the green wedge, the character and appearance of the area, and recreational opportunities. He agreed with the Inspector that, given the provisions of paragraph 215 of the Framework, and the findings in the Inspectors Report, the Framework is a material consideration that carries weight such as to justify a decision other than in accordance with Stockton's development plan.

51. **13/2184/OUT**

**Field at Grid Reference 440817 514442, Urlay Nook Road, Eaglescliffe**

**Revised Outline application for residential development (C3) (13 November 2013)**

52. This application had been submitted following the refusal of planning permission for a similar scheme in June 2013. The original application was the subject of an appeal to the Planning Inspectorate which the Council were seeking to defend and Counsel was appointed to lead the Council's case. Members were provided with Counsel's opinion on the planning merits of the appeal and planning application and the likelihood of the planning appeal being allowed with an award of costs against the Council.

53. As the site is within the limits of development a residential development is in accordance with the principles of saved Local Plan Policy HO3. The proposal was considered contrary to Core Strategy Development Plan Policy CS7 which indicates that no additional housing sites would be allocated before 2016 and land for only 50 – 100 dwellings (approximate) being allocated between 2016 and 2021 in this area, however,

guidance contained within the National Planning Policy Framework (NPPF) advises that adopted housing policies should be considered out of date where the authority cannot demonstrate a 5 year supply of housing land, thereby rendering the housing policy out of date and unable to be given weight in respect to allocating housing numbers. The Council demonstrated a 4.23 year supply of housing land at the time the application was considered. In view of NPPF, the site being an unallocated greenfield site within the Limits of Development and within the Yarm, Eaglescliffe and Preston Housing Sub Division area, the principle of residential development was considered to be acceptable.

54. Being outline with all matters reserved, the main considerations of the application beyond the principle of development relate to sustainability, traffic, indicative layout, contributions / provisions, ecology, archaeology, contamination. These were all considered in detail and the impacts of additional traffic could be adequately mitigated as could impacts on archaeology and ecology. The site is considered to be within reasonable distance of a range of services including education, retail, employment, leisure and a bus service exists near to the local centre, which this scheme proposes to extend the route of for a 5 year period, thereby bringing it closer to the development. The site is considered to represent a sustainable location for residential development.
55. It was considered that although contrary to the housing supply policies within the Core Strategy, these could not be given any material weight since the LPA did not have a 5 year supply of housing, and therefore the scheme would be in accordance with relevant saved policies of the local plan, the NPPF and other remaining core strategy policies.
56. The application was approved subject a Section 106 Agreement and appropriate planning conditions.
57. The concern of Council Members to the impossible position they had been placed in by National Government's National Planning Policy Framework in determining planning applications culminated in the Cabinet Member for Regeneration and Transport, Councillor Smith, at the Full Council Meeting on 6th November 2013 submitting a motion in accordance with Council Procedure Rule 12.1 which was carried:-
58. "This Council calls on the Conservative-led Government to urgently review its National Planning Policy Framework which effectively removes planning control from local authorities and communities and places it in the hands of private developers, and to reverse its huge reduction in public funding to support the development of brownfield sites for housing by investing to create jobs and new housing in the Borough and the rest of the North East.
59. Housing developers have made it clear they are no longer interested in developing brownfield sites because the costs of remediating these sites before they can start construction are too great. This has meant that the brownfield sites which previously contributed to the required five year supply of housing are no longer deliverable within a reasonable timescale. This is leading to Councils being directed by national Government policy, planning appeal and case law precedents, to approve developments on greenfield sites to meet their obligation to deliver a five year supply of housing land. This is causing increasing anxiety in the local communities affected, and as a result totally undermining the Government's stated intention of empowering local people to influence plans for their areas.
60. We have great sympathy for the many local residents who have invested considerable time and effort in contributing to local consultations on local planning frameworks and we can understand their extreme concern at the current top down interference with the democratic process that the new planning system was intended to prevent.



61. We resolve to write our MP's urging them to raise this issue with Ministers and to request Parliament urgently to review the National Planning Policy Framework and to look again at the levels of investment available to support development of brownfield sites."
62. As a result of this resolution Alex Cunningham MP for Stockton North wrote to Eric Pickles Secretary of State for Communities and Local Government drawing the Minister's attention to the issues. A reply was received from Nick Boles Parliamentary Under Secretary of State (Planning) which acknowledge the important role Brownfield land can make contributing to housing needs and cited examples of incentives offered by the Government to facilitate the reuse of existing unused or redundant land or buildings. However the letter did not indicate any new initiatives that would address Stockton's issues and acknowledged the reality of there being brownfield sites that were not economically viable to develop. Mr Boles letter concluded by advising that an up to date plan would stand the Council in good stead and the NPPF policies are be kept under review but there are no plans to revise them at the moment. This piece of advice from Mr Boles clearly is not a practical one as this Council is seeking to have an up to date plan in place but has to go through the lengthy statutory process which will still take well over another year at least to achieve and will be dependent on being able to demonstrate evidence of a five year supply of deliverable housing land with a 20% buffer.
63. Stockton South MP James Wharton has responded to the Council's motion. He references the reply received by Alex Cunningham MP from Nick Boles Parliamentary Under Secretary of State (Planning) as the formal reply on the subject. He has also discussed the matter with Ministers and considers there are a number of local problems and points to the failure to ensure the Local Plan has been kept up to date. The letter also refers to the status of the 5 year calculation by the Council and the likely impact on population drift from other parts of Teesside.

## **Conclusion**

64. Whilst it is understood the Government are committed to ensuring the planning system does everything it can to support sustainable economic growth, the previous planning system was the most proactive it had ever been and engaged the Community fully in its plan making process. The fundamental difference has been over the allocation of land for residential purposes and responding to market signals which has changed the balance from the importance of the Local Plan and its policies to the expedient of allowing housing development at all costs.
65. This local authority already identifies and plans for new or emerging sectors likely to locate in their area. Policies are flexible enough to accommodate requirements not anticipated in the plan and allow a rapid response to changes in economic circumstances
66. This local authority proactively fulfils its planning role, and actively promotes sustainable development, it approaches development management decisions positively – looking for solutions rather than problems so that applications can be approved wherever it is practical to do so. It also attaches significant weight to the benefits of economic and housing growth
67. However, the NPPF guidance minimises a Local Planning Authority's ability to influence development proposals to achieve quality outcomes and enables the delivery of

sustainable development proposals on the basis that economic necessity will normally outweigh any other consideration.

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