

ADVICE

1. I am asked in this case to advise on behalf of Stockton-on-Tees Borough Council in relation to a planning application for up to 330 dwellings on land forming part of the Tall Trees Hotel site, Worsall Road, Yarm, Stockton-on-Tees.
2. The application was submitted as an outline one with all matters reserved save for access and was presented to the Council's Planning Committee on 18th December 2013 with an officer recommendation for approval subject to a number of conditions and the completion of a section 106 agreement.
3. Contrary to the officer recommendation, the Planning Committee voted to refuse the application on two grounds. The first was that the application site was outside the limits of development and that the proposal was thus contrary to saved policy EN13 of the Stockton-on-Tees Local Plan (1997). The second was that the application site was unsustainable due to the lack of public transport serving it contrary to Core Strategy Policy 2 (CS2) – Sustainable Transport and Travel.
4. Officers (both planning and legal) present at the Planning Committee meeting were concerned that these reasons for refusal would not be sustainable at appeal and that they might result in an award of costs against the Council.
5. The Council has a protocol which applies in circumstances such as the present involving decisions on planning applications made contrary to officer recommendation. The protocol was invoked in this case. The effect is that the decision is treated as a "minded to refuse" one for the time being while the reasons for refusal are further considered by officers. If officers continue to hold the view that the reasons could not be sustained on appeal, a report to that effect is prepared and the application is taken back to the Planning Committee for its reconsideration. On

reconsideration the Committee is free to change its mind and approve the application but it is also able to adhere to its previous position and maintain the refusal.

6. If, on looking at the matter again, officers conclude that the refusal of the application could be sustained on appeal, the application is not taken back to the Planning Committee and the refusal notice is issued.
7. It is against that background that my advice is sought. I am asked to express a view on the merits of the reasons for refusal and the likelihood of their being successful on appeal. I am also asked to provide a view on whether the reasons for refusal expose the Council on appeal to the risk of a costs award on the basis of unreasonable behaviour.
8. My Instructing Solicitor and the Council's planning officers have put considerable emphasis on the fact that the Council lacks a five year housing supply. In my opinion, they were correct to do so. Paragraph 47 of the National Planning Policy Framework ("the NPPF") requires local planning authorities to take a number of steps "to boost significantly the supply of housing". One of the steps relates to the need to have a five year supply of housing land. Inspectors routinely attach considerable weight to the absence of a five year housing supply. There is no reason why that position would not obtain in the present case also.
9. Moreover, paragraph 49 provides that "relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites." Accordingly, no policies which are relevant to the supply of housing could be considered up-to-date in this case. The Council's view is that policy EN13 is not a relevant policy for the supply of housing. While this issue cannot be considered clear cut, my opinion is that the Council's view on this particular point is reasonable. However, the Council also needs to consider whether the development limits which underpin EN13 remain up-to-date in the light of the passage of time since they were set and changes in circumstances, including the housing requirement, since. My overall view, borne out by experience of many similar cases, is that an inspector would accord only limited weight to the conflict of the proposals in this case with EN13 and would be very likely to consider that the

absence of a five year supply outweighs it. Hence the first suggested reason for refusal could not be successfully defended on appeal in my opinion.

10. Regardless of issues in relation to EN13, given that relevant policies for the supply of housing cannot be considered up-to-date, the approach to decision-making must therefore be that which is contained in paragraph 14 of the NPPF. This provides that, where the development plan is absent, silent or relevant policies are out-of-date, planning permission is to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Save for the fact that the proposed development is outside development limits, the reasons for refusal do not identify any site-specific adverse impacts. There is therefore nothing to place on the negative side of the balance let alone anything of sufficient substance to achieve a significant and demonstrable outweighing of the benefits of the proposal. I deal with the issue of public transport accessibility separately.
11. The weakness of the case built on the contention that the proposed housing lies outside development limits is emphasised by the fact that the Council has already granted two applications for housing outside development limits in the near vicinity of the Tall Trees site. I refer to the Morley Carr Farm permission, which relates to a site partially opposite the application site and comprises 350 dwellings, and the application, also for 370 dwellings, south of Green Lane, some 100 metres or thereabouts to the east of the application site. Refusal of the present application on the basis that it is outside development limits has, therefore, the appearance of inconsistent decision-making. The Council's case is further compromised by the previously built nature of significant parts of the application site.
12. I turn to the second reason for refusal. CS2 provides that "accessibility will be improved and transport choice widened, by ensuring that all new development is well serviced by an attractive choice of transport modes, including public transport, footpaths and cycle routes, fully integrated into existing networks, to provide alternatives to the use of all private vehicles and promote healthier lifestyles."

13. The report for the Planning Committee, when describing comments from the Council's Head of Technical Services, noted that "the site is remote from the local bus service network but the site benefits from a rail station within 1km" and that "the nearest bus stop to this development with a regular bus services is on Davenport Road, approximately 750m walking distance from the development which is beyond the recommended 400m walking distance." The source of the 400m figure is not contained in the report but my recollection is that it is the Institute of Highways and Transportation publication "Guidelines for Planning for Public Transport in Developments (1999)". I am told in my instructions that, when the application was presented to the Planning Committee on 18th December 2013, it was explained by the officer representing the Head of Technical Services that, while the nearest bus stop to the application site was 750 metres away, this was within the national standard of 800 metres contained in "Manual for Streets". I presume that this is a reference to paragraph 4.4.1 of that document. This provides that "walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800 m) walking distance of residential areas which residents may access comfortably on foot."

14. In the round I think it most unlikely that any appeal could be successfully defended on the basis of inadequate public transport accessibility of the application site (which, in reality, appears to be related to accessibility by bus). The distance of the site from a bus stop is clearly not ideal. However, while by no means unimportant in itself, the distance of a site to a bus stop is only one aspect of the much broader notion of sustainability and the application site/development was overall considered to be sustainable in the report prepared for the Planning Committee. The reasons for refusal do not contend otherwise. It would be unrealistic to think that the limitations of the accessibility of the application site by bus would be treated by an inspector as an overriding factor necessitating refusal of an appeal. It would also be unrealistic to think that the application of any particular standard or piece of guidance in relation to walking distances would deliver a knockout blow.

15. I can summarise my advice at this point by saying that the merits of the Council's reasons for refusal are weak and that they would be very unlikely to be defended successfully on appeal.

16. Unfortunately, I also think that the Council is in territory where it would be at significant risk of an award of costs on the basis of unreasonable refusal judged by reference to the relevant policy set out in Circular No. 03/2009 Costs Awards in Appeals and Other Planning Proceedings.

17. I trust that I have now dealt with the matters raised in my instructions.

18. If I can assist further, my Instructing Solicitor should not hesitate to contact me.

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Alan Evans
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