

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 1 JULY 2009

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

8. APPEAL IN RELATION TO PROPOSED ERECTION OF 8 FLATS AND ONE HOUSE AT THE CASTLE PUBLIC HOUSE, 38 CASTLE STREET, BISHOP'S STORTFORD

WARD(S) AFFECTED: Bishop's Stortford wards.

'D' RECOMMENDATION: that the appellant and the Planning Inspectorate be advised that the Council does not offer evidence at appeal in respect of the fourth reason for refusal on application 3/08/1746/FP.

1.0 Purpose/Summary of Report

1.1 This report is to advise Members of the implications of a planning appeal that has now been lodged in relation to the proposed residential development at Castle Street, Bishops Stortford on behalf of Newperties Ltd.

2.0 Contribution to the Council's Corporate Objectives

2.1 The Council's objectives relate to the need to safeguard the built environment and safeguard our unique mix of rural and urban communities. Planning decisions are influential in relation to these objectives. At the same time, one of the Council's is to ensure that it is publicly accountable. This report enables Members to consider these objectives in relation to the development proposed.

3.0 Background

3.1 Members may recall that in December 2008 the planning

application for the erection of 8 flats and 1 house at the site was refused for the following reasons:-

1. The proposed development, by reason of its size, mass, scale and design would be detrimental to the character and appearance of the surrounding Conservation Area, contrary to policy BH6 of the East Herts Local Plan Second Review April 2007.
2. Inadequate provision is made within the site for the parking of vehicles in accordance with the Councils adopted standards for car parking provision and the proposal would thereby exacerbate existing parking problems in the surrounding area contrary to policy TR7 of the East Herts Local Plan Second Review April 2007.
3. The proposed development would result in the loss of an existing visual open space and landscaping and would provide inadequate new amenity space for future occupiers. It would therefore be detrimental to the character and appearance of the surrounding area contrary to policies ENV1, ENV2 and BH6 of the East Herts Local Plan Second Review April 2007.
4. The proposed development would result in additional vehicle movements to and from the site to the detriment of highway safety, in particular because of the use of roads in the area as a safe cycle route to the town centre. This would be contrary to policy TR10 of the East Herts Local Plan Second Review April 2007.

3.2 As indicated, an appeal has since been lodged against the Councils decision to refuse planning permission in this case. This is to proceed by way of a public inquiry in September 2009.

4.0 Implications

- 4.1 Members will be aware that in reporting the proposals at the December committee, Officers recommended that permission should be granted.
- 4.2 Whilst it is quite legitimate for members to come to a decision contrary to the officers recommendation, taking into account all the necessary issues and assigning weight as appropriate, each reason for refusal of that decision, and the basis for it, will now be scrutinised very closely at the forthcoming appeal.
- 4.3 Members will also be aware that, if it is found that the Council has behaved unreasonably in respect of any of the grounds of refusal, it will be at risk of an award of costs being made against it.
- 4.4 I have set out below an assessment of the likely outcome of the scrutiny of the reasons given for refusal in this case.
- 5.0 Reasons for refusal
- 5.1 The first reason relates to the impact that the proposed development would have on the character and appearance of the Conservation Area and Officers are satisfied that a case can be made at the forthcoming appeal in this respect.
- 5.2 The second reason for refusal relates to the lack of parking provision for the proposed development and, whilst Officers had previously recommended that this would not be significant bearing in mind the sustainable location of the site, Members assigned greater weight to this issue particularly bearing in mind the scale of the development proposed and the on-street parking problems already evident in the area. Again, Officers are satisfied that a satisfactory case can be made at appeal in this respect.
- 5.3 The third reason relates to the loss of the open character of the site and the impact that this would have on the appearance of the surrounding area. Officers consider that this could be successfully argued at appeal.

5.4 The fourth reason relates to the impact that additional vehicle movements would have on highway safety in the area, particularly because the roads in the area are used as a safe cycle route to the town centre. Further information from the Highway Authority indicates that a recommended cycle route passes along the west and north sides of the site. However it comments that as the access to the site is to be from the east and an existing access onto the cycle route is closed as part of the proposals. It does not believe that development traffic will have a noticeable impact on the cycle route. Given this, Officers are concerned that it will be difficult to justify this particular reason at appeal and that the Council will be seen as being unreasonable if it pursues this. The Council would be at risk of an award of costs being made against it. It is recommended that no further evidence be offered in relation to this refusal reason and that the appellant be advised of the position of the Council.

6.0 Conclusion

6.1 I am satisfied that the Council can make a successful case at appeal insofar as the first three reasons for refusal are concerned. In my view, the Council's decision in relation to these reasons was a legitimate one, taking into account the particular circumstances of the proposal and, notwithstanding the recommendation by officers; it did not act unreasonably in refusing permission on those grounds.

6.2 Unfortunately, however, I do have strong concerns regarding the fourth reason for refusal and I consider that, in this respect, the Council could be criticised for acting unreasonably if it pursues this matter.

7.0 Consultation

7.1 No general consultations have been undertaken in reporting this matter back to Members. Consultations did take place on the initial planning application proposals and those who responded will have been informed of the reasons for refusal.

7.2 If the Council now decides to change its position in relation to the fourth reason those who support the refusal on those grounds may be dissatisfied with this course of action. It is not a requirement, however, that the Council should re-consult on its position in relation to the forthcoming appeal and it is of course, open to anyone who supports this reason for refusal to make representations to that effect and the public inquiry in any event.

8.0 Legal Implications

8.1 The appeal inquiry process is a quasi-legal one. The recommendation set out here is intended to ensure that the Council's position is the most sustainable and effective, reducing legal and other challenges on the basis that it has behaved unreasonably.

9.0 Financial Implications

9.1 Members should note that there is a potential for a costs award to be made against the Council if it were found to have acted unreasonably in pursuing this reason for refusal without specific and convincing expert evidence to present to the inquiry.

9.2 This report seeks to suggest a way forward that allows the Council to make the most sustainable case at the appeal and minimises the risk of such an award of costs being made.

10.0 Human resource implications

10.1 None

11.0 Risk management implications

11.1 The main emphasis of this report is one of risk management. In my view, the decision that the Council has made, in respect of reason for refusal No.4 in this case, is an unsustainable one and one which would be very difficult to defend on appeal. There is a risk that the Council will be seen to have acted unreasonably and that financial penalties may result.

11.2 I consider that the suggested course of action reduces those risks. They do remain however. It may still be considered that the Council did not act quickly enough in withdrawing from this reason for refusal, or those who agree with that particular reason for refusal may be critical of any shift in the Council's position. I cannot therefore guarantee that some risks will not remain, but I feel that the recommended course of action places the Council in the most sustainable position whilst minimising the risks involved.

Background Papers

Planning application 3/08/1746/FP

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