



Committee and date

South Planning Committee

14 October 2014

Development Management Report

Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 14/00885/OUT	<u>Parish:</u>	Bishops Castle
<u>Proposal:</u> Outline application for mixed residential development and formation of a vehicular and pedestrian access		
<u>Site Address:</u> Land south of Woodbatch Road, Bishops Castle		
<u>Applicant:</u> Mr J M Jones		
<u>Case Officer:</u> Grahame French	<u>email:</u> planningdmse@shropshire.gov.uk	

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Recommendation:- Approve as per the officer recommendation in Appendix 1

1.0 BACKGROUND TO THE REPORT

1.1 This application was reported to the committee meeting on 27th May 2014. The original officer appraisal report recommending approval is attached as Annexe 1. Members resolved to defer the application after hearing from speakers for and against the proposals. This was order for the applicant to:

- i. Review the impact and effect of the proposed development on the local road network and Conservation Area, and
- ii. Review drainage issues and put forward mitigation measures identified as necessary.

1.2 The application was subsequently reported back to the committee on 22nd July with additional information on drainage and highway matters. Members resolved to refuse the application for the following reasons:

1. **Emerging Policy:** The Bishop's Castle community has overwhelmingly rejected sites on the south-west side of the town for housing development during a rigorous consultation exercise carried out in connection with Shropshire

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Council's emerging Site Management and Allocation of Development document ('SAMDev'). This is because of access problems to the town's hinterland. Other more appropriate sites have been identified in the SAMDev.

2. Housing type: A need for affordable housing had been identified in the area and the contribution of this application to the affordable housing stock would be minimal.
3. Highway / access matters: This proposal would exacerbate the already significant problems that exist along Kerry Lane. To exit the proposed development site and the town, traffic would have to use Kerry Lane, which, in places is a single track road, has no footpath in places, has five junctions within close proximity and is already considered to be unsuitable for existing residents and businesses.

Accordingly the proposed development would therefore be contrary to paragraph 17 of the National Planning Policy Framework and Core Strategy Policy CS6 whereby the adverse impacts of the proposals would significantly and demonstrably outweigh the benefits.

- 1.3 An application would not normally be reported back to committee after a resolution has been made. However, it is considered that a number of new factors have come to light since the original resolution and that it is appropriate to draw these to the attention of Members before a final decision is issued:

- Legal Services: Following discussion with officers the Council's Legal Services section has reiterated concerns about the ability to defend a highway based refusal reason on appeal, given the absence of objection from the Council's highways team. Concern is raised about the Council's potential exposure to costs in these circumstances.
- CIL Targeting: Cabinet agreed to allow a more targeted approach to the use of CIL money on local infrastructure projects in July 2014, after the current application was considered by the Committee. This would in principle allow such money to be utilised, where appropriate, in order to deliver local highway improvements linked to a specific development proposal. This has relevance to the current proposals and to another nearby outline planning application which is currently being considered as it provides greater reassurance regarding the ability to utilise the significant CIL money revenues for targeted highway improvements.
- Additional highway mitigation: Notwithstanding the absence of objection from Highway Officers the applicant's highways consultant has reviewed the highway concerns raised by Members at the July committee and further discussions are taking place with highway officers. Arising from this assessment the applicant has advised that there is significant scope to provide additional reassurance on key highway issues of concern to Members.

- 1.4 Officers advised the applicant that the opportunity would exist to address these points in the context of a re-submission of the application under the ‘free go’ provisions. However, the applicant has expressed a strong preference for the application to be reported back to the committee at this stage. Having reviewed the above considerations it is considered that relevant exceptional circumstance criteria are met in this case and accordingly the Area Development Manager has agreed to this request.
2. Applicant’s comments further to refusal resolution
- 2.1 Policy issues: The applicant has submitted comments in relation to the specific reasons for refusal cited in 1.2 above (emerging policy, housing type and highway / access matters) and these are summarised as Annex 1 of this report. Officers have reviewed these comments and it is considered that they have some policy basis. Accordingly they are drawn to the attention of the Committee at this stage.
- 2.2 CIL Targeting: The applicant considers that the decision of the Shropshire Cabinet on 30th July 14 is relevant to the determination of this application. The minute of the Cabinet meeting provides a succinct summary of the strengthened link between development and the provision of infrastructure. The decisions of how this can be provided have now been delegated to the Head of Economic Growth and Prosperity in consultation with the Portfolio Holder. In the case of Bishops Castle the applicant states that the “critical” highway infrastructure improvements set out on page 40 of the Place Plan can now be provided by a direct use of CIL monies accruing from the Woodbatch Road and potentially also the nearby Lavender Bank development, if approved.
- 2.3 Highway and access issues: The applicant has commissioned a supplementary highway report setting out the local highway context and recommending potential improvements to the highway network on the south side of Bishops Castle. In terms of highway context the report makes the following conclusions:
- i. The generated traffic expected from the proposed Woodbatch Road development, and from the proposed development at Lavender Bank, would not significantly affect traffic volumes accessing the town centre via Kerry Lane and Corporation Street.
 - ii. Corporation Street provides the principle conduit to access the town centre of Bishops Castle from the residential areas off Woodbatch Road, Lavender Bank, Corrick’s Rise and Oak Meadow, whilst Kerry Lane provides access principally to the lower reaches of Church Street and also to the A488, to the east, bypassing Bishops Castle town centre. Corporation Street also provides the most direct access to the town centre, is the easiest of the two roads to traverse both for pedestrian and vehicular use, and is closer to the car park at the junction of Union Street and Harley Jenkins Street than Kerry Lane.

- 2.4 The following recommendations improvements are made by the report:
- iii. An improvement to the pinch point at the lower end of Kerry Lane alongside No. 2 by covering the existing open culvert and providing both a run-off area for vehicles and a safer pedestrian route from that property into the town centre.
 - iv. The easing of the narrow width of road alongside No. 4 Kerry Lane by cutting into the embankment on the south side and constructing a low retaining wall.
 - v. The provision of traffic calming measures on the narrow part of Kerry Lane opposite No. 8 with, the possible introduction of a 20 mph speed limit and the increase in visibility linking to the junction of Kerry Lane with Woodbatch Road.
 - vi. Improvement to the junction of Woodbatch Road into Kerry Lane with increased visibility to the south, the construction of a high retaining wall to support the service road at this corner, the gentle widening of Kerry Lane into Woodbatch Road enabled by this retaining wall and visibility splay. Moving the pedestrian crossing 10m further down Kerry Lane away from its junction with Woodbatch Road.
 - vii. A ban on parking at Corporation Street close to its junction with Union Street. The possible extension of the footpath along Union Street in a southerly direction as far as No. 11 and the encouragement of off-street parking on Corporation Street.
 - viii. To consider the elevated section of Kerry Lane alongside with a designated pedestrian route, the retention of the existing car parking and suitable signage to identify the joint use of this service road and its restriction for vehicles to frontages only.
- 2.5 The report considers that implementation of some or all of the recommended improvements would result in significant benefits for existing traffic using both Kerry Lane and Corporation Street in order to access the town centre. In terms of priorities it is considered that the biggest single improvement would be to improve visibility at the junction of Kerry Lane and Woodbatch Road.
- 2.6 The report does not consider there to be any major problem with the flow of traffic along these routes, including during school delivery times. It advises however that there is no doubt that localised impediment can be either removed or improved to further free the flow of existing traffic and to cope with the small increase in vehicular traffic which would result from the construction of the proposed development and potentially also the second development off Lavender Bank.
- 2.7 As a longer-term solution the report also suggests that consideration could be given to implementation of a limited or full one way system in order to limit the use of Kerry lane.

3. OFFICER COMMENTS

- 3.1 The Council's Highways (Development Management) officer has not objected to the proposals given the limited amount of additional traffic which the proposals would generate and has not requested any financial contributions as part of this response. This has instead been offered voluntarily by the applicant during discussions with planning officers in recognition of local concerns received during the planning consultation process. The proposed funding would facilitate improvements to the junction between Woodbatch Road and Kerry Lane and would be delivered as part of a S106 legal Agreement if the current application is approved.
- 3.2 A Cabinet report on targeting of CIL monies dated 30th July 2014 also suggests that this would be capable of being supplemented by additional funding from CIL. Without prejudice to the outcome of the nearby Lavender Bank outline residential application similar funding would potentially also be available if that application was approved. The applicant's highway consultant has indicated that this would potentially allow the majority or all of recommended improvements to be delivered.
- 3.3 Notwithstanding the absence of objection from the Council's Highways (Development Management) section the applicant has cited the Bishops Castle Place Plan as highlighting the need for improvements to the existing highway network on the southern side of Bishop's Castle. The applicant has indicated that in the absence of alternative sources of public funding to facilitate this, the ability to utilise CIL and S106 funding from the current development and potentially also the Lavender Bank scheme, if approved, represents the only way of delivering these improvements.
- 3.4 The applicant's highways consultant has confirmed that the recommended works are achievable and would result in significant improvements to the local highway system. These improvements would not be deliverable if the current scheme was not to proceed, unless an alternative source of public money is identified. Without prejudice, the proposed improvements would also benefit an affordable housing scheme which it is understood is coming forward on land adjacent to the current site, potentially resulting in a more sustainable development.
- 3.5 Given the lack of objection from highway officers and the deliverable highway benefits being offered by the current proposals it is considered that highway matters are capable of being satisfactorily addressed. (Core Strategy Policy CS7)

4.0 CONCLUSION

- 4.1 Consideration of the application was deferred from the committee meeting on May 27th to allow time to address concerns in relation to drainage and highways which were raised at that meeting. The applicant subsequently provided additional information in relation to these matters but Members remained concerned in relation to highway and planning policy considerations and accordingly resolved to refuse the application.

4.2 Following discussions between the applicant and officers the exceptional decision has been taken to refer the application back to committee. The applicant has in the meantime commissioned a highway report which provides further clarity regarding the limited impact which the proposals would have on the local road network. Specific recommendations are also made for a number of deliverable improvements to local roads which the current proposals would help to facilitate. Initial prioritisation would be given to improving visibility at the Woodbatch Road / Kerry Lane Junction. It is considered that this information clearly indicates that refusal on highway grounds could not be substantiated.

4.3 In the absence of a sustainable highway refusal reason it is not considered that refusal overall can be justified. This is having regard to the points made by the applicant in Annex 1 attached. It is therefore recommended that the application is approved in accordance with the recommendations set out in the original officer report which is attached separately as Annex 2.

5.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

5.1 Risk Management: There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

5.2 Human Rights: Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community. First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents. This legislation has been taken into account in arriving at the above recommendation.

5.3 Equalities: The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one

of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

6.0 FINANCIAL IMPLICATIONS:

6.1 There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

7.0 Additional Information

List of Background Papers: Planning application reference 13/003126/FUL and plans.
Cabinet Member (Portfolio Holder): Cllr M. Price
Local Member: Cllr Charlotte Barnes, Bishops Castle
Appendices: Annex 1 – Applicant's commentary on draft refusal reasons Annex 2 – Officer report to 4 th March Committee including Appendix 1 – Conditions

ANNEX 1

APPLICANT'S COMMENTARY ON DRAFT REFUSAL REASONS

1. Reason 1 - Emerging Policy: The applicant contends that the first refusal reason misinterprets the link between development and the provision of infrastructure improvements. It is stated that the Bishops Castle Place Plan put forward by the Town Council as part of the LDF Implementation Plan and the CIL Regulation 123 list identifies highway infrastructure improvements to be a "critical" requirement to be funded by developer contributions (Page 40 of the Bishops Castle Place Plan). The applicant contends that the "*access problems in the town's hinterland*" identified in the Bishop's Castle Place Plan can only be solved by utilising the proceeds of development not only to improve an existing situation but also to facilitate general infrastructure improvements which will benefit the town as a whole. The applicant states that Without new residential development the "*access problems*" will remain - there is no other source of public funding which can be utilised. It is stated that the refusal reason in effect, gives no hope to residents of the town that its infrastructure needs will be met.
2. Reason 2 - Affordable Housing: The applicant advises with respect to the second reason for refusal that the application site would provide more than the required minimum of affordable housing (2 houses instead of the minimum requirement of 1.8). The widening of Woodbatch Road and the provision of a footway would also provide benefits for an affordable housing scheme which is proposed for adjoining land by the Bishops Castle Land Trust – BCLT (not yet submitted as an application). The applicant states that the BCLT would be able to utilise the improved roadway without the need to obtain third party land to carry out the access works themselves. The applicant also states that the proposed site would provide improvements to Kerry Lane which would be beneficial to the future occupants of the affordable housing scheme. Without the application site these benefits would not accrue as affordable housing is CIL exempt.
3. Reason 3 – Highways and access: The applicant contends with respect to the third reason that no evidence has been put forward that the highway network on the south side of the town would be adversely affected by the proposed development. The applicant refers to the Highway (Development Management) officer's advice that the network was capable of accommodating further development. The NPPF is also cited as advising (Para 32) that "*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*". The applicant also considers the wording of this reason to be misleading and advises that Kerry Lane is only one of many alternatives to access the centre of the town from Woodbatch Road, with other well-established footpaths and roads, including Corporation Street.
4. The applicant questions the use of para 17 of the NPPF as part of a reason for refusal. It is stated that the main purpose of this paragraph is to facilitate growth through development, not to refuse it. The applicant therefore considers use of Para 17 for refusal without recognizing the requirements of Para 32 to be unreasonable .