



Planning Inspectorate

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Your reference
RGRM/HMG
Our reference
T/APP/H1840/A/90/156882/P3

Date

26 APR 91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
APPEAL BY F B HACKLETT & SONS AND APPLICATION FOR COSTS BY THE COUNCIL
APPLICATION NO:- W/89/1756/0

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of the Wychavon District Council to refuse outline planning permission for residential development on land at Springfield Nurseries, 97/99 Main Street, Sedgeberrow. I held a local inquiry into the appeal on 3 April 1991. At the inquiry an application for costs was made on behalf of the Council and I deal with this separately below.

2. The appeal site, which amounts to some 1.17 ha, is an intensive horticultural holding situated on the south-west side of the main road through Sedgeberrow, a village in generally open countryside. There are fields adjoining your client's land to the west and south. On the north side however are houses which front Main Street and there are further dwellings along this road to the east; behind those, and south-east of the appeal site, is a small group of residential properties recently converted from a range of old barns. Barn Lane, which serves these properties and nearby agricultural land, borders the eastern boundary of your client's holding. The appeal land itself is extensively covered by glasshousing and there is also an assortment of other nursery buildings; in addition, close to the main road frontage are 2 houses.

3. I am aware this proposal is for outline permission only and that formally all matters are reserved for later approval. However at the inquiry you confirmed your client envisages a development at a density of some 8/9 dwellings per acre providing, therefore, about 24-27 units; I shall take this into account in judging the present proposal.

4. From my inspection of the site and the surroundings and from the representations made to me in writing and at the inquiry I consider the main issues in this case are first, the impact of the scheme on the character and appearance of this area taking into account the council's policies on rural settlements and the countryside, and secondly, the likely effect on highway safety conditions hereabouts.

5. As to the first issue, the policy of the Hereford and Worcester County Structure Plan, alterations to which were approved in June 1990, is that in



rural settlements beyond or excluded from the green belt residential development will normally be permitted where it falls within the present boundary of the settlement or forms a natural extension, normally defined in a statutory Local Plan, and where it accords with certain specified environmental, social and technical criteria. Residential development in the open countryside will not normally be permitted; the Plan specifies a number of exceptions, but none I note are applicable in this case. The council has defined the development boundary for this settlement in the Sedgeberrow Village Plan which forms part of the adopted Evesham Vale District Plan. The majority of the appeal site lies outside the defined boundary although the 2 existing houses are included. The Local Plan confirms that the extension of the village into the countryside will be resisted.

6. Primarily you consider the proposal would form a natural extension to this village and that the sort of housing envisaged here would be in keeping with other development in Sedgeberrow. You claim this scheme would thus accord with the provisions of the Structure Plan policy on rural settlements and that the specified policy criteria would essentially be met. As for the Local Plan you are critical that this is based on outdated survey material; also, that this Plan is intended to cover a period which expires this year. You refer to changes in circumstances which have arisen since the formulation of the Plan's policies and suggest it is appropriate now to reconsider the housing situation in Sedgeberrow. In particular you say the construction of the by-pass has made the village a safer place and that a housing site identified in the Plan has not in the event been developed with the type of dwellings which would meet local needs. You argue that while land for development has been allocated elsewhere in the Plan area, this is limited in terms of its location and nature; for example none has been provided for in Sedgeberrow or other villages. There should be more variety in the type of sites available. For these reasons you contend that some limited expansion of Sedgeberrow, as your client intends, is now most appropriate.

7. From what I saw at my inspection I find myself unable to share your views. The appeal site is in a relatively conspicuous position fronting the main street in this village. Parts of this holding are easily visible not only from nearby roads and properties but also from several more distant points, including the Cheltenham road. This is a relatively sizeable site in horticultural use and adjoined by extensive open land on 2 sides; in terms of its nature and appearance it relates well in my opinion to the stretch of open countryside bordering this built-up part of the village and it makes a noticeable contribution to the rural character of these wider surroundings. While there is substantial glasshousing here, this type of structure is not an uncommon feature in a rural situation. In all these circumstances I am convinced that this proposal would, given the nature and scale of housing envisaged, represent a substantial extension of development beyond the established and recognisable village confines into the open countryside, which would seriously harm the generally open appearance and rural character of these village surroundings.

8. For these reasons I agree with the council that your client's scheme would conflict with the aims and terms of Structure and Local Plan policies for this area which in my opinion are worthy of support in this instance. These are relatively up-to-date statutory documents, both having been formally approved/adopted within the last 3 years, and their specified provisions are clearly relevant to this case. National guidance is that such Plans should be given considerable weight unless strong contrary planning grounds are demonstrated. From the evidence before me I see no reason for setting these local policies aside.

9. In judging this matter I take into account that the council is presently undertaking a review of its Local Plan. This is in only the earliest of the stages of the formal adoption process, thus I accord it little weight in itself. However I observe this Plan does not propose any extension of the village boundary so far as the appeal site is concerned; indeed the intention is to reduce the extent of your client's land which is currently included in the development area.

10. In reaching my conclusions on the first issue, I have borne in mind national policy guidance to which you refer, basically about the need to ensure that sufficient housing land is available and suitable for the wide range of property required by the housing market. However the council's figures show, and you do not dispute, that there is well in excess of a 5 years' supply available in the relevant sub-area and you have put forward no tangible evidence of any particular need for the appeal proposal which alters my opinion on the unacceptability of this scheme. I am also conscious of recent advice regarding, in general terms, diversification in agriculture and rural housing; yet the government's commitment to the protection of the countryside continues to be emphasised and in all the circumstances of the present case that is the consideration to which I attach greatest weight.

11. Lastly, I have noted the other sites in Sedgeberrow to which you directed me which have been developed or are identified for housing in the council's Plan. In my view each such site has its own characteristics and I consider it right and proper to deal with the present scheme entirely on its individual merits. Here I should also point out that for similar reasons I do not attach significant weight to the council's argument of precedent. Had I been minded to allow this appeal I am satisfied that this would not necessarily have caused the council difficulty in dealing with other possible proposals elsewhere on their respective merits.

12. On the second issue, I acknowledge that the means of access is not a matter formally for approval at this stage. However the parties have, during the course of considering this project, discussed 2 alternatives. The original intention was to widen, and improve the junction of, Barn Lane but the necessary land required for this purpose is not in your client's control and agreement with the owner cannot be reached. You do not dispute the council's argument that this lane is, in its present form, unsuitable as a means of access for the appeal scheme. From what I saw at my inspection I share that opinion; the lane is quite narrow and at its junction with the main road the view of oncoming westbound traffic is very restricted and well below nationally recommended standards for a situation like this.

13. You explained at the inquiry that the preferred option now is to improve the existing site access direct on to Main Street in order to serve this scheme. This the council also considers unacceptable since it would result in the provision of an estate road access too close to Barn Lane; the consequences would be conflicting vehicular movements and misinterpretation of drivers' signals contrary to the interests of highway safety. I observed that Main Street, along this section, is about 6m wide with a footway on each side. The existing site access is on the outside of a sharp bend and there is a further bend a little way east of Barn Lane; there is no dispute that this road is fairly lightly trafficked and vehicle speeds generally are below the imposed 30mph limit. The proposed estate access would have an acceptable standard of visibility in both directions. However I note that the centre line distance between it and Barn Lane would be just some 26m whereas the council maintains this should be 100m according to its adopted standards. Although you argue these standards require a separation of only 40m for circumstances like this, clearly even that would not be met in this case. To my mind, this scheme would likely give rise to such a scale of vehicular

activity that, given the main road configuration hereabouts and the limited distance there would be between the proposed access and Barn Lane, it would cause confusion, inconvenience and danger for drivers and, consequently, seriously worsen highway safety conditions in this area. Your proposed solution to this problem is to close Barn Lane and divert its existing traffic through the appeal scheme; but again your client does not control the necessary land and I am aware the owners are not willing to co-operate in this respect.

14. Overall, you claim the foregoing difficulties could be overcome by the imposition of conditions on a planning permission. I disagree. The central problem is that your client does not have control over the land which is necessary to provide an acceptable means of access for the appeal scheme; nor, from the evidence before me, does it seem that this situation is likely to change in the foreseeable future. In the circumstances I do not consider there is any form of appropriate and reasonable condition which could remedy this matter.

15. Finally, I have examined the council's objection regarding the inadequacy of the local sewage treatment works to cater for the proposed development. You recognise this problem and propose either the construction of a private treatment plant on the appeal land or, alternatively, that your client would be prepared to make a capital contribution towards the enlargement of the local works. The council has put forward no evidence to suggest that a private plant would not, technically, be a satisfactory solution; furthermore, it agrees that a financial contribution could be negotiated which might lead to improvements to the local works being completed within 4 or 5 years thus enabling your client's scheme to go ahead. It seems therefore that the problems identified by the council are realistically capable of being resolved and I am satisfied that these matters could adequately be covered by the imposition of conditions if permission were to be granted in this case.

16. I have taken into account all other matters raised in the representations and at the inquiry but there is nothing which outweighs the environmental, policy and highways-related considerations that have led to my decision.

17. For the above reasons and in exercise of the powers transferred to me I hereby **dismiss** this appeal.

APPLICATION FOR COSTS

18. In support of the application for costs the council claimed your client had acted unreasonably in pursuing this matter to appeal when it must have been clear that the case would not succeed. Given the provisions and policies of the Structure and Local Plans for this area, and in view of the imminence of the Local Plan review (which includes the village plan for Sedgeberrow), it should have been obvious to your client that there was no reasonable prospect of permission being granted for this proposal. National advice is clear that up-to-date, relevant development plan provisions must be given considerable weight; this is the case with the Plans applying here. It would have been more appropriate had your client made representations through the Local Plan process rather than by way of this appeal; the likely publication of the review has been known of for some time and you personally are well versed in Local Plan proceedings. In the circumstances a full award of the council's costs is sought. Alternatively a partial award, excluding the costs of dealing with the highways and drainage matters, is sought.

19. In reply you stated your client was perfectly entitled to pursue this appeal. It has simply been a matter of following the proper and normal process of application submission, refusal of permission and appeal. The statutory requirements of the appeal procedure rules have been met. Your client has presented a reasonable case, logically argued and supported by evidence, particularly in regard to national and local policy. National guidance is critical of out-of-date Local Plans. The council's Plan is based on old material/data; evidence has been given by your client of changes in circumstances which have occurred in recent years to justify fresh consideration of the appeal scheme in that light. The possible publication of the Local Plan review should not have prevented the present appeal which was first lodged a year ago. In any event it is an acknowledged principle that development plans are but one consideration in the determination of a planning proposal and there is always a presumption in favour of development. Thus you say that in all the circumstances your client has not acted unreasonably in this matter.

CONCLUSIONS

20. In determining the council's application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on the grounds of unreasonable behaviour. Accordingly I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances of this appeal.

21. Circular 2/87 makes it clear that the right of appeal should be exercised in a reasonable manner; it goes on to explain, in broad terms, circumstances in which an award of costs against an appellant might be made. In my judgement however the circumstances of the present case are significantly different from those described in the circular. The council's objection in this case was based primarily on planning policy grounds arising from the Structure Plan and the Local Plan (incorporating the Sedgeberrow Village Plan); the reasons for refusal concerning highways and drainage problems are issues not central to the application for costs. The specified Plans are statutory documents and reasonably up-to-date. However the policies on which the council essentially relies are, although restrictive, expressed in qualified terms. Furthermore I agree with your point that such development plans are, in any event, not the only material consideration which need be taken into account.

22. Given those considerations, in my opinion your client was perfectly entitled to challenge the provisions and policies of those Plans and seek to demonstrate how their specified aims and terms would not be prejudiced by this scheme. In this respect, to my mind at the inquiry you produced adequate evidence to substantiate your client's case. Also I am mindful that there has been no previous appeal regarding the present holding, nor did the council seek to argue that there is any other appeal nearby which has already been determined in which the environmental circumstances are directly comparable to those in this case. Moreover there is no declaration in national policy of any general presumption against development in this particular location. For these reasons therefore I am convinced there is no basis on which your client should necessarily have believed there would be no reasonable prospect of success with this appeal. As for the imminence of the Local Plan review and the opportunity this would provide for making representations, I agree that is an option open to your client. However to my mind that represents an additional opportunity to challenge the council over its policies and there is no reason why it should preclude the submission of this appeal. Overall, while as is evident from my decision on the planning merits of the present

proposal, I disagree with your arguments and conclusions, in all the circumstances I am not persuaded that your client's behaviour has been unreasonable. Thus, in my judgement the council's costs in responding to this appeal were not unnecessarily incurred.

FORMAL DECISION AS TO COSTS

23. Having considered all the evidence I have decided that an award of costs against your client on grounds of unreasonable behaviour would not be justified for which reason, and in exercise of the powers transferred to me, I hereby determine that the council's application for costs be refused.

I am Gentlemen
Your obedient Servant

J. R. Collyer

J R COLLYER FRICS
Inspector