Town and Country Planning Act 1990, s.78

Appeal by Lightwood Strategic Ltd

Aylesbury Vale District Council

PINS ref. APP/J0405/V/15/3014403

Land at Haddenham Glebe, Haddenham, Buckinghamshire

CLOSING SUBMISSIONS
ON BEHALF OF AYLESBURY VALE DISTRICT COUNCIL

Introduction

1. The Council has intentionally taken a limited role in this inquiry for three principal reasons. First, the decision is no longer its own following the Secretary of State's call in on 27 March 2015. Secondly, the Council's clear position is as set out in its report to committee dated October 2015 [CD.8] as well as in the proof of evidence of Mrs Jarvis. The Council's views have not changed. Lastly, the tension in this case – between the significant need for housing and the importance of neighbourhood planning – has been aptly articulated by the Parish Council and Applicant's cases. In the end, the outcome of this application will turn on how much weight the Secretary of State applies to each of these two issues. However, there are a number of short points that the Council wishes to make by way of closing remarks.

Approach to decision-making

2. The following propositions can be derived from case law as to the proper approach in determining planning applications:

(i) Whilst section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") creates a presumption in favour of the development plan, judgment is still required by the decision maker. He or she is not required to 'slavishly to adhere to' the development plan but is at liberty to depart from the development plan if material considerations indicate otherwise.

(ii) The NPPF is properly speaking a material consideration (albeit one likely, as Governmant policy, to command significant weight (see paragraph 62 of *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) [CD.34]). Its does not change the statutory presumption in favour of the development under section 38(6) of the 2004 Act (see paragraph 62 of *Crane* [CD.34]).

(iii) The NPPF sets out a simple sequence of steps for the decision maker in housing cases: the first step is to consider whether relevant policies for the supply of housing are out of date because the local planning authority is unable to demonstrate a five year housing land supply. If so, paragraph 14 will be engaged. The second step is to consider whether planning permission should be withheld for either of the two possible reasons given in paragraph 14 (see paragraph 65 of *Crane* [CD.34]).

(iv) Neither paragraph 49 nor paragraph 14 of the NPPF prescribe the weight to be applied to policies found out of date. Neither say that policies which are deemed to be out of date should be ignored (*Woodcock* paragraph 107 [CD.13]). The decision maker must determine the weight to be given to them (paragraphs 71-74 of *Crane* [CD.34]).

3. *Crane* does not, as the Parish Council sought to suggest in opening and XX of Mrs Jarvis, state that "*a proposal's conflict with a recently* ***made*** *Neighbourhood Plan is, in itself, a powerful and decisive factor' against granting planning permission*" [PC OS, §11].

4. All the court said was that: the Secretary of State was entitled to conclude that the conflict was a powerful and decisive factor; "*there was nothing legally wrong with the Secretary of State's conclusion*" [CD.34, §78]; and *"in the end, therefore, one comes back to the most elementary principle of planning law, emphasized by Lord Hoffmann in* Tesco Stores Ltd. v Secretary of State for the Environment *[1995] 1 W.L.R. 759 (at p.780F-H): that the weight to be given to material considerations, including statements of government policy, is a matter for*

the decision- maker to judge, subject only to the constraint of rationality... In other circumstances the Secretary of State might have struck the balance differently. He might even have struck it differently here, and to have done so might not have been unreasonable. But this does not mean that the decision he did make was irrational..." [CD.34, §79].

5. It right that in *Crane* (and the Broughton Astley decision on which that challenge was based) as well as in the *Wimslow* appeal decision, the Secretary of State gave very substantial negative weight to the conflicts he found with the relevant neighbourhood plans but that does not mean the same is appropriate here.

6. In contrast to the above decisions, part of the Application Site is allocated for housing by the HNP. It is, in short, part of the vision and spatial strategy of the plan to build houses in this location. That fact must limit any harm – environmental and strategic – caused by the application site being wider than the allocation. Indeed, it was the Council's position during the consultation on the HNP that the better approach would be to allocate the whole of the Glebe site and seek its comprehensive redevelopment. These factors alone make the decision here quite distinct to those taken in Broughton Astley and Wimslow.

7. It is noteworthy that for all the PC's focus on *Crane* and the suggestion that the Council did not understand that decision by reference to the internal briefing memo to Members, there has been no criticism of the approach to decision-making in the officer's report. In the end, the PC's complaint is about the weight the Council attributed to the conflict with the HNP.

<u>Haddenham Neighbourhood Plan</u>

8. The Council and the Applicant differ on whether or not there is conflict with the HNP. The PC's analogy with *Crane* in this regard is apt. If it were right that, as a result of their being no cap on development in policy HD.1, the application does not conflict with the HNP even though it is not wholly within one of the allocated sites, then the whole process of site selection and allocation would be rendered pointless. That cannot be right and, in similar circumstances, the judge in *Crane* said as much [CD.34, §48].

9. As stated in opening, this is a conflict to which the Council gives significant weight given the importance the Government places on neighbourhood planning, the fact that the plan has

only recently been made and the hard work the people of Haddenham have invested in producing the HNP. However, it must also be recognised that (a) part of the site is allocated and this must for the reasons set out above reduce any harm and (b) it has always been the Council's view that the better approach would have been to allocate the whole of the site. Officers have consistently regarded the whole of the Glebe site as an appropriate location for housing.

Housing land supply

10. There is no issue between the parties: in Aylesbury no five-year housing land supply. Further as set out in the Statement of Common Ground Addendum (sections 4 and 5), the direction of travel in terms of housing need is up. The Council places significant weight on the provision of market and affordable housing in an area with great need of both.

11. In such circumstances, paragraph 14 of the Framework states that planning permission ought to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. It is, the Council understands, agreed that this is the balance to be struck in this case. Mr Gilbert flirted with the idea that this is not the case but in the end agreed that paragraph 14 did apply and that is certainly the basis on which the PC appeared to open their case [PC OS, §13]. It is clear that the second 'dagger' does not apply. Paragraph 198 is simply not in the nature of a 'footnote 9' policy. Indeed, paragraph 198 is not, in reality, much more than an expression of the statutory presumption in favour of the development plan.

Environmental matters

12. As set out in the Committee Reports and the evidence of Mrs Jarvis, it is the Council's judgment that the application would have little detrimental environmental impacts. The views of the local plan Inspector, in this regard, are not illuminating: he dealt with a different site, at a different time in a different policy context.

13. The Parish Council did seek to make something of the corrigendum to the January committee report that replaced the original paragraphs that dealt with heritage matters [CD.7]. Mrs Jarvis dealt with this candidly: the paragraphs were replaced because they did not reflect the views

of the heritage officer and because they were poorly drafted and made little sense. The replacement paragraphs are clear, they reflect the views of the Council's heritage officer and they formed the basis on which the committee made their decision.

Planning balance and conclusions

14. We conclude as we begun: the development has insignificant environmental impacts, a significant point for it (housing) and a significant point against it (the conflict with the neighbourhood plan). The Council does not think it here appropriate to blindly apply the same weight the Secretary of State applied in Broughton Astley or Wimslow. Each case must be judged on its own merits. In the Council's view, the allocation of part of the application site and the suitability of the remainder for housing has a material bearing on the weight to be applied to the conflict. In the end, it is a finely balanced decision given the importance of neighbourhood planning but, in such circumstances, the Framework dictates the result: planning permission ought to be granted as it cannot be said that the adverse impacts significantly and demonstrably outweigh the benefits.

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