

Response to Policy Comments dated 14.3.24

Introduction

The Planning Policy comments relating to this application rely on policies CS17 and AL2 of the Local Plan which seek to focus development in urban areas. The Planning Policy's application of policies CS17 and AL2 results in the conclusion that the proposed development is not acceptable in principle. The Planning Policy comments separately acknowledge the council's lack of a 5YHLS and states that: "*The scheme's potential contribution to the 5 year supply must be afforded weight in the overall planning balance, although 1 unit is limited in its potential contribution to the supply.*" The comments provide an incorrect application of the NPPF as the lack of a 5YHLS is central to the consideration of the Principle of Development.

The Application of the NPPF 'Tilted Balance'

Paragraph 11 of the NPPF states that: "*Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:*

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed ⁷; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

Footnote 8 to para 11d confirms that policies relating to the provision of housing are out of date if the local planning authority does not have a 5YHLS.

Havant Borough Council does not have a 5YHLS therefore policies CS17 and AL2 of the Local Plan are 'out of date' and not applicable.

Para 11d part i

Footnote 7 (which relates to 11d part i) confirms that the policies referred to are those in the NPPF relating to: *habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.*

The proposed development could potentially have an impact on 'habitats sites', however the applicant has confirmed that they can secure mitigation such as nitrate credits which would enable the Local Planning Authority to conclude 'no likely significant effect' on habitats sites if the LPA considered the application to be acceptable in principle. Part I therefore does not justify the LPA from not applying the presumption in favour of development.

Para 11d part ii

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

The NPPF (para 123) states that planning policies and decisions should: “...*make as much use as possible of previously developed or ‘brownfield’ land*”.

The NPPF’s definition of previously developed land excludes land in built-up areas such as private residential gardens and therefore includes private residential gardens in land not in built-up areas. The policy officer’s comments refer to the Dartford case (Dartford BC v SSLG [2017] EWCA Civ 141) which clarifies that gardens outside of built-up areas can be considered PDL. 106 West Lane is a residential garden located outside of a built-up area and therefore constitutes PDL in accordance with the NPPF. Para 123 makes it clear that LPAs should be prioritising the use of PDL such as 106 West Lane.

The comments originally provided by the Planning Policy department state: ‘*Paragraph 84 of the NPPF states that planning decisions should avoid the development of ‘isolated homes’ unless the circumstances set out within the national policy apply. In this case, it is understood that none of them would apply.*’ The Planning Policy department provided further comments in which they refer to the Dartford case (Dartford BC v SSLG [2017] EWCA Civ 141). The Dartford case confirms that the addition of a new dwelling within the curtilage of an existing permanent structure would not result in the creation of an ‘isolated home’. It follows that the proposed dwelling which would be located within the curtilage of 106 West Lane could not be described as isolated. The Policy Officer concludes the section relating to isolation by stating that: “*In any event, the development would not meet any of the circumstances set out under paragraph 84 of the NPPF*”. Paragraph 84 of the NPPF relates to circumstances in which the development of isolated homes may be appropriate. The proposed dwelling would not be isolated (in accordance with the conclusions reached in the Dartford case) therefore the circumstances set out in paragraph 84 of the NPPF are irrelevant to the consideration of this application.

The NPPF (para 124) also states that “*Planning decisions should promote and support the development of under-utilised land and buildings especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.*” The planning policy officer’s comments state that the NPPF does not define “under-utilised land and buildings”. While the NPPF may not define “under-utilised land and buildings” it is common sense that a site that containing 1 dwelling that has more than enough space for a second dwelling and falls into the category of ‘previously developed land’ must surely fall into this category.

Conclusion

The presumption in favour of development associated with para 11 of the NPPF is applicable to the consideration of this application.

-The site constitutes previously developed land which the NPPF states should be prioritised for development.

-The NPPF states that planning decisions should avoid the development of isolated homes. The proposed dwelling would not constitute an ‘isolated dwelling’ and is therefore not contrary to the NPPF.

-The NPPF states that planning decisions should promote and support the development of under-utilised land and buildings. The site is large enough for 2 dwellings but only contains 1 and is therefore under-utilised.

There are no clear reasons for refusing the development proposed (para 11 d part i).

There are no significant or demonstrable adverse impacts that would arise from permitting the development that would outweigh the benefits that the proposed dwelling would have in terms of its contribution towards Havant Borough Council's 5YHLS (para 11 d part ii).

It is respectfully requested that the Local Planning Authority applies the presumption in favour of sustainable development and permits the application.

Hebden Design Studio | 29th April 2024