

BRECKLAND DISTRICT COUNCIL

Report of the Assistant Director of Commissioning

To: Planning Committee – 1st October 2012

(Author: David Spencer, Deputy Planning Manager)

Subject: Appeal Decision for Land North of Cromwell Road, Weeting

Purpose:

The purpose of this report is to appraise Members on the outcome of the recent Appeal Decision for 35 houses, allotments and public open space at Weeting and the implications for adopted Development Plan policy relating to the protection of the environment.

Recommendation(s):
That Members note the contents of the report.

1. BACKGROUND

- 1.1 At its meeting on 16 January 2012 the Planning Committee refused an application for 35 houses, allotments and open space on land north of Cromwell Road, Weeting (reference 3PL/2011/1102/F). The decision was subsequently appealed and a public inquiry was held in Thetford between 19-21 June 2012. The Inspectors decision was issued on 16 August 2012 and is attached at Appendix A.
- 1.2 The Appeal site is in open countryside outside of the adopted settlement boundary for Weeting and is some 200 metres from land designated as part of the Brecks Special Protection Area (SPA) as having the potential to host Stone Curlew population. Consequently the appeal site was within the 1500 metre constraint zone identified under Policy CP10 of the adopted Breckland Core Strategy and Development Control Policies DPD which is attached at Appendix B. Natural England raised no objection to the proposal, having considered that the site was sufficiently screened by existing buildings from the SPA. In reaching a contrary conclusion to that of Natural England the application was refused on three principle reasons, namely:
 - Biodiversity, the impact on Stone Curlews
 - Character and appearance of Cromwell Road
 - Conflict with the adopted development strategy (Weeting is not identified for growth)
- 1.3 The Inspector arrived at a different conclusion on the character and appearance reason noting that there was no predominant character at the point in Cromwell Road where the access road into the scheme will be implemented as a result of demolishing an existing property. In respect of the development strategy the Inspector, in line with a number of national appeal decisions, noted the Council was unable to demonstrate a five year housing land supply and therefore the scheme would contribute to the shortfall (including the provision of affordable housing), subject to the environmental constraints being satisfactorily addressed. As a Local Service Centre with a good range of services to support further development the Inspector again concludes that subject to the environmental constraints Weeting is a sustainable location to accommodate development of the scale proposed. Weeting's potential to receive a housing allocation had been tested during both the Core Strategy and Site Specifics documents and the Inspectors for those documents took a precautionary approach not to allocate development to the village in light of the strategic environmental evidence on Stone Curlews. It should be noted that the LDF inspectors were being invited to consider housing numbers for the village in excess of 100 homes whereas the appeal related to a reduced scheme of 35 homes.

- 1.4 The focus of the Appeal relates to the environmental evidence of the Council and that provided by the Appellant, the Council's Core Strategy policy CP10 on the Natural Environment and the application of the Habitat Regulations. The latter point is a complex area which has caused issues of consistency for Natural England, local authorities and Government Inspectors which is not confined to Breckland. The Weeting Appeal decision adds to the diversity of decisions and demonstrates that there is not a 'one size fits all' approach to carrying out an appropriate assessment under the Habitat Regulations.
- 1.5 The Inspector in arriving at his Appeal Decision has undertaken his own Appropriate Assessment of the proposal and arrived at a conclusion that it would not result in a significant adverse effect on the ability of the adjoining SPA to accommodate Stone Curlew. In arriving in this conclusion the Inspector has placed particular emphasis on site characteristics and the presence of farm buildings between the appeal site and the SPA. The Inspector has also placed emphasis on the absence of Stone Curlews in that part of the SPA closest to the appeal site. This is a different approach than that adopted by other Inspectors elsewhere in England who have assessed impact on the potential of a designated site rather than impact on present (or absent) populations.
- 1.6 The important areas for Members to note from this Appeal decision with regard to making future decisions are as follows:
- (a) Policy CP10 of the Core Strategy remains a sound policy. The Inspector concluded that it was in conformity with the NPPF (paragraph 60 of his decision). However, Members need to be mindful that Policy CP10 does not apply a blanket ban on development within the 1500m Stone Curlew constraint zone and allows for two broad exceptions. Firstly, for the re-use of existing buildings and where a development proposal is completely masked from the SPA by existing development. Secondly, development may be permitted where it is demonstrated by an evidenced appropriate assessment that it will not adversely affect the integrity of the SPA. The second point requires an applicant to provide the necessary information and for Natural England and the Local Planning Authority to adjudge whether such information is satisfactory. Where the information from the applicant is not acceptable then permission should be refused. The Appeal decision does not affect the Council's policy on the 1500m Stone Curlew constraint zone.
 - (b) The Inspector does not disagree with or diminish the strategic environmental evidence commissioned by the Council from Footprint Ecology to inform the LDF process and establish the 1500m Stone Curlew constraint zone. He specifically states at paragraph 13 of his report that the Council's research "...has not been disproven."
 - (c) In going forward, it is imperative that Appropriate Assessments carried out under the Habitat Regulations to establish significance of effect are informed by comments from Natural England and where there is disagreement with Natural England that this is explored with them. Where additional information is supplied by an applicant to contend that there will not be a significant effect such information needs to be considered and a response provided on the adequacy of such information together with an invitation to remedy any deficiency in the information. The Inspector advises in his decision at paragraph 21 the following. "An assessment should be proportionate. The level of detail should be consistent with likely impact."
 - (d) Members need to view this Appeal decision as a very site specific decision as the Inspector concludes at his Paragraph 39 which, inter alia, says. "This conclusion is not of general applicability; it is specific to this site and this proposal." The decision reflects the scale and location of the proposed development and the specific evidence presented by the applicant on the local environmental conditions. In itself it has not set a precedent for similar schemes nor has it rendered the Stone Curlew 1500m zone and its associated policy redundant. The Local Planning Authority will still need to adopt a precautionary approach to applications in the 1500m zone.
- 1.7 In summary, Members are advised that the Local Planning Authority can continue to give full weight to the 1500m Stone Curlew zone and the contents of Policy CP10 in its decision making process. The Appeal decision has clarified the implementation of the Habitat Regulations and this is been put into action. Notably, the Inspector in the Weeting Appeal has made an interpretation that the significance of effect is on present birds rather than the future potential area to accommodate birds which is at odds with other Inspector decisions elsewhere in England. This is likely to remain an issue which

will vary on a site by site basis. The Council's Planning Manager and Deputy Planning Manager have discussed the relevance of this appeal to future proposals and have agreed an approach with Capita Symonds which requires the three stage proportionate assessment (considered by the Inspector as necessary) to be undertaken. This approach is now being applied to applications within the 1500m Stone Curlew zone.

2. OPTIONS

2.1 The options are as follows:

- (1) To consider the contents of the Report to inform future decision making
- (2) To not consider the contents of the Report (the do nothing option).

3. REASONS FOR RECOMMENDATION

3.1 This is a noteworthy appeal decision against a decision of the Local Planning Authority in a complex area of the planning regime. It is important that Members of the Local Planning Authority are appraised of the implications and advised on its consequence for future decision making.

4. IMPLICATIONS

4.1 **Legal:** Section 38(6) of the 2004 Planning and Compulsory Purchase Act remains extant in that planning applications must be determined in accordance with the policies of the Development Plan for the area unless material considerations indicate otherwise.

4.2 **Risks: None**

4.3 **Financial: n/a**

4.4 **Timescales: n/a**

4.5 **Equality and Diversity: n/a**

4.6 **Stakeholders / Consultation: n/a**

4.7 **Contracts: n/a**

4.8 **Section 17, Crime & Disorder Act 1998: n/a**

WARDS/COMMUNITIES AFFECTED

6.1 This report directly relates to an Appeal decision in Weeting Ward but the application of Policy CP10 (1500m Stone Curlew Zone) applies to the following Wards: Conifer; Harling & Heathlands; Mid Forest; Nar Valley; Thetford Abbey; Thetford Castle; Thetford Guildhall; Thetford Saxon; Watton; Wayland and Wissey.

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Appendices attached to this report:

Appendix A – Appeal Decision Ref APP/F6205/A/12/2172205

Appendix B - Policy CP10, Adopted Breckland Core Strategy and Development Control Policies DPD