

ITEM:		RECOMMENDATION:	REFUSAL
REF NO:	3PL/2018/0472/F	CASE OFFICER	Mark Simmonds
LOCATION:	BEESTON Land off The Street and Herne Lane Beeston	APPNTYPE:	Full
APPLICANT:	Mrs Helen Palmer-Wright C/O Parker Planning Services Orchard House	POLICY:	Out Settlemnt Bndry
AGENT:	Parker Planning Services Ltd Orchard House Hall Lane	ALLOCATION:	N
PROPOSAL:	Erection of 6 no. dwellings (including two affordable dwellings) with double garages, associated parking and gardens including the creation of a new access onto The Street		
		CONS AREA:	N
		LB GRADE:	N
		TPO:	N

DEFERRED REASON

SUPPLEMENTAL REPORT

INTRODUCTION

This application was presented to Planning Committee at the meeting of 1st October 2018 where Members resolved to approve the application as an overturn of Officer recommendation of refusal.

There has subsequently been submitted,

(a) additional information in the form of dated photographs showing a hedge on the northern boundary of the site including from 1946. The additional information comes from an objector and from investigations by the Council's Tree Officer.

The additional information indicates that the hedge on the northern boundary IS a hedge which should be considered as an 'Important Hedge' and its value as such and the presumption to retain such a hedge.

(b) a Pre-Action Letter regarding the intention to lodge a Judicial Review application in regard to the decision of the Council to approve the application, the details of which are set out below.

REASON FOR COMMITTEE CONSIDERATION

This application is being re-presented to Planning Committee for re-consideration by Members.

The reason that the application is being represented is due to the risk of a Judicial Review being lodged and the need for Members to be able to consider the additional information regarding the status of the hedge and to consider the issues raised in the Pre-Action letter.

KEY ISSUES

(a) Important Hedge

If planning permission is granted, the hedgerow will be removed in order to meet highways requirements. At the first Planning Committee presentation there appeared to have been some confusion over the age of the hedge.

For a hedgerow to qualify as being "important" and therefore protected under the Hedgerows Regulations 1997, it has to have been in existence for at least 30 years.

The planning officers have been advised that Gressenhall holds the historic maps and aerial survey photos for Norfolk and they have been digitised and published on the Norfolk County Council public website and that you can see the hedge row and various other trees in question in both the 1988 and 1946 aerial surveys on the website.

<http://www.historic-maps.norfolk.gov.uk/mapexplorer/>

Photographs have been seen by the Planning Officers corroborating that there was a hedge at these times. The photographic evidence from 1988 and 1946 of a hedgerow in this position, the northern boundary, is considered, on the balance of probabilities, to demonstrate that the hedge does qualify as an Important Hedge.

For clarity, this means that the presumption is to retain the hedge and this must be weighed in the planning balance when the application is determined.

(b) Pre-Action Letter

A letter has been received subsequent to the Planning Committee of the 1st October 2018, from solicitors regarding the decision.

The letter states it is not a "Pre-Action Protocol" letter and indeed a Judicial Review cannot be triggered until the Council releases a formal decision - ie the Planning Permission.

However, due to the clear threat within the letter to lodge a Judicial Review application, by solicitors, on behalf of an objector, Officers are treating the letter in the same manner as a "Pre-Action Letter".

The letter sets out the following grounds for Judicial Review, this is set out but truncated where appropriate.

"The above planning application was considered by the Planning Committee on 1st October 2018 and was approved contrary to officer advice. I am instructed that planning permission has yet to be issued no doubt in part due to the need to complete a section 106 agreement to secure the affordable housing that was required in respect of the planning application.

/~/ my instructions are to issue a claim for judicial review in the event that the Council proceeds to grant planning permission in accordance with the committee resolution.

The purpose of this letter is to put the Council on notice as to my client's intentions but also to give the Council the opportunity to avoid an unnecessary judicial review and thus save time and expense for all the relevant parties.

The officer report, which is a material consideration in accordance with Planning Policy Guidance, clearly sets out the history of applications on this site and draws attention to the previous Inspector's decision in relation to the site. The Inspector drew very clear and firm conclusions as to the inappropriateness of the site for development. Given those conclusions it might have been hoped that the applicant would have accepted that decision rather than seeking to achieve permission in circumstances where such an endeavour is bound to fail.

Unless there are material considerations that have changed since the previous Inspector's decision that would lead to a different conclusion my client is entitled to expect that the Council will act consistently and refuse the application. The officer report sets out in considerable detail such a consistent approach yet members have erroneously, and without any recognition that they must act consistently, decided to overturn that decision without any valid reasons that can withstand scrutiny.

I would, draw your attention to the recent Court of Appeal case of DLA DELIVERY LTD (Appellant) v (1) BARONESS CUMBERLEGE OF NEWICK (2) PATRICK CUMBERLEGE (Respondents) & SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT (Interested Party) (2018). /~/ the Court of Appeal decided that;

"In determining an appeal against the refusal of planning permission, the secretary of state had been obliged to have regard to his own recent decision in an unrelated case, dealing with effectively the same issues, even though none of the parties had brought that decision to his attention. No reasonable secretary of state would have failed to take reasonable steps to ensure that his own decisions in cases of the same kind, in the same district, during the same period, were consistent with each other, or that any inconsistency was clearly explained."

That decision applies equally to local authorities as a decision maker in planning cases. The Court of Appeal has set a very high bar for decision makers. In this case the issue is much easier to determine as all the relevant previous decisions have been brought to the attention of the members of the planning committee. I have acknowledged that if material considerations had changed since the previous Inspector's decision then members were at liberty to consider acting in the manner it did.

However, when the facts are examined the material considerations have, if anything, changed significantly against approving the application. The original Inspector considered that development of this site should not be permitted due to the fact that it was not sustainable. Without a change in policy, which has not occurred, that reason would have been a very significant, if not impossible, hurdle for the applicant to overcome. That difficulty became even greater as a result of the more recent appeal decision of November 2017 where a different Inspector again concluded that Beeston was not a sustainable location for development. As previously stated without a change in policy that placed Beeston in a different category there is no scope to conclude that Beeston is a sustainable location for development.

The lack of a five year housing supply was insufficient to convince the second Inspector that

planning permission should be granted which again removes a reason to approve the application. The officer report sets out correctly the approach to be taken where there is a lack of a five year housing supply and then comprehensively explains why the material considerations, based on a number of factors, do not outweigh the very significant policy constraints as set out in Inspector's decision letters.

Members dismissal of the Inspectorate's interpretation of sustainability is unwarranted and completely at odds with how they should approach their decision making role in this instance. Indeed such a position would be irrational given that members approved the local plan which originally placed Beeston into its current category.

Given these circumstances it is difficult to begin to understand why the members of the planning committee thought that they could approve this application despite the overwhelming nature of the relevant material considerations which all pointed to a single conclusion that the application should be refused. It would appear that the sole reason this application came before the planning committee at all was as a result of a local member asking for it to go to committee for determination. One can easily see an application that has been the subject of intense lobbying leading to an inappropriate and indefensible decision.

/~/ I would hope that common sense would prevail at that stage and the Council will act as it should have done in the first instance. If the applicant considers that material considerations have sufficiently changed then they can make such a case to a Planning Inspector who will then consider the matter again. I would reiterate that my instructions are to pursue a judicial review should members continue to insist on approving this application or should officers fail to refer the matter back to committee as requested above...."

Officers feel that the letter, quoted above, does raise substantive issues and that without a careful re-consideration by the Planning Committee there is indeed a real risk of a Judicial Review being lodged and without material reasons why the development should be approved being put forward to outweigh the harm demonstrated in the previous Committee Report, being successful.

RECOMMENDATION

Refusal on the grounds presented to Committee previously.

REASON(S) FOR REFUSAL

- 1 Unsustainable Development**

The site is situated in an unsustainable location and thus contrary to Policies SS1, CP14 and DC2 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document (2009) and the three dimensions of sustainable development outlined in the National Planning Policy Framework (in particular paragraphs 11, 12, 14 and 79). There are no material planning considerations that would outweigh this harm.
- 2 Harm to Protected Hedgerow**

The boundary hedgerow, is an Important Hedgerow, as defined under Schedule 1, Paragraph 7 of the Hedgerow Regulations 1997 (as amended). The proposed development would involve the loss of the Important Hedgerow and thus would be detrimental to the rural character and appearance of the area, especially given this is a prominent location into the village. As a result, the the proposal is contrary to Policies DC12 and CP11 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document (2009) and the NPPF (2018) (in particular Paragraph 170).

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APPLICANT:	Mrs Helen Palmer-Wright C/O Parker Planning Services Orchard House	POLICY:	Out Settlemnt Bndry
AGENT:	Parker Planning Services Ltd Orchard House Hall Lane	ALLOCATION:	N
PROPOSAL:	Erection of 6 no. dwellings (including two affordable dwellings) with double garages, associated parking and gardens including the creation of a new access onto The Street		
		CONS AREA:	N
		LB GRADE:	N
		TPO:	N

REASON FOR COMMITTEE CONSIDERATION

The application is being reported to committee at the request of Cllr Gould.

KEY ISSUES

- Principle of Development
- Design and Impact upon the Character and Appearance of Area and Trees and Hedgerow
- Amenity Impact
- Impact on Ecology
- Impact upon Highway Safety

DESCRIPTION OF DEVELOPMENT

This application seeks permission for the erection of six two storey dwellings (comprising four detached, 4-bed properties and a semi-detached property each with 3-bedrooms), with double garages, associated parking and gardens on land to the south of The Street, Beeston. Two of the units are proposed to be affordable units. The proposed dwellings would be constructed of clay pantiles for the roof and red bricks with areas of cladding and flint detailing for the walls. The proposal involves the creation of a new access onto The Street.

The previous application, 3PL/2015/1355/F for the same proposal was refused and dismissed at appeal by the Planning Inspectorate. The Planning Inspector refused the application on the grounds of unsustainable development stating that given the principle of development was not acceptable, there was no reason to address the other matters that had been raised.

SITE AND LOCATION

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The application site is located outside, but adjacent to, the Settlement Boundary for Beeston. The site currently forms part of a larger agricultural field with the boundaries to the north and west consisting of a mature hedgerow. The site is bounded to the north by The Street and beyond residential dwellings, to the west by Herne Lane, to the south by the existing larger field within the applicants ownership and beyond Ash Tree Farm, and to the east by residential dwellings.

EIA REQUIRED

Not required.

RELEVANT SITE HISTORY

- 3PL/2017/0289/F: Residential Development for 6no. dwellings (Inc. 2no affordable housing) with associated access drive, parking area, garaging & amenity space - Withdrawn

- 3PL/2015/1355/F: Erection of 6 no. dwellings - Refused 26 January 2017 and Dismissed at Appeal on 31 August 2017

POLICY CONSIDERATIONS

The following policies of the adopted Breckland Core Strategy and Development Control Policies and the adopted Site Specific Policies and Proposals Document, including the Proposals Maps, have been taken into consideration in the determination of this application. The provisions of the National Planning Policy Framework and National Planning Policy Guidance have also been taken into account, where appropriate

CP.01	Housing
CP.04	Infrastructure
CP.05	Developer Obligations
CP.06	Green Infrastructure
CP.08	Natural Resources
CP.09	Pollution and Waste
CP.10	Natural Environment
CP.11	Protection and Enhancement of the Landscape
CP.12	Energy
CP.13	Accessibility
CP.14	Sustainable Rural Communities
DC.01	Protection of Amenity
DC.02	Principles of New Housing
DC.04	Affordable Housing Principles
DC.11	Open Space
DC.12	Trees and Landscape
DC.16	Design
DC.17	Historic Environment

DC.19	Parking Provision
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
SS1	Spatial Strategy

OBLIGATIONS/CIL

Not applicable.

CONSULTATIONS

BEESTON P C

The parish council would like to see a better mix of houses with red brick and flint materials used

NORFOLK COUNTY COUNCIL HIGHWAYS

This submission includes the previously requested visibility improvements and off site highway works.

The site lies in a village with limited facilities and it is considered that there would be a high reliance of travelling by private car to access amenities and services to meet every day needs.

However the submission includes a proposal improve the level of visibility from Herne Lane onto The Street which will be of benefit to highway safety.

In addition the submission also includes a proposal to surface the area of overrun outside the village hall to cater for the increase in vehicular traffic using this part of the highway network.

The land in question does not form part of the highway and I understand it it owed by Beeston Playing Field Committee. Because this land lies in third party ownership, the Highway Authority suggests that the land is dedicated as highway before any work is allowed to start on site. This will ensure that the land is available and that the off-site works may be delivered. A suitably worded condition will need to be imposed in this respect.

Conditions and informatives are recommended if the application is approved.

CONTAMINATED LAND OFFICER

No objection, subject to condition.

ECOLOGICAL AND BIODIVERSITY CONSULTANT

Recommend conditions if the application is approved.

TREE AND COUNTRYSIDE CONSULTANT

The supplied survey clearly identifies that the hedge is over 30 years old and 20 metres in length. The survey has also identified that the hedgerow includes sufficient woody species (6) and associated features (3) as specified in schedule 1 paragraph 7 of the regulations for it to qualify as an important hedgerow. Whilst the survey does suggest that the status of the hedge is inconclusive due to infill planting, I am not aware of anything within the regulations which refers to this, and that it is only necessary for the hedgerow as a whole to be over 30 years. Maps held at Norfolk County Council Records Office show the site to be part of a field system that existed prior to 1845. Map C/SCA 2/187 dated 1814 clearly shows the meadow as an integral part of a field system pre-dating the Inclosure Acts. The hedgerow is positioned on the boundary of land

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which at the time was owned by J.G Booty. The 1845 Inclosure Act required that boundaries of individually allotted land were inclosed. In Norfolk the most common way of achieving this would have Hawthorn hedging. It would seem highly likely that the hedgerow at Herne Lane would therefore also meet the criteria for being important under schedule 1 paragraph 5. Given the above it is considered that the hedgerow meets the criteria set out in the hedgerow regulations for it to qualify as being important. The hedgerow contributes positively to the character and interest of the landscape as well as playing an important role in enhancing and conserving biological diversity, it should be retained.

HOUSING ENABLING OFFICER

In line with the new NPPF (2018), affordable housing provision is required. As a result, there is an objection to the current proposal because no affordable housing is proposed.

HISTORIC ENVIRONMENT SERVICE

Based on currently available information, the proposed development will not have any significant impact on the historic environment and we do not wish to make any recommendations for archaeological work.

CPRE NORFOLK

Objects to the proposal on the grounds that the proposal is outside of the Settlement Boundary, not allocated for housing, is not sustainable development, no affordable housing provision, loss of the important hedgerow and detrimental impact on the countryside.

NORFOLK FIRE & RESCUE SERVICE

Norfolk Fire and Rescue Service recommend a condition for the provision of a fire hydrant.

REPRESENTATIONS

A Site Notice was displayed on 22nd May 2018, advertised in the EDP and 17 neighbours were directly notified.

Fourteen representations have been received; 10 objecting and 4 providing comments. These can be summarised as follows:

- Site is outside of the Settlement Boundary;
- This is the same as the previously refused application that was dismissed at appeal - what has changed?
- Set a precedent;
- These are large properties, with no affordable housing and no justification why these are needed;
- There is no shortfall in the size of dwellings being proposed in the village;
- Traffic/highway safety;
- Loss of view;
- Drainage and flooding problems exist;
- Issues with surface water drainage and sewer treatment;
- Detrimental impact upon ecology;
- There are no facilities in the area;
- The statement overstates the available facilities in both Beeston and Litcham - Dereham and Swaffham is relied upon for shopping and other services;
- The distances stated are incorrect;
- the established hedgerow would be ripped out and ecological habitat destroyed;
- If the owner is desperate for money, we would be willing to buy the land rather than see it developed;

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- Queries why it was advertised in the local village book and not known about to attend the Parish Council meeting;
- Dismay that the Parish Council do not object when they objected to the previous application and thus not supporting the views of the village;
- Out-of-date reports;
- CPRE's objection agreed with;
- Inaccurate and misleading Statements.

The description of development was amended to reflect the creation of an access onto The Street and revised plans were submitted on 11th June 2018 reducing the footprint of the dwellings so that they are below the threshold for the requirement for affordable dwellings. However, following the introduction of the NPPF in July 2018, the site is of a scale that requires two affordable housing units. The applicant has revised the plan and submitted a plan indicating the two units that would be affordable housing.

This information has been reconsulted upon and the deadline has not ended at the time of writing, although additional comments have been received, which reiterate the above comments as well as the following:

- Post Consultation Document factually incorrect and gross inaccuracies re proximities;
- Drainage problems still not addressed;
- Great Crested Newt survey not updated and no explanation why;
- No information about the affordable housing and what it means for the development;
- Amendments do not address the concerns raised or original reasons for refusal;
- Detrimental to the character and appearance of the landscape;
- No need for more housing in Beeston;
- Increase in traffic and dangerous entrance will cause accidents;
- So many changes now, this should be a new application so that it is clear what the proposal is;
- Ambiguity in the additional information;
- Disingenuous to base an argument about the Ploughshare Public House on speculation.

If any further new representations are received, these will be reported in the Supplementary Report or at Committee.

ASSESSMENT NOTES

1.0 Principle of Development

1.1 This application seeks permission for the erection of six two storey dwellings (comprising four detached properties and a semi-detached property; the semi-detached property would form the two affordable housing units) with double garages, associated parking and gardens on land to the south of The Street, Beeston.

1.2 The site is located outside the Beeston Settlement Boundary. For this reason, the proposal conflicts, in principle, with Policies SS1, DC2 and CP14 of the adopted Core Strategy and Development Control Policies Development Plan Document, (2009), which seek to focus new housing within defined Settlement Boundaries. However, paragraph 11 of the NPPF (2018) states that where an authority does not have an up-to-date Development Plan or five year housing land supply, the relevant local policies for the supply of housing, as referred to above, should not be considered up-to-date and that housing applications should be considered in the context of the presumption in favour of sustainable development.

1.3 The Statement of Five Year Housing Land Supply as at 31st March 2017 was published in July 2017.

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This outlined that the District does not benefit from having a five year supply of housing land (it can only demonstrate a 4.6 years housing land supply). In these cases the NPPF makes provision, in principle, for Local Planning Authorities to positively consider sites that are not within defined Settlement Boundaries. This must be balanced against other policy requirements and aims including securing sustainable development, protecting the countryside, and good design.

1.4 The NPPF constitutes guidance for local planning authorities and decision-takers and is a material consideration in the determination of planning applications to achieve sustainable development. The Government outlines three dimensions to sustainable development: economic, social and environmental (paragraph 8). These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role - contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

- a social role - supporting strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

- an environmental role - contributing to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

1.5 A balanced assessment against these roles is, therefore, required.

1.6 Paragraph 78 of the NPPF notes that development in one village may help support the services in a nearby village. The site lies within the Parish of Beeston. Beeston is defined by Policy SS1 as a rural settlement that has "few, or in some cases no, local services". Beeston has a primary school and village hall. Litcham, a local service centre is approximately 3.22km (2.6miles) from the site. It is, therefore, considered that the proposal would not significantly support the services of nearby villages. Dereham (approximately 10.62km/6.6miles) and Swaffham (approximately 14.48km/9miles) are mid-sized market towns, which provide a "good range of services for their residents' day-to-day needs".

1.7 Beeston is classified as a lower tier rural settlement in the Local Plan, and Policy SS1 identifies it as a settlement considered not capable of sustaining consequential growth as it is reliant on higher order settlements for services and facilities. Such settlements are generally considered to be unsuitable for significant growth due to their small size and dependence on larger settlements for the majority of facilities. The village benefits from a primary school, village hall, playing field, some employment uses, and very limited public transport. The village used to benefit from a Public House, although this has closed down (the submission makes reference to villagers trying to save the Public House, but the fact is that the Public House remains closed). In this respect, the proposed residential scheme would not represent an accessible form of development and would result in a high reliance upon the private vehicle.

1.8 For these reasons occupants of the dwelling would rely on the use of the private car to gain access to local facilities to meet everyday needs. This would not accord with the core planning principle in paragraph 11 of the National Planning Policy Framework which is to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. The proposal would also not accord with paragraph 103 of the Framework in terms of ensuring the need to travel will be minimised and the use of

sustainable transport modes will be maximised. Further to this paragraph 79 states that housing should be located where it will maintain the viability of rural communities and isolated dwellings in the countryside should be avoided.

1.9 A proposal for six dwellings on this site was refused in January 2017 and dismissed at appeal (APP/F2605/W/17/3171002) on 31st August 2017. The Inspector stated that:

"... Beeston is some 7 miles from Dereham, which is the administration centre of Mid-Norfolk, and about 2 miles from the service centre village of Litcham which has a combined post office and general store. I noted that although Beeston has a school and village hall, the public house has recently closed and there are no shops. The evidence before me also indicates that local employment opportunities on the nearby industrial estate are retracting rather than expanding and at my visit there appeared to be very limited activity on the roads or in nearby gardens. Nor did I notice any footways along the main road through the village, and public transport is limited to a single bus service in both directions on Tuesday and Fridays only".

1.10 The Inspector continued to state that they were "not satisfied that the limited amenities in Litcham would be adequate to provide day to day needs and as such, future occupiers of the development would be reliant on travelling further afield for most facilities and services. Furthermore, the lanes linking Beeston to other settlements pass through open agricultural land and the lane to Litcham is single lane with passing places, so opportunities for walking or cycling would be limited. As such, the development would generate significant traffic to access even basic facilities and given the very limited public transport options, it is highly likely that these journeys would be made by private vehicles".

1.11 At paragraph 9, the Inspector appreciated "that there would be some short term and localised economic benefit from the development but I am not satisfied that this would outweigh the harm identified above in relation to the increase in journeys and the reliance on unsustainable modes of transport. I conclude that Beeston is almost entirely dependent on higher order settlements for services and facilities and that the site is not in a sustainable location.

1.12 The proposals would not meet any of the criteria listed in Policy CP14 for development in villages not identified for a specific level of growth in the settlement hierarchy. It would also be contrary to Policies SS1 and DC2 which taken together, restrict residential development to specific settlements and to land within settlement boundaries, as well as guidance in the Framework with regard to sustainable development".

1.13 The Inspector proceeded with:

"12. I appreciate that Paragraph 55 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. However, it is apparent that there are minimal facilities in Beeston and limited facilities in Litcham. I appreciate that this is an area of scattered villages in a rural context, but even by these standards, I consider Beeston to be fairly remote from amenities and services".

1.14 The applicant's agent made reference to the fact that the application should be granted approval because Litcham provides day-to-day services and that the site is not "isolated" as set out in Paragraph 55 of the NPPF and provided a copy of the High Court Judgement between Braintree District Council and SoSCLG, Greyread Ltd and Granville Developments Ltd (15 November 2017) and the subsequent Appeal Court Judgement (28 March 2018).

1.15 The Council is not stating that the site for the six dwellings is "isolated" and the Council does not disagree with the High Court judgement. Nevertheless, as outlined in the Inspectors' appeal decisions above, Beeston is remote from amenities and services. It is that the fact that the proposal does not meet the tests of

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sustainability and that in recent appeal decisions, the Inspectors dismissed appeals because Beeston was unsustainable.

1.16 In a more recent appeal decision (APP/F2605/W/17/3182476, 28th November 2017), the Inspector dismissed an appeal for two dwellings in Beeston, stating that:

"7. Beeston village ... has a limited range of services, including a school and public house. The distances from the appeal site to these services, along mainly unlit roads without pavements, would not make these conveniently accessible by means other than private car.

8. Paragraph 55 of the National Planning Policy Framework (the Framework) states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities; for example, where there are groups of smaller settlements, development in one village may support services in a village nearby. I am not persuaded that the two dwellings in the location would provide any material support to the vitality of the rural community in Beeston and consider occupiers here would be unduly reliant on private car journeys to meet regular needs.

9. The proposal would be in the countryside, outside the settlement boundary for Beeston, and conflict with the aims of CSDCP policies SS1, CP14 and DC2 in respect of where new housing should be built. These policies are broadly consistent with the core principle of the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. These policies are therefore afforded significant weight".

1.17 With regard to the benefits of the proposed development, it is noted that there would be some social and economic benefits through the provision of six dwellings; there would also be generation of labour in the short term during construction. However, given appeal decisions, including the dismissal of an appeal for the same development on this site and the most recent appeal decision (APP/F2605/W/17/3188621) issued on 6th September 2018, confirming that Beeston is unsustainable for development, holds significant weight in the determination of applications. The proposed development is not considered to be significant either individually or cumulatively and would not outweigh the conflict with the core policies in the development plan that manage sustainable growth across the district nor the NPPF. As a result, the development would not be sustainable development in the context of relevant local and national planning policies and thus the principle of development is unacceptable.

1.18 The main issues of consideration are whether there are any material consideration that would outweigh the principle of development, including the design and impact on the character and appearance of the surrounding area, impact on trees and ecology and highway safety.

2.0 Design and Impact on the Character and Appearance of the Surrounding Area and Trees and Hedgerow

2.1 The environmental role of sustainable development seeks to, in part, contribute to protecting and enhancing the natural, built and historic environment. Consideration of a development's impact on the character and appearance of the area within which it is situated is, therefore, integral to the environmental dimension of sustainable design, as is its design.

2.2 Policy DC16 on Design expects all new development should achieve the highest standards of design. This is echoed in the NPPF. All design proposals must preserve or enhance the existing character of an area. Policy CP11 on Protection and Enhancement of the Landscape sets out that the landscape of the District will be protected for the sake of its own intrinsic beauty. Policy DC1 on Protection of Amenity sets out that development will not be permitted where there are unacceptable effects on the amenities of the area.

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Paragraph 130 of the NPPF (2018) states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Policy DC12 seeks to protect the District's Trees and Hedges.

2.3 The environmental role of sustainable development seeks to, in part, contribute to protecting and enhancing the natural, built and historic environment. Consideration of a development's impact on the character and appearance of the area within which it is situated is therefore integral to the environmental dimension of sustainable development, as is design.

2.4 Although outside the Settlement Boundary, it is noted the site adjoins the existing built up part of the village on The Street, with relatively recently constructed housing immediately to the north and east. There is also further built development at Hill Farm to the west. Development of the site for housing would not, therefore, result in an isolated development. In terms of environmental considerations, it is noted the proposal would have the effect of consolidating existing development on The Street and extending the built form into an area of open land. This would result in loss of rural character to the immediate locality.

2.5 The application site forms part of a larger field which expands to the south of the site. The application proposes six dwellings to be located as frontage development along The Street and Herne Lane, with one access to serve them all from The Street. The layout of the development incorporates the existing pond on site and parts of the existing hedging along the boundary. Part of the hedging is to be removed to allow for visibility from the proposed access and to also improve visibility from Herne Lane. This is to be replaced with new hedging.

2.6 Policy DC12 seeks to protect the district's trees and hedges. The Tree and Countryside Officer has advised that the supplied survey clearly identifies that the hedge is over 30 years old and 20 metres in length. The survey has also identified that the hedgerow includes sufficient woody species (6) and associated features (3) as specified in Schedule 1, Paragraph 7 of the Hedgerow Regulations 1997 (as amended) for it to qualify as an "important hedgerow". Whilst the survey does suggest that the status of the hedge is inconclusive due to infill planting, there is nothing within the Regulations which refers to this, and that it is only necessary for the hedgerow, as a whole to be over 30 years.

2.7 Maps held at Norfolk County Council Records Office show the site to be part of a field system that existed prior to 1845. Map C/SCA 2/187, dated 1814, clearly shows the meadow as an integral part of a field system pre-dating the Inclosure Acts. The hedgerow is positioned on the boundary of land which, at the time, was owned by J.G Booty. The 1845 Inclosure Act required that boundaries of individually allotted land were "inclosed" (now referred to as "enclosed"). In Norfolk, the most common way of achieving this would have been Hawthorn hedging. It would seem highly likely that the hedgerow at Herne Lane would, therefore, also meet the criteria for being important under Schedule 1 Paragraph 5 of the Hedgerow Regulations 1997 (as amended). Given this, it is considered that the hedgerow meets the criteria set out in the Hedgerow Regulations for it to qualify as being important. The hedgerow contributes positively to the character and interest of the landscape as well as playing an important role in enhancing and conserving biological diversity, it should be retained.

2.8 Important hedgerows are afforded extra protection, as are trees the subject of a Tree Preservation Order, and thus an assessment needs to be made. The document submitted by the applicant's agent did not make reference to the NCC Record Office's historic maps, as is required to be undertaken in order to determine whether or not a hedgerow is important.

2.9 The previous application reported that it was considered that the layout and scale of the development helps to ensure the generally spacious and rural character of the locality is maintained and would not result

in overdevelopment of the site. The proposed dwellings would be constructed of clay pantiles for the roof and red bricks with areas of cladding and flint detailing for the walls, which was also deemed acceptable and in keeping with the surrounding area.

2.10 The Council previously accepted that the design was acceptable in this location and there are no material considerations that would mean that this view is altered in terms of the design of the dwellings.

2.11 However, in the context of the above, the proposal would be contrary to policies SS1, DC2, CP14 of the Core Strategy and the site is not considered to be in a sustainable location and is inconsistent with the social and environmental dimensions of sustainable development. In addition, the hedgerow is an important hedgerow as defined in law and its removal would have a detrimental impact on the historic nature and the character and interest of the landscape contrary to the Hedgerow Regulations 1997 (as amended) and Policies DC12 and CP11. This consideration alongside the policy objection weigh significantly against the proposal.

3.0 Amenity Impact

3.1 Policy DC1 seeks to protect residential amenity and that all new development must have regard to amenity considerations and states that development will not be permitted where there are unacceptable effects on the amenity of neighbouring residents and future occupants.

3.2 The Council, in the previous application, considered that, in terms of neighbour amenity, given the scale of the proposal, proposed separation distances, and existing/proposed boundary treatments that the proposal would not impact significantly upon neighbour amenity in terms of loss of light, privacy or overlooking.

3.3 Despite this, it should be noted that the amenity space afforded to Plot 2 is very small and limited and does not reflect the character and appearance of the area. This could be argued for Plot 1 as well.

3.4 However, despite concerns regarding the amenity space afforded to Plots 1 and 2, given that the proposal is the same as previously submitted, whereby the Council considered it to be acceptable, the proposal is considered to comply with Policy DC1.

4.0 Impact on Ecology

4.1 Policy CP10 seeks to protect the natural environment including protected species and Policy CP11 seeks the protection and enhancement of the landscape for the sake of its intrinsic beauty and benefit to the rural character. Development should have particular regard to maintaining the aesthetic and biodiversity qualities of natural and man-made features within the landscape, including consideration of individual or groups of natural and man-made features such as trees, hedges and woodland or rivers, streams or other topographical features.

4.2 The ecologist originally advised that the survey data contained in the Ecological Surveys Reports (Anglian Ecology; October 2015) were out-of-date and advised what was required of the applicant.

4.3 In response to the amended information, the Ecologist advised that the Preliminary Ecological Appraisal Validation Assessment (Parker Planning Services; June 2018) report states 'habitats within the site were generally in accordance with the findings in the original Ecological Survey report (Anglian Ecology, 2015). At the time of the review, the grassland was grazed by a small number of sheep, but probably is more representative of semi-improved grassland. The conclusions relating to the potential for protected and

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notable species presented within the original PEA report remain relevant as the habitats within the site have not significantly changed since its publication. The mitigation requirements within the original ecology report (Anglian Ecology, 2015) are generally still valid.'

4.4 The Preliminary Ecological Appraisal Validation Assessment (Parker Planning Services; June 2018) report highlights 'great crested newts have been identified in the onsite pond and other ponds within 500m of the site. A medium population has been identified which is a reasonable population estimate and fairly typical for the area. As great crested newts are present within the onsite pond and their immediate terrestrial habitat will be impacted by the development, a European Protected Species Mitigation (EPSM) licence will be required.' The Ecologist agrees with the proposed mitigation measures outlined in the Preliminary Ecological Appraisal Validation Assessment (Parker Planning Services; June 2018).

4.5 The great crested newt surveys undertaken by Arbtech in 2016 are now two years old and have exceeded the accepted period for acquiring an EPSM licence from Natural England. The EPSM licence application will require updated great crested newt surveys to be carried out in the approved survey period in 2019 (mid-March to mid-June).

4.6 The majority of trees on the site are proposed for retention, however the Arboricultural Impact Assessment shows a few trees on the site are proposed for removal (Robert Thackray Ltd.; November 2015). The Ecological Surveys report (Anglian Ecology; October 2015) classified the trees as having high potential for roosting bats and concludes 'if any mature trees are to be removed then bat activity surveys need to be conducted to ensure there is no bat roost within the tree or to inform any necessary mitigation if bats are present'. Additional information was provided by Riverdale Ecology on the 19th July 2018 relating to potential bat roosts in trees. The trees were assessed as having negligible potential for roosting bats and therefore no further survey work is required. A mature Ash tree, T18, does have two potential roost features. Pruning of limbs over the site is required then a prior aerial survey and detailed inspection of these features will be required.

4.7 The Ecological Surveys report (Anglian Ecology, 2015) highlights the north hedgerow is to be removed to create a visibility display along The Street. There are no mature trees in this hedgerow but it is an important wildlife resource, particularly for breeding birds. Removal must be done outside the breeding bird season, and if the timing is otherwise then a suitably qualified ecologist must check the hedgerow sections prior to removal for breeding birds. The eastern hedgerow with trees is an important mature hedgerow. Any removal of this hedgerow would require an inspection by a suitably qualified ecologist beforehand and bat/breeding bird surveys.

4.8 It is highly likely that several species of bat are utilising the mature trees along the eastern hedgerow and to the north east corner of the site as commuting foraging and potentially roosting sites. The north and west hedgerows are potentially commuting routes, and the mature trees around the pond (itself an important habitat are likely to be utilize by bat species. There are records of bat species within the immediate area. There must be no usage of powerful PIR controlled spotlights or security lighting on this site before, during, or after works because light spillage may affect potential bat roosting or commuting habitats. The mature ash trees around the pond are to retained where possible, except for where they represent an immediate hazard or they directly obstruct the development and cannot be retained using root protection measures.

4.9 The Ecologist supports the proposed mitigation measure of a new native species hedgerow of similar or more diversity planted to compensate for the loss of the north boundary hedgerow.

4.10 There is suitable habitat available on the site for nesting birds in the form of scrub, trees and hedgerows. Any vegetation clearance needs to be subject to a timing constraint.

4.11 Conditions are recommend should permission be granted. As a result, the proposal complies with policy in relation to the impact on protected species.

5.0 Impact upon Highway Safety

5.1 The NPPF requires new developments to provide safe and suitable access to the site for all people. Policy CP4 seeks to ensure that all access and safety concerns are resolved in new developments.

5.2 The Highway Authority has advised that this submission includes the previously requested visibility improvements and off site highway works.

5.3 The site lies in a village with limited facilities and it is considered that there would be a high reliance of travelling by private car to access amenities and services to meet every day needs.

5.4 However, the submission includes a proposal improve the level of visibility from Herne Lane onto The Street which will be of benefit to highway safety.

5.5 In addition the submission also includes a proposal to surface the area of overrun outside the village hall to cater for the increase in vehicular traffic using this part of the highway network.

5.6 The land in question does not form part of the highway and the Highway Authority understands that it is owned by Beeston Playing Field Committee. Given that this land lies in third party ownership, the Highway Authority suggests that the land is dedicated as highway before any work is allowed to start on site. This will ensure that the land is available and that the off-site works may be delivered. A suitably worded condition would be required.

5.7 In terms of highway safety in relation to the proposal and area, the proposal would comply with Policy CP13 and the NPPF.

5.8 However, with regard to the off-site highways work (to surface the area of overrun outside the village hall), this is not referred to in the description of development nor the submitted documentation other than forming a small part of one of the plans. Whilst the submission states that this is to cater for the increase in vehicular traffic using this part of the highway network, it does not demonstrate its location in relation to the proposed development.

5.9 The provision of the off-site highways work, although could be viewed as a benefit, is not necessary to enable this proposal to proceed. As a result, such a condition could not be imposed and would not be an over-riding reason to approve the proposal.

6.0 Other Matters

6.1 Policy DC17 seeks to protect the District's historic environment. The Historic Environment Service advised that, based upon currently available information, the proposed development will not have any significant impact on the historic environment and they do not wish to make any recommendations for archaeological work.

6.2 Policy CP9 seeks to protect the district from pollution and waste. The Contaminated Land Officer commented on the application and recommends the imposition of a conditions. As a result, the proposal would comply with Policy CP9.

6.3 Issues regarding drainage were raised. However, the site lies within Flood Zone 1 where the risk to flooding is identified as minimal. Conditions can be imposed and the Building Regulation process would have to be satisfied that the drainage is appropriate. As a result, the proposal, subject to conditions, would comply with Policy DC13.

6.4 Following the publication of the revised NPPF (2018), the Housing Enabling Officer advised that the site area and number of dwellings proposed trigger the thresholds of the Council's affordable housing policy as per DC4 of the Council's Adopted Core Strategy and Development Control Policies Development Plan Document. At present a 40% provision is required on sites capable of accommodating 5 or more dwellings and/or 0.17ha. This is then further split into 65% being made available for rent and 35% for shared ownership, shared equity or any other intermediate product that meets the intermediate definition within NPPF, meets an identified need in the District and is agreed by the Council.

6.5 However, the NPPF states that affordable housing should only be sought on developments of 10 or more dwellings or 0.5ha. In this instance two units would be required based on a site of 6no dwellings and over 0.5ha. This would consist of 1unit for rent and 1 for intermediate housing. The affordable housing mix i.e. unit types, layout etc. will need to be addressed in the application. The Housing Enabling Officer recommended that, in order to best meet an identified housing need, mainly smaller units i.e. 2bed 4 person unit is provided but noted that housing need is not static and, therefore, the affordable housing mix may change as time progresses particularly if there is a significant delay. The affordable housing should be integrated into residential layouts to provide a distribution of affordable housing within the development site that will enhance community cohesion. All affordable units should meet the required standards, and any that do not are likely to result in an objection from the Housing Enabling Team. The affordable units must be transferred to a Registered Provider of Affordable Housing agreed by the Council at a price that requires no form of public subsidy. A S106 Agreement would be required to secure the affordable housing contribution.

6.6 The applicant's agent confirmed that the applicant would provide two affordable dwellings and, on 7th September 2018, the applicant's agent submitted a revised plan illustrating this. The Housing Enabling Officer has been reconsulted and the consultation period is taking place at the time of writing. Members will be updated in the Supplementary Report or at Committee.

7.0 Planning Balance and Conclusion

7.1 The site is outside the Beeston Settlement Boundary and therefore the proposal does not accord with Policies SS1, CP14 and DC2 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document and the NPPF (in particular paragraphs 11, 12, 14, 79 and 103).

7.2 Several appeals have been determined by the Planning Inspectorate, all have confirmed that Beeston is not a sustainable area, including the site the subject of this current application.

7.3 In addition, an Important Hedgerow would be lost and would be detrimental to the rural character and appearance of the area, especially given this is a prominent location into the village contrary to Policies DC12 and CP11 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document (2009) and the NPPF (in particular paragraph 170).

7.4 There are no material considerations that would outweigh this. As a result the proposed development is, therefore, not considered sustainable and would be contrary to paragraphs 11, 12 and 14 of the NPPF.

7.5 The application is, therefore, recommended for refusal.

RECOMMENDATION

Refusal of Planning Permission

REASON(S) FOR REFUSAL

1

Unsustainable Development

The site is situated in an unsustainable location and thus contrary to Policies SS1, CP14 and DC2 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document (2009) and the three dimensions of sustainable development outlined in the National Planning Policy Framework (in particular paragraphs 11, 12, 14 and 79). There are no material planning considerations that would outweigh this harm.

2

Harm to Protected Hedgerow

The boundary hedgerow, is an Important Hedgerow, as defined under Schedule 1, Paragraph 7 of the Hedgerow Regulations 1997 (as amended). The proposed development would involve the loss of the Important Hedgerow and thus would be detrimental to the rural character and appearance of the area, especially given this is a prominent location into the village. As a result, the the proposal is contrary to Policies DC12 and CP11 of the adopted Breckland Council Core Strategy and Development Control Policies Development Plan Document (2009) and the NPPF (2018) (in particular Paragraph 170).