

Committee Report

Item 6A

Reference: DC/20/00330

Case Officer: Jasmine Whyard

Ward: Box Vale.

Ward Member/s: Cllr Bryn Hurren.

RECOMMENDATION – GRANT OUTLINE PLANNING PERMISSION SUBJECT TO CONDITIONS AND S106

Description of Development

Outline Planning Application (Access to be considered all other matters reserved) - Erection of up to 64no. dwellings and provision of land for a community building (Use Class D1)

Location

Land to the East of Sand Hill, Boxford, CO10 5AD

SUPPLEMENTARY REPORT

1. Background and History

Outline Planning Application DC/20/00330 for the 'Erection of 64 no. dwellings and provision of land for a community centre' at the site Land East of Sand Hill, Boxford, CO10 5AD is before Members for redetermination following a successful Judicial Review which led to the quashing of the decision to grant planning permission. The original planning permission therefore ceases to have effect.

This Supplementary Report provides a summary of and background to the Judicial Review and will provide an updated planning balance to aid the redetermination of this application. For the reasons given below, it remains the case that the original committee report (appended), which provides the full context to this application, can be relied upon in terms of general assessment. Members are also directed to consider again in full the responses from all parties received in relation to this application, as summarised within that original report. The planning file, which Members are directed to review, also contains two letters of complaint from Boxford Parish Council in relation to the application, and an updated letter from the Suffolk County Council outlining updated sums for the required s106 obligations. A highways assessment submitted by the Boxford Parish Council in October 2020 is appended to this report and is considered below.

2. Judicial Review

The application was previously heard at committee on the 17th June 2020 at which Members voted in favour of the officer's recommendation to grant planning permission and a decision was subsequently issued on the 11th December 2020 following completion of the S106 Agreement.

The committee resolution required that the S106 Agreement secure a 'community building consisting of a unit to be set on an area of no less than 0.08 hectares and that it constitutes a D1 Use Class unit'.

The completed S106 Agreement did not strictly secure a community building and instead secured a 'community building contribution' at a cost of £254,000 to be used for community purposes at the development site or within its vicinity (e.g. for the construction of a community building or for improvements to the current village hall or similar local facility).

The completed S106 Agreement was worded in such a way to provide more flexibility in delivering the community building than the committee resolution allowed, on account of the apparently strong contention locally that no such building was wanted.

Boxford Parish Council consequently applied for a Judicial Review of the decision to grant permission. Babergh District Council consented to a quashing order on the ground that the discrepancy between the committee resolution for a community building and the wording in the S106 Agreement was unlawful. The planning permission was subsequently quashed on the 26th March 2021.

Boxford Parish Council's application for Judicial Review raised several other grounds of challenge as listed below, however Babergh District Council disputed these grounds and did not consider that they revealed any errors of law. Nonetheless, for the purposes of complete transparency and completeness, the other allegations that were raised by Boxford Parish Council are set out below:

- Members erred in law on highways matters bearing upon their decision, and the error has gone uncorrected before the Decision was issued
- Breach of the Coronavirus Regulations
- The Defendant erred in granting planning permission which failed to properly secure the highways improvements
- The Defendant erred in granting planning permission which failed to secure superfast/ultrafast broadband

3. Redetermination

On the basis of the quashing of the original decision DC/20/00330, the application is before Members for redetermination. It is also noted that given the passage of time since the issuing of the original decision, there have been changes in circumstances, including the submission of the emerging Joint Local Plan to examination (Regulation 22) and the submission of an independent highways assessment commissioned by Boxford Parish Council. Importantly, the overall scheme proposed has not changed in any way.

Members are therefore presented with a refreshed planning balance; however, it is noted that the overall recommendation for approval remains the same as presented to Members in June 2020. Notwithstanding the additional material from Boxford Parish Council on highways (discussed below), the planning assessment carried out under the cover of the previous committee report remains sound. The previous committee report is therefore appended to this Supplementary Report and remains of relevance to the determination of this planning application.

In addressing Boxford Parish Council's concerns as stated in their application for Judicial Review the following will be secured:

- A new Section 106 Agreement will be completed securing a community building

- Notwithstanding that a telephone exchange exists within the village that would provide broadband, a planning condition will be imposed securing the provision of superfast/ultrafast broadband to the development

On the highway issues that Boxford Parish Council have raised, there were no concerns raised by officers nor the Local Highway Authority (LHA) (SCC Highways) at the time of the original decision. Boxford Parish Council have since submitted a highways assessment which has been duly considered by officers, however this assessment does not alter either the original views or current position of officers, thus there are no highways concerns to warrant refusal on highways grounds: safe and suitable access can be secured for all users, and there would be no severe cumulative impacts on the highway network. A copy of the Parish Council's highway assessment is appended to this report and has been available for public viewing on the electronic planning file for several months. Members are advised to consider that representation carefully.

It has not been disputed that sections of the footway between the site and the village centre would be narrow in places or narrow more generally to the extent that it would not accord with the guidance contained within the *Manual for Streets (MfS)/Inclusive Mobility* documents, where it is less than 1.5m in width. This is explained within the assessment provided by Boxford Parish Council. However, the guidance contained within those documents is just that. As ever the specific circumstances of an application warrant a careful and considered judgement to be undertaken in light of local context, the facts of the case and, of course, having regard to the various anecdotal and professional opinions expressed. In this case the proposed 1.2m-wide footway extension would provide a useable continuous footway connection between the site and the village centre. Notwithstanding the narrowness of the continuous connection (which is understood to be less than 1.2m in some places), the Local Highway Authority raise no objection and the Applicant themselves submitted the footway extension design following a safety audit. The route for pedestrians between the site and the amenities within the centre of the village is considered to be safe. Where the effective width of the existing carriageway would itself be narrowed by virtue of the footway extension, this would not pose a hazard to road users. The view of the LHA has remained unchanged despite the new assessment submitted by the Parish Council and it has been confirmed with them that they have considered its content.

All necessary highway works are capable of being implemented. For the avoidance of doubt, and to ensure that necessary highway improvements are secured, the relevant planning condition will include express reference to approved drawings 19217-03 Rev C and 19217-05.

4. Planning Balance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts, then that determination must be made in accordance with the plan unless material considerations indicate otherwise. It is important to note that Section 38(6) positions the Development Plan as the starting point for determination, it does not however act as the end point and other material planning considerations must be appropriately considered and weighed in the determination process.

The principle of development is primarily assessed against Core Strategy policies CS2, CS11 and CS15. It is considered that they are the most important policies for the determination of the application.

In policy terms, as the proposed development is for residential development with a community building it does not meet one of the exceptional circumstances set out under policy CS2 and therefore

the proposed development does not satisfy policy CS2, and is, in strict terms, in conflict with the Development Plan. Adopting a cautious approach, the development is considered to conflict with the development plan when viewed as a whole. The first side of the s38(6) balance, so to speak, therefore indicates that planning permission should be withheld.

However, for the reasons set out, officers remain of the opinion – as endorsed by Members previously – that compelling material considerations exist which direct that planning permission should nevertheless be granted at variance to the direction of the development plan. Chiefly this is for four reasons: firstly, the lesser weight to be afforded to policy CS2 (and in turn the significance of any conflict with it); secondly, the general compliance with the NPPF as a whole; thirdly, the significant benefits to flow from the development; and fourthly, the absence of any particular “harms” that would support a conclusion that development should be restricted or refused.

Policy CS2 sets a high threshold for permitting development in countryside locations by laying out an exceptional circumstances test. Moreover, a review of the settlement boundaries as envisaged at the time of the Core Strategy being adopted has not occurred, nor has there been a specific site allocations document (again as set out within the CS document). The exceptional circumstances approach is therefore overly restrictive and is inconsistent with the flexible approach advocated within the NPPF, when assessed against paragraph 213 of that document. The weight afforded to policy CS2 is reduced as a result and, in turn, officers afford less weight to the significance of any conflict with that element of the policy as a result.

Notwithstanding the weight afforded to policy CS2, its underlying purpose and spatial strategy to direct development to the most sustainable locations remains relevant, and to this end Boxford is designated as Core Village and thus should act as a focus for development within its functional cluster. The applicant has submitted a housing needs assessment which evidences a local need for housing within the village and that cluster. The application development is considered to meet the thrust of the spatial strategy of the District under the currency of the development plan that is in force.

The proposed 64 dwellings and community building are considered to score positively against all the criteria of Core Strategy policy CS11. Policy CS11 sets out a flexible approach to enable sustainable forms of development for Core Villages, even though the site itself strictly falls within a countryside location for the purposes of policy CS2. Policy CS11 heavily links to policy CS15, relating to implementing and delivering elements of sustainable development. The proposal also scores positively against policy CS15.

Notwithstanding the reduced weight afforded to policy CS2, the proposed development is in general accordance with the other most relevant and important policies in the Development Plan (which hold full weight). Furthermore, the significant public benefits through the delivery of 35% affordable housing provision (in accordance with Core Strategy policy CS19), meeting a proven shortfall in local housing within the functional Boxford Cluster (comprised of Boxford and surrounding villages as defined under the CS) and the erection of a community building are material considerations to the determination of this application and are considered to outweigh the identified conflict with policy CS2.

The proposal will result in a negligible level of less than substantial harm to Boxford Conservation Area and its listed buildings by virtue of an experiential change within the designated area and setting of those buildings (notwithstanding that, in all likelihood the majority of traffic will adjoin the main road and avoid the centre of the village; nevertheless, a precautionary position is being adopted here). This harm is a disbenefit of the scheme – regardless of its limited magnitude - which needs to be treated with the utmost importance in light of the statutory duties imposed by the listed building Act.

Officers have applied the balance required by paragraph 196 of the NPPF, having special regard to the desirability of preserving the setting of the listed building as required by sections 66 and 72 of the listed buildings Act and given the harm considerable importance and weight where there is a presumption against a grant of permission where harm is identified (also see NPPF paras 193 and 194 – any harm requires clear and convincing justification). The outcome of this balancing exercise is that those public benefits including housing, policy compliant affordable housing provision, community building all in an accessible location reducing the need to travel by private car compared to more remote areas of the district, and net gain for ecology and biodiversity, are considered to outweigh the negligible level of less than substantial harm, having given considerable importance and weight to the harm identified. With regard to the duty under the 1990 Act, the negligible level of less than substantial harm to heritage assets has been identified and then balanced against the public benefits of the scheme as required by paragraph 196 of the NPPF. Simply put the public benefits of the scheme outweigh the minimal harm to the historic environment, even where considerable importance and weight is attached to that harm, and that harm has been weighed again when considered in the overall balance being struck.

It is recognised that the site remains unallocated and outside of the settlement boundary for Boxford in the emerging Joint Local Plan, which is now at examination (Regulation 22). This is a material change of circumstances since the original decision was made. However, the emerging plan and its policies continue to hold limited weight given that the plan remains to be examined and there are significant outstanding objections, notably in relation to the proposed spatial distribution of development under the next plan period.

Having regard to NPPF paragraphs 48 and 49, it is not considered that the JLP is sufficiently advanced in the plan-making process for prematurity to form a reasonable or justifiable objection to the application. Furthermore, and having regard to NPPF paragraph 49(a) the proposal is not so substantial or its cumulative effect so significant that it would undermine the plan-making process. The position of the JLP and its weight as a document is limited such that within the circumstances of this application it is not determinative.

The Boxford Neighbourhood Plan remains nascent, and no draft plan is available. It is not determinative to the outcome of this application.

Members are reminded that the current development plan and its spatial strategy have repeatedly been found sound when tested at appeal, including the recovered appeal at Long Melford decision of April 2020 (appeal ref: 3214377). Similar to that case, which concerned a Core Village, the development in this instance is considered to meet a local need and is for a settlement that should act as a focus for growth within its cluster. In the absence of a settlement boundary review, the settlement boundaries are not considered to be up to date; and in the absence of a site allocations document as envisaged when the CS was adopted, it is the case that the Council's ability to deliver new housing and meet its housing land supply targets relies heavily upon edge of settlement sites coming forward.

In this case the development is in accordance with the current spatial strategy of the Council, it would serve to meet a local need, and scores positively against all of the policies in the plan save for the exceptional circumstances threshold that is held to be out of date.

Overall, therefore, material considerations indicate that planning permission should be granted when weighed against the breach of the plan (in so far as there is in strict terms conflict with policy CS2), the negligible harm to the Boxford Conservation Area and listed buildings within that Area (to which considerable importance must be attached) and the inevitable – but very minor – harm posed through the development of a greenfield site (but which is capable of being mitigated through time).

It remains the case that officers recommend that planning permission should be granted, subject to conditions and a s106 agreement that addresses the grounds of legal challenge to the quashed decision.

RECOMMENDATION

That authority be delegated to the Chief Planning Officer to grant outline planning permission subject to the prior completion of a Section 106 Legal Agreement on terms to their satisfaction to secure the following heads of terms:

- 35% Affordable Housing:
Affordable Rent = 75% - 16 dwellings
 - 4 x 1 bed 2-person flats @ 50 sqm
 - 2 x 2 bed 4-person bungalows @ 70 sqm - 8 x 2 bed 4-person houses @ 79 sqm
 - 2 x 3 bed 5-person houses @ 93 sqmRent to Buy = 25% - 6 dwellings
 - 4 x 2 bed 4-person house @ 79 sqm
 - 2 x 3 bed 5-person house @ 93 sqm

- Highways Improvements consisting of:
 - Creation of footway from the bottom of Sand Hill, into Cox Hill junction and Ellis Street and an uncontrolled crossing point, inclusive of widening the 'pinch point' on Broad Street
 - £20,000 to be made to SCC for the extension of the 30mph speed limit and the introduction of the 20mph speed zone.
 - £4,000 to complete the legal process to upgrade the PROW footpath to bridleway.
 - £15,000 for construction for new raised bus stop kerbs with shelters.

- Public Open Space consisting of:
 - An area of no less than 2.03Ha
 - Local Areas for Play (LAP) and / or Local Equipped Areas for Play provision
 - Management Company, or other Nominated Body with commuted sum for initial management

- Community Building consisting of:
 - Unit to be set on an area of no less than 0.08Ha – F2 Local Community Use Class unit

- School Transport Contribution:
 - £134,960 (Primary School)
 - £72,300 (Secondary School)

and that such permission be subject to the conditions as summarised below and those as may be deemed necessary by the Chief Planning Officer:

1. Reduced outline time limit (18 months)
2. Reserved matters details
3. Approved plans
4. Market housing mix

5. Archaeology (pre investigation)
6. Archaeology (post investigation)
7. Construction Management Plan
8. Levels
9. Highways – Visibility Splays
10. Highways – Details of access
11. Highways – Estate roads and footpaths
12. Highways – Basecourse level
13. Highways – Surface Water Discharge
14. Highways – Footway link
15. Highways – Residents Travel Pack
16. Highways – Parking
17. Highways – HGV Construction
18. Surface water drainage
19. SUDs
20. Landscape – Advanced Planting
21. Landscape – Hard and soft landscaping scheme
22. Landscape – SUDs details
23. Landscape – Management Plan
24. Fire hydrants
25. Ecological recommendations
26. Biodiversity enhancement strategy
27. Skylark mitigation strategy
28. Landscape and ecological management plan
29. Sustainability measures
30. Heritage – Bus stop and surface material details
31. Heritage – Street signage details
32. Heritage – Footway materials
33. Superfast / Ultrafast broadband
34. Car Charging points