

Agenda Item No 5

Planning and Development Board

6 November 2017

**Report of the
Head of Development Control**

Appeal Update

1 Summary

1.1 This report provides an up to date position in respect of appeal decisions.

<p>Recommendation to the Board</p> <p>That the report be noted.</p>

2 Background

2.1 Members have been receiving regular progress reports on outstanding appeals over the past few months. This report now brings matters up to date

3 Appeal Decisions

3.1 a) 30 Watton Lane, Water Orton

3.1.1 This appeal related to a proposed dropped kerb which was refused planning permission under delegated powers on the recommendation of the Highway Authority who objected to the scheme. The appeal was dismissed with the Inspector supporting the County Council – see Appendix A.

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3.2 b) 68 North Street, Atherstone

3.2.1 This proposal relates to the erection of two houses in the side garden of an existing house fronting North Street. The refusal under delegated powers related to the cramped conditions that would arise and to the poor quality of amenity that would result. The appeal was dismissed supporting the Council's decision – see Appendix B.

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3.3 c) Cirda House, Kingsbury Road, Curdworth

3.3.1 Members will recall this case as the Board decided to visit the site. It related to a new workshop on the former petrol filling station side on the main road through Curdworth. Notwithstanding a recommendation of approval, the Board considered that the potential for disturbance and nuisance to

neighbours should carry more weight. The Inspector disagreed and allowed the appeal subject to conditions. A costs claim against the Council was however not supported. The case again shows that a refusal should ideally be supported by demonstrable evidence if it is to be successful – see Appendix C.

3.4 d) **Boulter’s Lane, Wood End**

3.4.1 This is an outline application for fourteen houses at the rear of Boulter’s Lane in Wood End. The appeal was against the Council’s non-determination of the planning application. However the Board did consider the case at a recent meeting, resolving that it would have refused planning permission. The site is the same as a recent refusal, a decision which was supported at appeal. In this case however the appeal was allowed. The two changes in circumstance were that the Council did not have a five year housing supply at the time the appeal was lodged and secondly that this case included a Section 106 Unilateral Obligation offering an off-site financial contribution towards affordable housing. The Inspector took the view that these changed circumstances outweighed the previous appeal decision. This is a disappointing decision but it again clearly shows the need for the Council to hold and to maintain a five year housing supply at all times with a significant buffer to allow for some sites not coming forward. The decision is at Appendix D.

3.5 e) **6 Coventry Road, Coleshill**

3.5.1 This appeal relates to the refusal of a change of use of a property in Coleshill to partly include a take-away. Members will recall the site visit to Coleshill to look at the situation in respect of these uses. The appeal was allowed because the site was not in the “town centre” as defined by the Development Plan and that there was no evidence to show that this partial use would result in a “saturation” of such uses in the town. It is perhaps thus not surprising that an associated costs application was successful and the Council will now have to pay the applicant’s appeal costs. The two decision letters are at Appendix E.

4 **Outstanding Appeals**

4.1 Appeals have been registered with the Planning Inspectorate on the following cases – the outline proposal for up to 40 houses off Pooley Lane, Polesworth; the outline application for six houses off Main Road, Newton Regis, the dog training facility at Corley, the lights, bridge and signs at the Heart of England Centre and the indoor riding arena at Corley Moor.

4.2 An appeal has also been lodged against the service of an Enforcement Notice relating to the use of land at The Cedars in Station Road, Nether Whitacre. This is likely to be heard by way of a Public Inquiry.

4.3 Members have already been informed that the Daw Mill decision has been delayed and is not now likely until next year.

The Contact Officer for this report is Jeff Brown (719310).

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date



Appeal Decision

Site visit made on 21 August 2017

by **A J Mageean BA (Hons) BPI PhD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **30th August 2017**

Appeal Ref: APP/R3705/D/17/3178414
30 Watton Lane, Water Orton B46 1PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Gareth Whitehouse against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0674, dated 24 November 2016, was refused by notice dated 30 March 2017.
 - The development proposed is dropped kerb to property frontage.
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Decision

1. The appeal is dismissed

Main Issue

2. The main issue is the effect of the proposal on highway safety in the vicinity of the appeal site.

Reasons

3. The appeal site is a semi-detached property located on the south side of Watton Lane, a classified 30mph 'B' road. This is a long straight road running through the centre of the village of Water Orton. Along its length there are a series of traffic calming measures including pinch points and speed cushions. One such intervention, involving both a pinch point and speed cushions, is positioned parallel to the front of the appeal property. There is also a wide grass verge between the appeal property and the road. Some neighbouring properties have off road parking areas to the front of their houses, accessed via driveways running across the grass verge.
4. At the time of my site visit on a weekday morning Watton Road received a steady flow of traffic. I appreciate that my visit only provided a snapshot of road conditions. Nevertheless, based on my observations, it would be reasonable to assume that the level of traffic would increase at peak hours in the morning and evenings.
5. The location of the proposed drop kerb would be directly to the west of the pinch point and speed cushions, offset from the appeal property. As a result the proposed crossing of the verge would be angled, with a narrow and therefore constrained point of exit onto the road. As such vehicles entering and exiting the appeal property would need to manoeuvre in close proximity to the traffic calming measures. It is therefore likely that the narrow point of exit, along with the road narrowing and changes of level would hamper vehicle movements. In

spite of measures to slow down traffic, in my opinion the road conditions are such that traffic is still able to travel at such speed as to make such manoeuvres hazardous to vehicles travelling along this road.

6. I have some sympathy with the appellant's frustration regarding the positive response from the Local Highways Authority in relation to his initial enquiries, and the fact that many of his neighbours are able to park in their front garden areas. In this respect the appellant has also provided details of a similar application relating to No 20 Watton Road. However, in this case it appears that the Local Highway Authority agreed changes to the existing traffic calming measures to enable the dropped kerb to be implemented. I was able to view this scheme on site and whilst I accept that the dropped kerb is located to the west of a pinch point in the road, there is no discernible speed cushion in this location and thereby the degree of interference with vehicle manoeuvring is reduced. As there is no suggestion that traffic calming measures could be amended in the present case, a similar degree of mitigation has not been demonstrated.
7. The appellant also refers to the installation of a dropped kerb at a property on New Road, a continuation of Watton Lane. Again I was able to view the situation at this property, No 42, as part of my site visit. In this case both a pinch point and speed cushions are located close to the dropped kerb. However as this driveway is wider with a more direct point of access than that proposed in the present case, the road safety issues associated with the two sites are not directly comparable.
8. I appreciate that the appellant is looking for an alternative to parking on the highway in front of his property. He argues that parking in this location causes disruption to traffic. He also has safety concerns regarding the need to cross the highway with his young children. However, the presence of parked cars requires two-way traffic to slow down, thereby improving pedestrian safety overall.
9. Finally, the fact that the appellant has observed other situations in the village which he considers to be unsafe does not render the current proposals acceptable, and I am required to determine this appeal on its own planning merits.
10. I therefore conclude that the proposal would have a detrimental effect on highway safety in the vicinity of the appeal site. The proposal would conflict with Policy ENV14 of the North Warwickshire Local Plan 2006, and Policy NW10 point 6 of the North Warwickshire Core Strategy 2014 which, taken together, require vehicular access to be safe with local road networks able to accommodate traffic without causing danger.

Conclusion

11. For the reasons set out above, and as material considerations do not indicate that I should conclude other than in accordance with the development plan taken as a whole, the appeal is dismissed.

AJ Mageean

INSPECTOR



Appeal Decision

Site visit made on 7 September 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 September 2017

Appeal Ref: APP/R3705/W/17/3169218

Land adjacent 68 North Street, Atherstone CV9 1JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Andrew Davies against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0444, dated 2 August 2016, was refused by notice dated 25 November 2016.
 - The development proposed is 2 no dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the character and appearance of the surrounding area;
 - the living conditions of neighbours residing at 68 North Street, and 2 and 4 Queens Road with particular reference to amenity space, privacy and outlook;
 - the living conditions of future occupants with particular reference to amenity space, outlook and privacy; and,
 - Highway safety.

Reasons

Character and Appearance

3. The appeal site is located in an area predominantly residential in use and comprises a garden area that serves No 68 North Street. The proposal would be sited amongst hipped roof semi-detached dwellings to the north of North Street. These dwellings are set back a consistent distance from the highway and give the surrounding area a spacious and ordered character.
 4. Opposite the site is the Atherstone Conservation Area (ACA) the boundary of which is partly formed by the Grammar School, identified by the Council as a key unlisted building. The ACA draft appraisal identifies the Grammar School and adjacent junction with North Street as a marker for where the character changes from edge of town to that of suburb and ribbon development.
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5. The siting and two storey height of the dwellings would harmfully reduce the spacious character along the north of North Street. The detached form and gable roof design would also appear incongruous with hipped roof semi-detached dwellings along North Street. Owing to the slight bend in the road and corner location of the site, the resultant harm to the spacious and ordered character of the surrounding area would be noticeable from a wide public area. The use of in keeping wall, roof and window details would not prevent this harm.
6. Owing to the siting of the dwellings and the vegetated site boundary, the proposal would not protrude into the adjoining playing field. In addition, the Council state that the trees to the south east boundary are not worthy of protection and a landscape condition is suggested. Consequently the suburban and ribbon character of the wider area would be unaffected. On this basis the proposal would not have a harmful effect on the ACA as a whole. However, the absence of harm to the ACA does not prevent or reduce the harm identified to the spacious and ordered character of North Street.
7. Therefore the proposal would have a harmful effect on the character and appearance of the surrounding area. Consequently, the proposal would be contrary to Policy NW12 of the Core Strategy (CS), saved Policies ENV12 and ENV13 of the Local Plan (LP) and paragraphs 56 and 58 of the National Planning Policy Framework (the Framework). Combined these policies require development to demonstrate a high quality design that responds to surrounding local character and appearance.

Neighbours

8. The proposed dwellings and associated amenity areas would be located within the garden area serving No 68 North Street. No 68 forms a semi-detached pair with No 2 Queens Road and No 4 Queens Road is to the immediate north of the site. The side elevation of No 68 facing towards the proposed dwellings does not contain any habitable room windows.
9. No 68 would lose a significant section of private amenity space to its side and rear with only a small rear paved area remaining. In addition, during my site visit I saw that the adjoining elevated public pavement allows views into the amenity area to the front of No 68. Consequently, irrespective of additional boundary screening, the front amenity area would not fully compensate for the loss of private amenity space incurred by occupants residing at No 68.
10. The absence of a sufficiently sized outdoor private amenity space would prevent occupants at No 68 from being able to undertake typical outside garden uses such as sitting out and private outdoor relaxation. This would be particularly harmful to the living conditions of occupants residing at No 68.
11. The rear elevations of both proposed dwellings each contain windows that serve a first floor bedroom. These windows would provide future occupants direct views across the remaining small rear outdoor amenity area at No 68 and the garden areas serving Nos 2 and 4. Whilst the rear amenity areas serving Nos 2 and 4 include garden sheds, they also provide neighbours with outdoor private amenity space. The adjoining outdoor amenity areas would be overlooked by future occupants to an extent that would be harmful to the privacy of neighbours at Nos 68, 2 and 4.

12. The proposed dwellings would be sited away from habitable windows and the remaining rear amenity area serving No 68. Consequently the proposal would not have a harmful effect on the outlook of occupants residing at No 68. In addition, the separation distances involved would ensure that the proposal would not harm the outlook of neighbours residing at Nos 2 and 4. However the absence of harm to the outlook of neighbours would not outweigh the harm identified above in relation to amenity space and privacy.
13. Therefore the proposal would have a harmful effect on the living conditions of neighbours residing at 68 North Street, and 2 and 4 Queens Road with particular reference to amenity space and privacy. Consequently the proposal would be contrary to CS Policy NW10 (9) and paragraph 17 bullet point 4 of the Framework. Combined these policies seek to ensure that development secures a good standard of amenity for existing occupants and avoids unacceptable impacts through overlooking.

Future Occupants

14. The two storey scale of No 68 would be immediately adjacent to the rear amenity area serving dwelling No 1 as annotated in the proposed drawings. In conjunction with the proposed boundary fences, the outlook for future occupants from the rear outdoor amenity area at dwelling No 1 would be particularly limited. However, taking into account the separation distances involved and remaining open aspect to the north, future occupants at dwelling No 2 would have a sufficient outlook from the rear outdoor amenity area.
15. First floor habitable windows at the rear elevation of No 68 would provide neighbours direct views of the rear outdoor amenity area serving dwelling No 1. Furthermore, the outdoor amenity areas to the front of the proposed dwellings would be overlooked by highway users along North Street. Consequently the proposed front outdoor amenity areas would not offer future occupants a sufficiently private outdoor amenity space. The windows at the side elevation of No 68 do not serve habitable rooms and the windows at the rear elevations of Nos 2 and 4 face away from the appeal site. Consequently the rear outdoor amenity area serving dwelling No 2 would offer future occupants sufficient levels of privacy.
16. Drawing the above together, the rear outdoor amenity area serving dwelling No 1 would provide future occupants with an unacceptable outlook, level of privacy and amenity space. In contrast, the rear outdoor amenity area serving dwelling No 2 would be of a useable size and provide a sufficient outlook and levels of privacy for future occupants. However the absence of harm to the living conditions of future occupants residing at dwelling No 2 would not outweigh or prevent the harm to those residing at dwelling No 1. Nor would the intended starter home design of the proposed dwelling justify or reduce the harm to future occupants residing at dwelling No 1.
17. Therefore the proposal would have a harmful effect on the living conditions of future occupants with particular reference to amenity space, outlook and privacy. Consequently the proposal would be contrary to CS Policy NW10(9) and paragraph 17 bullet point 4 of the Framework. Combined these policies seek to ensure that development secures a good standard of amenity for future occupants and avoids unacceptable impacts through overlooking.

Highway Safety

18. The Council are concerned that vehicles entering and exiting the site would have to drive over the adjoining speed bump at an angle. However no substantive reasoning or evidence is before me to demonstrate how such circumstances would unacceptably harm highway safety.
19. Therefore the proposal would not have a harmful effect on highway safety and would meet the requirements of CS Policy NW10 (6), saved LP Policy ENV14 and paragraph 32 of the Framework. Combined these policies require development to provide a proper, suitable and safe access.

Other Matters

20. A number of benefits are associated with the proposal. The proposed dwellings are designed as starter homes and would contribute to housing supply. In addition, the proposal would utilise land that has good access to public transport, services and facilities at the nearby town centre. I have also identified an absence of harm in relation to highway safety, the outlook of neighbours and the living conditions of future occupants residing at dwelling No 2. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
21. In this case, the combined modest benefits associated with the proposal would be outweighed by the harm identified in relation to the main issues above.

Conclusion

22. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR



Appeal Decision

Site visit made on 7 September 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th September 2017

Appeal Ref: APP/R3705/W/17/3170136

Cirda House, Kingsbury Road, Curdworth B76 9DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr C Humpherston against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0301, dated 20 May 2016, was refused by notice dated 8 November 2016.
 - The development proposed is erection of detached building to carry out car tyre and exhaust fitting.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of detached building to carry out car tyre and exhaust fitting, at Cirda House, Kingsbury Road, Curdworth B76 9DS, in accordance with the terms of the application Ref PAP/2016/0301, dated 20 May 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development used above is agreed between the parties and is taken from the decision notice which more accurately reflects the permission sought.
3. Based on the evidence before me, it is not clear whether part of the site is located within a Green Belt. In any event, the Council raise no concern in this respect and I note that the reason for refusal relates to neighbouring living conditions and character and appearance.
4. Based on all I have seen and read, I have no reason to disagree with the Council's stance in relation to the Green Belt. Accordingly, my determination of the appeal focusses on the main issues below.

Application for costs

5. An application for costs was made by the appellant against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are the effect of the proposal on:
 - the living conditions of neighbours residing at Glebe Fields and Kingsbury Road, with particular reference to noise and disturbance; and,

- the character and appearance of the surrounding area.

Reasons

Neighbours

7. The appeal site is located on the western edge of Curdworth and comprises a vehicle valet use with associated building and service yard. Vehicles cleaned at the site include larger vehicles such as tankers and Heavy Goods Vehicles (HGV). Residential use is to the rear and eastern side of the site.
8. The Council and neighbours consider that the proposal would increase operations undertaken at the site and consequently increase noise and disturbance for neighbours residing at Kingsbury Road and Glebe Fields, particularly at No 32. No 32 Glebe Fields is located close to the boundary of the appeal site and would be adjacent to the proposed single storey building. The facing elevation of No 32 contains three windows serving a habitable room.
9. During my site visit I saw a HGV being cleaned adjacent to the facing habitable windows serving No 32. The noise from this process (including staff communicating with one another) and associated cleaning spray would be particularly disruptive and harmful to the living conditions of neighbours residing at No 32. Although to a lesser extent, this noise would also cause disturbance to other adjoining neighbours, as indicated by the submitted letters of objection.
10. No opening would be contained within the proposed rear elevation facing No 32 whilst two small doors would be contained within the proposed side elevations. The front elevation of the building would contain the principle openings and points of access for vehicles and customers. Suitably worded planning conditions would ensure that the proposed use is carried out within the proposed building. A condition could also be imposed to ensure that windows and doors are kept closed when noise generating equipment is in use.
11. Taking into account the existing use at the site and associated noise and spray, subject to the above noted conditions, the proposal would result in a reduced effect on the living conditions of surrounding neighbours. Furthermore, I understand that the opening hours proposed would be less than the existing use at the site. Moreover, I note that the Council's Environmental Health Officer has raised no objection to the proposal subject to the imposition of planning conditions.
12. Therefore the proposal would not have a harmful effect on the living conditions of neighbours residing at Glebe Fields and Kingsbury Road, with particular reference to noise and disturbance. Consequently the proposal would meet the requirements of Core Strategy (CS) Policy NW10 (9) and paragraph 17 bullet point 4 of the National Planning Policy Framework. Combined these policies seek to ensure that development secures a good standard of amenity for existing occupants and avoids unacceptable impacts through noise.

Character and Appearance

13. During my site visit I saw that despite being surrounded by residential properties to its south and east, the appeal site has a distinct and separate commercial character. A wider commercial character is also evident when approaching Curdworth from the east along Kingsbury Road. The proposed

- building would be seen in the context of the commercial character evident at the appeal site and in the wider area along Kingsbury Road.
14. The single storey height of the building would sit below residential properties to the south and its siting towards the rear of the site would complement the existing building at the site. In this respect the proposal would be a modest and discrete addition that would be in keeping with the commercial character of the appeal site. Red brick walls are proposed to match surrounding buildings and a condition would ensure appropriate roof materials.
 15. Therefore the proposal would not have a harmful effect on the character and appearance of the surrounding area. Consequently the proposal would meet the requirements of CS Policy NW12 which seeks to ensure development demonstrates a high quality of sustainable design that positively improves the individual settlement's character and appearance.

Other Matters

16. Concerns and photographs have been submitted in relation to highway safety. However, taking into account the comments of the Highway Authority, dismissing the appeal on highway safety grounds would be unjustified.
17. Concerns have also been raised regarding fire risk and pollution. However as the Fire and Rescue Service and the Council's Environmental Health Officer do not object to the proposal (subject to appropriate planning conditions), dismissing the appeal on these grounds would also be unjustified.
18. Nor would the availability of other sites or the provision of similar services in the surrounding area be a sufficient basis on which to dismiss the appeal. Based on the single storey height of the proposed building, the proposal would not have a harmful effect on the outlook, light or privacy of neighbours.

Conditions

19. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording in the interests of precision and clarity in order to comply with advice given in the Framework and the Planning Practice Guidance.
20. A prior to commencement of development condition relating to construction materials is necessary to ensure a satisfactory appearance. Conditions removing permitted development rights to create additional openings, to extend the building and to prevent change from the specified permitted use are necessary in the interests of neighbouring living conditions. Similarly, conditions relating to the hours of use and the closure of doors and windows during operation of machinery are necessary to preserve neighbouring living conditions.
21. A condition relating to construction times is included and altered to a reduced time period in order to protect the living conditions of neighbours. To preserve highway safety, a condition requiring approval and completion of the vehicular access, parking and turning areas prior to the occupation of the building is necessary. A condition relating to contamination is necessary based on the comments of the Council's Pollution Control Officer.

22. A condition requiring the removal of the mobile catering unit would not be relevant to the development to be permitted and thus its imposition would be contrary to paragraph 206 of the Framework. Consequently this condition is not included. As separate regulations control matters relating to extraneous material on the highway, this condition is not necessary.

Conclusion

23. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

INSPECTOR

Attached – schedule of conditions

1. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

2. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

3. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

4. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

5. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

6. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

7. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

8. The development shall be carried out in accordance with the approved plans submitted with the application, subject to the following conditions:

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Proposed Site Layout Plan 479-03, Proposed Floor Plans and Elevations 479-04.
- 3) No development shall take place until details of the facing bricks and roofing tiles, along with any other facing materials to be used in the proposed building have been submitted to and approved in writing by the Local Planning Authority. The development shall be built in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, doors or any other form of opening other than those expressly authorised by this permission shall be constructed on any of the elevations of the building hereby permitted.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Class H of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 shall be carried out without planning permission granted by the Local Planning Authority.
- 6) The premises shall be used for car tyre and exhaust fitting and for no other purpose (including any other purpose in Use Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 7) No development shall take place until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes at the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the occupation of the building hereby permitted and retained as such thereafter.
- 8) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development commences. If, during the course of

development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within an agreed timescale following the report's completion and approval in writing by the local planning authority.

9) No development shall take place until full details of the surfacing, drainage and levels of the car parking, turning and manoeuvring areas as shown on the approved plan have been submitted to and approved in writing by the Local Planning Authority. The building hereby permitted shall not be occupied until the areas have been laid out in accordance with the approved details and such areas shall be permanently retained for the parking and manoeuvring of vehicles thereafter.

10) All doors and windows at the building hereby permitted shall be kept closed except for access and egress during periods when noisy machinery or equipment is used. All tyre and exhaust works (including associated works) shall only take place within the building hereby permitted.

11) The use hereby permitted shall only take place between the following hours:

0800 - 1800 Mondays - Fridays

0800 - 1200 Saturdays and not at any time on Sundays or on Bank or Public Holidays.

12) Demolition or construction works shall take place only between 0800 – 1800 hours on Mondays to Fridays and 0800 – 1300 hours Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays. Deliveries and collections associated with the construction of the proposed development shall not occur during 0800 – 0900 and 1700-1800 on Mondays to Fridays.



Costs Decision

Site visit made on 7 September 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th September 2017

Costs application in relation to Appeal Ref: APP/R3705/W/17/3170136 Cirda House, Kingsbury Road, Curdworth B76 9DS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Humpherston for a full award of costs against North Warwickshire Borough Council.
 - The appeal was against the refusal of planning permission for the erection of detached building to carry out car tyre and exhaust fitting.
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Decision

1. The application for an award of costs is refused for the reasons given below.

Reasons

2. The National Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG also advises that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Other examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material consideration. The PPG also notes that refusing planning permission on a planning ground capable of being dealt with by condition risks an award of costs.
4. The appellant contends that the Council's reasons for refusal were vague, unsubstantiated and influenced by local politics. The appellant refers to the lack of objection made by the Council's Environmental Health Officer (subject to planning conditions), and contends that the visual effect of the proposal is a subjective matter. Furthermore, with reference to the Committee Report, the appellant highlights that the Council were advised that a refusal on the grounds of neighbour living conditions could not be sustained at an appeal. Therefore, the appellant considers that the Council behaved unreasonably and that unnecessary cost has been incurred in having to appeal a decision that should have been permitted.
5. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate

on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Whilst I have taken a different view on the matter, the Council did have a reasonable basis to contend that the proposal would lead to a second and different use at the site in proximity of residential properties. Furthermore it is clear that neighbours had a reasonable basis for concern in relation to noise and disturbance based on personal experience. It was legitimate and part of the Council's duty to take into account public representations when determining the planning application.

6. Owing to the proximity of the proposed building to surrounding residential properties, the Council also had a reasonable basis regarding the visual effect of the proposal on the surrounding area. Nor is there any evidence before me to substantiate the assertion that the decision was the product of local politics.
7. I note that the appellant worked proactively with the Council's case officer with revised plans submitted to overcome initial concerns. In my view this demonstrates that the Council approached the application in a positive way looking for solutions rather than problems as required by the National Planning Policy Framework.

Conclusion

8. Therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, and having regard to all matters raised, an award for costs is not justified.

B Bowker

INSPECTOR



Appeal Decision

Site visit made on 7 September 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th September 2017

Appeal Ref: APP/R3705/W/17/3171093

Delves Farm, Boulters Lane, Wood End CV9 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Ken Simmons against North Warwickshire Borough Council.
 - The application Ref PAP/2016/0686, is dated 29 November 2016.
 - The development proposed is the erection of 14 dwellings. Outline application, access to be considered now with all other matters reserved.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 14 dwellings. Outline application, access to be considered now with all other matters reserved, at Delves Farm, Boulters Lane, Wood End CV9 2QF, in accordance with the terms of the application Ref PAP/2016/0686, dated 29 November 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. The proposal as submitted is for outline permission with all matters reserved apart from access. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on this basis. The layout plan submitted with the planning application has been taken into account for indicative purposes.
3. It is common ground that as the Council cannot demonstrate a five year housing land supply, paragraph 14 of the National Planning Policy Framework (the Framework) is engaged. Based on the evidence before me, I have no reason to disagree with the consensus view reached on this matter. Paragraph 14 bullet point 4 of the Framework is applied to the proposal as part of the 'planning balance' exercise identified below, following consideration of any 'other matters' and the submitted planning obligation.
4. The Council state that had it been in a position to determine the application it would have refused planning permission based on the effect of the proposal on the character and appearance of the surrounding area. The Council consider that this harm would significantly and demonstrably outweigh the benefits associated with the proposal, when assessed against the policies in the Framework taken as a whole.

Main Issues

5. Based on the evidence before me, the main issues are:

- The effect of the proposal on the character and appearance of the surrounding area; and,
- The planning balance: Whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits.

Reasons

Character and Appearance

6. The appeal site comprises agricultural land to the rear of a linear pattern of residential development at Boulters Lane. The site is within the Wood End to Whitacre Landscape Area which describes Wood End as having a core of older vernacular buildings with recent expansion that has not detracted from traditional settlement character.
7. The site has been subject to a dismissed appeal¹ for an identical proposal dated 26 August 2016. The appeal was dismissed on the grounds of its effect on the character and appearance of the surrounding area. The appellant does not dispute the harm identified within the previous appeal decision.
8. The previous Inspector identified that the proposal would introduce back land development that would appear incongruous and unrelated to the village and its strongly linear form of development at the vicinity of the site. Based on all I have seen and read I concur that the proposal would lead to the harm identified by the previous Inspector.
9. Therefore the proposal would have a harmful effect on the character and appearance of the surrounding area. Consequently the proposal would conflict with Policy NW12 of the Local Plan Core Strategy (CS) which seeks to ensure that new development positively improves an individual settlement's character.

Other Matters

10. Concern is raised regarding highway safety. However, based on all I have seen and read, including the comments of the Council, subject to an appropriately worded condition, the proposal would not have a harmful effect on highway safety.
11. Concern has also been raised regarding the effect of the proposal on views from adjoining properties. However, I am mindful of the accepted position taken by the Courts that the right to a private view is not a material consideration in planning matters. Accordingly I afford this matter limited weight.
12. Based on the outline nature of the application and the separation distance between the site and surrounding properties, the proposal would not have a harmful effect on the levels of day/sunlight for neighbouring occupants. In addition, based on the evidence before me, dismissing the appeal on the grounds of local school capacity and flooding would be unjustified.

Planning Obligation

13. A signed and dated Unilateral Undertaking (UU) submitted by the appellant would secure a financial contribution towards off site affordable housing,

¹ APP/R3705/W/16/3150188

calculated using methodology outlined within the Affordable Housing Viability Report. The Council are concerned that the UU would not benefit the immediate locality and that no evidence has been submitted to demonstrate that the need for affordable housing has increased since the previous appeal decision.

14. Nonetheless the financial contribution would meet the requirements of CS Policy NW6 which is based on evidence of affordable housing need. No evidence is before me to indicate that affordable housing needs within the Borough have been met. In my view the obligation would comply with the statutory tests contained in Regulation 122 of The Community Infrastructure Levy Regulations 2010.

Planning Balance

15. A material change in circumstance since the previous decision is that the Council are unable to demonstrate a five year supply of housing land. It is this change in circumstance where the appellant's case for the proposal lies.
16. The emerging Local Plan was recently subject to public consultation. Paragraph 216 of the Framework states that decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency of the policy with the Framework. No information is before regarding the number unresolved objections to the emerging Local Plan but I note that the Council afford it limited weight. Thus, with no substantive reasoning to the contrary, I afford limited weight to the housing land supply within the emerging Local Plan.
17. An appeal decision² for residential development at Ansley is brought to my attention wherein the Inspector concluded that the Council could demonstrate 3.5 years supply of housing land. Since the Ansley decision the Council assert that it can now demonstrate 4.5 years of housing land (uncontested). In any event, it is common ground that paragraph 14 of the Framework is engaged.
18. Paragraph 14 bullet point 4 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this light, a number of benefits are associated with the proposal.
19. The proposal would contribute to housing supply via its provision of market housing and financial contribution towards affordable housing. In light of the Council's inability to demonstrate a five year supply of housing land, these social benefits are afforded significant weight in favour of the appeal. In addition, economic benefits would arise via the proposal increasing local spend and supporting construction employment. These benefits attract moderate weight in favour of the appeal.
20. The proposal would not meet the environmental dimension of sustainable development by virtue of its harm to the character and appearance of the surrounding area. In this light, I note that the need to take account of the different roles and character of different areas is a core planning principle in the Framework. Furthermore, the Council refer to paragraphs 58 and 109 of

² APP/R3705/W/16/3149572, decision date 6 January 2017.

the Framework which require development to respond to local character and protect valued landscapes.

21. The harm to the character and appearance of the settlement identified above would be noticeable from the proposed access on Boulters Lane and from the rear of adjoining dwellings. As this harm would be localised in extent, it attracts some weight against the proposal and not significant weight as contended by the Council. In the context of paragraph 14 bullet point 4 of the Framework, this level of harm would not significantly and demonstrably outweigh the benefits associated with the proposal when assessed against the policies in the Framework taken as a whole.
22. This is a factor which would outweigh the conflict of the proposal with CS Policy NW12. It is on this basis and for the reasons given above that the appeal should succeed.

Conditions

23. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording in the interests of precision and clarity in order to comply with advice given in the Framework and the Planning Practice Guidance.
24. Conditions 1 – 3 requiring the submission of reserved matters are necessary in view of the outline nature of the application. Condition 4 is necessary in the interests of certainty and would address the Council's concern in relation to the outline permission being for no more than 14 dwellings.
25. Condition 5 is necessary for highway safety purposes. Condition No 6 is necessary to ensure that the site is adequately drained. Condition No 7 is necessary in order to protect the living conditions of neighbouring occupants. Condition No 8 is necessary in the interests of fire safety.

Conclusion

26. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

INSPECTOR

Attached – schedule of conditions

Schedule of conditions

- 1) Details of appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 7269.151, Proposed Site Plan Drawing No 7269.150E, but only in respect of those matters not reserved for later approval.
- 5) No development shall commence on site until full details of the site's vehicular access and visibility splays onto Boulders Lane together with details of the access and layout of the site itself have first been submitted to and approved in writing by the Local Planning Authority. Development shall then be carried out only in accordance with the approved details prior to the occupation of the dwellings hereby permitted. There shall be no obstruction of any kind within the approved visibility splays.
- 6) No development shall commence on site until a detailed surface and foul water drainage scheme for the development based on sustainable drainage principles and an assessment of the hydrological and geo-hydrological context of the site has first been submitted to and approved in writing by the Local Planning Authority. Development shall then only be carried out in accordance with the approved details.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a) The location of storage compounds, haul roads and car parking for site operatives and visitors.
 - b) The hours of working and the hours of delivery of goods, plant and materials.
 - c) Wheel washing facilities and dust suppression measures.
 - d) Noise control during the construction.
 - e) Site lighting details.
 - f) Measures for the protection of trees that are to be retained.
 - g) Details of household refuse collection from occupied dwellings during construction and;
 - h) Details of the contact for any local concerns with the construction activities being undertaken.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 8) No development shall commence on site until a scheme for the provision of adequate water supplies and fire hydrants for fire-fighting purposes at



the site has first been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved scheme has been fully implemented in accordance with the approved details.



Appeal Decision

Site visit made on 14 September 2017

by **Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th October 2017

Appeal Ref: APP/R3705/W/17/3175142

6 Coventry Road, Coleshill B46 3BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Stickland of Tadjcloe Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0719, dated 16 December 2016, was refused by notice dated 4 April 2017.
 - The development proposed is change of use from office (Use Class A2) to delicatessen, café and hot food takeaway (Use Class A1/A3/A5).
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from office (Use Class A2) to delicatessen, café and hot food takeaway (Use Class A1/A3/A5) at 6 Coventry Road, Coleshill B46 3BE in accordance with the terms of the application, Ref PAP/2016/0719, dated 16 December 2016, subject to the following conditions:
 - i) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - ii) The development hereby permitted shall be carried out in accordance with the following approved plan: 10582-01 Revision B.
 - iii) There shall be no opening for business purposes of the A1 and A3 use elements of the development hereby permitted outside of the hours of 0900 to 2130 on Mondays to Saturdays and of the A5 use element outside of the hours of 1130 to 2130 on Mondays to Saturdays. There shall be no opening on Sundays or public bank holidays.
 - iv) The use hereby approved shall not commence until the proposed kitchen extraction system has been installed in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Those details shall include noise attenuation measures relating to the fan motors, and abatement measures concerning the filtration/treatment of odours which shall also ensure that the top of the proposed external extraction flue is at least one metre above the existing windows on the building. In addition the drainage serving the proposed kitchen shall be fitted with a grease separator or other means of grease removal prior to the commencement of the use hereby approved. All of the measures relating to this condition shall thereafter be maintained in accordance with the approved details.

- v) There shall be no delivery service associated with the proposed takeaway use.

Application for costs

- 2. An application for costs was made by Mr A Stickland of Tadjcloe Ltd against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Main Issue

- 3. The main issue is the effect of the proposed development on the vitality of the town of Coleshill.

Reasons

Vitality of Coleshill

- 4. The site is located within a parade of units outside of the main town centre area and primary retail core, with a noticeable and material degree of separation between the two.
- 5. Policy NW20 of the North Warwickshire Local Plan Core Strategy (the Core Strategy) seeks to protect the viability and vitality of town centres such that proposals that would have a detrimental impact in this respect will not be permitted. In particular, it sets out that a disproportionate concentration of uses will be avoided. This policy is broadly consistent with the National Planning Policy Framework (the Framework) which in section 2 sets out the need for ensuring the vitality of town centres. The Council, in its submissions, also refers to the Coleshill Neighbourhood Plan in terms of setting out the importance of new retail uses in the town but not necessarily preventing takeaways or cafes.
- 6. In this case the proposal is an existing A2 Use Class unit, albeit currently vacant, which would have permitted development rights to change its use to a shop in Use Class A1. It is also within an established parade where there are various shops and other small commercial units including two hairdressers, a butchers, a betting office, a cleaners, bakers that also sells hot snacks and a hot food takeaway outlet. Whilst there are therefore other units selling food, these are not all of the same nature or use class, and they also include some A1 retail. The introduction of the proposed mixed use would not be an unusual addition to the parade given its existing context and so would be a compatible addition in this respect. Neither would it cause a dominance of café or hot food takeaway uses, and the Council confirms that the parade is not safeguarded for retail use alone.
- 7. The distinct degree of separation from the town centre would also ensure that it would be unlikely to materially affect the existing businesses there which benefit from their close proximity to each other. In any case, I have received no substantive evidence to indicate that businesses similar in nature and use class to that proposed are at a saturation point in terms of maintaining the viability and vitality of Coleshill.
- 8. For the above reasons, the proposed development would not cause unacceptable harm to the vitality of the town of Coleshill and as such would

accord with policy NW20 of the Core Strategy and paragraph 23 of the Framework.

Other matters

9. The Council raises a concern about allowing a further hot food takeaway outlet in respect of the health implications relating to obesity levels within the local community. However, I have received insufficient evidence that the addition of this single outlet would be a material exacerbating factor, particularly as there is a wide choice of food retail outlets in the area available to local residents. Furthermore, I have received no substantive evidence to indicate that the majority of the shops are being converted to takeaways.
10. I have had regard to a concern raised about customer parking problems relating to the parade being exacerbated by the proposed development. However, there is no substantive evidence to indicate that the proposed use would generate materially more car born visitors than the existing use or that which would fall within permitted development for a change of use to an A1 shop use. There is also no substantive evidence that the proposal would generate a material increase in traffic on the surrounding roads so as to amount to a highway safety or congestion risk.
11. There are residential flats above the ground floor units in the parade. However, any cooking fumes would be channelled up beyond the eaves level by a rear flue. Furthermore, any noise generated would be unlikely to be materially greater than that generated by the existing nearby takeaway and public house opposite. The properties also face onto a main road with its inevitable existing traffic noise. Any potential late night noise and disturbance could be controlled through a condition to restrict the opening hours. Similarly, the operation of a delivery service relating to the takeaway use, due to the potential disturbance to residents living above and to the rear of the site resulting from comings and goings to the rear of the premises, could be prevented by condition.
12. There is also no substantive basis for considering that the proposal would generate rubbish in the area that could not be controlled through normal refuse collection and the existing provision of public litter bins.

Conditions

13. The Council has suggested eight conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Government's Planning Practice Guidance and amended some of the wording, amalgamated two and omitted two. The standard time condition is required and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would also be required.
14. In the interests of preventing an unacceptable reduction in the living conditions of nearby residential occupiers in respect of noise and disturbance, it would be necessary to control the hours of opening of the business to those specified, preventing late night and early morning opening and none at all on Sundays or bank holidays; and to prevent any delivery service associated with the takeaway use.

15. It would also be necessary to secure details of the proposed kitchen extract equipment in order to ensure that what is installed prevents unacceptable odours and noise emanating from it, again in the interests of the living conditions of those nearby residents. In the interests of preventing blockages to the drainage system in the area, it would also be necessary to ensure that the drainage serving the kitchen is fitted with a grease separator or other means of grease removal.
16. The Council suggests a condition to limit the use specifically to that applied for and as shown on the submitted floor plan layout, and not the A5 use alone, and also to ensure that should the A1 element of the use cease then the mixed use shall be discontinued. I have found in respect of the main issue that there would not be a dominance of café or hot food takeaway uses in the parade and the proposal would be unlikely to materially affect the existing businesses in the town centre. Furthermore, in terms of preventing unacceptable levels of cooking odour, that condition relating to securing an acceptable kitchen extraction system would provide control in this respect. Additionally, I have no substantive basis upon which to consider that any one of those uses alone would create a materially different situation than the mixed use in terms of noise generation or the capacity to deal with any litter generation. I therefore consider such a condition to be unnecessary and unreasonable.
17. Another suggested condition relates to ensuring the unit is laid out in general accordance with the submitted plan, in the interests of highway safety, albeit that it is not clear from the submissions as to the specific concern in this respect. Nevertheless, I note that the Council's Highways officer highlights that the amount of public floor area would equate to a parking space requirement the same as the current A2 use. There would be the potential to alter or expand the area of public floor area within the unit. However, it is unlikely, given the fairly modest size of the unit, that it would be to such an extent as to cause a material increase in customer activity, including over and above that which could result from a permitted and therefore unrestricted A1 use. I therefore consider this suggested condition also to be unnecessary and unreasonable.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR



Costs Decision

Site visit made on 14 September 2017

by **Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th October 2017

Costs application in relation to Appeal Ref: APP/R3705/W/17/3175142 6 Coventry Road, Coleshill B46 3BE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Stickland of Tadjcloe Ltd for a full award of costs against North Warwickshire Borough Council.
 - The appeal was against the refusal of planning permission for change of use from office (Use Class A2) to delicatessen, café and hot food takeaway (Use Class A1/A3/A5).
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

Reasons

3. The PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applicant firstly claims that the Council has behaved unreasonably by not accepting the professional advice of its officers that the proposal would be acceptable and not considered to be disproportionate to the existing uses in the parade or in Coleshill. It is claimed the Planning Committee delayed the development by deferring the decision for a site visit and then refused planning permission for a spurious and unsubstantiated reason and failed to produce evidence to substantiate the reason for refusal on appeal. It is further claimed that the Committee paid undue weight to local objections that cannot be substantiated by sound planning evidence.
5. Additionally, it is claimed that the Council introduced new evidence at the appeal stage related to health issues associated with the proposed use which were not mentioned in the reason for refusal.
6. The Council refers to Policy NW20 of the North Warwickshire Local Plan Core Strategy being up to date and relevant in this case and that Members were aware of the policy emphasis on avoiding disproportionate concentration of uses. It also highlights that the Coleshill Neighbourhood Plan has recently been

adopted since the application was refused planning permission and that policy TCLENP1 carries full weight, placing policy NW20 into a local context.

7. The Council refers to Coleshill having had a significant increase in the number of takeaways and café/restaurants, that there would be a loss of an A2 use where such uses are important for market towns, and that the daytime functioning of Coleshill would be prejudiced. Furthermore, it is stated that Members visited the site prior to making the determination, observing the number of eating places. It is also highlighted that the policy is not limited to a percentage or numerical factor and that Members made an assessment of the accumulation of similar uses when they visited the site.
8. In respect of the health issue, the Council refers to the foreword of policy NW20 referring to poor health and obesity being an issue throughout the borough with some local high concentrations and that where there is a local problem local polices may restrict the number of takeaways in order to maintain the variety of uses and assist in achieving a healthy resident population.
9. In considering the first claim of the applicant, the reason for refusal makes reference to policy NW20. However, it is vague in referring to the number of food outlets without clarifying if this relates to just A3 and A5 uses or A1 food outlets also. Furthermore, in its appeal statement, the Council does not fully clarify this. It refers to a saturation of A3 and A5 uses in the context of the town centre where A1 uses are in decline. However, it also refers to a saturation point relating to food outlets within the parade concerned with reference to the food options such as bakery shop, a takeaway and butchers which include A1 retail uses. That in turn introduces confusion as to the Council's position, especially as it highlights the importance of retail, and the existing premises could also change to an A1 food retail use without planning permission.
10. Furthermore, and importantly, although Members visited the site, there is no substantive evidence or analysis provided as to the basis for finding there to be a saturation of food outlets, whether A3 and A5 only or including those falling within A1 uses, and also whether considering the parade on its own or in combination with the town centre. No clear supporting analysis has been provided either in respect of the Council's appeal submissions concerning this matter. Furthermore, if taking account of A1 food outlets, they nevertheless remain as retail uses which the Council highlights as being important to the vitality of the town. In respect of A3 and A5 uses, there is only one other in the parade plus an element of hot food takeaway associated with the bakers.
11. Having regard to the health issue, the Council made no reference to this in respect of the reason for refusal or to any policy specifically restricting takeaways in this location, or even the town centre, other than a general need to prevent a disproportionate concentration of uses. Indeed officers did not refer to this being of concern in its officer report given the choice available to the consumer within the settlement. I have not received any substantive evidence that the adoption of the Neighbourhood Plan has changed that context. This issue has been introduced contrary to the officer's own original findings, without the Council having recorded this as a reason for the refusal, and without any clear substantive evidence in respect of the effect of this particular single unit.

12. In conclusion, for the above reasons, I find that the Council behaved unreasonably in determining the application and also in introducing an additional concern relating to health at the appeal stage, and that, therefore, the applicant's costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, a full award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Warwickshire Borough Council shall pay to Mr A Stickland of Tadjcloe Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. Mr A Stickland of Tadjcloe Ltd is now invited to submit to North Warwickshire Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dawe

INSPECTOR

