

Down but not out!

In this article John Pugh-Smith explains how a change in the five-year housing land supply position within South Somerset led to the dismissal of three major housing appeals and the how the Inspectors' decisions are, perhaps, of wider consideration and reflection

For the beleaguered local planning authority with less than a proven deliverable and viable five-years' housing land supply life has been tough since the provisions of paras. 47 and 49 of the NPPF truly began to bite from March 2013. However, by way of example, three recent appeal decisions concerning significant housing sites within two of South Somerset's market towns, Crewkerne and Chard, can bring some hope and perspective. They are also a reminder to the housebuilding industry of the importance of ensuring that a proposed scheme should be demonstrably of sufficient merit and with a deliverable and bespoke travel plan to warrant the grant of outline consent, and, that context and timing can be keys to success or failure.

The policy context for South Somerset in early 2014 had been an emerging Local Plan, the examination of which had been suspended by Inspector David Hogger for further work to be undertaken on the housing delivery of a number of major contributing allocations, particularly the proposed urban extensions around the principal settlement, Yeovil. However, the suspension and requirement for further work did not engage the specific emerging policies or their context for the Crewkerne and Chard appeal schemes.

At the initial inquiry just after Easter 2014 in respect of Land at Goldwell Farm, Yeovil Road Crewkerne, a residential proposal by Gleeson Developments Ltd for 110 dwellings, it was common ground that the Council did not have a deliverable 5-years' supply. Accordingly, the inquiry, conducted by Inspector Anthony Lyman, focussed upon the landscape impacts of the scheme, which required considerable land remodelling, and, whether the development would be truly accessible, given the location of the appeal site effectively on top of a hill away from the town centre and local schools yet across the road from a large committed but unbuilt housing site. The three-day inquiry closed on 25th April with a costs application by Gleeson on the accessibility reason which had been defended by a local Councillor due to the County Highway Authority having accepted the adequacy of the proposed Travel Plan.

Within a month the Council was, again, at inquiry fighting one of two large housing schemes at Chard. The first that reached its initial hearing on 20th May before Inspector Paul Griffiths, was for a mixed development comprising of 450 homes, a new football pitch (promoted to relocate Chard Town FC) and related sports and neighbourhood facilities in a location called Mount Hindrance. Again, it was accepted as common ground that the Council could not yet demonstrate a five-year housing land supply; and

the Inquiry focussed upon the impacts of the scheme by MacTaggart & Mickel Homes Ltd upon the Regeneration Strategy for Chard being promoted through the Emerging Local Plan and the accessibility and traffic impacts of the proposals. The inquiry also closed after three days. However, within a few weeks, as part of the preparations for the resumption of the Local Plan hearings before Inspector David Hogger, the Council's Forward Planners took a report to Members to explain that a 5-year supply could, just, now be demonstrated. Accordingly, after representations to PINS, both appeal inquiries were re-opened.

The first, the Mount Hindrance scheme, was re-opened in conjunction with an appeal scheme for 110 dwellings on adjoining land being promoted by David Wilson Homes Ltd in late August. Ironically, inquiry for the smaller Crimchard scheme had been postponed from February 2014 as a result of an EIA point taken by the Mount Hindrance promoters. Inspector Griffiths proceeded to hear the planning merits of the Crimchard scheme over two days. Matters resumed the following week with, in effect, a joint round table hearing on housing and supply issues before both inquiries were closed on 4th September. Later that month, Inspector Lyman re-opened the Goldwell Farm inquiry for one day to hear arguments, presented in a similar less formal manner, on housing land-supply issues. However, Gleeson did not pursue a separate costs application for the inquiry re-opening.

On 4th November 2014 Inspector Lyman published his decision letter (APP/R3325/A/13/2210545). He accepted that the Council had a deliverable five-years housing supply and dismissed the appeals on the grounds of landscape impact and lack of accessibility due to the topography, ease of walking into the centre (within 1.25 and 2.5kms of most of the town's main facilities) and limited bus service. On the latter point, the Inspector first noted the view of the Council's transport consultant (who had not attended the inquiry) that the "*measures (in the travel plan) are about as good as can be reasonably achieved*" had not been a resounding endorsement or that the measures would actually be achieved. He then went on to remark that he was "*not convinced that future residents of the new development would have a real choice about how they would travel as advocated by the Framework. The travel plan has a built-in monitoring and review mechanism to get objectives 'back on track' if the anticipated modal shift is not being achieved. However, given the specific circumstances relating to Crewkerne and the appeal site, it is not clear on the evidence before me, how the travel plan could be altered or what new incentives could be introduced to make the required percentage change more achievable. I conclude that, in reality, future residents of this site would be likely to be reliant on the use of private motor cars and that therefore the development would fail to satisfy the sustainable transport objectives of the Framework and Policy ST5 of the Local Plan*". He also dismissed Gleeson's April costs application.

Unsurprisingly, the Council drew the Goldwell Farm decision letter to the attention of Inspector Griffiths who, after accepting a further round of representations, indicated that he would hold the publication of his appeal decisions until after the outcome of his colleague's deliberations in respect of the Emerging Local Plan were known. There was also a 'hiatus' as to whether the Chard appeals were going to be called-in and determined by the Secretary of State. Eventually, the decision was made that the appeals would remain within the Inspector's jurisdiction. On 8th January 2015 the Local Plan Inspector's Report was published, and, after an opportunity for further comments from the appeal parties, the Local Plan was formally adopted on 5th March. Further comments were sought concerning the s.106 contributions following the ending of the transitional period for their pooling under CIL Regulation 123(3)(b) on 6th April. The appeal decision and costs letters were finally published on 3rd June 2015 (APP/R3325/A/13/2209680 & APP/R3325/A/13/2203867).

In dismissing both Chard appeals, Inspector Griffiths determined that, on the evidence presented to him, and despite the conclusions of Inspector Lyman and Inspector Hogger, he could not conclude that the Council had demonstrated a five-year supply of deliverable housing sites. He also concluded that both sites were sufficiently accessible even though the travel distances were, in most cases, well beyond the 800 metres seen as acceptable to walk in Manual for Streets, and, on a gradient. Inspector Griffiths remarked: *"However, the analysis of accessibility cannot be so reliant on suggested distances because it is largely a behavioural matter. Some people will be motivated to walk much further than 800 metres to school, or work, or the shops. Others will prefer to use the car for even shorter distances. The essential question, it seems to me, is whether the proposals would offer residents a reasonable opportunity to use more environmentally-friendly modes of transport than the private car ... I walked the likely routes ... and I did not find them particularly onerous ... It must [also] be borne in mind that a significant amount of housing development is planned for Chard, some of which is relatively remote from the town centre. Notwithstanding associated infrastructure improvements that might come about, that is inevitably going to lead to increased car use. In that context, I see nothing inherently difficult about the appeal sites in terms of accessibility by means of travel other than the private car, and both schemes include measures that would go some way to reduce dependence on that mode".* However, the Inspector found, as his primary ground for dismissal, that both schemes would prejudice the Local Plan strategy for Chard: *"Viewed separately, or together, the provision of this many dwellings [335 on one site and 110 on the other], on sites seemingly unencumbered by the restraints of others envisaged by LP Policy PMT2, would be very likely, in my view, to blow the LP strategy off-course. I cannot see why, given the capacity of the market in Chard [noted by the Inspector to be a 'soft' one], developers would seek to provide housing on more difficult regeneration sites, when relatively significant numbers of dwellings might have already*

been delivered, or be in the process of coming forward simultaneously, on edge of settlement sites, much less constrained, and therefore more profitable, to develop”.

However, success comes at a price, and, as some sought of ‘rough justice’ Inspector Griffiths allowed MacTaggart & Mickel’s costs applications upon the basis that the new material could have been produced sooner and, in consequence, for the additional time spent dealing with housing land supply issues. Such an approach on so crucial an issue, in the view of this commentator, was unfair given the prevailing circumstances and outcome, and, the timing of publication of the judgment on 20th May 2015 in ***Wiltshire Council v SSCLG*** [2015] EWHC 1261 (Admin). There, after the close of an appeal inquiry but before the decision letter had been published the LPA sent its Core Strategy Inspector’s report to PINS which questioned the required housing figure and recommending lower one. However, the Inspector’s report was not received by the appeal Inspector, in consequence he issued his decision letter on the basis of a higher requirement. Mrs Justice Patterson found that the Inspector’s report was an important material consideration and that there was a real possibility that the resolution of the housing numbers might have affected the outcome. Accordingly, she quashed the appeal decision letter. More telling, she further commented that there had to be some administrative mechanism for notifying an inspector and enabling a decision letter to be recalled, supplemented or amended; that the current PINS administrative procedures in place were, in the circumstances, not fit for purpose, and, that until a decision letter had been issued, the responsibility for it remained with the inspector. Given the foregoing, Inspector Griffith’s costs determinations seem all the more ‘rough’, at least to this commentator. It was also inconsistent; for the same Inspector, albeit in a written representations decision within a few days, on 8th June 2015 accepted the five-year supply position without demur. Whilst dismissing a scheme at Tintinhull (APP/R3325/W/14/3002063) for a single dwelling due to its impact on the settings of two Grade II listed buildings, and the character and appearance of the area, Inspector Griffiths remarked: *“there is no suggestion that the Council cannot currently demonstrate a five-year supply of deliverable housing sites”.*

Nonetheless, as is so often said, context and timing, are everything, and, the facts of the particular appeal!

John Pugh-Smith acted on behalf of South Somerset District Council in respect of the Crewkerne appeal (assisted by Victoria Hutton in respect of the April inquiry) and both Chard appeals. He regularly acts for national housebuilders as well as for local planning authorities and parish councils on residential development schemes within England and Wales.

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