

# Report

on an investigation into  
complaint no 07B13868 against  
Bromsgrove District Council

22 June 2009



# **Investigation into complaint no 07B13868 against Bromsgrove District Council**

<b>Table of Contents</b>	<b>Page</b>
<b>Report summary</b>	<b>1</b>
<b>Complaint</b>	<b>3</b>
<b>Legal and administrative background</b>	<b>3</b>
<b>Investigation</b>	<b>4</b>
<b>Conclusions</b>	<b>9</b>

## **Key to names used**

Mr Miller	the complainant
Councillors A to H	Members of the Planning Committee
Councillor I	Ward Member
Fendale	a parish within the authority's responsibility
Pinton	a hamlet within the parish of Fendale

## **Report summary**

### **Subject**

A local resident, on behalf of a Residents' Committee, complained that the Council did not consider properly an application for 20 affordable housing development units in the Green Belt, adjacent to a hamlet of around 60 dwellings.

Local residents submitted a petition opposing the development but the Councillor did not pass this to the Council.

To demonstrate local need for affordable housing, the applicant submitted a survey of housing need in the wider parish, some data about average house prices and incomes in the area, and information from the Council's housing register.

The Planning Manager recommended that the Council refuse the application because the development did not meet local or national planning policy. In particular, the officer considered that:

- The development was not small scale, suitable for its location or sustainable and that the applicant had not demonstrated a local housing need.
- The development is inappropriate in the Green Belt and there were no special circumstances that outweigh the harm caused to it.
- More information was needed about harm to potential protected wildlife habitats and the loss of protected trees.

Members approved the development against the Officer's recommendation.

The Ombudsman found that Members:

- Failed to distinguish between housing need and housing demand.
- Took an irrelevant factor into account in assessing harm to the Green Belt.
- Failed to give adequate consideration to officer advice about protected tree cover, and to Natural England's advice about possible habitats for protected species on the site.
- Failed to give adequate reasons for approving the application.

### **Finding**

Maladministration causing injustice.

### **Recommended remedy**

To remedy the injustice I have recommended that the Council should pay the complainant £1000.



## Complaint

1. Mr Miller has complained (on behalf of a Residents' Committee) about how Members approved an affordable housing scheme in the Green Belt. In particular Mr Miller has complained that:
  - a) Councillor C made a misleading statement about housing need in Pinton which influenced the Planning Committee's decision, and
  - b) Councillor I failed to pass on to the Council a petition opposing the development given to him by the Residents' Committee.
2. I have not used the complainant's real name in this report.<sup>1</sup>
3. An officer of the Commission has examined the Council's files and interviewed officers and elected Members who have been involved in the decision-making process.

## Legal and administrative background

4. Government guidance allows local authorities to approve development of 'exception sites' in Green Belts for affordable housing.<sup>2</sup> The guidance is reflected in the District Local Plan and this sets out the criteria by which a development for affordable housing may be deemed a rural exception site.<sup>3</sup>
  - a) The site should be within or adjoin a settlement, be "small scale and suitable for the location".
  - b) A local needs survey should show "conclusively that there is a genuine local need for the type, mix and scale of the proposed dwellings".
  - c) The site should conform with environmental and control policies in local and county plans.
  - d) The benefits of the affordable housing scheme should be safeguarded for future occupiers.
  - e) There must be no cross-subsidy by open market development.
5. In addition, the Worcestershire County Structure Plan seeks to control local housing supply but allows the Council to approve development for 100% affordable housing where this will meet local need.<sup>4</sup>

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1 The Local Government Act 1974, section 30(3)

2 Planning Policy Statement 3: Housing

3 Policy S16 Bromsgrove District Local Plan: Affordable Housing in the Green Belt

4 Supplementary Guidance Note 10: Managing Housing Supply in the District of Bromsgrove

6. The Council should take account of government guidance for planning authorities when determining applications for development in the Green Belt. This says that (except in limited circumstances), the construction of new buildings in the Green Belt is inappropriate and is by definition harmful to the Green Belt. The guidance says that “Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm is clearly outweighed by other considerations”.<sup>5</sup>
7. The Council has a duty to give clear reasons for its decision to approve or refuse a planning application.<sup>6</sup> Where the officer recommendation is for refusal and Members resolve to approve the application, Members should be able to give clear explanation of the reasons for the decision.

## Investigation

### What happened

8. The Council tasked Bromsgrove District Housing Trust with locating and developing land for affordable housing. Following consultation, the Trust identified a list of potential sites and ranked these in order of preference. Negotiations with owners of the three most preferred sites were unsuccessful.
9. A plot of land adjacent to Pinton was the fourth preference. Pinton is a hamlet within the parish of Fendale and comprises around 60 dwellings. The application site is currently overgrown wooded scrubland bounded by houses on two sides and a brook and hedgerow on the remaining boundary. The application is for 20 affordable dwellings. The entire site is designated Green Belt (including an area that previously contained garaging).
10. In support of the application, the Trust submitted information from the Fendale Parish Housing Survey, which indicated a high demand for affordable housing in the Parish although it did not give information specifically relating to Pinton. The Survey was conducted by a Rural Housing Enabler. It also submitted information from the Council’s housing register showing 22 families in Pinton on the housing waiting list. The Council automatically accepts onto the housing register families currently living on the static caravan site at Pinton.
11. Following a public meeting about the proposed development, the Residents’ Committee submitted a petition with around 200 signatories to the Parish Clerk. The petition is headed ‘[Pinton] against proposed housing development in our village’. The Clerk forwarded the petition to the Council’s main office marked for the attention of Councillor I, the Ward Member, who was not a member of the

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5 Planning Policy Guidance 2: Green Belts

6 The Town and Country Planning (General Development Procedure) Order 1995 paragraph 22 (as amended)

Planning Committee. This was not passed to the planning officers and so it was not referenced on the relevant Planning Committee report.

12. The Planning Committee Members visited the site prior to its meeting. Members were unable to access the site by foot because it is overgrown and so viewed the site from their parked position on the adjoining road.
13. The Planning Manager dealing with the application recommended that the application be refused. A summary of his reasons is:
  - a) The development does not meet all criteria for the rural exception site policy. The site adjoins the hamlet boundary but is a significant addition to the village and so cannot be described as small scale. It is not sustainable or suitable for that location because it will encourage private car use. In the Strategic Planning Manager's view, a genuine local need for affordable housing had not been demonstrated. The local survey indicates a desire for housing within Fendale but not a need within Pinton. The housing register information is specific to Pinton but again, it indicates a demand for rehousing but not necessarily housing need.
  - b) The proposal is inappropriate development in the Green Belt. It will cause harm to the openness of the Green Belt and encroach on it.
  - c) Local housing need in itself does not constitute very special circumstances that clearly outweigh harm to the Green Belt as this could be applied widely to sites adjacent to urban areas.
  - d) As no specific local housing need has been proven, the development cannot be considered an exception to policies seeking to control housing supply, despite the fact that the proposal is for a scheme of 100% affordable housing.
  - e) He had concerns about harm to potential protected wildlife habitats and the loss of protected trees. He recommended that further surveys were completed.
14. The Strategic Housing Manager was consulted on the application. He disagreed with the planners' view of the evidence of local housing need. He said that the needs survey indicates a significant level of local need and this is supported by the Council's housing register which indicates a demand for housing in Fendale.
15. The Committee report makes clear the views of Natural England that without additional surveys to establish the presence of protected species an informed planning decision cannot be made. The report also sets out the Tree Officer's view that the development posed a direct threat to woodland and the habitat for

fauna. The Tree Officer concluded that although there was potential for some housing, the present scheme is too extensive.

16. The Council had received several objections to the application from the public and a summary of these are included in the Committee report.

### **Reasons given by Members**

17. In response to my enquiries Councillor I said that he recalls having received the petition with other post sent via the Council's main office but failed to pass this on to the Council as it was misplaced among other papers at his office. Councillor I later found the petition and forwarded it to the planning department but only after the Committee had taken its decision. He said that he had not intended to withhold the petition deliberately.
18. The application was considered at a meeting of the Planning Committee. The Committee report included objections by the Residents' Committee and the comments of the Strategic Housing Manager. Much of the debate was around the need for affordable housing locally. During the meeting, Councillor C stated "...we need 22 families rehoused in [Pinton]."
19. The Committee voted to approve the application against officer recommendation by six votes to two with one abstention. The reason for the Committee's decision was;  
"The need and requirement for affordable housing in [Pinton] constituted very special circumstances, which outweighed the harm that would be caused to the openness of the Green Belt and other harm."
20. At interview, Members gave their reasons for considering that the application meets the criteria of the rural exception site policy. In summary, Members considered that the scale of the development was acceptable for the location and the local transport links meant that it was sustainable. In terms of local housing need, Members referred to a well-known need for affordable housing (nationally and at district level) and that they had taken account of the Senior Strategic Housing Manager's comments in support of the application and the local needs survey for Fendale parish of which Pinton is part.
21. Members also assessed the harm to the Green Belt. They considered that the land was of poor quality, and neglected, and could not have any other use. Members considered that the development's encroachment on the Green Belt was minimal and the site's boundaries of the brook and existing housing would discourage further development. They were satisfied that local housing need had been sufficiently demonstrated and that this constituted very special circumstances that outweighed harm to the Green Belt.

22. A summary of the individual comments on those Members who voted in favour of the application appears below.

Councillor A	Councillor A used her experience of an affordable housing scheme in her local area. She considered the scale acceptable and the location to be 'just right' as new dwellings could be absorbed by the existing community. The survey demonstrated need in the parish and the housing register gave information specific to the hamlet. This constituted very special circumstances to outweigh harm. She thought that wildlife would go elsewhere but no further advice was needed from the officers or applicant.
Councillor B	Councillor B knows the area and considered that the plot of land had not been maintained. The development would be sustainable as it is close to a main road with bus stop and transport links, a brand new school and library is being built. The survey demonstrates local need in the parish of which the hamlet is a part and this is sufficiently specific to the area to be a local housing need. These are the very special circumstances needed to outweigh the harm to the Green Belt. He disagreed with the Strategic Planning Manager's interpretation of this and could find no reason to doubt the survey (either in its robustness of methods or soundness of conclusion). He felt that the housing register shows a small part of overall need for housing and the Council should consider a wider area to demonstrate need. Councillor B was satisfied that the potential threat to habitat and trees could be adequately controlled by planning condition and a Tree Preservation Order.
Councillor C	Councillor C knows the area well. She took into account that the site only partly comprises Green Belt land and that the existing bus service made the development sustainable and suitable for the location. She considered that the issue of local housing need was the Housing Manager's remit and favoured his interpretation of the survey and supporting information, which she felt concurs with local knowledge. Councillor C believed she was quoting from the housing need survey for Fendale in stating that there were 22 families in need of rehousing in Pinton. She sought the opinion of Worcestershire Wildlife Society about the threat to wildlife and was satisfied that the need for housing outweighed this. Councillor C considered that the Council needed a local policy to allow affordable housing in the Green Belt as the issue is becoming increasingly difficult for Members.
Councillor D	Councillor D reported a tremendous pressure on the Council to provide affordable housing in the Green Belt. He considered that it was better for this land to be utilized than to be left derelict and that it was the only site available in a semi-rural area that is not agricultural. He did not feel that the development would cause

	<p>undue harm to residents. Councillor D took into account prior knowledge that there was a need for affordable housing in the district and had no doubt that the information available demonstrated a need within the parish. He felt that the need for housing in the parish was sufficient to constitute very special circumstances that outweigh the limited harm to the Green Belt. He does not recall taking into account habitat or wildlife issues.</p>
Councillor E	<p>Councillor E considered that the existing housing adjacent to the site already constitutes development in the Green Belt and so the impact of additional housing here would not be significant. The scale was not excessive and the development is sustainable due to the transport links. In his view, the additional housing would redress an imbalance caused by the loss of council houses in the adjacent area that are now privately owned. Councillor E was satisfied that the survey demonstrated a need within the district and said that Trust would not make an application unless there was a housing need. This was very special circumstances to outweigh harm. He also took into account that other potential sites had not been successful and this was the agreed next preference.</p>
Councillor F	<p>Councillor F described the site as ideal as it has the natural boundaries of the road, housing, and brook and so it was unlikely to intrude any further on the Green Belt. He also took into account that the site could not be used for anything else. Councillor F considered that 20 houses is acceptable and in keeping with the area. He was satisfied that a local housing need had been demonstrated and that the Council had set up the Trust and he would only expect it to submit an application where need was established. The Councillor considered that the housing needs constituted very special circumstances to outweigh harm. He felt that any wildlife habitat would not be large and so the protection of this would not be a significant consideration.</p>
Councillor G	<p>Councillor G voted against granting permission primarily because he considered that the applicant had not proved a local need for affordable housing and that the site forms a vital part of the Green Belt. The Councillor also needed some more information about any threat to protected trees and potential wildlife habitat.</p>

Councillor H	Councillor H abstained. He was satisfied that there is a local need for affordable housing but he was not familiar with the site and could not assess whether it was suitable for this development because it is overgrown and Members viewed it from the minibus.
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## Conclusions

### The residents' petition

23. The petition indicates the strength of feeling locally against the development. It does not refer to a material planning consideration that would allow the Council to refuse the application. Councillor I's failure to forward the petition to the Council before it took the decision to approve the application however, is maladministration likely to cause outrage to the signatories.

### That the development meets the criteria of the exception site policy

24. The rural exception site policy says that the Council should have regard to a number of criteria, including that the development be small scale and suitable for the location. On the one hand, an increase of 20 dwellings in a hamlet of 60 seems on the face of it to be hardly 'small scale'. Yet, within a district-wide housing development programme, 20 houses might well be small scale. In the final analysis, it seems to me that scale and suitability are matters for Members to interpret. In my view it was not maladministration for Members to decide that this was a development which accorded with, or could be allowed under, its rural exception policy.
25. The same policy requires the applicant to demonstrate that there is a genuine local housing need. The applicant relied on information about the hamlet from the housing register, the parish needs survey, and information about average house prices and how these relate to average income. The Strategic Planning Manager and the Strategic Housing Manager had opposing views about whether this information demonstrated a local housing need.
26. Councillor C has said that she believed that she was referring to the needs survey when she said that 22 families in Pinton needed rehousing. In fact, this information relates to households in Pinton on the housing register. The housing register can only indicate **demand** for housing in the area but Councillor C and several other Members have misinterpreted this as demonstrating a **need** for housing. The failure to distinguish between housing need and housing demand was maladministration.

27. At interview, Councillor E and Councillor F both assumed that there was a local need because the Housing Trust had submitted the application. Several other Members relied on their own knowledge of the need for affordable housing at a district or national level. The parish needs survey was three years old by the time the Council decided to approve the application and so was not as up to date as it might reasonably have been. The applicant's information about house prices and income was more recent but the Council could reasonably have sought more and more recent information to demonstrate housing need. I consider that it would have been good practice to do so but I do not conclude that any shortcomings here were so serious as to amount to maladministration.
28. In the absence of clear guidance on what may constitute 'local' in terms of housing need, I consider that the Council could reasonably conclude that housing need within the wider parish could amount to local need when considering development in the hamlet.

### **Assessment of harm to the Green Belt**

29. The Council must be satisfied that there are very special circumstances that outweigh the harm to the Green Belt and other harm caused by the development. Where the existing use of land is harmful, it does not seem unreasonable for Members to weigh this in the balance when assessing any harm that a proposal would cause to the Green Belt.
30. But in this case, Councillors D and F concluded that because the land is undeveloped and could not be put to use other than for housing, then its development will cause minimal harm to the Green Belt. But undeveloped land is an expected feature of the Green Belt and is not in itself harmful. As such, the fact that the land is undeveloped cannot reasonably be taken into consideration when assessing the harm to the Green Belt of a proposal to develop the land in question. It seems to me that some Members took into account an irrelevant factor and that was maladministration.

### **Wildlife habitat**

31. The applicant had established that the site is a potential habitat for several species and the Committee report recommends additional surveys to establish whether these are in fact present.
32. Councillor B said that the threat to a potential wildlife habitat could be controlled adequately by planning conditions but the Committee report makes it clear that this approach is not acceptable. Councillor F concluded that any protected wildlife populations would not be large and Councillor C said that the need of any wildlife for its habitat would be outweighed by the need for affordable housing. But without the additional surveys, Members did not have sufficient information to

reach these views. Councillor D did not recall having taken into account protected species issues. I consider that Members failed to consider adequately the impact of the development on protected species including Natural England's advice on the matter. Nor did it have sufficient regard for the relevant local and national planning policy. That was maladministration.

### **Tree cover preservation**

33. The Tree Officer has made clear that although tree cover of woodland on the site is protected by a Tree Preservation Order, the development is a threat to the integrity of the woodland because it is too extensive. Councillors B and E concluded that the threat to the protected tree cover could be managed by the Tree Preservation Order. I consider that Members failed to consider adequately the Tree Officer's advice. That was further maladministration by the Council.

### **Reasons for approval**

34. The Council must give reasons for approving a planning application. Spelling out clearly the reasons for approval is especially necessary where Members are approving an application against officer advice. In particular, Members must say why they reject officer advice and how they feel that the development satisfies their local planning policies. It seems to me that Members failed to give adequate reasons for their decision here and that was further maladministration by the Council.

### **Injustice**

35. On balance, I conclude that this was development that it was open to Members to approve. But I do not believe that they gave the application the careful consideration that was due to it, especially when officer advice was clear that permission should have been refused. Some Members misdirected themselves, and the Committee's reasons for approval did not adequately address officer concerns. Accordingly Mr Miller is left with a degree of understandable outrage that the Council should have handled matters better, and he has been put to some time and trouble in pursuing matters with the Council and with me.

## **Finding**

36. For the reasons set out in paragraphs 23 to 34 above, I find that there has been maladministration by the Council, leading to the injustice I have described in paragraph 35.
37. To remedy the injustice the Council should pay Mr Miller £1000.

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**22 June 2009**