
Appeal Decision

Inquiry held on 5-8 November 2013

Site visit made on 11 November 2013

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 23 January 2014

Appeal Ref: APP/A0665/A/13/2200583

Land at Clifton Drive, Sealand Road, Chester, CH1 4LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Bark Street Investments Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 12/04229/OUT, dated 14 September 2012, was refused by notice dated 27 June 2013.
 - The proposed development is described as residential development (up to 142 dwellings), including means of access via Clifton Drive, siting and layout.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The planning application the subject of this appeal was made in outline with all detailed matters except access, layout and scale reserved for future consideration.

Application for costs

3. At the Inquiry an application for costs was made by Bark Street Investments Ltd against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Main Issue

4. The Council's second reason for refusal related to the initial concern of Welsh Water that the local sewerage system could not meet the needs of the proposed development. However, the Statement of Common Ground¹ confirms the view of the Council and appellant that this matter could be satisfactorily addressed through the imposition of a suitable condition. This is now also the view of Welsh Water, who has withdrawn its objection to the scheme on that basis. I have no compelling reason to take a different view. With that in mind, I consider that the main issue in this case is whether the proposal would amount to a sustainable form of development, with particular reference to the availability of playing fields.

¹ ID4.

Reasons

5. The appeal site, which fronts onto Clifton Drive a short distance from its junction with Sealand Road, whilst owned by the appellant, is leased to the University of Chester and is used for sports. The site contains 3 adult football pitches; a junior/training pitch; an adult rugby pitch; limited changing room accommodation; and, a car parking area. The proposal involves the redevelopment of the site, primarily for housing.
6. The Development Plan comprises the *Chester District Local Plan*, adopted in 2006 (LP). There is no dispute that in this case, which involves residential development, the policies for the control of housing supply are absent from the Development Plan as they have not been saved. The *National Planning Policy Framework* (the Framework) confirms that at its heart is a presumption in favour of sustainable development. For decision-taking this means² where the Development Plan is absent, silent or relevant policies are out of date, granting permission 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; or, specific policies in the Framework indicate that development should be restricted.

Availability of playing fields

7. In addition to the sports facilities at the appeal site, the University has a grass adult rugby pitch in Blacon and a grass adult football pitch at its Kingsway Campus. At the latter site the University has indicated that it intends to provide two more adult pitches and possibly a training pitch at some point in the future. Whilst there are other sports facilities at the University's main Campus in the City, they do not include any grass pitches. The proposed residential development of the site would result in the loss of all the existing sports facilities at the appeal site.
8. The Framework confirms that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. It indicates that playing fields should not be built on unless one of a number of criteria is met. Those of particular relevance in this case are whether: the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or, an assessment has been undertaken which has clearly shown the land to be surplus to requirements. LP Policy SR2 reflects the first of these criteria; indicating that development resulting in the loss of existing playing fields will not be permitted unless alternative recreation provision of an equivalent standard is made available in a suitable location.
9. The section 106 unilateral undertaking (UU) submitted in support of the appeal includes a contribution of £165,000 to be paid by the appellant to the Council for the provision of a football pitch and a rugby pitch on Council land within Blacon. The appellant has identified a number of areas of land in the Blacon area, which it indicates are not currently in formal pitch use, but could be used as such. The appellant has described two of those areas as already being in informal pitch use. However, neither the appellant nor the Council has undertaken a fully informed feasibility study concerning the suitability of any of

² Unless material considerations indicate otherwise.

those areas for pitch use, both quantity and quality. Based on my own observations, I am not convinced that either of the Shelley Road sites or Graham Road site would be large enough to satisfactorily accommodate even one adult pitch and the area adjacent to Milton Road any more than one, even if the quality of the land was suitable for such a use. In the absence of a fully informed feasibility study, there is a significant degree of uncertainty as to whether the UU would secure the provision of 2 pitches and, based on what I have read, heard and seen, I consider that it would be unlikely to do so, notwithstanding the statement of the Council at the Inquiry that it would do its best. Therefore, I give this obligation no weight.

10. Planning permission Ref. 11/05832/FUL³ was granted in 2012 for new student accommodation at the University's main campus. The permission has been implemented and it involved the loss of a grass pitch at that site. The associated planning statement⁴ indicated that, although it was not part of the subject application, it was the University's intention to invest in three new grass pitches at the Kingsway Campus and the loss of the pitch at the main campus should be viewed in that context. The report to committee on that planning application recommended that planning permission be granted subject to a legal agreement securing the provision of 'all sports pitches' at the Kingsway Campus⁵. However, in the event, the planning permission granted was not subject to such an agreement. Instead condition no. 14, attached to that planning permission, requires the '*re-provision of the playing fields to be lost as part of the development*'.
11. The appellant takes the view that as only one pitch was lost through the implementation of planning permission Ref. 11/05832/FUL, it is only necessary to provide one new pitch at the Kingsway Campus to discharge condition no. 14. A pitch has been laid out there and the appellant submitted details of it to the Council for the purposes of discharging the condition in October 2012. The Council has yet to formally respond to that submission. At the Inquiry, the Council took the view that the provision of all three pitches would be required to discharge the condition. This is somewhat surprising, as the Council had requested during the evolution of the UU that a clause be included to secure the provision of the other 2 pitches at the Kingsway Campus. This would not be necessary if the provision was already secured by condition no. 14. I am not convinced that condition no. 14 can be relied on to deliver the 2 new pitches, whereas the UU as drafted would.
12. The UU also contains a community use obligation. *SE's Planning for Sport Development Management*⁶ gives encouragement to community use agreements, which it indicates can be an important part of ensuring viable provision as well as satisfying wider objectives of greater community involvement. Furthermore, the Framework indicates that planning decisions should plan positively for the provision and use of shared space and facilities as a means of enhancing the sustainability of communities. The proposed obligation includes: making the University's existing Blacon pitch, to which the community does not presently have access, available for community use on secured terms; formalising the presently unsecured community use of sports facilities at the main campus, including a limited number of additional facilities

³ CD28.

⁴ CD26.

⁵ CD27.

⁶ CDSE18.

that are not available to the community at present; and, making the existing and proposed pitches at the Kingsway Campus, to which the community does not presently have access, available for community use on secured terms.

13. However, the Kingsway Campus is not within a reasonable walking distance of Blacon. That campus is within the 10 minute drive time identified by the *Cheshire West and Chester Open Space Assessment 2011*⁷ as a general accessibility standard for multi-pitch sites. Nonetheless, given that around 35% of households in the relatively deprived Blacon Ward do not have a car, for a significant number of the residents of that ward the amenity value of facilities at the Kingsway Campus would be limited. Furthermore, in terms of the use of University facilities, the UU allows the needs of the University to take priority. With this in mind, whilst I have had regard to the view of the appellant that some capacity exists for community use, I have not been provided with any formal assessment persuading me that, once the University's usage is accounted for, the time available for community use would be significant. Furthermore, I have no reason to doubt, as it has indicated, that the University is committed to expanding community use of its facilities where possible in any event. Under these circumstances, I consider that formalising community use as proposed is likely to offer only limited benefits and I give the provisions of the UU in this respect little weight.
14. The proposed housing site would contain some areas of public open space as well as a neighbourhood area for play. However, it is clear, from the Design and Access Statement, that they would only be likely to take up a small proportion of the site area.
15. I consider overall that the obligations related to the provision of 2 new Kingsway Campus pitches and community use of University facilities would meet the tests set out in paragraph 204 of the Framework. Furthermore, the redevelopment of the appeal site would include the provision of a small amount of public open space and play space. However, the scheme would not provide, in comparison with the loss of 3 adult pitches and one training/junior pitch at the site, equivalent or better provision in terms of quantity and quality in a suitable location. It would conflict with LP Policy SR2.
16. However, that is not the end of the matter. It remains necessary, under the terms of the Framework, to consider whether an assessment has been undertaken which has clearly shown the land to be surplus to requirements. I have had regard to appeal decision Ref. APP/Y3615/A/12/2177936 drawn to my attention by the appellant⁸, which involved development of part of a school playing field. In that case the Inspector considered not only whether the school playing field was surplus to the requirements of the associated school, but also the extent to which the site was required by the local community.
17. The appellant has sought to demonstrate that there is a surplus of pitch provision with reference to the six acre standard and more recent Fields in Trust⁹ national benchmark standards for urban areas, set out in its *Planning and Design for Outdoor Sport and Play*, which are broadly consistent with the standards cited by LP Policy SR1. However, Sport England (SE) has confirmed that those benchmark standards do not take account of local factors such as

⁷ CD21.

⁸ CG2/15.

⁹ Formerly the National Playing Fields Association.

population distribution, age profile, physical characteristics of sites or who uses the sites. This has not been disputed by the appellant. Furthermore, paragraph 73 of the Framework indicates that assessments should identify specific needs and quantitative or qualitative deficits or surpluses of sports facilities in the local area.

18. Of the series of studies undertaken by the Council¹⁰, the more recent are of most relevance in relation to this matter. The *Playing Pitch Strategy Evidence Base, May 2011* (PPSEB), confirms that there are significant surpluses in adult pitches across the Borough and therefore, potential exists for some disposal. However, it indicates that this should be considered carefully as part of the preparation of the Council's Playing Pitch Strategy, in the context of the mini and junior pitch shortfalls and other sports needs¹¹. In February 2013 the Council adopted its *Playing Pitch Strategy, July 2012* (PPS), which was prepared with reference to SE's *Towards a Level Playing Field: A Guide to the production of Playing Pitch Strategies*. I have had regard to the concerns expressed by the Council and SE that there are some gaps in the PPS data and analysis, which they are jointly seeking to address through the preparation of individual settlement specific playing pitch assessments. Nevertheless, the Council adopted the PPS for the purpose, amongst others, of informing decisions on planning applications and, in the absence of the more detailed studies referred to, I agree with the appellant that the PPS can be regarded as the up-to-date adopted strategy relevant to the question in this case of whether the land is surplus to requirements. Furthermore, given the availability of the PPS, I give little weight to the more generalised analysis of supply undertaken by the appellant based on the national/LP benchmarks. To my mind, the circumstances are materially different from those in appeal Ref. APP/U4610/A/12/2176169¹². In that case no reference is made to a detailed playing pitch strategy and the assessment of supply was based on general greenspace standards.
19. Whilst the PPS identifies a local quantity standard for formal community pitches, the document does not make clear how it is to be used. However, the author, in written evidence to the Inquiry¹³, has confirmed that it is intended to be used to indicate the demand for playing fields likely to be associated with new populations to an area. It is not appropriate to use it as a measure of the adequacy of existing facilities. Therefore, I have found it to be of little assistance.
20. The PPS indicates that for Chester and surrounds, taking account of pitch quality, there is a 29.7 football pitch surplus at peak time in relation to adult matches, with a surplus of 15 pitches for junior football¹⁴ and a deficit of -20.5 pitches for mini football. However, it acknowledges that analysis of pitch use at peak time does not present a full picture. For example, only 45% of adult play takes place at peak time, on a Saturday afternoon, the remaining matches taking place at other times of the week. Furthermore, I am aware that some teams also train on grass pitches, although demand is limited¹⁵. Against this background, the PPS identifies that the implication for the City Ward, within

¹⁰ CD21-24.

¹¹ CD23 Page 50 bullet 3.

¹² CG2/16.

¹³ ID27.

¹⁴ If pitches that currently permit access but have no long term guarantee of this are excluded the surplus becomes a deficit of -12.3 pitches at peak time.

¹⁵ CD23 p.48.

which the site was located when the audit was carried out, is that in terms of numbers, supply meets demand. This is also stated in relation to the Blacon Ward, where the site is now located since ward boundaries were re-drawn in 2011¹⁶. In relation to this Ward the report indicates that all venues should be protected, unless replaced with a larger multi pitch venue. Unlike some other areas, no wards within Chester and surrounds are identified by the PPS as having potential opportunities for disposal.

21. The appellant has identified three sites within 10 minutes drive time of the appeal site which it suggests contain existing pitches that are not included in the PPS supply figures. They are Chester Racecourse, West Cheshire College Campus and the University of Chester Kingsway Campus.
22. However, whilst I understand that the Chester Racecourse site is not used at present, the 4 pitches that it could potentially accommodate were included within the PPSEB Appendix A-Pitch Audit supply figures¹⁷. Furthermore, there appears to be some doubt over the availability of part of that site for a period, albeit relatively short, at the start of the football season due to the competing demands of polo events.
23. The *Cheshire West and Chester Open Space Assessment, 2011*¹⁸, indicated that while it had identified the existence of pitches at West Cheshire College Campus, they were not functioning as formal playing fields. No explanation has been provided for why that was the case. Furthermore, the report indicated that although for the purposes of that assessment they were listed as playing pitches, it would be for the PPS to provide a definitive view on playing fields in the Borough. Land at West Cheshire College Campus was not included in the PPSEB Appendix A-Pitch Audit supply figures. The appellant has indicated that it does not have any evidence to show that the Education Authority would be willing to make the land available for the provision of adult pitches.
24. Whilst the 3 pitches, which the University of Chester has indicated are planned for the Kingsway Campus, were not accounted for in the PPSEB Appendix A-Pitch Audit supply figures, only one has so far been provided.
25. Under the circumstances, I consider that the existing facilities at the three sites identified by the appellant would be unlikely to materially alter the findings of the PPS. Furthermore, it appears that the conclusion of the PPS to the effect that supply meets demand within the City Ward may have been based on the assumption that there is a higher supply level of adult pitches than was actually the case. That is, the audit indicated that there were 4 rather than 3 adult football pitches on the appeal site as well as 2, rather than 1, rugby pitches, all in secured community use, which they are not currently. This reinforces my finding and I consider that even if the proposed additional pitches at the Kingsway Campus were taken into account, it is unlikely overall that the supply findings of the PPS would materially improve.
26. Whilst the PPS identifies the importance of formalising community agreements at school sites that currently accommodate junior football, including Blacon

¹⁶ The PPSEB Appendix A-Pitch Audit identifies the appeal site as forming part of the City Ward and at the Inquiry the Council confirmed that it was on this basis that the PPS had been drafted. However, as a result of the introduction of new ward boundaries in April 2011, the appeal site now falls within the Blacon Ward.

¹⁷ CD.SE25A.

¹⁸ CD21.

High School, there is no evidence before me to show that any significant progress has been made in achieving that aim.

27. In relation to Rugby Union, the PPS indicates that, when taking into account the implications of training patterns and school use, pitch usage is equivalent to the optimum level of use; that is, 2 matches per week. Furthermore, there are no dedicated Rugby League pitches and Chester Rugby Football League Club is seeking a new venue.
28. In my view, the appellant has not clearly demonstrated, with reference to the PPS and the other sites referred to above, that the appeal site is surplus to requirements.
29. In recent years use of the appeal site for University sports activity has generally taken place on Wednesday afternoons during the football season, with some other use during vacation periods by conference delegates¹⁹. That use was limited in the academic year 2012/13 and is expected to be at a low level in 2013/14. I have not been provided with a formally adopted Sports Strategy that sets out the University's plans for the appeal site and its other sports facilities. In previous letters on the subject, the University has indicated that the appeal site is surplus to its requirements for sports facilities. Nevertheless, the latest letter before the Inquiry, dated 1 November 2013²⁰, indicates that the cessation of use of the appeal site for University sports would be contingent on the completion of the laying out of all 3 of proposed pitches at the Kingsway Campus. The University has identified that the provision of those facilities would involve considerable financial commitment²¹, which may be met in part, at least, by monies released to it from the proposed residential development of the appeal site. As I have indicated, only one of those pitches has currently been laid out. In the event that the appeal is dismissed, I am not convinced that condition no. 14 attached to planning permission Ref. 11/05832/FUL would provide a means for securing the outstanding balance of 2 new pitches at the Kingsway Campus and, under those circumstances, the timing of future provision of the additional pitches at the Kingsway Campus appears to me to be uncertain. In my judgement, in light of current use, albeit at a relatively low level, the appeal site facilities are not currently surplus to the requirements of the University and in the event of the appeal being dismissed it appears likely on balance of probability²² that they would continue to be used for some time.
30. Turning to the potential needs of the wider community; over a considerable period of time and until recently the University's sports facilities at the appeal site have been used by a number of local amateur sports clubs. However, following the submission of the planning application, the subject of this appeal, it was drawn to the University's attention that its lease for the appeal site indicates that the site is not to be used other than for the purposes of the college. Consequently, in November 2012 the University informed those clubs that the facilities were no longer available for their use. Whilst the University

¹⁹ CG5 appendix 1 p.2.

²⁰ ID8.

²¹ CG5 appendix 1.

²² ID32 - the House of Lords in *Westminster City Council v British Waterways Board* [1985] AC 676. The judgement indicated that 'In a contest between the planning merits of two competing uses, to justify refusal of permission for use B on the sole ground that use A ought to be preserved, it must, in my view, be necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will be effectively put to use A.'

offered those clubs alternative accommodation, the Honourable Secretary of the Chester & District Football League (CDFL) has indicated that the facilities offered were not of as good a standard and consequently two of the teams that were using the appeal site were unable to fulfil their fixtures and they folded²³. There is no evidence before me to show that this was not the position. A number of sports organisations, including CDFL, have indicated that they would like to make use of the appeal site, if it was made available again for community use²⁴.

31. The University has stated, in its letter dated 3 October 2013²⁵, that use of the appeal site by local sports clubs or other community groups will not recommence at the site, irrespective of the outcome of the appeal. The appellant has indicated that this approach is necessary in order for the University to preserve its lease. However, I give that position statement of the University only limited weight, not least as both the University and the appellant have since become signatories to the UU, which in the event of planning permission being granted, commits them to allowing community use of the appeal site until construction work commences. To my mind, this indicates that they do not have an 'in principle objection' to community use. Furthermore, the University has expressed an intention to allow greater community use of its facilities when possible²⁶; the appellant has not indicated that it would be unwilling to allow community use in the event of the appeal being dismissed; and, the lease could be amended at any time with the agreement of the lessee and lessor. In my judgement, it is possible that community use may resume at some time in the future, although I give this little weight, in light of the uncertainties involved.
32. Nonetheless, I consider overall that the playing fields at the appeal site have not been shown to be clearly surplus to requirements.
33. I conclude that the scheme would conflict with LP Policy SR2 and, in the particular circumstances of this case, the relevant criteria of paragraph 74 of the Framework indicate that the land should not be built on. These are views shared by SE, which adds further weight to my finding. The proposal would harm the availability of playing fields in the area and these matters weigh heavily against the scheme. In light of the above findings, the scheme would also conflict with Policy SOC6 of the emerging *Cheshire West and Chester Local Plan, Publication Draft September 2013* (LPe). However, as the LPe is at a relatively early stage towards adoption and emerging Policy SOC6 has been the subject of objections and is not entirely consistent with the Framework, I give that particular conflict little weight. Furthermore, in my view, the circumstances in this case are materially different from those of appeal Ref. APP/K3605/A/11/2156394²⁷, in which the Inspector found that the mitigation strategy would provide a community benefit equivalent to that which would be lost as a result of the re-development of that particular site.

Other matters

34. I turn now to consider whether there are any other material considerations which indicate that planning permission should nonetheless be granted.

²³ Appendix 1.3 of the proof of Miss F Pudge.

²⁴ Appendix 1.3 of the proof of evidence of Miss F Pudge.

²⁵ CG5 appendix 1.

²⁶ CG5 appendix 1 and CD23 p.35.

²⁷ SE39.

35. Whilst I note that the Council's decision to refuse planning permission in this case was against the recommendation of its officers, this does not alter the planning merits of the case upon which my decision is based.

Housing land supply

36. Shortly before the Inquiry the Council confirmed that it is unable to demonstrate a supply of specific deliverable sites sufficient to provide for the 5 years worth of housing land plus buffer set out in the Framework²⁸. This view is based on the housing requirement figures drawn from the former *North West of England Regional Spatial Strategy to 2021* (RSS), which it considers to be the most appropriate at this time, and using a 'Sedgefield' approach to address the undersupply of the past. Supply was calculated to fall some way short of 3 years. The LPe is at a relatively early stage towards adoption and there have been objections to the associated housing land supply figures, which are significantly lower than those which were associated with the RSS. Under these circumstances little weight can be attributed to the emerging figures. Nonetheless, at the Inquiry the Council and appellant confirmed²⁹ that even based on the lower LPe figures and a 'Sedgefield' approach to undersupply since the start of the emerging plan period, the Council is unable to demonstrate a supply of specific deliverable sites sufficient to provide for the 5 years worth of housing land plus buffer set out in the Framework³⁰. The appeal scheme would help to address the housing land supply shortfall, making a notable contribution to housing land supply in the area. This is a matter of considerable weight in favour of the scheme. Furthermore, I consider that my approach in relation to housing supply is reasonably consistent with those taken in the previous appeal decisions drawn to my attention³¹.
37. The Council and appellant agree that it would not currently be viable to include an element of affordable housing in the scheme. Whilst the UU makes provision for the position to be reviewed at a later stage, I have no reason to believe that the situation is likely to materially alter. These particular circumstances do not weigh for or against the scheme.

Other greenspace

38. The appeal site is designated as 'other greenspace', the subject to LP Policy ENV 17, and identified as 'playing field' on the LP Proposals Map. The Council and the appellant agree that the scheme would conflict with that Policy and I have no reason to disagree. However, the reasoned justification for this Policy indicates that in the case of playing fields that have no other value than for active recreation, then Policy SR2 will apply. The reasoned justification for that Policy provides further clarity with respect to the application of LP Policy ENV 17. It indicates that where playing fields are designated under Policy ENV 17 and have wildlife, cultural or landscape importance in addition to their recreation value, then the proposals for development affecting them will be considered under Policy ENV 17. In this context, the Council and the appellant have indicated that the appeal site has no other value than for active recreation. This is consistent with the finding set out in the Inspector's Report

²⁸ Including a 20% buffer due to the acknowledged persistent under delivery of housing in its area.

²⁹ ID23.

³⁰ Including a 20% buffer due to the acknowledged persistent under delivery of housing in its area.

³¹ CG2/9, 10 & 12 and ID21.

on the LP (LPR)³². It indicates that, although it may provide a degree of visual relief for some local residents, the site does not perform any strategic landscape function. Furthermore, due, amongst other things, to the manicured condition of the site, it is likely to be devoid of any significant wildlife interest, a view which has been supported by the Council's Biodiversity Officer following a review of site survey information. In addition, the LPR confirms that the site performs no special cultural role. I have no compelling reason to depart from these views. I consider therefore that, as suggested by the appellant, the particular requirements of LP Policy ENV 17 and the conflict with it are of little relevance in this case.

Education contribution

39. Dee Point Primary School (DPPS), which would theoretically be the catchment school for the proposed development, has 243 pupils on the roll for 2013 against a net capacity of 210. It is likely to remain at capacity until it is replaced by a new school with capacity for 420 pupils in 2017. Other schools within the Blacon area are also either full to capacity at present or are forecast to be full to capacity by 2018. Considered in isolation the replacement of DPPS would theoretically give rise to a surplus of places there. However, I consider that in practice this is unlikely to be the case. Capacity versus demand is likely to be reasonably balanced across the cluster of schools in the Blacon area. To my mind, it is likely that oversubscription of the other schools within the cluster would be catered for by the enlarged DPPS, particularly as the last Ofsted inspection confirmed it to be an outstanding school and that currently it is proportionately the most over-subscribed school in Blacon.
40. It is likely that the proposed development would yield 26 additional primary aged pupils, for whom spaces would be required. The UU secures a financial contribution which would be made to the Council for the provision of those extra spaces. The sum has been calculated on the basis of Department for Education cost multipliers. Whilst the Council may choose to provide those spaces at schools within Blacon other than DPPS, as all those schools are within statutory walking distance from the appeal site and could therefore be offered to parents requesting a school place in their local area, I consider that such an approach would not be unreasonable. The proposed contribution is to provide improvements to primary school provision 'in the vicinity of the development'. In contrast, the educational contribution referred to in appeal decision Ref. APP/T2405/A/11/2154502³³, which was found not to be directly related to the associated development, appears to me to have been drafted in a less specific manner, referring more generally to 'facilities for upper school education'. The circumstances are not the same as those in the case before me. I am content that the proposed contribution would be directly related to the appeal scheme, it is necessary to make the development acceptable in planning terms and meets the other tests of obligations set out in paragraph 204 of the Framework. I consider that my approach to this matter is consistent with that taken by my colleagues who dealt with appeal Refs. APP/F2415/A/11/2165170 and APP/T2405/A/11/2164413. The effect of this matter in terms of the planning balance in the case before me is neutral.

³² CD41.

³³ CG2/14.

Flood risk

41. The appeal site includes land within Flood Zones 2 (Fluvial) and 3A (Tidal) shown on the Environment Agency's Flood Maps. The Framework, through the application of a Sequential Test, aims to steer new development to areas with the lowest probability of flooding. It indicates that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Furthermore, residential development is classified as a 'more vulnerable use', which should only be permitted in Flood Zone 3a if an Exception Test is passed³⁴.
42. In support of the proposal the appellant has provided a Flood Risk Assessment (FRA) together with Sequential and Exception Tests Analysis (SETA). The SETA indicates, with reference to a shortfall in housing land supply in the Chester area, that there are no sequentially preferable sites. In light of the housing land supply position I have set out above, in relation to the absence of a supply of specific deliverable sites sufficient to provide for the 5 years worth of housing land plus buffer set out in the Framework, I am content that the Sequential Test is passed.
43. In accordance with the requirements of the Exception Test, the appellant's site specific FRA indicates that, subject to identified mitigation measures, the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. This is not disputed by the Environment Agency. However, for the Exception Test to be passed it must also be demonstrated that the development would provide wider sustainability benefits to the community that outweigh flood risk.
44. The scheme would help reduce the housing land supply shortfall and would be likely to provide, subject to certain measures secured by condition or the UU, housing in a location from which jobs, shops and services are reasonably accessible. Those measures include a contribution towards an improved pedestrian access route between the site and Blacon, which is catered for by the UU. I am satisfied that this obligation meets the tests set out in paragraph 204 of the Framework. The impact on the ecology of the site could be satisfactorily mitigated through the imposition of conditions, requiring measures such as replanting and the provision of bat and bird boxes. Any enhancement over the existing position would however be limited in my judgement, due to the likely extent of the new built development on the site. Whilst the proposed introduction of a right turning lane from Sealand Road to Clifton Drive would be likely to reduce the potential for blocking back on the main road, I have not been provided with any evidence to show that this is a significant problem at present and so I give this matter little weight. The local economy would be likely to benefit from the creation of jobs and spending associated with the construction phase of the scheme, albeit for a limited time. It would also be likely to benefit over a longer period from the spending of future residents. As a further consequence of the development, the community would qualify for a substantial *New Homes Bonus*. In my judgement, whilst considerable weight is attached to the impact on housing land supply, these other factors attract only moderate weight.

³⁴ DCLG Technical Guidance to the National Planning Policy Framework.

45. The scheme would include the removal of existing large Poplar trees situated along the southern boundary of the site, which, if viewed in isolation, would improve the outlook to the rear of neighbouring Sealand Road dwellings. However, as a new tree belt, albeit potentially less dominant, would be established along that boundary and the existing green space that comprises the majority of the site would be taken up by housing development, the overall effect on the outlook from neighbouring properties would, in my view, be neutral at best.
46. Nonetheless, I consider on balance that the adverse impact of the scheme in relation to the availability of playing fields would outweigh any wider sustainability benefits to the community. The Exception Test has not been satisfied. This weighs against the scheme.

Conclusions

47. I conclude that the proposal would conflict with LP Policy SR2 and in the particular circumstances of this case the relevant criteria of paragraph 74 of the Framework indicate that the land should not be built on. In my view, this policy can be regarded as falling within the group of specific policies in the Framework that indicate development should be restricted, notwithstanding that it is not one of the examples given in the Framework's footnote 9. However, in any event, I conclude on balance that the adverse impacts of the scheme, with particular reference to the unacceptable harm to playing field provision in the area, would significantly and demonstrably outweigh the benefits and the proposal would not amount to sustainable development under the terms of the Framework. Furthermore, in my judgement it would not be possible to satisfactorily mitigate the harm that I have identified through the imposition of the conditions which have been suggested to me. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Owen Of Counsel	Instructed by the Council's solicitor
He called Mr P Friston BA BPI MRTPI	Cheshire West and Chester Council.

FOR THE APPELLANT:

Mr C Lockhart-Mummery QC	Instructed by Mr C Griffiths.
He called Mr C Griffiths BA Hons MRTPI	Satnam Planning Services Ltd.

FOR SPORT ENGLAND:

Mr I Ponter Of Counsel	Instructed by Nabarro LLP.
He called Miss F Pudge MRTPI	Sport England.

INTERESTED PERSONS:

Mrs A Mason	Local resident.
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DOCUMENTS

- ID1 Letters notifying interested persons about the appeal and Inquiry arrangements.
- ID2 Correspondence in response to the appeal notifications.
- ID3 William Davis Limited and Jelson Limited v the Secretary of State for Communities and Local Government and North West Leicestershire District Council [2013] EWHC 2058 (Admin).
- ID4 Final Agreed Statement of Common Ground-agreed by the Council, the appellant and Sport England.
- ID5 Bundle of supplemental core documents, CD19(B) and CD58-73.
- ID6 Appeal site lease.
- ID7 Email, dated 24 July 2012, from the Council to Chester University-re. the discharge of condition no. 14 attached to planning permission 11/05832/FUL.
- ID8 Letter, dated 1 November 2013, from the University of Chester to Satnam Planning Services Ltd.
- ID9 Planning Inquiry Note: No. 1 (revised version-5 November).
- ID10 Planning Inquiry Note: No. 2.
- ID11 Letter, dated 4 November 2013, from the Council to Satnam Planning Services Ltd.
- ID12 Drawing no. SK13-Proposed site access and improvements to the junction of Clifton Drive and Sealand Road for residential

- development.
- ID13 Drawing no. B3705 P004 B-Indicative site sections.
 - ID14 Outline opening submissions on behalf of the appellant.
 - ID15 Opening remarks for the local planning authority.
 - ID16 Opening submissions on behalf of Sport England.
 - ID17 Drawing no. B3705 P05-Topographical survey.
 - ID18 Inquiry note: submitted by the local planning authority to the Inquiry, 6 November 2013.
 - ID19 APP/T2405/A/11/2164413.
 - ID20 APP/F2415/A/11/2165170.
 - ID21 APP/Q4625/A/12/2169840.
 - ID22 Summary proof of evidence of Fiona Pudge.
 - ID23 Housing land supply (April 2013).
 - ID24 Schedule of policies within the emerging local plan to which objections have been received.
 - ID25 Appendix to CD32.
 - ID26 Details of consultation undertaken by Sport England on its Policy.
 - ID27 Cheshire West and Chester Playing Pitch Strategy-local standard note, provided by Neil Allen Associates, authors of CD24.
 - ID28 Unilateral undertaking, dated 6 November 2013.
 - ID29 Children & Young People's Services (CYPS)-School place planning & capital investment relating to new housing developments.
 - ID30 Email, dated 8 October 2013, from the Highway Authority to the local planning authority.
 - ID31 Closing submissions on behalf of Sport England.
 - ID32 Westminster City Council Appellants v British Waterways Board Respondents [1985] A.C. 676.
 - ID33 Closing submissions for the local planning authority.
 - ID34 Closing submissions on behalf of the appellant.
 - ID35 Land owner details for Nos. 174A and 174 Sealand Road.
 - ID36 Appellant's application for costs.
 - ID37 Council's response to application for costs.
 - ID38 Site visit itinerary and plans.