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## Appeal Decision

Site visit made on 12 April 2016

**by William Fieldhouse BA (Hons) MA MRTPI**

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

**Decision date: 08 June 2016**

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### **Appeal Ref: APP/R0660/W/16/3142921**

### **Yew Tree Farm, Close Lane, Alsager, Cheshire East**

- 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 Muller Strategic Projects against the decision of Cheshire East Borough Council.
  - The application ref 15/3561N, dated 7 August 2015, was refused by notice dated 26 November 2015.
  - The proposal is an outline application for residential development and access, all other matters reserved.
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### **Application for Costs**

1. An application for costs was made by Muller Strategic Projects against Cheshire East Borough Council. That application is the subject of a separate decision.

### **Decision**

2. The appeal is allowed and outline planning permission is granted for residential development and access, all other matters reserved, at Yew Tree Farm, Close Lane, Alsager, Cheshire East in accordance with the terms of the application, ref 15/3561N, dated 7 August 2015, subject to the conditions set out in the attached schedule.

### **Preliminary Matters**

3. The application sought outline planning permission for residential development with all matters, other than access, reserved for subsequent approval. An indicative layout plan submitted with the application, showing 40 dwellings and an area of public open space, was treated by both main parties as being for illustrative purposes only rather than a formal part of the proposal. I have dealt with the appeal accordingly.
4. The site is located close to, but outside, the defined settlement limits of Alsager. There is no dispute, therefore, that the proposal is contrary to saved policies NE2 and RES5 of the Borough of Crewe and Nantwich Replacement Local Plan 2005 ("existing local plan") which seek to restrict new housing development in, and protect the character of, the open countryside. The site is also designated in the countryside outside the Alsager settlement boundary in the emerging Cheshire East Local Plan Strategy ("emerging local plan strategy"). However, as that document is still subject to examination and there are outstanding objections the weight I attach to relevant policies is limited.

5. Whilst the sole reason for refusal refers to existing local plan policy BE5, the Council has subsequently advised that in fact it should be policy BE1. This is clearly relevant to the reason for refusal, and the appellant has addressed this at the appeal stage.
6. An executed section 106 unilateral undertaking, dated 19 May 2016, was submitted at the appeal stage. This followed a protracted period of negotiation over its format and content. Whilst the Council remains concerned at the use of unilateral undertakings in certain circumstances, it accepts that in this case the deed meets its requirements, overcomes the shortcomings that I identified in relation to an earlier version, and will be enforceable. The obligations that it contains would ensure that 30% of the homes to be built on the site would be affordable; the provision of public open space and children's play equipment within the development; and financial contributions to increase capacity at local primary and secondary schools. The Council has provided information to demonstrate that these obligations are in accordance with relevant development plan policies and guidance, and meet the necessary national policy tests and legal requirements<sup>1</sup>. I have no reason to consider that this would not be so and therefore I will take the planning obligations into account in coming to my decision.

### **Main Issue**

7. The main issue is the effect that the proposal would have on the local highway network, and in particular the safety of road users.

### **Reasons**

#### *The Site, its Surroundings, and the Proposal*

8. The appeal site is on the western side of Alsager around 1.7 kilometres from the town centre, the most direct access to which is via Close Lane and Crewe Road (B5077). It is a narrow field, just under 1.5 hectares in area, that is crossed by a public footpath and has been subdivided into horse paddocks. To the west, south west, and north lies open countryside; whereas to the south east is land on the edge of the town that is currently being developed for housing following an appeal decision made in 2014<sup>2</sup>.
9. Vehicular access to serve the proposed dwellings would be via the residential road from Close Lane that is being constructed as part of the adjoining development. The appellant describes the current proposal as "phase two" of that scheme.

#### *Highway Safety*

10. The National Planning Policy Framework ("NPPF") is clear that development should only be refused on transport grounds where the residual cumulative impacts are severe<sup>3</sup>. Associated guidance advises that, in assessing cumulative impacts, all relevant sites with planning permission and others that are likely to come forward within three years should be taken into account<sup>4</sup>.

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<sup>1</sup> National Planning Policy Framework (NPPF) paragraph 205 and the Community Infrastructure Levy Regulations (2010, as amended).

<sup>2</sup> Appeal ref APP/R0660/A/13/2203282: 74 dwellings on land west of Close Lane, Alsager allowed 29 July 2014.

<sup>3</sup> NPPF paragraph 32.

<sup>4</sup> Planning Practice Guidance (PPG) ref ID-42-013 and 014.

11. There are various sites in and around Alsager that are currently being developed, and others that are either committed or proposed for development. A recent study commissioned by the Council<sup>5</sup> found that if all of these various developments took place a number of junctions, including some between the current appeal site and Alsager town centre, would operate over desirable capacity. However, this does not demonstrate that this would lead to severe impacts in terms of highway safety, congestion, or general amenity.
12. The 2015 study also identified improvement schemes that would enable the local highway network to satisfactorily accommodate the majority of traffic from committed schemes and the development of sites identified in the emerging local plan strategy, with the exception of the main crossroads junction in the town centre<sup>6</sup>.
13. If additional sites to those committed and proposed in the emerging local plan strategy were developed, queues at this junction and other junctions would significantly worsen. In addition to the proposal before me, I am advised that there are two other large sites that are currently the subject of planning applications that in combination propose the development of over 800 dwellings. However, there is no certainty that planning permissions for those 800 dwellings will be granted, and even if they were it is by no means clear that they would be developed in three years. I therefore attach little weight to the potential transport impacts that those developments may cause in the future.
14. With regard to the proposal before me, the parties agree that most traffic would travel south from the site along Close Lane to Crewe Road and then split with around 70% turning west towards the M6 motorway and the remainder turning east towards the town centre. Given that the site is only likely to accommodate around 40 dwellings, the additional use of the Close Lane / Crewe Road junction would be limited, and any peak hour queues on Close Lane arising from the proposal in addition to other committed and planned developments would not be excessive in length or duration.
15. Furthermore, the proposal would generate only a low number of additional peak hour trips through the town (around 26 per hour), meaning that the increase in use of the junctions along Crewe Road would be less than 1%. Given that daily fluctuations in the use of these junctions is in the range of 5% to 10%, this increase would be unlikely to be noticeable or to cause safety problems.
16. The evidence of the appellant's transport consultant shows that, having allowed for other planned developments, the proposal would have a minimal impact on the local highway network. The Council's planning and highways officers agree, and there is no substantive evidence before me to lead me to a different conclusion.
17. Furthermore, I am aware that, having considered evidence at a public inquiry, a colleague Inspector recently found that the development of 70 dwellings on a site south of Crewe Road in the town would not have severe transport impacts<sup>7</sup>. Whilst I have considered the proposal before me on its own merits, this finding reinforces my conclusion that the impact of an additional 40 or so dwellings would be minimal.

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<sup>5</sup> Alsager Traffic Study Technical Note, March 2015.

<sup>6</sup> Alsager Traffic Study Technical Note (March 2015).

<sup>7</sup> Appeal ref APP/R0660/A/14/2228488 dismissed 18 January 2016.

18. I conclude on the main issue that, having regard to the cumulative effects with other developments in the area, the proposal would not be likely to cause material harm to highway safety. The proposal would, therefore, be in accordance with national policy, local plan policy BE1, and emerging local plan strategy policy IN1 which collectively seek to ensure that development does not generate such levels of traffic that the safe movement of traffic on surrounding roads would be prejudiced or there would be an adverse impact on neighbouring uses, and that infrastructure is delivered in a co-ordinated and timely manner to meet the needs of new development to make places function efficiently and effectively in a way that creates a sustainable community.

#### *Other Matters*

19. As the proposal would involve the development of a greenfield site in the countryside on the edge of the town it would inevitably have some environmental impact. However, the modest scale of the proposal in relation to the town, and its location adjoining the dwellings under construction to the east and not far from existing development along Nursery Road to the south, means that its visual impact and effect on the wider rural landscape would be limited. Planning conditions could ensure that existing trees, hedgerows, and ecological interests on and around the site would be protected and enhanced. The harm caused by the loss of grade 3a agricultural land would be limited due to the modest size and narrow shape of the site, its location on the urban fringe, and the fact that it is currently used as horse paddocks.

20. Local residents have expressed various other concerns including about noise and air pollution; the impact on outlook and privacy; flooding and drainage; and the capacity of local infrastructure. However, many of these issues were considered by the Inspector who allowed the appeal relating to the adjoining site; the appellant has provided relevant technical reports; and the Council is satisfied that, subject to conditions, the current proposal would be acceptable in these regards. There is no compelling evidence before me to lead me to a different conclusion to that of my colleague or the local planning authority on these matters.

21. The proposal would generate social and economic benefits through the provision of a significant number of additional market and affordable homes in a reasonably accessible location on the edge of a key service centre identified in the emerging local plan strategy. As the Council is currently unable to demonstrate a five year supply of deliverable housing sites as required by national policy<sup>8</sup>, and the dwellings are likely to be built in the short to medium term, I attach significant weight to these benefits.

#### *Overall Assessment*

22. By virtue of the site's location in the countryside outside any defined settlement, the proposal would not be in accordance with the development plan meaning that planning permission should not be granted unless material considerations indicate otherwise<sup>9</sup>.

23. In so far as local plan policies NE2 and RES5 constrain development outside settlement boundaries they are relevant to the supply of housing meaning that, in

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<sup>8</sup> NPPF paragraph 47.

<sup>9</sup> NPPF paragraph 11.

the absence of a five year housing land supply, they cannot presently be regarded as being up to date<sup>10</sup>.

24. However, policies NE2 and RES5 also serve to protect the countryside, an objective that is in accordance with one of the core principles of national planning policy<sup>11</sup>. That said, I have found that the proposal would have only a limited visual impact and little effect on the wider rural landscape. I have also found only limited harm arising from the loss of agricultural land.
25. Whilst little weight can be afforded to relevant policies in the emerging local plan strategy at the present time, the fact that the proposal would not be in accordance with that document counts against the proposal.
26. In relation to the main issue, I have found that the proposal would not materially harm the local highway network or highway safety.
27. The proposal would generate social and economic benefits to which I attach significant weight.
28. The totality of the harm that I have identified would be no more than moderate, and this would clearly be outweighed by the significant benefits that the proposal would deliver. Therefore, material considerations indicate that planning permission should be granted notwithstanding that the proposal is not in accordance with the development plan.

### **Conclusion**

29. I therefore conclude that the appeal should be allowed.

### **Conditions**

30. I have considered the 21 conditions suggested by the Council and agree that most are necessary, subject to some alterations to improve brevity, clarity and ensure consistency with national policy and guidance<sup>12</sup>.
31. The standard conditions relating to the timing of the submission of reserved matters and development are needed to ensure the development proceeds in an appropriate and timely manner. As the only plan to be approved is the red line site plan, no purpose would be served by imposing a condition requiring compliance with that.
32. Surface water needs to be appropriately dealt with, and the mitigation measures set out in the Flood Risk Assessment implemented, in order to prevent pollution and flooding. This can be ensured by the imposition of a single condition, rather than the two suggested by the Council.
33. Adherence to an approved Environmental Management Plan is required in order to safeguard the living conditions of local residents during the period of construction given the proximity of the site to existing dwellings and the nature of the local road network.

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<sup>10</sup> NPPF paragraph 49.

<sup>11</sup> NPPF paragraph 17, 5<sup>th</sup> bullet point.

<sup>12</sup> NPPF paragraphs 203 and 206, and Planning Practice Guidance ID 21a: *Use of Planning Conditions*.

34. A phase II investigation is needed to ensure that if there is any contamination on the site it is appropriately remediated in order to prevent pollution affecting existing and future residents and the local environment.
35. Given the proximity of the M6 motorway and other roads, an assessment of the impact of road traffic noise, and if necessary a mitigation scheme, is required in order to ensure satisfactory living conditions in the proposed dwellings.
36. Conditions requiring a survey of nesting birds, the provision within the development of features suitable for breeding birds, and a reptile mitigation scheme are needed to protect and enhance the ecology of the area. Conditions relating to the protection of existing trees and hedgerows and the implementation of an appropriate landscaping scheme are for the same purpose and to safeguard the character and appearance of the area.
37. The existing public footpath that crosses the site needs to be appropriately accommodated within the development and thereafter managed in order to ensure satisfactory pedestrian access to the nearby public rights of way and Close Lane.
38. An energy reduction scheme is required in order to ensure that the proposed dwellings are energy efficient, thereby minimising the impact on the environment and use of natural resources. The provision of Electric Vehicle Charging Points for each dwelling is required for the same reason, and the provision of car parking and turning spaces is in the interests of highway safety and to ensure satisfactory living conditions for future residents.
39. Appropriate boundary treatment should be provided in the interests of the character and appearance of the area and to ensure a good standard of amenity for the occupants of the proposed dwellings. The provision of bin storage facilities is for the same reasons, and in the interests of highway safety.

*William Fieldhouse*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the 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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Development shall not begin until a scheme for the disposal of surface water, which shall include an implementation timetable and the mitigation measures detailed in the Flood Risk Assessment ref 2155 dated 30 June 2015, has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.
- 5) Development shall not begin until an Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall be adhered to throughout the period of construction, and shall include details of:
  - a) the hours during which construction works and deliveries are to take place;
  - b) the parking of vehicles of site operatives and visitors;
  - c) loading, unloading and storage of plant and materials;
  - d) wheel washing facilities;
  - e) any piling required, including of details of method, hours, duration, and prior notification;
  - f) mitigation measures to control the emission of dust, dirt, noise and vibration;
  - g) plant and equipment, and construction traffic routes, to be used; and
  - h) the responsible person who should be contacted in the event of complaint.
- 6) Development shall not begin until a phase II site investigation has been carried out and the results submitted to and approved in writing by the local planning authority. If that investigation indicates that remediation is necessary, then a remediation scheme, which shall include an implementation timetable, shall be submitted to and approved in writing by the local planning authority. The remediation scheme shall be implemented, and a site completion report submitted, in accordance with the approved timetable.
- 7) No development shall take place until an acoustic assessment of the impact of road traffic noise on future residents, and if necessary a mitigation scheme along with an implementation timetable, have been submitted to and approved in writing by the local planning authority. Any approved scheme shall be implemented in accordance with the approved timetable.
- 8) No development shall take place between 1 March and 31 August in any year until a survey to check for nesting birds, and if necessary a protection scheme along with an implementation timetable, have been submitted to and approved

- in writing by the local planning authority. Any approved scheme shall be implemented in accordance with the approved timetable.
- 9) No development shall take place until details of features suitable for use by breeding birds to be provided as part of the development, along with a timetable for their provision, have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in accordance with the approved timetable.
  - 10) No development shall take place until a reptile mitigation scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.
  - 11) No development shall take place until details of all existing trees and hedgerows on the site along with a scheme for their protection during construction, which shall include an implementation timetable, has been submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.
  - 12) No development shall take place until a scheme for the retention and future management of the public right of way across the site, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.
  - 13) No development shall take place until an energy reduction scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.
  - 14) Details of the reserved matters shall include details of vehicle parking and turning areas along with a single Electric Vehicle Charging Point for each dwelling. No dwelling shall be occupied until the parking and turning areas and Electric Vehicle Charging Point pertaining to that property have been provided in accordance with the approved details. Thereafter, the parking and turning areas shall be permanently retained for their intended purposes.
  - 15) Details of the reserved matters shall include details of the positions, design, materials and type of boundary treatment, and no dwelling shall be occupied until the boundary treatment pertaining to that property has been provided in accordance with the approved details.
  - 16) Details of the reserved matters shall include details of bin storage facilities for each dwelling, and no dwelling shall be occupied until the facilities pertaining to that property have been provided in accordance with the approved details.
  - 17) All planting, seeding and turfing required by the approved landscaping details shall be carried out in the first planting season following the start of development, or in accordance with a programme agreed in writing by the local planning authority. If within a period of five years from the date of the planting, or replanting, of any tree or plant, that tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place.

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*End of schedule of conditions*

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