



Appeal Decision

Hearing held on 14 January 2014

Site visit made on 14 January 2014

by K G Smith BSc(Hons) MRTPI

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

Decision date: 3 February 2014

Appeal Ref: APP/R0660/A/13/2194875

Gresty Green, Gresty Green Road, Shavington, Crewe CW2 5AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andy Martin, Bellway Homes Ltd, against the decision of Cheshire East Council.
 - The application Ref 11/2212N, dated 13 June 2011, was refused by a notice dated 3 October 2012.
 - The development proposed is the demolition of existing buildings and erection of residential development with associated access and landscaping arrangements.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of residential development with associated access and landscaping arrangements at Gresty Green, Gresty Green Road, Shavington, Crewe CW2 5AE in accordance with the terms of the application Ref 11/2212N, dated 13 June 2011, subject to the conditions in the Schedule of Conditions at the end of this Decision.

Background and Procedural Matters

2. The proposed residential development comprises some 51 two-storey dwellings. The (two hectare/five acre) site lies to the west of Gresty Green Road, from which access would be taken, north of Gresty Lane and south of a railway line, beyond which is a residential area. The land comprises a grass field, a disused farmhouse and agricultural buildings.
3. In October 2011, the Council had resolved to grant permission subject to conditions and to a S106 Obligation to secure 18 affordable homes; an education contribution of £86,268; a Locally Equipped Area for Play (LEAP) and Public Open Space (POS) to be maintained in perpetuity by a management company; and a commuted payment of £51,000 towards specified local highway improvements.
4. The Obligation with the above benefits was not provided. Instead, the appellant carried out viability assessments which included information on a range of abnormal costs. The first assessment led to a reduced offer of five units/10% of affordable housing and no education or highways contributions. As a result, the planning application was refused. In summary, the sole reason for refusal was that the proposal would not create a sustainable, inclusive,

mixed and balanced community and that the benefits of allowing the development as a departure from the development plan would be outweighed by the adverse impact.

5. The most recent of the viability assessments has led to the provision by the appellant of a S106 Obligation by Unilateral Undertaking (UU) which would meet all of the requirements in paragraph 3 above with the exception that the scheme would include seven (13.7% of the 51) – rather than 18 - affordable homes, to be built to the Code for Sustainable Homes Level 3. The final draft of the UU was available at the Hearing and the signed and dated version was received by me on 17 January 2014.
6. A Statement of Common Ground (SoCG), provided on the day before the Hearing, confirmed that the Council now has no objections to the proposal. It accepts that it cannot demonstrate a deliverable five-year supply of housing land and that, with regard to some 23 other potential issues, including design, density, amenity, the principle of development and so on, it has no objection. It appeared at the Hearing only to assist with matters of clarification and to deal with the suggested conditions.
7. Some 241 representations were submitted at the application stage, including an objection from the Shavington-cum-Gresty Parish Council, and two at the appeal stage. No residents or other objectors appeared at the Hearing.
8. The representations against the proposal cover a wide range of issues. All those submitted at the application stage were considered by the Council in the Committee Report of 9 September 2011 but none led to a reason for refusal.

Main Issues

9. The main issues derive principally from the representations. They are: principle of development; sustainable location; highways and traffic; amenity; hedgerows and trees; ecology; drainage and flooding; the S106 provisions; followed by my overall conclusion.

Reasons

Principle of Development

10. The site lies outside the settlement limits of Crewe, in open countryside where development is controlled by Policy NE.2 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (the Local Plan).
11. However, as indicated above, the Council does not have a five-year supply of housing land. The lack of a five-year supply brings paragraphs (p) 49 and 14 of the (March 2012) National Planning Policy Framework (the Framework) into play. In essence, p49 states that relevant policies for the supply of housing should not be considered up-to-date if the authority cannot demonstrate a five-year supply. Therefore, policy NE.2, which seeks to resist housing development, is not up-to-date. Policy 14 confirms the presumption in favour of sustainable development and, where policies are not up-to-date, granting permission unless the adverse impacts would outweigh the benefits or specific policies of the Framework indicate that development should be restricted.
12. The Council prepared the Interim Planning Policy on the Release of Housing Land (2011) (the IPP) as an interim measure pending the adoption of the Core

Strategy (CS). The IPP pre-dates the Framework. The CS is still at an early stage in its preparation process and it will not be submitted to the Secretary of State before the summer of this year. The Council agrees that limited weight should be placed on either the IPP or the emerging CS in the decision-making process.

13. Would the proposal constitute sustainable development? It is to this question that I now turn. I start with whether the site is in a sustainable location and will then examine the possible adverse impacts before considering my overall conclusion.

Sustainable Location

14. The emerging CS identifies Crewe as a Strategic Gateway to the North West which is to accommodate 6,850 new homes (net) and a significant increase in the type and amount of employment in the town. Two major mixed-use allocations are identified to the south east and east of the appeal site at Basford East and Basford West. While the figures and details in the CS will, no doubt, be in dispute, the Council's aims in this, and in 'All Change for Crewe', are clear, and they include significant additional housing for the town.
15. The site was removed from its allocation as a Green Gap site in 1996. It had been in the emerging local plan as a site for housing but was taken out after the Local Plan inquiry due to a smaller housing target being set and other sites being preferred at the time. Objectors to the appeal proposal point to the comments of the Local Plan Inspector when he said, in 2003, that the railway that lies immediately north of the site defines the southern edge of the urban area, with the houses fronting Crewe Road at Gresty being a quite separate rural scatter. He was unequivocal in stating that extending the built-up area south of the railway would breach a firm, established and defensible boundary.
16. However, the Local Plan Inspector also said, and I agree, that the site is in a sustainable location, near to the southern edge of Crewe and with good transport links. It lies close to a regular bus service on Crewe Road; there is a network of pedestrian routes nearby to the north and accessibility on foot to shops, employment, leisure and other services; almost all of Crewe and much of Nantwich are within a 5km cycling distance of the site; Crewe railway station is about 2km. In short, in accessibility terms, the site is in a very sustainable location.

Highways and Traffic

17. This is a subject of particular concern to many residents.
18. I accept that the existing nearby junction between Gresty Green Road, Gresty Lane and Crewe Road has design limitations for both pedestrians and for turning vehicles but a condition is suggested, to provide for a pedestrian island and a right turning lane, that would substantially improve the situation.
19. The Traffic Assessment, using TRICS data, demonstrates that the roads and junctions nearby, with base flow plus the trips from the proposed development, would be well within their capacity. The scheme would not have a detrimental impact on the operation of the highway network.
20. However, as to the cumulative impact with other developments in the locality, other local improvements are being considered for mitigation and the S106

Obligation includes a £51,000 contribution towards such works. The rate of contribution from the appellant was reduced from £2,500 to £1,000 per dwelling because the scale of impact would be low. The Council considers this to be acceptable and I agree. The works would be necessary and the Council has provided relevant cost estimates.

21. Gresty Green Road to the east of the site leads to a narrow low bridge under the railway and the rail depot. There are complaints that lorries unable to reach the depot are unloaded on the road. It is unlikely that the proposed development for housing would add to such problems.
22. The proposed development would not exacerbate highway difficulties. Cheshire East Highways has no in-principle objection. Existing highway problems would be ameliorated. There would be no conflict on this issue with Local Plan policies BE.3 Access and Parking or BE.5 Infrastructure.

Amenity

23. This subject covers several topics. While the bungalows on the east side of Gresty Green Road are at a lower level relative to the site, the separation distances from the proposed dwellings opposite would be adequate. The house, Bridge Villa, would also have an appropriate separation distance.
24. The large Morning Foods premises (better known as Mornflake) lie on the opposite side of the railway to the north east of the site. It is a major employer in Crewe. The company has various permissions for expansion of the mill at Gresty Road and it owns land to the west for expansion. It is concerned that development of the appeal site and elsewhere south of the railway could be a constraint on its existing activities and proposed expansion.
25. The appellant's submitted noise assessment shows that the general noise environment for the site comprises traffic noise from Crewe Road and short duration noise from passing trains. It is clear that neither Morning Foods nor, to the west of the site, the Crewe Coldstores, would raise any significant noise issues.
26. The noise assessment demonstrates that target internal noise levels in habitable rooms and in external areas of the proposed houses could be achieved. A condition is suggested to ensure that the noise protection measures would be carried out.
27. The appellant's vibration impact assessment in relation to passing trains reveals that no special mitigation measures would be needed.
28. There would be no conflict on this issue with Local Plan policies BE.1 Amenity, BE.2 Design Standards or NE.17 Pollution Control (noise).

Hedgerows and Trees

29. Arboricultural reports have been submitted. Tree loss would be limited. Concern has been expressed about the removal of a copper beech tree near the old farmhouse, which I inspected at my site visit. As the reports indicate, it is in poor condition and its retention in the context of a residential development scheme would not be sustainable in the longer term.
30. The proposed development would require the removal of two sections of an 'important' hedgerow under the terms of the Hedgerow Regulations 1997.

Such removal for obtaining access to land where another means of access is not available or is only available at disproportionate cost would be permitted by the Regulations.

31. Additional landscaping is proposed in accord with Local Plan policy BE.2 Design Standards

Ecology

32. Surveys have been carried out with regard to bats on the site. These reveal that the use of barns and trees by bats is likely to be limited to small numbers using the roosts for short periods during the year. The loss of the roosts would be likely to have a minor impact on the conservation status of the species concerned. Moreover, mitigation provisions are proposed which could be secured by condition.
33. It is necessary to give due weight to the presence of protected species on the site but in this case I am satisfied that significant harm would not be likely. A licence would be needed to permit disturbance to the roosts.
34. There is evidence that barn owl is using one building as a perch but there is no evidence of nesting there. As it is not currently breeding on the site, a licence would not be needed for the proposed works.
35. Appropriate conditions are suggested for the protection of nesting birds and for the mitigation of impacts on bats and barn owls. The Council's Nature Conservation Officer is satisfied that the proposed mitigation would be adequate to deal with the adverse impact of the development. There would be no conflict with policies NE.5 Nature Conservation and Habitats or NE.7 Protected Species.

Drainage and Flooding

36. A Flood Risk Assessment has been submitted. The Environment Agency (EA) is satisfied with its content and has no objections subject to the imposition of two conditions, on the implementation of a surface water regulation system and on the management of any overland flow from surcharging of the on-site surface water drainage system. I see no reason to disagree. The scheme would be in compliance with policy BE.4 Drainage, Utilities and Resources.

S106 provisions

37. The provisions of the Unilateral Undertaking (UU) are agreed by the Council.
38. There is little spare capacity in the local primary schools. The UU provides a commuted payment as indicated above towards work on the local primary schools. No works would be needed to the secondary schools.
39. I have referred above to the sum for highway improvements, to the number of affordable homes, and to the LEAP and the POS with maintenance by a management company
40. There is relevant policy support in the Local Plan in BE.5 on infrastructure and RT.3 on recreational open space and children's play space in new housing developments. Policy RES.7 deals with affordable housing, as does the Interim Planning Statement on Affordable Housing. The Council sought 18 affordable units but is now satisfied that the development would not be economic with

that number. I am mindful in this context that the Growth and Infrastructure Act 2013 made provision for reconsidering S106 Agreements to ensure that developments become economically viable. The same principle is being followed by the Council in this case by analogy.

41. I am satisfied that the S106 Obligation in this case would meet the relevant tests found in p204 of the Framework and elsewhere.

Overall Conclusion

42. Arguments that housing should take place on brownfield sites have merit in principle but, by any measure, the figures show that the amount of such land could not meet the housing needs of Crewe or of the Borough. There is not a five-year supply of housing land.
43. Thus, there is a presumption in favour of sustainable development. The Framework confirms at p6 that p18-219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice. Moreover, as p7 indicates, sustainable development has economic, social and environmental roles which (p8) are mutually dependent. Would the appeal proposal constitute sustainable development?
44. Provision is made by the UU, in accordance with the relevant tests, for an acceptable level of affordable housing on the site, for a LEAP and POS with appropriate maintenance and for necessary contributions towards infrastructure for education and highways. Moreover, the appeal site is in a sustainable location and the proposal would not add to highway difficulties; rather, existing problems would be ameliorated. Fears about impacts with regard to noise, hedgerows, trees, ecology, drainage and flooding are not substantiated. Thus, with appropriate conditions, none of the issues considered above would result in a significant adverse impact and none would conflict with relevant Local Plan policies or specific policies in the Framework.
45. The other matters raised in the representations - including the effect on local businesses, prematurity, electricity supply, the capacity of local health and dental services and proximity to a mobile phone mast - do not, either jointly or severally, amount to a significant adverse impact.
46. There would be economic, social and environmental benefits from the proposal. These would include, as relevant, the provision of open-market and affordable housing, which would help towards the five-year supply and add to the populace of the town; the three areas of POS would exceed the policy RT.3 requirement; a pedestrian link to the route towards the town centre would be provided; a management company would secure the long-term maintenance of the POS; a disused site would be brought into beneficial use; there would be a New Homes Bonus of some £666,867. The proposal would constitute sustainable development.
47. I have no doubt that the benefits of the appeal proposal would outweigh any adverse impacts. I shall grant permission subject to appropriate conditions.

Conditions

48. A schedule of 21 conditions was submitted in the SoCG. A number of minor changes were agreed at the Hearing and these are incorporated in the

Schedule below. Whereas the Layout Plan BHWL056/01 Rev G is marked "Draft", this is in error; it is not a 'draft' plan.

49. The plots listed in condition 8 have either small rear gardens or their front gardens do not front onto a highway
50. Two letters were sent on the same day by the EA, one with two suggested conditions and one with an additional one for the protection of white-clawed crayfish. The Council's Nature Conservation Officer did not request such a condition and, while this species of aquatic invertebrates is found in Gresty Brook, some 300m north of the site, there is no habitat within the site that would be suitable for it and no linkages to the Brook, so there would be no direct or indirect effects on it. The main parties agreed at the Hearing that the condition (formerly No 15) was not necessary. I have deleted it.
51. National Rail suggested several conditions but some would be met within the Schedule and the rest would be private matters between landowners.
52. The last condition in the agreed list (No 21) dealt with an assessment of airborne dust from nearby industrial premises. It was agreed that this would be unnecessary. I have deleted it.
53. The reasons for the conditions are as set out in the SoCG but, as indicated above, former conditions 15 and 21 have been deleted as being unnecessary and the others have been renumbered. Also, No 17 (formerly No 18) on details of external lighting, is required not only to protect the amenities of nearby occupiers and in the interests of the appearance of the site, it is also to ensure that there would be no interference with the safety and operation of the railway and to prevent light pollution of the sky and, in this context, in the interests of bats which might over-fly the site.
54. The conditions in the Schedule below would all pass the tests in Circular 11/95 on the use of conditions.

K G Smith

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall commence within three years of the date of this permission.
- 2) No development involving the use of any facing or external roofing materials shall take place until samples of the materials have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) Prior to the commencement of development, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard and soft

landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme. The landscaping scheme shall include native species only and the provision of replacement hedgerow planting.

- 4) The approved landscaping plan shall be completed in accordance with the following:
 - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme to be submitted to and approved in writing by the Local Planning Authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837:2012 Trees in relation to design, demolition and construction.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

- 5) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved (including any tree/hedgerow felling, tree/hedgerow pruning, demolition works, soil moving, temporary access construction and/or widening, or any operations involving the use of motorised vehicles or construction machinery) a detailed Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved Method Statement. Such a Method Statement shall include full details of the Tree/Hedgerow Protection Scheme and Tree/Hedgerow Work Specification and:
 - a) Implementation, supervision and monitoring of the approved Tree/Hedgerow Protection Scheme.
 - b) Implementation, supervision and monitoring of the approved Tree/Hedgerow Work Specification.
 - c) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the approved Tree/Hedgerow Protection Scheme.
 - d) There shall be no storage of materials or vehicles and no fires within any area designated as being fenced off or otherwise protected in the approved Tree/Hedgerow Protection Scheme.
 - e) Timing and phasing of Arboricultural works in relation to the approved development.

- f) Special construction techniques for the proposed areas of hard surfacing in the tree/hedgerow root protection areas.
- 6) No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building or the development hereby permitted being brought into use shall be replaced in the first available planting season with trees, shrubs or hedge plants of a size and species to be submitted to and approved in writing by the Local Planning Authority.
- 7) Prior to the commencement of development a plan indicating the positions, design, materials and heights of boundary treatment to be erected and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the agreed timetable and the approved details.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A and E of Part 1, Schedule 2 of the Order shall be carried out at plots 32, 33, 34, 36, 37, 38, 39, 48, 49 and 50 as shown on plan reference: LDS 187-01D
- 9) Prior to undertaking any tree, hedgerow or demolition works between 1st March and 31st August in any year, the results of a detailed survey to check for nesting birds shall be submitted to the Council. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the Council.
- 10) Prior to the commencement of development, detailed proposals and a programme for the incorporation of features into the scheme suitable for use by breeding birds including swallows, house sparrow and swift shall be submitted to and approved in writing by the Local Planning Authority. The proposals shall be permanently installed in accordance with the approved details and programme.
- 11) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme including a programme for the provision of a mitigation package for Bats and Barn Owls. The mitigation strategy shall consist of detailed compensatory measures for the loss of/adverse impact upon terrestrial habitat and breeding sites and shall be prepared by a suitably qualified ecologist. The development shall be completed in accordance with the approved scheme and programme.
- 12) The development hereby approved shall be carried out in total accordance with the following approved plans:

BHWL056/04 location plan

BHWL056/01 Rev G Planning Layout
LDS187-01D Planting Plan
4FA124 House details
3LA094 House details
4KE133 Alt A House details
4KE131 House details
4KE133 Alt B House details
4LA129 House details
2ST062 House details
3CH073 House details
4OA115 House details
GARAGE, WALL AND FENCE DETAILS (no plan reference number - received by the Local Planning Authority on 13 June 2011)
J078/Acc/002 Access layout

- 13) The development hereby permitted shall not be commenced until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved in writing by the Local Planning Authority. Prior to the submission of those details, an assessment shall be carried out into the potential for disposing of surface water by means of sustainable drainage systems (SUDS) in accordance with the principles of sustainable drainage systems and the result of the assessment provided to the Local Planning Authority.
- 14) The development hereby permitted shall not be commenced until a scheme for the management of overland flow from surcharging of the on-site surface water drainage system has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- Details of proposed ground levels and proposed finished floor levels.
 - Details of how overland flow associated with the blockage/failure of the culverted watercourse will be safely routed through the site without adverse impact.
- The development shall be carried out in accordance with the approved scheme and details.
- 15) Prior to the development commencing:
- a) A contaminated land Phase I report to assess the actual/potential contamination risks at the site shall be submitted to and approved in writing by the Local Planning Authority.
 - b) Should the Phase I report recommend that a Phase II investigation is required, a Phase II investigation shall be carried out and the results submitted to and approved in writing by the Local Planning Authority.
 - c) Should the Phase II investigations indicate that remediation is necessary, a Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority. The remedial scheme in the approved Remediation Statement shall then be carried out.
 - d) Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the Local Planning Authority prior to the first use or occupation of any part of the development hereby approved.

- 16) The development hereby approved shall proceed in accordance with the measures described in Section 7.0 Noise Ingress of the Environmental Noise Study RO371-REPO1-DRG by Red Acoustics.
- 17) Before the development hereby permitted is first occupied, details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details.
- 18) Prior to the commencement of development, detailed drawings of the junction design at Crewe Road/Gresty Lane/Gresty Green Road, which shall include the provision of a pedestrianised island and a right turn lane, shall be submitted to and approved in writing by the Local Planning Authority. The approved junction design shall be constructed prior to the construction of any of the dwellings hereby approved.
- 19) Before development commences, details of the location and appearance of bin storage areas shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until its bin storage area has been provided.

APPEARANCES

FOR THE APPELLANT:

Mr R Barton	HOW Planning and Environmental Advisers
Mr D R Nesbitt	DTZ a UGL Company
Mr S Smith	DTZ a UGL Company
Ms H Lewis	Bellway Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Evans	Cheshire East Council
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DOCUMENTS submitted after the opening of the hearing

- 1 Extracts from the Borough of Crewe and Nantwich Replacement Local Plan 2011
- 2 A Prospectus for Crewe
- 3 Notification letter of 5 December 2013 to residents with list of addressees
- 4 Interim Planning Policy: Release of Housing Land, February 2011
- 5 Signed and dated Unilateral Undertaking.