



Appeal Decision

Site visit made on 21 January 2014

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 26 February 2014

Appeal Ref: APP/A0665/A/13/2204871

Land off School Bank, Norley, Northwich, Cheshire, WA6 8NW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Partner Construction against the decision of Cheshire West & Chester Council.
 - The application Ref. 13/00982/FUL, dated 5 March 2013, was refused by notice dated 20 August 2013.
 - The development proposed is the erection of 14 dwellings including 9 'affordable homes'.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 14 dwellings including 9 'affordable homes' at Land off School Bank, Norley, Northwich, Cheshire, WA6 8NW in accordance with the terms of the application, Ref. 13/00982/FUL, dated 5 March 2013, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Procedural matter

2. A signed Unilateral Undertaking, dated 10 December 2013, and made under section 106 of the Act has been submitted as part of the appeal. The Undertaking covenants the developer to pay to the Council a specific sum for Play Space and Public Open Space, should planning permission be granted. I have had regard to the Undertaking as a material consideration, as set out in paragraph 19 below.

Main Issues

3. Having regard to the formal reason for refusal and the representations submitted by the local community at both application and appeal stage, the main issues are:
 - Whether the development accords with policies on the location of development set out in the development plan and national guidance.
 - Whether the erection of the dwellings constitutes 'inappropriate development' in the Green Belt?
 - The effect on the character and appearance of the area;
 - Whether factors in favour of the development outweigh any harm and policy objection;

Reasons

4. The site is a low lying and open field extending to about 0.6ha and situated near the centre of the village of Norley. The village lies in open countryside which forms part of the Green Belt. The village has an elongated and partly dispersed form with ribbon development along lanes added to by groups of houses and small new residential estates around and off cul-de-sacs. The appeal site lies opposite a frontage of detached and semi-detached properties while adjoining the site on the same side of the road are a pair of 'semis' and a detached property.
5. It is proposed to erect 14 dwellings, 9 of which would be 'affordable' dwellings, and 5 would be open market housing to subsidise the affordable tenure. All of the dwellings proposed are semi-detached; 12 are two storey and a semi-detached pair of small bungalows are proposed towards the rear of the site. It is also proposed to construct a new access into the site from School Bank and lay out an area of public open space on the eastern side of the access.

Location of development and supply of housing land

6. In terms of the principle of the location of development, the site falls within an area classed as Tier 4 in the Vale Royal Borough Local Plan First Review Alteration (the Local Plan) as related to Green Belt and open countryside locations, where saved policy H4 indicates that new housing development will be restricted, amongst other minor exceptions, to affordable housing including rural exception sites. Such development is subject to the criteria set out in saved policy H16 which indicates that in order to meet local needs, exceptionally, development could be permitted within or adjacent to built up part of a village. The Council advises that the site lies adjacent to the defined settlement boundary of Norley. The development therefore accords with the policy as a rural exception site subject to the extent of local community needs and whether it can be demonstrated that the properties will remain affordable in perpetuity.
7. Moreover, in terms of the overall strategy on the location of new housing development, the Council accepts that its current position shows a 2.6 year supply of land for new housing. This is substantially short of the requirement set out in the National Planning Policy Framework (the Framework) that Councils must identify a 5 year supply of deliverable sites for housing. Accordingly, the relevant policies for the supply and regulation of housing land can not be considered to be up to date as indicated in paragraph 49 of the Framework. This emphasises the presumption in favour of sustainable development. Further, paragraph 14 makes it clear that where relevant policies are out of date, planning permission should be granted 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. I will consider the nature of these impacts under the other main issues.

Inappropriate development in the Green Belt

8. Saved Policy GS3 of the Local Plan says that permission will not be given for the erection of new buildings in the Green Belt except in very special circumstances for defined purposes which include limited affordable dwellings for community needs. As such, the development plan recognises that housing development that falls within the definition of affordable housing for local needs

would not be 'inappropriate development' in the Green Belt. Development that had a degree of open market housing, such as for cross-subsidy, would not fall within this definition in the local plan.

9. However, the Framework lists in paragraph 89, as one of the stated exceptions to inappropriate development, 'limited affordable housing for local community needs' (under policies set out in the Local Plan). In this context, the Framework suggests, in paragraph 54, that Councils should consider allowing some market housing if it would facilitate the provision of significant additional affordable housing to meet local needs. Further, I regard the proposed private housing element as small in scale and appropriate as a rural exception site as defined in the Glossary to Annex 2 in the Framework. As this arm of government policy is more recent than the saved policies in the development plan, it should be given more weight.
10. I conclude on this issue that the principle of a new development comprising a mixture of affordable housing facilitated by open market housing within or adjacent to a village in the Green Belt need not constitute 'inappropriate development' in the Green Belt as defined in the Framework.

Effect on the character and appearance of the area

11. The guidance in the Framework makes it clear that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Although the effect on openness is not a test of the affordable housing exception set out in paragraph 89, the effect on openness is a factor that contributes to the character and appearance of the area. In the case of the appeal site, the open verdant nature of the field contributes to the setting of the local part of the village and this open aspect would substantially be lost if the site were to be developed as per the appeal proposal.
12. However, in terms of the wider character of the area, development in this 'narrow' part of the village would be seen in the context of other built development. At my site visit I observed that in the view looking mainly east from along Hough Lane and Maddocks Hill, the proposed development would be seen in the midst of the existing houses at 'Windush' and 'The croft' and 'Redcot' and with the other development on the south-east side of School Bank and with development beyond at a higher level in the background. In the reverse view from the north along School Bank, the proposed development would again be seen in the context of other existing development. Further, although the physical form of the village is as a semi-dispersed settlement, my attention was drawn at the site visit to other areas where development has been consolidated within land bounded by roads or around cul-de-sacs.
13. In my judgment, the proposed density and layout of the housing scheme, including the position of some of the dwellings in a forward position in the street-scene, would continue this physical form of the settlement and the layout of the buildings would not be harmful to the pattern or 'urban grain' of the village and the character that it gives rise to.
14. However, in terms of the detailed design of the buildings put forward, there appears to me to be little variation in the design of the properties and particularly the external materials of the walls and roofs. This view was reinforced by what I saw of a similar scheme developed by the appellant company now built in the village of Kingsley which I visited at the appellant's

request. Whereas most of the existing housing near the site display a much greater variety of external materials with much emphasis on rendered or painted elevations and with decorative details in brickwork. I consider that the proposal does not pay sufficient regard to this local variation in materials and as such the proposal could be seen as a regimented and 'stand alone' development rather than one that integrates successfully into the character of the area and complements its appearance. Nevertheless, I do not consider that fundamental changes are required to the proposed elevations put forward and my concerns could be overcome by changes to the treatment of the elevations and roofs with a greater variety in materials. This could be achieved by condition.

15. Subject to the appropriate changes to the external form of the various semi-detached properties put forward, overall, I am satisfied that the development proposed would not have a materially harmful effect on the character and appearance of the area but would be compatible with it. As such, I find that the development proposed, with minor modification, would satisfy the requirements of saved policy BE1(xi) and (xii) of the Vale Royal Borough Local Plan and the guidance in the Framework on ensuring good design that contributed positively to a sense of place.

Other considerations

16. Representations made on behalf of some of the people objecting to the development and Norley Parish Council dispute whether there is an essential local housing need for the 'affordable housing' and the basis on which the housing needs surveys have been undertaken. The planning authority refer to the Strategic Housing Market Assessment (update 2012) which indicates that the annual need for affordable housing across the borough is 1,300 units with an annual gross requirement for affordable housing in Kingsley ward of 12 units. The planning authority also refers to local surveys undertaken in recent years to assess local need.
17. Whilst the assessment of local housing needs is not an exact science, I am satisfied on the basis of the evidence submitted that there is an established local housing need for the affordable housing put forward and that there is no evidence that this need has been eliminated by other developments allowed locally and recently. I am also satisfied that the degree of private housing put forward is small in scale and is necessary to make the overall development viable, and this type of provision of affordable housing is supported by the Framework.
18. Representations also refer to the emerging policy in the Council's Draft Local Plan – Strategic Policies – but this is still to be submitted for Examination therefore I can give little weight to its provisions at this stage. Even so, I do not consider that the proposal would be substantially in conflict with Policy SOC 2 of that Plan as currently drafted.
19. Finally, the scheme proposes the provision of an area of public open space at the front of the site. I note that the Unilateral Undertaking dated 10 December 2013 signed by the appellant company and the site owners, covenants that a financial contribution will be paid to the Council in respect of the provision off-site of other recreational facilities in the village. I am satisfied that the scheme and the Undertaking are necessary to make the proposal acceptable in planning terms for the provision of open space and recreation facilities and are directly,

fairly and reasonably related in scale and kind to the proposed development in accordance with the Council's Supplementary Planning Document 3 on Planning Contributions.

Whether factors in favour outweigh other objections

20. Bringing together my conclusions on the main issues, I have found that while the site lies in an area where there is a local policy presumption in the development plan against new housing development, the principle of the proposal is acceptable as a 'rural exception site' for affordable local housing for which there is a proven local need. Further, policies restricting the supply of new housing development have to be considered as out of date as at the moment the Council cannot demonstrate an adequate supply of land for new housing.
21. Although the site lies in the Green Belt, as the development is for limited affordable dwellings for community needs, it is acceptable under Local Plan policy GS3 and does not amount to 'inappropriate development' in the Green Belt as specified in the Framework. I have also found that while there would be a limited adverse impact on the openness of the area, the overall form of the development would not have a harmful effect on the character and appearance of the village although some details of the external appearance of the individual properties need to be refined and improved to give more variety in appearance.
22. Overall, I find that the proposal, with minor modification, would not result in significant and adverse impacts locally and that the factors in favour of the proposal, particularly to boost the supply of new housing and mainly of an 'affordable' nature, significantly outweigh the objections put forward. Therefore, I conclude that the proposals amount to sustainable development and accord with the provisions of the national Framework, when read as a whole. In these circumstances, there is a clear presumption that planning permission should be granted.

Conditions

23. The Council recommends that 22 conditions are imposed if I am minded to allow the appeal and I will consider these under the same numbering used by the Council. I will also amend the conditions where necessary to better meet the guidance in Circular 11/95.
24. In addition to a condition on the period of implementation of the development (No.1), it is also necessary that the development is undertaken in accordance with the submitted plans, unless other details are required by other conditions as specified below, and in the interests of clarity I will impose such a condition (No.2) which lists the plans that are approved. As the development is put forward as 'affordable housing' as an exceptional case in respect of local housing need, it is reasonable and necessary that a condition (No.4) is imposed to require that not less than 9 units fall within the definition of affordable housing in perpetuity and are undertaken by an 'affordable housing provider' together with details of the occupancy criteria for the affordable units.
25. In relation to the details of the development I agree that details of 'before and after' site levels (No.5) should be submitted and agreed in order to ensure that the form of the development is acceptable and that it fits in with the character and appearance of the area. The Council also requests that rights to carry out

'permitted development' for the erection of extensions and make other alterations to the dwellings (No. 9) are removed as well as limiting the insertion of other windows and openings in the dwellings (No. 10). However while it is reasonable to control the formation of additional windows in order to avoid overlooking and a loss of privacy, I do not agree that there is special justification to withdrawn the general rights to make alterations or extend the properties. I will therefore not impose recommended condition No. 9.

26. The landscaping of the site is necessary to ensure that the development fits in with its surroundings and I will impose a condition requiring the implementation of the landscaping scheme (No. 7); samples of the surfacing materials (No.3); and details of the arrangements for the laying out and maintenance of the area of open space (No.8). A condition is necessary to ensure that that tree protection measures are implemented (No's.18 and 20) during the construction phase and that hedge protection measures (No.19) are submitted, agreed and implemented as well, in the interests of keeping these natural features which contribute to the site's surroundings. It is also important in the interest of nature conservation that a restriction is imposed on the period in which changes can be made to trees and hedges so that breeding birds are not disturbed (No.13) and to require the provision of nest boxes with the new development (No.21), and the mitigation measures are implemented in accordance with the habitat survey (No.12).
27. In relation to infrastructure, it is reasonable and necessary in the interests of avoiding pollution and flooding that details of the disposal of foul sewerage and surface water from the site are submitted, agreed and implemented (No. 11). Further, it is in the interests of highway safety that the proposed new access is laid out as shown on the approved plans before the rest of the development is constructed (No. 17) along with the implementation of the parking spaces (No.15) and cycle storage (No.16). I agree that the construction phase of the development should be controlled through a Construction Method Statement (No. 14) to ensure that this phase of development does not have a harmful effect on the amenity of the area. However, the recommended condition No.22 in respect of the reduction of CO2 consumption within the fabric of the buildings should not be imposed as the Council has not shown that this is necessary in the interests of sustainable development or accords with any up to date policy in a development plan.
28. Finally, given my comments in paragraph 14 above, notwithstanding the proposals for specific materials to be used on the external walls and roofs of the buildings, I will impose a condition requiring the submission of a wider and more appropriate range of materials and surfaces, including the use of render, to be submitted to and approved by the local planning authority prior to the development starting, and that the resulting agreed scheme shall be implemented.

Conclusions

29. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the details submitted as part of this application and indicated in the following drawings:-

Drawing No. 13/406/01f

Drawing No. 13/406/02f

Drawing No. 13/406/03

Drawing No. A3-13/406/06 REV A

Drawing No. A3-13/406/07 REV A

Drawing No. A3-13/406/08 REV A

Drawing No. A3-13/406/09 REV A

Drawing No. A3-13/406/010 REV B

Drawing No. A3-13/406/11 REV A

Drawing No. 1876_01

Drawing No. 1876_02 REV B

Drawing No. A3-13/406/08 REV A

Drawing No. R/1431/1c

Drawing No. R/1431/2

Drawing No. R/1431/3B

Drawing No. SITE/13/02/01 REV C

Drawing No. STE/13/02/02 REV D

- 3) No development shall take place until samples of the surfacing materials, to be used for the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annexe 2 of the NPPF or any future guidance that replaces it. The scheme shall include:
 - i. the numbers, type and tenure on the site of the affordable housing provision to be made which shall consist of not less than 9 of the housing units;
 - ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of market housing;

- iii. the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing if no RSL involved);
 - iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing in perpetuity; and
 - v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 5) Prior to the commencement of development details of the existing ground levels of land immediately adjacent to the site, proposed ground levels and the level of proposed floor slabs shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
 - 6) A landscape management and maintenance plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
 - 7) All hard and soft landscaping works shall be carried out in accordance with the approved details on plan Drawing No: Drawing No. R/1431/1c, Drawing No. R/1431/2 and Drawing No. R/1431/3B. The works shall be carried out prior to occupation of any part of the development or in accordance with a programme agreed with the local planning authority. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or seriously diseased within 5 years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of like size and species to those originally required to be planted.
 - 8) Prior to the commencement of development full details of the proposed open/play space, including details of the future management and ongoing maintenance, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter.
 - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no new windows or openings (including rooflights) shall be constructed other than those permitted as part of this approval without the prior express consent of the Local Planning Authority.
 - 10) Full details of the foul and surface water drainage from the site shall be submitted to and approved by the local planning authority before the commencement of any development hereby approved. The approved details shall be implemented in full before the development is first occupied and shall be retained at all times thereafter.
 - 11) The mitigation measures as indicated in the extended phase 1 habitat survey carried out by the Appleton Group dated January 2013, Great

Crested Newt Appraisal carried out by Brooks Ecological Grounded advice dated February 2013 and June 2013 shall be implemented in full.

- 12) The clearance or felling of any scrub, hedgerow or trees shall not take place between 1st March and 31st August inclusive, unless otherwise approved in writing by the local planning authority.
- 13) Before the commencement of development a Construction Method Statement and Management Scheme shall be submitted to and approved in writing by the local planning authority. No development shall take place except in accordance with the approved Construction Methodology Statement. For the avoidance of doubt the scheme shall include the following details unless otherwise agreed in writing with the Local Planning Authority prior to the commencement of operations-
 - i) Measures to control dust, noise, vibration, light and odour and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;
 - ii) a detailed management / operation for the construction of the development;
 - iii) details for the management / monitoring of vibration levels at neighbouring properties. For the avoidance of doubt there shall be no piling (except as specifically approved in writing by the local planning authority) in carrying out site excavation or any other part of the development;
 - iv) details of the phasing of the demolition and construction work;
 - v) the hours of operation of both demolition and construction;
 - vi) details of construction traffic for the new development including temporary highway vehicle and pedestrian routings and suitable off-highway parking for all construction related vehicles.
- 14) The development hereby approved, shall not be occupied until the parking spaces, shown on plan ref: 13/406/01 have been laid out and made available for use. The parking spaces shall be retained at all times thereafter for that purpose.
- 15) The cycle storage facilities as indicated on approved drawing, Drawing No. 13/406/02f shall be erected and made available for use prior to the first occupation of the hereby approved development. The approved cycle storage details shall be retained at all times thereafter.
- 16) No other development shall commence until the footpath, road layout and all access visibility splays indicated on the approved plans have been completed to base course level. The houses shall not be occupied until the new access and road layout has been completed in accordance with the plans.
- 17) The tree protection measures indicated on drawing ref 1876_02 Rev B shall be implemented in full and retained throughout the construction process unless otherwise first agreed in writing by the Local Planning Authority.
- 18) Prior to the commencement of development hedgerow protection measures shall be submitted to and approved in writing by the Local Planning Authority. The hedgerow protection measures shall be

implemented in full and retained throughout the construction process unless otherwise first agreed in writing by the Local Planning Authority.

- 19) In this condition a "retained tree" means an existing tree which is to be retained in accordance with the approved plans. Paragraphs (a) and (b) below shall have effect until the expiry of 5 years from the date of occupation of the building for its permitted use.
- a. no retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans unless agreed otherwise in writing by the local planning authority. Any lopping or topping shall be carried out in accordance with British Standard BS3998 Tree Work.
- b. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and the specification of the replacement tree shall be agreed in writing by the local planning authority.
- 20) No development shall take place until a scheme for the provision of nest boxes within the site has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until features suitable for birds have been installed in accordance with the approved scheme. Thereafter, these enhancement features shall be retained unless otherwise agreed in writing with the local planning authority.
- 21) Notwithstanding the details submitted for the materials proposed for the external walls and roofs of the dwellings, no development shall take place until details of an alternative scheme of materials including the use of render on some of the buildings and variations to the roof materials, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with these revised details and not the scheme originally submitted.