



## Appeal Decision

Hearing held on 23 February 2016 and 15 June 2016

Site visits made on 14 and 15 June 2016

**by Richard Schofield BA(Hons) MA MRTPI**

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

**Decision date: 28 June 2016**

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**Appeal Ref: APP/R0660/W/14/3001394**

**The Hill, Sandbach, CW11 1FD**

- 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 Ms Emily Morris against the decision of Cheshire East Council.
  - The application Ref 14/1946C, dated 11 April 2014, was refused by notice dated 25 June 2014.
  - The development proposed is residential development comprising of 75 dwellings and associated vehicular and pedestrian access, open space and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline with all matters reserved other than access. I have determined the appeal on this basis.
3. The Hearing was opened by Inspector Brian Rogers on 23 February 2016 and quickly adjourned without any substantive evidence being heard. During the adjournment, the parties produced a revised Statement of Common Ground and were given the opportunity to submit additional evidence.
4. My site visit included an accompanied visit to Hill House, the Leonard Cheshire care home, adjacent to the appeal site.

### Main Issues

5. The main issue is whether, having regard to the requirements of local and national planning policy for the delivery of housing; the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with regard to outlook, privacy, light and noise; and the effect of the proposed development on Best and Most Versatile agricultural land, the proposal represents a sustainable form of development.

### Reasons

#### *Living conditions*

6. It was common ground between the main parties that there were no concerns in relation to the potential impact of the scheme upon the living conditions of the occupiers of neighbouring properties. There were, however, a large number of representations from local residents on this matter.
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7. The application for the appeal scheme was made in outline. It was the appellant's evidence that, this being so, the layout, and thus potential issues of 'amenity' impacts, could be addressed at the reserved matters stage. Although I accept that the precise site layout could be addressed at a later stage, I do not agree that all consideration of it is limited to reserved matters particularly where, as here, there appeared to be a lack of certainty as to the nature of what may be built out<sup>1</sup>. Indeed, given the representations made by the occupiers of neighbouring dwellings about the potential impact of the proposed development upon them, it is reasonable and necessary to establish at outline stage that, if planning permission were granted, the number of dwellings proposed could be accommodated on the site without giving rise to adverse impacts upon neighbouring properties that could not subsequently be altered.
8. The appeal scheme fixes the location of the site access and the submitted unilateral undertaking sets out a requirement for a Neighbourhood Equipped Area of Play. In addition, a number of sizeable trees on and around the site have, since the application was submitted, been protected by Tree Preservation Orders. The root protection zones of these trees would need to be carefully considered and one tree that was being proposed for felling would now be retained. Although the appellant stated at the Hearing that only 'minor tweaking' to the indicative layout would be required to accommodate this, there is no evidence before me to support this.
9. Given the proposed number of dwellings proposed for the site, which would result in a density of development that appears considerably higher than that of the surrounding area (notably to the west and south), these constraints clearly limit the ways in which they could be laid out.
10. 84 The Hill (No 84) has a large number of windows in its south eastern elevation, which appeared to be to habitable rooms rather than corridors, at both ground and first floor levels, facing the appeal site at very close quarters. The boundary here is almost completely open. Given the currently wide open outlook from No 84 over the appeal site, and its close proximity to the boundary with the appeal site, the impact of new development would be particularly severe. Dwellings, even if single storey and set into the site, would appear overbearing upon its outlook. It is also difficult to see how the privacy of No 84 could be secured in such a way as to not, in turn, further compound the adverse impact upon outlook and to impact upon daylight and sunlight to the ground floor windows.
11. Manor Road is narrow. Dwellings upon it are typically two storey houses, set back from the road behind front gardens and driveways. Even so, their frontages are very open, completely so in a number of instances, with views from first floor level over the appeal site. The appeal site is considerably elevated above Manor Road, whereas a number of extant dwellings are at a lower level to it. The potential for new dwellings to be close to, and rise well above, any planted site boundary, in combination with the step change in land levels would, in my judgment, result in a very significant adverse change in, and an oppressive impact upon, the currently open outlook from these dwellings. This would be even more notable at ground floor level, where outlook is already restricted by the change in land levels.

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<sup>1</sup> The Landscape and Visual Impact Assessment makes reference to apartments, which is not reflected in the indicative layout.

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12. I have similar concerns with regard to privacy. Given the site's elevated position and the necessary proximity of the proposed dwellings to Manor Road, it is likely, in my judgment, that there would be direct lines of sight from the proposed dwellings into habitable rooms of extant dwellings on Manor Road. It may be that single storey dwellings facing Manor Road could mitigate this to some degree, but this has not been suggested and there is no certainty that such dwellings would be provided.
13. I am not persuaded, however, that significant overshadowing or loss of daylight is likely, given the distances involved and my judgment of likely shadow lengths.
14. The impact of the appeal scheme on the occupiers of dwellings on the south side of The Hill would be less. The appeal site is lower here and the extant and proposed dwellings would be separated by the width of The Hill itself, which is a busy thoroughfare. I am satisfied that this would overcome any overlooking or outlook issues for dwellings opposite the site, provided that new dwellings were appropriately scaled.
15. Hill House is a 23 bed care home, the residents of which have physical and/or learning disabilities. Based upon my site visit, I have no reason to doubt the statements of residents and staff that the majority of residents spend much of the time in their rooms and, in some cases, in their beds.
16. The outlook from a number of first floor rooms and some of the ground floor rooms is expansive, across the appeal site, in close proximity to the appeal site boundary in a number of instances. Hill House also has a bungalow for two residents, again with open views across the site through the post and rail boundary fence.
17. It is evident that the indicative layout has given some consideration to the potential impact of the proposed scheme upon Hill House, with the provision of a landscape buffer around it. Nonetheless, again, in my judgment the impact of the proposed, dense development on the appeal site would result in a significant change in outlook for many residents.
18. Given the time that residents spend in their rooms, the sense of privacy afforded to them and the outlook from their large windows cannot fail to be an important consideration. In my judgment, a 75 dwelling residential scheme wrapping around Hill House site is likely to appear oppressive upon residents' outlook, both from the main house and the outlying bungalow.
19. I am less convinced that there would be any significant, direct adverse impacts upon privacy, notably at ground floor level, given the indicative separation distances, relatively level landform here and the potential to secure appropriate boundary treatments. That said, in my judgement, the likely juxtaposition of the proposed dwellings with Hill House, which would have the rear elevations of a number of houses turned towards it where currently there is an open field, would be likely to give rise to perceptions of a loss of privacy and a sense of being overlooked, to the discomfort of residents, notably those of the first floor bedrooms.
20. I am also mindful of an, as yet undetermined, planning application for a sensory room and lounge that would also have windows overlooking the site, along with a sensory garden running beside the northern site boundary.

However, as there is no certainty that this application will be approved I can give it little weight in my considerations.

21. Turning to matters of noise, I am not persuaded that the proposed scheme, with the obvious exception of the construction period, would generate significant levels of noise over and above that already present in the area from The Hill and extant residential development.
22. I am not satisfied on the basis of the evidence before me that the proposed number of dwellings could be laid out so as not to result in a significant adverse impact upon the living conditions of the occupiers of some neighbouring dwellings. I conclude, therefore, that while the appeal proposal is unlikely to have an adverse impact upon the living conditions of the occupiers of dwellings on the southwest side of The Hill, this would not be the case with regard to outlook, privacy and, in the case of No 84, light, for other neighbouring properties on Manor Road, The Hill and at Hill House. The proposal would conflict with paragraphs 17, 56 and 61 of the National Planning Policy Framework (the Framework). These seek, among other things, to ensure that planning always seeks to secure a good standard of amenity for all existing and future occupants of land and buildings; that good design should contribute positively to making places better for people; and that planning decisions should address the integration of new development into the built environment.

*Policy for the delivery of housing*

23. The Examination of the Cheshire East Local Plan Strategy is still underway, with hearings yet to be concluded upon proposed modifications to it. Some interim views have been received by the Council from the examining Inspector, but it is evident that the final report is far from imminent. As the emerging plan has yet to complete examination and is not expected to be adopted until late in 2016, and taking account of paragraph 216 of the Framework, in my judgment little weight can be attributed to it. I have, therefore, determined the appeal on the basis of adopted local and national planning policy.
24. Policy PS4 of the Congleton Borough Local Plan (the Local Plan) identifies Sandbach as a town with a 'settlement zone line'. It allows for housing development within the settlement of a scale commensurate with the character of the town, in accordance with other design and infrastructure related policies in the Local Plan. Policies PS8 and H6 restrict development outside settlements, other than where specific criteria, which the appeal scheme would not meet, are addressed.
25. Policy H1 of the Sandbach Neighbourhood Plan (the NP) is clear that future housing growth in the town will be delivered through existing commitments, sites identified in the emerging Local Plan Strategy and windfall sites. In this context, policy H5 supports development within its Policy Boundary. This is reiterated in policy PC3, which restricts development outside the Boundary, other than where specific criteria, which the appeal scheme would not meet, are addressed.
26. It is common ground that the appeal site is beyond the existing confines of Sandbach and, thus, in the open countryside. Consequently, the appeal scheme would, on its face, appear to conflict with the requirements of the development plan. However, where, as here, a local planning authority is unable to demonstrate a five-year supply of deliverable housing land,

Paragraph 49 of the Framework, which is a significant material consideration, indicates that relevant policies for the supply of housing should not be considered up-to-date. This includes policies in both the Local Plan and NP.

27. Based upon my reading of the above policies, I consider that, in seeking to confine housing development within existing settlement boundaries, they are relevant policies for the supply of housing. I accept that they may have a linked purpose, which is to protect the countryside for its own sake, but I nonetheless consider that their housing supply role renders them out-of-date by reference to paragraph 49 of the Framework. This, in my judgment, necessarily reduces the weight that may be attributed to them. Indeed, although the planning system is plan-led, the Government's policy as articulated by the Framework is that where the plan-led system is not delivering the required levels of housing, housing should be permitted, even if contrary to the plan's spatial strategy, unless the real world land use planning impacts of doing so significantly and demonstrably outweigh the benefits that housing may deliver.
28. My attention was drawn to paragraphs 183-185 and 198 of the Framework, as referenced in the Planning Practice Guidance. Paragraphs 183-185 clearly indicate that neighbourhood planning is central to local planning decision making and paragraph 198 is explicit that *'where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted'*. Nonetheless, the Framework is equally clear that boosting significantly the supply of housing is also a key policy consideration. The absence of a five-year supply of deliverable housing sites, which the Council volunteered as being a 'significant' undersupply, must be taken into account and results in circumstances that are, arguably, not 'normal' as far as that term might be encompassed by paragraph 198.
29. It is also common ground between the parties that Sandbach is a sustainable location for new residential development. That said, I am mindful of the residential schemes already granted permission in the town, which take it over its indicative dwelling target as set out in the emerging Local Plan Strategy. It may be that a view will need to be taken as to when incremental development is such that further housing in Sandbach is no longer 'sustainable'. This will largely be a matter of judgment. On the basis of the evidence before me, however, I am not persuaded that the level of development proposed would give rise to an unsustainable pattern of development and I can, in any case, give little weight to the Local Plan Strategy. Nor would it be of such a scale, or the emerging plan so far advanced, that it could reasonably be regarded as undermining or prejudicing the plan making process, such that it threatens the planned development of the area.
30. The appeal site is a field in the open countryside. In this context, the Council was of the view that the intrinsic character and beauty of the countryside was a key consideration in the inappropriateness of the site for the proposed development. However, the site is bordered to the south by The Hill, with its ribbon development, and to the north by the development along Manor Road. There is also residential development to its west and the Hill House complex is readily apparent to the southeast. Consequently, the site is very much 'semi-rural' in character and influenced by the prominent development around it.

31. The site's appearance and character would, clearly, change as a result of the appeal scheme. However, given the wider semi-rural character and appearance of the area, I do not consider that the scheme would appear as an incongruous incursion into the open countryside. Indeed, although I accept that the field may be of value to local residents, it is not of particularly remarkable landscape value of itself nor does it play a significant role in the wider countryside setting of Sandbach, being well contained within the wider landscape. I note that the Council's landscape officer concurs with this view and raised no concerns in this regard.
32. A number of appeal decisions were drawn to my attention wherein both Inspectors and the Secretary of State have found for and against schemes on grounds of character and appearance and countryside locations, and had applied different levels of weight to neighbourhood plan policies. The parties agreed, however, that such decisions were case and context specific and, as such, should not be regarded as setting any kind of precedent to which I must be wed.
33. The appeal proposal would conflict with the countryside development policies of the adopted development plan, noted above. Nonetheless, I consider that this conflict is outweighed by the lack of a five-year supply of deliverable housing sites. I conclude, therefore, that having regard to the requirements of local and national planning policy for the delivery of housing, the appeal site is an appropriate location, in relation to its 'open countryside' designation, for the development proposed.

*Best and Most Versatile Agricultural Land*

34. The appeal site comprises around 2.9ha of Grade 2 agricultural land. Policy NE12 of the Local Plan states that development on BMV land will not be permitted unless the need for development is supported by the Local Plan; the development cannot be accommodated on non-BMV land; and other sustainability considerations suggest that use of such land is preferable. Some examples of such considerations are given, but they are just that. There is no definitive list. Nor does it appear that a scheme must accord with every criterion in the policy. The policy is broadly in accordance with the Framework<sup>2</sup>, which, albeit that it expresses a preference for development on non-BMV land, does not preclude development on such.
35. A number of appeal decisions were drawn to my attention where the presence of BMV land was either a factor in dismissing appeals or where it was felt to be of limited weight when allowing appeals. The parties agreed that there was no common approach. The Council also agreed that the development of substantial areas of BMV land will be necessary in order to accommodate the likely levels of housing growth required in the Borough. In this context, the appeal scheme would result in the loss of a relatively small amount of BMV land.
36. That said, if every small scale housing proposal advanced the same argument, particularly for sites such as this one, which is not constrained such that it is not viable as an agricultural unit, then the piecemeal loss of BMV land could become significant. As such, this is not a matter to be set aside lightly. In my judgment, however, the lack of a five-year supply of deliverable housing sites

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<sup>2</sup> Paragraph 112

attracts weight as an 'other sustainability consideration' in favour of the use of the appeal site for the appeal scheme.

37. I conclude, therefore, that there is no inherent conflict between the appeal scheme and the loss of, in relative terms, a limited amount of BMV land. It would not conflict with the requirements of Local Plan policy NE12, cited above.

### **Other Matters**

38. A unilateral undertaking (UU) was submitted by the appellant that would make provision for contributions to open space, education, transport and affordable housing. I consider the latter below, in the planning balance, but the other factors do not outweigh my concerns and I have not, therefore, considered the UU further.
39. Local residents raised a number of other concerns, principally in relation to highway safety and efficiency. Reference was also made to impacts upon human rights. As I am dismissing the appeal for other reasons, however, there is no need for me to consider these matters further.

### **Conclusion**

40. I have found that although the appeal proposal conflicts with policies PS8 and H6 of the Local Plan, and policies H5 and PC3 of the NP, having regard to the requirements of local and national planning policy for the delivery of housing, the weight to be attributed to this conflict is tempered by the lack of a five year supply of deliverable housing sites and thus, the appeal site is an appropriate location for the development proposed. I have also found that the loss of a limited amount of BMV land does not weigh heavily against the scheme. However, I also found that the scheme would cause harm to the living conditions of the occupiers of some neighbouring dwellings. I afford this harm very significant weight.
41. The appellant has advanced a number of benefits in support of the appeal scheme. In social terms, it would provide a mix of market and affordable housing in what the main parties agree is currently a sustainable location. Given the Council's inability to demonstrate a five-year supply of deliverable housing sites, I give this factor significant weight.
42. Turning to the economic dimension of sustainability, the Government has made clear its view that house building plays an important role in promoting economic growth. The appeal scheme would be likely to provide jobs directly and indirectly and it was also suggested that the scheme would increase spend in the local economy. I give these factors moderate weight.
43. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impact of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

*Richard Schofield*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mrs Joanne Redmond

Strutt and Parker

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Greenland

Cheshire East Council

Mr Daniel Evans

Cheshire East Council

### INTERESTED PERSONS:

Cllr Sam Corcoran (Sandbach Town Council and Cheshire East Council)

Mr Raymond Scragg

Mrs Maria Gioseffi Rosenbaum

Mrs Wendy Gjerstad MA

Mrs Sally Moss Eadon

Mr Tony Davies

Mrs Joan Davies

Mrs Joanne Grossick

Mrs Charlotte Munro

Mrs Lynda Brown

Mr M Frost

Mr Keith Greenway

Mr Alan Plant

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Statement by Cllr Sam Corcoran
2. Table of committed housing sites in Sandbach
3. Cheshire East Local Plan Consultation Draft March 2016 relating to Sandbach
4. TPO map for the appeal site
5. Updated Statement of Common Ground

### **DOCUMENTS SUBMITTED AFTER THE HEARING**

6. Revised Unilateral Undertaking
7. Interim Report of the Cheshire East Local Plan Inspector
8. Further Interim Report of the Cheshire East Local Plan Inspector
9. Details of planning application 16/2460M at Hill House, Sandbach