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## Appeal Decision

Site visit made on 1 June 2016

by **Gareth Wildgoose BSc (Hons) MSc MRTPI**

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

Decision date: 08 July 2016

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**Appeal Ref: APP/A0665/W/16/3146189**

**New Pool, 240 Manchester Road, Lostock Gralam, Northwich CW9 7PL**

- 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 Mr P Dover on behalf of Country and Coastal Developments Limited against the decision of Cheshire West & Chester Council.
  - The application Ref 15/02291/OUT, dated 29 May 2015, was refused by notice dated 4 December 2015.
  - The development proposed is demolition of existing residential property and residential redevelopment of up to 27 no. dwellings and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. I have dealt with the appeal on that basis, treating the indicative site layout (1977-110-Rev F) as illustrative.
3. The indicative site layout (1977-100F-Rev F) is an amended plan submitted during this appeal to correct a previous version which included an inaccuracy with respect to the existing boundary with 238 Manchester Road at the entrance to the site which I observed during my visit. I have no substantiated evidence before me that would lead me to consider that the land enclosed by the site boundary as indicated on the location plan (1977-101) and the illustrative site layout is not within the ownership of 240 Manchester Road (No 240) or the appellant. A notice has been served on the occupants of No 240. I therefore determine the appeal on that basis.
4. Recent appeal decisions have been drawn to my attention, including Land at Fountain Lane, Davenham, Cheshire for up to 70 dwellings<sup>1</sup> and Land at Hill Top Farm, By-Pass Road, Northwich for the development of up to 113 dwellings<sup>2</sup> in the borough and Land off Crewe Road, Alsager for up to 70 dwellings<sup>3</sup> in the neighbouring Cheshire East Council. Whilst I have had regard to those decisions, the circumstances in each case differ from the development proposal before me in terms of the nature of the site in question and its surroundings. I have therefore determined the current appeal on its own merits based on the evidence before me.

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<sup>1</sup> APP/A0665/A/14/2226994

<sup>2</sup> APP/A0665/W/14/3000528

<sup>3</sup> APP/R0660/A/14/2228488

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## **Main Issues**

5. The main issues of this appeal are:
- whether the proposal is consistent with the objectives of local and national planning policies relating to the location and supply of housing;
  - the effect on the character and appearance of the site and the surrounding area, and;
  - the effect on local biodiversity, including protected species.

## **Reasons**

6. The appeal site is approximately 1.15 hectares of land that is predominantly located to the rear of an existing ribbon of dwellings on the south side of Manchester Road. The site is mostly flat and the majority of it, aside from No 240 and a small area of land beyond its rear boundary, has not been previously developed and currently comprises of dense vegetation, a pond, a mix of mature and semi mature trees and hedging, together with limited areas of gravel and hardstanding, caravans, sheds and chicken coops. Existing trees, hedges and fencing provide the boundary with the residential properties to the north. A mix of established hedgerows and mature trees define the western, southern and eastern boundaries of the site with predominantly open fields and agricultural land beyond, aside from a haulage depot to the west.
7. Access to the site is currently obtained via the existing driveway and through the rear garden of No 240. There is a separate informal access road at the side of No 226. The development includes the demolition of No 240 to create a new vehicular and pedestrian access to serve the proposed dwellings from Manchester Road.
8. The site is located on the western edge of Lostock Gramam, with a range of local services and facilities available within approximately a 1 km of the site, including a primary school located nearby on School Lane to the east. The larger town centre of Northwich is approximately 3.5 km to the west. Bus stops are located on both sides of Manchester Road in close proximity to the site. There are regular bus services to and from Northwich from the early mornings until early evenings on weekdays, less frequent services on Saturdays and no evident services on Sundays. Lostock Gramam train station is also close by on Station Road which provides hourly train services towards Chester (including Northwich) and Manchester from early mornings until late evenings from Monday to Saturday, with less frequent services on Sundays.

### *Local and national policies relating to the location and supply of housing*

9. With the exception of No 240 and its residential curtilage, the site adjoins, but lies outside of, the Settlement Policy Boundary of Northwich as defined by Saved Policy GS5 of the Vale Royal Borough Local Plan, adopted June 2006 (VRBLP). The land outside of the settlement boundary is therefore identified as open countryside and as such is not a location where residential development is permitted by Policy GS5 or by Policy STRAT 9 of the Cheshire West and Chester Borough Local Plan (Part One), adopted January 2015 (CWCLP Part One). The explanatory text to Policy STRAT 9 makes it clear that, until the upcoming Local Plan (Part Two) Land Allocations and Detailed Policies Plan (CWCLP Part Two) has been adopted, the retained policies in the VRBLP relating to settlement

- boundaries and development beyond the existing built form of settlements will continue to operate.
10. Policy STRAT 2 of the CWCLP Part One requires the delivery of at least 22,000 new dwellings in the borough as a whole in the period of 2010 to 2030. In addition, Policy STRAT 5 requires provision for at least 4,300 new dwellings in the settlements that form the wider built up area of Northwich, which includes Lostock Gralam. However, as the majority of the proposed development would be outside of the Settlement Policy Boundary of Northwich, including the indicative location of the dwellings, the proposal would be contrary to Policy GS5 of the VRBLP and Policy STRAT 9 of the CWCLP Part One relating to the location of housing.
  11. The National Planning Policy Framework (the Framework) aims to boost significantly the supply of housing<sup>4</sup>. The Framework makes clear that relevant policies for the supply of housing should not be considered up-to-date if local planning authorities cannot demonstrate a five-year supply of deliverable housing sites<sup>5</sup>.
  12. The Council have indicated that there is a deliverable five year housing supply in the borough, with the supply being equivalent to 6.83 years. They have also indicated that as at 1 April 2015, the cumulative level of existing completions and planning permissions in Northwich is approaching the level of provision for new dwellings identified in Policy STRAT 5. The appellant has not disputed these figures or provided any evidence to the contrary, nor have I any reason to take a different view with respect to the information provided by the Council. In such circumstances, I consider that the policies for the supply and location of housing are up-to-date. It is also therefore reasonable to conclude that at the current time there is no immediate need to release additional sites, including those outside of settlement boundaries such as the appeal site, to meet the housing requirements of the CWCLP Part One.
  13. In reaching the above findings, I have taken into account that the site was included within the Council's Strategic Housing Land Availability Assessment 2013 and within other evidence documents, which indicate that the site is suitable, available and deliverable, and with a similar development capacity as the proposal before me. Nevertheless, it is evident that the Council consider the site to potentially provide housing beyond 2020. To my mind this aligns with a plan-led approach as set out in the explanatory text of Policy STRAT 9, which indicates that where there is a need to accommodate development on the edge of a settlement then the boundary will be drawn to reflect this in the CWCLP Part Two.
  14. I conclude that, due to the majority of the site lying outside of the defined Settlement Policy Boundary of Northwich, the development would be contrary to the approach to the location and supply of housing set out in Policies STRAT 1, STRAT 2 and STRAT 9 of the CWCLP Part One and Policy GS5 of the VRBLP. When taken together these policies seek to encourage the use and redevelopment of previously developed land and buildings and minimise the loss of greenfield land. This includes directing development towards a settlement hierarchy and restricting development in the countryside to that

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<sup>4</sup> Paragraph 47

<sup>5</sup> Paragraph 49

which requires a countryside location and cannot be accommodated within identified settlements. The policies are consistent with the Framework.

### *Character and appearance*

15. A landscape character and visual appraisal provided by the appellant indicates that the site is identified as an Urban and Industry Landscape Type<sup>6</sup>, together with Landscape Type 6: East Cheshire Plains and Landscape Character Area 6c: Lostock Plain<sup>7</sup>. The character of the East Cheshire Plains landscape can be summarised as a large, expansive and flat pastoral landscape overlain by a strong hedgerow network of low cut thorn hedges and punctuated by hedgerow trees.
16. The Lostock Plain is a distinct character area located within the East Cheshire Plains. This area is defined by the typical open and flat landscape, but is interrupted by a contrasting function as a brine field. In this respect, I observed that some long range views, particularly to the west, are affected by the presence of industrial works and electricity pylons that are prominent on the skyline.
17. The site is typical of the small scale pattern of irregular fields evident in the wider landscape. However, the proposed housing indicated on the illustrative plan would be well concealed and visually contained for the most part. This would be due to the screening offered by existing housing to the north which faces Manchester Road and mature trees and established hedgerows to other boundaries of the site. There are some existing views out of the site in a westerly direction that are heavily influenced by the presence of the industrial works to this aspect. However, it is reasonable that such views could be screened by appropriate landscaping. In any case, the presence of residential properties, industrial buildings and a commercial yard to the eastern side of Griffiths Road limits views into the site and longer views across the landscape from an eastern direction.
18. There is no public access to the site and it is not prominent feature within the landscape due to the broadly flat topography of its surroundings and the visual containment provided by the boundary screening. It is likely that there would be some glimpses of development through existing trees during winter months when viewed from a southern, western and eastern perspective. However, the effect would be minor with limited public vantage points, few receptors and little difference to glimpses of the existing properties along Manchester Road that are currently available. Furthermore, the glimpses of the development would reduce as existing and additional landscaping matures on the appeal site. As a consequence, the development of the site would not have a detrimental impact upon the existing open character of the landscape or the long views across it that would be most susceptible and visually sensitive to change.
19. The houses would be seen from the north when passing the site entrance on Manchester Road, but the majority of receptors would be concentrating on the road ahead. In any case, the views into the site would be filtered by vegetation and limited due to the separation distance between the dwellings

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<sup>6</sup> As identified in the Cheshire Landscape Character Assessment [2008]. Cheshire County Council.

<sup>7</sup> As identified in the Vale Royal Landscape Character Assessment Supplementary Planning Document [2007]

- and the road. Existing views from the rear elevations and rear gardens of the adjoining properties on Manchester Road and those facing Griffiths Road would be affected by the development. However, this is generally the case with development on the edge of an existing settlement. A well-designed and appropriately landscaped scheme would be capable of limiting the perception of the site being suburbanised and providing a suitable outlook for occupiers of neighbouring properties around the site in accordance with the development plan and associated guidance. The precise siting, size and appearance of the proposed dwellings, together with associated landscaping could be appropriately controlled at the reserved matters stage.
20. The majority of the site lies within an Area of Significant Local Environmental Value as it forms part of a gap of existing open land between the eastern edge of Northwich and the western edge of Lostock Gralam. Saved Policy NE12 of the VRBLP requires that development will only be allowed in these areas where there will be no unacceptable harm to the value of the area.
21. The perception of an existing narrow gap between the edges of these settlements is already significantly reduced by the presence of a ribbon development of residential properties, together with established boundary treatments and landscaping, to the southern side of Manchester Road. In this respect, the development of the site to the south of these properties would not compound the perception of coalescence from public vantage points along Manchester Road. Further south, the development would reduce the existing distance between parts of the eastern edge of Northwich and the western edge of Lostock Gralam. However, this would not give a significant impression of increased coalescence or a loss of the identity of the individual settlements, due to the visual containment of the site with a southern boundary that aligns with a similar line of trees and hedges to the east. In addition, the presence of a wider and more open gap beyond the southern site boundary would be unaffected.
22. Having taken all of the above into account, I conclude that development would not result in unacceptable harm to the character and appearance of the site and the surrounding area. The development would have only a minor effect on the landscape and townscape character of the area, with the visual effect reducing over time as additional landscaping matures. The proposal, therefore, would not conflict with Policies STRAT 5 and STRAT 9 of the CWCLP Part One and Saved Policies GS5 and NE12 of the VRBLP in so far as they seek to protect the intrinsic character and beauty of the Cheshire countryside and safeguard the character and individuality of the settlements that form the wider built up area of Northwich.

### *Biodiversity*

23. The appellant has provided ecological reports relating to the site dated October 2014 and November 2015, with surveys having been undertaken in May 2014 and August 2014. The surveys identified evidence of protected species, including Great Crested Newts using the pond on site and a roost used by Pipistrelle bats within the roof of No 240, which is proposed to be demolished. A number of mitigation and enhancement measures are proposed and are capable of being secured by condition, including the pond being retained and protected, and bat access panels/bat boxes being provided for the new buildings. However, the surveys are now around two years old and the

- proposed development would result in the loss of suitable habitat for protected species. I cannot therefore conclude based on the evidence before me that the proposal would not result in harm to protected species within the site.
24. All competent authorities, when exercising their functions, must have regard to the requirements of the Habitats Directive. The Habitats Directive requires that member states establish a system of strict protection for European Protected Species (EPS), setting out the offences that may be committed. Natural England is the licensing authority and licence applications are determined separately from the planning system. Nevertheless, as the development could cause harm to EPS it is necessary that I have regard to the three derogation tests and consider whether there is a reasonable prospect of a licence being issued.
25. The first derogation test is whether the development is for the purpose of 'preserving public health or public safety, or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'. The appellant refers to the social and economic benefits of the development, together with the mitigation and enhancement measures relating to the EPS that are proposed. However the test of "imperative reasons of overriding public interest" is a stringent one. There are some public benefits arising from the provision of 27 new homes from a social and economic perspective. However, I am unable to conclude that the development of the site should be considered to be of "overriding public interest" given the conflict identified with the development plan relating to the location and supply of housing.
26. With regard to the above, the second derogation test is 'that there is no satisfactory alternative'. Based on the evidence before me, there is no immediate need to release additional sites, including those outside of Settlement Policy Boundaries such as the appeal site, to meet the housing requirements of the CWCLP Part One. This includes the presence of an existing level of completions and planning permissions in Northwich which are approaching the requirements for new dwellings identified in Policy STRAT 5. It is therefore reasonable to conclude that there are satisfactory alternatives for development of housing in the borough and within Northwich that would result in less harm to EPS. In such circumstances and in the absence of a detailed assessment of alternative sites, I am unable to conclude that there are no satisfactory alternatives to the development before me. In reaching this view, I attribute little weight to the appellant's suggestion that the absence of alternative land within the ownership of the developer satisfies this test. Similar justification could be offered in most situations across the country where a harmful effect on EPS is identified and therefore would undermine the level of protection intended by the Habitats Directive.
27. In reaching the above findings relating to the first and second derogation tests, I have taken account of the appellant's view that the 'do nothing alternative' may cause a degradation of habitat for protected species. However, based on the evidence before me and in view of the existing overgrown nature of vegetation within the site, I cannot conclude that such an effect would be significant or would outweigh the harm to protected species that could arise from the development.

28. It is common ground between the main parties that the development would meet the third derogation test which requires that 'the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'. Although more up-to-date surveys would be preferable, based on the evidence before me I have no reason to take a different view. It is reasonable to conclude that the proposed mitigation and enhancement measures would maintain the population of bats and newts at a favourable conservation status within their natural range. However, the absence of concern in this respect does not outweigh the previous conclusions relating to the first and second derogation tests.
29. For the reasons given above, I conclude that the development could result in significant harm to local biodiversity, with particular regard to the impact on protected species and their suitable habitat within the site. As a consequence, the proposal would be likely to offend Article 12 (1) of the EU Habitats Directive (Regulation 41(1) of the Conservation of Habitats and Species Regulations 2010 (as amended 2012)). Furthermore, having regard to the three tests of derogation, I am not satisfied that there would be a reasonable prospect of the licences required from Natural England being issued. The proposal would therefore conflict with Policy ENV4 of the CWCLP Part One in so far as it seeks to protect sites from loss or damage taking account of the impact on protected / priority species, with exceptional overriding circumstances having not been demonstrated. This policy is consistent with the Framework.

### **Other Matters**

#### *Social and Economic Benefits*

30. The proposal would deliver social and economic benefits in a relatively accessible location by providing up to 27 new homes, 30% of which could be secured as affordable by condition. In this respect, the development would contribute to meeting the identified housing need and choice in Lostock Gralam, Northwich and elsewhere in the borough, whilst supporting local services and businesses. In addition, there would also be shorter term local economic benefits arising from the necessary construction activity required to deliver the development.
31. Although the site is not currently needed in order to ensure an adequate supply of deliverable housing sites, there is nothing in the Framework to suggest that the existence of a five year supply should be regarded as a restraint on further development. Furthermore, Policies STRAT 2 and STRAT 5 of the CWCLP Part One set minimum targets for housing delivery rather than a limitation on housing development. In this context, and given the need to deliver affordable homes in the Borough in accordance with Policy SOC1 of the CWCLP Part One, I attach significant weight to the social and economic benefits associated with the proposal.

#### *Highway Safety*

32. The impact of the proposal on highway safety is not a matter contested by the Council. The highway authority is satisfied that the relatively low level of additional traffic could be accommodated on Manchester Road and the surrounding highway network without a severe impact. This would be subject to certain measures, such as the formation of the new access and relocation of

an existing bus stop, which could be secured by planning condition if the appeal were allowed. Based on my observations of the site and its surroundings I have no reason to take a different view on this matter.

33. In reaching the above findings, I have taken into account the proximity of the proposed junction to the driveway to No 238. However, the relatively low level of traffic associated with the proposed development and the use of the driveway to No 238 would be unlikely to have an adverse impact on highway safety. The Framework advises that development should only be prevented where the residual cumulative impacts are severe.

#### *Living conditions*

34. The proposed access road between Nos. 238 and 242 would increase the noise and disturbance experienced by occupiers of these properties. However, I do not consider that such an effect would result in significant harm to their living conditions. In reaching this view, I have taken account of the relatively low level of traffic identified in the evidence before me and the potential mitigation that could be provided at reserved matters stage or by condition.
35. I am satisfied that the impact of the development on the living conditions of occupiers of other neighbouring properties along Manchester Road would not be significant, subject to the design of an appropriate site layout and landscaping at reserved matters stage.

#### *Trees*

36. The appellant's evidence includes an arboricultural impact assessment (AIA) which indicates that no trees within the site boundary are subject to a Tree Preservation Order (TPO) and identifies the removal of a number of low value trees and hedges within the site. However, there is potential for additional landscaping to be provided to adequately replace the trees and hedging lost.
37. The AIA indicates that the proposed access road would potentially impact upon a single high value tree (T1 - Wellingtonia) and a single moderate value tree (T2 - Silver Birch), both of which are within the garden of a neighbouring property. In such circumstances, the appellant would need to demonstrate that the access road could be constructed without damage to the trees or alternatively reach an agreement to allow removal of the trees. The removal of the trees would have only a limited effect on the character and appearance of the surrounding area, as they are significantly set back from the highway frontage in a position of limited prominence.
38. The submitted layout is indicative only and precise details relating to the layout of the site, its relationship to existing trees and provision of additional landscaping could necessarily be dealt with at reserved matters stage.

#### **Planning Balance**

39. The proposal would conflict with the approach to the location and supply of housing in Policies STRAT 1, STRAT 2 and STRAT 9 of the CWCLP Part One and Policy GS5 of the VRBLP and would not therefore be in accordance with the development plan. In addition, I have identified that the development could result in significant harm to local biodiversity, with particular regard to the impact on protected species and their suitable habitat within the site in conflict with Policy ENV4 of the CWCLP Part One. In such circumstances, planning law



and the Framework<sup>8</sup> indicate that planning permission should not be granted unless material considerations indicate otherwise.

40. I have identified economic and social benefits arising from the provision of up to 27 new homes to which I attach significant weight. In addition, there would be some social benefit from the potential for wider public access to the proposed on-site open space, even though the primary purpose would be to meet policy requirements.
41. I have concluded that subject to the appropriate layout, scale, appearance and landscaping, the proposal would not unacceptably harm the character and appearance of the surrounding area. However, the scheme is in outline only and the absence of unacceptable harm is a factor which does not weigh in favour of the proposal.
42. I have identified a number of other adverse impacts that the proposal would have. There would be no material harm to highway safety or visual amenity in terms of loss of trees. There would be some disruption and disturbance during the construction phase and a marginal adverse effect upon the living conditions of the occupiers of neighbouring properties to either side of the access road through the increase in noise and disturbance. In combination, these adverse impacts carry only limited weight, given the extent of mitigation that could be secured by condition or through the submission of reserved matters.
43. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, the appeal proposal would be contrary to the development plan policies I have referred to, including the policies that set out the approach to the location and supply of housing which are not out of date. On a simple balancing exercise, the overriding concern relates to the potential harm to biodiversity, including protected species and their suitable habitat within the site. This conflict arising from the development before me would not be outweighed by other material considerations, including the contribution of the development to the supply of housing and the significant weight attributed to the identified social and economic benefits which would result. This is because there are satisfactory and less harmful alternatives for the location and supply of housing which exist to meet the requirements of CWCLP Part One for development of housing in the borough and within Northwich.

### **Conclusion**

44. For the reasons set out above and having taken all other matters into account, I conclude that the appeal should be dismissed.

*Gareth Wildgoose*

INSPECTOR

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<sup>8</sup> Paragraph 11