



Appeal Decision

Inquiry held on 18 September 2012

Site visit made on 20 September 2012

by S R G Baird BA (Hons), MRTPI

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

Decision date: 28 November 2012

Appeal Ref: APP/R0660/A/12/2173294

Land at Rope Lane, Shavington, Crewe, Cheshire

- 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 S Robinson (Wainhomes Developments Limited) against the decision of Cheshire East Council.
 - The application Ref 11/4549N, dated 8 December 2011, was refused by notice dated 21 March 2012.
 - The development proposed is the erection of up to 80 dwellings including details of access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 80 dwellings including details of access at Land at Rope Lane, Shavington, Crewe, Cheshire in accordance with the terms of the application, Ref 11/4549N, dated 8 December 2011 and the plans submitted with it, subject to the conditions contained in the attached Schedule of Conditions.

Preliminary Matters

2. The application was submitted in outline with all matters other than means of access reserved for a subsequent application. The access details are shown on Drawing No. 9W9523/Plan 4 Rev C.
3. The decision notice contains 4 reasons for refusal including 2 relating to ground contamination and hedgerows (Reasons 3 and 4). The Statement of Common Ground records that the local planning authority (lpa) would not pursue reasons for refusal 3 and 4.
4. At the Inquiry, the appellant submitted a copy of a signed Unilateral Undertaking (UU) under S106 of the above Act to provide for; education and highway contributions, affordable housing and the provision and subsequent maintenance of the proposed amenity area. The UU forms a material consideration in the determination of this appeal.

Policy Context

5. The National Planning Policy Framework (The Framework) at paragraph 14 says that unless material considerations indicate otherwise, where relevant development plan policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against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 as a whole. Paragraph 49, advises that relevant policies for the

supply of housing land should not be considered up-to-date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. In my view, the terms out-of-date and up-to-date mean the same thing for the purposes of applying The Framework.

6. It is common ground that the lpa does not have a 5-year supply of housing land. What is not agreed is the extent of the shortfall and whether the additional buffer required so as to ensure choice and competition should be increased to 20%. I heard evidence on the scale and make-up of the 5-year supply and whether the lpa has a record of persistent under-delivery of housing. However, the application of paragraph 14 of The Framework is unequivocal and does not depend on the extent of the housing land shortfall. Accordingly, in this case, it is unnecessary for me to consider the make-up of the lpa's 5-year housing land supply or the extent of the buffer. What I have to do, is address whether the relevant development plan policies relate to the supply of housing.
7. Here the development plan comprises, the North West of England Plan – Regional Spatial Strategy to 2021; the Cheshire Structure Plan (2006) and the Borough of Crewe and Nantwich Replacement Local Plan (2011). Of all the development planning policies identified, I consider Local Plan Policies NE.2 Open Countryside and NE.4 Green Gaps to be the most relevant.
8. The appeal site lies outside and adjoins the settlement boundary of Shavington. Policy NE.2 says that all land outside settlement boundaries will be treated as open countryside. In these areas, only development essential for the purposes of agriculture, forestry and outdoor recreation, essential works undertaken by public service authorities or statutory undertakers or for other uses appropriate to a rural area will be permitted. The development of up to 80 houses is clearly outside the scope of this policy.
9. The appeal site is located within the Shavington/Weston/Crewe Green Gap. Policy NE.4 says that Green Gaps are also the subject to the restrictions imposed by Policy NE.2 and again the erection of some 80 houses would fall well outside the scope of this policy. Policy NE.4 goes on to say that permission will not be granted for the construction of new buildings or the change of use of existing buildings or land that would erode the physical gaps between built-up areas or adversely affect the visual character of the landscape. Exceptions will only be considered where it can be demonstrated that no suitable alternative locations exist.
10. The lpa acknowledged that, having regard to paragraph 49 of The Framework, Policy NE.2 was not up-to-date and that whilst Policy NE.4 is not entirely divorced from land supply issues, it also serves a strategic function of maintaining the separation of settlements. I agree with the lpa's submission that any policy that seeks to regulate the location, type or amount of development could be said to restrict housing supply. Accordingly, it is necessary to examine the particular policy and adopt a proportionate approach. Policy NE.4 applies the same significant restrictions to, amongst other things, housing development as set out under Policy NE.2 and, because of the particular planning objectives relating to Green Gaps, adds additional criteria that proposed development has to be measured against. In my view, Policy NE.4 is not a freestanding policy; its genus is in Policy NE.2 and I agree with the appellant that if Policy NE.2 is accepted as being out-of-date, then it must

follow that Policy NE.4 must also be considered out-of-date for the purposes of applying Framework policy.

11. In coming to this conclusion, I have taken careful note of the submissions made by the lpa regarding the strategic function of Policy NE.4 and the comments of Inspectors dealing with objections to the Local Plan in 1996 and the Replacement Local Plan in 2003. However, since then, the position on both housing land supply and national planning policy has changed materially. Moreover, I note that the support my colleagues gave to Policy NE.4 was qualified by references to what appears to have been an adequate housing land supply. Thus, given the significant change in planning policy and the acknowledged inadequacy of the housing land supply in Cheshire East, I attach limited weight to the findings of my colleagues in 1997 and 2003.
12. Similarly, I attach limited weight to the Interim Planning Policy: Release of Housing Land document adopted by the lpa (IPP 1), the subsequent Revised Interim Planning Policy: Release of Housing Land document (IPP 2) and documents produced as part of the emerging Core Strategy. The Core Strategy is at a very early stage and unlikely to be adopted before the end of 2013; thus limited weight can be attached to it. Moreover, documents such as the Crewe Town Strategy are acknowledged as consultation only documents and although it will form part of the Core Strategy evidence base, it is not and will not be a policy document. Although it has no status as a development plan policy, IPP 1 has been adopted by the lpa and IPP 2 was at the time of the Inquiry a consultation document. Thus, as material considerations these documents have to be accorded limited weight. These were all conclusions accepted by the lpa. Moreover, in my view, their status and materiality is further compromised by the thrust of paragraph 49 of The Framework. Reading these documents carefully, I am in no doubt they are intended to be policies designed to regulate the supply of housing land. In this context, they fall to be considered in the light of paragraph 49 of The Framework. Thus, in the acknowledged absence of a 5-year supply of housing land, IPP 1 and 2 have to be regarded as out-of-date and cannot logically have any more weight or relevance than development plan Policies NE.2 and NE.4.

Main Issue

13. In light of the above conclusions, the main issue is whether there are any adverse impacts that would significantly and demonstrably outweigh the benefits of granting planning permission.

Reasons

Benefits

14. The proposal is for the erection of up to 80 dwellings of which 30% would be Affordable Dwellings and of which 65% would be Social Rented Housing and 35% would be Discounted for Sale Housing. The lpa acknowledges that the proposal would increase the supply of housing and improve the choice and quality of housing in the district through the provision of a range of house types and tenures and is sustainably located close to shops, schools and other services in Shavington. The development would bring direct and indirect economic benefits to Shavington. These would include additional trade for local shops and businesses, jobs in construction and economic benefits to the construction industry supply chain. The lpa accepts that approval of the

scheme would fulfil the economic and social requirements of the planning system as set out in The Framework in terms of contributing to building a strong, responsive and competitive economy, providing for the supply of housing and generating jobs. The lpa acknowledges that these potential benefits are significant considerations in favour of the scheme.

Character, Appearance and Separation

15. The appeal site lies within a series of small enclosed fields that form part of the green gap between Shavington and Crewe. It is clear that residents value the physical and perceived separation of the 2 settlements and the contribution that this makes to the identity of Shavington as a rural settlement. To a large extent this is founded on the inability to see the built-up edge of Crewe from much of the northern edge of Shavington and that access to Crewe is limited to 2 roads, Rope Lane and Crewe Road.
16. The appeal site lies within an indentation in the northern boundary of the settlement formed by a spur of residential development on Burlea Drive that extends up to the bridge on Rope Lane over the A500 and residential development at Northfield Place. Thus, in views from Rope Lane and the public footpath that runs from Rope Lane to Vine Tree Avenue whilst there would be a localised loss of openness, the development would not, overall, result in Shavington coming closer to Crewe or increase the visibility of the built-up edge of Crewe. In the above context, the development would not materially reduce the physical or perceived separation of Shavington and Crewe.

Other Considerations

17. The impact of the development on the local highway network has been the subject of a robust assessment by the appellant and this was acknowledged by the Council as highway authority. This assessment concludes that traffic generated by the scheme could be accommodated within the existing highway network leaving available traffic capacity at all but one of the assessed junctions, the South Street/A534 junction where there would be a marginal increase in vehicle queues. Subject to the provision of a financial contribution to junction improvement works, the highway authority has no objection to the proposal. I have no reason to disagree with the outcome of the traffic assessment or the highway authority's conclusions.
18. The impact of the development on drainage and the potential for flooding has been the subject of a Flood Risk Assessment and assessed by the Environment Agency who, subject to the imposition of planning conditions, has no objections. It is anticipated that the development would generate a demand for some 13 primary school places and 10 secondary school places. The lpa has identified pressure on local primary school provision and sufficient capacity within local secondary schools. Subject to the provision of a contribution to education provision the Council as education provider has no objections. As to the impact on other community infrastructure, this is not a matter raised by the lpa and other than assertion I have no evidence to suggest any adverse impact from the development.
19. The UU provides for the provision of affordable housing, highways and education contributions and the provision of the proposed amenity area and the setting up of a management company to maintain the area. Having regard to

the evidence before me, I consider the proposed UU accords with the tests contained at paragraph 204 of The Framework.

Conclusion

20. The lpa does not have a 5-year supply of land for housing, development plan policies NE.2 and NE.4 insofar as they regulate the supply of land for housing are not up-to-date. The Core Strategy is at an early stage of preparation and other documents used by the lpa to regulate the supply of land for housing can only be afforded limited weight. The Framework indicates that where relevant development plan policies are considered not to be up-to-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Although there would be limited harm to the character and appearance of the area through the localised loss of openness, the scheme would not materially affect the degree of separation between Shavington and Crewe. In this case, I consider the limited harm to the character and appearance of the area does not significantly and demonstrably outweigh the acknowledged benefits of the proposed development. In coming to this conclusion, I have taken all other matters into consideration including the representations made by local residents but none are sufficient to outweigh the benefits of the proposal.

Conditions

21. In addition to conditions relating to the submission of details of reserved matters, conditions relating to compliance with the Flood Risk Assessment, drainage via a separate system and a restriction on development near the Swill Brook are reasonable and necessary in the interests of proper drainage and flood prevention. In the interests of the living conditions of existing and potential residents, conditions relating to lighting, noise mitigation, air quality assessment, the potential for ground contamination and renewable energy are reasonable and necessary. In the interest of highway and pedestrian safety, a condition to provide for a footpath along the site frontage is reasonable and necessary. In the interests of the appearance of the area and ecology, conditions relating to the submission of a tree survey, the protection of existing trees and hedges, nesting birds and the provision of features for breeding birds are reasonable and necessary. Given the potential for archaeological finds, a condition providing for a watching brief and the surveying of spoil is reasonable and necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
22. I consider the suggested conditions relating to retention of hedgerows as part of the public realm, the replacement of planting removed as part of the development, details of the public open space, the public footpath and access details are unnecessary given the nature of the reserved matters to be submitted and the requirements of other conditions.

George Baird

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place except in complete accordance with the mitigation measures as set out in the Flood Risk Assessment from Weetwood (Ref 1961/FRAv1.3 dated 11 November 2011).
- 5) The site shall be drained on a separate system, with only foul drainage connected into the public foul sewerage system. Surface water shall discharge to the watercourse.
- 6) No development shall take place within 8m of the top of the bank of the Swill Brook.
- 7) No development shall commence until the developer has secured the implementation of a scheme of archaeological observation and recording during significant intrusive groundworks, such as the excavation of foundation trenches and major services, combined with supervised metal detecting of the spoil, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. A report of the findings of the investigation shall be submitted to the local planning authority within 3 months of the completion of the investigations.
- 8) Each reserved matters application shall be accompanied by a detailed lighting plan for the phase of development to which it relates. No development shall take place except in complete accordance with the approved plan.
- 9) No development shall commence until a noise mitigation scheme for protecting the proposed dwellings from traffic noise (mainly from the A500) has been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any of the dwellings to which they relate are occupied.
- 10) The first reserved matters application shall be accompanied by an updated Air Quality Impact Assessment, the scope of which shall first be agreed in writing with the local planning authority. The report shall, inter alia, acknowledge the recently identified disparity between measured NO_x and NO₂ and the projected decline with emission forecasts which form the basis of air quality modelling. The report shall predict air quality with 'no emission reduction' and 'with emission reduction' scenarios. The report shall also include details of any necessary mitigation measures. The mitigation shall be completed before any of the dwellings to it relates is occupied.

- 11) Prior to the development commencing a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority. If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the local planning authority. The scheme shall be carried out as approved. If remediation is 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 before the first occupation of any dwelling hereby approved.
- 12) A tree survey shall be submitted with each reserved matters application and shall inform the design of the layout. The reserved matters application shall make provision for the retention of those trees that are classed as Category A and Category B in the submitted survey.
- 13) No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a Tree Preservation Order currently in force, has been 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 protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority. 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 with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.
- 14) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- 15) The reserved matters application shall make provision for the proposed footpath along the site frontage in accordance with Drawing No. 9W9523/PLAN 4 Rev C dated 8 May 2011.
- 16) Prior to any commencement of any works between 1 March and 31 August in any year, a detailed survey shall be carried out to check for nesting birds within the area of the proposed works. Where nests are found in any hedgerow, tree or scrub to be removed a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed in writing to the local planning authority by a suitably qualified person.

- 17) Prior to the commencement of development, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including swifts and house sparrows shall be submitted to and approved in writing by the local planning authority. The features shall be permanently installed in accordance with the approved details prior to the first use of the development hereby permitted.
- 18) No development shall commence until details of a scheme that demonstrates how at least 10% of predictable energy requirements will be derived from the design of the dwellings hereby approved has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Vincent Fraser QC instructed by S Harris of Emery Planning Partnership.

He called:

Mr S Harris BSc (Hons) MRTPI.
Associate Director, Emery Planning Partnership.

Mr C Barnes CMLI.
Managing Director, Barnes Walker Limited, Landscape & Urban Designers.

FOR THE LOCAL PLANNING AUTHORITY

Mr Carter of Counsel, instructed by C Elwood Borough Solicitor.

He called:

Mr R A House BA (Hons) MRTPI.
Central Area Manager (Spatial Planning).

Mr B Haywood (BA (Hons) MA, DMS, MRTPI.
Principal Planning Officer.

Mr J Gomulski BA (Hons), MILA, MA, LMRTPI.
Principal Landscape Architect.

INTERESTED PERSONS

Cllr. D Brickhill.
Shavington Ward, Cheshire East Council.

Cllr. Hogben.
Shavington Parish Council.

Mr P Yoxall.
Shavington Parish Council.

Mrs S Birch.

Mr P West on behalf of Mrs J West.

Mr Farrington.

Mr Preston.

Dr. Lovie.

Documents Submitted at the Inquiry

- Doc 1 - NLP, Further Comments in Respect of Matter 4 – Housing Wigan Core Strategy EIP.
- Doc 2 - Additional comments by Ipa on Harris Appendix EPP5.
- Doc 3 - Strategic Housing Land Availability Assessments – Practice Guidance.
- Doc 4 - Extract from NPPF Forum 29 March 2012.
- Doc 5 - Details of 2 sites Cheshire East Call for Sites.
- Doc 6 - Copy of Email 27 April 2012. CEC SHLAA – Langley Works.
- Doc 7 - Copy of letter dated 27 April 2012 CEC 2012 SHLAA Update – Land South of Crewe Road, Alsager.
- Doc 8 - Bundle of 5 Appeal Decisions.
- Doc 9 - Further Extract from NPPF Forum 23/24 August 2012.
- Doc 10 - Journey photographs – Rope Lane.
- Doc 11 - Copy of letter from Home Builders Federation to CEC.
- Doc 13 - List of suggested conditions.
- Doc 14 - Amendment to suggested condition 22.